



**BRITISH VIRGIN ISLANDS
FINANCIAL SERVICES COMMISSION**

PROVISIONAL GUIDANCE NOTES ON COMPLIANCE REGIME

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INTRODUCTION:

These Guidance Notes are issued by the Financial Services Commission (hereinafter referred to as “the Commission”) to provide a provisional framework for the receipt, consideration and approval of applications for appointments of Compliance Officers. They will also serve as a benchmark for the administration of the compliance regime in so far as regulated persons are concerned. The point of first reference in this regard is the Financial Services Commission Act, 2001 (the “FSC Act”) which essentially provides the relevant legislative regime relating to the appointment and functions of Compliance Officers.

These Guidance Notes are designed to provide a focused approach to an efficient and effective regime that fully informs applicants and those approved as Compliance Officers as to their obligations and the benchmarks that the Commission will use to assess their compliance with the established statutory regime. The Guidance Notes are due to be transformed into imperative legislative provisions under a Regulatory Code pursuant to the Financial Services Commission Act, 2001; they must therefore be received as interim or provisional measures for the purpose of facilitating compliance with the requirements of the Financial Services Commission Act, 2001 with regard to the appointment of individuals as Compliance Officers.

Every regulated person, unless exempted under these Guidance Notes, is required to appoint a Compliance Officer who must be of sufficient seniority and qualification in order to properly and adequately perform the functions of a Compliance Officer. The Compliance Officer will, in essence, be the liaison between the regulated person and the Commission and may be the first point of contact for the Commission with respect to the regulated person.

Under the provisions of the Financial Services Commission Act, 2001, Anti-money Laundering Regulations, 2008 (the “Regulations”) and Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (the “Code”), it should be possible for a Compliance Officer to function in the dual portfolios of Compliance Officer and Money Laundering Reporting Officer (“Reporting Officer”) for AML/CFT matters. This, however, will be subject to the approval of the Commission; thus it must not be taken for granted that appointment as a Compliance Officer also constitutes appointment or recognition as a Reporting Officer. Specific application needs to be made pursuant to the provisions of the Financial Services Commission Act, 2001 if the intention is to serve in both capacities.

It is to be noted that the numbered provisions of these Guidance Notes are expected to be complied with fully. Failure to do so may result in necessary action being taken by the Commission. Any interpretative matter with respect to the compliance regime will be dealt with pursuant to the provisions of the Financial Services Commission Act, 2001 and these Guidance Notes. The explanations that follow the numbered provisions are designed to serve as guidelines for the interpretation, understanding and application of the compliance regime and the specific provisions concerned. They are strongly

recommended for compliance as they will be relied on by the Commission in assessing compliance with the requirements of the Financial Services Commission Act, 2001 and these Guidance Notes. In the event of any uncertainty or clarification to be rendered, this must be referred in writing to the Commission for guidance.

It should be noted that as far as possible, the interpretation and understanding of these Guidance Notes will be based on the purposive interpretation approach; the approach essentially is to establish the objectives of a provision (read in the context of the Act and the overall objectives of the Guidance Notes) in order to convey the desired intention to ensure an efficient and effective compliance regime. It is therefore pertinent that necessary guidance must be sought from the Commission in the event of any concern or uncertainty.

Any reference in these Guidance Notes to a statute or other instrument shall be construed to refer to the actual statute or other instrument or any other statute or other instrument amending or replacing the original statute or other instrument.

These Guidance Notes are issued by the Financial Services Commission with respect to the appointment of Compliance Officers under the Financial Services Commission Act, 2001 and the general administration of the regime for Compliance Officers.

Interpretation

1. For the purposes of these Guidance Notes,

“approved person” is a person approved by the Commission to act in the capacity of director, senior officer or officer under any financial services legislation;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

“Compliance Officer” means the person appointed as such pursuant to section 2(1);

“financial services legislation” means any principal legislation listed in Schedule 2 of the Financial Services Commission Act, 2001 and any subsidiary legislation made thereunder;

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under a financial services legislation;

“senior officer” means a person in the employment of a regulated person at the level of director, manager or equivalent position or whose functions require him to be

answerable directly to the board of the regulated person or any other person who is recognised and approved as a senior officer by the Commission; and

“temporary absence” means a period of not more than four (4) consecutive weeks or a total of twelve (12) weeks in a consecutive twelve (12) month period.

PART I APPOINTMENT OF THE COMPLIANCE OFFICER

Appointment and removal of compliance officer

2. (1) A regulated person, who is not otherwise exempt, shall appoint one of his senior officers as a Compliance Officer who shall be subject to the approval of the Commission in accordance with the requirements of section 34 (3) of the Financial Services Commission Act, 2001.
- (2) The Commission may direct the removal of a Compliance Officer, in which case it is the responsibility of the regulated person to identify another senior officer who is suitably qualified for approval and subsequent appointment as a Compliance Officer.

(Explanation:

(i) The Commission is responsible for the approval of a Compliance Officer of a regulated person. That requires the submission of a written application to the Commission; it is important that applications are submitted within a sufficient period prior to the planned appointment to give the Commission adequate time to process the application and revert to the applicant with a decision.

(ii) A person may, with the approval of the Commission, be appointed as a Compliance Officer under section 34 (3) of the Financial Services Commission Act, 2001 (the “FSC Act”); a person appointed as such may, with the approval of the Commission, also perform the functions of a Reporting Officer under the Anti-money Laundering Regulations, 2008 (the “Regulations”) and Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (the “Code”). However, in order to be able to do so, the person must first apply to the Commission for approval and only then is he or she properly authorised to serve in such a dual capacity.

(iii) Regulation 13 of the Regulations requires every relevant person to appoint a Reporting Officer to receive and take appropriate action on internal suspicious transaction reports. The Code indicates that the Reporting Officer may be the same person as the Compliance Officer. This may be the case especially in instances where the size and complexity of the business of a regulated person will not justify the appointment of a Reporting Officer in addition to a Compliance

Officer. However, the caveat outlined in paragraph (ii) above should be noted and fully complied with.)

Status of compliance officer

3. (1) The Compliance Officer shall be a senior and key member of staff possessing the relevant qualifications and experience to conduct his or her duties effectively.

(2) The Compliance Officer's position within the regulated person shall be of sufficient seniority as to enable the application of sound and independent judgment and effective interaction with the Commission regarding the regulated person's compliance with established guidelines, policies, laws and practices.

