

CHAPTER 4 CONDUCT OF BUSINESS

PART A – GENERAL REQUIREMENTS

**4.01 Standard of Conduct**

- (1) A Participant and Registered Person must, in the conduct of the Participant'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. 4-001]*

**4.02 Conflict of interest and risk management**

A Trading Participant must have in place adequate arrangements to manage:

- (a) all conflict of interest that may arise in the conduct of the Trading Participant's business; and
- (b) all risks that may arise in the conduct of the Trading Participant's business.

*[Refer to Directive No. 4-001]*

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

- (1) A Trading Participant must have in place structures, internal controls and written policies and procedures designed to:
- (a) facilitate the supervision of the Trading Participant's business activities and the conduct of the Trading Participant's Registered Persons, employees and agents;
  - (b) identify, monitor and manage conflict of interest and risks that may arise in the conduct of the Trading Participant'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").
- (2) For the avoidance of doubt, a Trading Participant must ensure that relevant information about its business is regularly reported to its management as part of the Trading Participant's compliance with Rule 4.03(1).
- (3) A Trading Participant must consider all relevant factors in determining the adequacy and effectiveness of the Policies and Procedures including the:
- (a) size of the Trading Participant's business;
  - (b) Trading Participant'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 Trading Participant's senior management over day to day operations.
- (4) A Trading Participant must properly document and regularly review and update the Trading Participant's Policies and Procedures to take into account any changes that may occur in the regulatory requirements.
- (5) A Trading Participant must properly disseminate and effectively implement and enforce within the Trading Participant, the Policies and Procedures and any updates to such Policies and Procedures.

*[Refer to Directive No. 4-001]*

#### **4.04 Trading by an employee, Registered Representative or director of a Trading Participant**

A Trading Participant must ensure that an employee, Registered Representative or director of a Trading Participant who trades in Contracts for his own account notifies the Trading Participant of such trades in writing or by electronic means. Upon receipt of the notifications, a Trading Participant must take the, necessary steps to manage conflict of interest and risks in accordance with Rule 4.02. For the purposes of this Rule 4.04, a director's account will include an account in which such a director has a direct or indirect interest.

#### **4.05 Records**

- (1) A Trading Participant 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. 4-001]*

- (2) A Trading Participant must record and maintain up- to- date relevant information on its Clients, their trading accounts and trades executed in their trading accounts.

*[Refer to Directive No. 4-001]*

#### **4.06 Advertising and Publicity**

A Trading Participant's advertising or publicising of the Trading Participant'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 its related corporations or any other Participants into disrepute; and
- (d) contain adequate risk disclosure statements.

#### **4.07 Communication within the Trading Participant**

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

**4.08 Statements, Information and Reports to the Exchange**

- (1) A Participant must submit, within such time and in such form and manner as prescribed by the Exchange, such statements, information and reports as may be requested by the Exchange.
- (2) A Participant and Registered Person must ensure that any statement, information or document submitted to the Exchange whether before or after admission as a Participant or registration as a Registered Person in relation to any matter under these Rules or Directives:
  - (a) is clear, unambiguous and accurate;
  - (b) does not contain any material omission; and
  - (c) is not false or misleading.
- (3) If any statement, information or document the Exchange receives from or on behalf of a Participant or Registered Person breaches the requirements in Rule 4.08(2), the Participant and the relevant Registered Person will be held responsible for such breach even if the statement, information or document were signed or submitted by a person other than the relevant Registered Person.
- (4) A Participant or Registered Person does not commit a breach of this Rule 4.08(2) if a Participant 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 Participant 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 this Rule 4.08(2).
- (5) A Participant or Registered Person must immediately notify the Exchange if the Participant or Registered Person becomes aware that any statement, information or document provided to the Exchange may not fulfil the requirements in this Rule 4.08(2).

**4.09 Trading or Accepting Margins during Insolvency or after Revocation of Licence**

- (1) A Trading Participant must not trade or accept any margin from its Clients during its insolvency or after its Capital Markets and Services Licence has been revoked or suspended.
- (2) A Registered Representative must not trade or accept any margin from his Clients during his bankruptcy, or after his Capital Markets Services Representative's Licence has been revoked or suspended.

