



TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION
Guidelines for the Supervision of the Securities Sector

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1. INTRODUCTION

This Guideline applies to all persons carrying on investment business in the securities sector of the Turks and Caicos Islands. It is issued by the Turks and Caicos Islands Financial Services Commission (the Commission) pursuant to Section 43 of the Financial Services Commission Ordinance (FSCO).

2. OBJECTIVES

The Commission is committed to strengthening regulatory supervision of the financial services sector in the Turks and Caicos Islands (TCI). The purpose of these guidelines will:

- Provide information on the role of the Commission as the regulator of the Securities sector of the Turks and Caicos Islands (TCI);
- Align the legislative framework of the Turks and Caicos Islands as it provides for the regulation and administration of securities with international standards, in particular the Core Objectives and Principles of the International Organization of Securities Commission (IOSCO); and
- Provide an overview of the Commission's approach to monitoring for compliance through examinations of securities licensees.

Underpinning these guidelines are the IOSCO Core Objectives and Principles, as they relate to the size, structure and development of the securities industry in the TCI and relevant TCI legislation which place an obligation on the Commission and licensees offering investment business in and from within the TCI to achieve improved regulatory compliance.

The Commission will keep these guidelines under review to ensure they remain updated and reflect changes to legislation, policy and regulatory arrangements.

3. THE SECURITIES SECTOR

The Investment Dealer's (Licensing) Ordinance and The Mutual Funds Ordinance are the regulatory ordinances which provide for the licensing and administration of securities business in the TCI. The table below lists the various categories of licensed investment businesses and the activities for which they are licensed:

(a) Licensees – nature of activities

CATEGORIES OF LICENCEES	LICENSED ACTIVITY
Licenses under Investment Dealers (Licensing) Ordinance	
Full Investment Dealer	Trades on behalf of customers; acts as a fund manager; solicits subscriptions for new issues of investments; or

	offers advice about investments by way of a business.
Execution Only	Trades in investments on behalf of customers, but shall not give advice as to the suitability of the investment for a customer.
Fund Manager	Trades in investments on behalf of one or more mutual funds.
Adviser	Offers advice about investments by way of a business but does not trade in investments on behalf of customers.
Licenses issued under the Mutual Funds Ordinance	
Mutual Funds	A company, a unit trust or a partnership that issues equity interests, the purpose or effect of which is the pooling of investors' funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains but does not include a person licensed under the Banking, Insurance or Trust (Licensing) Ordinances.
Exempt Mutual Funds	Mutual Fund in which equity interests are held by not more than 15 investors, the majority of whom are capable of appointing or removing the operator of the fund; authorized to issue equity interests to professional investors.
Mutual Fund Administrators	A company or partnership which conducts mutual fund administration in or from within the Islands: to manage the fund; control all or substantially all of the assets of the mutual fund; to administer the mutual fund; provide the principal office of the mutual fund in the Islands or provide an operator to the mutual fund.
Restricted Mutual Fund Administrators	Authorizes the licensee to conduct mutual fund administration only in respect of the mutual funds specified from time to time in the licence.
"Investments"	Includes commodities trading; corporate bonds; equities; government and local authority bonds; units in collective investment schemes; warrants, covered warrants, options, futures, forward contracts, contracts for differences, swaps, and spread bets and any similar securities or derivatives; of synthetic products which replicate or substantially replicate any of the investments above.

(b) The Financial Services Commission

The Commission is the sole regulator of the financial services industry of the TCI and pursuant to its mandate under the Financial Services Commission Ordinance (FSCO) has responsibility to supervise and regulate all financial businesses in accordance with regulatory and administered Ordinances.

IOSCO has invited the Commission to apply to become a signatory to IOSCO's Multilateral Memorandum of Understanding (MMoU) concerning consultation and cooperation and the exchange of information. As an interim step toward ordinary membership the Commission has applied to become an Associate Member.

4. INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

IOSCO is the international standard setter for securities markets regulations. Its membership comprises more than 100 jurisdictions with responsibility for regulation of securities including (i) securities markets (where they exist); (ii) intermediaries that operate in those markets; (iii) the issuers of securities; and (iv) the sale of interests in and the management and operation of collective investment schemes. IOSCO has issued a set of 38 principles based on the three fundamental objectives of the IOSCO regulatory framework which are:

- The protection of investors;
- Ensuring that markets are fair, efficient and transparent; and
- The reduction of systemic risk.

