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## PART 7

### CONDUCT OF BUSINESS

#### CHAPTER 1

##### *General requirements for all licenceholders*

### **7.1 Application**

Except where otherwise expressly provided, and so far as applicable, this Chapter applies to all licenceholders.

##### *Conduct of business — general*

### **7.2 Skill, care and diligence**

A licenceholder must act with due skill, care and diligence in carrying on regulated activities.

### **7.3 Responsible behaviour in dealings by officers etc.**

A licenceholder must have procedures for ensuring that any regulated activity carried on by any of its officers or employees —

- (a) is done openly and fairly;
- (b) complies with any applicable law or regulations relating to that activity in the Isle of Man or another country or territory;
- (c) avoids in so far as is practical, any conflict of interest, and requires disclosure of any conflict of interest that it has not been able to avoid; and
- (d) does not result in any undisclosed private benefit to the person concerned.

### **7.4 Responsible behaviour**

(1) A licenceholder must have procedures for requiring those seeking to obtain business on its behalf —

- (a) to do so in a way which is clear, fair and not misleading;
- (b) to be civil and considerate;
- (c) to avoid any undue pressure; and
- (d) to make clear the purpose (or purposes) of the contact at the initial point of communication, and to identify himself and the licenceholder which he represents to clients and potential clients.

(2) A licenceholder must not communicate with a client —

- (a) at an unsocial time unless such communication has been previously agreed; or
- (b) on an unlisted telephone number, unless the person has previously agreed to such calls on that number.

- (3) The licenceholder must give any recipient with whom he arranges an appointment a contact point.
- (4) For the purpose of paragraph (2), "unsocial hour" means —
- (a) before 9.00 am or after 9.00 pm in the recipient's time zone;
  - (b) any day or any time —
    - (i) where the licenceholder knows that the person concerned does not wish to be called on that day or at that time; or
    - (ii) where the licenceholder has reason to believe that the person concerned would not wish to be called on that day or at that time (for example, because of religious observance or working patterns).

### **7.5 Introductions to overseas branches etc.**

A licenceholder who introduces a retail client to a business which is located outside the Island must —

- (a) disclose to the retail client in writing that the business will not be regulated under the Financial Services Act [2007]; and
- (b) inform the client of any system of regulation applying to the business in the country or territory where it is located.

### **7.6 Supervision**

(1) A licenceholder must establish procedures to ensure the adequate supervision of its employees and tied agents so as to prevent their acting beyond their experience or competence.

(2) A licenceholder must maintain appropriate records relating to the training, experience and qualifications of its employees and tied agents, showing the types of activity which they are competent to conduct.

### **7.7 Action likely to bring Island into disrepute**

A licenceholder must not carry on business of such a kind or in such a way as may be likely to bring the Island into disrepute or damage its standing as a financial centre.

#### *Integrity and fair dealing*

### **7.8 Integrity and fair dealing**

- (1) A licenceholder must —
  - (a) observe high standards of integrity and fair dealing in carrying on regulated activities; and
  - (b) comply with any applicable code or standard which is in issue or endorsed by any professional body or investment exchange on which the licenceholder does business.
- (2) Rules 7.99 to 7.133 are without prejudice to the generality of paragraph (1).

## **7.9 Informed decisions**

A licenceholder must —

- (a) take all reasonable steps to enable its clients to take informed decisions; and
- (b) avoid misleading or deceptive representations or practices.

## **7.10 Independence**

(1) A licenceholder —

- (a) must not claim that 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 which there may be on either.

(2) Without prejudice to paragraph (1), a licenceholder must not represent itself as acting independently if it has any relationship or arrangement with any other person which —

- (a) brings any distortion into the way in which it conducts its business with a client; or
- (b) results in an advantage to the licenceholder, or a disadvantage to the client, in any business done with that person.

## **7.11 Gifts and other benefits**

A licenceholder must not —

- (a) offer or receive; or
- (b) permit any employee or agent to offer or receive,

any gift or other direct or indirect benefit, if to do so might adversely influence the giving of advice by, or the exercise of discretion on the part of, the licenceholder.

## **7.12 Remuneration**

A licenceholder's remuneration must be directly related to —

- (a) the services provided; and
- (b) the disclosed relationship between the licenceholder and the client.

### *Conflicts of interest*

## **7.13 Conflicts of interest — general (see also rules 9.28 and 9.29)**

Where a conflict of interest arises, between the licenceholder (including relevant persons) and its clients or between one client and another, the licenceholder must promptly notify, in writing, each of the clients concerned of this fact.

