

THE CAPITAL MARKETS (CONDUCT OF BUSINESS) REGULATIONS, 1996.

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Regulation.

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STATUTORY INSTRUMENTS.

1996 No. 56.

The Capital Markets (Conduct of Business) Regulations 1996.
(under section 102 of the Capital Markets Authority Statute 1996 Statute No. 1 of 1996).

IN EXERCISE of the powers conferred on the Capital Markets Authority by section 102 of the Capital Markets Authority Statute, 1996, these Regulations are made this 20th day of November, 1996.

PART I—PRELIMINARY.

1. These Regulations may be cited as the Capital Markets (Conduct of Business) Regulations, 1996.
2. (1) In these Regulations, unless the context otherwise requires—

"customer" means a person for whom a licensee acts as an agent and to whom the licensee owes a duty of care, and includes a potential customer;

"licensee" means a person licensed under Part IV of the Statute and includes an exempt dealer;

"own account transaction" means a transaction effected or arranged by the licensee in the course of carrying on his or her securities business and which was done on his or her own account;

"regulatory system" means the arrangements for regulating a licensee under the Statute and regulations made under the Statute or directions given by the Authority;

"securities business" means the business of dealing in securities.

(2) In these Regulations any term defined under the Statute shall have the meaning assigned to it by the Statute.

PART II—CONDUCT OF BUSINESS.

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

(a) he or she shall not claim to be independent or impartial if he or she is not; and

(b) he or she shall ensure that any claim he or she makes as to his or her independence or impartiality adequately includes any limitation that there may be on either.

4. 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 that transaction, the licensee shall not knowingly either advise, or deal in the exercise of a discretion, in relation to that transaction unless he or she 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 affects the interests of the customer.

5. A licensee shall take reasonable steps to ensure that neither he nor she nor any of his or her employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

6. Where a licensee issues an advertisement concerning his or her securities business, he or she shall take all reasonable steps to ensure that—

(a) the contents and presentation of the advertisement are demonstrably fair and not misleading; and

(b) the advertisement discloses fairly the risks concerned.

7. Where a licensee issues an advertisement concerning securities business, he or she shall ensure that the advertisement identifies him or her as the advertiser.

8. (1) A licensee may make a communication with another person which is designed to promote the provision of securities services only if he or she can show that he or she believes on reasonable grounds that the communication is fair, comprehensive and not misleading.

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

9. A licensee shall not—

(a) recommend a transaction to a customer, or effect a discretionary transaction with or for the customer, unless the licensee has taken all reasonable steps to enable the customer to understand the risks involved;

(b) mislead a customer as to any advantages or disadvantages of a contemplated transaction; or

(c) promise a return unless the return is contractually guaranteed.

10. A licensee shall take reasonable steps to ensure that a customer to whom he or she provides securities services is given adequate information about the identity and business address of the licensee and the identity and status within the licensee's firm, of employees and other relevant representatives with whom the customer has contact.

11. Before or when making a personal recommendation to a customer to invest in a collective investment scheme, a licensee shall give the customer—

(a) information about the scheme which is adequate to enable the customer to make an informed investment decision;

(b) appropriate written particulars.

12. (1) A licensee shall satisfy himself or herself on reasonable grounds and on a continuing basis, that any representative he or she appoints is fit and proper to act for him or her in that capacity.

(2) The licensee shall also satisfy himself or herself on reasonable grounds and on a continuing basis that he or she has adequate resources to monitor and enforce compliance by his or her representatives with high standards of business conduct.

13. (1) A licensee shall not provide to a customer any securities services relating to—

(a) the discretionary management of a portfolio; or

(b) any other type of business that is prescribed by the Authority; except under a written agreement signed by the customer and returned to the licensee.

(2) The Authority and a licensed securities exchange may from time to time, prescribe special procedures relating to the operation of discretionary accounts and every licensee must follow those special procedures or ensure that those special procedures are followed.

14. (1) Where a licensee provides securities services to a customer on written contractual terms (whether under regulation 13 or otherwise), the agreement shall set out in adequate detail, the basis on which those services are provided.

(2) The High Court may, if it considers it just and equitable to do so, by order set aside or vary an agreement entered into in contravention of this regulation; but no such order shall affect any dealing or transaction entered into or carried out by the licensee on behalf of the customer.

15. (1) A licensee shall not, in any written communication or agreement, seek to exclude or restrict—

(a) any duty or liability to a customer which he or she has under the Statute or any regulation made under the Statute;

(b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to him or her of securities 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 him or her in the provision of securities services.

