

§1398. Duties of exchange facilitators; prohibited activities

1. Duty to client. An exchange facilitator shall act as a custodian for all exchange funds, including, but not limited to, money, property, other consideration or instruments received by the person from, or on behalf of, a client, except funds received as the person's compensation. An exchange facilitator shall invest those exchange funds in investments that meet a prudent investor standard and that satisfy the investment goals of liquidity and preservation of principal. For purposes of this subsection, a prudent investor standard is violated if any of the following occurs:

- A. Exchange funds are knowingly commingled by the exchange facilitator with the operating accounts of the exchange facilitator; [PL 2009, c. 61, §1 (NEW).]
- B. Exchange funds are loaned or otherwise transferred to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator. This paragraph does not apply to the transfer of funds from an exchange facilitator to an exchange accommodation titleholder as defined in United States Internal Revenue Service Revenue Procedure 2003-37 in accordance with an exchange contract; or [PL 2009, c. 61, §1 (NEW).]
- C. Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to its clients and does not preserve the principal of the exchange funds. [PL 2009, c. 61, §1 (NEW).]

Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. An exchange facilitator may not knowingly keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was actually entrusted to the exchange facilitator by that client.

[PL 2009, c. 61, §1 (NEW).]

2. Notice of change in control. An exchange facilitator shall notify all existing exchange clients whose relinquished property is located in this State, or whose replacement property held under a qualified exchange accommodation agreement is located in this State, of any change in control of the exchange facilitator. The notice must be provided within 10 business days of the effective date of the change in control by hand delivery, facsimile transmission, e-mail, overnight mail or first-class mail, and must be posted on the exchange facilitator's publicly accessible website for at least 90 days following the change in control. The notice must include the name, address and other contact information of the transferees. For purposes of this subsection, "change in control" means any transfer of more than 50% of the assets or ownership interests, directly or indirectly, of the exchange facilitator. [PL 2009, c. 61, §1 (NEW).]

3. Prohibitions. A person engaged in business as an exchange facilitator may not do any of the following:

- A. Make any material misrepresentations concerning any like-kind exchange transaction that are intended to mislead; [PL 2009, c. 61, §1 (NEW).]
- B. Pursue a continued or flagrant course of misrepresentation, or make false statements through advertising or otherwise; [PL 2009, c. 61, §1 (NEW).]
- C. Fail, within a reasonable time, to account for any money or property belonging to others that may be in the possession of, or under control of, the person; [PL 2009, c. 61, §1 (NEW).]
- D. Engage in any conduct constituting fraudulent or dishonest dealings; [PL 2009, c. 61, §1 (NEW).]
- E. Commit any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery or theft; or [PL 2009, c. 61, §1 (NEW).]

F. Materially fail to fulfill its contractual duties to a client to deliver property or funds to the client, unless that failure is due to circumstances beyond the control of the person engaging in business as an exchange facilitator. [PL 2009, c. 61, §1 (NEW).]

[PL 2009, c. 61, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 61, §1 (NEW).

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