

**STEP Bahamas Luncheon
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**“SMART Funds as an
Estate Planning Tool”**

**Linda Beidler-D’Aguilar
Partner, Graham, Thompson & Co.**

Securities Industry Act & Regulations

Key points of the New Securities Industry Act 2011:

- IOSCO “A” status should be forthcoming
- Enhanced definitions of “securities” and “securities business”
- Streamlines the licensing process for firms engaging in securities business.
- Greater powers for the Securities Commission with increased accountability.
- Direct reports from auditors to Securities Commission on any deficiencies.

SMART Funds as a Tool for Estate Planning

SMART Funds are a superb vehicle but not necessarily a complete estate plan.

What is a SMART Fund?

It's a “Specific Mandate Alternative Regulatory Test” Fund

Types of SMART Funds

A SMART Fund 001 is a collective investment scheme limited to the discretionary managed clients of regulated financial institutions

A SMART Fund 002 is a private investment company with a maximum of 10 qualified investors, a majority of whom have the ability to appoint and remove the fund's operators (i.e., general partners, directors).

A SMART Fund 004 is a private investment company with a maximum of 5 investors. An administrator is not required, but if not appointed the license can only be issued by Securities Commission.

A SMART Fund 005 is an investment fund with a maximum of 5 qualified investors.

Features of SMART Funds

- Waiver of annual audit with unanimous consent of all investors.
- If waived, performance reports must be filed with Securities Commission every six months.
- Term sheets are mandatory only for a SMART Fund 002

Investor Qualifications for SMART Funds

“Qualified Investors” for purposes of SMART Funds 002 and 005 are:

- Licensed banks, securities firms, investment funds and insurance companies;
- Any natural person (jointly with spouse) with net worth of \$1,000,000;
- Any natural person who had a minimum income of \$200,000 for the last 2 years (\$300,000 with spouse) and has reasonable expectation of the same for the current year;
- A trust with total assets of more than \$5 million;
- Any entity beneficially owned by any of the above classes of investors; or
- Any entity with net assets in excess of \$5 million.

Legal Structures for a SMART Fund

- International Business Company (IBC)
- Segregated Account Company (SAC)
- Limited Partnership (LP)
- Trusts

Key consideration: who will hold the interests in the SMART Fund?

OBLIGATIONS

The duties of an administrator include taking all reasonable steps to ensure that:

- the operations of an investment fund are carried out in accordance with the investment fund's underlying documents; and
- the investment fund is carrying on its business in a manner which is not prejudicial to investors or creditors of the investment fund.

The operators (directors or general partners) of a fund have statutory duties, including the obligations to ensure that:

- the value of equity interests is calculated in accordance with the provisions of the constitutive documents; and
- any investment and borrowing limitations set out in the fund's documents are complied with.

Advantages of using a SMART Fund

SMART FUND

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REAL ESTATE]; A --- C[CLASS B  
STOCKS AND  
BONDS]; A --- D[CLASS C  
OPERATING  
COMPANY]; A --- E[CLASS D  
COMMODITIES];
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CLASS A

REAL ESTATE

CLASS B

STOCKS AND
BONDS

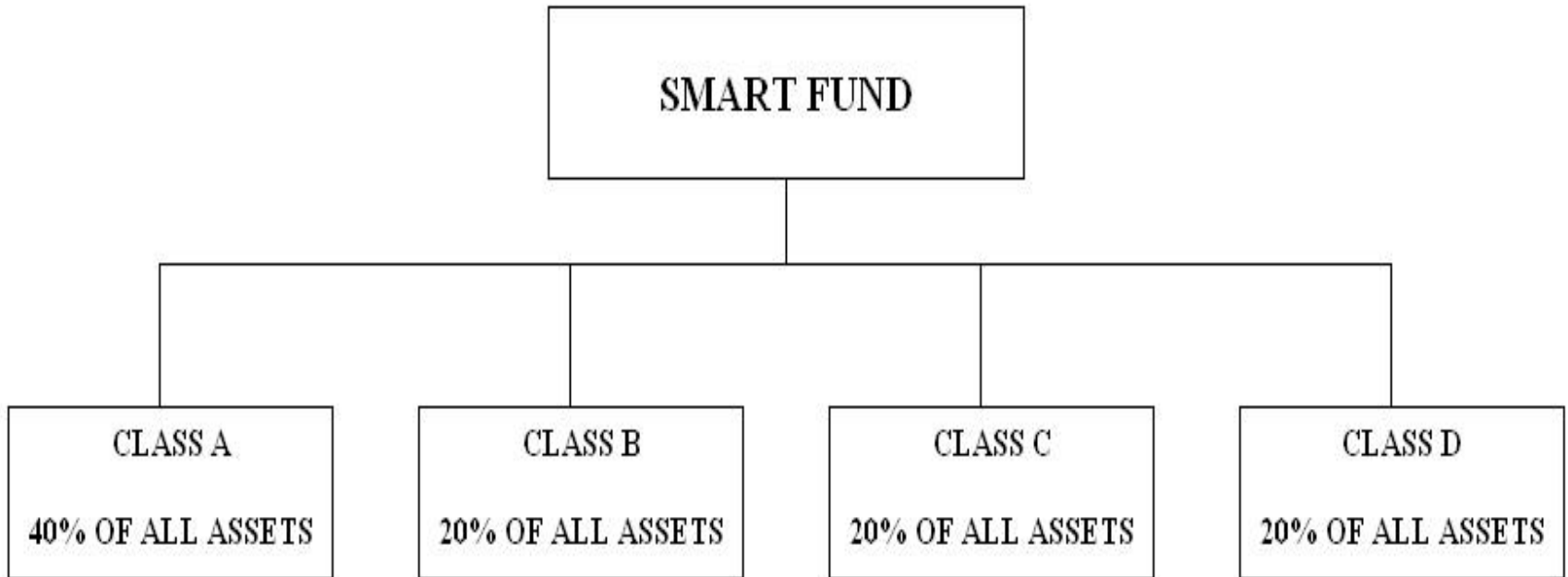
CLASS C

OPERATING
COMPANY

CLASS D

COMMODITIES

Advantages of using a SMART Fund





LIABILITY

No party to a fund may be relieved of liability for consequences to investors in the event of willful default.