

CHAPTER 4 CONDUCT OF BUSINESS

PART A GENERAL REQUIREMENTS

4.01 Standard of conduct

A Clearing Participant and Registered Person must in the conduct of the Clearing 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) act in a manner consistent with the promotion and protection of the goodwill and public image of the Clearing House and its Clearing Participants.

[Refer to Directive 4-001]

4.02 Structures, internal controls, policies and procedures

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

- (a) facilitate the supervision of the Clearing Participant's business activities and the conduct of the Clearing Participant's Registered Persons, employees and agents;

[Refer to Directive 4-001]

- (b) identify, monitor and manage conflicts of interests and risks that may arise in the conduct of the Clearing Participant's business;
- (c) achieve compliance with these Rules and the Act; and
- (d) provide for Client protection;

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

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

- (a) size of the Clearing Participant's business;
- (b) the Clearing 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 Clearing Participant's senior management over day to day operations.

(3) A Clearing Participant must properly document and regularly review and update the Clearing Participant's Policies and Procedures to take into account any changes that may occur in the regulatory requirements.

- (4) A Clearing Participant must properly disseminate and effectively implement and enforce within the Clearing Participant, the Policies and Procedures and any updates to such Policies and Procedures.
- (5) A Clearing Participant must maintain an internal record of the names of all persons who are designated as supervisory personnel and those delegated with supervisory functions and the dates for which such designation is or was effective.

4.03 Records

- (1) A Clearing Participant must keep proper Records:
 - (a) to sufficiently explain the Clearing Participant's Clearing activities;
 - (b) to evidence compliance with the requirements in these Rules; and
 - (c) when expressly required under any provisions of these Rules

[Refer to Directive 4-001]

- (2) The records specified under Rule 4.03(1) must be maintained by the Clearing Participant 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.

4.04 Communication within the Clearing Participant

A Clearing Participant must immediately disseminate these Rules and requirements that the Clearing House and the Commission issue to all the Clearing Participant's Registered Persons and relevant employees.

4.05 Statements, information and Documents

- (1) A Clearing Participant must submit, within such time and in such form and manner as determined by the Clearing House, such statements, information or Documents as may be requested by the Clearing House.

[Refer to Directive 4-001]

- (2) A Clearing Participant and Registered Person must ensure that any statement, information or Document submitted to the Clearing House, whether before or after admission as a Clearing Participant in relation to any matter under these Rules must:
 - (a) be clear, unambiguous and accurate;
 - (b) not contain any material omission; and
 - (c) not be false or misleading.
- (3) If any statement, information or Document the Clearing House receives from or on behalf of a Clearing Participant or Registered Person breaches the requirements in Rule 4.05(2), the Clearing Participant 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.
- (4) A Clearing Participant or Registered Person does not commit a breach of Rule 4.05(2) above if a Clearing 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 Clearing 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 Clearing House that the statement, information or Document did fulfil the requirements of Rule 4.05(2).
- (5) A Clearing Participant or Registered Person must immediately notify the Clearing House if the Clearing Participant or Registered Person becomes aware that any statement, information or Document provided to the Clearing House may not fulfil the requirements in Rule 4.05(2).

4.06 Accepting Margins during insolvency or after revocation of licence

A Clearing Participant must not accept any margin from its Clients during its insolvency or after its Capital Markets Services Licence has been revoked or suspended.

4.07 Conflicts of interest

A General Clearing Participant must have in place adequate arrangements to manage all conflicts of interests that may arise in the conduct of the General Clearing Participant's business.

4.08 Advertising and publicity

A General Clearing Participant's advertising or publicising of its business must:

- (a) be accurate and not misleading or ambiguous;
- (b) not contain claims that are not verifiable; and
- (c) not bring the Clearing House or the Clearing House's Related Corporations or any other Clearing Participant into disrepute.

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PART B RESOURCES

4.09 Personnel

- (1) A Clearing Participant must only employ or engage Registered Persons, employees and agents who are fit and proper with suitable skills and experience with regard to the position and responsibility they hold.
- (2) A Clearing Participant must ensure that an employee or director of a Clearing Participant who trades in Derivatives on the Exchange or a Specified Exchange for his own account notifies it of such trades in writing or by electronic means and upon receipt of the notifications, the Clearing Participant takes the necessary steps to manage conflicts of interest and risk, in accordance with Rules 4.02 and 5.06. For the purposes of this Rule, a director's account will include an account in which such a director has a direct or indirect interest.

