

Reg. 21 of 1998

**THE SECURITIES INDUSTRY ACT  
(CONDUCT OF BUSINESS)  
REGULATIONS**

*made under section 126(1) and 126(7)*

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## **THE SECURITIES INDUSTRY ACT (CONDUCT OF BUSINESS) REGULATIONS**

### **PRELIMINARY**

Citation.

1. These Regulations may be cited as the Securities Industry (Conduct of Business) Regulations.

Interpretation.

2. In these Regulations –

"approved bank" means a bank licensed under the Financial Institutions Act and which is approved by the Council for the purposes of these Regulations;

"customer bank account" means a bank account established for the purposes of regulation 31;

"discretionary management" means the management of a portfolio of securities where the manager has been granted discretionary powers to select investments and buy and sell them without the prior consent of the company;

"money" includes any form of money, whether represented by a cheque or other payable order, or otherwise.

Independence.

#### CODE OF BUSINESS CONDUCT

3. Where a registered person is advising or acting for a customer the registered person shall ensure that any claim made as to the independence or impartiality of the registered person adequately includes any limitation that there may be on either.

Material interest.

4. Where a registered person has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the registered person shall not knowingly either advise, or deal in the exercise of a discretion, in relation to that transaction unless the registered person has —

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

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

Inducements

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Fair and clear communication      5. A registered person must take reasonable steps to ensure that neither the registered person nor any of the registered person's employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

Customers' understanding of risk.      6. A registered person shall take reasonable steps to ensure that any agreement, written communication, notification or information that the registered person gives or sends to customers to whom the registered person provides securities investment services is presented fairly and clearly.

7. A registered person shall not —

(a) recommend a transaction to a customer, or effect a transaction with or for the customer, unless the registered person has taken all reasonable steps to enable the customer to understand the risks involved;

Information about the registered person.      (b) knowingly mislead a customer as to any advantages or disadvantages of a contemplated transaction; or

(c) promise a return unless such return is contractually guaranteed.

Charges.      8. A registered person shall take reasonable steps to ensure that a customer to whom the registered person provides services is given adequate information about the registered person's address and the identity and status, within the registered person's firm, of employees and other relevant representatives with whom the customer has contact.

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

Customer agreements.

(2) Before a registered person provides securities services to a customer the registered person shall disclose to the customer the basis or amount of the registered person's charges for the provision of those services and the nature of and amount of any other remuneration receivable by the registered person and attributable to them.

10. (1) Where a registered person provides securities investment services to a customer on written contractual terms (whether pursuant to regulation 11 or otherwise), the agreement shall set out in adequate detail the basis on which those services are provided.

Where customer agreement required.

(2) A court of competent jurisdiction may, if the court considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this regulation, but no such order shall affect any dealing or transaction entered into or carried out by the registered person on behalf of the customer.

11. (1) No registered person shall undertake —

- (a) the discretionary management of a portfolio;
- (b) transactions in futures and options; or
- (c) any other type of business that is prescribed by the Council,

except under a written agreement between the

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registered person and the customer duly signed by the customer and returned to the registered person.

Customers'  
rights

(2) The Council may from time to time prescribe special procedures relating to the operation of discretionary accounts and every registered person shall follow such special procedures or shall ensure that such special procedures are followed.

**12.** (1) A registered person shall not, in any written communication or agreement, seek to exclude or restrict —

- (a) any duty or liability to a customer which the registered person has under any law or under any rules made by the Council;
- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to the customer 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 the registered person in the provision of securities services.

Suitability

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

Contract notes.

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

14. (1) A registered person shall, in respect of every contract for the purchase, sale or exchange of securities entered into by the registered person (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with the requirements of paragraph (2) and-

- (a) where the contract was entered into by the registered person as agent, deliver the original contract note to the person on whose behalf the registered person entered into the contract; or
- (b) where the contract was entered into by the registered person as principal, retain the contract note for itself.

(2) The contract note shall state whether it is in respect of a purchase, sale or exchange of securities and shall include —

- (a) the name of the registered person and the address of the principal place at which the registered person carries on

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business;

- (b) where the registered person is acting as principal, a statement that the registered person is so acting;
- (c) the name and address of the person (if any) to whom the registered person is required to give the contract note and (where different) the name of the person for whom the transaction was undertaken;
- (d) the date of the contract, and the date on which the contract note is made out;
- (e) the quantity and description of the securities the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of consideration payable under the contract or, in the case of an exchange, sufficient particulars of the securities exchanged to identify them;
- (h) the rate or amount of commission payable in respect of the contract;
- (i) the amount of stamp duty (if



any), payable in connection with the contract and, where applicable, in respect of the transfer;

- (j) the date of settlement; and
- (k) such other information as may be prescribed by the Council to ensure that there shall be a complete audit trail in respect of the execution of customer instructions and the settlement of market transactions.

Periodic information.

15. Where a registered person acts as an investment manager for a customer, the registered person 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, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

Customer order priority.

Timely execution.

16. A registered person shall always give priority to outstanding customer orders.

Best execution.

17. Where a customer order has been received, or a registered person has decided in its discretion to effect a customer order, the registered person shall effect the execution of the order without delay.

Timely allocation.

18. Where a registered person deals for a customer, the registered person shall deal on the terms which are the best available to the customer.

Fair allocation.

19. A registered person shall ensure that a transaction the registered person executes is allocated

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forthwith.

20. Where a registered person has aggregated an order for a customer transaction with an order for an own account transaction, or with an order for another customer transaction, then in the subsequent allocation –

(a) the registered person shall not give unfair preference to the registered person or to any of those for whom the registered person dealt; and

Front running.