5. IOSCO PRINCIPLES OF SECURITIES REGULATION

As the leading international grouping of securities regulators, IOSCO represents a broad spectrum of markets with varying levels of complexity and development. The 38 Principles, or standards issued by IOSCO give effect to its core objectives and provide the general framework for the regulation of securities. Sections A – J below provide a brief explanation of the IOSCO Principles.

These Principles serve as the benchmark for continuous improvement in securities regulation and are used by other assessors, like the International Monetary Fund, in their assessments of the performance of the securities sector element of a country's Financial Sector Assessment Programs. They are broadly categorized as:

- Principles relating to the Regulator;
- Principles for Self-Regulation;
- Principles for the Enforcement of Securities Regulation;
- Principles for Cooperation in Regulation;
- Principles for Issuers;
- Principles for Auditors, Credit Ratings Agencies and Other Information Service Providers;
- Principles for Collective Investment Schemes;
- Principles for market Intermediaries;
- Principles for Secondary Markets; and

- Principles Relating to Clearing and Settlement.

These Principles are largely reflected in the legislative framework of the TCI. This section of the guidelines link IOSCO Principles to legislated provisions and the obligations of participants in the securities sector for implementation of these standards:

A. Principles relating to the Regulator

Principles 1 through 8 establish desirable attributes of a regulator as independent and accountable with appropriate powers and resources to ensure the achievement of the core objectives of securities regulation. The responsibilities of the Regulator are to be clear and objectively stated, preferably in law; monitor and manage systemic risk; review legislation regularly; and ensure conflicts of interest and misalignment of incentives are avoided.

Legislative Provisions: The independence, powers and functions of the Turks and Caicos Financial Services Commission are established under the Financial Services Commission Ordinance 2007 as amended. The FSCO vests in the Commission the responsibility to regulate and supervise the financial services industry of the TCI in accordance with the FSCO and other regulatory and administered ordinances.

The Regulatory framework for the Securities sector includes the following legislation:

- The Financial Services Commission Ordinance (FSCO);
- The Mutual Funds Ordinance 1998 as amended (MFO);
- The Investment Dealers (Licensing) Ordinance 2001 (IDLO);
- The Proceeds of Crime Ordinance 2007 as amended (POCO);
- Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 (AML/PTF Regulations); and
- Anti-Money Laundering and Prevention of Terrorist Financing Regulations Code of 2011 (AML/PTF Code) [issued under the section 111(1) of the Proceeds of Crime Ordinance 2007].

B. Principles for Self-Regulation

Principle 9 requires oversight by the regulatory authority of Self-regulated Organizations.

Legislative Provisions: There are no provisions in legislation for the regulation of Self-Regulated Organizations (SRO's). It is not currently a practice to utilize SRO's in the TCI.

C. Principles for the Enforcement of Securities Regulation

Principles 10 through 12 require the Regulator to have comprehensive inspection, surveillance and enforcement powers and require the implementation of an effective compliance program.

Legislative Provisions: The FSCO vests in the Commission the responsibility to ensure that licensees are compliant with regulatory and administered Ordinances and Code as well as AML/PTF Regulations and AML/PTF Code. In keeping with this function the Commission is authorized to conduct compliance visits to monitor and assess compliance with these obligations.

The FSC performs full, thematic and AML onsite inspections and has comprehensive enforcement powers under Section 33 of the FSCO. Enforcement action against a licensee may be for, among other reasons:

- Failing to comply with the FSCO or a regulatory Ordinance such as the Investment Dealers Licensing Ordinance;
- Failing to comply with AML/CFT requirements in any law;
- Failing to comply with a directive of the FSC;
- Breaching a term or condition of its licence;
- Providing false information to the FSC;
- A shareholder of the licensee or person having an interest in the licensee, or any director, officer or key employee of the licensee that does not meet the FSC's fit and proper criteria during the currency of the licence; and
- The licensee, its subsidiary or holding company's refusal or failure to co-operate with the FSC when carrying out supervisory obligations.

Obligations of Investment Businesses: Every person carrying on investment business from or within the TCI must be licensed. It is an offence to conduct unauthorized financial service business in or from within the territory.