4.10 Business premises

- (1) A Clearing Participant must have business premises that are adequately and properly equipped for the conduct of the Clearing Participant's business.
- (2) A Clearing Participant must have adequate security and emergency arrangements to provide continuous business operations with minimal disruptions.

[Refer to Directive 4-001]

- (3) A Clearing Participant must not carry on its Clearing business at any place other than a place that has been approved in writing by the Clearing House.

[Refer to Directive 2.01(2)-002]

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PART C CLIENTS

4.11 Client information

- (1) Before a General Clearing Participant accepts a person as a Client the General Clearing Participant must:
 - (a) obtain all essential information about the person relevant to the services to be provided;
[Refer to Directive No. 4-001]
 - (b) verify the person's identity and the authenticity of the application to open an account with the Clearing Participant; and
[Refer to Directive No. 4-001]
 - (c) enter into a written agreement with such person.
- (2) If the Client represents that the Client is acting on behalf of another person, the General Clearing Participant may start acting for the Client only if the General Clearing Participant brings to the notice of the Client, the Client's obligation under Rule 4.13.

4.12 Agreement with Client

In relation to the written agreement referred to in Rule 4.11(1)(c), a General Clearing Participant must ensure that the written agreement:

- (a) sets out the terms and conditions of the services to be provided by the General Clearing Participant;
- (b) includes the Client's obligation to comply with these Rules, whether these Rules apply directly or indirectly to the Client; and
- (c) includes an appointment by the Client of the chief executive officer of the Clearing House as the Client's attorney or agent to do all things necessary to transfer any Open Position held by the General Clearing Participant on the Client's behalf to another General Clearing Participant where the Participantship of the General Clearing Participant has been suspended or terminated.

4.13 Disclosure of information by Client

- (1) If requested by the Clearing House, a General Clearing Participant must require a Client to disclose or procure (and the Client must disclose or procure) information and documents in relation to the Market Contracts that have been entered into in respect of the Client's account.
- (2) The information referred to in Rule 4.13(1) includes information whether any transaction in the Client's 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 such Market Contracts.
- (3) In relation to a request made under Rule 4.13(1), the Clearing House may direct a General Clearing Participant to refrain from acting for any Client until the information and document requested is furnished by the Client.

4.14 Doing business with Clients

- (1) A General Clearing Participant 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.
- (2) A General Clearing Participant must account for and adequately safeguard a Client's or potential Client's assets.

[Refer to Directive 4-001]

- (3) A General Clearing Participant must obtain written authorisation from the Client in relation to accepting instructions from any person or persons on behalf of a Client.

4.15 Protection of Clients' information

A General Clearing Participant and Registered Person must not disclose a Client's information in the Clearing Participant'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 Clearing House 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.

4.16 Clients' margins and margin payment

- (1) A General Clearing Participant must procure margins from its Clients.
- (2) A General Clearing Participant must ensure that its Clients maintain the amount of minimum margins on all Open Positions and on all Open Contracts where Delivery and acceptance of Delivery has been effected in accordance with Rule 8.02(c), and these margins are at least equivalent to the amount of margins required by the Clearing House.
- (3) A General Clearing Participant may accept from its Clients as margin, cash, letters of credit, bank guarantees, approved securities and other forms of margins in the manner and subject to conditions as the Clearing House may from time to time prescribe.

[Refer to Directive 4-001]

- (4) Except for a Market Contract which reduces a Client's margin obligation, a General Clearing Participant must ensure that no new Market Contracts are entered into by the Client unless:
 - (a) the minimum margin for the Market Contracts is on deposit or is forthcoming within such period as may be prescribed by the Clearing House from time to time after a call for margin has been made by the General Clearing Participant; and
 - (b) that Client's pre-existing Open Positions comply with the margin requirements established by the General Clearing Participant.

[Refer to Directive 4-001]

- (5) If new Market Contracts are entered into by the Client due to whatever reason despite Rule 4.16(4), the General Clearing Participant must clear and settle all such Open Contracts arising from such Market Contracts.
- (6) A General Clearing Participant may close out all or any Open Positions of a Client where the Client fails to comply with a demand for margin after a margin call has been made by the Clearing House.

4.17 Complaints by Clients

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

[Refer to Directive 4-001]

4.18 Statements to Clients

- (1) A General Clearing Participant must confirm in writing to every Client every transaction made for the Client no later than the following Business Day.

