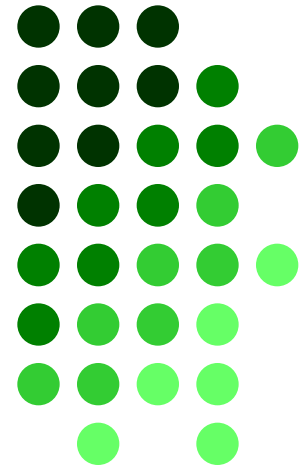


SMART Funds

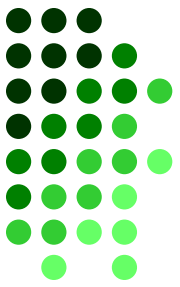
David F. Allen
(dfallen@mckinney.com.bs)



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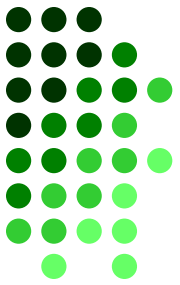
4 Types of Investment Funds

Under *Investment Funds Act, 2003* (*IFA*)

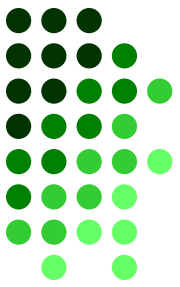


- **Standard Fund:** anticipates offering to general public, highly regulated, traditional. Not a professional fund, a SMART fund or a recognized foreign fund.
- **Professional Fund:** designed for sophisticated institutional investors; fast launch time (i.e. bank or trust company, registered broker-dealer)
- **SMART Fund:** Specific Mandate Alternative Regulatory Test Fund – satisfies prescribed parameters approved by Commission.
- **Recognised Foreign Fund:** licensed or registered in jurisdiction prescribed by Securities Commission.

Characteristics Of SMART Fund



- *Governed by Investment Funds (SMART Fund) Rules, 2003 and Investment Funds (SMART Fund) Rules, 2005 along with IFA and Investment Funds Regulations, 2003 (IFR).*
- Highly flexible: Industry Participants and/or Commission can establish new templates/types of SMART Fund.
- The “test” of SMART Fund determines level of regulatory oversight imposed based on:
 - Risk;
 - Sophistication of fund’s investors;
 - Number of people investing; and
 - Participation of licensed fund administrator.
- There are 125 licensed SMART Funds in The Bahamas, as of 31st December 2006.

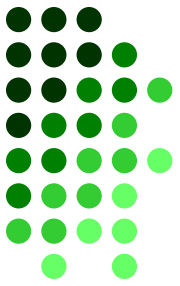


Legal Attributes

- Offering document is “term sheet,” which is discretionary.
- Shareholders can waive annual audit requirements.
- Fast track licensing in 72 hours.
- By 31st January each year the Operator must certify to Commission that fund qualified to operate as type of SMART Fund.

SMART Fund Templates

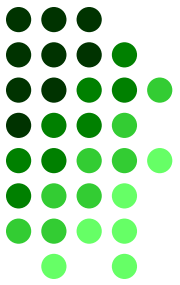
SMF001



Licensors may license if:

- Promoter of fund is financial institution; and
- Investor in fund a customer of promoter and party to Discretionary Management Agreement with Promoter.
- Assets of investors in fund not subject to fees at fund level and at Discretionary Management Agreement level;
- IFA and IFR apply.

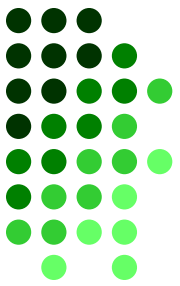
SMF002



Licensors may license if:

- Investment fund has more than 10 investors who hold equity interest in fund;
- Investor of fund is person to whom a professional fund may be offered; and
- Majority of investors who hold equity interests in fund have power to appoint and remove operators of fund;
- IFA and IFR apply.

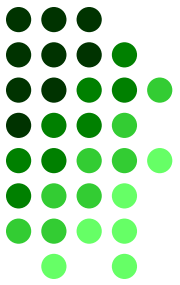
SMF003



Licensors may license if:

- Fund operating as mutual fund exempt pursuant to s.3(4) of Mutual Funds Act, 1995 at time of repeal of that Act; and
- Fund has not more than 15 investors holding equity interests in fund, majority of whom have power to appoint or remove operators of fund;
- IFA and IFR apply.

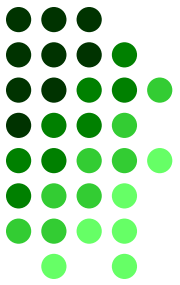
SMF004



Licensors may license if:

- Investment fund has more than 5 investors who hold equity interests in fund; and
- Fund operates as private investment company;
- IFA and IFR apply.

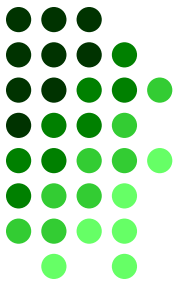
SMF005



Licensors may license if:

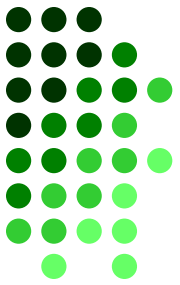
- Fund limited to 5 investors who hold equity interests in fund;
- Each investor in fund is person to whom professional fund may be offered;
- Fund operates as private investment vehicle;
- Fund appointed administrator, which is financial institution;
- IFA and IFR apply.

Set Up



- Promoter or Administrator sets up SMART fund with Commission or Unrestricted Investment fund Administrator;
- Provides supporting documents:
 - Mem. & Arts.
 - Admin. Agr.
 - Subscript. Agr.
 - Discret. Manag. Agr.
 - Term Sheet
- Chooses type of regulation (SMF004 most popular);
- Commission meets every month to approve funds.

Conclusion



- Worldwide securities regulators introduce stringent disclosure rules on private investment, Bahamas created unique legislation that regulates on sliding scale tailored to investors.



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