Under the IDLO a person that contravenes the licensing requirements commits an offence and is liable upon summary conviction to a fine of \$25,000 or a term of imprisonment of two years or both.

The MFO provides that any person carrying on or attempting to carry on business in or from within the Islands for which it is not licensed is liable on summary conviction to a fine of \$100,000.

D. Principles for Cooperation in Regulation

Principles 13 through 15 empower the Regulator with appropriate authority to obtain and share information with domestic and foreign counterparts; ensuring that the regulatory system allows for this level of cooperation and assistance.

Legislative Provisions: Under the FSCO the Commission is obligated to cooperate with both domestic and foreign counterparts and is authorized to share information with its counterparts for the purpose of discharging any existing function or exercising any power stated by law:

- Section 28 of the FSCO establishes that the Commission has a “duty to cooperate” with foreign regulatory authorities or persons outside the islands with functions in relation to prevention or detection of financial crime;
- Section 29 of the FSCO establishes the “provision of assistance to foreign regulatory authorities” subject to conditions the Commission considers appropriate;
- Section 12(l) of the FSCO empowers the Commission to enter into memoranda of understanding with regulatory authorities and agencies within and outside of the Turks and Caicos Islands for the purposes of discharging its functions.

Obligations of Investment Businesses: Under Section 23 of the FSCO licensees are required upon notification to provide specified information or to produce specified document to the Commission.

In relation to **securities transactions** the AML/PTF Regulations and the Code in Section 36(4) requires that a financial business keep for each transaction, records that identify:

- (a) the client—
 - (i) name of the account holder, including the identity of the beneficial owner; and
 - (ii) person authorized to transact business;
- (b) the amount purchased or sold;
- (c) the time of the transaction;
- (e) the price of the transaction; and
- (f) the individual and the bank or broker and brokerage house that handled the transaction.

AML/PTF Regulations and the Code establish record retention requirements for all financial businesses and specify that the following be maintained for at least 5 years:

- Relationship Information;
- Identification & verification Information on individuals, legal entities, directors & beneficial owners, trusts & trustees, foundations;

- Transaction records;
- All account files; and
- All business correspondence.

E. Principles Relating to Issuers

Principles 16 through 18 relate to disclosure of financial results and other information material to investors' decisions. They also address fair and equitable treatment of holders of securities and holders of securities and the importance of high international standards in the preparation of financial statements.

Legislative Provisions: Issuers in the TCI are limited to a few mutual funds established under the laws of the TCI. The MFO establishes the reporting obligations of mutual funds. An important function of the mutual fund administrator is to communicate with investors and the public with regard to the financial affairs of the fund.

Obligations of Investment Businesses: A mutual fund administrator is required under Section 15 of the MFO to act in good faith and in the interest of the investors of the mutual fund. This includes ensuring the preparation of audited financials on each fund that it administers at an internationally acceptable standard by an auditor approved by the Commission.

A mutual fund administrator is mandated to include the following disclosures in an offering Prospectus:

- Risks;
- Restrictions which may apply to the distribution to profits, gains or equity interests; service providers associated with the fund;
- Structure of the mutual fund;
- Names and bios in relation to the licensed mutual fund's investment adviser, manager, auditor, administrator, custodian and any sub custodian, prime broker, legal advisers and any person having significant involvement in the affairs of the licensed mutual fund;
- Fund objectives and investment policy;
- Calculation of the net asset value;
- Pricing and redemption of shares;
- Management and administration of the fund covering, among other things, procedures for dealing with income and expenditure and procedure for dealing with conflict of interest disclosure of calculation of fees and other charges;
- Ownership, beneficial interest and shareholding in the licensee;

- File an annual return on the mutual funds and exempt mutual funds for which it acts; and
- Notify the Commission of any changes or proposed changes in the business plan or Prospectus supplied with the application for license.

A mutual funds administrator must report to the Commission any concerns it may have regarding honesty, good character or conduct of any operator or manager of a mutual fund under its administration, or the solvency of that operator or manager or of the mutual fund.

A person conducting mutual funds administration without a license or operates in breach of its Licence commits an offense under Section 12 of the MFO and is liable on conviction to a fine of US\$100,000 and US\$50,000 respectively.

