

**KINGDOM OF SAUDI ARABIA**

**Capital Market Authority**

**AUTHORISED PERSONS REGULATIONS**

**English Translation of the Official Arabic Text**

**Issued by the Board of the Capital Market Authority**

**Pursuant to its Resolution Number 1-83-2005**

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**Based on the Capital Market Law**

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**Arabic is the official language of the Capital Market Authority**

**Important Notice: The current version of these Rules, as may be amended, can be found  
at the Authority website: [www.cma.org.sa](http://www.cma.org.sa)**

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## **PART 1: GENERAL PROVISIONS**

### **Article 1: Preliminary**

The purpose of these Regulations is to regulate authorised persons and registered persons and to specify the procedures and conditions for obtaining a license, as well as the conditions for the maintenance of the license or the registration, to provide for the rules of conduct that authorised persons must comply with when conducting their business, as well as the rules and provisions governing the conduct of business, and to set the systems and controls as well as the provisions relating to client money and assets.

### **Article 2: Definitions**

- a. Any reference to the “Capital Market Law” in these Regulations shall mean the Capital Market Law issued by Royal Decree No. M/30 dated 2/6/1424H.
- b. Expressions and terms in these Regulations have the meaning which they bear in the Capital Market Law and in the Glossary of defined terms used in the Regulations and Rules of the Capital Market Authority, unless the contrary intention appears.

### **Article 3: Compliance with the Regulations and Rules**

- a. An authorised person and a registered person must comply with the Regulations and Rules applicable to them and must provide to the Authority without delay any information, records or documents that the Authority may require for the purpose of administration of the Capital Market Law and its Implementing Regulations.
- b. The governing body and employees of an authorised person and a registered person, must comply with any requirement issued by the Authority to appear to explain any matter or to assist in any enquiry relating to the administration of the Capital Market Law and its Implementing Regulations.

### **Article 4: Waivers**

- a. The Authority may waive a provision of these Regulations in whole or in part as it applies to an applicant or an authorised person either on an application from the applicant or the authorised person or on its own initiative.

b. The Authority will make an announcement of the waiver of any provisions where it believes that:

- 1) the waiver of the provision may be of application to more than one type of authorised persons; and
- 2) the publication of the waiver will not materially prejudice the authorised persons.

This is to achieve the policy of the Authority to promote competition, including retaining a level playing field between authorised persons.



## **PART 2: THE PRINCIPLES FOR AUTHORISED PERSONS**

### **Article 5: The principles**

- a. The Principles provided for in this Part are a general statement of the fundamental obligations of authorised persons. They are intended to form a universal statement of the standards of conduct expected of authorised persons under these Regulations.
  
- b. An authorised person must comply with the following principles:
  - 1) Integrity, by conducting its business with integrity.
  
  - 2) Skill, care and diligence, by conducting its business with due skill, care and diligence.
  
  - 3) Efficiency of management and control, by taking reasonable care to organise its affairs responsibly and effectively, with adequate risk management policies and systems.
  
  - 4) Financial prudence, by maintaining adequate financial resources in accordance with the Rules issued by the Authority.
  
  - 5) Proper market conduct, by observing proper standards of market conduct.
  
  - 6) Protection of Clients' assets, by arranging for adequate protection of its clients' assets.
  
  - 7) Co-operation with regulators, including disclosing to the Authority any material event or change in the authorised person's business operations or organization.
  
  - 8) Communications with clients, by communicating information to them in a way which is clear, fair and not misleading.
  
  - 9) Paying due regard to customers' interests, by treating them fairly and paying due regard to their interests.

- 10) No conflicts of interest, by managing conflicts of interest fairly, both between itself and its customers and between a customer and another client.
  
- 11) Customers' suitability, by taking reasonable care to ensure the suitability of its advice and discretionary managing decisions for any customer to whom it provides those services.