[Refer to Directive 4-001]

- (2) A General Clearing Participant must provide to each Client a monthly statement.

[Refer to Directive 4-001]

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PART D OUTSOURCING

4.19 Outsourcing by General Clearing Participants

- (1) A General Clearing Participant which outsources its Clearing functions to a Service Provider must comply with the following requirements:
 - (a) these Rules; and
 - (b) the Commission's Licensing Handbook.
- (2) A General Clearing Participant must ensure that the Service Provider(s) comply with the Rules and directions that are applicable to the outsourced functions in the same manner as the General Clearing Participant is required to.
- (3) A General Clearing Participant remains accountable for all outsourced Clearing 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.
- (4) The requirements in this Rule 4.19 is not applicable to a Bank Clearing Participant.

4.20 Outsourcing by Direct Clearing Participants

- (1) A Direct Clearing Participant which outsources its Clearing functions to a Service Provider must comply with the conditions set out in this Rule 4.20.
- (2) The Direct Clearing Participant must ensure compliance by the Service Provider(s) of all relevant requirements stipulated in any provision in these Rules and any agreement between the Direct Clearing Participant and the Clearing House.
- (3) A Direct Clearing Participant remains accountable for all outsourced Clearing 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.
- (4) The Direct Clearing Participant must have in place an insurance policy to protect it against any liability, loss or damage arising from any action or omission of the Service Provider in performing the said Clearing functions.
- (5) The Direct Clearing Participant must ensure that the Clearing House or its agent has, at all times, access to and is allowed to make copies of the Books of the Direct Clearing Participant or the Service Provider.
- (6) The Direct Clearing Participant must procure a written consent through a letter of undertaking from the Service Provider to allow the Clearing House or its agent to exercise its powers as stated in Rule 4.20(5) above.
- (7) A Direct Clearing Participant must notify the Clearing House within 2 weeks from the signing of the relevant agreement(s) setting out the terms and conditions of the outsourcing arrangement, including where applicable, the agreement setting out the terms and conditions for sub-contracting its Clearing functions to another Service Provider ("relevant service level agreement(s)").
- (8) A Direct Clearing Participant must, in respect of the outsourcing of its Clearing functions, notify the Clearing House of:
 - (a) the termination or variation of the relevant service level agreement(s); or

- (b) any adverse development arising from or in connection with the outsourcing arrangement that could significantly affect the Direct Clearing Participant, within 2 weeks from the occurrence of such event.

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PART E FINANCING

4.21 Financing to Related Corporations

Subject to any restriction or prohibition under any law, a Clearing Participant may extend financing to any Related Corporation of the Clearing Participant if:

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

4.22 Non-applicability of Rule 4.21

Rule 4.21 does not apply to a Bank Clearing Participant.

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PART F OFF-BALANCE SHEET TRANSACTIONS

4.23 Investment Banks

All provisions in this Part F of this Chapter 4 do not apply to a Clearing Participant that is an Investment Bank.

4.24 Records of Off-Balance Sheet transactions

A Clearing Participant must maintain a Record that sufficiently explains the Off-Balance Sheet transactions entered by it.

4.25 Reporting of Off-Balance Sheet transactions

A Clearing Participant must lodge with the Clearing House a monthly report on Off-Balance Sheet transactions in the form as prescribed by the Clearing House.

[Refer to Directive No. 4-002]

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PART G DISPUTES

4.26 Disputes

In relation to a dispute that arises from or in connection with an Open Contract, the following applies:

- (a) If the dispute arises from or in connection with physical delivery pursuant to an Open Contract, the parties to the dispute must settle the dispute by arbitration;
- (b) For disputes other than those specified in Rule 4.26(a), 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; and
- (c) If parties are unable to agree on an arbitral forum for the settlement of disputes under Rules 4.26(a) or (b), then such parties must settle the dispute by arbitration before an arbitral forum prescribed by the Clearing House.

[Refer to Directive No. 4.26-001]

4.27 Arbitration and arbitration award binds Clearing Participants' Clients

A Clearing Participant must cause its Clients to agree that in relation to a dispute referred to in Rule 4.26:

- (a) the Clients must submit to arbitration; and
- (b) the Client complies with Rule 4.28.

4.28 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 Clearing House of:
 - (a) any request made for a dispute to be arbitrated; and
 - (b) the outcome of the arbitration.
- (4) The Clearing House will not be liable to any party for any act or omission in connection with any arbitration.

[End of Chapter]