SECURITIES INDUSTRY (PHYSICAL PRESENCE) RULES

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SECURITIES INDUSTRY (PHYSICAL PRESENCE) RULES

(SECTION 149(1))

S.I. 12/2012

[Commencement 30th January, 2012]

Citation.

1. These Regulations may be cited as the Securities Industry (Physical Presence) Rules.

Interpretation.

2. (1) In these Rules —

"managing representative" means a company that is —

(a) appointed by a registered firm to achieve physical presence in The Bahamas for and on behalf of such registered firm; and

(b) approved by the Commission for the purposes of (a);

"physical presence" means having located within The Bahamas —

(a) governance and management;

(b) premises and facilities; and

(c) records and record-keeping arrangements;

"registered firm" means a firm registered under the Act to manage and or advise on securities;

"service level agreement" means an agreement detaining the responsibilities and obligations of a managing representative to administer the affairs of, and to act as agent in The Bahamas for, a registered firm;

"the Act" means the Securities Industry Act; Ch. 363.

"the Regulations" means the Securities Industry Regulations.

(2) Words and phrases not defined in paragraph (1) and used in these Rules shall, unless the context otherwise requires, have the same meaning ascribed to them in the Act and regulations made under the Act.

Exemption.

3. These Rules shall not apply to —

(a) an alternative trading system (ATS);

(b) a compensation, contingency or similar fund formed to compensate clients of registrants;

(c) an individual registered under Part VI of the Act;

(d) a public issuer;

(e) an investment fund;

(f) a party related to an investment fund, that is not licensed under the Investment Funds Act; Ch. 369A.

(g) a person that is by order of the Commission exempt from a provision of securities laws;

(h) a rating organisation;

(i) a general partner or a partner, director, officer or significant security holder of a person referred to in paragraphs (a) to (h).

Minimum physical presence requirements. Schedule.

4. Subject to rule 3, all market participants shall satisfy and maintain the minimum physical presence requirements set out in the Schedule.

Alternative requirements for registered firms.

5. (1) A registered firm may appoint a managing representative to satisfy the minimum physical presence requirements under these Rules.

(2) A registered firm shall, notwithstanding the appointment of a managing representative, ensure that all regulatory requirements under the Act are satisfied and maintained.

Process for approval of a managing representative.

6. (1) A registered firm shall not appoint a managing representative to satisfy its physical presence requirements unless such managing representative has been approved by the Commission.

(2) An application for approval of a proposed managing representative shall, unless the Commission permits otherwise, be submitted by the registered firm and considered by the Commission at the time the registered firm applies to be registered under the Act.

Commission has power to refuse appointment.

7. The Commission shall not approve a managing representative unless such representative can demonstrate clearly that it —

(a) has knowledge of the types of business activities of the registered firm;

(b) has technical and managerial resources to act as a managing representative;

(c) has the operational capacity to meet the obligation of a managing representative;

(d) is fit and proper; and

(e) meets such other requirements as may be prescribed.

Request for supplemental information.

8. The Commission may as it considers necessary request from a registered firm or an approved managing representative —

(a) supplementary information; or

(b) clarification of the information initially provided at the time of the approval of the managing representative.

Notices of change of appointment, termination or resignation of managing representative.

9. (1) A registered firm shall give notice of the change of appointment, termination or resignation of an appointed managing representative to —

(a) the Commission;

(b) the affected managing representative.

(2) A notice under paragraph (1) shall —

(a) pursuant to regulation 7 of the Regulations, contain the information required by Form 12 of the Second Schedule to the Regulations modified as necessary for the purposes of this rule; and

(b) be sent to the Commission and the affected managing representative within ten days after the appointment, termination or resignation, as the case may be.

Qualifications for approval of a managing representative.

10. (1) A managing representative approved by the Commission shall be incorporated, established or registered under a law in The Bahamas and further registered or licensed —

(a) under the Act as a registered firm;

(b) under the Investment Funds Act as — Ch. 369A.

