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Services Commission

No. 97

THE INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) RULES 2014

The Insurance Intermediaries (Conduct of Business) Rules 2014

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The Principles

1. Integrity

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

2. Skill, Care and Diligence

A licensee should act with due skill, care and diligence towards its customers and counterparties.

3. Conflicts of Interest

A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm should live up to that expectation.

4. Information about Customers

A licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

5. Information for Customers

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him.

6. Customer Assets

Where a licensee has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

7. Market Practice

A licensee should observe high standards of market conduct, and should also comply with any code of standard as in force from time to time and issued or approved by the Commission.

8. Financial Resources

A licensee should ensure that it maintains adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject.

9. Internal Organisation

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of investment business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

THE INSURANCE INTERMEDIARIES (CONDUCT OF BUSINESS) RULES 2014

The Guernsey Financial Services Commission (“*the Commission*”), in exercise of the powers conferred on it by section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended (“*the Law*”) hereby makes the following rules:-

1. Introduction

1.1. Citation, commencement and application

- 1.1.1. These rules may be cited as the Insurance Intermediaries (Conduct of Business) Rules 2014 (“*the Intermediaries Rules*”) and shall come into operation on 1 January 2015.
- 1.1.2. *The Intermediaries Rules* apply to all insurance intermediaries unless specifically agreed otherwise by *the Commission* in accordance with Rule 1.1.3.
- 1.1.3. *The Commission* may in its absolute discretion by notice in writing to a licensee exclude or modify the application of any provision of *the Intermediaries Rules* if *the Commission* is satisfied that any such derogation will not be prejudicial to the interests of clients.

1.2. Interpretation

- 1.2.1. Subject to the terms defined below and unless the context otherwise requires, in *the Intermediaries Rules* expressions defined in *the Law* have the same meaning as they have in *the Law*, and the following expressions have the meanings assigned to them:

“accounting reference date” means the date to which a *licensee’s* accounts are prepared;

“advertisement” means every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media, and advertising shall be construed accordingly;

“advice” has the meaning given in Schedule 3 to *the Law*;

“agent”, in relation to a *licensee*, means any person (including an *employee*) who acts under the instruction of a *licensee*;

“approved bank” means a person who is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended or is registered under the Banking Business (Jersey) Law, 1991, or authorised to undertake Class 1 Deposit-taking Business under the Isle of Man Financial Services Act 2008 or is authorised and regulated to carry on a banking or deposit-taking business under the Financial Services and Markets Act 2000 or under the law of any *Member State* or under the law of any other country or territory which may be listed in notices issued from time to time by *the Commission*;

“associate” in relation to a *licensee* means:-

- (a) an undertaking in the same *group* as that *licensee*;
- (b) any body corporate at least one-fifth of the issued equity share capital of which is beneficially owned by that *licensee* or an *associate*;
- (c) any other person whose business or domestic relationship with the *licensee* or its *associate*, or with the partners, *directors*, *managers* or *employees* of the *licensee*, or its *associate*, places the person in a position to exercise significant influence over the *licensee* which might reasonably be expected to give rise to a conflict of interest in dealings with third parties;

“audited financial statements” has the meaning given in Rule 4.2.1;

“authorised insurance representative” means an individual authorised in accordance with section 16 of *the Law*;

“block of business” means business that increases the receiving licensee’s or reduces the transferring licensee’s fee income by 15% or more, such figure being calculated using the last audited accounts of that licensee;

“Board” has the meaning given to it by section 133 of the Companies (Guernsey) Law, 2008, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“chief executive” means any person occupying the position of *chief executive* or managing director (whether solely or jointly) by whatever name called;

“client” means any person with or for whom a *licensee* carries on, or

intends to carry on, *insurance intermediary business*;

“collective investment scheme” means any arrangement such as is identified and described in paragraph 1 of Schedule 1 to *the Protection of Investors (Bailiwick of Guernsey) Law, 1987*;

“the Commission” means the Guernsey Financial Services Commission;

“complaint” means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

“Compliance Officer” has the meaning given at Rule 3.2.1;

“controller”:-

- (a) in relation to a body corporate, means any person who, either alone or with any *associate* or *associates* is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the body corporate or of another body corporate of which the body corporate is a *subsidiary*; and
- (b) in relation to an unincorporated entity means:
 - (i) any person (legal or natural) in accordance with whose directions or instructions, either alone or with those of any *associate* or *associates*, the officers or members of the governing body of the entity are accustomed to act (but disregarding *advice* given in a professional capacity), and
 - (ii) any person (legal or natural) who, either alone or with any related person or related persons is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the entity; and for the purposes of this definition “related person”, in relation to any person, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a *director*, any person who is an *employee* or partner of that person and, if that person is a body corporate, any *subsidiary* of that body corporate and any *employee* of any such *subsidiary*;

“director” means, in respect of a company, any person appearing on the register of *directors* of such company, in respect of a limited partnership, any person appearing on the register of *directors* of the general partner of such

limited partnership and in respect of any other incorporated bodies, any person responsible for the management of the incorporated body;

“elective eligible counterparty” has the meaning given at Rule 7.5.3;

“elective professional client” has the meaning given at Rule 7.4.3;

“eligible counterparty” is considered in Rule 7;

“employee” in relation to a person, means an individual who is employed in connection with a *licensee’s insurance intermediary business* in Guernsey whether under a contract of service or for services or otherwise;

“finance business” has the same meaning given in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended;

“financial adviser” means an *authorised insurance representative* authorised by a *licensee* to give *advice to retail clients on long term insurance business*;

“generally accepted accounting principles” refers to financial statements prepared in accordance with International Financial Reporting Standards, UK *generally accepted accounting principles* (“GAAP”) or US GAAP.

“group” in relation to a *licensee* means that *licensee*, any body corporate which is its *holding company* or *subsidiary*, and any other body corporate which is a *subsidiary* of that *holding company*;

“holding company” has the meaning given in Schedule 5 to *the Law*;

“insurance company” means a company licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended.

“insurance intermediary” has the meaning given by section 2(5) of *the Law*

“insurance intermediary business” means performing, by way of business, any of the activities defined in section 2(5) of *the Law*;

“the Intermediaries Rules” means the Insurance Intermediaries (Conduct of Business) Rules 2014.

“intermediary services” means activities undertaken in the course of carrying on *insurance intermediary business*

“large undertaking” means a *large undertaking* meeting two of the following size requirements on a company basis:

(a) balance sheet total of £13,000,000;

(b) net turnover of £26,000,000;

(c) own funds of £1,300,000.