F. Principles for Auditors, Credit Rating Agencies, and Other Information Service Providers

Principles 19 through 23 - In June 2010 IOSCO revised its Objectives and Principles for Securities Regulation to incorporate eight (8) new Principles based on 'lessons learned from the recent financial crisis. Among these were Principles related to credit rating agencies and auditor independence.

Legislative Provisions: There is currently no legislation for the establishment of or for the supervision of credit agencies.

In October 2014, the Commission issued Guidelines for the Appointment of External Auditors and Conduct of External Auditors and the external audit function.

The Guidelines recognize that the provision of audit services is critical to the reliability and integrity of the financial reporting process, with the ultimate purpose being to protect the interest of investors and the public. The Guidelines outline the responsibility of the licensee in vetting the competency of the prospective external auditor prior to appointment.

Obligations of Investment Businesses: A licensee, through its board of directors, must seek to ensure that auditors are assessed as fit and proper; has knowledge of the industry and experience in auditing such institutions; and to establish the auditor's independence from the licensed business. The board of directors is responsible for the audit program in relation to the nature and scope of operations and risk profile. The full Guideline is available on the Commission's website at www.tcifsc.tc.

G. Principles for Collective Investment Schemes

Principles 24 through 28 require regulatory systems which set standards for eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme. These Principles provide for rules governing the legal form and structure of the CISs, segregation and protection of client funds, the requirement for disclosure under the principles of issuers, and oversight of hedge funds/hedge fund managers and advisers.

Legislative Provisions: The Mutual Funds Ordinance establishes conditions of mutual fund and mutual fund administrator's licenses and makes it a requirement that every mutual fund operating from the TCI have a promoter that is considered to have a sound reputation as well as a mutual fund administrator providing an office in the islands.

Obligations of Investment Businesses: Comments under Principles "E" address the obligations of investment businesses.

H. Principles for Market Intermediary

Principles 29 through 32 address entry standards, operational conduct, and measures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

Legislative Provisions: The IDLO and the MFO each include a prescribed application form. In addition to requiring biographic information on directors, officers, shareholders and beneficial owners of the applicant the following information should accompany the application:

- Evidence of capital requirement (for investment dealers which are not banks);
- Professional indemnity insurance;
- Business Plan;
- Procedures Manual;
- Investment Policy; and
- An Offering Prospectus (for mutual funds).

Information required to be submitted in evidence of an AML/PTF Compliance Program include:

- Copy of the AML/PTF business risk assessment;
- The AML/PTF Compliance Policy Manual; and
- An application for approval of the Compliance Officer and Money Laundering Reporting Officer.

The Mutual Funds Regulations requires that the Mutual Fund Administrator maintain a Code of ethics to include prohibition on –

- i. misuse of insider information; and
- ii. the lending or making transactions in any investment in which a related person is involved.

Where during the currency of the licence it is determined that the fit and proper standards are not met, the Commission under its statutory powers may apply measures which can be any of the following:

- i. Revoke or suspend the licensee's licence under FSCO Section 34
- ii. Issue a directive under FSCO Section 37
- iii. Appoint an examiner to conduct an investigation under FSCO Section 35
- iv. Require the licensee to appoint a qualified person under FSCO Section 36
- v. Impose a financial penalty by taking disciplinary action against the licensee under Sections 45-47
- vi. Apply for a protection order under FSCO Section 38
- vii. If a company, to petition the court to wind up the company.

The law requires that the grant and revocation of a regulatory license be published in the official Gazette. The Commission, given its responsibility to protect the public interest maintains on its website a list of regulated entities as well as public statements issued in respect of licensees.

Licensees are required to establish and maintain effective complaints-handling systems and procedures. The Commission further provides that where a complainant is not satisfied with any substantive reply from the licensee they may complain directly to the Commission.

Obligations of Investment Businesses: Applicants seeking to be licensed as investment dealers and mutual fund operators, including individuals connected with the applicant (e.g. directors, officers, shareholders and beneficial owners) must satisfy a fit and proper assessment. The fit and proper assessment is an initial and continuing test applied to the conduct of a licensee's business.

It is important to note that information once submitted in support of an application for license is not to be changed without the prior approval from the Commission.

Information required in connection with applicants for investment businesses are listed in Appendices A and B.

I. Principles for Secondary Markets

Principles 33 through 37 require that regulation and oversight of trading systems and securities exchanges aim to ensure that the integrity of trading is maintained through fair and equitable rules. They require that regulation promote transparency of trading and be designed to detect and deter manipulation and other unfair trading practices.