(b) if all orders cannot be satisfied, the registered person shall give priority to satisfying orders for customer transaction

21. Where a registered person has a large customer order to execute, or where the registered person intends to publish to customers a price-sensitive recommendation or research or analysis, the registered person shall not knowingly effect an own account transaction in the investment concerned or in any related investment until the large order has been executed or 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.

Churning.

22. A registered person shall not –

(a) deal or arrange a deal in the exercise of the registered person's discretion for any customer; or

Insider dealing.

(b) advise a customer to deal,

if the dealing could in the circumstances reasonably be regarded as too frequent or too large.

Safeguarding of  
customer  
investments.

**23.** A registered person shall take reasonable steps to ascertain if any of the registered person's customers is an insider and maintain records accordingly to assist in the monitoring of insider dealing.

**24.** A registered person who has custody of a customer's securities in connection with or with a view to effecting securities business shall—

(a) keep safe, or arrange for the safekeeping of, every document of title, or document evidencing title, relating to them; and

Complaints

(b) ensure that any security that the registered person buys or holds for a customer are properly registered in the name of the customer or, with the consent of the customer, in the name of an appropriate nominee.

Customer  
confidentiality.

**25.** A registered person shall establish internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action relating to those complaints is promptly taken.

**26.** (1) Subject to paragraph (2), all information in the possession of a registered person relating to a customer shall be kept confidential by the registered person.

Unsolicited calls.

(2) A registered person may disclose information relating to a customer when duly required to do so by the Council, or if the registered person is

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ordered to do so by a court of competent jurisdiction.

Cessation of  
business.

27. (1) Subject to paragraph (2), no person shall, for the purposes of soliciting securities business, make an unsolicited telephone call, or attend at any address without first being invited by an occupant.

(2) Paragraph (1) does not apply in relation to existing customers.

28. Where a registered person decides to cease to carry on securities business the registered person shall—

- (a) forthwith notify the Council and each of the registered person's customers of such decision;
- (b) ensure to the satisfaction of the Council that any such business which is outstanding is properly completed or transferred to another registered person.

Application.

### CUSTOMER MONEY

29. (1) These Regulations shall apply to any customer money held or received by a registered person in the course of carrying on the registered person's securities business.

Customer  
money.

(2) For the purpose of these Regulations, "customer money" is money of any currency which, in the course of carrying on a registered person's securities business, the registered person holds or receives on behalf of a customer or which the registered person owes to a customer.

30. (1) Customer money shall be held by the registered person on trust for and on behalf of the respective customers for whom that customer money is received or held according to their respective shares in it.

Customer bank accounts.

(2) Customer money shall not form part of the assets of the registered person for any purpose and shall not be available in any circumstances for payment of any debt of the registered person.

31. (1) A registered person who receives or holds customer money shall open one or more customer bank accounts with an approved bank.

(2) A customer bank account shall be kept segregated from any account holding money belonging to the registered person.

(3) A registered person shall forthwith pay into a customer bank account all customer money coming into the registered person's hands for or from a customer.

(4) A registered person shall keep records of—

- (a) all amounts paid into a customer bank account kept by the registered person, specifying the persons on whose behalf the amounts are held they were paid into the account;
- (b) all withdrawals from a customer bank account, the dates of those withdrawals, and

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the names of the persons on whose behalf the withdrawal is made; and

Accounting for and use of customer money.

- (c) such other particulars as may be required by the Council.

32. A registered person shall promptly for customer money and, in particular, shall ensure that—

- (a) customer money and other money do not become mixed;
- (b) the registered person can at all times mount of customer money standing to the credit of each customer; and

Payment out of a customer bank account.

- (c) money belonging to a customer is not used for another customer.

33. (1) Subject to paragraph (2), money may be withdrawn from a customer bank account only if—

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

(2) a registered person may withdraw money from a customer bank account for or towards payment of the registered person's own fees or commission only if the fees or commissions accord

Appointment of auditor. with the arrangements agreed with the customer.

## AUDITORS

34. A registered person shall ensure that the auditor appointed under the Securities Industry (Accounting and Financial Statements) Regulations 2002 has the powers reified in regulation 35 and that—

- (a) those powers and duties are set out in a letter of appointment;
  - (b) the letter of appointment is signed by the registered person and the auditor; and
  - (c) the registered person retains a copy of the letter of appointment.
- Powers and duties of auditors.

35. (1) An auditor shall have—

- (a) a right of access at all reasonable times to the accounting and other records of the registered person and all other documents relating to the registered person's business; and
- (b) a right to require from the registered person such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(2) An auditor shall submit a report to the Council on the annual financial statements in

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accordance with these Regulations and the report shall state the matters specified in regulation 18 of the Securities Industry (Accounting and Financial Statements) Regulations 2002.

(3) In preparing an auditor's report for the purposes of these Regulations, the auditors shall carry out such investigations as will enable the auditor to form an opinion on the matters requires by regulation 18 of the Securities Industry (Accounting and Financial Statements) Regulations 2002 to be stated in the auditor's report.

Notification to  
Council.

Resignation or  
removal of  
auditors.

**36.** A registered person shall, within seven days, give a written notice to the Council of the appointment, removal or resignation of an auditor.

**37.** (1) Where an auditor resigns or is removed by a registered person, a notice to that effect sent to the Council under regulation 36 shall contain either —

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the attention of the Council; or
- (b) a statement signed by the auditor of such circumstance as are mentioned in subparagraph (a).

(2) Where a registered person fails to appoint an auditor at the end of the auditor's term of office, the Council is authorised to appoint an auditor.

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