

**THE CAPITAL MARKETS AND SECURITIES (CONDUCT OF BUSINESS)
REGULATIONS
ARRANGEMENT OF REGULATIONS**

Regulation

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**THE CAPITAL MARKETS AND SECURITIES (CONDUCT OF BUSINESS)
REGULATIONS**

G.N. No. 771 of 1997

1. Short title

These Regulations may be cited as the Capital Markets and Securities (Conduct of Business) Regulations.

2. Interpretation

In these Regulations:

"**customer**" means a person for whom a licensee acts as an agent and to whom the licensee owes a duty of care, and includes a potential customer;

"**licensee**" means a person licensed under Part IV of the Act;

"**own account transaction**" means a transaction effected arranged by the licensee in the course of carrying on his securities business and which was done on his own account;

"**regulatory system**" means the arrangements for regulating a licensee under the Act and regulations made thereunder or directions given by the Authority.

3. Independence

No licensee shall, while advising or acting for a customer claim he is independent or impartial if he is not and shall ensure that any claim he makes as to his independence or impartiality adequately includes any limitation that he may be on either.

4. Material interest

Where licensee has a material interest in a transaction to be entered into with or for a customer, or he has relationship which gives rise or is likely to give rise to a conflict of interest in relation to such a transaction, the licensee shall not advise or exercise any discretion in relation to that transaction unless he has–

- (a) fairly disclosed that material interest or that relationship to the customer; or
- (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

5. Inducements

A licensee must take reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

6. Issue of advertisements

Where a licensee issues an advertisement concerning his securities business, he shall take all reasonable steps to ensure that–

- (a) the contents and presentation of the advertisement are demonstrably fair and not misleading;
- (b) the advertisement discloses fairly the risks concerned.

7. Fair and clear communications

Where a licensee issues an advertisement concerning securities business, he shall ensure that the advertisement identifies him as the advertiser.

8. Customer's understanding of risk

(1) A licensee may make a communication with another person which is designed to promote the provision of securities services only if he can show comprehensive and not misleading.

(2) A licensee shall take reasonable steps to ensure that any agreement, written communication, notification or information that he gives or sends to customers to whom he provides securities services is presented fairly and clearly.

9. Information about licensee

A licensee shall not–

- (a) recommend transaction to a customer, or effect a discretionary transaction with or for him unless he has taken all reasonable steps to enable the customer understands the risks involved;
- (b) mislead a customer as to any advantages or disadvantages of a contemplated transaction; or
- (c) promise a return unless such return is contractually guaranteed.

10. Information about collective investment scheme

A licensee shall take reasonable steps to ensure that a customer, to whom he provides securities services, is given adequate information about his identity and business address and the identity and status within the licensee's firm of employees and other relevant representatives whom the customer has contact.

11. Representatives of licensee

Before or when making a personal recommendation to a customer to invest in a collective investment scheme, a licensee shall give to the customer–

- (a) information about the scheme which is adequate to enable the customer to make an informed investment decision;
- (b) appropriate written particulars.

12. Where written customer agreement required

(1) A licensee shall satisfy himself on reasonable grounds and on a continuing basis that any representative he appoints is fit and proper to act for him in that capacity.

(2) The licensee shall also satisfy himself on reasonable grounds and on a continuing basis that he has adequate resources to monitor and enforce compliance by his representatives with high standards of business conduct.

13. Customer agreements

(1) A licensee shall not provide to a customer any securities services relating to—

- (a) the discretionary management of a portfolio; or
- (b) any other type of business that is prescribed by the Authority, except under a written agreement signed by the customer and returned to licensee.

(2) The Authority and a licensed securities exchange may from time to time prescribe special procedures relating to the operation of discretionary accounts and every licensee must follow such special procedures are followed.

14. Customer's rights

(1) Where a licensee provides securities services to a customer on written contractual terms (whether pursuant to regulation thirteen or otherwise), the agreement shall set out in adequate detail the basis on which those services are provided.

(2) The High Court may, if it considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this rule, but no such order affects any dealing or transaction entered into or carried out by the licensee on behalf of the customer.

