



FINANCIAL SERVICES  
COMMISSION

## GUIDELINE NO. 2

### COMPLIANCE PROGRAM GUIDELINE

This guideline is issued on March 1, 2013 pursuant to section 53 of the Financial Services Commission Act, 2010-21

#### COMPLIANCE PROGRAM GUIDELINE FOR MARKET ACTORS AND MUTUAL FUND ADMINISTRATORS

##### INTRODUCTION

Market actors and Mutual Fund Administrators, herein after referred to as “**Financial Institutions**” are required to comply with a number of provisions under the Securities Act, Cap. 318A, the Mutual Funds Act, Cap. 320B, the Money Laundering and Financing of Terrorism (Prevention and Control) Act 2011-23 and the Financial Services Commission Act 2010-21 which are designed to ensure, among other things, that they observe proper standards of conduct thereby contributing to the preservation of the integrity of the capital market.

Financial Institutions are expected to carry out their responsibilities in a manner that promotes best practices and demonstrates compliance with the requisite laws and guidelines.

The establishment of a robust compliance program and associated internal controls are essential to a financial institution’s operations.

This guideline establishes the requirement for all financial institutions to institute a compliance program, and outlines the further obligations of financial institutions in respect of such a program.

## 1. OBJECTIVES

- To establish a requirement for financial institutions to institute a compliance program and internal controls based on best practices.
- To ensure that a minimum standard of best practice is set for all financial institutions for an effective and sound compliance program.

*In addition to this guideline financial institutions should reference other relevant materials on establishing and maintaining a compliance program and internal controls, including those published by the International Organisation of Securities Commissions (“IOSCO”).*

## 2. INTERPRETATION

### 2.1 DEFINITIONS

**Commission** means Financial Services Commission.

**Financial Services Commission Act** means Financial Services Commission Act, 2010-21 and any amendments thereto

**Market Actor** means market actor as defined by the Securities Act.

**Mutual Fund Administrator** means mutual fund administrator as defined by the Mutual Funds Act

**Securities Act** means Securities Act, Cap. 318A and any amendments thereto

**Mutual Funds Act** means Mutual Funds Act, Cap. 310B and any amendments thereto:

(1) “Internal controls” refer to the different systems and processes that an organization has in place to help ensure that among other things:

(2)

- it complies with the laws, regulations, guidelines, policies, internal rules and procedures to which it is subject;
- proper records are maintained and the information that the organization produces is reliable;
- the assets including those of investors are safeguarded against unauthorized use and disposition; and
- there is an economical and efficient use of resources.

### **3. ROLE OF THE BOARD OF DIRECTORS AND SENIOR MANAGEMENT**

**3.1.** The Board of Directors and/or Senior Management should undertake the following in respect of the organisation's compliance program:

- designating the person(s) responsible for carrying out the compliance function;
- overseeing the activities of and consulting with the person(s) undertaking the compliance function;
- making enquiries regarding the organisation's compliance and ensuring that the compliance functions are carried out ;
- working to resolve any compliance violations without delay; and
- providing the Commission with information relative to its compliance program and violations when required to do so.

### **4. ESTABLISHING A COMPLIANCE PROGRAM**

**4.1.** A financial institution shall establish and maintain a compliance program designed to among other things:

- identify the applicable laws, regulations, rules, policies and guidelines to which a financial institution is subject;
- establish internal controls;
- establish a compliance role or identifies personnel responsible for carrying out the compliance function;
- identify and address violations; and
- report violations and their resolution to the Board and the Commission.

**4.2** The nature, size and intricacy of a financial institution's business directly affect the scope, structure and activities of a compliance program. A financial institution should tailor its program to reflect the level of complexity of its operations, having regard to:

- the products and services it offers e.g. whether it is a single service entity or offers many varying services;
- the characteristics of its clients, for example retail or institutional;
- the structure and diversity of its operations e.g. whether multiple jurisdictions are involved;

- the market conditions, volumes of business and its rate of growth;
- the regulatory requirements applicable to its operations; and
- the number of people that it engages to conduct its business and their job functions and responsibilities.

