
Regulations of Anguilla: **/2014

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INVESTMENT BUSINESS ACT 2014, R.S.A. c. P**

INVESTMENT BUSINESS REGULATIONS, 2014

regulations made by the Governor in Council, on the advice of the Financial Services Commission, under section 35 of the Investment Business Act 2014, R.S.A. c. I**.

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Part 1 Interpretive provisions

1 Interpretation

In these Regulations -

"accounting reference period" in respect of a licensee, means -

- (a) the period beginning with the date as at which the licensee commenced to carry on investment business and ending with the date as at which the licensee prepares the licensee's first balance sheet; and
- (b) each subsequent period beginning with the day following the date as at which the licensee prepares a balance sheet and ending with the date as at which the licensee prepares the licensee's next balance sheet;

"annual accounting reference date", in respect of a licensee, means the most recent of any dates notified by the licensee to the Commission as the date as at which the licensee's balance sheet is to be made up in any accounting reference period;

"approved bank" means an institution –

- (a) that may lawfully carry on deposit-taking business in the jurisdiction in which it was established; and
- (b) that is regulated and supervised by a recognised regulatory body;

"approved custodian" has the meaning given to that expression by section 2;

"associate" has the meaning given to that expression by section 3;

"balance sheet" means a balance sheet required to be included as part of a financial statement;

"broadcast" means published whether by radio, television, telephone (including facsimile and text message), internet or otherwise electronically;

"business day" means a day other than a Saturday, Sunday or a public holiday;

"client bank account" has the meaning given to that expression by section 3;

"client money" has the meaning given to that expression by section 5;

"connected customer" has the meaning given to that expression by section 6;

"default" means the commencement of —

- (a) an application for a declaration of bankruptcy, or

(b) liquidation or insolvency proceedings;

“designated account”, in respect of a licensee, means a client bank account that –

(a) includes either words in its title indicating that it is a designated account or other information that sufficiently distinguishes it as such; and

(b) only contains the money of a single client (or, in the case of 2 or more clients who open an account jointly, those clients) whose written consent to the use of the approved bank with which the client money is to be held has been obtained by the licensee;

"document of title" includes a certificate evidencing title;

"financial statement" means a financial statement prepared in accordance with section 12;

“intermediary”, in respect of a licensee, means –

(a) a person to whom client money held by the licensee has been passed in respect of the carrying out of a transaction on behalf of a client; or

(b) a person from whom money is owed to the licensee that will be client money when received by the licensee;

“licensee’s nominee”, in respect of a licensee, means an approved custodian who is controlled by and acts only in accordance with the directions or instructions of the licensee;

“notice” means written notice;

"pooling event" has the meaning given to that expression by section 7;

“protected account” means a client bank account that is not a designated account;

“publish” means publish to the public or to a section of the public;

"registrable investment" means an investment, the terms of which require the title holder to register either with the issuer of the investment or a third party;

"written", in respect of a notice or advertisement, includes printed or in such electronic form that the notice or advertisement can, by the use of a facility that is readily available, be easily rendered in a form that may be read by the human eye.

2 Meaning of “approved custodian”

(1) An approved bank is an approved custodian.

(2) A company is an approved custodian in respect of a licensee if -

(a) it has no other investment business than acting as a nominee holder of investments or other property; and

- (b) in respect of a client's protected property, it will act solely in accordance with the directions or instructions of the licensee or an approved bank.
- (3) A person is an approved custodian in respect of a licensee if the licensee reasonably believes the person to be lawfully carrying on investment business as a custodian of investments or other property and that, in providing those services, the person is subject to —
 - (a) regulation and supervision by a recognised regulatory body or agency of government in the jurisdiction in which the person carries on the investment business; or
 - (b) independent review at least once a year by auditors whose qualifications are prescribed by law or by a recognised body or agency;

3 Meaning of “associate”

- (1) If the licensee is an individual the licensee's husband, wife or child or stepchild is an associate of the licensee.
- (2) A licensee's partner in an enterprise is an associate of the licensee.
- (3) A company of which the licensee is a director is an associate of the licensee.
- (4) If the licensee is a company a director or employee of the company or of any company in the same group as the company, and any director or employee of such a company is an associate of the licensee.
- (5) A person with whom the licensee has an agreement, arrangement or other obligation -
 - (a) to act together in exercising voting power; or
 - (b) with respect to the acquisition, holding or disposal of shares or other interests in a company, partnership or other association,is an associate of the licensee.