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**PART B – RESOURCES**

**4.10 Personnel**

A Trading Participant must only employ or engage employees and agents who are fit and proper with suitable skills and experience with regard to the position and responsibility they hold.

**4.11 Business premises and systems**

- (1) A Trading Participant must have adequate and effective resources for the proper performance of the Trading Participant's business activities, including:
  - (a) business premises that are adequately and properly equipped for the conduct of the Trading Participant's business; and
  - (b) adequate security and emergency arrangements to provide continuous business operations with minimal disruptions.
- (2) A Trading Participant is responsible for the quality, reliability and integrity of all systems the Trading Participant uses in the Trading Participant's business in trading in Contracts on the Exchange.

*[Refer to Directive No. 4.11-001]*

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**PART C – CLIENTS**

**4.12 Client information and opening a Client Account**

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

*[Refer to Directives No. 4-001 and 4-002]*

- (2) If the Client represents that the Client is trading on behalf of another person, the Trading Participant may open a Client Account for the Client only if the Trading Participant brings to the notice of the Client, the Client's obligation under Rule 4.12(3) and (4).
- (3) If requested by the Exchange, a Trading Participant must require a Client to disclose or procure (and the Client must disclose or procure) information and documents in relation to the orders, trades and Open Positions in respect of the Client Account.
- (4) The information referred to in Rule 4.12(3) above includes information on whether any transaction and instruction to trade in Contracts in the Client Account is carried out on another person's behalf and in such instance, the name of, and particulars sufficient to identify the ultimate owner of the Open Positions or the ultimate person on whose behalf the instruction to trade in Contracts is carried out in respect of the Client Account.

**4.13 Agreement with Clients**

In relation to the written agreement referred to in Rule 4.12(1)(c), a Participant must ensure that the written agreement sets out the terms and conditions for the operation of the Client's trading account and includes the Client's obligation to comply with these Rules and Directives, whether these Rules and Directives apply directly or indirectly to the Client.

**4.14 Statement to Clients**

A Trading Participant must send any such relevant information to a Client for the purchase or sale of a Contract as may be prescribed by the Exchange.

*[Refer to Directive No. 4-001]*

**4.15 Doing business with Clients**

- (1) A Trading Participant and Registered Person must act honestly and fairly and in the best interests of the Trading Participant's Clients.

*[Refer to Directive No. 4-001]*

- (2) A Trading Participant and Registered Person must make adequate and accurate disclosure of the risks, benefits and conflict of interest to the Clients in the Trading Participant's and Registered Person's dealings with the Clients.

*[Refer to Directive No. 4-001]*

- (3) In relation to a Client's orders, a Trading Participant, Head of Dealing or Registered Representative must:
- (a) obtain written authorisation from the Client in relation to accepting instructions from any person or persons on behalf of a Client;
  - (b) carry out the Client's instructions in a timely manner. A Registered Representative, on receiving a Client's order must immediately enter the order into the trading system;
  - (c) on execution of the Client's order, the Registered Representative must check the particulars of the Contract and confirm to the Client that the Contract is done;
  - (d) give priority to a Client's orders over execution of their own orders in relation to the Contracts of the same class;
  - (e) not front-run a Client; and
  - (f) ensure that the Client's orders are executed in the chronological order in which they are received.
- (4) A Trading Participant must forward all communications 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.
- (5) The Exchange may direct a Trading Participant to refrain from trading for any Client in any of the following circumstances:
- (a) in relation to a request made under Rule 4.12(3), until the information and document requested is furnished by the Client or where the Client refuses to furnish the same;
  - (b) where an act or omission by the Client in relation to or arising from any transaction in Contracts causes, aids or facilitates a breach of these Rules or Directives.
- (6) A Trading Participant must account for and adequately safeguard the assets of its Clients and Registered Representatives.

*[Refer to Directive No. 4-001]*

- (7) A Trading Participant must handle a complaint from a Client (whether written or otherwise) relating to the Trading Participant's business in a timely and appropriate manner.

