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SECURITIES INDUSTRY (COMPLIANCE OFFICERS) RULES, 2019

Arrangement of Rules

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MINISTRY OF FINANCE

S.I. No. 5 of 2019

SECURITIES INDUSTRY ACT, 2011

(No. 10 of 2011)

SECURITIES INDUSTRY (COMPLIANCE OFFICERS) RULES, 2019

The Securities Commission, in exercise of the powers conferred by section 149 of the Securities Industry Act, 2011 makes the following Rules —

1. Citation.

These Rules may be cited as the Securities Industry (Compliance Officers) Rules, 2019.

2. Interpretation.

(1) In these Rules —

"Act" means the Securities Industry Act, 2011[1];

"Compliance Officer" means a person designated as a Compliance Officer pursuant to regulation 40(2) of the Regulations;

"outsourcing contract" means a written arrangement made pursuant to regulation 44 of the Regulations between a registered firm and a third party service provider which appoints the service provider as the Compliance Officer;

"Regulations" means the Securities Industry Regulations, 2012[2];

(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 or the Regulations respectively.

3. Compliance Officer must have a physical presence.

Every registered firm as defined by section 2 of the Act must have a Compliance Officer —

(a) physically present in The Bahamas;

(b) who must, at least once per year, make and present compliance reports directly to the board of directors of the registered firm.

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[1] *No. 10 of 2011.*

[2] *S. I. No. 1 of 2012*

4. Seniority of Compliance Officer.

A registered firm must ensure that a person appointed as the Compliance Officer is sufficiently senior and independent to —

(a) exercise sound judgement;

(b) carry out the functions and duties of a Compliance Officer objectively; and

(c) interact effectively with senior management and board members when carrying out the functions and duties regarding compliance with securities laws and guidelines, and policies and practices of the firm.

5. Independence of Compliance Officer.

A registered firm must not, directly or indirectly, take any action to coerce, manipulate, mislead, bribe or influence or otherwise engage in any activity that threatens the independence of the Compliance Officer when carrying out his compliance functions and duties.

6. Conflicts of interest.

A person designated as the Compliance Officer of a registered firm must not while so designated —

(a) function as Chief Executive Officer, trading representative, discretionary management representative or advising representative of the registered firm;

(b) act in any capacity other than that of Compliance Officer; or

(c) assume any duties and responsibilities which may cause a conflict of interest with the person's functions and duties as Compliance Officer within the registered firm.

7. Outsourcing compliance function.

(1) A registered firm may outsource the compliance function under regulation 40(2) of the Regulations but retains responsibility for all functions that the registered firm outsources.

(2) A registered firm, prior to outsourcing the compliance function in whole or in part, must —

(a) notify the Commissioner in writing —

(i) of the name and address of the proposed Compliance Officer;

(ii) whether the proposed Compliance Officer is an employee of a parent company or a company affiliated with the registered firm;

(iii) of the regulatory status of the proposed Compliance Officer;

(b) satisfy the Commission, prior to designation under regulation 40(2), that the proposed Compliance Officer has —

(i) the requisite knowledge to be a Compliance Officer;

(ii) the technical and managerial resources to be a Compliance Officer;

(iii) the operational capacity to meet the obligations of a Compliance Officer; and

(iv) executed an outsourcing contract with the registered firm.

(3) A registered firm must monitor the performance of all outsourced compliance functions to ensure the proper and effective performance thereof.

8. Outsourcing contract.

Where a registered firm appoints a third party service provider as a Compliance Officer under an outsourcing contract, the contract shall provide for —

(a) the outsourced services to be provided;

(b) the responsibilities of the outsourced Compliance Officer and the registered firm;

(c) the terms of service regarding the inspection of the records by the registered firm or by any person or persons authorized by the registered firm;

(d) the terms of service including remuneration, conditions of amendment, termination, indemnification and any other considerations;

(e) access by the Commission to documents of the registered firm including the working papers and notes of the Compliance Officer;

(f) the protection of clients' confidentiality in accordance with the laws of The Bahamas;

(g) the contract to be governed by and construed in accordance with the laws of The Bahamas; and

(h) the prohibition of the Compliance Officer sub-contracting, delegating or otherwise appointing any other person to carry out the compliance functions of the outsourced Compliance Officer under the contract.

9. Compliance with confidentiality obligations.

A registered firm must take reasonable steps to ensure that the laws of The Bahamas relating to client confidential information and securities, and data

protection, are not breached by any outsourced Compliance Officer appointed by the registered firm to carry out the compliance functions.

10. Application of Rules.

Rules 6, 7 and 8 do not apply to persons licensed under the Act to deal in securities or to arrange deals in securities.

Dated this 23rd day of January, 2019.

Signed
ROBERT LOTMORE
Securities Commission of The Bahamas