4 Meaning of “client bank account”

An account is a client bank account if it is with an approved bank and —

- (a) holds the money of one or more clients of a licensee;
- (b) is in the name of the licensee;
- (c) includes either words in its title indicating that it is a client account or other information that sufficiently distinguishes it as an account containing client money and not an account that contains money belonging to the licensee; and
- (d) is a current or deposit account.

5 Meaning of "client money"

- (1) Money is client money if it is money that a licensee, in the course

of carrying on investment business holds or receives (whether in Anguilla or elsewhere) in respect of an investment business agreement entered into, or to be entered into with or for a client -

- (a) that is not immediately due and payable on demand to the licensee for the licensee's own account or, if it is so due and payable, is held or received in respect of an obligation of the licensee that has not yet been performed or
 - (b) that the licensee owes to the client and is immediately due and payable without the need for the client to demand payment.
- (2) However, money is not client money if it is money that the client agrees is held in the form of precious coin for intrinsic value.
- (3) Money is not client money if it is money held on behalf of or received from a connected customer unless -
- (a) the licensee is acting in the licensee's capacity as a trustee of a trust; and
 - (b) neither the licensee nor any associate of the licensee is a beneficiary of the trust.
- (4) Money in the form of a cheque or a payable order made payable to a client of a licensee by a third party or to a third party by a client of a licensee is not client money.
- (5) For the purposes of this section money is not to be regarded as due and payable in respect of fees or commissions payable to the licensee unless it may be withdrawn under section 24.

6 Meaning of "connected customer"

- (1) A client of a licensee is a connected customer, in respect of the licensee, if the client is -
- (a) an associate of the licensee other than by virtue only of being an employee of the licensee or of another company in the same group;
 - (b) the spouse, minor child or minor stepchild of a person described in paragraph (a) of this definition; or
 - (c) a person who is a beneficiary under a trust (other than an occupational pension scheme) that the licensee, in the licensee's capacity as trustee of the trust, knows or ought reasonably to know, has beneficiaries that include a person described in subsection (a) or (b); or
- (2) A client of a licensee is a connected customer, in respect of the licensee, if the client is a person with whom the licensee has an agreement that the licensee will have an interest of 25 per cent or more in —
- (a) any transaction or series of transactions carried on by the licensee in the course of investment business undertaken with or for the client; or
 - (b) the gain or loss arising from any such transaction.

7 Meaning of “investment business advertisement”

- (1) An advertisement is an investment business advertisement if it contains –
 - (a) an invitation to transact investment business; or
 - (b) information that is intended or might reasonably be presumed to be intended to lead directly or indirectly to the transaction of investment business,
- (2) Subsection (1) applies to any means of bringing such an invitation or such information to the notice of a person and the reference in it to an advertisement is to be construed accordingly.
- (3) An advertisement is not an investment business advertisement if it consists only of the communication of either or both of the following —
 - (a) the name of an investment business;
 - (b) a brief reference to an investment business without an invitation, suggestion or reference to a specific service.
- (4) An advertisement is not an investment business advertisement if it consists only of a statement that an investment business named in the statement has sponsored a specific event, organisation, or person.
- (5) An advertisement is not an investment business advertisement if it consists only of a prospectus the Commission has agreed may be published.
- (6) An investment business advertisement that has been altered is a new investment business advertisement.
- (7) Each issue of a written investment business advertisement and each occasion on which an investment business advertisement is broadcast constitutes a new investment business advertisement.

8 Meaning of "pooling event"

- (1) A pooling event, in respect of a licensee, is the happening of any of the following —
 - (a) the default of the licensee;
 - (b) the default of an approved bank with which client money held by the licensee is deposited;
 - (c) the default of an intermediary; or
 - (d) the coming into force of a direction by the Commission in respect of client money held by the licensee, unless the direction states otherwise.
- (2) A pooling event is to be taken not to have occurred on the default of an approved bank or an intermediary if, forthwith, on the default the licensee repays to the licensee’s clients or pays into a client bank account an amount equal to the amount of client money held on behalf of those clients with the bank or by the intermediary.

