Revised Regulations of Anguilla: S13-4

SECURITIES ACT (R.S.A. c. S13)

CONDUCT OF BUSINESS REGULATIONS

Note: These Regulations are enabled under section 71 of the Securities Act, R.S.A. c. S13.

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PART 1

PRELIMINARY

Application

1. These Regulations are of general application to all licensed securities business provided that, where a section applies only in particular circumstances, that section will apply to a licensee only if those circumstances are relevant to the type of the securities business undertaken by that licensee.

Interpretation

2. In these Regulations—

"approved bank" means a bank licensed under the Banking Act* and which is approved by the Commission for the purposes of these Regulations;

"customer bank account" means a bank account established for the purposes of section 33; and

"money" includes any form of money, whether represented by a cheque or other payable order, or otherwise.

Contravention

3. If a licensee contravenes any provision of these Regulations, the licensee commits a disciplinary offence.

PART 2

CODE OF BUSINESS CONDUCT

Independence

4. If a licensee is advising or acting for a customer the licensee shall—

(a) not claim it is independent or impartial if it is not; and

(b) ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

Material interest

5. If a licensee has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to the transaction, the licensee shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless the licensee has—

(a) fairly disclosed that material interest or relationship, as the case may be, to the customer; or

(b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the customer.

* Banking Act, 2015 (Act 6/2015) *repealed* the Banking Act, R.S.A. c. B11.

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Inducement

6. A licensee must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to its customers.

Fair and clear communication

7. (1) A licensee may make a communication with another person that is designed to promote the provision of securities investment business services only if it can show that it believes on reasonable grounds that the communication is fair, comprehensive and not misleading.

(2) A licensee shall take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to customers to whom it provides securities investment business services is presented fairly and clearly.

Customers' understanding of risk

8. A licensee shall not—

(a) recommend a transaction to a customer, or effect a discretionary transaction with or for the customer, unless it has taken all reasonable steps to enable the customer to understand the risks involved;

(b) mislead a customer as to any advantages or disadvantages of a contemplated transaction; or

(c) promise a return unless the return is contractually guaranteed.

Information about the licensee

9. A licensee must take reasonable steps to ensure that a customer to whom it provides securities investment business services is given adequate information about its identity and business address and the identity and status within the licensee's firm of employees and other relevant representatives with whom the customer has contact.

Representatives of licensee

10. (1) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that it has appointed a representative who is a fit and proper person to act for it in that capacity.

(2) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

Customer agreements

11. (1) A licensee shall not provide to a customer any securities investment business services relating to—

(a) the discretionary management of a portfolio; or

(b) any other type of business that may be specified by the Commission;

except under a written agreement signed by the customer and returned to the licensee.

(2) The agreement shall set out in adequate detail the basis on which those services are provided.

(3) The Commission may from time to time prescribe special procedures relating to the operation of discretionary accounts and every licensee shall follow the special procedures or ensure that they are followed.

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(4) A court of competent jurisdiction may, if it considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this section, but the order shall not affect any dealing or transaction entered into or carried out by the licensee on behalf of the customer.

Customers' rights

12. (1) A licensee shall not, in any written communication or agreement, seek to exclude or restrict—

(a) any duty or liability to a customer which it has under any law or under any rules made by the Commission;

(b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to the customer of securities investment business services;

(c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of securities investment business services.

(2) A purported exclusion or restriction prohibited by this section shall be void and of no effect.

Suitability

13. (1) A licensee must take all reasonable steps to ensure that it does not give securities investment business advice to, nor effect a discretionary transaction with or for, a customer unless that advice or transaction is suitable for the customer having regard to the facts disclosed by that customer and other relevant facts about the customer of which the licensee is or ought reasonably to be aware.

(2) A licensee must not recommend a security to a customer unless the licensee has adequate current information in its possession to enable it to form a basis for the recommendation.

Charges

14. (1) A licensee's charges must not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances.

(2) A licensee must before it provides securities investment business services to a customer disclose to the customer—

(a) the basis or amount of its charges for the provisions of those services; and

(b) the nature and amount of any other remuneration receivable by it and attributable to the customer.