“the Law” means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended;

“licensee” means the holder of a licence to carry on *insurance intermediary business* issued under *the Law*;

“long term insurance business” means performing any of the activities defined in section 2(5) of *the Law* in relation to *long term insurance products*;

“long term insurance products” means any policy or product falling under schedule 1 of *the Law* excluding permanent health, credit life assurance and any contracts on human life that are renewable annually;

“long term intermediary services” means activities undertaken in the course of carrying on *long term insurance business*;

“manager”, in relation to a person, means an *employee* who, under the immediate authority of his employer, is responsible either alone or jointly with one or more other persons for the conduct of the *licensee’s insurance intermediary business*;

“material records” means such records that would be necessary for the purposes of establishing a complete and accurate record of all aspects of a *licensee’s* conduct of *insurance intermediary business*. These include (without limitation) records of instructions, transactions, valuations, *client* correspondence and *advice*;

“Member State” means, at any time, in addition to a state which is a member of the European Union, any other state which is within the European Economic Area;

“minimum capital requirement” means the minimum capital requirement as defined in the Minimum Capital Requirement of Licensees – Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;

“pension scheme” means a scheme approved under section 155 of the Income Tax (Guernsey) Law, 1975, as amended;

“permanent data” means such records, documents or data as are considered material for the establishment and ongoing proper conduct of *insurance intermediary business* by a *licensee*. These include (without limitation): mandates and other agreements, *client* take-on documentation, *client* profiles, records relating to due diligence and other checks made and the findings of such checks;

“per se eligible counterparty” has the meaning given at Rule 7.5.2;

“per se professional client” has the meaning given at Rule 7.4.2;

“professional client” is considered in Rule 7;

“professional investor” has the meaning given in paragraphs 1 & 2 of the definition in the Qualifying Investor Funds Guidance, issued May 2007;

“pure protection product” means a long term insurance product as defined in schedule 1 of *the Law* where the benefits are not determined by reference to:

- (a) the value of, or the income from, the value of property of any description, or,
- (b) fluctuations in, or an index of, the value of property of any description.

“qualified auditor” means a person who has a place of business in Guernsey and is a member of:

- (a) The Institute of Chartered Accountants in England and Wales; or
- (b) The Institute of Chartered Accountants of Scotland; or
- (c) The Institute of Chartered Accountants in Ireland; or
- (d) The Association of Chartered Certified Accountants; or
- (e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards for membership as any of the bodies specified in paragraphs (a) to (d).

For the purpose of this definition a “person” is defined as a partnership, body corporate or an individual with a current practising certificate issued by the bodies referred to in (a) to (e) above;

“Recognised Professional Body” means a body which regulates the practice of a profession; references to the practice of a profession do not include

references to carrying on a business consisting wholly or mainly of *insurance intermediary business*;

“Regulatory Laws” means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended;
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended;
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended;
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended;
- (f) any other enactment or statutory instrument prescribed for the purposes of Rule 1 by regulations of *the Commission*;

“relevant person”, in relation to a *licensee*, means any of the following:

- (a) a *director*, partner or equivalent, *manager* or *agent* of the *licensee*;
- (b) a *director*, partner or equivalent, or *manager* of any *agent* of the *licensee*;
- (c) an *authorised insurance representative* or *financial adviser*;

“retail client” is considered in Rule 7;

“Self-Regulatory Organisation” or “SRO” means a body (whether a body corporate or an unincorporated concern) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are subject to its regulation;

“significant complaint” means a complaint alleging a breach of *the Law*, *mala fides*, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise);

“statement of professional standing” means a certificate issued by a body listed in the guidance note on training and competency schemes issued by *the Commission*;

“subsidiary” has the meaning given in Schedule 5 to *the Law*;

“terms of business” means a documented record of the terms on which the *licensee* is prepared to provide the activities proposed to a *client*.

2. Corporate Governance and Senior Management Responsibility in respect of Insurance Intermediary Business

2.1. Corporate Governance

- 2.1.1. The *Board* of a *licensee* must ensure that there are effective and appropriate policies, procedures and controls, as described at Rule 3, in place which provide for the *Board* to meet its obligations under *the Law* and these Rules.
- 2.1.2. In meeting the requirements of *the Intermediaries Rules*, the *Board* of the *licensee* must evaluate and record the assessment of its compliance with the Finance Sector Code of Corporate Governance or any successor codes. The *Board* should also refer to Rule 3.
- 2.1.3. The *Board* of a *licensee* must retain responsibility for the outsourcing of any of its functions.
- 2.1.4. For the avoidance of doubt, the *Board* of an administered *licensee* remains responsible for the conduct of the administered entity.
- 2.1.5. Every *licensee*, other than a *licensee* administered by another firm in the Bailiwick, must appoint a *chief executive* (the formal title being at the discretion of the *licensee*) and appoint a replacement to fill this position as and when it becomes vacant.
- 2.1.6. A *licensee's Board* and senior management shall act and shall take all reasonable steps to ensure that all *employees* of the *licensee* act so as to avoid serious damage to the *licensee's* reputation or to its financial position.
- 2.1.7. Every *licensee* providing *advice to retail clients on long term insurance business* shall appoint a *financial adviser* to fulfil this function. A *financial adviser* shall be considered to be an *authorised insurance representative* for the purposes of section 16 of the Law.
- 2.1.8. It is responsibility of the *Board* of a *licensee* to ensure that the activities of a *financial adviser* are reviewed and managed by a suitably qualified and experienced individual.
- 2.1.9. In meeting the requirements of Rule 2.1.8, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by the Commission as amended or replaced from time to time.

Guidance Note:

“Reasonable steps” at Rule 2.1.6 above includes having in place sufficient management controls and compliance procedures and a system for ensuring that such controls continue to be sufficient and that *employees* are observing internal compliance procedures.

3. Compliance Arrangements

3.1. General

- 3.1.1. The *Board* has effective responsibility for compliance with *the Law*, *the Intermediaries Rules* and any rules, codes or guidance made under *the Law*. In particular the *Board* must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.
- 3.1.2. As such it should ensure that a *licensee* takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and *employees* act, to the extent applicable, in conformity with-
- (a) their own and their employer's relevant responsibilities under *the Law* and the rules made thereunder;
 - (b) the *Regulatory Laws*;
 - (c) the requirements of the statutory restrictions on market abuse, insider dealing, money laundering and countering the financing of terrorism;
 - (d) any other enactment prescribed for the purposes hereof by regulation of *the Commission*;
 - (e) appropriate arrangements on propriety in personal dealings;
 - (f) guidelines issued by *the Commission* from time to time relevant to the carrying on of *insurance intermediary business*; and
 - (g) requirements of any *Self-Regulatory Organisation* or *Recognised Professional Body* of which the *licensee* is a member or subject to its regulation.
- 3.1.3. A *licensee* must keep a breaches register to log all instances of non-compliance with legislation, regulations, rules and codes as listed in Rule 3.1.2.
- 3.1.4. A *licensee* must ensure that compliance procedures in respect of its *insurance intermediary business* are set out in writing and that a copy of these written procedures is kept at the offices of the *licensee*, and made available to *the Commission* on demand.
- 3.1.5. *The Commission* may require changes to the arrangements and the *licensee* shall implement and comply with any such requirements.