(Explanation:

The Commission will consider the following criteria as relevant to the assessment of requisite qualification and experience (see paragraph 17 for additional information):

- *The person must be fit and proper. In order to enable a proper assessment of a person's fitness and appropriateness for the post of Compliance Officer, it is essential that all supporting documents, including appropriate references (with contactable physical and email addresses and telephone (and facsimile) numbers of referees) are submitted with every application for approval of appointment as Compliance Officer;*
- *The level of academic achievement should, at the minimum, be the possession of a diploma in a field considered relevant by the Commission; in circumstances where the Commission considers a qualification as not sufficient, it may (if it so considers appropriate in any particular case) require the person to undertake additional training in order to be better prepared for the role of Compliance Officer. Such a decision, when taken, will be communicated to the relevant regulated person;*
- *The person must have had recent and relevant experience working in a compliance-related role or in an ancillary capacity. The minimum period may be applied on a graduated scale, depending on the level of academic qualification. Weight will be given to managerial skills, aptitude to work, ability to make objective and independent assessments, timely response to requests for information and other related matters. It is not sufficient that the person has an impressive academic qualification, unless it can be demonstrated that the person has the requisite experience;*
- *The person's ability to read and understand the law, including written policies established by the regulated person and guidelines, directives or*

practice directions that may be issued by the Commission from time to time; knowledge of Virgin Islands laws, especially as they relate to financial services regulation will, subject to the other criteria, be considered as an advantage;

- *The ability to read, write and understand the English language; the person must have good writing skills. Merely having an appreciable knowledge of these requirements will not be acceptable.)*

Independence of compliance officer

4. (1) The Compliance Officer shall possess sufficient independence to perform his or her role objectively, and a regulated person shall not engage in any activity that threatens the independence of the Compliance Officer.
- (2) The Compliance Officer shall occupy a key position within the regulated person and not be susceptible to undue influence regarding the manner and extent to which he or she is to perform the functions of a Compliance Officer.

(Explanation:

(i) The regulated person must recognise and respect not only the role of the Compliance Officer, but also the independence of the office he or she occupies. A Compliance Officer that functions independently and objectively must be viewed as an asset to the regulated person, not as a threat. It is therefore important that no regulated person

- *threatens a Compliance Officer with regard to his or her tenure, remuneration or other benefit; this does not derogate from a regulated person's ability in good faith to terminate the appointment of a compliance officer for good cause and in accordance with established internal disciplinary procedures;*
- *dictates to a Compliance Officer how he or she must write a report regarding the regulated person's compliance responsibilities or what such report may or may not contain; or*
- *adopts a policy the net effect of which is to restrict or limit the resources of a Compliance Officer.)*

(ii) The regulated person must be aware of possible conflicts of interest that may arise with respect to the Compliance Officer. To avoid possible conflicts of interest the terms of reference of a Compliance Officer should clearly state that, in respect of compliance matters, his or her duties should not be subordinated to

the interest, or perceived interest, of the regulated person. It should be noted that the Compliance Officer's first duty call is to his or her compliance function, which he or she must give priority at all times. It is therefore not acceptable to saddle a Compliance Officer with multiple tasks which may result in hampering the proper and effective execution of his or her compliance duties.)

Unrestricted access and provision of sufficient resources

5. (1) The Compliance Officer shall have unrestricted access to the executive and non-executive directors, senior management and auditors of the regulated person.
- (2) A regulated person shall provide a Compliance Officer with sufficient resources to perform his or her functions effectively.

(Explanation:

(i) The Commission will expect the Compliance Officer of a regulated person with employees resident in the Territory, unless otherwise exempted, to be based in the Virgin Islands.

(ii) The Compliance Officer must have unrestricted access to all books and records, customer due diligence files and related correspondence files of the regulated person and its clients.

(iii) It is the duty of the regulated person to provide its Compliance Officer with sufficient resources, including human and financial resources as may be necessary, to enable him or her to properly and efficiently discharge his or her compliance functions. Where a regulated person has a substantial business base, it may become necessary to appoint other staff to assist the Compliance Officer in the performance of his or her functions. Withholding necessary resources to stifle the efforts of a Compliance Officer or reduce the importance of the office of Compliance Officer is not acceptable.)

Temporary absence of compliance officer

6. (1) A regulated person shall make necessary arrangements for an approved person to undertake the compliance function during the temporary absence of the Compliance Officer.
- (2) If the period during which the Compliance Officer is unable to perform his or her functions exceeds the period specified for temporary absence, the person designated to perform the compliance function in the interim shall be subject to approval by the Commission.

(Explanation:

- (i) *For every regulated person, compliance functions performed during the temporary absence of the Compliance Officer should be undertaken by an approved person.*
- (ii) *The approved person performing the functions of the Compliance Officer during the Compliance Officer's temporary absence exercises all the powers and has all the independence of a Compliance Officer.*
- (iii) *A regulated person must maintain a record of all the temporary absences of its Compliance Officer and the person(s) assuming the role of the Compliance Officer during the absences.*
- (iv) *Where a Compliance Officer's absence from office exceeds the period specified for a temporary absence, the regulated person concerned must submit a formal application to the Commission seeking approval for the person performing the functions of the Compliance Officer to continue in that capacity until the return of the Compliance Officer or such other period as the Commission may consider fit. Accordingly, a regulated person is expected to have foreknowledge of whether or not its Compliance Officer will be absent from office beyond the period specified for temporary absence and thus submit in a timely manner (where the period is to be exceeded) an application for approval.)*
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PART II
DUTIES AND RESPONSIBILITIES OF THE COMPLIANCE OFFICER

Manual of compliance procedures

7. The Compliance Officer shall be responsible for establishing and maintaining a manual of compliance procedures that
- (a) complies with the Commission's guidelines, policies and standards for a manual of compliance procedures set out in Appendix A; and
 - (b) is filed with the Commission.

(Explanation:

- (i) *The manual of compliance procedures shall cover all legal and regulatory obligations of the regulated person (guidance on matters that should be included in the manual are set out in Appendix A).*

(ii) *The Compliance Officer shall ensure compliance by staff of the regulated person with the provisions of the manual of compliance procedures. Every non-compliance matter shall be recorded, indicating the nature, form and period of non-compliance and included in a report to the Commission; such report shall also be made available for inspection or examination by the on-site inspectors or examiners of the Commission.)*

Liaison functions

8. (1) The Compliance Officer shall act as the liaison between the regulated person and the Commission, including preparing and submitting written reports to the Commission on the regulated person's compliance with
- (a) the provisions of the FSC Act and other relevant financial services legislation;
 - (b) the Regulatory Code and any guidance issued by the Commission, that applies to the regulated person; and
 - (c) any directives or practice directions issued by the Commission in relation to the regulated person.
- (2) The written reports must be submitted to the Commission at least once every six months.

(Explanation:

The primary functions of a Compliance Officer are to ensure compliance by the regulated person with financial services legislation and related policies, guidelines, standards, directives and practice directions established or issued by the Commission and to serve as a liaison between the regulated person and the Commission. He or she also ensures compliance by the regulated person with the AML/CFT laws (where so approved to perform such function) and all other statutory requirements that are put in place from time to time. Depending on the level and consistency of compliance by a regulated person, the Commission may enlarge the period of preparation and submission of reports by any particular Compliance Officer; conversely, the Commission may require more frequent reports where it considers that appropriate with respect to any regulated person.)

