

**CODE OF PRACTICE
FOR
INVESTMENT BUSINESS**

Contents

Page

Advisory note regarding the application of the Code of Practice (the “Code”)	4
Introduction	4
Principles	
1. A licensed person must conduct the business with integrity	6
2. A licensed person must have the highest regard for the interests of its clients	7
3. A licensed person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.	
3.1 Corporate Governance	10
3.2 Internal systems and controls	11
3.3 Integrity and competence	12
3.4 Continuing Professional Development (CPD)	14
3.5 Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer	15
3.5 Complaints	15
3.6 Record Keeping	15
4. A licensed person must be transparent in its business arrangements.	17
5. A licensed person must maintain, and be able to demonstrate the existence of both adequate financial resources and adequate insurance.	19
6. A licensed person must deal with the Commission and other authorities in Anguilla in an open and co-operative manner.	23
7. A licensed person must not make statements that are misleading, false or deceptive.	27

Contents continued

Schedules

Schedule 1	Paragraphs 5.3 to 5.6 of Code	31 – 43
Schedule 2	Table of notifications and consents	44 – 49
Schedule 3	Transitional Provisions allowed for licensed persons to gain compliance with the Code	50 - 51
Schedule 4	The Classes of Investment Business	52

Advisory note regarding the application of the Code of Practice (the ‘Code’)

This Code applies to all persons licensed by the Financial Services Commission (‘Commission’) under section 8 of the Investment Business Act (the ‘Law’) to carry on investment business as defined under section 3 of the Law.

Transitional Provisions

Persons that are licensed under the law to carry on investment business who have opted to take advantage of the transitional provisions set out under Schedule 3 must comply with the requirements of this Code of Practice by the dates specified in the Schedule.

Introduction

The Code is issued by the Commission under powers granted to it by section 48(1) of the Financial Services Commission Act, R.S.A. c. F28 (‘FSC Act’). The Code has been prepared and issued for the purpose of establishing sound principles for the conduct of investment business in accordance with accepted international standards. It is the responsibility of the licensed person not only to comply with these principles, but also to implement such additional practices as it considers necessary.

In exceptional circumstances, where strict adherence to the Code would produce an anomalous result, a licensed person may apply to the Commission for variance from the Code and such variance may be granted by the Commission, if the case appears reasonable to it, and if such variance is granted it shall be extended in the form of a condition issued under section 32A of the FSC Act.

The Code is arranged under **seven** fundamental principles as described below;

1. A licensed person must conduct its business with integrity,
2. A licensed person must have the highest regard for the interests of its clients,
3. A licensed person must organise and control its affairs effectively for the proper performance of its business activities, and be able to demonstrate the existence of adequate risk management systems,
4. A licensed person must be transparent in its business arrangements,
5. A licensed person must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance,
6. A licensed person must deal with the Commission and other authorities in Anguilla in an open and co-operative manner, and
7. A licensed person must not make statements that are misleading, false or deceptive.

Each section of the Code is designed to be understood by reference to its full text including any notes. The Code should be read by licensed persons in conjunction with the Law and its subordinate legislation, together with any conditions attached to a licence held under the Law.

Failure by a licensed person to follow this Code represents grounds for the Commission to take regulatory action. Where the Commission has reason to believe that at any time there has been a failure on the part of a licensed person to follow this Code, it may consider making use of its regulatory powers which, in serious cases, could include the revocation of an 'investment business' licence.

In addition, failure to comply with a Code may support a decision by the Commission that, for example, continued non-compliance or other failure to remedy the circumstances giving rise to the breach may be addressed by the issue of a written directive under section 32 of the FSC Act. Such a directive might impose requirements on a licensed person to do or not to do things, remove persons, or cease operations. In circumstances considered appropriate by the Commission a directive can be made public under section 34 of the FSC Act.

Whilst failure to follow this Code shall not itself render any person liable to proceedings of any kind or invalidate any transaction, the Code shall be admissible in evidence in any proceedings if it appears for the conducting of these proceedings to be relevant to any question arising in the proceedings.

A licensed person is reminded that the conduct of investment business involves the carrying on of any of the activities listed section 3 of the Law, by way of business in or from within Anguilla or, if by a company incorporated in Anguilla, which are in any part of the world.

Revision of the Code

The Code can be revised after consultation with representative persons or bodies.

1. A licensed person must conduct its business with integrity

1.1 Failure to comply with the above principle will be considered a serious breach of the Code,

1.2 Without limiting the scope of the above principle, a licensed person must not;

1.2.1 act or refrain from acting, or

1.2.2 contract or have any other arrangement,

so as to avoid, or seek to avoid, any regulatory obligations it may have under the Code and the full consequences of not following them unless the Code expressly permit any such avoidance.

2. A licensed person must have the highest regard for the interests of its clients

- 2.1 A licensed person must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken,
- 2.2 In determining the means by which it will comply with the requirements under principles 2 and 4 of the Code, a licensed person must take into account any guidance issued by the Commission that is applicable to investment business.

Knowledge of Client

- 2.3 Where a licensed person is responsible for providing advice to or exercising discretion for its clients, it must obtain, document and maintain any information about the circumstances (both financial and otherwise) and investment objectives of the client that are relevant to the services to be provided.
- 2.4 Where a client declines to provide information concerning, their circumstances and investment objectives, a licensed person must not provide advice to or exercise discretion on behalf of clients unless it has first disclosed to the client and confirmed in writing that the lack of such information may adversely affect the service that it can provide.

Suitability

- 2.5 Where a licensed person is responsible for providing advice or exercising discretion for its clients, it must be able to demonstrate in writing that the advice or exercise of discretion is suitable for that client having regard to:
 - 2.5.1 the facts disclosed by that client
 - 2.5.2 the terms of any agreement with that client; and
 - 2.5.3 any other relevant facts about the client of which the licensed person is, or reasonably should be, aware.
- 2.6 Where a licensed person is responsible for providing advice it must make available to its client, in a comprehensible and timely manner, appropriate information so as to allow the client to make an informed investment decision.
- 2.7 A licensed person must ensure that adequate procedures are implemented to ensure that the investment services that it provides are regularly reviewed at appropriate intervals.

Conflicts of Interest

- 2.8 A licensed person must endeavour to avoid any conflict of interest arising,
- 2.9 Where conflicts do arise, a licensed person must have effective procedures so as to address such conflicts by:
 - 2.9.1 disclosure;

- 2.9.2 applying internal rules of confidentiality;
- 2.9.3 declining to act; or
- 2.9.4 otherwise as appropriate.

Switching & Churning

- 2.10 A licensed person must not advise a client to, nor in the exercise of its discretion effect a switch of long term insurance products or a switch within or between collective investment schemes unless it is in the client's interest to do so. Written evidence should be retained in this regard.
- 2.11 A licensed person must not advise a client nor in the exercise of discretion, enter into transactions with unnecessary frequency having regard to the client's agreed investment objectives.

Front Running

- 2.12 Where a licensed person or its associate, as defined in section 1(1) of the Law, intends to publish to clients a recommendation, or a piece of research or analysis, in relation to a particular investment, it must not:
 - 2.12.1 deal in the investment, or any related investment, on its own account; or
 - 2.12.2 deal in the investment, or any related investment on behalf of an associate ahead of the clients for whom the recommendation, research or analysis was intended if those clients ought to have priority.
- 2.13 A licensed person shall not be deemed to have breached 2.12 of the Code if it can demonstrate that:
 - 2.13.1 the publication could not reasonably be considered price sensitive;
 - 2.13.2 the licensed person is a market maker in the investment concerned and the deal was executed or arranged in good faith;
 - 2.13.3 the licensed person was dealing in order to fulfil an unsolicited client's order; or
 - 2.13.4 the licensed person has reasonable grounds for believing that it needs to deal in the investment concerned in order to fulfil client orders which are likely to result from the publication and that by doing so will not cause the price of the investment to move against clients interests by a material amount.

Customer Order Priority

- 2.14 A licensed person must deal with client and own account orders fairly and in due turn.

Aggregation

- 2.15 A licensed person may only aggregate an order of a client with the order of another client or of the relicensed person, where it is in the overall best interests of all the clients concerned, or any possible disadvantage has been disclosed to each client separately.

Fair and Timely Allocation

- 2.16 When allocating orders, a licensed person must not give unfair preference to itself or to any client for whom they deal,
- 2.17 Where a licensed person has aggregated a client order with its own or other clients' orders it must allocate back to the client within 24 hours.
- 2.18 Where an aggregated order is not completed in full (i.e. a partial fill) a licensed person must give priority to the clients' orders unless it can demonstrate that the transaction would not have happened on such favourable terms without the licensed persons' involvement.

Timely Execution

- 2.19 Once a licensed person has agreed with a client or decided in its discretion to effect or arrange a client order, it must effect or arrange the execution of the order as soon as reasonably practicable in the circumstances, unless postponement is in the best interests of the client.