- 3.1.6. A *licensee* must review its written compliance procedures at least annually.

Guidance Note:

It is not the role of *the Commission* to approve compliance arrangements. Accordingly it is the responsibility of the *Board* to determine the “appropriate intervals” referred to in 3.1.1. However, such an interval should be no longer than one year.

3.2. The Compliance Officer

- 3.2.1. A *licensee* must appoint a *Compliance Officer* in Guernsey to be responsible for compliance and must appoint a replacement to fill this position if it becomes vacant.
- 3.2.2. The *Board* must ensure that the *Compliance Officer* appointed :
- (a) be either a natural person or, if a legal person, *the Commission* should be informed of the natural person who takes responsibility for compliance within the organisation as the *Compliance Officer*;
 - (b) be resident in Guernsey;
 - (c) has sufficient resources to perform his duties;
 - (d) has timely access to all records required under Rule 6;
 - (e) receives full co-operation from all staff;
 - (f) reports directly to the *Board*;
 - (g) has regular contact with the *Board* to ensure that the *Board* is able to satisfy itself that all the requirements of *the Law* and *the Intermediaries Rules* are being met; and
 - (h) be fully aware of both his obligations and those of the *licensee* under *the Law* and *the Intermediaries Rules*.
- 3.2.3. Where a *licensee* is considering the outsourcing of compliance functions and/or providing the *Compliance Officer* with additional support from third parties, from elsewhere within the *group* or externally, then the *licensee* must:
- (a) ensure that roles, responsibilities and respective duties are clearly defined and documented; and

(b) ensure that the *Compliance Officer*, other third parties and all *employees* understand their respective roles, responsibilities and duties.

3.2.4. Where the compliance function itself is outsourced to a third party the *licensee* should advise *the Commission* of the name(s) of the natural person(s) employed by the *licensee* (or its administrator/manager where applicable) responsible for oversight of the outsourcee.

Guidance Note:

Where the compliance function itself is outsourced to a third party, the *licensee* should be aware that the *licensee* remains responsible for compliance with *the Law* and the rules and regulations made thereunder. A *licensee* cannot contract out of its statutory and regulatory responsibilities.

3.3. Compliance Monitoring Programme

3.3.1. The *Board* of a *licensee* must, in addition to complying with the preceding requirements of *the Intermediaries Rules* -

(a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of ensuring compliance with the *Intermediaries Rules*, *the Law* and any other rules or codes made under *the Law*;

(b) establish and maintain an effective policy, for which responsibility must be taken by the *Board*, for the review of its compliance with the requirements of *the Intermediaries Rules*, *the Law* and any other rules or codes made under *the Law* and such policy shall include provision as to the extent and frequency of such reviews;

(c) ensure that a review of its compliance with these Rules is discussed and minuted at a meeting of the *Board* at appropriate intervals, and in considering what is appropriate a *licensee* must have regard to the risk taking into account -

(i) the size, nature and complexity of the *licensee's* insurance intermediary business;

(ii) its *clients*, products and services; and

(iii) the ways in which it provides those products and services;

(d) The *Board* has effective responsibility for compliance with *the*

Intermediaries Rules, the Law and any other rules or codes made under *the Law*. In particular the *Board* must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.

- (e) In meeting the requirements of *the Intermediaries Rules, the Law* and any other rules made under *the Law*, the *Board* of a *licensee* must evaluate and record the evaluation of its compliance with the Finance Sector Code of Corporate Governance or any successor codes.
- (f) A *licensee* must also ensure that there are effective and appropriate policies, procedures and controls in place which provide for the *Board* to meet its obligations relating to compliance review, in particular the *Board* must:
 - (i) ensure that the compliance review policy takes into account the size, nature and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures and controls;
 - (ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of the area of compliance;
 - (iii) ensure that when a review of compliance is discussed by the *Board* at appropriate intervals the necessary action is taken to remedy any identified deficiencies; and
 - (iv) provide adequate resources either from within the *licensee*, within the *group*, or externally to ensure that the compliance policies, procedures and controls of the *licensee* are subject to regular monitoring and testing as required by *the Intermediaries Rules*.
- (g) The *Board* may delegate some or all of its duties but must retain responsibility as per Rule 3.1.1.

3.4. Employee Screening

- 3.4.1. A *licensee* shall maintain effective and appropriate procedures, when hiring *employees*, for the purpose of ensuring high standards of *employee* probity and competence.
- 3.4.2. The *Board* of a *licensee* is responsible for *employee* screening.
- 3.4.3. In order for a *licensee* to ensure that *employees* are of the required standard of

competence and probity, which will depend on the role of the *employee*, the licensee must:-

- (a) obtain and confirm appropriate references at the time of recruitment;
- (b) require information from the *employee* with regard to any regulatory action taken against him;
- (c) require information from the *employee* with regard to any criminal convictions and the provision of a check of his criminal record (subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002); and
- (d) confirm his educational and professional qualifications.
- (e) obtain either a valid *statement of professional standing* from that *employee*, or evidence that the *employee* has successfully completed the regulatory module of an acceptable qualification prior to authorisation as a *financial adviser*.

3.5. Employee Training

- 3.5.1. The *Board* of the *licensee* is responsible for *employee* training.
- 3.5.2. Every *licensee* shall create and implement a training and competency scheme for all *authorised insurance representatives* and *financial advisers* appropriate to the nature and scale of the *licensee's* business.
- 3.5.3. In meeting the requirements of Rule 3.5.2, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by *the Commission* as amended or replaced from time to time.
- 3.5.4. A *licensee* shall ensure that relevant *employees* receive comprehensive ongoing training to ensure competence for duties including but not limited to:-
 - (a) *the Law* and the rules made thereunder;
 - (b) the obligations of *employees* and their potential liability in failing to meet those obligations;
 - (c) the implications of non-compliance by *employees* with any relevant legislation, rules or guidance;
 - (d) its policies, procedures and controls for ensuring compliance with *the Law* and *the Intermediaries Rules* and any other relevant legislation, rules or guidance.

3.5.5. The *licensee* shall maintain a training log to record the training *directors* and *employees* of a *licensee* receive.

