SUBSIDIARY LEGISLATION

THE SECURITIES (CONDUCT OF BUSINESS) RULES

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SECTION 48-SECURITIES (CONDUCT OF BUSINESS) RULES

Statutory Instrument 168 *of* 1993

PART I

PRELIMINARY

1. These Rules may be cited as the Securities (Conduct of Business) Rules. Title

2. In these Rules, unless the context otherwise requires- Interpretation

"advertisement" includes every form of advertising, whether in a publication, brochure or handout, or by the display of notices or by means of circulars or other documents, or by an exhibition of pictures or photographic or cinematographic films or videos, or by way of sound broadcasting or television or by the distribution of recordings or in any other manner;

"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 or 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 subsidiary legislation made thereunder or directions given by the Commission.

3. (1) These Rules, which include the statements of principle in Part II, apply in relation to all licensees in respect of their securities business. Application

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

PART II

STATEMENTS OF PRINCIPLE

4. In his conduct of securities business, a licensee shall at all times act according to the principles of best practice and, in particular, shall-

Principles of best practice

(a) observe high standard of integrity and fair dealing;

(b) act with due skill, care and diligence;

(c) observe high standards of market conduct;

(d) seek from customers information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling him to fulfil a licensee's responsibilities to his customer;

(e) take reasonable steps to give every customer he advises, in a comprehensible and timely way, any information needed to enable the customer to make a balanced and informed investment decision;

(f) avoid any conflict of interest with his customers and, where such a conflict unavoidably arises, to ensure fair treatment to his customer by complete disclosure or by declining to act; furthermore he should never unfairly place his interests above those of his customers;

(g) protect properly, by way of segregation and identification, those customer assets for which a licensee is properly responsible;

(h) maintain adequate financial resources to meet his securities business commitments and withstand the risk to which his business is subject;

(i) organise and control his internal affairs in a responsible manner;

(j) keep proper records;

(k) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and

(l) deal with the Commission in an open and co-operative manner and keep the Commission informed of anything concerning the licensee that might reasonably be expected to be disclosed to it.

PART III

CONDUCT OF BUSINESS

5. Where a licensee is advising or acting for a customer-

Independence

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

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

6. Where a licensee 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 licensee shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless he has-

Material Interest

(a) fairly 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.

7. A licensee must take reasonable steps to ensure that neither he nor any of his employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

Inducements

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

Issue of advertisements

(a) the contents and presentation of the advertisement are demonstrably fair and not misleading;

(b) the advertisement discloses fairly the risks concerned.

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

Identification of issuer

10. (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 that he believes on reasonable grounds that the communication is fair, comprehensive and not misleading.

Fair and clear communications

(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.

11. A licensee shall not-

Customer's understanding of risk

(a) recommend a transaction to a customer, or effect a discretionary transaction with or for him, unless he has taken all reasonable steps to enable the customer to understand 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.

12. 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 with whom the customer has contact.

Information about the licensee

13. Before or when making a personal recommendation to a customer to invest in a collective investment scheme, a licensee shall give him-

Information about collective investment schemes

(a) information about the scheme which is adequate to enable him to make an informed investment decision;

(b) appropriate written particulars.

Representatives of licensee

14. (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.

Where written customer agreement required

15. (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 Commission,

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

(2) The Commission 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 or shall secure that such special procedures are followed.

Customer agreements

16. (1) Where a licensee provides securities services to a customer on written contractual terms (whether pursuant to rule 15 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.

Customers' rights

17. (1) 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 subsidiary legislation 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 by this rule shall be void and of no effect.

18. 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 of which the licensee is or ought reasonably to be aware. Suitability

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

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

20. (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 note containing the essential details of the transaction in accordance with section *forty-one* of the Act. Confirmation and periodic information

(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, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

21. A licensee shall deal with customer and own account orders fairly and in due turn. Customer order priority

22. 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. Timely execution

23. 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. Best execution

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

25. Where a licensee 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-

Fair 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.

26. 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.

Front running

27. A licensee shall not-

Churning

(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.

28. A licensee shall not knowingly profit or seek to profit, either for his own account, the account of a customer or any third party, from inside information in the hands of any of his officers, employees or agents, or assist anyone with such information to make a profit for himself.

Insider dealing

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

Safeguarding of customer investment

(a) keep safe, or arrange for the safekeeping of, any documents of title, or documents evidencing title, relating 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, in the name of an appropriate nominee.

30. 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.

Complaints

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

Compliance

(a) his officers, employees and other representatives are aware of their obligations under the Act and any subsidiary legislation made thereunder, and that they act in conformity with them; and

(b) sufficient information is recorded and retained about his securities business and compliance with the regulatory system.

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

Supervision

32. 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.

Customer confidentiality

33. (1) Subject to subrule (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 Commission, 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.

Cessation of business

34. Where a licensee decides to withdraw from securities business he shall-

(a) forthwith notify the Commission and each of his customers of such decision; and

(b) ensure to the satisfaction of the Commission that any such business which is outstanding is properly completed or transferred to another licensee.

Suspension or revocation of licence

35. A licensee who contravenes any of the provisions of these Rules shall be guilty of an offence and his licence shall be liable to suspension or revocation under section *twenty-four* of the Act.

SECTION 78-THE SECURITIES (TRANSITIONAL) RULES.

Statutory Instrument 169 *of* 1993

Title

1. These Rules may be cited as the Securities (Transitional) Rules.

Interpretation

2. In these Rules, unless the context otherwise requires, "collective investment scheme" has the same meaning as in section *seventy-two* of the Act.