(2) A purported exclusion or restriction prohibited by this rule shall be void and of no effect.

16. A licensee shall take all reasonable steps to ensure that he or she does not give securities advice to, nor effect a discretionary transaction with or for a customer unless that advice or transaction is suitable for him or her 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.

17. (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 securities services to a customer, the licensee shall disclose to the customer the basis or amount of the licensee's charges for the provision of those services and the nature and amount of any other remuneration receivable by the licensee and attributable to those services.

18. (1) Where a licensee effects a sale or purchase of securities with or for a customer, he or she shall ensure that the customer is sent with due dispatch, a contract note containing the essential details of the transaction in accordance with section 57 of the Statute.

(2) Where a licensee acts as an investment manager for a customer, he or she 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.

19. When a licensee has agreed or decided in his or her discretion to effect or arrange a customer order, he or she shall effect or arrange the execution of the order as soon as is reasonably practicable in the circumstances.

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

21. A licensee shall ensure that a transaction he or she executes is promptly allocated.

22. 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) the licensee shall not give unfair preference to himself or herself or to any of those for whom he or she dealt; and

(b) if all orders cannot be satisfied, the licensee shall give priority to satisfying orders for customer transactions.

23. Where a licensee intends to publish to customers a price sensitive recommendation or research or analysis, the licensee 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.

24. A licensee shall not—

(a) deal or arrange a deal in the exercise of his or her 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.

25. A licensee who has custody of a customer's securities in connection with or with a view to securities business shall—

(a) keep safe, or arrange for the safekeeping of any documents of title, or documents evidencing title, relating to them; and

(b) ensure that any securities that the licensee buys or holds for a customer are properly registered in the name of the customer or, with the consent of the customer, in the name of an appropriate nominee.

26. 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.

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

(a) the licensee's officers, employees and other representatives are aware of their obligations under the Statute and any regulations or other legislation made under the Statute, and that they act in conformity with them; and

(b) sufficient information is recorded and retained about his or her securities 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 seven years, by the licensee for inspection by any person duly authorised by the Authority.

28. A licensee shall establish and maintain procedures—

(a) for the supervision of each of his or her 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 or her competence to give or to provide.

29. (1) Subject to sub regulation (2), all information in the possession of a licensee relating to a customer, shall be kept confidential by the licensee.

(2) A licensee may disclose information relating to a customer when properly required to do so by the Authority, a clearing house or the market supervision department of a licensed securities exchange of which the licensee is a member, or if the licensee is ordered to do so by a court of competent jurisdiction or other due process of law.

30. Where a licensee decides to withdraw from securities business the licensee shall—

- (a) immediately notify the Authority and each of his or her customers of the decision; and
- (b) ensure to the satisfaction of the Authority that any such business which is outstanding is properly completed or transferred to another licensee.

31. A licensee shall at all times act according to best practice in the securities industry and, without prejudice to the foregoing, shall—

- (a) observe high standards of integrity and fair dealing;
- (b) act with due skill, care and diligence;
- (c) observe high standards of market conduct;
- (d) seek from customers, information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling the licensee to fulfill a licensee's responsibilities to his or her customer;
- (e) take reasonable steps to give every customer he or she advises, in a comprehensible and timely way, any information needed to enable the customer to make a balanced and informed investment decision;
- (f) avoid any conflict of interest with his or her customers and, where any such conflict unavoidably arises, to ensure fair treatment to his or her customer by complete disclosure or by declining to act; and he or she shall not unfairly place his or her interests above those of his or her customers;
- (g) protect properly, by way of segregation and identification, those customer assets for which a licensee is properly responsible;
- (h) maintain adequate financial resources to meet his or her securities business commitments and withstand the risks to which his or her business is subject;
- (i) organise and control his or her internal affairs in a responsible manner;
- (j) keep proper records;
- (k) have adequate arrangements to ensure that all staff employed are suitable, adequately trained and properly supervised, together with well-defined compliance procedures; and
- (l) deal with the Authority in an open and co-operative manner and keep the Authority informed of anything concerning the licensee that might reasonably be expected to be disclosed to it.

32. A licensee who fails, without reasonable excuse, to comply with any of the requirements of these Regulations commits an offence and is liable on conviction to a fine not exceeding four million shillings; and in the case of a continuing offence to a further fine not exceeding one hundred thousand shillings for each day on which the offence continues.

LEO KIBIRANGO,
Chairman, Capital Markets Authority.