3.5.6. The *Licensee* and its *Board* shall ensure that each of its *financial advisers* advising on *long term insurance business* and its *authorised insurance representatives* advising on *pure protection products* shall hold such qualifications to at least the minimum standard as published by the Commission from time to time on its website or satisfy such requirements as the Commission may determine.

For the avoidance of doubt, *the Commission* may specify time periods in which such qualifications must be obtained and the *licensee* and its *Board* must ensure that its *financial advisers* obtain the qualifications within the relevant time periods.

In the event that the qualifications are not obtained within the relevant period by any *financial adviser* of the *licensee*, the *licensee* and its *Board* must take such steps as are necessary to revoke the authorisation of the *financial adviser* and stop that individual from providing *advice* to *retail clients* until such time as the necessary qualifications are obtained. At that time, the *licensee* and its *Board* may wish to authorise that individual as a *financial adviser*.

3.5.7. A *financial adviser* shall carry out and record a minimum of thirty five hours of continuing professional development per annum, of which a minimum of twenty one hours shall be structured continuing professional development.

3.5.8. In meeting the requirements of Rule 3.5.6 and 3.5.7, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by *the Commission*.

3.5.9. A *licensee* shall obtain a *statement of professional standing* from each *financial adviser* within three months of the expiry of a valid *statement of professional standing*. Where a *statement of professional standing* is not provided to the *licensee* by a *financial adviser*, that *financial adviser's* authorisation as a *financial adviser* shall be revoked until such time as a valid *statement of professional standing* is provided.

Guidance Note:

The Commission requires *licensees* to provide adequate training for their staff in accordance with Principle 9. Training should take into account each staff member's existing experience and educational and professional qualifications. Appropriate training should also cover *licensees'* in-house training provisions.

The Commission expects that the *Board* of a *licensee* shall exercise

oversight of the training process both in terms of its planning and execution and to document that oversight.

The Commission places emphasis on the *licensee's* system of supervision and administrative controls to ensure that *employees* do not act beyond their competence.

4. Accounting Records and Financial Statements

4.1. Accounting Records

4.1.1. Every *licensee* must keep accounting records in English which are sufficient to show and explain its transactions which:

(a) disclose with reasonable accuracy, at any time, the financial position of the *licensee* at that time;

(b) enable the *licensee* to demonstrate its continuing compliance with the *minimum capital requirement*.

4.2. Audited financial statements

4.2.1. Every *licensee* must prepare *audited financial statements* covering the period from the immediately preceding *accounting reference date* (or, in the case of a new business, from the date of incorporation) to the next following *accounting reference date* which shall as a minimum include:-

(a) accounts complying with *generally accepted accounting principles*;

(b) an auditor's report thereon, which shall include a statement of financial resources certified by the auditor confirming that the appropriate financial resources requirement specified in the *minimum capital requirement* is satisfied.

4.2.2. Where the *licensee* is preparing *audited financial statements* from the period of incorporation to the *accounting reference date*, *audited financial statements* should be prepared to the date notified to *the Commission* at the time of making an application for a licence.

4.2.3. Any change in the *accounting reference date* of a *licensee* must immediately be notified to *the Commission* together with a statement of reasons for the change.

4.3. Auditor

4.3.1. Every *licensee* must appoint a *qualified auditor* and confirm to *the Commission* that the *qualified auditor* is so qualified.

4.3.2. A *licensee* shall give *the Commission* written notice of a change of its *qualified auditor* forthwith, including a statement of the reasons for the change.

5. Conduct of Business

5.1. Fitness and propriety

- 5.1.1. A *licensee* must observe the Principles in carrying on its *insurance intermediary business*.

Guidance Note:

The Commission has a continuing duty to determine whether a *licensee* remains a fit and proper person to carry on *insurance intermediary business*. In so doing, *the Commission* shall take account of whether the *licensee* has observed the Principles.

The Principles are a statement of the standards expected of a *licensee*.

Breach of a Principle will be taken into account for the purposes of discipline and intervention.

The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.

In considering whether a *licensee* remains a fit and proper person, *the Commission* will also have regard to Schedule 4 to *the Law*.

- 5.1.2. A *licensee* must have adequate and effective systems of control in place to ensure that its *financial advisers* comply with the Code of Conduct for Financial Advisers and its *authorised insurance representatives* comply with the Code of Conduct for Authorised Insurance Representatives.

5.2. Client relations

5.2.1. Client agreements

- (a) Where a *licensee* provides *advice* on *long term insurance products* to a *retail client*, it must do so under a written agreement signed both by the *licensee* and *client* which sets out in adequate detail the basis and terms on which the services are provided and the extent of the discretion to be exercised by the *licensee*, unless the *client* specifically advises in writing that he does not wish such a written agreement to be used.
- (b) Where a *licensee* provides *advice* on general insurance products or *pure protection products*, it must provide the *client* with its *terms of business* in writing.

- (c) If the *licensee* is to provide *intermediary services* on an execution-only basis, the basis and terms on which the services are provided must be set out in adequate detail and signed by both the *licensee* and the *client*.
- (d) Where a *licensee* provides *long term intermediary services* to a *professional client* or an *eligible counterparty*, whether on a discretionary basis or otherwise, it must provide that *client* with the terms on which the *licensee* is prepared to provide the activities proposed.
- (e) Where it is not practicable for a *licensee* to provide the information required by Rule 5.2.1(d) before commencing business with the *client* the *licensee* shall provide it to the *client* as soon as practicable.

Guidance Note:

In all provision of *intermediary services*, it is important that both parties understand the responsibilities of the *licensee*. Where a *licensee* conducts business on an execution-only basis, it is particularly important that the limitations of the *licensee's* responsibilities are closely adhered to. If the *licensee* were to provide *advice* to the *client* on insurance products, for the purpose of these Rules, this would not constitute an execution-only arrangement. *The Intermediaries Rules* anticipate a clear definition, within any written agreement or *terms of business*, of an execution-only relationship.

5.2.2. Suitability

- (a) A *licensee*, at the outset of its provision of *insurance intermediary services* to a *client*, should ensure that it has obtained sufficient knowledge of the *client* to ensure that any *advice* is suitable to the requirements of the *client*.
- (b) A *licensee* should establish and maintain systems to ensure that its *employees* do not procure, endeavour to procure or advise anyone to enter into a transaction if that *employee* is not competent to advise on that transaction or to assess its suitability for *clients*.
- (c) A *licensee* must take reasonable steps to ensure that it does not in the course of its *insurance intermediary business* recommend a policy to a *client* unless the recommendation or transaction is suitable for him having regard to the facts obtained by the *licensee*, the terms of any agreement with that *client*, and other relevant facts about the *client* of which the *licensee* is, or reasonably should be, aware.
- (d) Reasonable steps would include the *licensee* actively obtaining information from a *client* and documenting it in a readily accessible manner. Such

records should be retained for a period of six years from the date the relationship ceases.