(i) an unrestricted investment fund administrator operating in The Bahamas; or

(ii) a restricted investment fund administrator operating in The Bahamas;

(c) as an entity under the Financial and Corporate Service Providers Act; or Ch. 369.

(d) as the holder of an unrestricted license under the Banks & Trust Companies Regulation Act. Ch. 316.

(2) A managing representative shall, in addition to the requirements under paragraph (1), demonstrate that it —

(a) has knowledge of the types of business activities of the registered firm proposing to appoint it;

(b) has technical and managerial resources to act as a managing representative;

(c) has the operational capacity to meet the obligation of a managing representative;

(d) is able to satisfy and maintain all minimum physical presence requirements as are prescribed for market participants and set out in the First Schedule; and

First Schedule.

(e) has executed a service level agreement with the registered firm that proposes to appoint it.

Service level agreement.

11. (1) A service level agreement shall contain, but need not be limited to, arrangements covering —

(a) the services to be provided;

(b) the responsibilities of the managing representtative and the registered firm, including but not limited to —

(i) maintenance of principal corporate records and other records;

(ii) assistance in the performance of any annual audits or financial statements by the registered firm;

(iii) ensuring operations of the registered firm are in compliance with the laws of The Bahamas;

(c) books and record-keeping requirements and ensuring that all reports, communications and other documents are received by the management representative to enable it to properly discharge its record-keeping requirements;

(d) terms of service regarding the inspection of records by the registered firm or by any person or persons authorised by such registered firm;

(e) terms of service, including remuneration and other consideration, and conditions of amendment, termination and indemnification;

(f) access to records by the Commission to ensure effective and regulatory oversight;

(g) confidentiality provisions; and

(h) a requirement that the agreement is to be governed by and construed in accordance with the laws of The Bahamas.

(2) A copy of the service level agreement executed by the proposed managing representative shall be submitted to the Commission at the time a firm submits an application for registration under the Act to manage and or advise on securities.

Sanctions.

12. Without prejudice to any other action that may be instituted or taken against a person, the Commission shall commence enforcement action in accordance with the provisions of Part XV of the Act at any time it appears to the Commission that a person has failed to comply with any of the requirements under these Rules.

Transitional provisions.

13. (1) The physical presence requirements set out under these Rules shall not take effect until the 30th day of December, 2012 with respect to a person who immediately before the effective date was a securities exchange, clearing facility, ancillary facility, broker-dealer or securities investment advisor registered under the former Act.

(2) The Statement of Practice on Physical Presence Requirements for Registrants issued on 4th November, 2009 under the former Act shall, until the 30th day of December, 2012, have effect under the Act and these Rules.

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SCHEDULE (Rule 4)
MINIMUM PHYSICAL PRESENCE REQUIREMENTS

Governance and Management Requirements	A market participant other than an exempted market participant under Rule 3, shall — (a) have a chief executive officer residing in The Bahamas who shall — (i) be registered with the Commission; (ii) be responsible for managing the day to day operations of the marketplace in the jurisdiction, which responsibility shall not be delegated; and (b) appoint at least one director who shall be a resident of The Bahamas.
Records and Record-Keeping Arrangements Requirements	A market participant other than an exempted market participant under Rule 3 shall keep such books, records and other documents as are necessary and prudent for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others, in accordance with the Act and any regulations made under the Act.
Premises and Facilities Requirements	A market participant other than an exempted market participant under Rule 3 shall — (a) maintain an established place of business in and operate from The Bahamas; (b) maintain and manage premises and equipment necessary for the administration of its affairs, including but not limited to — (i) appropriate, dedicated and secure physical office space, including adequate desk and other necessary workspace; (ii) appropriate, separate and secure facilities for the custody and storage of official records; (iii) appropriate communications; and (c) unless a waiver has been provided by the Com-mission, bear appropriate exterior identification of the registrant's presence; and, (d) have public access telephone and have listed all other numbers, codes and mailing and street addresses.