## **PART 3: AUTHORISATION**

### **Chapter One – Applications for authorisation**

#### **Article 6: Requirements for Authorisation**

- a. For the purposes of these Regulations, an applicant for authorisation means the person that is applying for authorisation to carry on securities business. An applicant for authorisation becomes subject to these Regulations from the date of submission of his application.
- b. An application for authorisation may be submitted by the founders or controlling shareholders of an applicant if the applicant is not yet established. The founders or controlling shareholders become subject to the provisions that apply to an applicant from the date of submission of the application.
- c. An application for authorisation must be made on the application form prescribed by the Authority and be accompanied by the information and documents required in Annex 3.1.
- d. The form and contents of the application and all information and documents filed with it must be as prescribed by the Authority.
- e. An applicant must demonstrate to the Authority that:
  - 1) it is fit and proper to carry on securities business of the kind and scale for which it seeks authorisation in accordance with the rules prescribed by the Authority;
  - 2) it has adequate expertise and resources for the kind of securities business that it proposes to carry on in accordance with the rules prescribed by the Authority;
  - 3) it has managerial expertise, financial systems, risk management policies and systems, technological resources, and operational procedures and systems that are sufficient to fulfil its business and regulatory obligations and to conduct the kind of securities business that it proposes to carry on; and

- 4) its directors, officers, employees and agents who will be involved in the applicant's securities business have the necessary qualifications, skills, experience and integrity to carry on the kind of securities business that it proposes to carry on.
- f. In order to engage in dealing, custody and managing business, an applicant must be established in the Kingdom and must be:
- 1) a subsidiary of a local bank;
  - 2) a joint stock company;
  - 3) a subsidiary of a Saudi joint stock company that is engaged in financial services business; or
  - 4) a subsidiary of a foreign financial institution that is licensed under the Banking Control Law issued by Royal Decree No. M/5 dated 22/2/1386H.

The applicant may be of any legal form established in the Kingdom to apply for a license to conduct arranging or advising.

- g. The paid up capital of the applicant must not be less than the following:
- 1) dealing and custody: SR 50 million;
  - 2) managing: SR 20 million for managing investment funds and client portfolios; and SR 5 million for managing private non-real-estate investment funds and sophisticated investor portfolios;
  - 3) arranging: SR 2 million; and
  - 4) advising: SR 400,000.
- h. An applicant must have its management and head office in the Kingdom.

- i. If the applicant has close links with another person, the Authority must be satisfied with the integrity, regulatory status, business record and financial soundness of any such person, and that such close links will not impair the effective supervision of the applicant, or its operations and compliance with these Regulations.
- j. The applicant for authorisation must pay such fees as may be prescribed by the Authority.

**Article 7: Procedure and powers of the Authority in relation to an application**

- a. In considering an application, the Authority may:
  - 1) carry out any enquiries that it considers appropriate;
  - 2) require the applicant, or his representative, to attend before the Authority to answer questions and explain any matter the Authority considers relevant to the application;
  - 3) require the applicant to provide such additional information as the Authority considers appropriate within 30 days of the request; and
  - 4) verify any information furnished by the applicant.
- b. The Authority may refuse to consider the application for authorisation where an applicant has failed to provide information requested from it, or has failed to provide information requested from it within the time requested.
- c. The Authority shall, upon receipt of all information and documents required, notify the applicant in writing of the same, and shall take any of the following decisions within a maximum period of 30 days from the date of the notice:
  - 1) approve the application in whole or in part;
  - 2) approve the application subject to such conditions and limitations as it considers appropriate;
  - 3) refuse the application, giving reasons.

- d. If the Authority resolves to authorise the applicant, it will inform the applicant of this in writing and of its permitted business profile including any limitations that the Authority may consider appropriate.
- e. If the Authority resolves to refuse the application, it will notify the applicant in writing.
- f. An applicant must not carry on, or hold itself out as carrying on, securities business prior to receiving the Authority's decision referred to at paragraph (d) of this Article.

### **Article 8: Right of appeal**

The applicant may appeal to the Committee in respect of any decision or action that the Authority takes under this Part.