5.2.3. Disclosure

- (a) Before a *licensee* provides *insurance intermediary services* to a *client*, it must disclose to him in writing the services, products offered and the expertise of the *licensee*.
- (b) Rule 5.2.3 shall not apply where a *licensee* provides *intermediary services* to a *client* who is an *eligible counterparty*.
- (c) A *licensee* must not recommend a transaction to a *client* unless it has taken reasonable steps to make him aware of the risks involved, including conflicts of interest.

5.2.4. Fees, Charges and Remuneration

- (a) Before entering into an agreement to provide *investment services* to a *client*, a *licensee* shall disclose to the *client* in writing all fees and charges for providing those services, together with the basis of their calculation.
- (b) A *licensee* shall disclose any and all remuneration to be received in connection with a transaction prior to the execution of the transaction. If the amounts are not known, then the basis of calculation shall be provided.
- (c) Remuneration shall be disclosed in a manner appropriate to the category of *client* to which it relates
- (d) Rule 5.2.4.(b) shall not apply for transactions relating to general insurance business unless the *client* requests disclosure of remuneration the *licensee* has or will receive.
- (e) Rule 5.2.4.(b) shall not apply for execution-only business unless the *client* requests disclosure of remuneration the *licensee* has or will receive.

5.2.5. Periodic information

- (a) Rule 5.2.5 shall not apply where a *licensee* provides *long term intermediary services* to a *client* who is an *eligible counterparty*.
- (b) Rule 5.2.5 shall not apply where a *client* has self-service access to a statement service, for example where statements are available via the internet, and *the client* has agreed in writing for Rule 5.2.5(c) to not apply.

- (c) A *licensee* which provides *long term intermediary services* to a *client* must forward any valuation reports issued by the product provider to the *client* unless the *client* advises the *licensee* in writing that he wishes them less frequently (although the *client* must be sent a valuation report on at least an annual basis). If the *client* advises the *licensee* in writing that he does not wish to receive a valuation report, the *licensee* must keep any valuation reports with the *client's* records. Where the *licensee* has categorised the *client* as a *professional client* under the provisions of Rule 7, it may decide not to send out its records.

5.2.6. Business Transfer

- (a) A *licensee* shall obtain the prior written consent of the Commission in respect of any transfer of a *block of business* to or from the *licensee*, where such transfer will occur at the *licensee's* instigation or with their agreement.

5.3. Execution and advising

5.3.1. *Client* order priority

- (a) A *licensee* must execute *client* and own account transactions fairly and in due turn.
- (b) Rule 5.3.1(a) shall not apply where a *licensee* provides *intermediary services* to a *client* who is an *eligible counterparty*.

5.3.2. Timely execution

- (a) Once a *licensee* has agreed with a *client* to effect or arrange a transaction, it must effect or arrange the execution of the transaction as soon as reasonably practicable in the circumstances.
- (b) Rule 5.3.2 shall not apply where a *licensee* provides *intermediary services* to a *client* who is an *eligible counterparty*.
- (c) Rule 5.3.2(a) does not preclude a *licensee* from postponing execution of a transaction where it believes on reasonable grounds that this is in the best interests of the *client*. Such a decision must be documented.

5.4. Promotion and Advertising

5.4.1. Issue of Materials

The *licensee*, if responsible for promotion and *advertising*, must ensure that any

materials issued:-

- (a) are clear, fair and not misleading;
- (b) do not contain any statement, promise or forecast which is untrue;
- (c) are not designed in such a way as to distort or conceal any relevant subject material;
- (d) are clearly recognisable as an *advertisement*;
- (e) are not likely to be misunderstood;
- (f) where appropriate state that the investment value is not guaranteed or that the value may fluctuate, and;
- (g) in the case of long term business –
 - i. does not employ phrases such as “tax-free” or “tax-paid without making clear which taxes are being referred to, and
 - ii. does not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance and may not be repeated.

5.4.2. Regulatory Status

- (b) The regulatory status of the *licensee* shall be included on all communications.

5.4.3. Overseas Promotion and Advertising

- (a) A *licensee* shall take all reasonable steps with a view to ensuring that any form of promotion or *advertising* in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.

6. Record Keeping

6.1. Records

- 6.1.1. All records prepared in order to comply with *Intermediaries Rules* shall be retained for a period of at least six years from their occurrence.
- 6.1.2. A *licensee* shall keep, for a period of six years from their occurrence, a record of occurrences which have, or in the opinion of the person responsible for compliance or any *client* may have, involved an alleged breach of *the Law* or the rules and regulations made under it and of the steps taken with a view to ensuring that such occurrences do not recur.
- 6.1.3. Unless otherwise stated, all *material records* and *permanent data* prepared in order to comply with *the Intermediaries Rules* shall be retained for the duration of the relevant relationship and also for a period of at least six years starting from the date that the relevant relationship ceased. For the purpose of this rule, the term “relationship” includes any direct relationship a *licensee* has with a *client* in respect of *insurance intermediary business*.
- 6.1.4. A *licensee* shall keep, and properly maintain, records relating to its *insurance intermediary business* and any other activities affecting its *insurance intermediary business*, in a form capable of prompt reproduction in English and capable of being checked or audited, so as to demonstrate compliance with *the Law* and the regulations and rules made under it.
- 6.1.5. A *licensee* shall make such records available for inspection by the *Commission*, its *employees* and any persons authorised by it for any purpose whatsoever within 72 hours in the Bailiwick, although it need not necessarily be maintained in the Bailiwick.
- 6.1.6. A *licensee* must review, at least annually, the ease of retrieval of, and condition of paper and electronically retrievable records including telephone records and recordings.
- 6.1.7. Where a policy is cancelled, lapsed, partially or fully withdrawn, details of such occurrences shall be maintained, for a period of six years from their occurrence, together with an explanation of the reasons for such occurrences, or evidence that such an explanation has been sought, even if not received.

6.2. Destruction of records or files

- 6.2.1. Without limiting any other obligation under *the Law* or the rules and regulations made under it or under the laws of Guernsey, a *licensee* shall ensure that it and its *directors* and *employees* and other persons to the extent

that they are under its power and control shall not, without the express consent in writing of *the Commission*, amend, destroy, make further entries in, or erase, any record or file (whether in documentary or electronic form) which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under *the Law* or the rules and regulations made under it.