Part 2 Fees

9 Application fee

The application fee that must accompany an application by a person who wishes to carry on investment business is \$?.

10 Licence fees

- (1) A licensee must pay -
 - (a) an annual licence fee of \$?; and
 - (b) any costs incurred by the Commission in respect of any inspection carried out by or on behalf of the Commission of the licensee's investment business at the premises where that business is carried on.
- (2) The annual licence fee is payable by a licensee -
 - (a) on being licensed; and
 - (b) on each subsequent 15 January,
- (3) Any amount payable by a licensee under subsection (1)(b) is payable on the next 15 January.
- (4) If a person is licensed after 1 July in any year, the annual licence fee payable by the licensee on being licensed is half the fee otherwise payable.
- (5) An annual licence fee, any amount payable under subsection (1)(b) and any penalty accrued in respect of the late payment of the fee or amount is a debt due to the Commission and may be sued for accordingly.

Part 3 Accounts and audit

11 Accounting records

- (1) A licensee must keep accounting records that are sufficient to show and explain the licensee's transactions.
- (2) The records must -
 - (a) disclose with reasonable accuracy, at any time, the licensee's financial position at that time; and
 - (b) enable the licensee to prepare financial statements in accordance with section 12.

12 Annual financial statements

- (1) A licensee must prepare a financial statement for each accounting reference period.
- (2) The statement must include a balance sheet made up as at -
 - (a) the licensee's annual accounting reference date;

- (b) the date specified in accordance with section 13(1);
 - (c) the date specified in accordance with section 14(5)(b);
 - (d) a date not more than 14 days either side of the date specified in clauses (a), (b) or (c) if the condition set out in subsection (4) is satisfied; or
 - (e) any other date agreed by the Commission.
- (3) The statement must also include -
- (a) a profit and loss account for the period beginning with the day following the date as at which the licensee's most recent balance sheet prior to that mentioned in subsection (2) was made up and ending with the date as at which the balance sheet mentioned in subsection (2) was made up; and
 - (b) such other statements, notes, information and explanations as are necessary to show that subsection (5) has been complied with.
- (4) The condition referred to in subsection (2)(d) is that the licensee has given notice to the Commission -
- (a) in the case of the financial statement relating to the licensee's first accounting reference period, within two months of the date as at which the licensee commenced to carry on investment business; or
 - (b) in any other case, within two months of the annual accounting reference date for the accounting reference period immediately preceding the accounting reference period in question.
- (5) The balance sheet must show a true and fair view of the state of affairs of the licensee as at the date at which it was made up and the licensee's profit and loss account must show a true and fair view of the licensee's profit or loss for the period to which it relates.
- (6) In the case of a licensee that is an incorporated company or a partnership, the financial statement must be approved by its directors or partners as the case may be and signed on their behalf by at least one such director or partner.
- (7) Where section 15 requires a licensee to retain auditors, the licensee must submit the licensee's financial statement to the licensee's auditors who must report whether the statement is made up in accordance with this Part.
- (8) The licensee must submit the licensee's financial statement together with any auditors' report to the Commission within four months of the end of the accounting reference period to which the statement relates.
- (9) The Commission may, if it thinks fit, waive conditionally or otherwise the requirements of subsection (1) in the case of a class of licensee or in the case of a particular licensee.

13 First balance sheet

- (1) If, in accordance with section 12(4)(a), a licensee has given notice to the Commission within two months of the date as at which the licensee commenced to carry on investment business, the licensee may prepare the licensee's first balance sheet as at the date specified in the notice.
- (2) That date must be a date not more than 18 months after the date the investment business commenced.

