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S. I 42 of 2008

SECURITIES ACT 2007

(Act No. 8 of 2007)

Securities (Conduct Of Business) Regulations, 2008

In exercise of the powers conferred by section 133 of the Securities Act, the Minister of Finance on the recommendation of the Securities Authority makes the following Regulations:

**PART 1
PRELIMINARY**

1.(1) These Regulations may be cited as the Securities (Conduct of Business) Regulations, 2008. Citation and application

(2) These Regulations are of general application to all licensed securities business provided that, where a regulation applies only in particular circumstances, that regulation will apply to a licensee only if those circumstances are relevant to the type of the securities business undertaken by that licensee.

2. In these Regulations – Interpretation

“approved bank” means a bank licensed under the Financial Institutions Act or such other bank outside of Seychelles which is approved by the Authority for the purposes of these Regulations;

“Authority” means the Security Authority;

“client bank account” means a bank account established for the purposes of regulation 31; and

“money” includes any form of money, whether represented by a cheque or other payable order, or otherwise;

“the Act” means the Securities Act, 2007.

3. If a licensee contravenes any provision of these Regulations the licensee commits a disciplinary offence under the Act. Contravention

**PART 2
CONDUCT OF BUSINESS**

4. If a licensee is advising or acting for a client the licensee shall – Independence or impartiality

(a) not claim it is independent or impartial if it is not; and

(b) ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

Material interest

5. If a licensee has a material interest in a transaction to be entered into with or for a client, or a relationship which gives rise to a conflict of interest in relation to the transaction, the licensee shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless the licensee has -

(a) fairly disclosed that material interest or relationship, as the case may be, to the client; or

(b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the client.

Inducement

6. A licensee must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to its clients.

Fair and clear communication

7.(1) A licensee may make a communication with another person that is designed to promote the provision of securities business services only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

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

Clients' understanding of risk

8. A licensee shall not -

(a) recommend a transaction to a client, or effect a discretionary transaction with or for the client, unless it has taken reasonable steps to enable the client to understand the risks involved;

(b) mislead a client as to any advantages or disadvantages of a contemplated transaction.

Information about the licensee

9. A licensee must take reasonable steps to ensure that a client to whom it provides securities business services is given adequate information about its identity and business address and the identity and status within the licensee's firm of employees and other relevant representatives with whom the client has contact.

10. (1) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that it has appointed a representative who is a fit and proper person to act for it in that capacity. Representative of licensee

(2) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

11. (1) A licensee shall not provide to a client any securities business services relating to – Client agreement

- (a) the discretionary management of a portfolio; or
- (b) any other type of business that may be specified by the Authority,

except under a written agreement signed by the client and returned to the licensee.

(2) The agreement shall set out in adequate detail the basis on which those services are provided.

(3) The Authority may prescribe special procedures relating to the operation of discretionary accounts and every licensee shall follow the special procedures or ensure that they are followed.

(4) A court of competent jurisdiction 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 regulation, but the order shall not affect any dealing or transaction entered into or carried out by the licensee on behalf of the client.

12. (1) A licensee shall not, in any written communication or agreement, seek to exclude or restrict – Clients' rights

- (a) any duty or liability to a client which it has under any law or under any rules made by the Authority;
- (b) any liability owed to a client for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of securities business services.

(2) A purported exclusion or restriction prohibited by this regulation shall be void and of no effect.

13. (1) A licensee must take all reasonable steps to ensure that it does not give securities business advice to, nor effect a discretionary transaction with or for, Suitability

a client unless that advice or transaction is suitable for the client having regard to the facts disclosed by that client and other relevant facts about the client of which the licensee is or ought reasonably to be aware.

(2) A licensee must not recommend a security to a client unless the licensee has adequate current information in its possession to enable it to form a basis for the recommendation.

Charges

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

(2) A licensee must before it provides securities business services to a client disclose to the client –

- (a) the basis or amount of its charges for the provisions of those services; and
- (b) the nature and amount of any other remuneration receivable by it and attributable to the client.

Confirmation and periodic information

15. (1) When a licensee causes a sale or purchase of securities with or for a client, it must ensure that within twenty four hours or as soon as practicably possible the client is sent a contract note containing the essential details of the transaction.

(2) If a licensee acts as an investment manager for a client, it must ensure that the client is sent at suitable intervals –

- (a) a report stating the value of the portfolio or account at the beginning and the end of the period;
- (b) its composition at the end of the period; and
- (c) in the case of a discretionary portfolio or account, changes in its composition between the beginning and the end of the period.

Client order

16. A licensee shall deal with its client and own account orders fairly and in due turn.

Timely execution

17. A licensee shall effect or arrange the execution of an order as soon as is reasonably practicable after it has agreed or decided in its discretion to effect or arrange a client order.