7. Categorising Clients

7.1. General definition

- 7.1.1. Subject to Rule 7.1.3, any person with or for whom a *licensee* carries on *insurance intermediary business* is a *client* of that *licensee*.
- 7.1.2. A *client* of an *agent* is a *client* of the *licensee* for whom that *agent* acts or intends to act in the course of business for which that *licensee* has accepted responsibility via a contractual arrangement. Such acceptance of responsibility should be evidenced and demonstrable.
- 7.1.3. Rules 7.2 to 7.7 inclusive apply to intermediary licensees advising on *long term insurance business*.

7.2. Notification to Clients

- 7.2.1. A *licensee* must:
- (a) notify a *client* of its categorisation as a *retail client*, *professional client*, or *eligible counterparty* in accordance with this Rule; and
 - (b) prior to the provision of services, inform a *client* about:
 - (i) the effect of this categorisation;
 - (ii) the right that *client* has to request a different categorisation; and
 - (iii) any limitations to the level of *client* protection that such a different categorisation would entail.

Guidance Note:

Rule 7.6 requires a *licensee* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection. A *licensee* should therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation.

7.3. Retail clients

- 7.3.1. A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

7.4. Professional clients

- 7.4.1. A *per se professional client* or an *elective professional client* is a *professional client*.

- 7.4.2. Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under Rule 7:

- (a) not a member of the public; or
- (b) a *large undertaking* and/or a *professional investor*;

- 7.4.3. A *licensee* may treat a *client* as an *elective professional client* if the *licensee* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved. If the *client* is an entity, the assessment should be performed in relation to the person authorised to carry out transactions on its behalf.

- 7.4.4. A *licensee* may treat a *client* as an *elective professional client* if the following procedure is followed:

- (a) the *client* must state in writing to the *licensee* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;
- (b) the *licensee* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and
- (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

Guidance Note.

An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*.

- 7.4.5. If a *licensee* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as a *professional client*, the *licensee*

must take the appropriate action.

Guidance Note.

Professional clients are generally responsible for keeping the *licensee* informed about any change that could affect their current categorisation.

7.5. Eligible counterparties

7.5.1. A *per se eligible counterparty* or an *elective eligible counterparty* is an *eligible counterparty*.

7.5.2. Each of the following is a *per se eligible counterparty* (including an entity licensed under similar local legislation in its own jurisdiction) unless and to the extent it is given a different categorisation under Rule 7:

- (a) any entity licensed for Dealing, Managing or Advising under the Protection of Investors (Bailiwick of Guernsey) Law, 1987;
- (b) an *approved bank*;
- (c) an *insurance company*;
- (d) a *collective investment scheme*;
- (e) a *pension scheme* or its management company;
- (f) a national government or its corresponding office, including a public body that deals with the public debt;
- (g) a central bank;
- (h) a supranational organisation;
- (i) any other entity that is
 - (i) incorporated outside the Bailiwick; and
 - (ii) is suitably licensed, authorised or qualified by primary or secondary legislation in its home jurisdiction.

- 7.5.3. A *licensee* may treat a *client* as an *elective eligible counterparty* if:
- (a) the *client* is an undertaking;
 - (b) a *per se professional client* and;
 - (c) he requests such categorisation and the *licensee* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved; and
 - (d) the *licensee* has obtained express confirmation from the prospective counterparty that it agrees to be treated as an *eligible counterparty*.
- 7.5.4. A *licensee* may obtain a prospective counterparty's express confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

7.6. Providing clients with a higher level of protection

- 7.6.1. A *licensee* must accede to a *client's* request for re-categorisation as a *client* that benefits from a higher degree of protection.
- 7.6.2. A *licensee* may, either on its own initiative or at the request of the *client* concerned:
- (a) treat as a *professional client* or a *retail client* a *client* that might otherwise be categorised as a *per se eligible counterparty*;
 - (b) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*,
- and if it does so, the *client* will be re-categorised accordingly.
- 7.6.3. If a *per se eligible counterparty* requests treatment as a *client* whose business with the *licensee* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *licensee* agrees to that request, the *licensee* must treat that *eligible counterparty* as a *professional client*.
- 7.6.4. The ways in which a *client* may be provided with additional protections under this section include re-categorisation on:
- (a) a general basis;

- (b) a trade by trade basis;
- (c) in respect of one or more specified rules;
- (d) in respect of one or more particular services or transactions; or
- (e) in respect of one or more types of product or transaction.

7.7. Policies, Procedures and Records

7.7.1. A *licensee* must implement appropriate written internal policies, procedures and controls to categorise its *clients*.

7.7.2. A *licensee* may satisfy Rule 7.2.1 by either:

- (a) issuing a standard notice to the *client* when they are given the *client* agreement; or
- (b) by incorporating the notice in the text of the *client* agreement.

In the case of (a) the *licensee* must keep a copy of the standard form for inspection while it is in use and for six years after the *licensee* ceases to use it.

7.7.3. A *licensee* must make a record in relation to each *client* of:

- (a) the categorisation established for the *client* under this section, including sufficient information to support that categorisation;
- (b) evidence of despatch to the *client* of any notice required under Rule 7.2.1 and, if such notice differs from the relevant standard form, a copy of the actual notice provided; and
- (c) a copy of any agreement entered into with the *client* under Rule 7.

This record must be made at the time of categorisation and should be retained for at least six years after the *licensee* ceases to carry on business with or for that *client*.

8. Complaints

8.1. Complaints Procedure

- 8.1.1. Every *licensee* must have in operation, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any *complaints* relating to the *licensee's insurance intermediary business*, howsoever received.
- 8.1.2. The *licensee* shall ensure that each of its officers and *employees* responsible for dealing with *clients* is at all times aware of the procedure and of the obligation to follow it.

Guidance Note:

It is expected that all *complaints* are reviewed by at least a senior officer of the *licensee* who is independent of the circumstances giving rise to the *complaint*. An appropriate person could be the *Compliance Officer*.

8.2. Notifications

- 8.2.1. If a *complaint* remains unsettled for longer than three months from the date of the *licensee* becoming aware of the complaint, the *licensee* shall inform *the Commission* within fourteen days and shall also advise the complainant that he may inform *the Commission* directly of his *complaint*.
- 8.2.2. The *licensee* shall inform *the Commission* within fourteen days of it becoming aware of a *significant complaint* and shall also advise the complainant that he may inform *the Commission* directly of his *complaint*.
- 8.2.3. The *licensee* shall inform *the Commission* within fourteen days of it becoming aware of a series of *complaints* regarding any one *employee*, whether a current *employee* or not.
- 8.2.4. For the purposes of Rule 8.2.1, where a *licensee* has given a substantive response in relation to a *complaint* or *significant complaint*, unless and until the *licensee* has received an indication from the complainant that the response is unsatisfactory, the *licensee* shall be entitled to treat the *complaint* as settled and resolved after the expiry of four weeks from the date of its response.