(3) A licensee must not have a commission, mark-up or mark-down in excess of 5% and any commission, mark-up or mark-down in excess of 5% shall be treated as excessive except as otherwise determined by the Commission.

Confirmation and periodic information

15. (1) When a licensee causes a sale or purchase of securities with or for a customer, it must ensure that within 24 hours the customer is sent a contract note containing the essential details of the transaction.

(2) If a licensee acts as an investment manager for a customer, it must ensure that the customer is sent at suitable intervals—

(a) a report stating the value of the portfolio or account at the beginning and the end of the period;

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(b) its composition at the end of the period; and

(c) in the case of a discretionary portfolio or account, changes in its composition between the beginning and the end of the period.

(3) A customer transaction report must be submitted to the Commission in respect of any transaction involving a sum in excess of $10,000.

Customer order priority

16. A licensee shall deal with its customer and own account orders fairly and in due turn.

Timely execution

17. A licensee shall effect or arrange the execution of an order as soon as is reasonably practicable after it has agreed or decided in its discretion to effect or arrange a customer order.

Best execution

18. A licensee must take all reasonable steps to find and deal on the terms which are the best available to the customer when dealing with or for a customer.

Timely allocation

19. A licensee must ensure that a transaction it executes is promptly allocated.

Fair allocation

20. If a licensee aggregates an order for a customer transaction with an order for an own account transaction, or with an order for another customer transaction, then in the subsequent allocation—

(a) it shall not give unfair preference to itself or to any of those for whom it dealt; and

(b) where all orders cannot be satisfied, it shall give priority to satisfying orders for customer transactions.

Front running

21. If a licensee intends to publish to customers a price-sensitive recommendation or research or analysis, it must not knowingly effect an own account transaction in the investment concerned or in any related investment until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

Excessive transactions

22. A licensee shall not—

(a) deal or arrange a deal in the exercise of discretion for any customer; or

(b) advise a customer to deal;

if the dealing could in the circumstances reasonably be regarded as too frequent or excessive.

Insider dealing

23. A licensee shall not knowingly profit or seek to profit, either for its own account, the account of a customer or any third party, from inside information in the hands of any of its officers, employees or agents, or assist anyone with such information to make a profit for itself.

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Safeguarding of customer investments

24. A licensee who has custody of a customer's securities in connection with or with a view to securities investment business shall—

(a) keep safe, or arrange for the safekeeping of, any documents evidencing title relating to them; and

(b) ensure that any securities that it buys or holds for a customer are properly registered in the customer's name or, with the consent of the customer, in the name of an appropriate nominee.

Complaints

25. (1) A licensee must have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

(2) A licensee shall maintain a customer complaints file that contains copies of all customer complaints.

Compliance

26. (1) A licensee must disclose, in every transaction, whether it is dealing with a customer in its capacity as an agent or on its own account.

(2) A licensee and its customers shall have a fiduciary relationship and the licensee must treat and conduct its business in full observance of this obligation.

(3) A licensee must take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

(a) its officers, employees and other representatives are aware of their obligations under the Act and its Regulations, and that they act in conformity with them; and

(b) sufficient information is recorded and retained about its securities business in compliance with the Act and its Regulations.

(4) A licensee must keep and maintain all necessary books and records of its business including—

(a) customer account statements;

(b) records of transactions;

(c) order tickets;

(d) confirmations; and

(e) stock ledgers;

for a period of not less than 7 years, for inspection by any person duly authorised by the Commission.

Supervision

27. A licensee must establish and maintain procedures—

(a) for the supervision of each of its officers, employees and other representatives; and

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(b) for ensuring that the persons referred to in paragraph (a) do not give advice or provide services of a nature that is beyond their competence to give or to provide.

Customer confidentiality

28. (1) Subject to subsection (2), all information in the possession of a licensee relating to a customer must be kept confidential by it.

(2) A licensee may disclose information relating to a customer when properly required to do so by the Commission, a clearinghouse or the market supervision department of a securities market of which it is a member, or if it is ordered to do so by a court of competent jurisdiction.

Cold calling

29. (1) No licensee shall—

(a) attend at any residence without being invited by an occupant of the residence; or

(b) make an unsolicited telephone call to any residence;

within Anguilla for the purpose of trading in a security.

