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Authorities and Other Agencies of State Notices

Securities Commission

Securities Markets Act 1988

The Authorised Futures Dealers Notice (No. 4) 2003

Pursuant to section 38 of the Securities Markets Act 1988, the Securities Commission gives the following notice.

Notice

1. **Title, commencement and expiry**—(1) This notice is the Authorised Futures Dealers Notice (No. 4) 2003.
(2) This notice comes into force on its publication in the *New Zealand Gazette*.
(3) This notice expires on the close of 1 December 2003.
2. **Interpretation**—(1) In this notice, unless the context otherwise requires:

“Act” means the Securities Markets Act 1988.

“agreed upon procedures engagement terms” means a written agreement, in terms of the *Explanatory Foreword to Reporting Engagement Standards and Guidelines* issued by the Institute of Chartered Accountants of New Zealand, between the compliance reporter and the company to perform specific procedures with respect to the company’s compliance with rules contained in the company’s compliance manual.

“compliance reporter” means a qualified auditor who has entered into agreed upon procedures engagement terms with the company.

“qualified auditor” has the same meaning as in section 2C of the Securities Act 1978.

“recognised exchange” means an authorised futures exchange or any exchange in a country other than New Zealand which is authorised by the laws of that country to operate as a futures exchange.

“Regulations” means the Futures Industry (Client Funds) Regulations 1990.

“specified futures contract” also referred to as off exchange traded futures contract, means a futures contract other than one that is made on or effected through a recognised exchange.

“the company” means **Intercontinental Financial Services Corporation Limited**.

(2) Any term or expression that is defined in the Act or the Regulations and that is used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

3. **Authorisation**—(1) The company is authorised to carry on the business of dealing in specified futures contracts.

(2) The authorisation is subject to the conditions that:

- (a) the company does not carry on the business of dealing in specified futures contracts on behalf of any person other than a person who has entered into a client services agreement with the company, and then only in accordance with the terms of that agreement.
- (b) before the company carries on the business of dealing in specified futures contracts on behalf of any person, the company has provided that person with copies of the following:
 - (i) a document that clearly describes, for the prudent but non-expert investor, the risks associated with trading in specified futures contracts, including any specific risk factors that apply to trading in any of the particular

- contracts or classes of contracts dealt with by the company;
- (ii) one or more documents that clearly describe, for the prudent but non-expert investor, the class or classes of specified futures contracts in which the company intends to deal on behalf of that person; and
 - (iii) an investment broker disclosure document including the information listed in section 3 of the Investment Advisers (Disclosure) Act 1996.
- (c) no employee, director or agent of the company may give investment advice to any client unless that director, employee or agent has first provided investment adviser disclosure to that client in terms of the Investment Advisers (Disclosure) Act 1996, including the request disclosure under section 4 of the Act.
- (d) any company document that states the company has been authorised by the Securities Commission to carry on the business of dealing in futures contracts includes a statement to the effect that:
- (i) the Securities Commission's role in authorising futures dealers is limited and does not imply approval or endorsement of the business, trading or solvency of the company; and
 - (ii) the Securities Commission has not approved the client services agreement or any disclosure documents of the company.
- (e) the company maintains proper records:
- (i) to record dealings in respect of specified futures contracts with or on behalf of the client;
 - (ii) to record client money, funds and property held or received in connection with dealings in specified futures contracts; and
 - (iii) which are audited or reviewed, and reported on, in accordance with the Regulations and the Financial Reporting Act 1993.
- (f) the company has current agreed upon procedures engagement terms.
- (g) the company has appointed a compliance reporter.
- (h) copies of the current agreed upon procedures engagement terms, the company's compliance manual and any amendments to these documents have been deposited with the Securities Commission.
- (i) the company's financial statements are prepared and registered on the basis that the company is an issuer in terms of the Financial Reporting Act 1993 and are audited at least once a year by a qualified auditor under the Financial Reporting Act 1993.
- (j) the agreed upon procedures engagement terms provide for (without limitation):
- (i) the client money, funds and property records in respect of specified futures contracts to be reviewed and reported on by the compliance reporter at least once a year;
 - (ii) the review of, and reporting on, the dealing practices and systems of the company against the practices and procedures set out in the company's compliance manual by the compliance reporter (including on-site inspections of the company's records and procedures), such review and reporting to be undertaken at least once in every six months;
 - (iii) a copy of the compliance reporter's reports to be sent to the Securities Commission by the compliance reporter;
 - (iv) the company to provide the compliance reporter with copies of its annual report and monthly financial statements including a statement of financial position, a statement of financial performance, a statement of cash receipts and payments that includes receipts and payments of client monies, funds and property for the month and a statement of its position with regard to client funds;
 - (v) the compliance reporter to give notice to the Securities Commission before or immediately upon it resigning or retiring from its position as compliance reporter.
- (k) the company sends a copy of its audited financial statements to the Securities Commission not more than three months after the end of each financial year.
- (l) the company maintains adequate professional indemnity insurance for its business at all times.
- (m) the company immediately notifies the Securities Commission in writing of any of the following events:
- (i) the insolvency of the company or the bankruptcy of any of its directors.
 - (ii) if the company, or any of its directors, is convicted of an indictable offence.
 - (iii) where a receiver, provisional liquidator, liquidator or a similar officer is appointed, or any resolution is passed or order made for the winding up or dissolution of the company.
 - (iv) any regulatory action taken against the company, or any of its directors or senior management, whether in New Zealand or elsewhere.
 - (v) if any director or member of the senior management leaves the company or if any new director or member of senior management is appointed to the company.

Dated at Wellington this 28th day of August 2003.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

JANE DIPLOCK, A.O., Chairperson.

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