#### **4.16 Protection of Clients' Information**

A Trading Participant and Registered Representative must not disclose the Client's information in the Trading Participant and Registered Representative'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.

#### **4.17 Discretionary Account**

- (1) A Trading Participant must not operate a discretionary account on behalf of a Client unless written authorisation of the Client has been obtained, and the account has been approved in writing by a person appointed by the Trading Participant to approve such accounts. Where a Trading Participant is properly authorised in writing by a Client to operate a discretionary account on behalf of that Client, it must:
  - (a) maintain full and complete records of each exercise of that discretionary authority showing the name of the Client, the details of the Contract and the date and time the transaction is effected and the name of the Registered Representative executing the order;
  - (b) ensure that in the exercise of the discretion no trading is entered into which is excessive having regard to the financial resources of that Client; and
  - (c) ensure that in the exercise of the discretion, no conflict of interest arises.
- (2) A Trading Participant, Head of Dealing and Registered Representative must not, in relation to a discretionary account, execute any orders for the sale or purchase of Contracts which are excessive in size or frequency in view of the financial resources and nature of such account.
- (3) A Compliance Officer must review the acceptance of each discretionary account to determine that the person appointed by the Trading Participant to accept the account had a reasonable basis for believing that the Client is able to understand and bear the risks of the strategies or transactions proposed, and he must maintain a record of the basis for his determination.
- (4) Each discretionary order must be reviewed by a Compliance Officer and identified as a discretionary order at the time of entry.

#### **4.18 Clients' Margins and Margin Payment**

- (1) A Trading Participant must obtain margins from its Client in accordance with the requirements below unless –
  - (a) the Trading Participant will not be clearing the trades executed on behalf of the Client; and
  - (b) the Client has entered into an arrangement with a Clearing Participant for the clearing of any of the Client's Contracts which are traded on the Exchange, and the said Clearing Participant will be obtaining the margins for that purpose.

*[Refer to Directive No. 4.18-001]*

- (2) Where margins are required, a Trading Participant must obtain a minimum initial margin and maintain the amount of minimum margins on all Open Positions. These margins must be at least equivalent to the amount of margins required by the Clearing House.
- (3) A Trading Participant may accept from its Clients as margin cash, letters of credit, bank guarantees and any other approved securities and other forms of margins in the manner and subject to conditions determined by the Clearing House pursuant to the Clearing House Rules.
- (4) A Trading Participant may request, at its absolute discretion, from its Clients, margins above the minimum required by the Clearing House.
- (5) Except for trades which reduce a Client's margin requirements, a Trading Participant must not accept orders for new Contracts from a Client unless the minimum initial margin for the Contracts is on deposit or is forthcoming within such period as may be prescribed by the Exchange after a call for initial margin has been made by the Trading Participant and that

Client's pre-existing Open Positions comply with the margin requirements established by the Trading Participant.

- (6) A Trading Participant must mark to market each Client's Open Positions daily and make additional call for margins, if necessary.
- (7) A Trading Participant may Close Out all or any Open Position of a Client where the Client fails to comply with a demand for margin after a Margin Call has been made by the Trading Participant.

#### **4.19 Accepting Securities as Margin Payment**

- (1) A Trading Participant must not accept securities from Clients as margin payment unless:
  - (a) the securities are approved securities; and
  - (b) the Trading Participant and each Client has executed a memorandum of deposit in such form as may be prescribed by the Exchange ("Memorandum of Deposit").