## *Advertisements*

### **7.14 Advertisements — general**

A licenceholder must not publish or cause or permit to be published -

- (a) any advertisement for a product or service unless it contains a fair and accurate description of the product or service;
- (b) any advertisement that hides, diminishes or obscures important statements or warnings;
- (c) any advertisement which might damage the good reputation of the Island; or
- (d) any advertisement that makes a prediction or forecast of future income unless it is based on and consistent with present conditions and includes a warning that past performance is not an indicator of future performance.

### **7.15 Reference to licensing**

(1) A licenceholder must not publish or cause or permit to be published any advertisement (other than an advertisement which does not mention or relate to a regulated activity) unless it —

- (a) states in a prominent position —
  - (i) that the licenceholder is licensed by the Commission; and
  - (ii) the type or types of regulated activity which it is authorised to carry on; and
- (b) states the business name of the licenceholder and its principal business address in the Island.

(2) A licenceholder must in all correspondence and other documents issued or published by it (including business cards, emails, websites, terms of business and client agreements) state in a prominent position —

- (a) that it is licensed by the Commission; and
- (b) the type or types of regulated activity which it is authorised to carry on.

(3) The statement under paragraph (1)(a) and (2)(a) must be in the following form —

*"Licensed by the Isle of Man Financial Supervision Commission to [take deposits] [provide [investment][collective investment scheme][corporate][trust] services]"*

as the case may be.

- (4) This rule does not apply to —
  - (a) cheques, cheque books or paying in books;
  - (b) statements;
  - (c) cheque guarantee, charge, debit or credit cards or cards of a similar nature.

## *Miscellaneous*

### **7.16 Display of licence**

(1) A licenceholder must prominently display page one of its licence in its principal place of business in the Island.

(2) A licenceholder must provide to clients on request, information regarding the conditions attached to its licence together with details of any rule waivers or modifications.

## *CHAPTER 2*

### *General requirements for deposit takers*

### **7.17 Application**

Except where otherwise expressly provided, and so far as applicable, this Chapter applies to all licenceholders authorised to carry on regulated activities falling within Class 1.

## *Advertisements*

### **7.18 Reference to compensation scheme in advertisements**

(1) A licenceholder must not publish or cause or permit to be published any advertisement which states or implies that any deposits or interest will be guaranteed, secured, insured or the subject of any form of protection (other than that provided by regulations under section 25 of the Act) unless it states —

- (a) the form of the protection;
- (b) the extent of the protection; and
- (c) the full name of the person who will be liable to meet any claim by the depositor by virtue of the arrangements conferring the protection.

(2) A licenceholder which is not a participant in a scheme established by regulations under section 25 of the Act must not publish or cause or permit to be published any advertisement which refers to its deposit taking business or contains an invitation to make deposits unless it states in a prominent position that the licenceholder is not a participant in that scheme.

## *CHAPTER 3*

### *General requirements for all investment service providers*

### **7.19 Application**

Except where otherwise expressly provided, and so far as applicable, this Chapter applies to all licenceholders authorised to carry on regulated activities falling within Class 2.

## **7.20 Inducements**

(1) A licenceholder must not recommend to a *retail client* a transaction if the recommendation is motivated largely by a benefit which it may bring to the licenceholder, unless the transaction is demonstrably to the client's advantage.

(2) In this rule "benefit" includes a volume override (that is, an extra commission for generating additional trades).

## **7.21 Churning**

A licenceholder must not effect transactions with unnecessary frequency or in excessive size with or for a client for whom the licenceholder exercises discretion as to how the client's funds are invested.

## **7.22 Valuation of investments which are not marketable**

(1) This rule applies where a licenceholder manages investments on behalf of a client and the amount of any remuneration of the licenceholder is dependent upon the value of any such investments.

(2) The valuation of any investment which is not readily marketable, or for which information for determining their current value may not be available, must be on the basis of an arm's length valuation which has been —

- (a) prepared by or confirmed as an arm's length valuation by an independent and competent person; or
- (b) agreed expressly with the client at the time that the management agreement is signed.

## **7.23 Front running**

A licenceholder must not enter, or permit any person associated with the licenceholder to enter, into an investment transaction ahead of a client, if that client ought to have priority.

## **7.24 Fairness in allocation**

Where, on an allocation of stock or other investments, there is not enough to go round, the licenceholder must always —

- (a) allocate what it has fairly and uniformly; and
- (b) put itself last unless its participation in the transaction enabled everyone to get a better deal.