Developing compliance culture

9. The Compliance Officer shall ensure that all directors and staff are familiar with and understand the laws and policies of the Virgin Islands relating to financial services; this embodies the current regulatory regime concerning financial services, including

relevant policies and standards of regulation and cooperation as well as the procedures outlined in the manual of compliance procedures. It is important that the Compliance Officer efficiently and effectively imparts awareness of the need for compliance, thereby developing within the regulated person a robust compliance culture.

(Explanation

(i) The requirements of this provision include providing advice and guidance to all directors and staff of the regulated person on compliance with the relevant Virgin Islands legislation, policies, standards and best practices, especially as they relate to matters of financial services.

(ii) The Compliance Officer shall also monitor the developments and changes in legislation, as well as in policies, standards and these and other Guidance Notes issued or that may be issued by the Commission and in international regulatory standards and keep the regulated person up-to-date with regulatory developments and changes. The aim of the Compliance Officer must at all times be of developing a culture of compliance within a regulated person and this is best done by ensuring a greater understanding of the financial services legislation and related policies, standards and guidelines that are administered by the Commission; a general understanding of the laws of the Virgin Islands – for example those relating but not limited to the Constitution and labour, immigration and land – is essential in facilitating compliance therewith.)

Establishing a training programme

10. The Compliance Officer shall establish and maintain a programme of training staff of the regulated person in compliance functions, such as client acceptance procedures, know your customer (KYC) procedures and suspicious activity reporting relevant to the regulated person’s activities.

Functions relating to required returns

11. The Compliance Officer shall ensure that all returns required to be made to the Commission are complete, accurate and filed within the relevant time period.

Conducting reviews and assessments

12. The Compliance Officer shall undertake structured reviews of compliance arrangements and systems of control and make regular assessment reports to senior management, identifying any deficiencies and making recommendations for any updates or revisions.

Annual compliance report

13. The Compliance Officer shall prepare and submit to the board of directors an annual compliance report. A copy of the compliance report should be maintained with all other books and records of the regulated person.

Establishing a complaints procedure

14. The Compliance Officer shall establish, maintain and monitor a complaints procedure for the monitoring and handling of complaints and may in that regard utilise the guidance on complaint management set out in Appendix E.

Performing the functions of Anti-money Laundering Reporting Officer

15. The Compliance Officer may act, if approved by the Commission to do so, as the Money Laundering Reporting Officer and perform the duties outlined in the Anti-money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

(Explanation:

Paragraphs 10 to 15 are self-explanatory. The extent (if any) to which these obligations are discharged by the Compliance Officer will be monitored, inspected and assessed by the Commission's inspectors and examiners.)

PART III APPLICATION PROCESS FOR COMPLIANCE OFFICER

Submitting application for approval of a Compliance Officer

16. (1) An application for approval of a Compliance Officer shall be made by the regulated person in the form set out in Appendix B, even in cases where the prospective regulated person is awaiting approval for licensing. The following documentation must be submitted in support of the application:

- (a) certified copies of identification documents (for example, passport identification page(s));
- (b) certified copies of professional and educational qualifications;

- (c) a résumé or curriculum vitae outlining the relevant qualifications and experience of the applicant. This should include the names, addresses and telephone numbers of previous employers;
- (d) a police certificate or a sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past three years; and
- (e) professional, personal and financial references. The professional reference should be from a person who can speak to the experience and ability of the proposed Compliance Officer. The personal reference should be from a person who can vouch for the proposed Compliance Officer's conduct and character. The financial reference must be submitted by a financial institution, directly to the Commission (clearly referencing the name of the regulated person).

(2) A non-refundable administration fee of one hundred dollars must be submitted with the Application for approval of the appointment of a Compliance Officer.

(Explanation:

(i) An application for approval of a Compliance Officer must be submitted to the Commission in the form prescribed in Appendix B. Any additional information that an applicant considers relevant to the processing of an application or in relation to a proposed Compliance Officer which the Commission should know shall be provided in writing and attached to the completed application form.

(ii) A single application with a single fee may be submitted for a group of companies provided that those companies are subsidiaries of a common parent or share common ownership (Sections A, F and G of the application form must be completed by each regulated person in the group).

(iii) The regulated person must indicate whether the Compliance Officer will also serve as the Reporting Officer under the Regulations and the Code (section F (3) of the application form).

(iv) Without prejudice to paragraph (ii) above, sections A, F and G of the application form should be completed by the regulated person submitting the application; sections B, C, D and E must be completed by or on behalf of the proposed Compliance Officer seeking approval.

(v) Declarations (section G of the application form) are to be signed by

- *a director or other individual of the regulated person communicating a board resolution to that effect; and*
 - *the prospective Compliance Officer seeking approval.*
- (vi) *Copies of documents must be properly certified, meaning that*
- (a) *the person certifying the document indicates that*
 - (i) *he has seen and compared the original document verifying the identity and residential address of the prospective Compliance Officer;*
 - (ii) *the copy of the document which he certifies is a complete and accurate copy of the original; and*
 - (iii) *where the document contains a photograph of the prospective Compliance Officer, the photograph bears a true likeness to the individual to whom the certification relates;*
 - (b) *the certificate*
 - (i) *bears the date of the certification;*
 - (ii) *bears the signature and seal of the person certifying the document; and*
 - (iii) *provides adequate information to enable the person certifying the document to be contacted in the event of a query or further clarification.*
- (vii) *The Commission can request additional information from the regulated person for the purposes of completeness or verification.)*
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Meeting the Commission’s fit and proper test

17. Before granting approval of an application for a Compliance Officer, the Commission must be satisfied that the candidate is fit and proper in accordance with the criteria established in the Commission’s “Guidance Notes on Fit and Proper Test” set out in Appendix C.

(Explanation:

(i) The criteria used to determine fitness and propriety are included in the “Guidance Notes on Fit and Proper Test” issued by the Commission (see Appendix C) which the Commission will use as part of its assessment of an application for the approval of a Compliance Officer.

(ii) It is the responsibility of the applicant to demonstrate that the proposed Compliance Officer has the relevant skills and experience to perform his or her duties. The character and integrity of a proposed Compliance Officer are also key determining factors in the processing of an application for approval.

(iii) The Commission expects that fully completed applications for the approval of a Compliance Officer will be processed within 21 business days. If, however, the application is not fully completed the Commission can request further information from the regulated person. This will cause a delay in the approval process and thus extend the normal processing time of the Compliance Officer application. Furthermore, where the Commission has to obtain third party confirmation in performing due diligence, this may cause a delay in the approval process.

(iv) Where an application is submitted by a prospective regulated person not yet approved, the Commission may consider the approval of the Compliance Officer simultaneously with the granting of approval to the regulated person.

