Revised Regulations of Anguilla: S13-10

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

FOREIGN SECURITIES AND INTERMEDIARIES REGULATIONS

Note: These Regulations are enabled under section 174 of the Securities Act, R.S.A. c. S13.

(Am. in L.R. 15/12/2006)

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SCHEDULE: Approved Countries

Interpretation

1. (1) In these Regulations—

"Act" means the Securities Act;

"Commission" means the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Agreement;

"foreign securities regulatory commission" includes any commission, body or agency that exercises regulatory control or oversight over the securities business of a foreign broker dealer, foreign limited service broker, foreign investment adviser, foreign securities exchange or the issue of securities by a foreign company.

(2) For the purpose of these Regulations, "foreign company", "foreign custodian", "foreign government", "foreign investment adviser", "foreign securities exchange", "foreign securities registry", "foreign security" and "Member territory" shall have the meaning given under Part 16 of the Act.

Approved classes

2. (1) The following classes of foreign securities may be listed and traded on a securities exchange in accordance with the securities exchange's listing rules and procedures for foreign securities—

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(a) securities issued by a foreign company formed or incorporated in the countries specified in the Schedule;

(b) securities issued by a foreign company formed or incorporated in any country or jurisdiction, if the securities are listed on a foreign securities exchange that is recognized in the rules of a securities exchange that has been approved by the Commission under section 12 or 13 of the Act;

(c) other foreign securities approved by the Commission on a case by case basis on application of the issuer of the foreign securities, a securities exchange or other interested party.

(2) Approval under paragraph (1)(c) is only approval in that particular case and does not constitute approval of the country or jurisdiction of incorporation or type of company generally.

Exemption from certain requirements

3. A foreign company whose securities are listed on a securities exchange as a secondary listing pursuant to the Act and the rules of the securities exchange shall be exempt from the requirements of—

(a) the Continuing Disclosure Obligations of Issuers Regulations; and

(b) the Collective Investment Schemes Regulations, if the foreign company is a collective investment scheme,

on condition that it submits to the Commission all documents provided to investors who participated in the issue of securities that are being listed pursuant to section 2.

Licensing requirement for foreign broker dealers and limited service brokers

4. (1) The Commission may grant an exemption from the requirements of Part 4 of the Act to a foreign broker dealer or limited service broker licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission if it—

(a) registers with the Commission; and

(b) trades securities for its own account or on behalf of foreign persons.

(2) In determining whether to grant an exemption under subsection (1) the Commission shall, in evaluating the foreign broker dealer or limited service broker, take into consideration the following—

(a) compliance with the requirements of the foreign securities regulatory commission;

(b) compliance with the requirements as stated in sections 47(3)(d) and 50(3)(d) of the Act;

(c) compliance with the requirements as stated in sections 47(3)(e) and 50(3)(e) of the Act; and

(d) compliance with the requirements as stated in sections 47(3)(h) and 50(3)(h) of the Act.

(3) The Commission may require a foreign applicant for a licence as a broker dealer or limited service broker to—

(a) disclose to the Commission any pending or previous disciplinary action taken against the applicant by a foreign securities regulatory commission within the past 3 years;

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(b) undertake, if a licence is granted by the Commission, to advise the Commission immediately should disciplinary action be taken against it by a foreign securities regulatory commission; and

(c) submit to the enforcement and disciplinary jurisdiction of the Commission in connection with any activity or transaction involving a person resident in a Member territory or effected through the facilities of a securities exchange.

Exemption from certain regulations

5. (1) The Commission may grant an exemption from the requirements of the Accounting and Financial Statements Regulations and Parts 3 and 4 of the Conduct of Business Regulations to a foreign broker dealer or limited service broker licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission.

(2) In determining whether to grant an exemption under subsection (1), the Commission shall in evaluating the foreign broker dealer or limited service broker take into consideration the following—

(a) compliance with the requirements of the foreign securities regulatory commission as to the submission of audited financial statements;

(b) financial statements filed with the licensed securities exchange.

Licensing requirement for foreign investment advisers

6. (1) A foreign investment adviser that desires to give advice on securities or holds himself out as carrying on the business of giving advice on securities must comply with this section.

(2) The Commission may grant an exemption from the requirements of Part 4 of the Act to an investment adviser licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission if he—

(a) registers with the Commission; and

(b) advises foreign persons concerning investment in securities.

(3) In determining whether to grant an exemption under subsection (2) the Commission shall, in evaluating the investment adviser, take into consideration the following—

(a) compliance with the requirements of the foreign securities regulatory commission;

(b) compliance with the requirements as stated in section 53(3)(c) of the Act;

(c) compliance with the requirements as stated in section 53(3)(d) of the Act; and

(d) compliance with the requirements as stated in section 53(3)(g) of the Act.

(4) The Commission may require a foreign applicant for a licence as an investment adviser to—

(a) disclose to the Commission any pending or previous disciplinary action taken against the applicant by a foreign securities regulatory commission within the past 3 years;

(b) undertake, if a licence is granted by the Commission, to advise the Commission immediately should any disciplinary action be taken against it by a foreign securities regulatory commission; and

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(c) submit to the enforcement and disciplinary jurisdiction of the Commission in connection with any advice given to or activity or transaction involving a person resident in the Member territory or effected through the facilities of a securities exchange.

Licensing requirement for principals and representatives of foreign broker dealers, limited service brokers and investment advisers

7. (1) A foreign broker dealer, limited service broker or investment adviser licensed by the Commission pursuant to these Regulations must have at least one principal and one representative.

(2) A principal or representative of a foreign broker dealer, limited service broker or investment adviser licensed by the Commission pursuant to these Regulations who conducts business or holds himself out as conducting business within a Member territory must be licensed by the Commission under sections 59 to 62 of the Act.

(3) For the purposes of subsection (2), the expression "conducts business or holds himself out as conducting business" includes but is not limited to—

(a) use of the telephone, telegraph, mail, internet or e-mail to communicate with investors or potential investors located in a Member territory, whether on a regular or sporadic basis;

(b) visiting investors or potential investors in a Member territory, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis;

(c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker's membership in a securities exchange;

(d) engaging in any other activity or combination of activities described in—

(i) section 46 of the Act, in the case of a foreign broker dealer or limited service broker, or

(ii) section 52 of the Act, in the case of a foreign investment adviser,

if any part of the activity takes place in a Member territory or is designed or intended to communicate with persons present in a Member territory.

(4) A person is subject to the requirements of subsection (2) if he participates in any of the activities listed in subsection (3) even if he is not physically present in the Member territory when he participates in the activity.

Citation

8. These Regulations may be cited as the Foreign Securities and Intermediaries Regulations, Revised Regulations of Anguilla, S13-10.

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SCHEDULE

(Section 2)

APPROVED COUNTRIES

Australia
Canada
Finland
Iceland
Japan
New Zealand
Norway
Singapore
Sweden
Switzerland
United States of America
A member state of the Caribbean Community (CARICOM)
A member of the European Union (EU) as at 1st July, 2003.

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