## **7.25 Distribution of transactions among clients**

A licenceholder must not allocate or transfer to any client any deal (or part of a deal) in an investment which it entered into as principal unless —

- (a) the allocation or transfer was unconditionally decided upon in principle before the deal was done; or
- (b) the investment has improved in value since the deal, the licenceholder is satisfied that the investment is suitable for the client and the client obtains the benefit of best execution and of the improvement in value.

## *Skill, care and diligence*

### **7.26 Skill, care and diligence**

Rules 7.277 to 7.333 are without prejudice to rule 7.2.

### **7.27 Prompt and timely execution**

(1) A licenceholder must act promptly in accordance with its instructions, unless —

- (a) it has been given a discretion as to timing; and
- (b) it uses that discretion in an appropriate way.

(2) Instructions and decisions to buy or sell must be recorded as soon as taken, with the date and, whenever possible, the time.

### **7.28 Best execution**

(1) Subject to paragraph (2), a licenceholder must not transact business for a client on worse terms than it would expect to obtain for itself, allowing for the size of the transaction.

(2) Where a licenceholder effects a transaction through —

- (a) another licenceholder; or
- (b) a person authorised and regulated by the Financial Services Authority in the United Kingdom,

it may rely upon that person to obtain best execution provided that the client has accepted those arrangements in writing.

### **7.29 Fairness with research or analysis**

A licenceholder must not —

- (a) deal for itself or any person associated with it ahead of the distribution of its own or an associate's research or analysis and with advance knowledge of anything that might possibly be price sensitive in it; or
- (b) distribute research or analysis containing recommendations from which a licenceholder expects to benefit (including by way of past or future principal transactions, or because of a material interest) unless the anticipated source of benefit is disclosed; or
- (c) otherwise behave unfairly in the way in which it acts upon its own or an associate's research or analysis.

### **7.30 Knowledge of client**

(1) Before providing investment services, a licenceholder must find out enough about *a retail investor's* personal and financial circumstances, including his investment objectives and risk attitude where relevant, to enable it to act properly for him in investment matters.

(2) This rule does not apply in the case of an *execution-only client*.

### **7.31 Suitability**

A licenceholder must ensure, as far as it can, —

- (a) in making recommendations to a client;
- (b) in exercising discretion; and
- (c) in advising about the client's instructions,

having taken reasonable steps to inform itself of what is available on the market, —

- (i) that any transaction is not unsuitable for the client; and
- (ii) if he is a *retail investor*, that it is positively suitable for him.

### **7.32 Life policies and collective investment schemes**

(1) This rule applies to the following investments —

- (a) a life policy;
- (b) units in a collective investment scheme.

(2) A licenceholder must not —

- (a) recommend to any client; or
- (b) effect on behalf of a client,

the acquisition of an investment to which this rule applies unless it is satisfied —

- (i) that it will be suitable for the client; and
- (ii) that it does not compare unfavourably with competing products.

(3) A licenceholder must not —

- (a) recommend to any client; or
- (b) effect on behalf of a client,

a switch of investments to which this rule applies unless it —

- (i) reasonably believes that the switch will be to the client's advantage; and
- (ii) records the basis of that belief at the time of the switch and can demonstrate this to the Commission, if required.

### **7.33 Restriction on authority conferred by product companies**

A licenceholder must prohibit by the terms of employment or contract its employees and tied agents who are authorised to canvass for business from canvassing for or advising about life policies or collective investment schemes other than its own.

## *Disclosure and information*

### **7.34 Disclosure and information**

A licenceholder must take all reasonable steps to ensure that a retail investor is given sufficient information which he is able to understand to enable him to make balanced and informed investment decisions.

### **7.35 Understanding of risk**

- (1) A licenceholder must not —
  - (a) recommend a transaction to a retail investor; or
  - (b) act as a discretionary manager for a retail investor,

unless it has taken reasonable steps to ascertain the level of risk appetite of the retail investor and to enable him to understand the nature of the risks involved.

- (2) Without prejudice to the generality of paragraph (1), a licenceholder must not —
  - (a) advise a retail investor to deal, or deal with or for him, in futures or options, contracts for differences or unregulated collective investment schemes, unless it has arranged for the client to receive (and the client has, by returning a signed copy, shown that he has received and understood) a risk disclosure statement containing the matters specified in Appendix A or the investor has declared in writing that he is a professional investor; or
  - (b) advise him to buy or effect in the exercise of discretion any purchase of an illiquid investment or one which is not readily realisable, unless it has informed the client of the nature and extent of the risks involved in such investments, including any difficulties in determining their value, and has obtained his written consent.