(v) A regulated person can withdraw an application for the approval of a Compliance Officer at any time before the Commission has reached a decision, provided that notification is given to the Commission. Consent of the proposed Compliance Officer and the entity with which the Compliance Officer is, or would have been, employed (if this is an entity other than the regulated person) must also be obtained and presented to the Commission. A full reason must be given for the withdrawal and, if the withdrawal is due to the Compliance Officer’s resignation or dismissal from employment with the regulated person (or other entity, if this is the case), an explanation of the reason for the dismissal or resignation must be provided.

(vi) Where the Commission refuses an application it will provide the applicant with the reason for its decision. A regulated person may appeal to the Financial Services Appeal Board a decision made by the Commission, in accordance with the FSC Act.)

Compliance Officer ceasing to be fit and proper

18. Under section 37(1)(d)(i) of the Financial Services Commission Act, 2001, the Commission may take enforcement action against the regulated person if the Compliance Officer is at any time not a fit and proper person to carry out his or her duties and obligations.

(Explanation:

The onus is on the regulated person to ensure that the Compliance Officer is fit and proper at the application stage and on an ongoing basis. If at any point in time, in the opinion of the regulated person, the Compliance Officer ceases to be fit and proper, the regulated person is obligated to notify the Commission in writing of that fact immediately, and seek to apply for the appointment of a fit and proper Compliance Officer.)

An approval not conclusive of a future approval

19. The Commission evaluates applications for the appointment of a Compliance Officer on an individual basis. The Commission, in approving applications for the appointment of a Compliance Officer, bears in mind that the approval of an individual as Compliance Officer for a regulated person does not indicate that the individual is or will be approved to act as Compliance Officer for another regulated person.

PART IV EXEMPTIONS

Exemption from the requirement to appoint a Compliance Officer

- 20.** (1) Subject to sub-paragraph (2), the following are exempted from applying for approval of or appointing a Compliance Officer:
- (a) captive insurers and credit life insurers;
 - (b) private funds;
 - (c) professional funds;
 - (d) public funds;
 - (e) Class I, Class II or restricted Class II licensee without a physical presence in the Virgin Islands that

- (i) is regulated in the jurisdiction where its business is conducted; or
 - (ii) is a part of a group of companies that is subject to regulatory supervision; and
 - (f) Class III licensee or restricted Class III trust licensee with less than three employees.
- (2) The exemption accorded to a licensee referred to in sub-paragraphs (e) and (f) does not apply unless the licensee subscribes to the declaration outlined in Appendix F indicating that,
- (a) in the case of a licensee under paragraph (e) (i) or (ii), it has no physical presence in the Virgin Islands and it is either regulated in the jurisdiction where its business is conducted or is a part of a group of companies that is subject to regulatory supervision; or
 - (b) in the case of a licensee under paragraph (f), it has less than three employees.

(Explanation:

(i) The entities listed in sub-paragraph (1) are exempted from submitting any application to the Commission for the approval of a person as a Compliance Officer; in the same vein, the listed entities are not required to appoint a Compliance Officer.

(ii) However, in the case of the licensees referred to in sub-paragraph (1) (e) and (f), the additional caveat requiring the making of a declaration is designed to satisfy the Commission of the factual circumstances relative to the licensee in order for the exemption to apply. The declaration, when made, must be submitted to the Commission. Failure to comply with this requirement, in the absence of the appointment of a Compliance Officer, constitutes a serious breach that may result in enforcement action being taken by the Commission.)

Application for an exemption to appoint a Compliance Officer

21. (1) The Commission may exempt any of the following persons from the requirement to appoint a Compliance Officer or for the Compliance Officer to be based in the Virgin Islands upon the receipt of a written application:
- (a) domestic insurers that are incorporated outside the Virgin Islands;

- (b) mutual fund managers;
 - (c) mutual fund administrators;
 - (d) mutual fund managers and administrators;
 - (e) restricted Class II trust licensees that are not subject to regulation in another jurisdiction and are being administered in the Virgin Islands by a Class I trust licensee that is physically located in the Virgin Islands.
- (2) Where the Commission grants an exemption pursuant to a written application under sub-paragraph (1), it may impose such conditions as it deems fit.
- (3) Where the Commission does not grant an exemption pursuant to a written application under sub-paragraph (1), the person to whom the application relates shall comply with the other provisions of these Guidance Notes with respect to the approval and appointment of a Compliance Officer.
- (4) An application for an exemption under this paragraph must be accompanied by a non-refundable fee of one hundred dollars.

(Explanation:

(i) It should be noted that the granting of exemptions under paragraphs 20 and 21 is not a licence to permit the exempted person from conducting its business to a lower regulatory standard or to the standards established under law or by the Commission with respect to regulated persons. The responsibility is always on regulated persons to ensure adherence with established compliance measures, whatever form such measures may be in.

(ii) It is open to the Commission, in granting an exemption under paragraph 21, to impose such conditions as it considers fit. Such conditions may comprise, but are not limited to, the following:

- *the provision of a written assurance that the applicant for an exemption is regulated elsewhere outside the Virgin Islands and that the compliance regime of the home regulator is equivalent or similar to that in the Virgin Islands;*
- *the maintenance of appropriate documentation and other information on the books and records of the regulated person, which includes the books and records of another person who performs compliance functions on behalf of the regulated person;*

- *the documentation to be maintained may relate to personal details of the person performing relevant compliance functions on behalf or in respect of an exempted regulated person (including name, address, date of birth and place of birth);*
- *the provision and maintenance of details of the suitability of the performing compliance functions on behalf or in respect of an exempted regulated person (including educational qualifications, professional qualifications and experience);*
- *the provision and maintenance of any contractual document which outlines the compliance functions to be performed;*
- *in a case where compliance functions are being performed by another person on behalf or in respect of a regulated person, the submission to the Commission on a periodic or other basis of any compliance report relative to the exempted regulated person;*
- *the granting of an exemption for a specified period, subject to the possibility of such exemption being renewed for the same or other specified period;*
- *the power of the Commission to revoke an exemption that has been granted;*

(iii) It is to be noted that the granting of an exemption does not in any way constitute an exemption for compliance with any other requirements that may be established under law or pursuant to any directives, guidelines or policies established by the Commission.)

APPENDIX A

Guidance on Content and Structure of the Manual of Compliance Procedures

1. Under Section 34 of the FSC Act, every regulated person shall establish and maintain a manual of compliance procedures, the implementation of which shall be overseen by the Compliance Officer.

(Explanation:

(i) This Guidance on the Structure of the Manual of Compliance Procedures serves as a guide as to the structure and content of a manual of compliance procedures and is not definitive or exhaustive. The contents of the manual of compliance procedures will depend on the nature, size and complexity of the business activity undertaken by the regulated person.

(ii) The manual of compliance procedures should be reviewed periodically and any recommendations for any updates or revisions should be submitted to the board of directors of the regulated person.)