## **Chapter Two – Maintenance of authorisation**

### **Article 9: Fit and Proper**

- a. As a condition for the maintenance of authorisation, an authorised person must continue to be fit and proper to carry out the securities business which it is authorised to carry out at all times.
- b. The skills, experience, competence and integrity of an authorised person's or applicant's employees, officers or agents is an important factor in assessing whether it is fit and proper. The skills, experience, competence and integrity of the employees, officers or agents will be assessed against the following criteria:
  - 1) they must possess adequate qualifications and professional experience to carry out their responsibilities, including appropriate technical knowledge and skills;
  - 2) they must have probity and soundness of judgement commensurate with their positions;

- 3) they must fulfil their responsibilities with diligence and to protect clients' interests in accordance with the Implementing Regulations;
- 4) they must not have committed an offence involving fraud or dishonesty; and
- 5) they must not have contravened or broken any laws or regulations governing securities business or aimed at protecting investors.

**Article 10: Scope of business**

- a. An authorised person must not carry on, or hold itself out as carrying on, securities business unless that business is within its permitted business profile.
- b. An authorised person must comply with the rules applicable to it and with any limitation, condition or other requirement that the Authority specifies.
- c. Client money must be held with a local bank.
- d. The value of assets under management by an authorised person shall not exceed SR (one) billion if his activity is limited to managing private non-real-estate investment funds or managing sophisticated investor portfolios, and he shall have a continuous control mechanism to ensure the value does not exceed the maximum limit stated in this paragraph. If the limit was exceeded, the authorised person must take the following steps:
  - 1) Notify the Authority at occurrence immediately; and
  - 2) submit a corrective plan to the Authority within a maximum period of one month from occurrence date, and refrain from receiving any additional funds or assets from clients from occurrence date until the situation is corrected.

**Article 11: Variation or amendment**

- a. An authorised person must apply to the Authority for approval of any proposed variation or amendment to its permitted business profile.

- b. The Authority has all the powers set out in Article 7 of these Regulations to consider a proposed variation or amendment, and may also require some or all of the information or documents referred to in Article 6 of these Regulations to be updated.
- c. The Authority will aim to process an application to vary or amend an authorised person's permitted business profile within 30 days from receiving all information that it considers necessary.
- d. After considering an application to vary or amend an authorised person's permitted business profile, the Authority may:
  - 1) approve the application for variation or amendment in whole or in part;
  - 2) approve the application subject to such conditions and limitations as it considers appropriate;
  - 3) defer making a decision for such period as it may consider necessary to carry out further study or examination or to allow for the provision of additional information; or
  - 4) refuse the application, giving reasons.
- e. If the Authority resolves to approve an application for a change in a permitted business profile, it will inform the authorised person of this in writing and of its new permitted business profile, including any limitations that the Authority may consider appropriate.
- f. The authorised person must not carry on (or hold itself out as carrying on) the kind of securities business concerned before receiving the Authority's notification under paragraph (e) of this Article.
- g. If the Authority resolves to refuse the application for variation or amendment, it will notify the authorised person in writing.
- h. The authorised person may appeal to the Committee in respect of any decision or action that the Authority takes under this Article.



## **Article 12: Withdrawal from business and cancellation of authorisation**

- a. An authorised person that proposes to cease to carry on securities business must notify the Authority in writing of the date on which it intends to cease to carry securities business and the reasons for the decision:
  - 1) at least 45 days in advance of that date; or
  - 2) if such advance notice is not possible because cessation of business is caused by an external event of which the authorised person was not aware, immediately on making a decision to cease to carry on securities business.
- b. Where an authorised person decides to cease providing securities business to clients, it must ensure that any such business that is outstanding is properly completed or is transferred to another authorised person and that it provides reasonable notice to its clients of the cessation of business.
- c. An authorised person may request the cancellation of its authorisation, and must in this case submit a written request to the Authority not less than three months prior to the proposed date of the cancellation.
- d. A request to cancel an authorisation must include sufficient information concerning the circumstances of the cancellation to enable the Authority to determine whether to accept the cancellation, to postpone the date of the cancellation, or to require other measures that it considers necessary for the protection of clients of the authorised person.
- e. The Authority may refuse a request to cancel an authorisation if it considers that the maintenance of the authorisation is necessary to investigate any matter affecting the authorised person, to protect the interests of the authorised person's clients, or to impose a prohibition or requirements on such authorised person under the Capital Market Law or its Implementing Regulations.
- f. The Authority may suspend the authorised person's authorisation on its own initiative if the authorised person does not carry on any securities business for a period of 12 months, or 6 months following the date on which an authorised person has ceased to