### **7.36 Disclosure of product particulars**

(1) A licenceholder must ensure that, before or immediately after a recommendation is made by it or on its behalf to acquire an investment to which rule 7.322 applies, and prior to executing an order, a retail investor is given or sent a statement, prepared by the licenceholder or the product company, which informs him of —

- (a) details of the investment;
- (b) premiums or other amounts payable then and in the future;
- (c) the factors relevant to the ultimate value of the investment or benefits payable under it;
- (d) the consequences of not keeping up the payments; and
- (e) any surrender or transfer value.

(2) This rule does not apply where the licenceholder is acting under the terms of a *discretionary management agreement*.

### **7.37 Disclosure of conflicts of interest**

(1) Where the licenceholder's conflicts of interest policy is not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of its clients will be prevented, a licenceholder must clearly disclose the general nature or sources, or both, of conflicts of interest to the client before carrying on any activity on its behalf.

(2) The disclosure required by paragraph (1) must —

- (a) be in writing; and
- (b) include sufficient detail, taking into account the nature of the client, to enable him to take an informed decision with respect to the activity in the context of which the conflict of interest arises.

(3) Where a conflict of interest may arise in the personal account dealing of an employee of a licenceholder, the licenceholder must take reasonable steps to ensure —

- (a) the employee is given a written notice (“the “Personal Account Notice”) setting out the requirements contained in Schedule 1 and ensure that the employee enters into a written undertaking with the licenceholder to observe the requirements of the Personal Account Notice; and
- (b) the licenceholder must establish and maintain compliance procedures and appropriate arrangements to mitigate the potential for conflicts of interest.

#### *Client agreement — terms of business*

### **7.38 General need for client agreement or terms of business**

(1) A licenceholder must not carry on any regulated activity, to which this chapter applies, for a client unless either —

- (a) it has entered into a written agreement (a "client agreement" or “terms of business”) with the client relating to the services it provides; or
- (b) it has notified the client in writing of its terms of business relating to those services.

(2) A client agreement or terms of business must —

- (a) set out the basis on which the licenceholder is to provide its services;
- (b) be clear and not misleading; and
- (c) not deprive the client of any rights which he would have had if the agreement or terms had not existed.

(3) The client agreement must be signed by the client before any regulated activity to which this chapter applies is undertaken.

(4) The terms of business must be provided to the client before any regulated activity to which this chapter applies is undertaken.

(5) A licenceholder must retain —

- (a) a copy of the client agreement, signed by the client; or

- (b) evidence of a notification under paragraph (1)(b).
- (6) In rules 7.400 to 7.455 references to a client agreement include references to terms of business notified under paragraph (1)(b).

### **7.39 Retail and professional investors**

- (1) Unless the client agreement specifies to the contrary, the client shall be deemed to be a *retail investor*.
- (2) If the client agreement specifies that the client is not a retail investor, the licenceholder must inform him in writing that the level of protection afforded to him is lower than that offered to a retail investor.
- (3) No client agreement is required for the issue of any tipsheet, broker's circular or similar publication.
- (4) No client agreement is required for —
  - (a) transactions not involving undue risk which are made while negotiations leading to a client agreement are taking place; and
  - (b) transactions made after an agreement has expired or been brought to an end solely to complete outstanding obligations.

### **7.40 Matters to be disclosed in a client agreement or terms of business**

Every client agreement must —

- (a) provide information on all relevant facts relating to the licenceholder's remuneration (including the remuneration of any intermediary which is payable by the client) attributable to the services provided;
- (b) state that the client may request details of the amount of remuneration being received by the licenceholder;
- (c) state that the client has the right to request details of the educational qualifications, experience and track record of —
  - (i) the licenceholder; and
  - (ii) any employee of the licenceholder engaged in providing services to the client;
- (d) state that the licenceholder will not advise a client to use the services of another person who is an *associate* of the licenceholder without disclosing that relationship;
- (e) where the licenceholder is a tied agent of the institution by which a financial product recommended to the client is marketed, disclose that relationship; and
- (f) state how interest received on client money is to be dealt with, in accordance with rule [4.13] [*client money part*].