18. A licensee must take reasonable steps to find and deal on the terms which are the best available to the client when dealing with or for a client. Best execution
19. A licensee must ensure that a transaction it executes is promptly allocated. Timely allocation
20. If a licensee aggregates an order for a client transaction with an order for an own account transaction, or with an order for another client transaction, then in the subsequent allocation – Fair allocation
- (a) it shall not give unfair preference to itself or to any of those for whom it dealt; and
 - (b) where all orders cannot be satisfied, it shall give priority to satisfying orders for client transactions.
21. If a licensee intends to publish to clients a price-sensitive recommendation or research or analysis, it must not knowingly effect an own account transaction in the investment concerned or in any related investment until the clients for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it. Front running
22. A licensee shall not knowingly profit or seek to profit, either for its own account, the account of a client or any third party, from inside information in the hands of any of its officers, employees or agents, or assist anyone with such information to make a profit for itself. Insider dealing
23. A licensee who has custody of a client's securities in connection with or with a view to securities business shall – Safeguard of client investments
- (a) keep safe, or arrange for the safekeeping of, any documents evidencing title, relating to them; and
 - (b) ensure that any securities that it buys or holds for a client are properly registered in the client's name or, with the consent of the client, in the name of an appropriate nominee.
24. (1) A licensee must have internal procedures to ensure the proper handling of complaints from clients and to ensure that any appropriate remedial action on those complaints is promptly taken. Complaints
- (2) A licensee shall maintain a client complaints file that contains copies of all client complaints.
25. (1) A licensee must disclose, in every transaction, whether it is dealing with a client in its capacity as an agent or on its own account. Compliance

(2) A licensee and its clients shall have a fiduciary relationship and the licensee must treat and conduct its business in full observance of this obligation.

(3) A licensee must take reasonable steps, including the establishment and maintenance of procedures, to ensure that –

(a) its officers, employees and other representatives are aware of their obligations under the Act and its regulations, and that they act in conformity with them; and

(b) sufficient information is recorded and retained about its securities business in compliance with the Act and its regulations.

(4) A licensee must keep and maintain all necessary books and records of its business including –

(a) client account statements;

(b) records of transactions;

(c) order tickets;

(d) confirmations; and

(e) stock ledgers,

for a period of not less than seven years, for inspection by any person duly authorised by the Authority.

Supervision

26.

A licensee must establish and maintain procedures –

(a) for the supervision of each of its officers, employees and other representatives; and

(b) for ensuring that the persons referred to in paragraph (a) do not give advice or provide services of a nature that is beyond their competence to give or to provide.

Client

confidentiality

27. (1)

Subject to sub-regulation (2), all information in the possession of a licensee relating to a client must be kept confidential by it.

(2) A licensee may disclose information relating to a client when properly required to do so by the Authority, a clearing house or the market

supervision department of a securities market of which it is a member, or if it is ordered to do so by a court of competent jurisdiction or otherwise required by any other law, including the Anti-Money Laundering Act, 2006.

28. If a licensee withdraws from securities business it shall –
- (a) immediately notify the Authority and each of its clients of its decision; and
 - (b) ensure to the satisfaction of the Authority that any outstanding business is properly completed or transferred to another licensee.

Cessation of
business

PART 3 CLIENT MONEY

29. This Part applies to any client money held or received by a licensee in the course of carrying on its securities business.

Application

30.(1) For the purposes of these Regulations “client money” means money of any currency which, in the course of carrying on its securities business, a licensee holds or receives on behalf of a client or which it owes to a client.

Client money

(2) Client money shall be held by the licensee on trust for and on behalf of the respective clients for whom that client money is received or held according to their respective shares in it.

(3) Client money shall not form part of the assets of the licensee for any purpose and shall not be available in any circumstances for payment of any debt of the licensee.

31.(1) A licensee that receives or holds client money shall open one or more client bank accounts with an approved bank.

Client bank
accounts

(2) A client bank account must be kept segregated from any account holding money belonging to the licensee.

(3) A licensee must immediately pay into a client bank account all client money coming into its hands for or from a client.

(4) A licensee must keep records of –

- (a) all amounts paid into a client bank account kept by the licensee, specifying the persons on whose behalf the amounts

are held and the dates on which they were paid into the account;

- (b) all withdrawals from a client bank account, the dates of those withdrawals, and the names of the persons on whose behalf the withdrawals are made; and
- (c) any other particulars that may be determined by the Authority.

Accounting
for and use of
client money

32. A licensee must account properly and promptly for client money and, in particular, must ensure that—

- (a) client money and other money do not become mixed;
- (b) the licensee can at all times be sure how much client money stands to the credit of each client; and
- (c) money belonging to one client is not used for another client.

Payment out
of a client
bank account

33. (1) Subject to sub-regulation (2), money may be withdrawn from a client bank account only if—

- (a) it is not client money;
- (b) it is properly required for payment to or on behalf of a client; or
- (c) it is properly transferred to another client bank account or into a bank account in the client's own name.

(2) A licensee may withdraw money from a client bank account for or towards payment of its own fees or commission only if the fees or commission accord with the arrangements agreed with the client.

MADE this 8th day of July 2008.

**DANNY FAURE
MINISTER FOR FINANCE**