15. Suitability

(1) A licensee shall not, in any written communication or agreement, seek to exclude or restrict—

- (a) any duty or liability to a customer which he has under the Act or any regulation made thereunder;
- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to him of securities services;
- (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of him in the provision of securities services.

(2) A purported exclusion or restriction prohibited in this rule shall be void and of not effect.

16. Charges

A licensee shall take all reasonable steps to ensure that he does not give securities advice to, nor effect a discretionary transaction with or for, a customer unless that advice or transaction is suitable for him having regard to the facts disclosed by that customer and other relevant facts about the customer or which the licensee is or ought reasonably to be aware.

17. Confirmation and periodic information

(1) A licensee's charges shall not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances.

(2) Before a licensee provides securities services to a customer it shall disclose to him the basis or amount of the licensee charges for the provisions of those services and the nature of and amount of any other remuneration receivable by him and attributable to them.

18. Timely execution

(1) Where a licensee effects a sale or purchase of securities with or for a customer he shall ensure that the customer is sent with due dispatch a contract not containing the essential details of the transaction in accordance with section fifty-eight of

the Act.

(2) Where a licensee acts as an investment manager for a customer, he shall ensure that the customer is sent, at suitable intervals, a report stating the value of the portfolio or account at the beginning and end of the period of, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

19. Best execution

When a licensee has agreed or decided in his discretion to effect or arrange a customer order, he shall effect or arrange the execution of the order as soon as is reasonably practicable in the circumstances.

20. Timely allocation

Where a licensee deals with or for a customer he shall take all reasonable steps to find and deal on the terms which are the best available to the customer.

21. Fair allocation

A licensee shall ensure that a transaction he executes is promptly allocated.

22. Front running

Where a licensee has aggregated an order for a customer transaction with an order for an own account transaction, or with an order for other customer transaction, then in the subsequent allocation—

- (a) he shall not give unfair preference to himself or to any of those for whom he dealt; and
- (b) if all orders cannot be satisfied, he shall give priority to satisfying orders for customer transactions.

23. Churning

Where a licensee intends to publish to customers a price sensitive recommendation or research or analysis, he shall not knowingly effect an own account transaction in the investment concerned or in any related investment until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

24. Insider dealing

A licensee shall not—

- (a) deal or arrange a deal in the exercise or discretion for any customer; or
- (b) advise a customer to deal, if the dealing could in the circumstances reasonably be regarded as too frequent or too large.

25. Safeguarding of customer investment

A licensee who has custody of customer's securities in connection with or with a view to securities business shall—

- (a) keep safe, or arrange for the safekeeping of, any documents of title or documents evidencing title which relates to them; and
- (b) ensure that any securities that he buys or holds for a customer are properly registered in his name or with the consent of the customer and in the name of an appropriate nominee.

26. Complaints

A licensee shall have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

27. Compliance

(1) A licensee shall take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

- (a) his officers, employees and other representatives are aware of their obligations

under the Act and any regulations legislation make thereunder, and that they act in conformity with them; and

- (b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his competence to give or to provide.

(2) Records required to be maintained by the regulatory system shall be kept available, for a period of not less than seven years, by the licensee for inspection by any person duly authorised by the Authority.

28. Supervision

A licensee shall establish and maintain procedures—

- (a) for the supervision of each of his officers, employees and other representatives; and
- (b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his competence to give or to provide.

29. Customer confidentiality

(1) Subject to subregulation (2), all information in the possession of a licensee relating to a customer shall be kept confidential by the licensee.

(2) A licensee may disclose information relating to a customer when properly required to do so by the Authority, a clearing house or the market supervision department of a licensed securities exchange of which he is a member, or if he is ordered to do so by a court of competent jurisdiction or other due process of law.

30. Cessation of business

Where a licensee decides to withdraw from securities business he shall—

- (a) forthwith notify the Authority and each of his customers of such decision; and
- (b) ensure to the satisfaction of the Authority that any such business which is outstanding is properly completed or transferred to another licensee.