### **7.41 Terms to be included in client agreement with a retail investor**

- (1) A client agreement with a *retail investor* must include terms relating to the following matters —

- (a) the nature of the services to be provided by the licenceholder under it, including, where appropriate, the client's investment objectives and any restrictions on investments or markets in which funds may be invested;
  - (b) in respect of any fees payable by the client to the licenceholder —
    - (i) the basis of calculation;
    - (ii) the notice required for any increase of fees;
    - (iii) the method of payment (e.g. deduction or billing);
    - (iv) the frequency of payment; and
    - (v) whether or not any fees payable are to supplement or be abated by any remuneration receivable by the licenceholder in connection with transactions effected by the licenceholder with or for the client;
  - (c) the fact that the licenceholder is regulated by the Commission in the conduct of regulated activities;
  - (d) the manner in which the instructions may be given by the client for any transaction;
  - (e) the arrangements for handling and accounting for client money, specifying how the money is at all times separated from the licenceholder's money;
  - (f) the arrangements for registration and identification of ownership and safe custody of documents of title and the name of any nominee company used;
  - (g) the client's right to inspect copies of contract notes, vouchers and entries in books or electronic recording media relating to the clients' transactions, together with a statement that such records will be maintained for 6 years from the date of the transaction;
  - (h) arrangements for bringing the agreement to an end, which must include the right for the client to terminate the agreement on immediate written notice; and
  - (i) details of the licenceholder's conflicts of interest policy.
- (2) Where a licenceholder is effecting *margined transactions* on behalf of a retail investor, the agreement must include —
- (a) a warning that the licenceholder in certain circumstances may be required to obtain additional money from the client by way of margin;
  - (b) where the licenceholder intends to effect contracts which are not traded on and under a *recognised or designated exchange*, the specific authority of the client to do so;
  - (c) a statement of when a deposit or margin (including the initial and variation margin) may be required and the licenceholder's rights on failure to pay;

- (d) a warning that failure to meet margin calls may lead to closing out without reference;
- (e) a statement of the circumstances in which it might be possible for a licenceholder to close out without reference to the client.
- (3) The terms of the client agreement relating to fees must not —
  - (a) provide for notice of less than one month for an increase in fees;
  - (b) provide for deduction of fees from income or capital belonging to a client without prior notification to the client, in accordance with a procedure specified in the agreement.
- (4) This paragraph is without prejudice to rule 7.400.

#### **7.42 Discretionary management agreement**

- (1) Where a licenceholder is to exercise discretion for a retail investor in the management of investments, the client agreement must include statements as to —
  - (a) whether or not there is any restriction on —
    - (i) the categories of investment in which the fund may be invested; or
    - (ii) the amount or the proportion of the fund which may be invested in any category of investment or in any one investment,
 and, if so, what the restriction is;
  - (b) the frequency with which the client is to be supplied with a statement of the money and investments held and a valuation of them, and what the basis of valuation is to be;
  - (c) if the agreement is to include a measure of portfolio performance, the basis on which that performance is to be measured;
  - (d) whether hedging or borrowing powers are to be used, the nature of such powers and limits upon their use;
  - (e) whether the licenceholder may lend investments to or borrow investments from third parties or charge investments to secure borrowings, how such powers are to be exercised and the limits placed upon them;
- (2) The licenceholder must provide the client with a statement showing the initial composition of the investments and their initial value (so far as it can be ascertained) at the time that the client agreement is signed or as soon as practicable thereafter.
- (3) Where investment is contemplated in areas involving *higher risk investments* on behalf of a retail investor, including —
  - (a) writing of options and doing business in futures and contracts for differences;
  - (b) other margined transactions;
  - (c) illiquid investments; and
  - (d) participation in underwriting securities,

the agreement must specifically state whether such transactions are permitted and any limits on the category of investment or on the financial commitment involved.

#### **7.43 Compliance with client agreement**

A licenceholder must comply with the terms of the client agreement in all dealings with or on behalf of a client.

#### **7.44 Periodical information**

(1) Subject to paragraph (2), a licenceholder which is managing investments for a client must normally account to him at least once in every 6 months as to the investment performance of the portfolio, stating —

- (a) the current valuations;
- (b) a suitable comparison with the movement of the market; and
- (c) any changes in the composition of the investments.

(2) A client may expressly waive the requirement for a biannual report in favour of an annual report, but before he does so the licenceholder must make the client aware that he is entitled to receive information every 6 months.

#### **7.45 Penalty on termination**

Where the client is a retail investor, the client agreement may provide for an additional payment to be made to the licenceholder upon the termination of the agreement, but this must be clearly disclosed in the client agreement.

#### *Futures, options and contracts for differences*

#### **7.46 Risk warning**

(1) A licenceholder must secure, before it enters into any transaction in futures, options and contracts for differences with or for a *retail investor*, that the investor receives, signs and returns to the licenceholder a risk disclosure statement containing the matters specified in Appendix A.

(2) This rule does not apply where the licenceholder is acting under the terms of a *discretionary management agreement*.

