

**CHAPTER 5 CONDUCT OF BUSINESS**

**PART A GENERAL REQUIREMENTS**

**5.01 Standard of conduct**

A Participating Organisation and Registered Person must, in the conduct of the Participating Organisation's business:

- (a) adhere to just and equitable principles and act with due skill, care and diligence and with due regard for the integrity of the market; and
- (b) not through any act or omission, do anything which may result in or has the effect of the market not being orderly and fair.

*[Refer to Directive No. 5-001]*

**5.02 Conflicts of interest and risk management**

A Participating Organisation must have in place adequate arrangements to manage:

- (a) all conflicts of interests that may arise in the conduct of the Participating Organisation's business; and
- (b) all risks that may arise in the conduct of the Participating Organisation's business.

*[Refer to Directive No. 5-001]*

**5.03 Structures, internal controls, policies and procedures**

(1) A Participating Organisation must have in place structures, internal controls and written policies and procedures designed to:

- (a) facilitate the supervision of the Participating Organisation's business activities and the conduct of the Participating Organisation's Registered Persons, employees and agents;
- (b) identify, monitor and manage conflicts of interests and risks that may arise in the conduct of the Participating Organisation's business;
- (c) achieve compliance with these Rules, the Directives, and the Securities Laws; and
- (d) provide for investor protection,

(referred to collectively in this Rule as "Policies and Procedures").

*[Refer to Directive No. 5-001]*

(2) A Participating Organisation must consider all relevant factors in determining the adequacy and effectiveness of the Policies and Procedures including the:

- (a) size of the Participating Organisation's business;
- (b) Participating Organisation's financial position;

- (c) diversity of operations;
  - (d) volume, size and frequency of transactions;
  - (e) degree of risk associated with each area of operation; and
  - (f) amount of control by the Participating Organisation's senior management over day to day operations.
- (3) A Participating Organisation must properly document and regularly review and update the Participating Organisation's Policies and Procedures to take into account any changes that may occur in the regulatory requirements.
- (4) A Participating Organisation must properly disseminate and effectively implement and enforce within the Participating Organisation, the Policies and Procedures and any updates to such Policies and Procedures.

*[Refer to Directives No. 5-002 and 5.03-001]*

#### **5.04 Records**

- (1) A Participating Organisation must keep proper records to evidence compliance with the requirements in these Rules, and when expressly required under any provisions of these Rules or Directives.

*[Refer to Directive No. 5-001]*

- (2) The records specified under Rule 5.04(1) must be maintained by the Participating Organisation for a period as specified under the relevant laws in Malaysia or in the absence of such laws, for a period of not less than 7 years.

#### **5.05 Business premises**

A Participating Organisation must have:

- (a) business premises that are adequately and properly equipped for the conduct of the Participating Organisation's business; and
- (b) adequate security and emergency arrangements to provide continuous business operations with minimal disruptions.

*[Refer to Directive No. 5.05-001]*

#### **5.06 Advertising**

A Participating Organisation's advertising or publicity in relation to the Participating Organisation's business must:

- (a) be accurate and not misleading or ambiguous;
- (b) not contain claims that are not verifiable;
- (c) not tend to bring the Exchange or the Exchange's Related Corporations or any other Participating Organisation into disrepute; and
- (d) contain adequate risk disclosure statements.

**5.07 Communication within the Participating Organisation**

A Participating Organisation must immediately disseminate these Rules, Directives and requirements the Exchange and the Commission issue to all the Participating Organisation's Registered Persons and relevant employees.

**5.08 Disputes**

- (1) Any dispute between parties referred to in Rule 5.08(7) may be brought to the Exchange, by notice in writing by either party to the dispute ("Notice of Dispute").
- (2) The parties to a dispute notified to the Exchange under Rule 5.08(1) must not resort to any outside tribunal or a court of law for determination of such dispute for a period of 30 days from the Exchange's receipt of the Notice of Dispute.
- (3) If there is no response from the Exchange within 30 days from the Exchange's receipt of the Notice of Dispute, the parties to the dispute may resort to an outside tribunal or a court of law for determination of such dispute.
- (4) If the Exchange decides to act in any such dispute, the Exchange will so inform the party or parties to the dispute within the period of 30 days from the Exchange's receipt of the Notice of Dispute.
- (5) The Exchange when acting in any dispute may appoint either 1 or 3 arbitrators to adjudicate the dispute if the parties to the dispute fail to reach an agreement for settlement of the matter in dispute.
- (6) Any arbitrator(s) appointed by the Exchange under Rule 5.08(5) will arbitrate the matter in dispute in accordance with the provisions of the Arbitration Act 2005. The award of such arbitrator(s) is final and binding upon the parties to such dispute.
- (7) For the purposes of this Rule 5.08:
  - (a) "dispute" means a dispute arising out of any matter governed by these Rules or Directives between or involving:
    - (i) Market Participants; or
    - (ii) Market Participants and the Exchange.
  - (b) "Market Participants" means Participating Organisations, Dealer's Representatives or both.

