

Financial Services (Investment and Fiduciary Services)

1989-47

FINANCIAL SERVICES (CONDUCT OF BUSINESS)

REGULATIONS, 1991

Regulations made under s.53.

**Subsidiary
1991/094**

FINANCIAL SERVICES (CONDUCT OF BUSINESS)

REGULATIONS, 1991

(LN. 1991/094)

30.5.1991

Amending enactments	Relevant current provisions	Commencement date
LN. 2006/140	r. 3(1) & (2)	7.12.2006

ARRANGEMENT OF REGULATIONS.

Regulation

**PART 1.
PRELIMINARY.**

1. Citation.
2. Interpretation.
3. Application.

**PART 2.
STATEMENTS OF PRINCIPLE.**

4. Integrity.
5. Skill, care and diligence.
6. Best market practice.
7. Know your customer.
8. Information for customers.
9. Conflicts of interest.
10. Customer assets.
11. Financial resources.
12. Internal organisation.
13. Relations with the Commission.

**PART 3.
CORE RULES.**

I. Independence.

14. Independence.
15. Material interest.
16. Inducements.

II. Advertising and Marketing.

17. Issue of advertisements.
18. Identification of issuer.
19. Fair and clear communications.
20. Customers' understanding of risk.
21. Information about the licensee.
22. Information about packaged products.
23. Representatives of licensee.

**FINANCIAL SERVICES (CONDUCT OF BUSINESS)
REGULATIONS, 1991**

**Subsidiary
1991/094**

III. Customer Relations.

24. Customer agreements.
25. Where written customer agreement required.
26. Customer's rights.
27. Suitability.
28. Charges.
29. Confirmations and periodic information.

IV. Dealing for Customers.

30. Customer order priority.
31. Timely execution.
32. Best execution.
33. Timely allocation.
34. Fair allocation.
35. Front running.
36. Churning.

V. Market Integrity.

37. Insider dealing.
38. Reportable transactions.

VI. Administration.

39. Safeguarding of customer investments.
40. Complaints.
41. Compliance.
42. Supervision.
43. Cessation of business.

1989-47

Financial Services (Investment and Fiduciary Services)

FINANCIAL SERVICES (CONDUCT OF BUSINESS)

REGULATIONS, 1991

**Subsidiary
1991/094**

Citation.

1. These Regulations may be cited as the Financial Services (Conduct of Business) Regulations, 1991.

Interpretation.

2. In these Regulations, unless the context otherwise requires–

“the Commission” means the Financial Services Commission established by section 3 of the Financial Services Commission Act, 1989;

“contract for differences” means an investment falling within paragraph 9 of Schedule 1 to the Act;

“controlled activity” has the meaning given in section 3(2)(c) of, and Schedule 3 to, the Act;

“customer” means any person with or for whom the licensee has entered into or intends to enter into an investment agreement, and includes a potential customer;

“customer transaction” does not include an own account transaction;

“financial services business” means any activity that constitutes investment business or a controlled activity, and “financial services” shall be construed accordingly;

“futures” means an investment falling within paragraph 8 of Schedule 1 to the Act;

“investment” has the meaning given in section 3(2)(a) of, and Schedule 1 to, the Act;

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Schedule 2 or 3 to the Act;

“investment business” has the meaning given in section 3(2)(b) of, and Schedule 2 to, the Act;

“licensee” means a person licensed under section 8 of the Act to carry on investment business or a controlled activity;

1989-47

Financial Services (Investment and Fiduciary Services)

FINANCIAL SERVICES (CONDUCT OF BUSINESS)

**Subsidiary
1991/094**

REGULATIONS, 1991

“option” means an investment falling within paragraph 7 of Schedule 1 to the Act;

“the Act” means the Financial Services Act, 1989;

“own account transaction” means a transaction effected or arranged by the licensee in the course of carrying on its financial services business and which was done on its own account or on the account of an associate acting on its own account;

“packaged product” means a life policy or a unit in an authorised or recognised investment scheme; and

“regulatory system” means the arrangements for regulating a licensee under the Act and subsidiary legislation made thereunder and any rules or directions made by the Commission.

Application.

3.(1) These Regulations apply in relation to all licensees in respect of their financial services business, other than business falling within paragraph 1 and 2 of Schedule 3 to the Act.