*[Refer to Directive No. 4.19-001]*

- (2) The Trading Participant and the Clients are not allowed to amend, vary, add or substitute the Memorandum of Deposit or enter into additional agreements or any form of arrangement or understanding which has the effect of altering, limiting or waiving the meaning, substance, application and the operation of the Memorandum of Deposit.
- (3) Where the Trading Participant accepts securities as margin payment from its Clients in accordance with Rule 4.19(1), the Trading Participant may deposit the same with the Clearing House for the purpose of the Trading Participant's margin payment to the Clearing House.
- (4) A Local Participant may lodge approved securities as a margin payment with its Clearing Participant in order for the Clearing Participant to clear with the Clearing House, trades that are executed by the Local Participant on the Exchange. In this respect, all provisions in Rule 4.19(1) and (2) apply equally to the Clearing Participants and the word "Client(s)" wherever mentioned in Rule 4.19(1) and (2) means the Local Participant.
- (5) For the purpose of this rule "approved securities" means securities prescribed by the Clearing House as eligible to be deposited with the Clearing House by the Trading Participants for the purpose of the Trading Participants' margin payment to the Clearing House.

#### **4.20 Prohibition to Accept Orders**

In respect of a Trading Participant who is not required to obtain margin according to Rule 4.18(1), if the Clearing Participant notifies the Trading Participant that the Client has failed to comply with a demand for margin by the Clearing Participant or such other margin requirements as required under the Clearing House Rules, the Trading Participant must not accept orders for new Contracts from the Client except for trades which reduce a Client's margin requirements.

#### **4.21 Premium**

- (1) A Trading Participant must obtain premiums from its Client within such period that the Exchange may prescribe if the Client is a buyer of an Option.
- (2) If a Client fails to pay the premiums to a Trading Participant within the period prescribed by the Exchange after being requested to do so by the Trading Participant, the Trading Participant may Close Out all or any Open Position of a Client, charging any loss to the defaulting Client and retaining any gain.

**PART D – OUTSOURCING**

**4.22 Outsourcing Arrangements**

- (1) A Trading Participant 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 Trading Participant must ensure that the service provider(s) comply with the Rules that are applicable to the outsourced functions in the same manner as the Trading Participant is required to.
- (3) A Trading Participant 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.

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**PART E - FINANCING TO RELATED CORPORATION**

**4.23 General Principles**

Subject to any restriction or prohibition under any law, a Trading Participant may extend financing to any related corporation of the Trading Participant if:

- (a) the Trading Participant implements policies and procedures to control and manage the risk exposure when carrying out such financing activities;
- (b) the Trading Participant manages any potential conflict of interest that may arise between the Trading Participant and its related corporation, where the interest of the Trading Participant must prevail; and
- (c) the Trading Participant has ensured that these policies and procedures governing such financing activities:
  - (i) are endorsed by the Trading Participant's Board of Directors;
  - (ii) include the authority and limits for the granting of financing to related corporations; and
  - (iii) prohibit any individual persons from being able to exercise an overriding authority over the provision of financing to related corporations.

**4.24 Investment Bank**

This Part E of Chapter 4 is not applicable to an Investment Bank.

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**PART F – DISPUTES**

**4.25 Disputes**

- (1) If the dispute arises from or in connection with physical delivery under a Contract traded on the Exchange, the parties to the dispute must settle the dispute by arbitration.
- (2) For disputes that arises from or in connection with a Contract traded on the Exchange other than those specified in paragraph (1) above, if any one or more of the parties to the dispute elect to settle the dispute via arbitration, the other disputing party must submit to such arbitration.
- (3) If parties are unable to agree on an arbitral forum for the settlement of disputes under paragraph (1) or (2), then such parties must settle the dispute by arbitration before an arbitral forum prescribed by the Exchange.

*[Refer to Directive No. 4.25(3)-001]*

**4.26 Arbitration and Arbitration Award binds Trading Participants' Clients**

A Trading Participant must cause its Clients to agree that in relation to a dispute referred to in Rule 4.25:

- (a) the Clients must submit to arbitration; and
- (b) the Client complies with Rule 4.27 below.

**4.27 Arbitration Award**

- (1) The arbitration award is final and binding on the parties to the dispute.
- (2) The parties to the dispute must bear the costs and fees for the arbitration in accordance with the arbitration award.
- (3) The parties to the dispute must notify the Exchange of:
  - (a) any request made for a dispute to be arbitrated; and
  - (b) the outcome of the arbitration.
- (4) The Exchange will not be liable to any party for any act or omission in connection with any arbitration.

[End of Chapter 4]