Best Execution

- 2.20 For investments other than units in a collective investment fund and long term insurance products, in dealing with or for a client, a licensed person must take reasonable care to ascertain the price which is best available at the time for transactions of the kind and size concerned and then, unless circumstances require it to do otherwise in the clients' interests, deal at a price no less advantageous to the client (excluding any of its disclosed charges)
- 2.21 A licensed person may rely on another person who executes the transaction to provide best execution, but only if they believe on reasonable grounds that the person will do so.
- 2.22 Where a licensed person executes an order through recognised securities exchange trading systems the 'best execution' requirement will be deemed to have been satisfied.
- 2.23 Where a licensed person has access to a variety of price sources, it should compare those sources and give the client the best price.

3. A licensed person must organise and control its affairs effectively for the proper performance of its business activities, and be able to demonstrate the existence of adequate risk management systems.

3.1 Corporate Governance

3.1.1 Licensed persons must operate an effective corporate governance system that must include the following key elements:

3.1.1.1 licensed persons must satisfy the Commission they have an adequate span of control appropriate to the nature of their business;

3.1.1.2 responsibilities must be apportioned in such a way that individual responsibilities and accountabilities are clear and that there is separation of critical functions so as to guard against fraud and market abuse; and

3.1.1.3 the business and affairs of the licensed person must be adequately monitored and controlled at senior management and board level as appropriate.

3.1.2 Specifically with respect to 3.1.1.1:

3.1.2.1 licensed persons that are not permitted to handle clients' assets should effectively be directed by at least two appropriately qualified and experienced individuals (otherwise known as the 'Four Eyes' principle)

3.1.2.2 licensed persons that are permitted to handle clients' assets should effectively be directed by at least three appropriately qualified and experienced individuals (otherwise known as the 'Six Eyes' principle); and

3.1.2.3 the relationship between the individuals must be such as to ensure that they can all exercise independent judgement without duress or undue influence from one another;

3.1.3 Clearly defined procedures must be in place so that there is appropriate oversight by the board of directors and senior management in order to address the principles of risk management:

3.1.3.1 an assessment of the risks present in the licensed person's business must be made, and those risks must be documented, as must the ways in which they are monitored and controlled;

3.1.3.2 the licensed person must maintain accurate and reliable information systems, and

3.1.3.3 the licensed person must complete timely and appropriate management and regulatory reporting.

GUIDANCE

Note 1: Corporate governance is the system by which an organisation is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the organisation and sets out the rules and procedures for making decisions. Risk management is an integral part of the corporate governance framework.

*Note 2: The requirements set out under paragraph 3.1.1 deal with both prudential and conduct of business issues referring as they do, to the **direction of the business of the licensed person itself**. As such, this is not a provision that directly governs, for instance, appropriate signatory arrangements for the execution of a specific transaction or exercise of a particular discretion.*

3.2 Internal systems and controls

3.2.1 A licensed person must:

3.2.2 Operate robust arrangements for meeting the standards and requirements of the regulatory framework, including:

3.2.2.1 maintaining and testing adherence to, a policies and procedures manual covering the operation of the business;

3.2.2.2 establishing effective complaints handling systems;

3.2.2.3 ensuring adequate supervision of direct and indirect employees;

3.2.2.4 maintaining procedures governing sole, dual or multiple authorisations for handling client assets and for guarding against involvement in financial crime (including the detection and prevention of money laundering); and

3.2.2.5 ensuring that all transactions or decisions are appropriately authorised by persons with the requisite knowledge and experience to effect such transactions or make such decisions.

3.2.3 undertake a periodic review of the internal control systems to ensure that they continue to work effectively;

3.2.4 keep adequate and orderly records of its business transactions, its financial position, its internal organisation and its risk management systems;

3.2.5 ensure that adequate business resumption, disaster recovery and other contingency arrangements are in place and tested at appropriate intervals;

- 3.2.6 ensure that systems are in place to enable management to guard properly against involvement in financial crime including fraud, market abuse, money laundering and the financing of terrorism;
- 3.2.7 comply with all relevant legislation, requirements and guidance to counter financial crime including fraud, market abuse, money laundering and the financing of terrorism. Failure to follow legislation, requirements and guidance to counter financial crime including fraud, market abuse, money laundering and the financing of terrorism may form the basis for regulatory action by the Commission and a risk of prosecution by the Attorney General's Chambers;
- 3.2.8 have due regard to the internationally accepted principles of 'sensitive activities' carried out by entities, irrespective of the jurisdiction in which the entity is operating in;

3.3 **Integrity and Competence**

- 3.3.1 A licensed person must:
- 3.3.2 Ensure its directors, senior managers and all other staff are fit and proper for their roles. "Staff" as identified in this section includes not only employees, but also self-employed representatives;
- 3.3.3 Retain any documentary evidence obtained in the staff vetting process e.g. employer references;
- 3.3.4 Vet and monitor the working practices, competence and probity of its directors, partners, senior managers and other staff;
- 3.3.5 Ensure that its staff comply with the following competency requirements;
 - 3.3.5.1 all investment employees must have obtained a professional qualification appropriate to their role (also see transitional provisions)
 - 3.3.5.2 all investment employees must be sufficiently experienced to discharge their duties properly. In the event that an investment employee has less than two years experience in relation to their current role, the licensed person must take steps to monitor their working practices over and above the ordinary staff monitoring requirements required by 3.3.2 of the Code; and
 - 3.3.5.3 directors and senior managers who do not meet the definition of an investment employee will be expected to possess professional qualifications and / or experience appropriate to their role.
- 3.3.6 obtain and retain copies of documentary evidence of qualifications held by investment employees, which are to be used by the licensed person to assess the competence of those employees.

- 3.3.7 Where complex transactions are undertaken or complex investments are advised upon, more specialised qualifications, experience and other competencies is required to ensure the licensed person can demonstrate that employees are competent and adequately supervised.
- 3.3.8 On submission of a request by the licensed person, the Commission will consider, on a case-by-case basis, the acceptability or otherwise of any other qualifications held by an investment employee. Such a request must include a written explanation as to why the licensed person considers the alternative qualification to be appropriate for that employee and the Commission may request a copy of the syllabus studied or equivalent where practical.
- 3.3.9 The Commission may, on application by the licensed person, grant exemptions from the requirement to hold qualifications set out in 3.3.5 of the Code. In doing so, the Commission will pay regard to any previous exemption granted by the Commission in respect of the investment employee on whose behalf the exemption is being sought, as well as the nature of the role being performed and the licensed person's systems and controls.

GUIDANCE

Note 1: An 'investment employee', in respect of a licensed person, means –

(a) A person employed on the relevant date either under a contract of service or a contract for services by the registered person as –

- a. a dealer*
- b. a discretionary investment manager*
- c. an adviser*
- d. an arranger*
- e. a supervisor; and*

(b) a person employed on the relevant date either under a contract of service or a contract of services in any of the categories of work specified in paragraph (a) of this definition b a person who is himself employed on the relevant date either under a contract of service or a contract for services by the registered person

and if, on the relevant date, there exists a post in the service of the registered person that is vacant but would normally be occupied by a person to which paragraph (a) of this definition applies, includes that person;

Note 2: "Employees" as identified in this section includes not only direct employees, but also indirect employees, such as temporary and contracted employees and other contracted service providers.

3.4 Continuing Professional Development (“CPD”)

- 3.4.1 CPD is a compulsory requirement for all investment employees and the Compliance Officer. A licensed person is required to maintain CPD records for all such employees although it is permissible for a licensed person to require its employees to keep their own records and account to a licensed person on a regular basis.
- 3.4.2 A minimum of 35 hours per year of CPD must be undertaken, a maximum of five of which may be relevant reading (pro-rated for part-time employees)
- 3.4.3 A licensed person is responsible for ensuring CPD is appropriate for investment business employees and this consideration must take into account the employee’s job description and current duties and may include future development needs.
- 3.4.4 The onus is on each licensed person to demonstrate the adequacy of its CPD regime.

GUIDANCE

Note 1: It is expected that employees will achieve their CPD targets by adhering to the requirements of their own relevant professional body. However, where the relevant professional body does not prescribe how CPD should be achieved, there are a number of acceptable ways to attain the minimum CPD requirement, including, but not restricted to:-

- (a) studying for further qualifications;*
- (b) in-house training, seminars, conferences and product presentations;*
- (c) computer-based training;*
- (d) one-to-one tuition;*
- (e) reading relevant professional and trade magazines;*
- (f) personal structured study; and*
- (g) attending external training courses.*
- (h) monitoring of financial information screens (Reuters, Bloomberg etc.) as part of their daily duties (i.e. Dealing Room)*

3.5 **Complaints**

3.5.1 A licensed person must establish effective complaints handling systems and procedures and in particular must:-

- 3.5.1.1 maintain adequate records of complaints against the licensed person, including a central register;
- 3.5.1.2 handle complaints transparently, fairly and, in so far as is possible, independently;
- 3.5.1.3 inform customers of how complaints may be made and how they may expect these to be responded to;
- 3.5.1.4 provide an acknowledgement and initial response in writing within fifteen working days, unless expressly agreed by the client to the contrary; and
- 3.5.1.5 advise the client in writing when the complaint is considered closed.