14 Change of accounting reference date

- (1) A licensee may change the licensee's annual accounting reference date if -
 - (a) the licensee has given notice to the Commission in accordance with this section; and
 - (b) the time allowed under section 12(8) for submitting to the Commission the licensee's financial statement and report for the accounting reference period that would be affected by that change of date has not expired.
- (2) The notice under subsection 14(1)(a) must state if, as a result of the change of accounting reference date, the current or previous accounting reference period is to be —
 - (a) shortened, so as to come to an end on the first occasion as at which the new annual accounting reference date falls or fell after the beginning of the period; or
 - (b) extended, so as to come to an end on the second occasion as at which that date falls or fell after the beginning of the period.
- (3) An accounting reference period may not be extended so as to exceed 18 months.
- (4) Except with the Commission's approval a licensee may not give notice under this section less than five years after the end of an accounting reference period that had been extended as a consequence of a change of accounting reference date.
- (5) If a licensee has changed the licensee's annual accounting reference date the licensee may prepare the licensee's next balance sheet —
 - (a) as at the new annual accounting reference date; or
 - (b) as at a specified date within a year of the licensee's former annual accounting reference date.

15 Auditor to be retained

- (1) A licensee must retain an auditor throughout the period of the licensee's registration.
- (2) However, a reasonable period may elapse between the termination of the appointment of one auditor and the appointment of another.
- (3) If that period exceeds one month, the licensee must immediately give the Commission notice that the licensee has no auditor.

- (4) The Commission may waive conditionally or otherwise the requirements of subsection (1) in the case of a class of licensee or in the case of a particular licensee.

16 Auditor to be given access to licensee's accounts and records

A licensee must give the licensee's auditor —

- (a) a right of access at all reasonable times to the licensee's accounting and other records and all other documents relating to the licensee's investment business; and
- (b) such information and explanation as the auditor considers necessary for the performance of the auditor's duties as an auditor.

17 Auditor ceasing to hold office

If, for any reason, an auditor of a licensee ceases to hold office, the licensee must, within seven days, send to the Commission -

- (a) a statement to the effect that there are no circumstances connected with the licensee's ceasing to hold office that the licensee considers should be brought to the attention of the Commission; or
- (b) a report of any such circumstances.

18 False statements to auditors

A principal person of a licensee must not knowingly or recklessly provide to the licensee's auditors information or an explanation that the auditor requires or is entitled to require that is misleading, false or deceptive in a material particular.

19 Auditor to report certain circumstances to the Commission

- (1) The auditor of a licensee must immediately report to the Commission if the auditor suspects that a circumstance mentioned in subsection (2) exists.
- (2) The circumstances are that the auditor suspects -
 - (a) that a ground for revoking the licensee's registration specified in section 8(4) of the Act has occurred or may occur; or
 - (b) that a client of the licensee has incurred, or is at risk of incurring a loss as a result of a breach by the licensee of a legal requirement, a provision of a regulatory code issued by the Commission or any internal control or procedure.

Part 4 Client money

20 Segregation of client money

- (1) A licensee must pay client money that the licensee holds or receives into a client bank account.

- (2) A licensee must ensure that there is kept separate -
 - (a) client money under the licensee's control;
 - (b) the licensee's money; and
 - (c) money held by the licensee on behalf of or received from connected customers.
- (3) Subsection (2) does not apply to money to which the exception in section 5(3) applies.

21 Accounting for and use of client money

- (1) A licensee must account properly and promptly for client money.
- (2) A licensee must ensure that —
 - (a) client money and other money is not mixed otherwise than as permitted by this Part;
 - (b) individual transactions can be accurately identified and traced;
 - (c) the credit standing to the account of each client is calculated each business day;
 - (d) no client account is ever overdrawn; and
 - (e) money belonging to one client is not used for another client.
- (3) If the daily calculation referred to in subsection (2)(c) reveals that a client account has been overdrawn -
 - (a) the licensee must pay in a sum of money equivalent to the deficit; and
 - (b) the money paid in becomes client money and must not be withdrawn by the licensee otherwise than in accordance with section 24 unless the deficit has otherwise been made good.
- (4) Subsection (2)(d) or (e), as the case may be, does not apply in respect of a designated account of a client if the client has given the licensee written consent –
 - (a) to the account being overdrawn; or
 - (b) for the money in the account being used for another client.