8.3. Record Keeping

- 8.3.1. Every *licensee* shall maintain a register in which it records any *complaints*

received, along with sufficient details to allow it to be able to demonstrate that it has dealt (or is dealing) with such complaints in accordance with the *Intermediaries Rules*.

9. Professional Indemnity Insurance

9.1. Minimum Requirement

9.1.1. Every *licensee* shall maintain professional indemnity insurance with the following minimum limits:

- (a) on the basis of each and every loss cover of at least £250,000, and
- (b) on an annual basis, £1,000,000 or 3 times fee income, whichever is the greater, but *the Commission* reserves the right to vary in writing these amounts in relation to individual *licensees*, where it considers it appropriate to do so.

9.1.2. Where the deductible or excess exceeds £20,000 on the basis of each and every loss, the *minimum capital requirement* will increase to 125% of the deductible or excess. *The Commission* reserves the right to vary the application of this subparagraph in relation to individual *licensees*, where it considers it appropriate to do so.

9.2. Notifications to the Insurer

9.2.1. A *licensee* shall:-

- (a) when applying for cover, notify his professional indemnity insurer, through his professional indemnity insurance broker where appropriate, of all material facts, which shall include, without limitation:
 - (i) the imposition and details of any conditions imposed on the *licensee* under section 7 of *the Law*;
 - (ii) the revocation of the *licensee*'s licence under section 9 of *the Law*;
 - (iii) any regulatory penalty taken by *the Commission* against the *licensee*, or any of its *directors* or *employees*, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (as amended) or any of the *Regulatory Laws*;
 - (iv) any prohibition order made against the *licensee*, or any of its *directors* or *employees*;
 - (v) any criminal proceedings commenced against the *licensee*, or any of its *directors* or *employees*; or

- (vi) any criminal or regulatory investigation or formal enquiry which involves the *licensee*, or any of its *directors* or *employees*.
- (b) ensure that he complies with all warranties applying at the date of the commencement of his professional indemnity policies and any continuing warranties applying during the duration of the professional indemnity insurance policy, and
- (c) ensure that he makes all notifications and disclosures which are required to be made to his professional indemnity insurers during the duration of the policy pursuant to its terms and conditions.

9.2.2. A *licensee* shall notify his professional indemnity insurers, through his professional indemnity insurance broker where appropriate, within fourteen days of the following events or such earlier period as is specified by his professional indemnity policy:

- (a) the imposition and details of any conditions imposed on the *licensee* under section 7 of the Law,
- (b) the revocation of the *licensee's* licence under section 9 of the Law,
- (c) any regulatory penalty taken by *the Commission* against the *licensee*, or any of its *directors* or *employees* under *the Law*, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (as amended) or any of the *Regulatory Laws*,
- (d) any prohibition order made against the *licensee*, or any of its *directors* or *employees*,
- (e) any criminal proceedings commenced against the *licensee*, or any of its *directors* or *employees*, and
- (f) any criminal or regulatory investigation or formal enquiry which involves the *licensee*, or any of its *directors* or *employees*.

9.3. Notifications to *the Commission*

9.3.1. A *licensee* shall notify *the Commission* of the following events within seven days of their becoming aware of:-

- (a) any actual or purported termination, avoidance or invalidation of the *licensee's* professional indemnity cover.
- (b) any notification made by a *licensee* to his professional indemnity insurers

with respect to a claim or potential claim which may be made by the *licensee* under its professional indemnity policy.

10. Conflicts of Interest

10.1. Conflicts of interest policy

- 10.1.1. *Licensees* shall establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the *licensee* and the nature, scale and complexity of its business.
- 10.1.2. Where the *licensee* is a member of a *group*, the policy must also take into account any circumstances, of which the *licensee* is or should be aware, which may give rise to a conflict of interest arising as a result of other members of the *group*.

10.2. Contents of the Conflicts of interest policy

- 10.2.1. The conflicts of interest policy established in accordance with Rule 10.1 shall include the following content:
- (a) it must identify, with reference to the specific *insurance intermediary business* carried out by or on behalf of the *licensee*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*;
 - (b) it must specify procedures to be followed in order to manage such conflicts.
- 10.2.2. *Licensees* shall ensure that the procedures provided for in Rule 10.2.1(b) are designed to ensure that *relevant persons* engaged in *insurance intermediary business* involving a conflict of interest of the kind specified in Rule 10.2.1(a) carry on that *insurance intermediary business* at a level of independence appropriate to the size and organisation of the *licensee* and the nature, scale and complexity of the business and of the *group* to which it belongs.
- 10.2.3. For the purposes of Rule 10.2.1(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the *licensee* to ensure the requisite degree of independence:
- (a) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information

may harm the interests of one or more *clients*;

- (b) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *licensee*;
- (c) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (d) procedures to prevent or limit any person from exercising inappropriate influence over the way in which a *relevant person* carries out *insurance intermediary business*; and
- (e) procedures to prevent or control the simultaneous or sequential involvement of a *relevant person* in *insurance intermediary business* where such involvement may impair the proper management of conflicts of interest.

10.2.4. If the adoption or the practice of one or more of those procedures does not ensure the requisite degree of independence, *licensees* shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

10.2.5. Where procedures made by the *licensee* in accordance with Rule 10.1 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to *client* interests will be prevented, the *licensee* shall clearly disclose the general nature and sources of conflicts of interest to the *client* before undertaking business on its behalf.

10.2.6. *Licensees* shall make disclosure to *clients*, pursuant to Rule 10.2.5, including sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *insurance intermediary business* in the context of which the conflict of interest arises.

10.3. Record of services or activities giving rise to detrimental conflict of interest

10.3.1. *Licensees* shall keep and regularly update a record of the *insurance intermediary business* carried out by or on behalf of the *licensee* in

which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or may arise.

10.4. Gifts and Inducements

10.4.1. Having regard to Rules 10.1 to 10.3, inclusive, a *licensee* must take reasonable steps to ensure that neither its *directors*, *employees* nor any of its *agents* -

(a) offers or gives; or

(b) solicits or accepts,

any gift or other direct or indirect benefit which is likely to conflict significantly with any duties of the recipient (or the recipient's employer) owed to a *client* in connection with *insurance intermediary business*.

10.4.2. Rule 10.4.1 shall not apply where a *licensee* provides services to a *client* who is an *eligible counterparty*.