3.5.2 A licensed person must notify the Commission:-

- 3.5.2.1 if a complaint is not satisfactorily resolved within three months of the client having lodged a complaint;
- 3.5.2.2 if any complaint has resulted in the licensed person making a claim on its Professional Indemnity Insurance policy or having made any type of settlement in excess of \$2,500.
- 3.5.2.3 if the licensed person considers it to be in the interests of the public or the complainant;
- 3.5.2.4 of a complaint or series of complaints that suggest the licensed person is failing to meet any of the requirements of the Code; or
- 3.5.2.5 if any unresolved complaint results in litigation commencing.

3.6 **Record Keeping**

3.6.1 This section explains the minimum standards of record keeping that are required in respect of a licensed person's own business and the investment business services that it provides.

3.6.2 The licensed person must ensure that it has appropriate record keeping arrangements for compliance with the applicable Laws, Regulations and this Code.

3.6.3 A licensed person must:

- 3.6.3.1 maintain an audit trail of the policies and procedures manual that covers the operation of the business;

- 3.6.3.2 keep adequate orderly and up to date records which must include, but are not necessarily limited to:
 - 3.6.3.2.1 its financial affairs;
 - 3.6.3.2.2 business transactions undertaken;
 - 3.6.3.2.3 transactions effected for clients;
 - 3.6.3.2.4 its internal organisation, including the allocation of responsibilities among its employees;
 - 3.6.3.2.5 directors' and staff own account dealings;
 - 3.6.3.2.6 risk management systems; and
 - 3.6.3.2.7 board or management minutes.
- 3.6.4 Every licensed person is expected to maintain such books and records so as to be able to readily retrieve them in Anguilla and, if kept otherwise than in legible form, maintain them so as to be readable at a computer terminal in Anguilla so that they may be produced in legible form without delay.
- 3.6.5 Every licensed person must ensure that the records prepared under section 3.6.3.2 are updated as required. When updates are made, the effective date of such updates must be recorded and the superseded records maintained.
- 3.6.6 Every licensed person must have a clearly documented policy regarding record retention. The following minimum retention periods must be applied:
 - 3.6.6.1 records relating to significant corporate governance matters, such as management meeting minutes and risk assessment matters – ten years from the date of the record;
 - 3.6.6.2 any other records relating to requirements established by this Code – ten years from the date of the record;
 - 3.6.6.3 contractual documentation such as client account opening paperwork, mandates, agreements and know your customer documentation – ten years from the closure of the account or from the end of a series of transactions; and
 - 3.6.6.4 transaction vouchers, such as cheques – ten years from the date of the transaction.

4. A licensed person must be transparent in its business arrangements.

- 4.1 A licensed person must disclose on its stationery and in advertising material that it is regulated by the Commission and ensure that all publications include the statement *'XXX Ltd is licensed under the Investment Business Act, [citation] for the conduct of investment business and regulated by the Anguilla Financial Services Commission.'*
- 4.2 A licensed person must communicate information to clients in a way that is adequate, fair and not misleading.
- 4.3 A licensed person must provide to its clients confirmation, in writing, of the services that it is providing as well as a contract, agreement or other written form setting out its general and specific terms of business. These terms of business must:
- 4.3.1 be distinguishable from marketing or promotional material;
 - 4.3.2 be consistent with the Code;
 - 4.3.3 be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary;
 - 4.3.4 be provided prior to the provision of services; and
 - 4.3.5 explain whether the licensed person is acting as a principal or as the agent of the client or any other person.
- 4.4 A licensed person must provide confirmation, in legible form, of any transaction effected for a client. Such confirmation must set out all relevant matters in relation to the transaction.
- 4.5 A licensed person that provides advice about investments from a restricted range of the available providers of investments of the same type, must inform its clients of the nature and extent of that restriction in writing. The specific wording is at the discretion of the individual businesses, but the onus will be on each licensed person to demonstrate that the nature and extent of such restrictions have been communicated clearly to the client.
- 4.6 A licensed person is required to demonstrate in writing that the client has been made aware of all associated fees and charges including commissions (both initial and recurring) and any payments to or from third parties (such as introductory fees or commission sharing arrangements) – effectively a ‘no surprises’ policy. This information must be disclosed prior to transactions being effected and the information concerning commissions should include either a monetary or percentage figure. This information must be provided to a client upon request, and the client notified of this fact, should it not be possible or practicable to provide it an earlier stage. Any implications in relation to cancellation, failure to meet premiums and the ability and effect of making changes should also be made clear to the client.

- 4.7 A licensed person must inform clients if it has a policy of recording telephone conversations with them. This may be achieved by including an appropriate statement in the licensed person's terms of business, marketing and promotional material and regular statements provided to customers, or by advising callers at the start of all telephone conversations.
- 4.8 A licensed person must inform its clients of its investment strategy and past performance where relevant.

5. A licensed person must maintain, and be able to demonstrate the existence of adequate financial resources and adequate insurance.

- 5.1 Where a licensed person is considered by the Commission as an institution of stature, the licensed person may apply to the Commission for a waiver for the requirement for the Adjusted Net Liquid Assets (“ANLA”) requirements set out in this Code.
- 5.2 A licensed person conducting Classes C or E investment business (please see Schedule 4) must maintain:
- 5.2.1 a minimum of \$25,000 paid up share capital and a surplus of ANLA over the Expenditure Requirement in the ratio of 110% in accordance with the calculation set out in the Schedule 1; and
 - 5.2.2 a minimum net asset position of \$25,000 in the licensed person’s accounts at all times.
- 5.3 A licensed person conducting Classes A,B or D (please see Schedule 4) investment business must maintain:
- 5.3.1 a minimum of \$12,500 paid up share capital and a surplus of ANLA over the Expenditure Requirement in the ratio of 110% in accordance with the calculation set out in Schedule 1; and
 - 5.3.2 a minimum net asset position of \$12,500 in the licensed person’s accounts at all times.
- 5.4 A licensed person is required to immediately notify the Commission (in addition to any notification obligation under the Law or this Code):
- 5.4.1 if its ANLA falls below 130% of its Expenditure Requirement;
 - 5.4.2 If its ANLA falls below 110% of its Expenditure Requirement;
 - 5.4.3 of any single significant contingency, financial commitment or large exposure exceeding 25% of its ANLA;
 - 5.4.4 of any instrument, transaction or situation that appears not to be catered for in, or
where the application of, Schedule 1 might give a misleading impression of the adequacy of the financial resources.
- 5.5 The Commission may, upon written application from a licensed person, consider granting consent to exclude a long term subordinated loan as a liability within the ANLA calculation. Such consent is only likely to be granted where the loan is in a prescribed format as provided by the Commission, and where the loan is made by a lender that is acceptable to the Commission.

GUIDANCE

Note 1: For entities with any Position, Counterparty or Foreign Currency Risk Requirements, the calculation must be undertaken every business day; and those entities not subject to these risks must complete the calculation on at least a quarterly basis. Where there is a significant risk that the entity might breach the requirement, the entity must conduct the calculation on a more regular basis, as appropriate.

Note 2: "Net Assets" are defined as total assets less total liabilities

Note 3: Where a licensed person has issued share capital of less than \$25,000 but a combined share capital and share premium exceeding \$25,000, together with a surplus of ANLA over Expenditure Requirement, the Commission may deem a licensed person to have satisfied 5.2.1 or 5.3.1 of the Code. In such circumstances the licensed person must give prior written notification to the Commission of any proposed reduction in share premium.

Note 4: With respect to the share capital requirements in 5.2 and 5.3, if the licensed person operates in Anguilla as a branch of a legal entity incorporated outside Anguilla then the share capital requirement applies to the legal entity incorporated outside Anguilla.

5.6 Insurance arrangements

5.6.1 A licensed person is required to maintain adequate insurance cover at all times, commensurate with its business activities. Such cover must include Professional Indemnity Insurance ("PII") cover and extensions must include negligence and errors and omissions by the licensed person and employee dishonesty and must, where possible, extend to all territories in or from which the licensed person conducts business.

5.6.2 Specifically, so far as lawful, extensions must include legal defence costs; retroactive cover in respect of claims arising from work carried out in the past by the licensed person; loss of documents (liability and costs replacement, restoration or reconstruction); self-employed or contract hire persons engaged in the licensed person's business; indemnity to employees, former employees and/or consultants.

5.6.3 A licensed person must inform the Commission of any limitations in cover that may apply to any territory in or from which business may be conducted by the licensed person.

5.6.4 The minimum aggregate cover must exceed the greater of:

5.6.4.1 three times relevant fees and commissions

5.6.4.2 10% of controlled assets; or

5.6.4.3 \$1,000,000.

But licensed persons shall not be required by the above tests to have aggregate cover exceeding \$5,000,000.

5.6.5 The Commission may, on application by a licensed person, consider a variance to the minimum insurance cover requirements stipulated under 5.6.4 above in exceptional circumstances.