(2) These Regulations are of general application to all financial services business provided that, where a regulation applies only in particular circumstances, that regulation will apply to a licensee only if those circumstances are relevant to the course of the financial services business, other than business falling within paragraph 1 or 2 of Schedule 3 to the Act undertaken by that licensee.

PART 2.

STATEMENTS OF PRINCIPLE.

Integrity.

4. A licensee shall observe high standards of integrity and fair dealing in the conduct of its financial services business.

Skill, care and diligence.

5. A licensee shall act with due skill, care and diligence in the conduct of its financial services business.

Best market practice.

6. A licensee shall observe high standards of market conduct in the conduct of its financial services business.

Know your customer.

7. A licensee shall seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

Information for customers.

8. A licensee shall take reasonable steps to ensure that a customer it advises is given, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed investment decision.

Conflicts of interest.

9.(1) A licensee shall either avoid any conflict of interest arising or, where conflicts arise, shall ensure fair treatment for all its customers by disclosure, internal rules of confidentiality, declining to act or otherwise.

(2) A licensee shall not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the licensee would place his interests above its own, the licensee shall live up to that expectation.

Customer assets.

10. Where a licensee, in connection with or for the purposes of financial services business, has control of or is otherwise responsible for assets belonging to a customer, it shall arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

Financial resources.

11. A licensee shall ensure that it maintains adequate financial resources to meet the commitments of its financial services business and to withstand the risks to which its business is subject.

Internal organisation.

12. A licensee shall organise and control its internal affairs in a responsible manner, keeping proper records, and where the licensee employs staff or is responsible for the conduct of financial services business by others, shall have adequate arrangements to ensure that they are suitable, adequately

trained and properly supervised and that it has well-defined procedures to facilitate compliance with the regulatory system.

Relations with the Commission.

13. A licensee shall deal with the Commission in an open and cooperative manner and keep the Commission promptly informed of anything concerning the licensee that might reasonably be expected to be disclosed to it.

PART 3.**CORE RULES.***I. Independence.***Independence.**

14. Where a licensee is advising or acting for a customer—

- (a) it shall not claim it is independent or impartial if it is not; and
- (b) it shall ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

Material interest.

15. Where a licensee has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the licensee shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless it has—

- (a) fairly disclosed that material interest or relationship, as the case may be, to the customer; or
- (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the customer.

Inducements.

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

Issue of advertisements.

17. Where a licensee issues an advertisement concerning investment or financial services, it shall have appropriate expertise in relation to the investment or service concerned and take all reasonable steps to ensure that—

- (a) the contents and presentation of the advertisement are demonstrably fair and not misleading;
- (b) the advertisement discloses fairly the risks involved in the investment or service concerned.

Identification of issuer.

18. Where a licensee issues an advertisement concerning investment or financial services, it shall ensure that the advertisement identifies it as the issuer.

Fair and clear communications.

19. (1) A licensee may make a communication with another person which is designed to promote the provision of financial services only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(2) A licensee shall take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to customers to whom it provides financial services is presented fairly and clearly.

Customers' understanding of risk.

20. A licensee shall not—

- (a) recommend a transaction to a customer, or effect a discretionary transaction with or for him, unless it has taken all reasonable steps to enable the customer to understand the risks involved; or
- (b) mislead a customer as to any advantages or disadvantages of a contemplated transaction.

Information about the licensee.

21. A licensee shall take reasonable steps to ensure that a customer to whom it provides financial services is given adequate information about its identity and business address and the identity and status within the licensee's firm of employees and other relevant representatives with whom the customer has contact.

Information about packaged products.

22. (1) Before or when making a personal recommendation to a customer to buy a packaged product, a licensee shall give him information about the product which is adequate to enable him to make an informed investment decision.

(2) Before or as soon as practicable after a customer buys a packaged product in a transaction recommended, effected or arranged by a licensee, the licensee shall provide him with appropriate written product particulars.

Representatives of licensee.

23. (1) A licensee shall satisfy itself on reasonable grounds and on a continuing basis that any representative it appoints is fit and proper to act for it in that capacity.

(2) The licensee shall also satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

*III. Customer Relations.***Customer agreements.**

24. Where a licensee provides financial services to a customer on written contractual terms, the agreement shall set out in adequate detail the basis on which those services are provided.