Legislative Provisions: The structure of the securities sectors does not include trading systems and securities exchanges. These Principles are therefore not reflected in legislation.

J. Principle Relating to Clearing and Settlement

Principle 38 requires that Securities settlement systems and central counterparties be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.

Legislative Provisions: This Principle is not reflected in legislation as it relates to elements of a securities market that is not currently authorized in the TCI.

6. CORPORATE GOVERNANCE

The establishment of documented policies, systems and controls that ensures compliance with international standards is the responsibility of the Board of Directors. The Board of Directors of each investment business must ensure that governance arrangements are in place and are appropriate to the size, complexity, structure, history and corporate culture. The Board also has responsibility for effective implementation of compliance standards.

7. COMPLIANCE EXAMINATIONS

Purpose of Examinations

The Commission has a statutory responsibility to promote sound business practices. Accordingly it is strengthening the supervisory regime of the securities sector which includes improved monitoring of licensees of securities business.

Supervision of the sector will see a combination of methods used which include desk-based (offsite) monitoring and on-site examinations.

Offsite monitoring is conducted through periodic reviews of reports and other data. The scope of offsite monitoring is adjusted based on specific events (triggers) which could affect risks associated with the business activities; these can be changes in key personnel, adequacy or

inadequacy of control processes, market factors and the frequency or recency of on-site examinations.

On-site examination can be conducted as full or focused. A focused examination is performed on a particular area of risk within the business and entails a review of the effectiveness of processes and controls for the specific area of risk. In determining the scope of an examination, the Commission would consider the licensee's risk rating, the complexity of its operation and the asset size. All examinations involve collecting and analyzing data.

Regulatory monitoring whether through offsite reviews and/or onsite examinations improve the Commission's knowledge of activities conducted in the sector; provides information on the asset quality; assesses whether licensees continue to satisfy the "fit and proper" test; and informs the Commission on required policy and legislative changes.

The Examination Process

The FSCO allows for compliance examinations to occur at any time. The Commission may advise when an examination is to occur or, if justified, may not. Where the examination is announced, the licensee is advised by the Commission in writing of the proposed dates of the examination to occur at the physical premises of the licensee. The advice is given approximately three weeks to a month before the planned examination. It lists information and/or documents to be reviewed and identifies what information is required to be submitted to the Commission prior to the examination; and, introduces the examiners.

On arriving at the licensee's place of business, the examiners, all representatives of the Commission, must identify themselves. An initial interview is held with senior representatives of the licensee at which time the examiners may ask questions to get a better understanding of the licensee and its operations (systems, procedures and controls) – this may also include a tour of the licensee's office. The FSCO makes it a requirement that licensees give access to its premises and cooperate with the compliance visit.

Legislation provides for the examination of a subsidiary or holding company of the licensee or former licensee. As part of the examination information and/or documents held by a third party service provider may also be requested; this could be in preparation for, during or after the examination. The examiners may make the request directly to the third party service provider, and in addition verify directly with officers, employees or agents of the licensee information in relation to the examination.

An exit interview is normally scheduled on the last day of the compliance visit. Examiners would again meet with the most senior representatives of the licensee. This provides both the licensee and examiners an opportunity to discuss findings; highlight information/documents requested which at the end of the examination remains outstanding, and to record any action taken by the licensee in response to findings during the examination.

Following the on-site visit, examiners will begin to analyze the information reviewed during the examination. This may necessitate further follow-up with the licensee for additional information or clarification of certain information and can occur by telephone or by extending the on-site visit.

If during the examination serious issues are identified, the examiners in addition to documenting these findings may immediately refer the matters to the Commission for enforcement proceedings or the Financial Intelligence Unit for criminal investigation.

The Commission, within approximately eight weeks of completion of the examination, will provide the license holder with a closing letter and a report of its findings, giving the license holder approximately 30 days from receipt of the letter to acknowledge the findings and recommendations to correct the deficiencies. Recommended corrective actions are time framed for resolution and where there is evidence that indicates a licensee is not responding to a recommendation, the Commission may take enforcement action.

The Commission reserves the right to conduct “corrective action reviews” as a means of verifying that licensee has taken the corrective action recommended in response to the findings.