carry on securities business after notification to the Authority in accordance with paragraph (a) of this Article.

- g. An authorised person continues to be subject to the jurisdiction of the Authority in respect of any act or omission that occurred before the cancellation of its authorisation and for two years thereafter. If at any time during this period the Authority commences any enforcement investigation or proceedings, the authorised person shall continue to be subject to the jurisdiction of the Authority until the end of the enforcement investigation or proceedings.

### **Article 13: Controllers**

- a. An authorised person must notify the Authority, in such form as the Authority may prescribe, that a person is intending to become, or cease to be, a controller of the authorised person:
  - 1) at least 30 days in advance of the proposed effective date; or
  - 2) if such advance notice is not possible, immediately on the authorised person becoming aware of such intention.
- b. An authorised person must not permit any person to become or act as a controller unless the Authority has approved the controller in writing.
- c. A person who intends to become a controller of an authorised person must notify the Authority of such intention at least 30 days in advance of the proposed effective date, and must provide the Authority with such information as the Authority requires to satisfy itself of its identity, integrity, regulatory status, business record and financial soundness.
- d. Before approving a controller the Authority must be satisfied that the person's control of the authorised person will not impair the effective supervision of the authorised person or its operations and compliance with the Capital Market Law and the Implementing Regulations.
- e. In considering any application submitted under this Article, the Authority has all of the powers set out in Article 7 of these Regulations.

#### **Article 14: Close links**

- a. An authorised person must notify the Authority, in such form as the Authority may prescribe, that a person is intending to establish close links with the authorised person:
  - 1) at least 30 days in advance of the proposed effective date; or
  - 2) if such advance notice is not possible, immediately on the authorised person becoming aware of any change in close links.

The notice must include such information as the Authority requires to satisfy itself of the identity of the person with whom the authorised person proposes to establish close links, its integrity, regulatory status, business record and financial soundness.

- b. An authorised person must not establish close links with another person unless the Authority has approved the close links in writing.
- c. Before approving any close links, the Authority must be satisfied that such links will not impair the effective supervision of the authorised person or its operations and compliance with the Capital Market Law and the Implementing Regulations.
- d. In considering any application to establish close links, the Authority has all of the powers set out in Article 7 of these Regulations.

#### **Article 15: Notification requirements and Powers of Authority**

- a. An authorised person must comply with the notification requirements set out in Annex 3.2.
- b. On receiving a notice under paragraph (a) of this Article, the Authority may:
  - 1) require the authorised person to provide any additional information that it considers necessary to properly assess the matter; and

- 2) impose any conditions, restrictions or additional requirements on an authorised person, including limitations on its permitted business profile, that it reasonably considers to be necessary to address a regulatory concern raised by any matter that it is notified of under this Article.

#### **Article 16: Record-keeping**

- a. An authorised person must record and retain sufficient information about its securities business to demonstrate compliance with these Regulations.
- b. Records required to be maintained by these Regulations must be retained for a period of ten years unless the Authority specifies otherwise.
- c. The Authority may inspect the records directly or through a person it appoints for that purpose.
- d. Records made by an authorised person may be recorded in any form, but must be capable of reproduction in hard printed form.
- e. When a client or a former client requests any records kept during the regulatory record-keeping period, the authorised person must make available, within a reasonable period, any of the following:
  - 1) any written material or records which relate to that client and which the authorised person has sent, or is required to send, to that client under Part 5 of these Regulations; and
  - 2) copies of any correspondence received from or sent to that client relating to securities business.