11. Notifications

11.1. Notifications under the Law

11.1.1. Where a person shall become -

- (a) a *director* or *controller* of a *licensee* which is a company; or
 - (b) a partner in a *licensee* which is a partnership;
 - (c) a *manager* who is connected with the *licensee's insurance intermediary business* in Guernsey. *Manager* shall include a *Compliance Officer* in Guernsey as per Rule 3.2;
 - (d) an *authorised insurance representative* which shall include *financial adviser*
- the *licensee* should refer to the requirements of sections 27(5), 27(5A) and 36 of the *Law*.

11.2. Name and Address

11.2.1. A *licensee* shall give written notice within fourteen days to *the Commission* of:

- (a) a change in the registered or equivalent name of the *licensee*;
- (b) a change in any business name under which the *licensee* carries on *insurance intermediary business* in Guernsey;
- (c) a change in the address of the head office or principal place of business of the *licensee*;
- (d) a change in the address of the registered office of the *licensee*; and
- (e) a change in the address for the service of notices or documents furnished pursuant to section 4(i)(iii) of the *Law*.

11.3. Key Employees

11.3.1. A *licensee* shall notify the Commission, in writing, within fourteen days of the fact that, and the date on which, any person has :-

- (a) become the secretary of the *licensee*, in the case of a Bailiwick company.

(b) ceased to be

- (i) a *manager* who is connected with the *licensee's insurance intermediary business* in Guernsey;
- (ii) the secretary of the *licensee*, in the case of a Bailiwick company;
- (iii) the *Compliance Officer* in Guernsey as per Rule 3.2; or
- (iv) An *authorised insurance representative* or *financial adviser*.

11.3.2. A notice under Rule 11.3.1(b) shall include a statement of the reasons for the change.

11.4. Information regarding key employees

11.4.1. A *licensee* shall give written notice to *the Commission* within fourteen days of it becoming aware of the following matters in relation to any individual falling within Rule 11.3.1:

- (a) a change of name;
- (b) the refusal of any application for, or revocation or suspension of, any licence, authorisation or registration under any legislation relating to *finance business*;
- (c) the imposition of disciplinary measures or sanctions by a regulatory authority (including a *Self-Regulatory Organisation*) or professional body in relation to the individual's professional or business activities; and
- (d) the making of an order by a court disqualifying that individual from serving as *director* of a company or from being concerned with the management of a company.
- (e) Any breach of the Code of Conduct for Financial Advisers by a *financial adviser* or Code of Conduct for Authorised Insurance Representatives by an *authorised insurance representative*.

11.4.2. A notice under Rule 11.4.1 shall include a statement of the circumstances and all known matters related to the reason for the notification.

11.5. Information regarding all employees

11.5.1. A *licensee* shall give written notice to *the Commission* within fourteen days of it becoming aware of the occurrence of the following in relation to any of

its *employees*:-

- (a) a conviction of any offence involving fraud or other dishonesty;
- (b) a conviction of any offence under legislation relating to *finance business*; and
- (c) the institution of *saisie*, *desastre*, bankruptcy, sequestration or similar proceedings.

11.5.2. A *licensee* shall give written notice within fourteen days to *the Commission* of the summary dismissal of any *employee* in Guernsey and the reasons for this dismissal, which shall include *employees* under probation.

11.5.3. A record shall be maintained of the names of any *employees* disciplined by a *licensee* in connection with any breach of *the Law* or rules made thereunder or with any other conduct which may reasonably be expected to affect the conduct of the *licensee's insurance intermediary business* including particulars of:-

(a) the offence for which the *employee* was disciplined; and

(b) steps taken to discipline the *employee*.

Details of the particulars required to be recorded under Rule 11.5.3(a) and (b) above shall be submitted to *the Commission* within seven days of the *employee* being so disciplined. Any record made for the purposes of this Rule shall be kept until six years have expired from the date on which disciplinary steps were taken.

11.6. General

11.6.1. A *licensee* shall give written notice to *the Commission* within fourteen days of the occurrence of any of the following:-

(a) the presentation of an application for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of, or administration order on, the *licensee* or a company which is a *subsidiary* or *holding company* of the *licensee*;

(b) the appointment of a receiver, administrator, administrative receiver or trustee of the *licensee*;

(c) the making of a composition or voluntary arrangement with creditors of the *licensee*;

- (d) the granting, withdrawal, or refusal of an application for, or revocation of, any licence, authorisation or registration to carry on *finance business* under any legislation relating to *finance business* whether in Guernsey or elsewhere;
- (e) the appointment of inspectors by a statutory or other regulatory authority (including a *Self-Regulatory Organisation*) or *Recognised Professional Body* to investigate the affairs of the *licensee*;
- (f) the imposition of disciplinary measures or sanctions on the *licensee* or its *directors* in relation to its *finance business* by any regulatory authority (including a *Self-Regulatory Organisation*) or *Recognised Professional Body*;
- (g) the bringing against any *licensee* or its *directors* of any material legal action or proceedings, or any arbitration to which the *licensee* is a party, relating to *finance business*;
- (h) the conviction of the *licensee* of any offence under legislation relating to *finance business*, companies or bankruptcy or of any offence involving fraud or dishonesty; and
- (i) Any breach of a solvency or insurance requirement and any other breach of the Minimum Criteria for licensing under Schedule 4 to the Law

11.7. Holding company

11.7.1. A *licensee* shall give written notice to *the Commission* within fourteen days if it becomes or ceases to be a *subsidiary* of another company or entity. The notice shall specify the following information if this has not already been notified:-

- (a) the *holding company*'s (or entity's) name;
- (b) its principal business;
- (c) the name of its *directors*; and
- (d) the address of its registered office.

11.8. Subsidiaries

11.8.1. A *licensee* shall give written notice to *the Commission* within fourteen days of the formation, acquisition, disposal or dissolution of a *subsidiary*.

11.8.2. The notice shall specify the following:-

- (a) the *subsidiary's* name; and
- (b) its principal business, if any.

11.9. Proposed change to the Business Plan

11.9.1. A *licensee* shall give written notice to *the Commission* within fourteen days of any significant change in the business plan, irrespective of whether it requires any change to its licence.

11.10. Written notice

11.10.1. A *licensee* shall give written notice and details to *the Commission* within fourteen days where it has reason to believe that :-

- (a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of *the Intermediaries Rules*;
- (b) a *director* or *employee* has been engaged in activities involving fraud or other dishonesty in relation to the *licensee's insurance intermediary business* in Guernsey;
- (c) the *licensee's* auditor may qualify the accounts; or
- (d) the liabilities of a *subsidiary* or *holding company* of the *licensee* exceed its assets.



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