(2) Subsection (1) does not apply where the licensee attends at or telephones the residence—

(a) of a close personal friend, a business associate or a client with whom or on whose behalf the licensee has been in the habit of trading securities; or

(b) of a person who has received a copy of a prospectus or draft prospectus and is requesting that information regarding a security offered in that prospectus be given to the person by the licensee.

Cessation of business

30. If a licensee withdraws from securities business it shall—

(a) immediately notify the Commission and each of its customers of its decision; and

(b) ensure to the satisfaction of the Commission that any outstanding business is properly completed or transferred to another licensee.

PART 3

CUSTOMER MONEY

Application

31. This Part applies to any customer money held or received by a licensee in the course of carrying on its securities business.

Customer money

32. (1) For the purposes of these Regulations, customer money is money of any currency which, in the course of carrying on its securities business, a licensee holds or receives on behalf of a customer or which it owes to a customer.

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(2) Customer money shall be held by the licensee on trust for and on behalf of the respective customers for whom that customer money is received or held according to their respective shares in it.

(3) Customer money shall not form part of the assets of the licensee for any purpose and shall not be available in any circumstances for payment of any debt of the licensee.

Customer bank accounts

33. (1) A licensee that receives or holds customer money shall open one or more customer bank accounts with an approved bank.

(2) A customer bank account must be kept segregated from any account holding money belonging to the licensee.

(3) A licensee must immediately pay into a customer bank account all customer money coming into its hands for or from a customer.

(4) A licensee must keep records of—

(a) all amounts paid into a customer bank account kept by the licensee, specifying the persons on whose behalf the amounts are held and the dates on which they were paid into the account;

(b) all withdrawals from a customer bank account, the dates of those withdrawals, and the names of the persons on whose behalf the withdrawals are made; and

(c) any other particulars that may be determined by the Commission.

Accounting for and use of customer money

34. A licensee must account properly and promptly for customer money and, in particular, must ensure that—

(a) customer money and other money do not become mixed;

(b) the licensee can at all times be sure how much customer money stands to the credit of each customer; and

(c) money belonging to one customer is not used for another customer.

Payment out of a customer bank account

35. (1) Subject to subsection (2), money may be withdrawn from a customer bank account only if—

(a) it is not customer money;

(b) it is properly required for payment to or on behalf of a customer; or

(c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) A licensee may withdraw money from a customer bank account for or towards payment of its own fees or commission only if the fees or commission accord with the arrangements agreed with the customer.

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PART 4

AUDITORS

Engagement letters

36. A licensee shall ensure that the auditor appointed under section 80 of the Act has the powers and duties specified in section 37 and that—

(a) those powers and duties are set out in an engagement letter;

(b) the engagement letter is signed by the licensee and the auditor; and

(c) the licensee retains a copy of the engagement letter.

Powers and duties of auditors

37. (1) An auditor shall have—

(a) a right of access at all times to the accounting and other records of the licensee and all other documents relating to its business; and

(b) a right to require from the licensee any information and explanation deemed necessary for the performance of the duties of an auditor.

(2) An auditor shall submit a report to the Commission on the annual financial statements in accordance with these Regulations and the report shall state the matters specified in section 18 of the Accounting and Financial Statements Regulations.

(3) In preparing an auditor's report for the purposes of these Regulations, the auditor shall carry out the necessary investigations to enable the auditor to form an opinion as to the matters required by section 18 of the Accounting and Financial Statements Regulations to be stated in the report.

Notification to Commission

38. A licensee must, within 7 days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

Resignation or removal of auditors

39. (1) If an auditor resigns or is removed by a licensee, the notice required by the Commission under section 38 shall contain either—

(a) a statement signed by the auditor to the effect that there are no circumstances connected with the resignation or removal which the auditor considers should be brought to the attention of the Commission; or

(b) a statement signed by the auditor stating the circumstances mentioned in paragraph (a).

(2) For the purposes of these Regulations, a failure to appoint an auditor at the end of the auditor's term of office shall be deemed to be removal of that auditor.

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PART 5

CITATION

Citation

40. These Regulations may be cited as the Conduct of Business Regulations, Revised Regulations of Anguilla, S13-4.

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