22 Licensees to open client bank account

- (1) A licensee must open a client bank account before receiving client money.
- (2) The title of the account must distinguish it from any account that holds money belonging to the licensee or a connected customer.
- (3) A licensee must not operate a client bank account with an approved bank until the licensee -
 - (a) has obtained from the approved bank an undertaking addressed to the licensee and, except in the case of a designated account, the Commission; and

- (b) has sent a copy of the undertaking to the Commission.
- (4) The undertaking must provide that -
 - (a) money standing to the credit of the client bank account is and will be held by the licensee as trustee;
 - (b) interest earned on the account will be credited to that account, or to an account of the same type;
 - (c) the bank is not, and will not be, entitled to combine the account with any other account or to exercise any right of set-off or counterclaim or any security interest against money in the account in respect of any debt or other obligation owed to it by the licensee.
- (5) The Commission may waive the requirement to obtain an undertaking in respect of a licensee if -
 - (a) the law to which the approved bank is subject makes it impossible or impracticable to give the undertaking; or
 - (b) there are other exceptional circumstances.
- (6) The Licensee must –
 - (c) comply with any conditions subject to which a waiver is given. and
 - (d) explain to the licensee's clients the risks to which they may be subject in the absence of the undertaking.

23 Payments into a client bank account

- (1) A licensee must, as soon as practicable and in any event no later than the next business day, pay client money held or received by the licensee -
 - (a) into a client account; or
 - (b) to the client concerned.
- (2) A licensee who holds or receives client money in the form of an electronic transfer or a cheque or a draft drawn in favour of the licensee, must in the first instance pay it into a client bank account.

24 Payments out of a client bank account

- (1) A licensee must not withdraw money from a client bank account unless
 - (a) it is not client money;
 - (b) it is money properly required for immediate payment to or on behalf of a client; or
 - (c) it is money properly transferred to another client bank account or into a bank account in the client's own name (not being an account that is also in the name of the licensee).
- (2) A licensee may also withdraw money from a client bank account for or towards payment of the licensee's own client fees or commission.

- (3) However, the licensee may not do so unless —
- (a) the fees or commission are accurately calculated and accord with arrangements previously agreed in writing with the client; and
 - (b) the licensee has given the client 14 days' notice of the licensee's intention to withdraw the money, including precise details of the breakdown of the proposed payment, and the client has not objected.
- (4) The licensee may also do so if the amount of the fees or commission has been -
- (a) agreed with the client in writing; or
 - (b) finally determined by a court or by arbitration.

25 Interest on client money

- (1) A licensee must pay interest paid on client money in accordance with any agreement entered into with the client.
- (2) Such an agreement may provide that no interest is to be paid to the client on client money.
- (3) In the absence of such agreement the licensee must disclose to the client the amount of interest paid on client money and its destination.

26 Reconciliation of accounts

- (1) A licensee must during any period of 28 days -
 - (a) reconcile the balance on a client bank account, as recorded by the licensee, with the balance on the account as set out in the statement issued by the approved bank covering the period in respect of which the reconciliation is made; and
 - (b) reconcile the total of the balances on all protected accounts, as recorded by the licensee, with the total of the corresponding balances in respect of each of its clients, as recorded by the licensee.
- (2) Subsection (1)(a) does not apply in respect of a designated account of a client -
 - (a) if the client has given the licensee written consent to it not applying; and
 - (b) the licensee has taken steps to ensure that the balance on the account as set out in the statement issued by the approved bank agrees with what the licensee believes the balance to be.
- (3) The reconciliations referred to in subsection (2) must be performed within 10 business days of the date to which the reconciliation relates, and any differences must be corrected forthwith unless —
 - (a) they arise as a result of differences in timing between the accounting and settlement systems of the licensee and the approved bank; or

(b) the Commission is notified.

27 Designated accounts

A licensee must inform a client with a designated account that the account does not have the protection set out in Part 6.

Part 5 Client property

28 Application of Part 5

This Part applies where a licensee has the possession, custody or control of a client's protected property.

29 Protection of investments

- (1) A licensee must not recommend to a client that a person other than the licensee or an approved custodian should act as -
- (a) the registered holder of the client's registrable investments; or
 - (b) the custodian of documents of title to investments belonging to the client.
- (2) A licensee must not procure the client's agreement to a person other than the licensee or an approved custodian so acting.