5.6.6 Any excess per claim (the amount the licensed person is liable to pay on any claim) on the policy must not exceed the total of \$5,000 or 3% of the licensed person's annual relevant fees and commissions, whichever is the greater. The full amount of any excess per claim must at all times be treated as an additional liability when performing the ANLA calculation as set out in Schedule 2.

5.6.7 The Commission may, on application by a licensed person, consider a variance to the maximum excess per claim stipulated under 5.6.4. If the Commission gives consent to a variance, the licensed person must treat a multiple (x3) of the additional excess as a liability when performing the ANLA calculation as set out in Schedule 1.

5.6.8 With the consent of the Commission, licensed persons may self-insure provided they are, or are owned by, an institute of stature.

5.6.9 A licensed person that is ceasing to conduct investment business is required to arrange for appropriate "run off" PII cover in respect of claims arising from past acts or omissions. Such cover must be for a minimum period of twelve months and on terms considered to be appropriate by the Commission.

5.6.10 In the event that a licensed person's aggregate level of PII cover is depleted as a result of a claim on its policy, the licensed person must obtain re-instated cover that meets the requirements set out under 5.6 of the Code.

5.6.11 A licensed person must have adequate procedures in place to ensure compliance with all terms and conditions of its PII policy, particularly in relation to the timely notification of events that may lead to a claim on the policy by the licensed person.

GUIDANCE

Note 1: "Relevant fees and commissions" for PII purposes is gross income paid or payable to the firm, which is commission, brokerage fees or other relevant income arising from professional business activities (regulated or not) covered

*under the PII policy. This applies for the last accounting year before the start
or
renewal of the policy, or as per the business plan for new applicants.*

*Note 2: The requirements of 5.6 may be satisfied by the licensed person being covered
under a group PII policy.*

6. A licensed person must deal with the Commission and other authorities in Anguilla in an open and co-operative manner.

6.1 There is a need for candour and co-operation in a licensed person's relationship with the Commission. Licensed persons are required to advise the Commission promptly of any matter that might reasonably be expected to affect their licence or be in the interests of investors to disclose. This principle extends to the provision of information and notification of events concerning non-regulated activities and other members of the corporate group, where appropriate, for example, in relation to money laundering issues and market abuse.

6.1.1 In addition to the requirements of the relevant law, a licensed person must allow, and shall ensure that any agent or subcontractor of the licensed person also allows, inspections by or on behalf of the Commission of any part of the activities in relation to which the licensed person has been granted licensing under the Law. The licensed person must provide all reasonable assistance in connection with any such inspection and shall ensure that any such agents or subcontractors also provide reasonable assistance.

6.2 When a licensed person has failed to comply with other parts of the Code, its observance or non-observance of this principle will be relevant to the question of mitigation or aggravation.

6.3 Notifications

6.3.1 This section sets out matters which must be brought to the attention of the Commission within the timescales specified.

6.3.2 In addition to obligations under the Law, and notwithstanding the generality of paragraph 6.1 above, certain notifications will always be expected from a licensed person:

6.3.3 A licensed person must notify the Commission in writing not less than 28 days before the change is implemented, of a change in:

6.3.3.1 the name of the licensed person;

6.3.3.2 any business name under which the licensed person carries on investment business;

6.3.3.3 the address of the registered office of the licensed person;

6.3.3.4 the address of the head office of the licensed person; and

6.3.3.5 the address of the principal office(s) in Anguilla of the licensed person .

6.3.4 A licensed person must notify the Commission in writing not less than 28 days before the summary winding up or voluntary dissolution of the licensed person.

- 6.3.5 A licensed person must notify the Commission of any decision to commence a new activity that is likely to have a material effect on the business or its profitability. Notification should be provided prior to commencement of the activity.
- 6.3.6 A licensed person must notify the Commission immediately in writing of any of the following –
- 6.3.6.1 the presentation of any application to the court for bankruptcy, or the winding up of the licensed person or of a company which is a subsidiary or holding company of the licensed person, or the summoning of any meeting to consider a resolution to wind-up a licensed person, or a company which is a subsidiary, or holding company of the licensed person;
 - 6.3.6.2 the application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country, in relation to the licensed person;
 - 6.3.6.3 the making or any proposals for the making of a composition or arrangement with creditors of the licensed person;
 - 6.3.6.4 where the licensed person is a partnership, a limited partnership or a limited liability partnership (collectively known as a “partnership”) an application to wind up or dissolve the partnership;
 - 6.3.6.5 the imposition of disciplinary measures or disciplinary sanctions on the licensed person in relation to investment business by any relevant supervisory authority or any securities exchange or clearing house;
 - 6.3.6.6 the conviction of the licensed person, or any of its principal persons or key employees, for any offence under legislation of any country relating to banking or other financial services, companies, credit unions, consumer credit, building societies, insolvency, insurance and industrial and provident societies, or for any offence involving fraud or dishonesty, or the imposition of any penalties for tax evasion;
 - 6.3.6.7 the re-incorporation of a licensed person incorporated with unlimited liability as a limited liability company;
 - 6.3.6.8 a general partner in a licensed person becoming a limited partner;
 - 6.3.6.9 the granting or refusal of any application for, or revocation of, authorisation to carry on investment, banking or insurance business in any country or territory outside Anguilla;
 - 6.3.6.10 the granting, withdrawal or refusal of an application for, or revocation of, membership by the licensed person of any securities exchange or clearing house;

- 6.3.6.11 the withdrawal of an application for, or revocation of, membership of any professional body by a principal person or employee, in any jurisdiction;
 - 6.3.6.12 the appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of the licensed person;
 - 6.3.6.13 any other matter which the licensed person considers would be material to the requirements placed on the licensed person, any of its principal persons, or any of its investment employees to be fit and proper;
 - 6.3.6.14 any litigation taken by the licensed person or any subsidiary, or against them;
 - 6.3.6.15 the breakdown of administrative or control procedures relevant to any part of the licensed person's business (including breakdowns of computer systems or other accounting problems) resulting, or likely to result, in failure to comply with one or more of the provisions of this Code;
 - 6.3.6.16 any event arising that makes it impracticable for the licensed person to comply with one or more of the provisions of this Code;
 - 6.3.6.17 any event arising that makes it impractical for the licensed person to comply with any conditions attaching to the licensed person's licence; and
 - 6.3.6.18 any other matter which would be material to the Commission's supervision of the licensed person, any of its principal persons or any of its investment employees under the Law or this Code.
- 6.3.7 A licensed person must notify the Commission in writing within seven days of becoming aware of, or having resolved to undertake, any of the following matters:
- 6.3.7.1 in relation to any principal person who is an individual, any change in his or her name, address and any information which might impact upon his or her good reputation or character;
 - 6.3.7.2 where a licensed person is a body corporate, the formation, acquisition, disposal or dissolution of a subsidiary specifying the subsidiary's name and its principal business;
 - 6.3.7.3 where a licensed person is not a body corporate, when it acquires or disposes of a holding of more than half in nominal value of the equity share capital of a company, specifying the name of the company and its principal business; and
 - 6.3.7.4 where a licensed person wishes the Commission to cancel its licence in accordance with section 30(1A) of the FSC Act, the Commission will then require a licensed person to complete a Cessation of Business Plan ('COBP').

- 6.3.8 A licensed person must submit a written report to the Commission within seven days specifying any changes in the information originally submitted under the following headings:
- 6.3.8.1 branch offices anywhere in the world from which the licensed person carries on investment business;
 - 6.3.8.2 insurance arrangements; and
 - 6.3.8.3 the countries outside Anguilla in which the licensed person carries on investment business indicating whether this is done through a branch office, a subsidiary or otherwise.
- 6.3.9 A licensed person must provide the Commission with details of its investment employees upon request.

7. A licensed person must not make statements that are misleading, false or deceptive.

7.1 A licensed person must take reasonable steps to ensure that its investment business advertisements (“**advertisements**”) are not misleading, false or deceptive. Words used in advertisements must be chosen carefully and certain words, such as “guarantee”, “assured”, “confidential” and “secret”, must be treated with great caution.

7.2 An advertisement must not contain:

7.2.1 a statement, promise or forecast unless the licensed person, at the time the advertisement is made, has reasonable grounds for believing it is not misleading, false or deceptive;

7.2.2 a statement of opinion held by any person unless the licensed person, at the time the advertisement is made, has reasonable grounds for believing it to be the honestly held opinion of that person at the time;

7.2.3 a statement of fact unless the licensed person, at the time the advertisement is made, has reasonable grounds for believing it to be true for as long as the advertisement continues to be made in current publications;

7.2.4 a statement about the scale of activities of, or any of the activities of, or the resources of or available to, a licensed person or that licensed person’s group unless the licensed person, at the time the advertisement is made has reasonable grounds for believing the statement, is not misleading, false or deceptive;

7.2.5 a statement relating to taxation benefits unless it is clearly illustrated by example to show what it means in practice and to whom such benefits apply;

7.2.6 a statement relating to customer confidentiality unless it is qualified to show the limits of any confidentiality assurance made;

7.2.7 a statement of comparison with other entities carrying on investment business unless the basis of comparison is clearly stated and the comparison is fair; or

7.2.8 a statement implying that the service is only available for a limited period or in limited form, if such is not the case.