The Examination

The **offsite assessments** would include a review of:

- Business Risk Assessment
- Documents submitted in periodic reporting
- Business Plan
- Prospectus (where applicable)
- Operational Policy and Procedures Manual to include a code of ethics
- AML/PTF Compliance Policy and Procedures
- Organization chart
- Latest audited financials

The areas subject to review during **an onsite examination** are:

- Corporate governance practices
- Internal testing and management reports
- Accounting records/Audited accounts
- Internal controls
- Safekeeping of client funds
- Business Advertisement
- Overseas interests
- Staff – recruitment and training
- Offences and penalties
- Client file review

Areas subject to review for AML/PTF Compliance are:

- Compliance and Money Laundering Reporting Officers
- Internal control testing
- KYC Procedures for new and continuing business relationships and one-off transactions
- Introduced persons
- Intermediary relationships
- AML training
- Suspicious transaction procedures
- Records, record keeping & retrieval
- Registers

Appendix 1 (Requirements for Investment Dealers Licence)

Applicants seeking to be licensed as investment dealers must submit the prescribed application in Schedule 1 of the Investment Dealers Regulations.

The application should clearly state –

- Applicant's name;
- Evidence of constitution of the applicant;
- If a company, address of its parent and/or subsidiary company carrying on business;
- Registration details, whether incorporated in the islands or outside of the islands;
- State the type of license which is sought;
- Names and addresses of directors, managers and other key personnel;
- Name, addresses and nationalities and proportions of shares held by individuals whether the shareholder is registered or not registered;
- Name, addresses and nationalities and proportions of shares held by individuals whether the beneficial owner is registered or not registered as a shareholder;
- An applicant that is a partnership must clearly indicate the name and address of each partner and evidence of the structure by a partnership agreement.

The Application should be accompanied with the following:

- A Business Plan describing the nature of the business, the administrative procedures to be adopted and financial projections for the business;
- Proof of incorporation should be certified by the Registrar of Companies or the public seal of the country where the applicant was incorporated;
- If incorporated outside of the TCI, evidence of Registration of the business as a foreign company;
- Identification information on each director officer, shareholder and beneficial owner of the applicant by way of government issued identification and police clearance from country of residence;
- A certified translation of the incorporation documents, as required;
- Evidence of ability to meet capital requirements;
- Evidence of ability to effect professional indemnity insurance at the minimum coverage by an approved insurer;
- Evidence that there are two directors who are natural persons;
- If a partnership, that there is at least one partner who is ordinarily resident in the TCI;
- That the applicant has a manager who is ordinarily resident in the TCI;
- Evidence that the directors, shareholders, beneficial owners and other key personnel have sufficient experience and are knowledgeable in the business of dealing in investments, advising upon investments and managing funds and that those who

manage the applicant are fit and proper persons to conduct the business by virtue of integrity, solvency and competence through submission of biographic affidavits, curriculum vitae, two references, one of a financial character; and a personal statement of affairs on each director, officer, shareholder and beneficial owner of the applicant;

- The date of the financial year end of the applicant;
- Application from the applicant for approval of the appointment of a Compliance Officer (CO), Money Laundering Reporting Officer (MLRO) and Money Laundering Compliance Officer (MLCO);
- Copy of AML/CFT Business Risk Assessment and AML/CFT Compliance Policy document; and the application fee.

Investment Dealers (Licensing) Ordinance requires that a licensed dealer be able to:

- Meet its financial obligation;
- Maintain accounts in respect of all transactions and balances relating to his business and
- Maintain separate accounts for clients assets;
- Maintain capital (where required);
- Maintain ability to effect customer instructions and settle transaction in a timely manner; and
- Notify the Commission of any changes that would affect the structure or conditions of the operation.

Submit the following returns to the Commission by March 31 annually:

- A Certificate of Solvency;
- Annual Compliance Certificate confirming that the investment dealer has complied with all of the statutory requirements or indicating failure to do so; and
- A certificate of an approved auditor certifying that the investment dealer has at all times complied with all of the statutory requirements;
- The value of investments under management; and
- Information required by the Commission on the licensee in exercise of its supervisory functions.