2. The manual of compliance procedures shall provide sufficient detail and structure to ensure that staff of the regulated person understand the compliance function and their individual roles in the compliance framework.

(Explanation:

The manual of compliance procedures should provide sufficient information concerning the legal and practical framework to enable staff to apply general principles to specific situations that may be outside the precise scope of the manual.)

3. (1) The manual of compliance procedures shall address the following general areas:
 - (a) the purpose and importance of the compliance function;
 - (b) the role of the Compliance Officer and any compliance committee that may be established and how the compliance function is to be monitored and reviewed;
 - (c) a description of the business undertaken by the regulated person, including risks associated with the business and the risk management systems in place;

- (d) an organisational chart clearly indicating who is responsible for various procedures and tasks within the organisation and a description of those tasks and the compliance reporting structure;
- (e) a description of the relevant laws and any guidance issued by the Commission, including the regulatory obligations of the regulated person;
- (f) the procedures that will be used to test compliance and how breaches in compliance will be reported and rectified.

(2) Although the manual will cover specific tasks in detail, it should not be considered as simply a “tick box” checklist of procedures. A manual of compliance procedures should at a minimum address the following:

(a) **Record Keeping and Disclosure**

- i. the records to be kept (for example, identification, transaction and accounting records);
- ii. how records should be kept and whether it would be useful to provide pro forma records;
- iii. how long records should be kept (those covered by the Code must be kept for a minimum period of five years);
- iv. the risks (including legislative and regulatory) associated with keeping incorrect or insufficient records;
- v. how records are to be stored (for example, hard or electronic records; in a safe, or secured filing cabinet); and
- vi. how and when compliance is monitored (whether by the Compliance Officer or external auditor).

(b) **Know Your Customer (KYC), Client Acceptance and Due Diligence Procedures**

- i. the KYC, client acceptance and due diligence procedures, if not detailed in writing elsewhere (significant guidance is provided in the Anti-money Laundering and Terrorist Financing Code of Practice, 2008);
- ii. the risks associated with a failure to apply KYC, client acceptance and due diligence procedures (in respect of customers, intermediaries and external service providers); and

- iii. the procedures for the ongoing monitoring of clients and service providers.

(c) **Training and Recruitment**

- i. a training manual indicating what type of programmes will be conducted;
- ii. a staff training plan covering type and frequency of training and a succession plan (in respect of key personnel and new staff);
- iii. who will provide staff training;
- iv. staff training records;
- v. the risks (legislative and regulatory) of inadequate staff training; and
- vi. how the effectiveness of staff training will be assessed.

(d) **Compliance with Statutory Filing, Reporting and Other Regulatory Obligations**

This should cover all statutory and regulatory obligations, including the procedures for reporting suspicious transactions to the Financial Investigation Agency. The manual should also identify persons responsible for compliance in respect of each obligation referred to above and indicate the procedures for recording and monitoring compliance.

(e) **Significant Complaints Handling**

- i. the person responsible for handling complaints;
- ii. procedures for dealing with complaints (for example, the time period for an initial decision on complaints and which complaints should be referred to the Compliance Officer or other senior management);
- iii. how complaints will be investigated;
- iv. what action should be taken where complaints are found to be justified;
- v. records to be kept of complaints;
- vi. communication with complainant; and
- vii. monitoring of complaints handling.

(f) **Reporting Breaches Of Compliance**

The manual should include detailed procedures for reporting breaches of compliance, including reporting lines and penalties.

(Explanation:

The specific contents of a manual of compliance procedures will vary depending on the size and complexity of the regulated person's business activities. For example, a trust company will have specific trust and company management functions, and fund managers, banks and insurance companies will all have their own specific functions.)

APPENDIX B
Application for the Approval of the Appointment of a Compliance Officer



REFERENCE NUMBER

(For FSC use ONLY)

APPLICATION
FOR
APPROVAL OF THE
APPOINTMENT OF A
COMPLIANCE OFFICER

Please forward completed forms to:
British Virgin Islands Financial Services Commission
P.O. Box 418, Pasea Estate,
Road Town, Tortola, British Virgin Islands
Tel: 284-494-1324
Fax: 284-494-5016
commissioner@bvifsc.vg

This form and annexes thereto should be printed or completed using INK and BLOCK CAPITALS or typescript for all answers. If there is insufficient space, please continue on a separate piece of paper, and clearly identify the section and question to which the additional information relates.

NOTES TO APPLICANTS:

- (A) This form should be completed by all regulated persons under the Financial Services Commission Act (the “FSC Act”).**
- (B) An application for approval should be made by the regulated person not by the prospective Compliance Officer, even in cases where the prospective regulated person is awaiting approval for licensing or authorisation.**
- (C) A non-refundable administration fee of one hundred dollars must be submitted with this application form.**
- (D) A single application form with a single fee may be submitted for a group of companies provided that those companies are subsidiaries of a common parent or share common ownership. Sections A, F and G of this application form must be completed by each regulated person in the group. Please print additional pages of these sections as necessary.**
- (E) Please ensure that the following documents (or certified copies) are submitted in support of this application:**
 - 1. Certified copy of identification documents (for example, passport identification page(s));**
 - 2. Certified copies of professional and educational qualifications;**
 - 3. Resume or curriculum vitae:**
 - i. outlining the relevant qualifications and experience of the proposed Compliance Officer; and**
 - ii. including the names, addresses and telephone numbers of previous employers;**
 - 4. Police certificate or a sworn affidavit (where a certificate is not issued) as to the non-criminal record of the applicant for the past three years; and**

- 5. Professional, personal and financial references. The professional reference should be from a person who can speak to the experience and ability of the prospective Compliance Officer. The personal reference should be from a person who can vouch for the individual's conduct and character. The financial reference must be submitted by a financial institution, directly to the Financial Services Commission (the "Commission") clearly referencing the name of the applicant.**
- (F) Please review the "Provisional Guidance Notes on Compliance Regime" prior to completing this application form.**
- (G) Please note that the Commission may request additional information from the applicant for the purposes of completeness or verification.**

SECTION A

REGULATED PERSON

This section should be completed by the regulated person submitting the application form. In the event that there are multiple applications this section should be completed by each regulated person (see Note to Applicants (D)). Please print additional pages of this section as required.

1. REGULATED PERSON

2. ADDRESS

3. CERTIFICATE/LICENCE CURRENTLY HELD

COMMISSION CERTIFICATE/LICENCE # _____

4. WHO SHOULD THE COMMISSION CONTACT IN RELATION TO THIS APPLICATION?

Name

Position

Telephone

Fax

Email

SECTION B**PERSONAL DETAILS**

This section should be completed by or on the behalf of the prospective Compliance Officer.

