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SECURITIES UPDATE: REGULATION OF FOREX ACTIVITIES IN PANAMA

The Superintendence of the Securities Markets adopts new regulation on the activity of investing in the Foreign Exchange international market

25 June 2013

Regulation 4-2013 dated 29 May 2013 has been issued by the Superintendence of the Securities Market of Panama to apply to foreign exchange activities in or from the Republic of Panama and to set forth the special, technical, operational, technological and personnel requirements that duly licensed broker dealers and investment advisors must fulfill to carry out these activities.

There is a prohibition to undertake or provide advice in the ForEx activity without proper authorization, pursuant to article 255 of the Securities Law.

ForEx activity is defined in the Regulation as the habitual operation of purchase and sale of currency at a price or exchange rate at the time of the contract as an investment activity and acting on behalf of clients for this purpose. This activity includes the offer to the general public the undertaking of sale and purchase operations, intermediation and/or rendering investment advice, in all cases for investment purposes. It also includes operations such as spot, forwards, CFDs, swaps and options on foreign currency, provided these operations are offered to the general public and are not subject to the exceptions stated in the Regulation.

ForEx activities are considered to be “incidental” to the operation of broker dealers in or from the Republic of Panama the income derived from commissions and services may not exceed each month 30% of the total income for commissions and services of the licensed entity, calculated in the 6 month period immediately prior to the month being measured.

Broker dealers and investment advisors that wish to carry out these activities must file a business plan before the Superintendence, including aspects such as detailed description of the operations, description of negotiation platforms, and information on liquidity providers, custodial agreements, client information policies and procedures, among others. The licensed companies authorized to undertake ForEx activities must also develop and apply policies and procedures to evaluate the risk profile of their clients.

Reporting requirements to the Superintendence and personnel training are also additional obligations that broker dealers and investment advisors must comply with to obtain and keep the license to carry out ForEx activities in Panama.

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