7.3 An advertisement made in a written or broadcast form must not contain:

7.3.1 a statement of fact which the licensed person does not at the time the advertisement is made have reasonable grounds, supported by documentary evidence, for believing to be true;

- 7.3.2 a statement of opinion held by any person which the licensed person does not at the time the advertisement is made, have reasonable grounds, supported by documentary evidence, for believing to be the honestly held opinion of that person at that time.
- 7.4 The content and format of any advertisement must not:
 - 7.4.1 be designed so as to be likely to be misunderstood;
 - 7.4.2 be designed so as to disguise the significance of any warning statement or information which is required to be included under this Code; or
 - 7.4.3 signify in any way that the advertisement is approved by the Commission.
- 7.5 An advertisement may include a quotation from a statement made by any person commending any investment or service provided that:
 - 7.5.1 where the person is an employee or associate of the licensed person, that fact is disclosed in the advertisement;
 - 7.5.2 the quotation is included with that person's written consent;
 - 7.5.3 the statement is relevant to the investment or service which is the subject of the advertisement;
 - 7.5.4 where the whole of the statement is not quoted, what is quoted represents fairly the message contained in the whole of the statement; and
 - 7.5.5 the statement has not become inaccurate or misleading subsequent to it being made.
- 7.6 The licensed person must be able to demonstrate that adequate disclosure of the key risks and the relevant terms and conditions was made to the customer before commitment was made, so as to ensure the customer has made an informed decision.
 - 7.6.1 An advertisement may only specify some of the terms and conditions which attach to an investment or service, and exclude others, providing:
 - 7.6.1.1 those which are specified give a fair indication of the nature of the investment or service and the risks involved and the advertisement contains the terms and conditions; or
 - 7.6.1.2 where no mention of terms and conditions is made, the advertisement must contain information as to how all the terms and conditions may be obtained.
- 7.7 Any advertisement shall disclose any special areas of risk relating to the investment or service, such as limited marketability, gearing, stabilisation, etc.

- 7.8 In the case of an investment the value of which may fluctuate or is not guaranteed (or both) and which may result in the investor not getting back the amount invested, the advertisement shall state that fact prominently.
- 7.9 In the case of an investment the value of which is guaranteed, protected, assured or similar, the advertisement shall state clearly the nature of the guarantee protection or assurance, etc. (the ‘guarantee’); the name of the guarantor; to what the guarantee relates and whether there are any matters which may affect the investor’s ability to benefit from it.
- 7.9.1 The word ‘Guarantee’ is not permitted to be used in a financial service advertisement unless the advertisement clearly demonstrates that the Guarantor is independent of the promoter and the licensed person can evidence to the Commission, should it to require, the financial basis of that guarantee. In using the word ‘guarantee’ a licensed person should be mindful that any person underwriting risks associated with an investment may give rise to a requirement to register under the relevant insurance laws of a particular jurisdiction.
- 7.9.2 Where the financial service advertisement otherwise meets the guidelines for use of the word ‘guaranteed’, ‘Assured’, ‘Protected’ or similar, the licensed person must:
- 7.9.2.1 consider whether the name of the product fairly represents the nature of the guarantee/assurance/protection/similar which is being offered; and
- 7.9.2.2 ensure the extent to which the guarantee applies is clearly stated. For example, if advertising a fund where the guarantee extends to certain sub-funds but not others, the different levels of guarantee must be explicit.
- 7.9.3 If the financial service advertisement states that the investment has ‘Capital Guaranteed’, the licensed person must ensure that this is truly the case in respect of 100% Capital Return;
- 7.10 A general warning to prospective investors to seek independent taxation advice, as to their own position, must be made in any advertisement where reference to personal tax benefits is made.
- 7.11 An advertisement must not specify a rate of return without specifying how it is calculated, including any element which may involve a reduction of the investor’s capital.
- 7.12 If the income from an investment may fluctuate, the advertisement shall state clearly that this is the case.
- 7.13 Any advertisement inviting direct investments in futures, options, warrants and contracts for difference or any other higher risk product or instrument shall contain an appropriate and clear risk warning. For example, ‘The risks of loss from investing in commodity and financial futures, Foreign Exchange contract securities, warrants and index contracts and options can be substantial’; or its equivalent as approved by the Commission.

GUIDANCE

- Note 1: Under section 19 of the Law, it is an offence for any person to knowingly or recklessly make a misleading, false or deceptive statement, promise or forecast.*
- Note 2: Section 7 of the Investment Business Regulations, 2014 defines an ‘investment business advertisement’. It is the Commission’s view that this definition covers written, media broadcasts, internet and oral advertisements.*
- Note 3: For the avoidance of doubt, the Law does not require advertisements to be approved by the Commission and accordingly the Commission would not normally contribute to any review or vetting process. However, in serious cases, the Commission will consider exercising its powers of direction to have an advertisement amended or withdrawn. Nevertheless, the Commission is especially interested in advertisements that meet the criteria set out in 7.13 of the Code and would appreciate sight of any such advertisements before issue.*
- Note 4: The requirements in section 7 are not intended to capture advertising or promotional literature forwarded by a licensed person to its customers on behalf of third parties.*
- Note 5: It may not be possible or practicable to list within an advertisement all areas of risk that might apply to a particular product or service. Similarly, it may not be possible or practicable to specify all the relevant terms and conditions. The necessary extent to which the risk warnings and the terms and conditions are specified in an advertisement will be dependent upon the nature of the products or services being advertise.*
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SCHEDULE 1

(Paragraphs 5.3 to 5.6)

Table 1 (the Resource Requirement Table) sets out the methodology for calculating the Adjusted Net Liquid Assets and Total Requirement. Tables 2 – 6 and the accompanying notes set out the applicable calculations and definitions.

The calculation must be performed with a frequency that reflects the circumstances of the business and the risks that face it. Unless the Commission consents otherwise the following must apply:

- For entities with any Position, Counterparty or Foreign Currency Risk Requirements, the calculation must be undertaken every business day;
- Those entities not subject to these risks must complete the calculation on at least a quarterly basis. Where there is a significant risk that the entity might breach the requirement, the entity must conduct the calculation on a more regular basis, as appropriate.

The Commission may consider variances to the required frequency of calculations if an entity can demonstrate either enhanced capitalisation or if it regularly exceeds the requirement to a sufficient extent to suggest that the risk of breach is minimal. Such variances will be conditional on these circumstances being maintained.

The Commission may impose enhanced requirements on a licensed person, based on its risk based supervision and approach.

Table 1 – Resource Requirement Table

	USD	USD	USD	Note
Adjusted Total Assets		<i>X</i>		Table 2
Adjusted Total Liabilities		<i>(X)</i>		Table 3
Adjusted Net Liquid Assets (ANLA)			X	
Expenditure Requirement (ER)	<i>(X)</i>			Table 4
Position Risk Requirement (PRR)	<i>(X)</i>			Table 5
Counterparty Risk Requirement (CRR)	<i>(X)</i>			Table 6
Foreign Currency Risk Requirement (FCRR)	<i>(X)</i>			27
Total Requirement (TR):			<i>(X)</i>	
Ratio of ANLA to TR				%

You must notify the Commission immediately if the Ratio of ANLA to TR falls below 130%, and make a further notification if it falls below 110%.

GUIDANCE

Note: The ANLA/TR must be maintained at a level of more than 100% of the expenditure requirement (either by increasing share capital or introducing subordinated loans).

Table 2 – Calculation of Adjusted Total Assets

Assets:	USD	USD L	USD	Note
Total Fixed Assets		<i>X</i>		
Current assets:				
Work in progress	<i>X</i>			
Debtors and prepayments	<i>X</i>			
Amounts due from related parties	<i>X</i>			
Cash at bank and in hand	<i>X</i>			
Investments	<i>X</i>			
Other	<i>X</i>			
Total Current Assets		<i>X</i>		
Total Assets			<i>X</i>	
Illiquid Asset Adjustments:				
Fixed assets	<i>(X)</i>			1
Debtors>90 days	<i>(X)</i>			2
Work in progress>90 days	<i>(X)</i>			3
Prepayments>90 days	<i>(X)</i>			4
Amounts due from related parties	<i>(X)</i>			5
Any other relevant items*	<i>(X)</i>			
Total Illiquid Assets Adjustment		<i>(X)</i>		
Adjusted Total Assets – take to Table 1			<i>X</i>	

GUIDANCE

* The licensed person must exercise appropriate judgement to include any items here that may not be covered by the defined categories of illiquid asset adjustment but would be considered to be illiquid.