Appendix 2 (Requirements for Mutual Fund Operators Licence)

Applicants seeking a mutual fund license or to be licensed as a mutual funds administrator must submit the following:

An application for a **licensed mutual fund** is to be submitted on Form No. 3 in Schedule 3, of the Mutual Funds Regulations must be completed and supported by the following information:

- Evidence of each operator's experience and qualifications to undertake the duties and responsibilities of a licensed mutual fund;
- Name and address of local management company;
- Name and address of auditor;
- Name and address of proposed custodian of documents and records;
- A copy of the management agreement;
- Assurance that there will be at least two directors (for companies);
- If a unit trust, names and addresses of trustees;
- A copy of the proposed prospectus;
- Procedures for ensuring adherence to the funds' investment policies;
- Evidence that the mutual fund policies include:
 - i. adequate diversification of investments;
 - ii. restrictions on speculative investments;
 - iii. restrictions on the amount of capital which can be borrowed; and
 - iv. requirements regarding the capacity of liquid assets to meet general liabilities;
- A copy of audited financials if the applicant is a company in existence for two years; and
- The application fee.

An application for the **registration of a mutual fund** must be submitted on Form 1 in Schedule 2 of the Mutual Funds Regulations and in addition to the above must include the following information:

- Evidence that the mutual fund is constituted under the laws of the TCI;
- That the fund is authorized to issue equity only to investors with investments of \$100,000.00 or more in securities quoted on a stock exchange;
- The application fee.

An application for the **recognition of a mutual fund** must be submitted in Form No. 2 of Schedule 2 of the Mutual Fund Regulations. In addition to the information submitted on licensed funds the following is also required:

- Evidence that the mutual fund is constituted under the laws of a foreign country or territory;
- Certified copies of documents constituting the entity;
- Evidence that its equity interests are listed on a stock exchange including over the counter market;
- Name of Registered Office;
- Name of Directors;
- Name of parent company, if any;
- Name of regulator of parent company;
- Local management company;
- Name and address of Auditor;
- Name of proposed custodian of documents and records;
- The name and address of the applicant's office in the islands;
- A copy of the prospectus;
- Other information as may be required by the Commission
- The application fee.

Exempt Mutual Funds is a category of funds that are exempt from licensing, registration and recognition requirements under Section 7 of the MFO.

Applicants seeking to operate an Exempt Mutual Fund must submit an application for agreement to operate a mutual fund as an exempt mutual fund. The applicant must provide the Commission with evidence that:

- Equity interests in the fund are held by not more than 15 investors the majority of whom can remove the operator of the fund;
- That the mutual fund is only authorized to issue equity interests to professional investors;
- That the fund is administered by a mutual fund administrator providing an office in the TCI; and
- Any additional information or documentation as the Commission deems necessary to agree a mutual fund as an exempt mutual fund can be provided.

Applicants for license as a **Mutual Fund Administrator** must be submitted on the prescribed application Form No. 4 in Schedule 2 of the Mutual Funds Regulations.

The application must be submitted along with information which is sufficient to allow the Commission to consider the fit and properness of the application and should include:

- Evidence that the directors, shareholders, beneficial owners and other key personnel have sufficient experience and knowledge to administer mutual funds and that those who manage the applicant are fit and proper persons to conduct the business by virtue of integrity, solvency and competence through submission of biographic affidavits, curriculum vitae, two references, one of a financial character; and a personal statement of affairs on each director, officer, shareholder and beneficial owner of the applicant;
- Assurance that the promoter and operator of the client mutual fund can fulfill their respective obligations in respect of the mutual fund;
- Evidence that the applicant holds an insurance policy with an insurance company acceptable to the Commission to cover any claim arising from negligence or breach of duty by its employees;
- Evidence of a code of ethics which will include prohibition on -
 - i. misuse of insider information; and
 - ii. lending or making transaction in any investment in which a related person is involved; and
- Address of the applicants office in the TCI.

Mutual fund administrators are also required to file the following **returns** with the Commission by March 31 annually:

- A listing of all mutual funds and exempt mutual funds for which it acts;
- Annual Certificate of Compliance with Ordinance and conditions of the license; and
- An annual certificate of solvency stating that the assets of the mutual fund exceed the fund's liabilities by 15%; and
- Evidence of professional indemnity insurance with an insurer acceptable to the Commission to cover claims arising from negligence or breach of duty by its employees.
- The value of the assets under management.
- Information required by the Commission on the licensee in exercise of its supervisory functions.