30 Registrable investments

- (1) A licensee must arrange for a client's registrable investments to be registered -
- (a) in the client's name; but
 - (b) if another name is agreed with the client, in that name.
- (2) If a licensee arranges for a client's registrable investments to be registered in the same name as that of the licensee's registrable investments, the licensee must arrange for those of the client to be registered in an account that distinguishes it from the account in which those of the licensee are registered.

31 Safekeeping of documents: general

- (1) A licensee must ensure that a client's documents of title to investments in the licensee's possession or under the licensee's control are kept safe in accordance with this Part.
- (2) The obligation continues until the documents are delivered -
- (a) to the client;
 - (b) in accordance with the client's written instructions; or
 - (c) to an approved custodian acting for the licensee.

32 Safekeeping of documents by the licensee

- (1) This section applies where -

- (a) a licensee is required to ensure that a client's documents of title to investments are kept safe in accordance with this Part; and
 - (b) the documents are not in the custody of an approved custodian acting for the licensee.
- (2) The licensee must keep possession of the documents in safe custody and must not part with them other than to the client or on the licensee's instructions.
- (3) If the title to the documents passes by delivery, the licensee must hold them in such manner that -
- (a) it is readily apparent that the investments to which they relate do not belong to the licensee or to a connected customer of the licensee; and
 - (b) the owner of each investment can be identified at all times.
- (4) If some of the documents are held -
- (a) as security for a loan to the client; or
 - (b) as a form of security, guarantee or indemnity provided by way of security for the discharge of a liability arising from margined transactions effected by the licensee with or for the client,
- the licensee must distinguish them from any not so held.
- (5) In subsection (4)(b) "margined transaction" means a transaction effected by a licensee with or for a client that relates to investment business under the terms of which the client will or may be liable to pay further amounts of cash or collateral over and above the amount initially received by the licensee.

33 Safekeeping of documents by a licensee's nominee

- (1) This section applies where -
- (a) a licensee is required to ensure that a client's documents of title to investments are kept safe in accordance with this Part; and
 - (b) the documents are properly in the custody of the licensee's nominee.
- (2) The licensee must ensure that the nominee complies with the requirements of section 32 as though —
- (a) the section applied to the nominee; and
 - (b) the references in it to the licensee were references to the nominee.

34 Safekeeping of documents held by an approved custodian who is not the licensee's nominee

- (1) A licensee must not employ the services of an approved custodian who is not the licensee's nominee to hold a document of title to

investments belonging to a client except in accordance with this section.

- (2) The licensee and the custodian must have agreed in writing that -
 - (a) the custodian will not part with possession of the document otherwise than to the licensee or on the licensee's instructions;
 - (b) the document will be held in a manner whereby it is readily apparent that the investment to which it relates does not belong to the licensee.
- (3) The licensee and the custodian must also have agreed in writing that the custodian will not less than during any period of 6 months and on the request of the licensee prepare and deliver to the licensee a statement that —
 - (a) is made up as at the date within the previous 28 days specified by the licensee; and
 - (b) specifies, in relation to each description of investment, the documents of title held and the amount of the investment.
- (4) The custodian must have given a written acknowledgement to the licensee that the custodian will not have or claim a lien or right of retention over, or a right to sell, a document of title to an investment placed in the custodian's custody, to offset the indebtedness of the licensee or a client to the custodian except where -
 - (a) that client is the title holder of the investment;
 - (b) the consent to do so of the beneficial owner or, if the legal owner has the capacity to do so, the legal owner, has been given; or
 - (c) the indebtedness is solely in respect of charges relating to the administration or custody of the investment.
- (5) A licensee who makes an agreement with a custodian in accordance with this section must not authorize the custodian to release a client's document of title to an investment otherwise than —
 - (a) in accordance with the client's agreement; or
 - (b) on the client's express instructions.

35 Accounting for title to investments

- (1) This section applies where a licensee is required to ensure that a client's documents of title to investments are kept safe in accordance with this Part.
- (2) The licensee must during any 6 months period deliver or send to the client a statement -
 - (a) that is made up as at a date not earlier than 28 days before the date it is sent or delivered; and
 - (b) that specifies the investments or other property and the amount of each investment.