Table 3 – Calculation of Adjusted Total Liabilities

Liabilities	USD	USD	USD	Note
Current Liabilities:				
Bank Overdraft	X			
Bank loans < 1 year	X			
Lease obligations < 1 year	X			
Provision for Clawback of pre-paid commissions	X			6
Taxation obligations < 1 year	X			
Deferred income	X			
Amounts due to related parties < 1 year	X			5
Subordinated loan < 1 year to run	X			
Any other relevant items	X			
Total Current Liabilities		X		
Long Term Liabilities				
Bank loans > 1 year	X			
Lease obligations > 1 year	X			
Taxation obligations > 1 year	X			
Amounts due to related parties > 1 year	X			5
Subordinated loan > 1 year	X			
Any other relevant items	X			
Total Long Term Liabilities		X		
Total Liabilities			X	
Adjustments to Total Liabilities				
PII Excess	X			7
Additional Excess on PII	X			8
Guarantees and/or charges over assets	X			9
Non refundable deferred income	(X)			10
Allowable subordinated loan > 1 year	(X)			11
Allowable undrawn credit facility	(X)			12
Bank loans > 1 year	(X)			
Lease obligations > 1 year	(X)			
Taxation obligations > 1 year	(X)			
Any other relevant items	(X)			
Total Adjustment to Liabilities		(X)		
Adjusted Total Liabilities – take to Table 1			X	

Table 4 – Calculation of Expenditure Requirements

Calculation of Expenditure Requirements	USD	USD	USD	Note
Administrative expense	X			
Distribution costs	X			
Finance costs	X			
Tax expense	X			
Any other relevant expenses	X			
Total expenditure		X		
Compare to:				
Budget for the current year		Y		13
Take the higher			X or Y	
Adjustments to ER:				
Discretionary bonuses/profit share	(X)			14
Bad Debt expense	(X)			
Exceptional costs	(X)			15
Other	(X)			
Total Adjustments to ER		(X)		
Relevant Annual Expenditure (RAE)			X	
Expenditure Requirement (ER)–take to Table 1			X	RAE x 25%

Note: Licensed persons must exercise care to ensure that any items deducted from the Expenditure Requirement (under “Adjustments to ER”) were originally included in either the “Total Expenditure” or “Budgeted Expenditure” figure.

Table 5 – Calculation of Position Risk Requirement

Licensed persons which maintain positions in investments (either long or short) are exposed to the risk that the value of such investments may move against them in the future. A licensed person shall calculate each of its position risk requirements in accordance with this table, and take the total position risk requirement, which is the sum of the requirements for each category, for entry in Table 1.

Calculation of Position Risk Requirement (PRR):	USD	USD	Note
A. Debt:			
Government or local authority	(X)		16
Issued or accepted by an approved bank?	(X)		16
Other marketable investments	(X)		16
FRN's	(X)		17
Total Debt PRR:		(X)	
B. Equities:			
Listed on regulated securities exchange	(X)		25% of MV
Traded on a regulated securities exchange	(X)		35% of MV
Total Equity PRR:		(X)	
C. Futures, Options and Contracts for Difference:			
Exchange traded futures	(X)		4 x initial requirement
OTC futures	(X)		18
Purchased Options	(X)		18
Contracts for differences	(X)		20% of MV contract
Total Futures, Options and Contracts for Difference PRR:		(X)	
D. Other Investments:			
Unit linked bonds and units in a regulated mutual fund/collective investment scheme unless covered below	(X)		25% of realisable value
Units in higher volatility and property funds	(X)		50% of realisable value
With profit life policies	(X)		20% of surrender value
Any other investments	(X)		100% of amount of asset
Total Other Investments PRR:		(X)	
Total Position Risk Requirement – take to Table 1		(X)	

GUIDANCE

- *Approved banks are those defined in section 1 of the Investment Business Regulations, 2014.*
 - *Higher volatility funds would include geared futures and options fund or warrant funds, assuming they are regulated schemes. Where they are not regulated the 100% of realisable value must be taken as the CRR.*
-

Table 6 – Counterparty Risk Requirement

A licensed person must calculate the net CRR under each of the category headings below. Categories in which there is no entry or the net CRR is negative are to be treated as nil. The overall CRR is the aggregate of all such sub-totals. The Commission may consent to these calculations being based on an internationally recognised standard.

Calculation of Counterparty Risk Requirement (CRR):	USD	USD	Note
Cash against document transactions:	(X)		19
Free deliveries:	(X)		20
Options purchased for a counterparty:	(X)		21
Amounts owed in respect of exchange traded margined transactions:	(X)		22
Concentrated risk from one counterparty:	(X)		23
Investments subject to repurchase, reverse repurchase, stock borrowing or stock lending transactions:	(X)		24
Over the Counter Derivatives:	(X)		25
Other receivables and accrued income:	(X)		26
Total Counterparty Risk Requirement – take to Table 1		(X)	

Definitions used in Schedule 1 – Adjusted Net Liquid Assets

Ref.	Definitions	Notes
1	Illiquid Fixed Assets	Fixed assets such as land, buildings or intangibles (goodwill, intellectual property etc.) must be treated as illiquid.
2	Illiquid Debtors	Debtors which are more than 90 days overdue must be treated as illiquid.
3	Illiquid Work in progress (WIP)	WIP not billable and collectable within 90 days must be treated as illiquid.
4	Illiquid Prepayments	Any prepayment relating to a period after 90 days must be treated as illiquid.
5	Illiquid Related Party Balances	All amounts due from related parties (including shareholders, directors and connected companies) are considered to be illiquid unless they are in the normal course of business and the outstanding balances are usually settled within 60 days. All amounts due to related parties must be included within the total liabilities. No deduction to total liabilities must be made for these amounts unless they have been appropriately subordinated. (see 11 below)
6	Provision for Clawback on Commission	This figure must be an appropriate estimate of the anticipated clawback that the entity may suffer in the year, based on available information such as persistency rates.
7	PII Excess	The amount of the excess on a licensed person's PII policy must be treated as a liability within the calculation.
8	Additional excess on PII	In cases where the Commission has granted prior written consent to a PII excess higher than the level specified in the Code, a licensed person must treat a multiple (x3) of the additional excess as a liability within this calculation.
9	Guarantees and/or charges over assets	Where a charge has been given over any asset or the licensed person has entered into a guarantee arrangement related to any asset within Adjusted Total Assets, an appropriate adjustment must be made to reduce the ANLA.
10	Non-refundable deferred income	Where the licensed person's standard terms and conditions state that fees billed in advance are non-refundable, this amount of deferred income need not be included as a liability in the calculation.
11	Subordinated loans	In cases where the Commission has granted prior written consent to the use of an eligible subordinated loan, the balance of the loan may be removed from liabilities. Such consent is conditional upon the loan being from an acceptable lender and the inclusion of appropriate notification requirements to the Commission. Failure to comply with any of these conditions renders the Commission's consent void (see paragraph 5.6).
12	Allowable undrawn credit facility	Where the Commission has granted prior written consent to the use of a credit facility, the licensed person may deduct the undrawn element of the facility from liabilities.

Definitions used in Schedule 1 – Expenditure Requirement

Ref.	Definitions	Notes			
13	Budgeted expenditure	This figure must be based on the business plan budget for the year in question. During the year, the figure may be flexed for actual expenditure.			
14	Discretionary bonuses/profit share	Where these items are payable under an employment contract or similar, they may not be treated as deductible. If the items are wholly discretionary, they may be deducted.			
15	Exceptional costs	Where the Commission's prior written consent, certain exceptional and non-recurring costs may be deducted.			
16	Debt	< 90 days	90 days–1yr	1 – 5 yrs	> 5 years
	Government or local authority	2% x MV	2% x MV	5% x MV	10% x MV
	Issued or accepted by an approved bank	2% x MV	5% x MV	10% x MV	15% x MV
	Other marketable investments	5% x MV	5% x MV	10% x MV	15% x MV
17	FRNs which are marketable investments	Under 20 years – 5% x MV		Over 20 years – 10% x MV	
18	Futures, Options and Contracts for Difference:				
	OTC futures	The appropriate percentage in A and B of Table 5 must be applied to the value of the underlying position			
	Purchased options	The appropriate percentage in A and B of Table 5 must be applied to the value of the underlying position, but limited to the market value of the option.			