#### **7.47 Contracts to be on-exchange**

(1) A licenceholder must not undertake a *margined transaction* on behalf of a client through another person unless that person is either —

- (a) another licenceholder authorised to carry on that activity; or
- (b) an overseas person authorised in the country or territory in which it carries on business to undertake such transactions who is required to hold clients' money received in relation to such transactions in a segregated bank account for that purpose and in his books to credit the client accordingly.

(2) The licenceholder must ensure that the client's money is treated as clients' money by the person referred to in paragraph (1)(a) or (b).

(3) A licenceholder must not, without the express permission of the client, undertake a margined transaction for a retail investor in a contract which is not traded on a *recognised or designated exchange*.

#### **7.48 Liability in respect of margins**

- (1) In relation to margined transactions a licenceholder must —
  - (a) keep daily track of the amount of margin or other requirements which must be paid for each client;
  - (b) ensure that any margin payable is required to be deposited in advance in cash or approved collateral;
  - (c) ensure that any deposit on a *limited liability transaction* is deposited promptly and in cash;
  - (d) ensure that margin, whenever properly required to be paid, is deposited in cash or approved collateral;
  - (e) make the client aware of the consequences of not paying a margin.
- (2) Where a licenceholder is effecting margined transactions as an *investment manager*, it must ascertain from —
  - (a) the person referred to in rule 7.48(1)(a) or (b); or
  - (b) the exchange on which the contract is traded,

whether or not the licenceholder is responsible for the fulfilment of its clients' obligations.

(3) If there is a shortfall on a margined transaction, the licenceholder must make up the difference until it obtains more cash or collateral from its client.

(4) Where a licenceholder lends money to a client to make up such a shortfall, it must properly record the loan in its accounts.

#### *Documentation and records*

#### **7.49 Contract note etc**

- (1) After a transaction has been carried out for a client, a licenceholder must send or cause to be sent to the client or to his order promptly a statement of the transaction.
- (2) Paragraph (1) does not apply where —
  - (a) the licenceholder reasonably believes that another licenceholder or the product company will send such a note to the client;
  - (b) the transaction is effected with a market counterparty (unless otherwise required by contract or custom);
  - (c) the transaction relates to a life policy; or
  - (d) the client has made a specific written request in writing, separate from any other agreement, that statements must not be sent to him and has not revoked the request.

(3) Paragraph (1) does not apply where the transaction is part of a series of linked transactions, but the licenceholder must send or cause to be sent to the client or to his order a statement of the transactions —

- (a) on completion of the series; or
  - (b) at appropriate intervals not more than 3 months apart.
- (4) Paragraph (1) does not apply where —
- (a) the transaction involves a third party who has failed to provide information required of him; or
  - (b) a transaction involves the conversion of one currency into another and that conversion has not been made,

in which case the licenceholder must send or cause to be sent to the client or to his order a statement of the essential features of the transaction as soon as practicable.

(5) A statement required by paragraph (1), (3) or (4) must specify the essential features of the transaction including —

- (a) the name and address of the licenceholder;
  - (b) the client's designation and account number;
  - (c) the date of the transaction;
  - (d) a description of the investment and size of transaction;
  - (e) the nature of the transaction and unit price (and whether forward or historic price);
  - (f) the total cost;
  - (g) the amount of remuneration of the licenceholder;
  - (h) the amount of fees, taxes or duties;
  - (i) the settlement date;
  - (j) if the transaction involves converting one currency into another, the exchange rate.
- (6) Where —
- (a) the transaction relates to units in a collective investment scheme; and
  - (b) deductions for charges and expenses are not made uniformly throughout the life of an investment but are loaded disproportionately on the early years,

the amount of any deductions must be expressed either in cash terms or as a percentage of the unit price.

(7) Upon exercise of an option, the following items must be included in the statement required by paragraph (1), (3) or (4) —

- (a) the profit or loss to the client arising out of the exercise of the option; and
- (b) the fees, commissions and expenses payable by the client, if any, in connection with the transaction.

## CHAPTER 4

### *Specific requirements for CIS service providers*

#### **7.50 Application and interpretation**

(1) Except where otherwise expressly provided, and so far as applicable, this Chapter applies to all licenceholders authorised to carry on regulated activities falling within Class 3.

(2) In this Chapter —

"collective investment scheme", and "participant" in relation to a collective investment scheme, have the same meanings as in the Financial Supervision Act 1988;

"relevant scheme" means a collective investment scheme for which a licenceholder provides services which are regulated activities falling within Class 3.

#### **7.51 Interests of scheme to be paramount**

(1) Where a licenceholder carries on any activity relating to a relevant scheme, the interests of the scheme must be the licenceholder's paramount consideration.