1. NAME

Surname

First Name(s)

Middle Name(s)

2. PREVIOUS NAME(S) (if any)

Date of change and reason for change

3. DATE OF BIRTH

--	--

dd

--	--

mm

--	--	--	--

yyyy

4. PLACE OF BIRTH**5. (A) NATIONALITY****(B) COUNTRY OF RESIDENCE****6. IDENTIFICATION NUMBER**

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Type of Identification

_____ (e.g. passport, social security, national insurance etc.)

7. CURRENT ADDRESS

Date resident at this address

From:

--	--

mm

--	--	--	--

yyyy

:

(If address has changed in the last ten years, please provide addresses for the last ten years on the following page)

SECTION C EDUCATION, QUALIFICATIONS

This section should be completed by or on the behalf of the prospective Compliance Officer.

1. EDUCATION

INSTITUTION ATTENDED	DIPLOMA/DEGREE/ PROFESSIONAL QUALIFICATION ATTAINED	YEAR COMPLETED

2. LIST OF MEMBERSHIPS IN PROFESSIONAL ORGANISATIONS OR INSTITUTIONS

ORGANISATION/ ASSOCIATION	MEMBERSHIP STATUS (eg. Student, Associate, Fellow etc.)	MEMBER SINCE	MEMBERSHIP NUMBER (if applicable)

SECTION D

EMPLOYMENT

This section should be completed by or on the behalf of the prospective Compliance Officer.

1. CURRENT EMPLOYMENT

NAME OF EMPLOYER

TELEPHONE

FAX

E-MAIL

SUPERVISOR/CONTACT PERSON

ADDRESS

DATE OF APPOINTMENT

CURRENT POSITION

NAME OF REGULATOR(S) (if any)

RESPONSIBILITIES

2. PREVIOUS EMPLOYMENT

Please indicate positions held during the last ten years, listing the most recent appointment first. Please use additional pages as required.

NAME OF EMPLOYER

TELEPHONE

FAX

E-MAIL

SUPERVISOR/CONTACT PERSON

ADDRESS

DATES OF EMPLOYMENT

From

To

NATURE OF BUSINESS

POSITION HELD

NAME OF REGULATOR(S) (if any)

RESPONSIBILITIES

Reason for leaving

Resignation

Expiration of Contract

Redundancy

Retirement

Termination/Dismissal

Other

(Please specify in the space provided below)

SECTION E

FITNESS AND PROPRIETY

This section should be completed by placing an “X” in the appropriate box. Please list any incident or action in any jurisdiction, with the exception of minor traffic offences. Please note that no time restriction applies to the matters you are asked to disclose. If the answer to any of the following questions is “YES”, please provide full details on a separate sheet. This section should be completed by or on the behalf of the prospective Compliance Officer.

1. Have you been convicted of any criminal or civil offence by any court in the British Virgin Islands or elsewhere? (Minor motoring offences may be omitted).

YES NO

2. Do you have any criminal or civil charges pending?

YES NO

3. Has any disciplinary, enforcement, disqualification or similar proceeding been taken against you by any professional body, regulatory body or association or are any such proceedings pending?

YES NO

If “yes”, name the regulatory or professional body or association:

4. Have you been found guilty of conducting any unauthorised regulated activities or been investigated for possible conduct of unauthorised regulated activities?

YES NO

5. Have you been the subject of any regulatory investigation or is any such investigation pending?

YES NO

6. Has any application for your regulatory approval ever been refused?

YES NO

7. Have you been obstructive, misleading or untruthful in dealing with a court, tribunal, official inquiry, regulatory or professional body?

YES NO

8. Have you been the subject of any bankruptcy proceedings or filed for bankruptcy, entered into a compromise agreement or other similar arrangement with your creditors or had a receiver appointed in respect of any of your property?

YES NO

9. Have you at any time failed to satisfy any personal or business related debts due?

YES NO

10. Have you been the subject of an investigation into allegations of misconduct or malpractice in connection with any business activity?

YES NO

11. Have you ever been expelled or excluded from, or refused admission to, a professional body?

YES NO

12. Have you been refused, restricted in, or had suspended, the right to carry on trade, business or profession for which a specific licence, authorisation, registration, membership or other permission is required?

YES NO

13. Have you ever been asked to resign, or been dismissed from any fiduciary office or position of trust?

YES NO

14. Are you aware of any matter relating to your character, reputation or financial position that the Commission may regard as relevant in considering this application?

YES NO

15. Has any business with which you have been associated as a director, senior officer or officer ever entered a formal insolvency process or ceased trading whilst insolvent, while you were associated with it or within one year after your association ceased?

YES NO

SECTION F RELATIONSHIP WITH REGULATED PERSON

This section should be completed by the regulated person.

1. Will the prospective Compliance Officer be employed under a full time contract of employment?

YES **NO**

2. If the answer to 1. above is “no” provide details of employment with regulated person.

3. Will the proposed Compliance Officer also serve as the regulated person’s Reporting Officer?

YES **NO**

If “no” what is the name of the Reporting Officer?

4. What other positions or offices (if any) does or will the prospective Compliance Officer hold with the firm?

5. Does the prospective Compliance Officer hold any shares in, or have any interest, legal or equitable, direct or indirect, in the firm?

YES **NO**

6. If the answer to 6. above is “yes” provide details of shareholding or other interest.

7. Is the prospective Compliance Officer able, directly, to exercise more than 10% of the voting power of the firm?

YES **NO**

8. If the answer to 8. above is “yes” provide details.

SECTION G

DECLARATIONS

The following declaration should be completed by the regulated person in relation to the information provided in sections A and F.

Any false declarations or misrepresentations of information are an offence under the financial services legislation and the offender is liable on conviction to a term of imprisonment or a fine or both. In the case of multiple applicants this section should be completed by each applying regulated person.

The information provided in sections A and F is, to the best of our knowledge and belief, complete and true and there are no other facts or matters relevant to this application of which the Commission should be aware. We undertake to inform the Commission forthwith, of any material changes to the information supplied on this application.

Signed on behalf of the applying regulated person:

Name of Authorised Signatory

Job Title / Position

Signature

Date

The following declaration should be completed by the prospective Compliance Officer in relation to the information provided in sections B, C, D and E.

I certify that the information provided in sections B, C, D and E, is to the best of my knowledge and belief, complete and true and there are no other facts or matters relevant to this application of which the Commission should be aware. I undertake to inform the Commission, forthwith, of any material changes to the information supplied on this application.

Name of prospective Compliance Officer

Signature

Date

For Financial Services Commission Use only

Date Rec'd:

Application Fee Rec'd:

Action Taken *Date* *Initial*

Action Taken *Date* *Initial*

Acknowledged

Further Enquiries

Receipt No

Further Enquiries

Decision

Further Enquiries

APPENDIX C

BVI FINANCIAL SERVICES COMMISSION

GUIDANCE NOTES ON FIT AND PROPER TEST

INTRODUCTION

The BVI Financial Services Commission (the “Commission”) believes that the maintenance of a “fit and proper” environment is essential in ensuring that those who use financial services offered in the British Virgin Islands (the “BVI”) are confident that business activities are conducted in accordance with high standards of market practice and integrity. Under the Financial Services Commission Act, 2001 (the “FSC Act”) and other financial services legislation, the Commission is responsible for ensuring that regulated persons and approved persons are equipped to conduct business activities in and from within the BVI.