Definitions used in the Schedule 1 – Counterparty Risk Requirement

19	<p>Cash against document transaction: Where a licensed person has unsettled bargains in any securities it must calculate the price difference* to which it is exposed and then multiply this by the appropriate percentage below to calculate the CRR for each separate unsettled bargain.</p>												
	<table border="1"> <thead> <tr> <th data-bbox="284 412 858 450">Business days after settlement</th> <th data-bbox="858 412 1426 450">Percentage</th> </tr> </thead> <tbody> <tr> <td data-bbox="284 450 858 562">0 - 15</td> <td data-bbox="858 450 1426 562">Nil</td> </tr> <tr> <td data-bbox="284 562 858 674">16 - 30</td> <td data-bbox="858 562 1426 674">25%</td> </tr> <tr> <td data-bbox="284 674 858 786">31 - 45</td> <td data-bbox="858 674 1426 786">50%</td> </tr> <tr> <td data-bbox="284 786 858 898">46 - 60</td> <td data-bbox="858 786 1426 898">75%</td> </tr> <tr> <td data-bbox="284 898 858 1003">Over 60</td> <td data-bbox="858 898 1426 1003">100%</td> </tr> </tbody> </table>	Business days after settlement	Percentage	0 - 15	Nil	16 - 30	25%	31 - 45	50%	46 - 60	75%	Over 60	100%
Business days after settlement	Percentage												
0 - 15	Nil												
16 - 30	25%												
31 - 45	50%												
46 - 60	75%												
Over 60	100%												
20	<p>Free Deliveries</p> <p>Where a licensed person has either (a) made payment to a counterparty in respect of securities but not received the appropriate certificates, or (b) provided certificates in respect of securities to a counterparty but not received payment, and settlement is more than three business days overdue, the full value must be counted as part of the CRR.</p> <p>Exceptions may be made where the licensed person has appropriate guarantees or other controls in place to provide assurance that the settlement will occur, up to a maximum of 15 business days. However such an approach must be documented and where it is not met, the full value must be provided for. Where there is any doubt over appropriate treatment the licensed person must discuss this with the Commission.</p>												
21	<p>Options purchased for a counterparty:</p> <p>Where a licensed person has purchased an option on behalf of a counterparty on terms which do not impose on the counterparty any actual or contingent margin requirement or liability to make payment other than the initial purchase price of the option, and the counterparty has not paid the price by three days after trade date, the CRR is the amount by which the purchase price exceeds the current realisable value of the option. Where a licensed person has purchased a traditional option for its own account or on behalf of a counterparty who has not paid the licensed person, then, if the licensed person has paid the option premium to the writer, it must calculate a CRR equal to the option premium.</p>												

- Where the licensed person has purchased securities for or sold securities to another party (i.e. securities debtor), the price difference is the excess of the contract value over the current mid-market price of the securities. The price difference is taken as nil if there is no excess. Where a licensed person has sold securities for or purchased securities

from another party (i.e. a securities creditor), the price difference is the excess of the mid-market value of the security over the contract value. The price difference is taken as nil if there is no excess.

22	<p>Amounts owed in respect of exchange traded margined transactions:</p> <p>Where, as a result of an exchange traded margined transaction, a counterparty of the licensed person has an initial margin and/or variation margin requirement and has not met it fully with cash, acceptable collateral or a positive equity balance not used to meet variation margin, and more than three business days have passed since the shortfall occurred, the full value must be counted as part of the CRR.</p> <p>Exceptions may be made where the licensed person has appropriate guarantees or other controls in place to provide assurance that the settlement will occur, up to a maximum of 15 days. However such an approach must be documented and where it is not met, the full value must be provided for. Where there is any doubt over appropriate treatment the license person must discuss this with the Commission.</p>									
23	<p>Concentrated risk from one counterparty:</p> <p>If the total amount due to a licensed person for free deliveries or other debts attracting a CRR from a single counterparty (treating as one counterparty several counterparties grouped together by the firm for margin or credit treatment) exceeds 25% of the licensed person's ANLA it must calculate additional CRR by applying the appropriate percentage below:</p> <table border="1" data-bbox="284 1081 1428 1234"> <thead> <tr> <th data-bbox="284 1081 834 1122">Amount of ANLA</th> <th data-bbox="834 1081 1428 1122">Additional CRR</th> </tr> </thead> <tbody> <tr> <td data-bbox="284 1122 834 1162">Up to 25%</td> <td data-bbox="834 1122 1428 1162">Nil</td> </tr> <tr> <td data-bbox="284 1162 834 1202">25% - 50%</td> <td data-bbox="834 1162 1428 1202">15% (for the entire excess if less)</td> </tr> <tr> <td data-bbox="284 1202 834 1234">Over 50%</td> <td data-bbox="834 1202 1428 1234">40% (for the entire excess if less)</td> </tr> </tbody> </table>	Amount of ANLA	Additional CRR	Up to 25%	Nil	25% - 50%	15% (for the entire excess if less)	Over 50%	40% (for the entire excess if less)	
Amount of ANLA	Additional CRR									
Up to 25%	Nil									
25% - 50%	15% (for the entire excess if less)									
Over 50%	40% (for the entire excess if less)									
24	<p>Investments subject to repurchase, reverse repurchase, stock borrowing or stock lending transactions:</p> <p>After providing for PRR as appropriate, an additional provision in respect of CRR must also be made in respect of these items. The CRR deducted must equal the exposure of the items if that exposure is not in the firm's favour.</p>									
25	<p>Over the Counter Derivatives</p> <p>By attaching current market values to contracts (marking to market), obtain the current replacement cost of all contracts with positive values.</p> <p>To obtain a figure for potential future credit exposure (except in the case of single currency "floating/ floating interest rate swaps" in which only the current replacement costs will be calculated), multiply the notional principal amounts or values underlying the firm's aggregate positions by the following percentages:</p> <table border="1" data-bbox="284 1787 1428 1906"> <thead> <tr> <th data-bbox="284 1787 644 1827">Residual Maturity</th> <th data-bbox="644 1787 1002 1827">Interest Rate Contracts</th> <th data-bbox="1002 1787 1428 1827">Foreign Exchange Contracts</th> </tr> </thead> <tbody> <tr> <td data-bbox="284 1827 644 1868">One year or less</td> <td data-bbox="644 1827 1002 1868">Nil</td> <td data-bbox="1002 1827 1428 1868">1%</td> </tr> <tr> <td data-bbox="284 1868 644 1906">More than 1 year</td> <td data-bbox="644 1868 1002 1906">0.5%</td> <td data-bbox="1002 1868 1428 1906">5%</td> </tr> </tbody> </table>	Residual Maturity	Interest Rate Contracts	Foreign Exchange Contracts	One year or less	Nil	1%	More than 1 year	0.5%	5%
Residual Maturity	Interest Rate Contracts	Foreign Exchange Contracts								
One year or less	Nil	1%								
More than 1 year	0.5%	5%								
26	<p>Other receivables and accrued income:</p> <p>Any item not covered in notes 1-12 or 19-25 above must attract 100% CRR from the time that they become due.</p>									

Note 27 – Foreign Currency Risk Requirement

For each non-reporting currency (that is, each currency other than that in which the licensed person's books of accounts are maintained) in which the licensed person has monetary assets or liabilities or any off balance sheet contracts, which would give rise to a position in that currency, the licensed person must calculate the net open position (netting assets and liabilities). The net open position may be a net long or net short position.

The net open position for each currency must be converted into the reporting currency, using the daily spot rate. Where the price of an investment is quoted in more than one currency, a position in the investment shall be treated as an asset or liability in the currency of the country in which the main principal market in the investment is based.

The net open foreign currency position is the sum of all the net open positions in foreign currencies converted into the reporting currency, i.e. net long and net short positions are aggregated as each represents an exposure to a movement in foreign exchange rates. The Foreign Currency Risk requirement is calculated as 10% of the net open foreign currency position and should be included in Table 1.

GUIDANCE

Note: Options included in the position risk requirement are to be excluded from these calculations.

SCHEDULE 2

TABLE OF NOTIFICATIONS AND CONSENTS

The following table summarises those trigger events and circumstances which a licensed person must bring to the attention of the Commission, as well as those requests for variances which require the Commission's prior written consent.

CONTROL AND RISK MANAGEMENT		
3.3.8	Consent	On submission of a request by the licensed person, the Commission will consider, on a case-by-case basis, the acceptability or otherwise of any other qualifications held by an investment employee. Such a request must include a written explanation as to why the licensed person considers the alternative qualification to be appropriate for that employee and the Commission may request a copy of the syllabus studied or equivalent where practical.
3.3.9	Consent	The Commission may, on application by the licensed person, grant exemptions from the requirements to hold the qualifications set out in 3.3.5 of the Code. In doing so, the Commission will pay regard to any previous exemption granted by the Commission in respect of the investment employee on whose behalf the exemption is being sought, as well as the nature of the role being performed and the licensed person's systems and controls.
3.5.2	Notification	<p>A licensed person must notify the Commission: -</p> <ul style="list-style-type: none"> • If a complaint is not satisfactorily resolved within three months of the client having lodged a complaint; • If any complaint has resulted in the licensed person making a claim on its Professional Indemnity Insurance Policy or having made any type of ex-gratia settlement in excess of \$2,500; • If the licensed person considers it to be in the interests of the public or the complainant • Of a complaint or series of complaints that suggest the licensed person is failing to meet any of the requirements of the Code; or • If any unresolved complaint results in litigation commencing.