**5.09 Statements, information and reports to the Exchange**

- (1) A Participating Organisation and Registered Person must ensure that any statement, information or document submitted to the Exchange whether before or after registration as a Participating Organisation or a Registered Person in relation to any matter under these Rules or Directives must:
  - (a) be clear, unambiguous and accurate;
  - (b) not contain any material omission; and
  - (c) not be false or misleading.

- (2) If any statement, information or document the Exchange receives from or on behalf of a Participating Organisation or Registered Person breaches the requirements in Rule 5.09(1), the Participating Organisation and the relevant Registered Person will be held responsible for such breach notwithstanding that the statement, information or document was signed or submitted by a person other than the relevant Registered Person.
- (3) A Participating Organisation or Registered Person does not commit a breach of Rule 5.09(1) above if a Participating Organisation or Registered Person can prove that:-
  - (a) all enquiries as were reasonable in the circumstances had been made; and
  - (b) after making such enquiries, the relevant Participating Organisation or Registered Person had reasonable grounds and did believe until the time of the presentation, submission or disclosure of the statement, information or document to the Exchange that the statement, information or document did fulfil the requirements of Rule 5.09(1).
- (4) A Participating Organisation or Registered Person must immediately notify the Exchange if the Participating Organisation or Registered Person becomes aware that any statement, information or document provided to the Exchange may not fulfil the requirements in Rule 5.09(1).

#### **5.10 Currency**

- (1) Unless stated otherwise, all Rules containing references to RM values which relate to transactions in securities, will also apply to all transactions in securities denominated in foreign currency. In order to apply the Rules, the foreign currency values must be converted to RM values.
- (2) Unless stated otherwise, all monies payable to the Participating Organisation from the Exchange or from the Participating Organisation to the Exchange pursuant to these Rules or the Directives will be in RM even where the monies payable relate to transactions in securities denominated in foreign currency.

#### **5.11 Segregation of Client's Securities**

A Participating Organisation must ensure that all Clients' securities in its possession which are held in safe custody pursuant to custodial services rendered by the Participating Organisation, are held by its nominee company which is a wholly-owned subsidiary and an Authorised Nominee pursuant to Depository Rules.

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**PART B      RESOURCES**

**5.12 Proper performance of business activities**

- (1) A Participating Organisation must have adequate and effective resources for the proper performance of the Participating Organisation's business activities.
- (2) A Participating Organisation is responsible for the quality, reliability and integrity of all systems the Participating Organisation uses in the Participating Organisation's business in trading in securities on the Exchange's stock market.

**5.13 Personnel**

A Participating Organisation must only employ or engage Registered Persons, employees and agents who are fit and proper with suitable skill and experience with regard to the position and responsibility they hold.

*[Refer to Directive No.5-001]*

**5.14 Trading Clerks**

- (1) A Participating Organisation or a Dealer's Representative may appoint a Trading Clerk to assist the Participating Organisation or Dealer's Representative in entering orders into the ATS and in carrying out administrative and clerical duties.
- (2) A Participating Organisation and the Dealer's Representative who appoints the Trading Clerk must ensure that the Trading Clerk:
  - (a) does not represent himself as a Dealer's Representative or carry out the functions of a Dealer's Representative;

*[Refer to Directive No. 5-001]*

- (b) observes professional conduct, standard of integrity and fair dealing;
  - (c) exercises proper skill, care and diligence; and
  - (d) acts honestly and in the best interest of the Client and the Participating Organisation.
- (3) A Participating Organisation must keep a record of each Trading Clerk, appointed or engaged by the Participating Organisation or the Dealer's Representative.
- (4) A Participating Organisation and the Dealer's Representative who appoint the Trading Clerk are liable for all acts and omissions of the Trading Clerk.

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## PART C CLIENTS

**5.15 Client information and opening of accounts with Clients**

- (1) Before a Participating Organisation opens a trading account for a Client, the Participating Organisation must:
- (a) obtain all essential information about the Client relevant to the services to be provided; and
  - (b) verify the Client's identity and the authenticity of the application to open a trading account with the Participating Organisation.

*[Refer to Directives No. 5-001 and 5.15-001]*

- (2) If the Client represents that the Client is trading on behalf of another person, the Participating Organisation may open a trading account for the Client only if:
- (a) the Client is an Authorised Nominee or Exempt Authorised Nominee; and
  - (b) the Participating Organisation brings to the notice of the Client, the Client's obligation under Rule 5.15(8).

*[Refer to Directive No. 5.15-001]*

- (3) A Participating Organisation must enter into a written agreement with a Client. The written agreement must set out the terms and conditions for the operation of the Client's trading account and must include the Client's obligation to comply with these Rules and Directives, whether these Rules and Directives apply directly or indirectly to the Client.
- (4) A Participating Organisation must record and maintain up-to-date relevant information on the Participating Organisation's Clients, their trading accounts and trades executed in their trading accounts. For the avoidance of doubt, trades executed in the Client's trading account in this Rule include the trades executed on the stock market of the Exchange or Recognised Stock Exchanges.