(2) A licenceholder must —

(a) where practicable, avoid any conflict of interest arising in relation to a relevant scheme; and

(b) where a conflict arises, address that conflict through internal rules of confidentiality by —

(i) declining to act;

(ii) disclosing the nature of the conflict to the governing body of the scheme; or

(iii) where appropriate, seeking that body's written confirmation that the licenceholder may continue to provide services to the scheme.

(3) When entering into financial, banking or other transactions on behalf of a relevant scheme, the licenceholder must —

(a) act in the best interests of the scheme; and

(b) not effect such transactions with unnecessary frequency or in excessive size.

(4) Where the licenceholder provides services in respect of more than one scheme, the licenceholder should ensure that all schemes are dealt with fairly and no scheme is given unfair advantage or disadvantage.

#### **7.52 Observance of terms of offer document**

In relation to a relevant scheme, a licenceholder must take all reasonable steps to comply with every statement in the most recently published prospectus, explanatory memorandum or other documentation describing how he will —

- (a) operate the scheme; and
- (b) comply with the duties imposed on him by or under the Financial Supervision Act 1988.

### **7.53 Valuation of investments which are not marketable**

(1) This rule applies where the licenceholder has responsibility for the calculation of net asset valuations of a relevant scheme.

(2) The valuation of any investment which is not readily marketable, or for which information for determining their current value may not be available, must be on the basis of an arm's length valuation which has been —

- (a) prepared by or confirmed as an arm's length valuation by an independent and competent person; or
- (b) calculated in line with the licenceholder's documented policies and procedures in relation to the valuation of schemes.

### **7.54 Participants to be treated fairly**

(1) A licenceholder must ensure that —

- (a) all participants in a relevant scheme are treated fairly; and
- (b) no participant is given unfair advantage or priority.

(2) Where a licenceholder in possession of information that may be material to the prospects of a relevant scheme, it must, subject to any legal requirements and any duty of confidentiality, ensure that all participants are treated fairly when communicating such information.

(3) A licenceholder must not give itself, or permit any person associated with the licenceholder to be given, an unfair advantage or priority.

### **7.55 Material interests**

Subject to any legal requirements and any duty of confidentiality, the licenceholder should, within a reasonable time, notify the governing body of a relevant scheme of any matter —

- (a) of which it becomes aware; and
- (b) the disclosure of which might reasonably be expected to be in the material interests of the scheme.

### **7.56 Forecasts of future income**

(1) Where a licenceholder makes or publishes a prediction or forecast of future income from a relevant scheme, it must be based on and consistent with present conditions.

(2) The licenceholder must be able to justify the prediction or forecast to the Commission if required to do so.

### **7.57 Information to be supplied by tied agents.**

A licenceholder must ensure that its tied agents, when communicating with a retail investor, adequately inform the investor about the licenceholder and the agent's relationship with it.

### **7.58 Notification of amendment of scheme**

A licenceholder must notify the Commission in writing of any proposed material change to the constitutional documents of any relevant scheme.

### **7.59 Services for collective investment schemes established outside the Island**

A licenceholder must not, without the consent of the Commission, provide services which are regulated activities falling within Class 3 for the manager or administrator of a collective investment scheme established in a country or territory outside the Island.

## *Inter-professional Agreements*

### **7.60 Requirement to have inter-professional agreements**

A licenceholder must not carry on any regulated activity falling within Class 3 for any person except in accordance with a written agreement which sets out the basis on which its services are to be provided.

## *CHAPTER 5*

### *General requirements for all corporate service and trust service providers*

### **7.61 Application**

Except where otherwise expressly provided, and so far as applicable, this Chapter applies to all licenceholders authorised to carry on regulated activities falling within Class 4 or Class 5.

### **7.62 Terms of business**

- (1) A licenceholder must not carry on any regulated activity to which this chapter applies for a client unless either —
  - (a) it has entered into a written agreement (a "client agreement") with the client relating to the services it provides; or
  - (b) it has notified the client in writing of its terms of business relating to those services.
- (2) A client agreement or terms of business must set out —
  - (a) the fees to be charged or the basis of calculation of the fees to be charged, or both;
  - (b) the method by which such fees are to be collected;
  - (c) the method by which increases in fees are notified to the client;

- (d) the conditions for the termination of services by the licenceholder, including, if applicable, the provisions for the refund of any fees due to the client as a result of the termination of services; and
  - (e) how interest received on client money is to be dealt with, in accordance with rule [4.13] [*client money part*].
- (3) A licenceholder must retain —
- (a) a copy of the client agreement referred, signed by the client; or
  - (b) evidence of a notification under paragraph (1)(b).

