

ANGUILLA – MUTUAL FUNDS ACT

Policy Guidance

Revocation and cancellation of mutual fund licenses (including certificates of registration or recognition)

Introduction

The Commission may revoke the licence of a mutual fund if the licensee applies to the Commission for its licence to be revoked, under section 30(1)(c) of the Financial Services Commission Act, R.S.A. c. F28 (“FSC Act”). The Commission may also cancel the license of a mutual fund, at the request of the holder, under section 26(a) of the Mutual Funds Act, R.S.A. c. M107 (“MF Act”).

Where a fund fails to commence or ceases to carry on the financial services business for which it was licensed, the Commission is entitled to revoke its licence under section 30(1)(b) of the FSC Act and to cancel its license under section 26(b)(i) of the MF Act.

A mutual fund may approach the Commission seeking voluntary revocation of its license, consequential to a decision to dissolve or wind up the fund. Such a fund may have no assets, liabilities or investors (other than management).

In other cases, the Executive may identify a mutual fund that has no assets, no liabilities, and no investors or otherwise appear to be dormant. In those cases, the Executive may initiate the process of revocation and cancellation of the mutual fund licence, unless the fund manager can provide a satisfactory explanation as to why the dormant fund should retain its licence and continue.

Where the licence of a fund is revoked or cancelled, the Commission is concerned that investors be sufficiently protected and that all of the fund’s liabilities be duly settled.

Policy

The Commission issues this policy to give guidance to mutual funds in respect of when the Commission may seek to exercise its powers under sections 30(1)(b) and (c) of the FSC Act and sections 26(a) and (b)(i) of the MF Act.

Specific guidance points

Interpretation

1. For the purposes of this policy guidance, a reference to a director of a mutual fund includes:
 - 1.1. a director of a fund organised as a corporation,
 - 1.2. a partner of a fund organised as a partnership,
 - 1.3. a trustee of a fund organised as a trust, and
 - 1.4. a manager of a fund organised as a limited liability company.

Voluntary revocation and cancellation

2. If a mutual fund applies to the Commission for its licence to be revoked, under section 30(1)(c) of the FSC Act, or requests that its license be cancelled, under section 26(a) of the MF Act, the Commission will require the following documents or information to be filed:
 - 2.1. The original copy of the licence of the fund if the licence was issued during the current calendar year.
 - 2.2. A certified copy of a resolution of the directors of the fund indicating the date on which the fund will cease to carry on its business or manage or administer its affairs in or from Anguilla.
 - 2.3. Where the fund is being liquidated or wound up:
 - 2.3.1 Comparative accounts for the two most recently completed financial years and stub period accounts from the date of the last financial year end to either the date of commencement of the winding up where a third party liquidator has been appointed, or the date of the final distribution if no third party liquidator has been appointed, all such accounts to be audited in the case of a public fund;
 - 2.3.2 A copy of the liquidator's report, where a liquidator has been appointed; and
 - 2.3.3 A certified copy of a resolution of the directors of the fund which must verify:

- 2.3.3.1 The reason for the liquidation or winding up of the fund;
- 2.3.3.2 That, as far as the directors are aware, the fund has operated in accordance with its articles or other constitutive documents and its offering document, including adherence to all investment guidelines and restrictions and computation of the net asset value;
- 2.3.3.3 That all participating investors (shareholders, unit holders, *etc.*) have been properly and completely redeemed out of the fund; and
- 2.3.3.4 That the fund is not being wound up in a manner that is prejudicial to its investors and creditors.

2.4. Where the fund is being transferred to another jurisdiction:

- 2.4.1 A certified copy of a resolution of the directors of the fund which must verify that since it was licensed in Anguilla, the fund has operated in accordance with its constating documents and its offering document, including adherence to all investment guidelines and restrictions and computation of the net asset value and has not been conducted in a manner that would be prejudicial to the investors or creditors.
- 2.4.2 Confirmation that the fund has received approval or approval in principle from the regulators in the jurisdiction to which it is being transferred.

2.5. Where the fund has never carried on business:

- 2.5.1 Confirmation by an approved external auditor that agreed upon procedures have been carried out that substantiate that no subscriptions have been received from investors; and
- 2.5.2 A certified copy of a resolution of the directors of the fund which must attest as to the reason why the fund has never carried on the financial services business for which the fund was licensed.

Non-voluntary revocation and cancellation

- 3. Where a mutual fund has any combination of no assets, no liabilities or no investors (other than management) for a period of 12 months or longer, or otherwise appears dormant, the

Commission may consider the fund to have failed to commence, or to have ceased to carry on, the financial services business for which the fund was licensed.

4. If the Commission considers a mutual fund to to have failed to commence, or to have ceased to carry on, the financial services business for which the fund was licensed, the Commission may give written notice to the fund that it proposes to suspend or revoke the licence of the fund or to cancel its licence, and will give the fund an opportunity to make representations by written notice filed with the Commission, that show good reason why its licence should not be revoked or cancelled. Reasons may include:
 - 4.1 Evidence that the fund has assets, liabilities or investors (other than management); or
 - 4.2 Evidence that the fund intends to acquire assets, incur liabilities or sell its shares, units or other interests to investors (other than management) within the following 3 months.
5. Where a mutual fund does not make representations or where the Commission has concluded that representations are not sufficient to show good reason why a fund's licence should not be revoked or cancelled, the Commission may require any or all of the documents or information referred to in section 2 to be filed with the Commission.

Approved by the Board
Anguilla Financial Services Commission
17 September 2012