- (3) However, a licensee need not comply with subsection (2) if –
- (a) the client has given written consent to the subsection not being complied with;
 - (b) a statement has been sent or delivered in that calendar year; and
 - (c) no change has taken place in the matters to be specified under subsection (2)(b) since the statement was sent or delivered.

36 Reconciliation of documents

- (1) This section applies where a licensee or an approved custodian is required to ensure that a client's documents of title to investments are kept safe in accordance with this Part.
- (2) The licensee must, not less than once every 6 months, carry out a reconciliation of the documents.

37 Title to investments recorded electronically

- (1) This section applies where the titles to investments of a licensee's clients are recorded electronically.
- (2) The licensee must ensure that in the records of the person maintaining the record of the entitlements -
 - (a) the clients' entitlements are separately identifiable from those of the licensee; and
 - (b) each client's entitlement is separately identifiable from those of other clients.

38 Storage of client property

- (1) This section applies where a licensee holds client's documents, title to which passes by delivery.
- (2) The licensee must ensure that documents are stored so as to minimize any risk of their loss due to theft, fire or flood.

39 Insurance

- (1) A licensee must maintain adequate insurance to cover non-registered securities of clients.
- (2) The insurance must extend to cover the licensee's nominees.

40 Lending client's documents to third parties

- (1) A licensee must not lend a client's title documents to a third party.
- (2) However, a licensee may do so with the client's written consent.
- (3) A licensee must keep a record of any client's title documents lent to a third party.

41 Commission and other money

- (1) This section applies to money, fees or commission received by a

licensee from a third party in respect of investment business carried out on behalf of a client.

- (2) The licensees must credit the money, fees or commission to the account of the client.
- (3) However, if the client otherwise directs the licensee must credit the money, fees or commission in accordance with the direction.
- (4) A direction under subsection (3) may permit the licensee to retain the whole or any part of the money, fees or commission.

Part 6 Default

42 Application of Part 6

This Part applies to protected accounts.

43 Creation of statutory trust

Client money held by a licensee in a protected account is held on trust in accordance with this Part -

- (a) for the clients for whom the money is held according to their respective shares in it; and
- (b) after all valid claims under paragraph (a) have been met, for the licensee.

44 Destination of client money on pooling event

- (1) This section applies when a pooling event occurs in respect of a licensee.
- (2) Except insofar as money is received after the pooling event, the power of the licensee to pay money into and out of protected accounts in which client money is held is suspended.
- (3) Except as provided by section 45, all the money held in all the licensee's protected accounts must be pooled and be made available to meet the claims of clients in respect of whom client money is or should be held in those protected accounts equably.
- (4) Subsection (5) applies if at the time of the pooling event occurs the licensee has paid an uncleared cheque or other payable order into a protected account.
- (5) When the cheque or order is cleared the amount credited in respect of it must be pooled in accordance with subsection (3).
- (6) Subsection (7) applies if at the time the pooling event occurs client money from a protected account is in the hands of an intermediary
- (7) The money must, on its return to the protected account, be pooled in accordance with subsection (3).
- (8) If client money referred to in subsection (7) cannot be returned until one month after the pooling event, the licensee may make distributions from the account in advance of that date if the licensee makes provision for the possibility of the money not being returned.

- (9) Any surplus remaining in the pool created under subsection (3) after pooling forms part of the assets of the licensee.
- (10) Subsection (9) is without prejudice to any claim of any other person arising under these Regulations.
- (11) Subsection (12) applies if the licensee receives money from a client after a pooling event that, but for the event, would fall to be paid into a protected account,
- (12) The licensee must place the money in a new client account where it will not be pooled with the money held in the licensee's protected accounts at the time of the pooling event.

45 Money held by third parties

- (1) This section applies if –
 - (a) client money is held by an approved bank or an intermediary who defaults; or
 - (b) following a pooling event an approved bank or an intermediary fails to recognize that the money is held on trust in accordance with this Part.
- (2) The money must —
 - (a) be pooled separately;
 - (b) be made available to satisfy the separate claims of the separate clients equably; and
 - (c) after the claims described in paragraph (b) have been satisfied, be paid into the pool created under section 44(3).
- (3) Where this section applies the pool created under section 44(3) is to be applied -
 - (a) to meet the claims of separate clients that are not separate claims and the claims of other clients (all ranking equally); and
 - (b) after the claims described in paragraph (a) have been satisfied, to meet any unsatisfied separate claims of separate clients.
- (4) In this section —

"separate claim" means the claim of a separate client to the value of the money that was or should have been held with the approved bank or intermediary; and

"separate client" means a client whose money was or should have been held with the approved bank or intermediary.