## *CHAPTER 6*

### *Specific requirements for corporate service providers*

#### **7.63 Application**

So far as applicable, this Chapter applies to all licenceholders authorised to carry on regulated activities falling within Class 4.

#### **7.64 Nominee shareholders**

Where a licenceholder acts or arranges for another person to act as a nominee shareholder or nominee member of a company, the licenceholder must —

- (a) ensure that in all such cases a written nominee agreement or such other trust instrument as may be appropriate exists; and
- (b) retain a copy of the agreement or instrument in its records.

#### **7.65 Resignation of licenceholder**

(1) If a licenceholder intends, without the consent of a client, to cease carrying on any regulated activities to which this chapter applies for or on behalf of that client, it must notify in writing —

- (a) the client; and
- (b) where the client is a company, the directors, the shareholders and, if different, the beneficial owner of the client.

(2) Where a licenceholder ceases to carry on any regulated activities to which this chapter applies for or on behalf of a client company for any reason, it must —

- (a) preserve the company's records until they are handed over to the company, another licenceholder or another person who is to provide those or similar services;
- (b) ensure the records are in a readily realisable format suitable for use by the records' recipient; and
- (c) co-operate with the company, licenceholder or other person, to ensure a smooth transition.

### **7.66 Compliance by client companies**

A licenceholder must take reasonable steps to ensure that any company or partnership for which it carries on any regulated activity complies with such statutory obligations as are applicable to that activity.

## *CHAPTER 7*

### *Specific requirements for trust service providers*

### **7.67 Application**

This Chapter applies to all licenceholders authorised to carry on regulated activities falling within Class 5.

### **7.68 Resignation of licenceholder**

If a licenceholder ceases to carry on regulated activities in relation to a trust, it must take whatever steps are appropriate and necessary —

- (a) to facilitate the transfer of that business to another licenceholder or another person who is to provide those or similar services; and
- (b) to secure the appointment of a replacement trustee, protector or enforcer, as the case may be; and

and co-operate with the new trustee, protector or enforcer to ensure a smooth transition.

## *SCHEDULE 1*

### **Personal Account Notice**

(1) A licenceholder must ensure that the Personal Account Notice identifies the compliance officer or a specifically designated employee of the licenceholder to be responsible for receiving reports and granting permissions in respect of activities undertaken by its employees in accordance with the Personal Account Notice.

(2) The Personal Account Notice must require that an employee:

(a) does not deal for his own account in investments of any kind in which the licenceholder carries on investment business to any material extent, or in any related investments, without the permission of the licenceholder (such permission may be general or specific);

(b) does not deal in investments for his own account with any of the licenceholder's customers without the prior consent of the licenceholder;

(c) reports promptly to the licenceholder in writing any transaction for his own account for which permission is required under (a) above which he enters into otherwise than through the licenceholder unless he has arranged for the licenceholder to receive promptly a copy of the contract or similar note issued in respect of the transaction;

(d) does not deal for his own account in an investment in circumstances where he knows or should know that the licenceholder intends to publish a written recommendation, or a piece of research or analysis, in respect of that investment or any related investment which could be reasonably expected to affect the price of that investment;

(e) does not deal for his own account at a time or in a manner which he knows or should know is likely to have a direct adverse effect on the particular interests of any customer of the licenceholder; and

(f) does not accept any gift or inducement from any person which is likely to conflict with his duties to any customer of the licenceholder.

(3) The personal account notice must specify that the references to an employee dealing for his own account include an employee:

(a) dealing in his capacity as a personal representative of an estate or as a trustee of a trust, in which estate or under which trust there is a significant interest held by the employee, or any associate of the employee, or any company or partnership controlled by him or by any associate of the employee;

(b) otherwise dealing in his capacity as a personal representative or a trustee, unless he is relying entirely on the advice of another person from whom it is appropriate to seek advice in the circumstances; or

(c) dealing for the account of another person unless he does so in the course of his employment with the licenceholder.

(4) The Personal Account Notice must further state that, if an employee is precluded from entering into a transaction for his own account, he must not (except in the proper course of his employment):

(a) procure any other person to enter into such a transaction; or

(b) communicate any information or opinion to any other person if he knows, or has reason to believe, that the person will, as a result, enter into such a transaction, or counsel or procure some other person to do so.

(5) Paragraph (2) and (3) above do not apply to:

(a) any transaction by an employee for his own account in a packaged product; and

(b) any discretionary transaction entered into for, and without prior communication with the employee, provided that the discretion is not exercised by the licenceholder.