FINANCIAL RESOURCES

5.4	Notification	<p>A licensed person is required to immediately notify the Commission (in addition to any notification obligation under the Law or this Code):</p> <ul style="list-style-type: none"> • if its ANLA falls below 130% of its Expenditure Requirement; • if its ANLA falls below 110% of its Expenditure Requirement; • of any single significant contingency, financial commitment or large exposure exceeding 25% of its Adjusted Net Liquid Assets; • of any instrument, transaction or situation that appears not to be catered for in, or where the application of, Schedule 1 might give a misleading impression of the adequacy of the financial resources; and • if it no longer complies with the requirements of 5.2 or 5.3 of the Code.
5.5	Consent	<p>The Commission may, upon written application from a licensed person, consider granting consent to exclude a long term subordinated loan as a liability within the ANLA calculation. Such consent is only likely to be granted where the loan is in a format acceptable to the Commission.</p>
5.5 Note 3	Notification	<p>Where a licensed person has issued share capital of less than \$25,000 but a combined share capital and share premium exceeding \$25,000, together with a surplus of ANLA over Expenditure Requirement, the Commission may deem a licensed person to have satisfied 5.2.1 or 5.3.1 of the Code. In such circumstances the licensed person must give prior written notification to the Commission of any proposed reduction in share premium.</p>
Schedule 1	Consent	<p>The Commission may consider variances to the required frequency of calculations if a licensed person can demonstrate either enhanced capitalisation or if it regularly exceeds the requirements to a sufficient extent that the risk of a breach is minimal. Such variances will be conditional on these circumstances being maintained.</p>

INSURANCE ARRANGEMENTS

5.6.3	Notification	A licensed person must inform the Commission of any limitations in cover that may apply to any territory in or from within which business may be conducted by the licensed person.
5.6.5	Consent	The Commission may, on application by a licensed person, consider a variance to the minimum insurance cover requirements stipulated under 5.7.4 above in exceptional circumstances.
5.6.7	Consent	The Commission may, on application by a licensed person, consider a variance to the maximum excess per claim stipulated under 5.6.4. If the Commission gives consent to a variance, the licensed person must treat a multiple (x3) of the additional excess as a liability when performing the ANLA calculation as set out in Schedule 1.
5.6.8	Consent	With the consent of the Commission, licensed persons may self-insure provided that they are, or are owned by, an institute of stature.

CHANGE IN DETAILS

6.3.3	Notification	<p>Notify the Commission in writing not less than 28 days before any change in:</p> <ul style="list-style-type: none"> • the name of the licensed person; • any business name under which the licensed person carries on investment business • the address of the registered office of the licensed person • the address of the head office of the licensed person; and • the address of the principal office(s) in Anguilla.
6.3.4	Notification	<p>A licensed person must notify the Commission in writing not less than 28 days before the summary winding up or voluntary dissolution of a licensed person.</p>
6.3.5	Notification	<p>A licensed person must notify the Commission of any decision to commence a new activity that is likely to have a material effect on the business or its profitability. Notification should be provided prior to commencement of the activity.</p>
6.3.6	Notification	<p>Notify the Commission immediately in writing of:</p> <ul style="list-style-type: none"> • the presentation of any application to the court for bankruptcy, or the winding up of the licensed person or of a company licensed person, or the summoning of any meeting to consider a resolution to wind-up a licensed person, or a company which is a subsidiary, or holding company of the licensed person; • the application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country, in relation to the licensed person; • the making or any proposals for the making of a composition or arrangement with creditors of the licensed person; • where the licensed person is a partnership or a limited liability partnership (collectively known as a ‘partnership’) an application to wind up or dissolve the partnership; • the imposition of disciplinary measures or disciplinary sanctions on the licensed person in

		<p>relation to its investment business by any relevant supervisory authority or any securities exchange or clearing house;</p> <ul style="list-style-type: none"> • the conviction of the licensed person, or any of its principal persons or employees, for any offence under legislation of any country relating to banking or other financial services, mutual societies, companies, credit unions, consumer credit, friendly societies, insolvency, insurance and industrial and provident societies, or for any offence involving fraud or dishonesty, or the imposition of any penalties for deliberate tax evasion; • the re-registration of a licensed person incorporated with unlimited liability as a limited liability company; • a general partner in a licensed person becoming a limited partner • the granting or refusal of any application for, or revocation of, authorisation to carry on investment, banking or insurance business in any country or territory outside Anguilla; • the granting, withdrawal or refusal of an application for, or revocation of, membership by the licensed person of any securities exchange or clearing house; • the withdrawal of an application for, or revocation of, membership of any professional body by a principal person or employee, in any jurisdiction; • the appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of the licensed person; • any other matter which the licensed person considers would be material to the requirements placed on the licensed person, any of its principal persons, or any of its investment employees to be fit and proper; • any litigation taken by the licensed person or any subsidiary, or against them; • the breakdown of administrative or control procedures relevant to any part of the licensed person's business (including breakdowns of computer systems or other accounting problems) resulting, or likely to result, in failure to comply with one or more of the provisions of this Code; • any event arising that makes it impractical for the licensed person to comply with any conditions attaching to the licensed person's registration; and • any other matter which would be material to the
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		Commission's supervision of the licensed person, any of its principal persons or any of its investment employees under the Law or this Code.
6.3.7	Notification	<p>A licensed person must notify the Commission in writing within seven days of becoming aware, or having resolved to undertake, of any of the following matters:</p> <ul style="list-style-type: none"> • in relation to any principal person who is an individual, any change in his or her name, address and any information which might impact upon his or her good reputation or character; • where a licensed person is a body corporate, the formation, acquisition, disposal or dissolution of a subsidiary specifying the subsidiary's name and its principal business; • where a licensed person is not a body corporate, where it acquires or disposes of a holding of more than half in nominal value of the equity share capital of a company, specifying the name of the company and its principal business; and • where a licensed person wishes the Commission to cancel its licence in accordance with section 30(1A) of the FSC Act, the Commission will then require a licensed person to complete a Cessation of Business Plan ('COBP').
6.3.8	Notification	<p>A licensed person must submit a written report to the Commission within seven days specifying any changes in the information originally submitted under the following headings:</p> <ul style="list-style-type: none"> • branch offices anywhere in the world from which the licensed person carries on investment business; • insurance arrangements; and • the countries outside Anguilla in which the licensed person carries on investment business indicating whether this is done through a branch office, a subsidiary or otherwise.
6.3.9	Notification	A licensed person must provide the Commission with details of its investment employees upon request.

SCHEDULE 3

TRANSITIONAL PROVISIONS

It is acknowledged that the some of the requirements set out in this Code will require existing firms operating in or from within Anguilla conducting investment business to re-structure their business (operational and financial) in order to come into compliance with them.

Many of the areas specified within the Code are recognised as generally international best practice and the Commission would expect applicants to be already in compliance with these areas when the application to register under the Law is made. The sections of the Code specified below have been identified by the Commission that full compliance, due to their nature, may take longer for some firms to achieve compliance with and therefore extra time has been permitted to assist firms in resourcing and establishing these changes within their organisation.

It should be noted that if a licensed person becomes aware that compliance with any part of the Code will not be met by the dates or time scales specified below, pre-notification must be made in writing to the Commission at least 30 days prior to specified date outlining the reasons as to why the requirements have not been met.

TRANSITIONAL PROVISIONS		
<u>Section</u>	<u>Requirement</u>	<u>Expiry Date</u>
3.1	Corporate Governance – Span of Control requirements (four & six eye principles)	TBD
3.2	Internal systems and controls (written policies & procedures)	TBD
3.3	Competence – All relevant staff to have obtained a professional qualification appropriate to their role	TBD
4	Change to stationery material (Headed paper, Compliment slips, Business Cards etc.)	TBD
	Change to Web page (s) and email disclaimers	TBD
5	Adequate financial resources and adequate insurance:- PII ANLA calculations Capital requirements	TBD TBD TBD

Licensed person are reminded that failure to meet the requirements of the Code could lead to the suspension, revocation or the setting of conditions to a licensed person's licence to carry on Investment Business in or from within Anguilla.

It is expected by the Commission that all applicants that apply to be licensed under the Law to carry out Investment Business will already be in compliance with all other requirements set out in this Code or would have made, or are prepared to commence the requirements expected by the Code on the date application is made to register under the Law.

Note – The Transitional Provisions stated above only apply to those applicants that apply to be licensed under the Investment Business Act to conduct investment business within 3 months of the Law coming into enactment. The Transitional Provisions will not be allowed to new applicants to register under the Law to conduct investment business after this period.

SCHEDULE 4

CLASSES OF INVESTMENT BUSINESS

Classes of Investment Business	Description of Investment Business
Class A	Arrange investments including; (a) making arrangements for another person (whether as principal or as agent for a third person) to buy, sell, subscribe for or underwrite investments; and; (b) making arrangement with a view to a person who participates in the arrangement buying, selling, subscribing for or underwriting investments (whether as principal or as agent for a third person)
Class B	Deals in investments, that is, the person buys, sells, subscribes for or underwrites investments, either as principal or as agent
Class C	Undertakes discretionary investment management, that is, the person decides as agent to buy, sell, subscribe for or underwrite investments on behalf of a principal and has control of the assets under such agreement
Class D	Giving of investment advice, that is, the person gives to persons in their capacity as investors or potential investors advice on the merits of: (a) the purchase, sale, subscription for or underwriting of a particular investment, or (b) the exercise of a right conferred by an investment to acquire, dispose of, underwrite or convert the investment
Class E	Provides administration and safeguarding of investments under a contractual arrangement, including arranging for one or more other persons to safeguard and administer the investments whether in certified or uncertified form
Class F	Acts as or operates as a securities exchange.