#### **Article 17: Fees**

An authorised person must pay such fees as the Authority may prescribe for the maintenance of the license.

## ANNEX 3.1

### INFORMATION AND DOCUMENTS REQUIRED FOR AUTHORISATION

These authorisation requirements set out below apply to all types of securities business and the application of each requirement will differ depending on the nature, scope and complexity of the activities. Applicants whom the type of their activities will be limited to managing private non-real estate investment funds, managing sophisticated investor portfolios, arranging and advising will be excluded from submitting the information and documents stated in the sub-paragraphs (1), (3), (4) and (5) of paragraph (8) and the paragraphs (9), (10), (11), (12), (13), (16) and (17) of this Annex, provided that the applicant undertakes to obtain the documents and information contained in sub-paragraphs (1), (3), (4) and (5) of paragraph (8) and paragraphs (10), (13), (16) And (17) of this Annex before commencing his activity.

1. **Controllers** – An applicant must submit a list of all controllers of the applicant, and provide details of the identity, ownership (if applicable), integrity, regulatory status, business record and financial position of each proposed controller.
2. **Close Links** – An applicant must submit a list of all persons that have, or are proposed to have, close links with the applicant, and provide details of the identity, ownership (if applicable), integrity, regulatory status, business record and financial position of each such person.
3. **Governing Body Resolution** – An applicant must submit to the Authority a resolution of its governing body in the form prescribed by the Authority approving the application and its contents, and certifying the accuracy and completeness of the accompanying information and documents.
4. **Business Profile** – An applicant must submit a proposed business profile including full details of all securities and all services for which the applicant proposes to provide for each securities activity that it is applying to carry on. A schedule must be attached in the following form:

<b>Securities Business</b>	<b>Types of Activity</b>	<b>Details of Securities</b>	<b>Details of Services</b>	<b>Categories of clients</b>
Dealing	Dealer (as principal or agent) Underwriter			
Custody	Securities custody services			
Managing	Manage investment funds Manage client portfolios Manage private non-real-estate investment funds Manage sophisticated investor portfolios			
Arranging	Financial advisor / corporate finance advisor			
Advising	Investment Advisor			

5. **Business Plan** – An applicant must submit a business plan, setting out:
- 1) a detailed description of the securities business activities that the applicant proposes to undertake during, at least, the first 12 months after authorisation, including:
    - the products and services that it intends to provide to clients;
    - the classes and types of securities that it intends to provide services in; and
    - all exchanges and markets that it intends to trade in;
  - 2) a description of the nature of the proposed clients of the applicant;
  - 3) a list of any exchanges, clearing houses or depositaries of which the applicant is or intends to become a member.
6. **Financial Statements** – An applicant must submit financial statements prepared and accredited by the applicant’s auditors in accordance with the standards issued by SOCPA and presented in the format prescribed by the Authority, and must:

- 1) show the applicant's current and projected financial position, including its capital, financial resources, revenues and expenses as at the date of the financial statements, the proposed commencement of business, and the financial position 12 months after the date of commencement of business;
  - 2) provide supporting evidence of the capitalisation and resources of the applicant and the presumptions on which the statements have been provided.
7. **Registered Persons** – An applicant must submit a list of each person who is to be a registered person and an application form for registration for each such person in the format prescribed by the Authority, including details of their qualifications and experience.
8. **Systems and Controls** – An applicant must, in accordance with Part 6 of these Regulations, submit the following systems and controls documentation:
- 1) risk management policies and systems;
  - 2) anti-money laundering and anti-terrorism financing procedures;
  - 3) compliance manual;
  - 4) compliance monitoring programme; and
  - 5) code of conduct.
9. **Operations Manual** – An applicant must submit an operational procedures manual detailing the procedures and systems to be employed in relation to all material business and administrative operations, including the following:
- 1) opening and processing of client accounts;
  - 2) processing and recording of orders, and the execution, settlement and confirmation of trades;
  - 3) the provision of prudent and suitable advice and services to clients;