**4.3** The program must be documented, updated periodically and communicated to all employees of the organisation.

**4.4** The program should outline the following:

- (a) organisation's policies;
- (b) the procedures to be followed to ensure compliance;
- (c) internal reporting requirements;
- (d) regulatory reporting requirements;
- (e) procedures for addressing breaches of regulatory requirements or internal policies including:
  - processes for identifying breaches;
  - steps to be taken when a breach is identified;
  - parties (internal or external) to be alerted when a breach occurs and the time period within which the breach must be reported;
  - actions to be taken to rectify the breach and to guarantee that it does not reoccur; and
  - methods for keeping records of breaches.

### **Compliance Role/Personnel**

**4.5** As part of its compliance function a financial institution is required to create a compliance role within its organisation. The performance of the duties of the person(s) responsible for the compliance role may be outsourced however, in accordance with section 7 of these guidelines.

**4.6** Staff should be made aware of how to access the compliance personnel and be encouraged to consult with the person(s) concerning compliance with regulatory requirements.

**4.7** The person(s) responsible for carrying out the compliance function shall undertake the following activities:

1. ascertaining the regulatory requirements with which a financial institution must comply;
2. creating, communicating and reviewing the compliance policies and procedures to address regulatory requirements;
3. monitoring and enforcing compliance with the requirements;
4. investigating suspected breaches of the regulatory requirements or internal policies and procedures;
5. providing assistance, training and guidance to employees to assist them in complying with the requirements;
6. advising the Board of Directors and/or senior management on pertinent laws, regulations and guidelines to help them with their compliance responsibilities;
7. reporting periodically and at a minimum annually to the Board of Directors and senior management on the organisation's compliance with the regulatory requirements and the organisation's internal procedures;
8. reporting periodically to the Board of Directors and senior management on violations on the regulatory and internal requirements; and
9. where required notifying the Financial Services Commission, within 24 hours, of a breach of the regulatory requirements in cases of serious misconduct. The actions taken by the organisation with respect to the misconduct, including efforts to avert future violations should also be reported to the Commission.

#### **Independence of Compliance Role/Personnel and Ability to Act**

**4.8** A financial institution's compliance program should be designed to ensure that the independence of the compliance personnel is established and maintained.

**4.9** The person(s) undertaking the compliance role should have the required authority and resources to adequately discharge the functions assigned.

**4.10** Compliance personnel should also have the relevant training, knowledge, and experience to undertake the responsibilities assigned.

- 4.11 The roles and responsibilities of the compliance personnel need to be clear and identified whether the compliance function exists in only one department or if it is in different parts/levels of the organization.
- 4.12 Compliance personnel should have unlimited access to senior management and if the situation arises also to Board of Directors to discuss significant compliance matters.
- 4.13 Compliance personnel should report directly to the Board of Directors.
- 4.14 Compliance personnel should be empowered to access any records or information needed to carry out their responsibilities, including the capability to conduct investigations of potential breaches of regulatory requirements or internal policies and procedures.

## **5. PERIODIC ASSESSMENTS**

- 5.1 A financial institution must ensure that the organisation's compliance program is subject to periodic reviews by the person(s) who are independent of executing the general compliance function. Where appropriate and feasible the organisation's auditor may conduct such reviews.
- 5.2 The results of assessments must be reported to the Board of Directors and deficiencies shall be addressed in a timely manner.

## **6. CROSS-BORDER COMPLIANCE ARRANGEMENTS**

- 6.1. The responsibilities and accountabilities of personnel involved in compliance related activities should be clearly defined when the compliance function is involved in the oversight of activities of the market actor outside the home jurisdiction.

Compliance personnel with such responsibilities should:

- identify the compliance requirements of the organisation in respect of activities that are being undertaken outside its home jurisdiction;
- ensure that accountability and reporting lines for the compliance staff responsible for the compliance function must be identified;
- conduct an intermittent review/audit of the securities firm's activities and the compliance function outside the home jurisdiction;
- ensure that they have ready access to information of the pertinent compliance requirements applicable to the activities outside the home jurisdiction. This

information includes laws, regulations and policies that are issued in the jurisdictions in which the market actor is involved in business.

## **7.       OUTSOURCING OF THE COMPLIANCE FUNCTION**

- 7.1.** Financial Institutions may outsource their compliance function to third parties, having provided the Commission with prior written notification of their intention to do so. Financial Institutions shall maintain however full accountability to the Financial Services Commission for all tasks outsourced to third party service providers.