46 Default officer

- (1) This section applies –
 - (a) if a licensee defaults ;or
 - (b) a direction by the Commission in respect of all client money held by a licensee comes into force

- (2) The Commission may appoint a person, a default officer, to administer the application of this Part in relation to the licensee.
- (3) The licensee and the licensee's clients must provide the default officer with any required assistance.
- (4) A certificate by the default officer certifying -
 - (a) the value of a claim or of an amount pooled in accordance with section 44(3) or 45(2)(a); or
 - (b) the amount of a payment to be made,is conclusive evidence of the matter certified in the absence of any manifest error.
- (5) A default officer may withdraw, amend or revise the certificate at any time but a client who has received payment pursuant to a certificate may not be required to repay any sum.
- (6) The default officer must –
 - (a) report to the Commission on the licensee's actions; and
 - (b) comply with any direction of the Commission.

Part 7 Records

47 Record to be retained

Record required to be kept under these Regulations must be retained for at least 7 years.

Part 8 Advertisements

48 Advertisement for investment business outside Anguilla

- (1) In this Part "licensee" includes a person who carries on investment service business outside Anguilla.
- (2) Accordingly an advertisement that would be an investment business advertisement in respect of a licensee is an investment business advertisement in respect of such a person.

49 Information to be included in advertisement

- (1) A person must not publish an investment business advertisement unless it contains –
 - (a) the name of the person who issued it; and
 - (b) if that person is not the licensee whose investment business is advertised, the name of that licensee.
- (2) The advertisement must also contain the address of the licensee mentioned in subsection (1).
- (3) The address may be –
 - (a) a geographical address; or

(b) an address where electronic communications may be received.

50 Contents of advertisements

- (1) A person must not publish an investment business advertisement unless the advertisement makes it clear (whether expressly or by necessary implication) that it is an investment business advertisement.
- (2) A person must not publish an investment business advertisement unless its contents are clear, fair and not misleading.
- (3) A person must not publish an investment business advertisement unless it contains -
 - (a) the name of the authority that regulates the licensee; or
 - (b) if there is no such authority, a statement to that effect.
- (4) A person must not publish an investment business advertisement that claims that the licensee is approved by the Commission.
- (5) A person must not publish an investment business advertisement that claims that the investment business to which the advertisement relates has been approved by the Commission.

51 Details and copies of advertisements to be retained

A person who publishes an investment business advertisement must keep for at least 7 years after the last date on which it was published -

- (a) a copy or recording of the advertisement;
- (b) a record of each occasion on which it was published and where and how it was published; and
- (c) a record of the identity of the person who approved the form and content of the advertisement and the date it was approved.

52 Publishers

- (1) This section applies to a person whose business it is to publish or to arrange for the publication of advertisements.
- (2) The person is not to be taken to have published an investment business advertisement merely because the person published it or arranged for its publication if —
 - (a) the person received the advertisement for publication in the ordinary course of business; and
 - (b) the matters contained in the advertisement were not devised or selected (whether wholly or in part) by the person or by any person under the person's direction or control.

53 Unsolicited material

- (1) This section applies where a person has given a licensee notice that the person does not wish to receive investment business advertisements from or on behalf of the licensee.

- (2) A person must not issue an investment business advertisement to the person contrary to the notice.

54 Twelve-month exemption for pre-existing advertising material

This Part does not apply before the first anniversary of its coming into force to a written or broadcast investment business advertisement that is the whole or part of sales material or marketing material, prepared in its final form before this Part came into force.

Part 9 Exemption from the Act

55 Exemption

The Act does not apply to investment business carried on by a person licensed under the *Securities Act*¹ in so far as the business the person is licensed to carry on under that Act is investment business.

Part 10 Citation

56 Short title

These Regulations may be cited as the Investment Business Regulations 2014

¹ R.S.A. c. S13