The “fit and proper” assessment is both an initial test undertaken during consideration of an application for licensing or authorisation and also a continuing and cumulative test, which takes account of the ongoing conduct of both a regulated person and its approved persons, and their history of compliance with all applicable Virgin Islands laws, regulations and Codes, and the nature of their relationships with the Commission.

The primary responsibility for ensuring that regulated persons are soundly and prudently managed and directed rests with the regulated persons themselves. The Commission’s expectations are that regulated persons will take the measures necessary to ensure that they along with their approved persons meet the Commission’s “fit and proper” criteria.

GENERAL

1. For the purposes of these Guidance Notes,

“adequate” means sufficient in terms of quantity, quality and availability;

“approved person” means a person required to be approved under financial services legislation;

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under a financial services legislation;

“resources” includes all financial resources, non-financial resources and means of managing resources (for example, capital, provisions against liabilities, holdings

of or access to cash and other liquid assets, human resources and effective means by which to manage risks);

2. The “Fit and Proper” test is applied to the regulated person, as well as its approved persons, at the application stage and on an ongoing basis.

(Explanation:

(i) The regulated person must provide the Commission with appropriate information at the application stage and on an ongoing basis.

(ii) Where an applicant for licensing or a regulated person withholds information which is relevant to the “fit and proper” assessment, this will reflect negatively on their assessment.

(iii) Wilfully providing false or misleading information when applying for a licence is an offence under the relevant financial services legislation.)

3. The Commission will give regard to any matter which might be material in assessing fitness and propriety.

(Explanation:

(i) The Commission will not be restricted to the information provided by the applicant and is at liberty to source other information it considers relevant or helpful in relation to an application; this process includes the verification of information provided to the Commission.

(ii) The Commission will also take account of key relationships that the applicant or regulated person has or proposes to establish with accountants, lawyers, actuaries and other functionaries.)

4. If a matter comes to light which suggests that a regulated person or an approved person might not be fit and proper, the Commission will take into account its relevance, materiality and the length of time since it occurred, in determining whether the regulated person or approved person is fit and proper.

(Explanation:

A series of matters used to assess fitness and propriety may be significant when taken together, even if each matter in isolation might not be significant. The

cumulative effect of such matters might determine whether the regulated person or approved person is deemed to be fit and proper by the Commission.)

5. Any material change in the circumstances of the regulated person or approved person subsequent to the Commission's approval to grant a licence or authorisation should be communicated to the Commission.

(Explanation:

This information could influence the ongoing fit and proper assessment of the regulated person and its approved persons.)

6. An individual is considered fit and proper by the Commission for a particular, specified role within a regulated person.

(Explanation:

(i) That individual will not necessarily be judged fit and proper for any other role that he or she may wish to carry on at a later stage, either with the same or with another regulated person.

(ii) Likewise, an individual considered unfit for a specified position in a particular regulated person may be considered fit and proper in a different position or with a different regulated person.)

PART II KEY ELEMENTS OF THE FIT AND PROPER TEST

7. The Commission exercises judgment and discretion in assessing fitness and propriety and takes into account all relevant matters, including those set out below:

- (a) **Honesty, Integrity and Reputation**
- (b) **Competence and Capability**
- (c) **Financial Soundness**

8. In assessing honesty, integrity and reputation of a regulated person the Commission will consider among other things, whether the regulated person

- (a) has been convicted, or is connected with a person who has been convicted, of any offence, particularly an offence involving dishonesty, fraud or other

financial crime, or has been subject to any pending criminal proceedings that may lead to a conviction by any court in the Virgin Islands or elsewhere or civil proceedings which strongly bring into question its integrity or reputation;

- (b) has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the Commission, or any other regulatory authority, professional body or government body or agency within or outside the Virgin Islands;
- (c) has contravened, or is connected with a person who has contravened, any provision of any financial services legislation, or any code, directive, policy or guideline issued by the Commission or other relevant industry standards in the Virgin Islands or elsewhere. The Commission will, however, take into account both the status of these instruments and relevant industry standards and the nature of the contravention;
- (d) or a person connected with the regulated person, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence suspended, revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; or
- (e) has been open and co-operative in all its dealings with the Commission and any other regulatory body and is committed to comply with all relevant legal, regulatory and professional obligations.

9. In assessing honesty, integrity and reputation in relation to an approved person, the Commission will consider among other things, whether the approved person

- (a) has been dismissed or asked to resign from employment, a position of trust or a fiduciary or similar appointment;
- (b) has been disqualified from acting as a director or in any managerial capacity, is the subject of any proceeding of a disciplinary or criminal nature, or has been notified of any potential proceedings or investigations which might lead to such proceedings; or
- (c) has been a director, partner, or concerned in the management of a business that has gone into insolvency, liquidation or administration while the approved person has been connected with that organisation or within one year of the end of such connection.

10. In order to meet the competence and capability criteria the regulated person shall demonstrate to the Commission that the business is soundly and prudently run.

(Explanation:

(i) The business should be adequately resourced and well organised. It should maintain adequate records and well-defined and documented operating and compliance procedures.

(ii) The regulated person must also establish clear internal managerial reporting lines. The regulated person's business should be operated in full compliance with all statutory rules and regulations in force in the Territory and any rules and regulations which may apply in any other country where the regulated person is conducting business.)

11. All approved persons must perform to the highest standards of market practice and act in a way that protects the best interests of consumers and investors, and the reputation of the Virgin Islands.

12. In determining the competence and capability of a regulated person and its approved persons the Commission will consider, among other things, whether:

- (a) the regulated person has satisfactory past performance or expertise in the nature of the business being conducted;
- (b) the regulated person has approved persons and other employees with the appropriate range of skills and experience to understand, operate and manage the regulated person's regulated activities;
- (c) the regulated person has in place appropriate recruitment policies and adequate internal control systems and procedures. It must ensure that all persons acting on its behalf or providing services to it meet the "fit and proper" criteria;
- (d) the approved persons have been dismissed or suspended from employment for drug or alcohol abuse or other abusive acts in the workplace; and
- (e) the approved persons have the technical knowledge and ability to perform the prescribed duties for which they are engaged. In relation to this point, recognised professional qualifications and membership of professional institutions will be particularly relevant.

13. In assessing the financial soundness of the regulated person the Commission will assess whether the regulated person can maintain solvency and prudent financial control. An applicant must show that business plans are viable and realistic and that the organisation will have a good probability of continuance in the future.