*[Refer to Directive No. 5-001]*

- (5) A Participating Organisation must clearly identify the Securities Account where the securities arising from all dealings in the trading account must be credited into or debited from.
- (6) A Participating Organisation must obtain the Client's confirmation and undertaking in writing that the Beneficial Owner of the securities in the trading account and the Securities Account is the same unless the Client is the Beneficial Owner of the securities in the trading account and the Securities Account.
- (7) If the Securities Account holder is not the Client, the Participating Organisation must obtain from the Client, a written authorisation and consent from the Securities Account holder permitting the following:
- (a) effecting any entry in the Securities Account arising from any trade executed in the Client's trading account; and
  - (b) the exercise of any rights by the Participating Organisation, Exchange or Clearing House over the securities held in the Securities Account arising from any trade executed in the Client's trading account.

- (8) If requested by the Exchange, a Participating Organisation must require a Client to disclose (and the Client must disclose) information and documents in relation to any dealing in securities in respect of the Client's trading account.
- (9) The information referred to in Rule 5.15(8) includes information whether any dealing in the Client's trading account is carried out on another person's behalf and in such instance, the name of, and particulars sufficient to identify such person. If that person is not the Beneficial Owner of the securities, the Client must also be required to procure the particulars of the Beneficial Owner of the securities.

#### 5.16 Doing business with Clients

- (1) A Participating Organisation and Registered Person must act:
  - (a) with due skill, care and diligence;
  - (b) honestly and fairly; and
  - (c) in the best interests of the Participating Organisation's Clients.

*[Refer to Directives No. 4-001 and 5-001]*

- (2) A Participating Organisation and Registered Person must make adequate and accurate disclosure of the risks, benefits and conflicts of interests to the Clients in the Participating Organisation's and Registered Person's dealings with the Clients.

*[Refer to Directives No. 5-001 and 5-002]*

- (3) A Participating Organisation must forward all communication and documents relating to the affairs of the Client directly to the Client unless the Client has authorised in writing for such communication and documents to be sent to a third party.
- (4) A Participating Organisation must account for and adequately safeguard a Client's assets.

*[Refer to Directive No. 5-001]*

- (5) A Participating Organisation must, in relation to a complaint from a Client (whether written or otherwise) relating to the Participating Organisation's business:
  - (a) handle the complaint in a timely and appropriate manner; and
  - (b) take steps to investigate and respond immediately to the complainant.

*[Refer to Directive No. 5-001]*

- (6) A Participating Organisation and Registered Person must protect the secrecy of the Client's information in the Participating Organisation's possession unless:
  - (a) the Client authorises the disclosure of the information in writing;
  - (b) the law requires the disclosure of the information;
  - (c) the Exchange or any other relevant body or authority (whether in or outside of Malaysia) requires the disclosure of the information;
  - (d) the information is already publicly available; or

- (e) the information is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular Client to be ascertained from the information.
- (7) The Exchange may direct a Participating Organisation to refrain from trading for any Client in any of the following circumstances:
- (a) in relation to a request made under Rule 5.15(8), until the information and document requested is furnished by the Client or where the Client refuses to furnish the same; or
  - (b) where an act or omission by the Client in relation to or arising from any transaction in securities causes, aids or facilitates a breach of these Rules or Directives.

**5.16A Discretionary Account**

In operating a Discretionary Account, a Participating Organisation or a Dealer's Representative must comply with the following:

- (a) Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives; and
- (b) the requirements the Exchange prescribes in respect of Discretionary Accounts.

*[Refer to Directives No. 2.01(2)-006, 3.36-001 and 5-001]*

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**PART D            OUTSOURCING**

**5.17    Outsourcing Arrangements**

- (1) A Participating Organisation which outsources its functions must comply with these Rules, the Commission’s Licensing Handbook and any Directives that may be issued by the Exchange on this matter.
- (2) A Participating Organisation must ensure that the service provider(s) comply with the Rules that are applicable to the outsourced functions in the same manner as the Participating Organisation is required to.
- (3) A Participating Organisation remains accountable for all outsourced functions and will be held liable for any act or omission on the part of the service provider which results in a breach of these Rules.

**5.18    Investment Bank**

Rule 5.17 is not applicable to an Investment Bank.

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**PART E            INSURANCE REQUIREMENTS**

**5.19    Requirement to take up insurance policy**

- (1)    A Participating Organisation must take up and maintain at all times an insurance policy that is adequate having regard to:
  - (a)    the nature and extent of the Participating Organisation's business as permitted under the Capital Markets Services Licence and the Commission's policy on permitted activities for stockbroking companies contained in the Commission's Licensing Handbook; and
  - (b)    the responsibilities and risks assumed or which may be assumed by the Participating Organisation in connection with those activities.
- (2)    A Participating Organisation may maintain the above insurance policy at Group Level.
- (3)    A Participating Organisation must notify the Exchange that the insurance policy is in place.

*[Refer to Directive No. 5-001]*

**5.20    Notification of claims**

A Participating Organisation must notify the Exchange of any claim or potential claim against the insurance policy referred to in Rule 5.19(1) within 2 Market Days from when the Participating Organisation becomes aware of the claim or potential claim.

[End of Chapter]