Where written customer agreement required.

25. A licensee shall not provide to a customer any financial services relating to—

- (a) futures, options or contracts for differences;
- (b) the discretionary management of a portfolio;
- (c) investments that are not readily realisable investments; or

FINANCIAL SERVICES (CONDUCT OF BUSINESS)

REGULATIONS, 1991

**Subsidiary
1991/094**

- (d) any other type of business that is prescribed by the Commission,

except under a written agreement signed by the customer and returned to the licensee and which sets out in adequate detail the basis on which the services are to be provided.

Customers' rights.

26. A licensee shall not, in any written communication or agreement, seek to exclude or restrict—

- (a) any duty or liability to a customer which it has under the Act, any subsidiary legislation made thereunder or under any rules made by the Commission;
- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to him of financial services;
- (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of financial services.

Suitability.

27. A licensee shall take all reasonable steps to ensure that it does not give financial advice to, nor effect a discretionary transaction with or for, a customer unless that advice or transaction is suitable for him having regard to the facts disclosed by that customer and other relevant facts about the customer of which the licensee is or ought reasonably to be aware.

Charges.

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

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

Confirmations and periodic information.

29. (1) Where a licensee effects a sale or purchase of an investment (other than a life policy) with or for a customer, it shall ensure that the customer is

sent with due dispatch a note containing the essential details of the transaction.

(2) Where a licensee acts as an investment manager for a customer, it shall ensure that the customer is sent at suitable intervals a report stating the value of the portfolio or account at the beginning and end of the period, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

IV. Dealing for Customers.

Customer order priority.

30. A licensee shall deal with customer and own account orders fairly and in due turn.

Timely execution.

31. When a licensee has agreed or decided in its discretion to effect or arrange a customer order, it shall effect or arrange the execution of the order as soon as is reasonably practicable in the circumstances.

Best execution.

32. Where a licensee deals with or for a customer it shall take all reasonable steps to find and deal on the terms which are the best available to the customer.

Timely allocation.

33. A licensee shall ensure that a transaction it executes is promptly allocated.

Fair allocation.

34. Where a licensee has aggregated an order for a customer transaction with an order for an own account transaction, or with an order for another customer transaction, then in the subsequent allocation—

- (a) it shall not give unfair preference to itself or to any of those for whom it dealt; and
- (b) if all orders cannot be satisfied, it shall give priority to satisfying orders for customer transactions.

Front running.

35. Where a licensee intends to publish to customers a recommendation or research or analysis, it shall not knowingly effect an own account transaction in the investment concerned or in any related investment until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

Churning.

36. A licensee shall not—

- (a) deal or arrange a deal in the exercise of discretion for any customer; or
- (b) advise a customer to deal,

if the dealing could in the circumstances reasonably be regarded as too frequent or too large.

V. Market Integrity.

Insider dealing.

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

Reportable transactions.

38. A licensee shall make available to the Commission on written request details about transactions (including own account transactions) in securities that it effects other than on an established investment exchange.

VI. Administration.

Safeguarding of customer investments.

39. A licensee which has custody of a customer's investments in connection with or with a view to financial services business shall—

- (a) keep safe, or arrange for the safekeeping of, any documents of title relating to them; and
- (b) ensure that any registrable investments that it buys or holds for a customer are properly registered in his name or, with the consent of the customer, in the name of an appropriate nominee.

Complaints.

40. A licensee shall have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

Compliance.

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

- (a) its officers, employees and other representatives are aware of their obligations under the Act, subsidiary legislation made thereunder and under rules made by the Commission, and that they act in conformity with them; and
- (b) sufficient information is recorded and retained about its financial services business and compliance with the regulatory system.

(2) Records required to be maintained by the regulatory system shall be kept available, for a period of not less than 6 years, by the licensee for inspection by any person duly authorised by the Commission.

Supervision.

42. A licensee shall establish and maintain procedures—

- (a) for the supervision of each of its officers, employees and other representatives; and
- (b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his competence to give or to provide.

Cessation of business.

43. Where a licensee decides to withdraw from financial services business it shall ensure to the satisfaction of the Commission that any such business which is outstanding is properly completed or transferred to another licensee.