14. In determining the financial soundness of a regulated person and its approved persons the Commission will consider matters such as but not limited to:

- (a) whether there are any indications that the regulated person will not be able to meet its debts as they fall due;
- (b) whether relevant solvency requirements are met by the regulated person;
- (c) whether the regulated person or its approved persons have been subject to any judgement debt or award that remains outstanding or has not been satisfied within a reasonable period;
- (d) whether the regulated person or its approved persons have made an arrangement with creditors, filed for bankruptcy, or been adjudged bankrupt or had assets sequestered; and
- (e) whether the approved persons have been able to provide the Commission with a satisfactory credit reference.

APPENDIX D

Reporting Requirements

- 1.** Section 34(7)(d) of the FSC Act makes provisions for the Commission to require a Compliance Officer to prepare and submit to the Commission a report detailing the level of the regulated person's compliance with
 - (a) the provisions of the FSC Act and other relevant financial services legislation;
 - (b) the Regulatory Code, or any Guidance issued by the Commission, that applies to the regulated person; and
 - (c) any directives or practice directions issued by the Commission that apply to the regulated person.

(Explanation:

(i) These reporting requirements provide guidance to the Compliance Officer as to the structure and contents of such a report. The report will vary depending on the type of business that the regulated person undertakes.

(ii) In cases where the compliance function is performed by another person (see Part IV of the Guidance Notes on Compliance Regime) that person must also meet these reporting requirements.)

- 2.** The report submitted by the Compliance Officer shall at a minimum contain the following:
 - (a) the regulated person's training register which should include the content of material covered, the staff member(s) involved and the duration of any training programme;
 - (b) details of any Virgin Islands laws that may have been breached by the regulated person and a summary of the remedial action, including the timeframe;
 - (c) details of any suspicious transactions reported;
 - (d) details of significant complaints made by the clients of the regulated person, indicating the nature of these complaints and how they were dealt with; and

- (e) an indication of whether there has been a significant breakdown in the internal control structure of the regulated person.

(Explanation:

The Commission may specify further details as to the manner and frequency of reporting by a Compliance Officer.)

APPENDIX E

BVI FINANCIAL SERVICES COMMISSION

GUIDANCE NOTES ON COMPLAINT MANAGEMENT

INTRODUCTION

These Guidance Notes are issued by the BVI Financial Services Commission and essentially outline the requirement for regulated persons to establish, maintain and monitor a complaints procedure for the monitoring and handling of complaints.

Regulated persons must maintain a complaint register documenting complaints received and actions taken to address each complaint. It is to be noted that the provisions of these Guidance Notes are expected to be complied with fully.

1. For the purposes of these Guidance Notes,

“regulated person” means a person authorised, licensed, registered or recognised or required to be so authorised, licensed, registered or recognised under a financial services legislation; and

“senior officer” means a person in the employment of a regulated person at the level of director, manager or equivalent position or whose functions require him to be answerable directly to the board of the regulated person or any other person who is recognised and approved as a senior officer by the Commission.

2. (1) A regulated person shall establish, maintain and monitor a complaints procedure for the monitoring and handling of complaints.

(2) A regulated person shall take reasonable steps to ensure that all employees are aware of the complaints procedure and of the duty to comply with it.

3. The complaints procedure established, maintained and monitored by the regulated person should, at a minimum, address the following:

- (a) the person responsible for handling complaints;
- (b) procedures for dealing with complaints (for example, the time period for an initial decision on complaints and which complaints

should be referred to the Compliance Officer or other senior management);

- (c) how complaints will be investigated;
- (d) what action should be taken where complaints are found to be justified;
- (e) records to be kept of complaints;
- (f) communication with complainant; and
- (g) monitoring of complaints handling.

4. A complaint must be considered by an officer or employee of suitable seniority who was not concerned in the matter or, where this is not possible, by another person of appropriate standing who is not an officer or employee of the regulated person, and a substantive reply must be sent promptly.

5. After being received, a complaint shall be investigated and, if necessary, relevant action shall be taken to rectify the complaint.

6. All complaints and follow-up actions shall be duly recorded in the complaint register, as shown in paragraph 12.

7. The complaint register shall include the following information:

- (a) Complainant's name and address;
- (b) Date when complaint was made;
- (c) Date when complaint was reported to the person with authority to deal with complaints;
- (d) Details of the nature of the complaint;
- (e) How and when the complaint was investigated; and
- (f) What action was taken regarding complaint.

8. The complaint register shall be used by all regulated persons. This register shall document complaints received by regulated persons and provide a record of the manner in which regulated persons respond to and act to rectify complaints.

9. The complaint register may be in summary form provided that a full record is kept elsewhere. A full record of each complaint and of the action taken in response to it shall be kept by the regulated person for at least five years after the date of the last response.

10. The details of each complaint made to the regulated person, including investigation into the complaint and action(s) taken to rectify the subject matter of the complaint shall be reviewed by senior management. Senior management shall sign off on the complaint form after it has been completed and reviewed.

11. If a customer registers a complaint with the regulated person and it is not dealt with satisfactorily in the first instance, the customer may issue the complaint to any member of senior management.

12. The complaint register shall include the following information:

COMPLAINT REGISTER	
Complainant's Name	
Complainant's Address	
Date Complaint Made	
Date Complaint Reported to Person with Authority to deal with Complaints	
Details of the Nature of Complaint	
Details of Investigation into Complaint	
Action Taken	

Senior Management

Date

APPENDIX F

**DECLARATION FORM FOR AN EXEMPTION FROM APPOINTING A
COMPLIANCE OFFICER**

TO: Managing Director/CEO
Financial Services Commission
Pasea Estate
Road Town
Tortola
BRITISH VIRGIN ISLANDS

I,, (*name of person making the declaration*) being a
director/senior officer of (*name of regulated
person*), whose registered address is at hereby
makes this declaration for and on behalf of the said
..... (*name of regulated person*) as
follows:

I declare that, in support of the application by
(*name of regulated person*) for an exemption from appointing a Compliance Officer, the
said (*name of regulated person*) is

(a) a Class I/Class II/Restricted Class II* licensee without a physical presence in the
Virgin Islands and it is regulated in (*name
of the jurisdiction where its business is conducted*)/it is a part of a group of
companies known as(*state name*) that is
subject to regulatory supervision by (*name
of supervisory body*) of (*name of
jurisdiction*)*;

(b) a Class III/restricted Class III trust* licensee with (*state number*)
employees.

I further declare that the information provided in this declaration is true and correct
according to my knowledge and belief.

This declaration is made this day of , 20xx.

.....
(Name of declarant)

.....
(Signature of declarant)

.....
.....
.....
.....
.....
(Address of declarant)

*** Delete as necessary**

ISSUED by the Financial Services Commission this 1st day of April, 2008.

Kenneth Baker
Deputy Managing Director
Financial Services Commission