

# **GUIDELINES ON THE ROLE AND APPROVAL OF COMPLIANCE OFFICERS**

## **1. Introduction**

In accordance with section 27 of the Financial Services Commission Act, R.S.A. c. F28, a licensee is required to appoint a fit and proper individual approved by the Commission as its Compliance Officer (“CO”). The Commission may, by written notice, revoke its approval.

## **2. Role of the Compliance Officer**

The main responsibility of a CO is to put in place systems and controls (including clear lines of accountability) to ensure compliance with applicable laws and with the internal policies of the licensee by its employees, agents, and other contractors. The CO aims to ensure that compliance risk is understood and managed, and that the licensee’s compliance systems are part of the fabric of business operations. The CO aims to promote an ethical culture and a culture of compliance within the licensee.

The expression “compliance risk” means uncertainty giving rise to the possibilities of legal or regulatory sanctions, material financial loss, or loss to reputation as a result of an entity’s failure to comply with laws, generally accepted industry standards, or internal policies.

A CO should:

- prepare an annual compliance plan to be approved by senior management and the Board;
- establish and maintain a manual of policies and procedures for compliance, a code of conduct and systems and controls for the effectiveness of the compliance program;
- ensure an appropriate, effective, uniform and documented response to alleged or suspected violations of laws, policies and procedures, or controls, reporting to the Commission or other authorities as appropriate or required;
- take steps to prevent further similar violations, including any appropriate modifications to policies and procedures etc;
- review and countersign new client accounts;
- review products and procedures and test systems and controls periodically on a planned basis as appropriate to ensure compliance;
- put in place a system for ensuring that regulatory deadlines are met (eg, submission of the licensee’s annual accounts and other returns);
- adequately document the manner in which compliance risk is managed so as to support reporting to senior management, the Board and the Commission;
- provide appropriate training and keep the Board, senior management, employees, agents, and relevant contractors aware of changes to the laws and to the licensee’s operations, internal policies and procedures, etc;
- monitor the licensee’s marketing activities, such as electronic and print advertising, and monitor the sales practices of the licensee’s representatives;
- monitor the licensee's observance of minimum capital and solvency requirements;
- have a role in preventing or managing conflicts of interest;
- ensure appropriate disclosures to clients;

- review, respond to, and investigate client complaints within a reasonable period.

Depending on the size, nature and complexity of the licensee, the CO may also be approved under sections 20 and 21 respectively of the Anti-Money Laundering and Terrorist Financing Regulations, 2009, to perform the role of Money Laundering Compliance Officer (“MLCO”) and Money Laundering Reporting Officer (“MLRO”). In a small licensee, the CO may also perform a business function in the licensee. The Commission will consider approving an individual who performs the CO function for a group of companies of which the licensee is a member.

For more on the requirements and guidance applicable to the MLCO and MLRO, please see the Anti-Money Laundering and Terrorist Financing Code, 2009 - <http://www.fsc.org.ai/aml.shtml>.

### **3. Role of the Board and Senior Management**

The appointment of a CO is designed to supplement, not supplant, the responsibilities of the Board and of senior management to ensure compliance with legislation and internal policies. It is for the Board and senior management to send a clear message to all employees that everyone is responsible for achieving the desired compliance culture and outcomes.

The Board and senior management should oversee and monitor the ongoing competence and effectiveness of the CO and the compliance function, including a reporting system so that employees can report misconduct and compliance failures without fear of retribution. The CO’s duties, responsibilities and reporting lines should be clearly documented. Senior management and the Board should provide the CO with all appropriate support, including access to all relevant information. Senior management should meet regularly with the CO.

The CO should report to the Board on matters such as:

- an assessment of the key compliance risks the licensee faces and the steps being taken to address them;
- an assessment of how the various parts of the licensee (eg, business units, product areas, subsidiaries) are performing against compliance standards and goals;
- any compliance issues involving senior management and the status of any associated investigations or other actions being taken;
- material compliance violations or concerns involving any other person or unit of the licensee and the status of any associated investigations or other actions being taken; and
- any enforcement or other actions being taken by the Commission or other authority.

A licensee should appoint a CO who:

- is of sufficient seniority and with sufficient resources to effectively perform his/her functions;
- has appropriate skills and experience and is otherwise fit and proper to act as the CO;
- has the trust and confidence of the Board, senior management and employees; and
- is sufficiently independent to perform his/her role objectively.

#### **4. Fit and Proper Standard**

According to the Guidelines on Fit and Proper Individuals 2010, the “fit and proper” standard is applied by the Commission to individuals who are, or are proposed to be, key employees (including the CO) of a licensee.

Before granting approval, the Commission will take into account all relevant considerations that relate to the following:

- competence and ability;
- character; and
- record of compliance.

A CO should:

- have relevant work experience appropriate knowledge, qualifications and skills for the duties and responsibilities of the position, including a good understanding of the laws of Anguilla;
- be able to demonstrate sound judgment;
- have a financial services industry, compliance, or anti-money laundering certificate, diploma or degree recognized by the Commission;
- be a member of a compliance professional organization; and
- understand the nature of the business within which he/she operates.

It is the responsibility of the licensee to satisfy the Commission that the proposed CO has the relevant qualities, experience, and skills to perform his/her duties. Compliance with the “fit and proper” standard is both an initial test applied on the application for approval and a continuing test applied to the ongoing performance of a CO.

For more details, please read the Guidelines on Fit and Proper Individuals in the Publications section of the Commission’s website.

#### **5. Submitting an Application for Prior Approval of a Compliance Officer**

The licensee should apply for approval using the personal questionnaire for MLRO/MLCO/CO form published on the Commission’s website. On the date of issue of these Guidelines, there is no fee for the application, but that may change. Please check the Publications section of the Commission’s website from time to time – [www.fsc.org.ai](http://www.fsc.org.ai).

Along with the above application form, the applicant should submit a CV, a current police report, notarized identification (such as a copy of a passport) and an organizational chart showing direct access to the Board and to whom the CO will report. If the CO function is proposed to be outsourced, the Commission will assess the relevant individual in a similar way, but will also ask for a copy of the contract for CO services. The Commission may require additional information from the licensee.

Where a proposed CO will serve in a dual capacity, this should be made clear and explained.

Where the application is submitted by a prospective licensee not yet licensed, the Commission may consider the approval of a CO at the same time. An approval of a CO for a licensee does not constitute approval for that individual to act as CO for another licensee.

Policy Guidance No. 1 of 2005 (Approval of compliance officers) is no longer in effect.

**Approved by the Board**  
**Anguilla Financial Services Commission**

18 December 2012