- 4) handling and custody of client money and client assets;
  - 5) reporting to clients; and
  - 6) complying with all record-keeping requirements.
10. **Terms of Business** – An applicant must submit a copy of proposed terms of business (in accordance with Part 5 of these Regulations), and of the proposed forms.
11. **Fees** – An applicant must submit a list of proposed fees, commissions, charges and other expenses payable by clients.
12. **Contracts** – An applicant must submit agreements, arrangements and understandings with third parties to provide any material services or operations, including:
- 1) Execution, clearing and settlement of trades;
  - 2) Custody of client money or client assets;
  - 3) Arrangements to offer products or services provided by, sponsored by, or associated with a third party;
  - 4) Arrangements to introduce clients;
  - 5) Information technology, databases and computer systems;
  - 6) Record-keeping;
  - 7) Compliance services;
  - 8) Audit services.
13. **Insurance** – An applicant must submit details of professional indemnity insurance policies in accordance with the requirements prescribed by the Authority.



14. **Incorporation Documents** – If the applicant is a company, it must submit a copy of its articles of association or by-laws.
15. **Structure** – If an applicant is a company, it must submit an ownership structure chart showing the group of which the applicant forms part, including each controller and each person with whom the applicant has close links.
16. **Organisation Chart** – An applicant must submit an organisation chart identifying the applicant’s governing body, the CEO and senior management, the compliance officer and MLRO. The chart must outline the reporting lines of each department within the business in accordance with Part 6 of these Regulations.
17. **Business Continuity** – An applicant must submit a copy of the applicant’s business continuity plan.

### **ANNEX 3.2**

#### **NOTIFICATION REQUIREMENTS**

- I. An authorised person must notify the Authority in writing not less than 30 days before any change in:**
  1. the name of the authorised person or, where the authorised person is a company, its registered name;
  2. any business name under which the authorised person carries on securities business in the Kingdom; or
  3. the address of the head office of the authorised person, or, if different, the address of the place for service of notices or documents.
- II. An authorised person must notify the Authority in writing within 7 days of the occurrence of:**
  1. any change in the material information provided to the Authority on the form of application for registration relating to a registered person’s name, good reputation or character. A registered person must give immediate notice to the compliance officer of his authorised person of any such changes;

2. if the authorised person is a company, the formation, acquisition, disposal or dissolution of a subsidiary specifying the subsidiary's name and its principal business;
3. if the authorised person is not a company, when it acquires or disposes of a holding of more than half in nominal value of the capital of a company or equivalent holding of an unincorporated body, specifying the name of the company or unincorporated body and its principal business; or
4. any changes in the information originally submitted under the following headings:
  - branch offices in the Kingdom from which the authorised person carries on securities business;
  - insurance arrangements;
  - the countries outside the Kingdom in which the authorised person carries on securities business indicating whether this is done through a branch office, a subsidiary or otherwise; and
  - the contracts or arrangements to clear and settle transactions or for custody of client money or client assets.

**III. An authorised person must notify the Authority in writing immediately on the occurrence of:**

1. the presentation of a petition for the winding up of the authorised person or of a company which is a subsidiary or controller of the authorised person or the summoning of any meeting to consider a resolution to wind up an authorised person or a company which is a subsidiary or controller of the authorised person;
2. any insolvency event;
3. the imposition of disciplinary measures or disciplinary sanctions on the authorised person in relation to its securities business by any regulatory authority;

4. the conviction of the authorised person for any offence under legislation relating to banking or other financial services, companies, insolvency, or for any offence involving fraud or any act involving a lack of integrity or dishonesty, or the imposition of any penalties for deliberate zakat or tax evasion;
5. a general partner in an authorised person becoming a limited partner;
6. the granting or refusal of any application for, or revocation of, authorisation to carry on securities, banking or insurance business in any country or territory outside the Kingdom;
7. the withdrawal or refusal of an application for, or revocation of, membership of an exchange or clearing house;
8. the appointment of inspectors by an official or regulatory authority to investigate the affairs of the authorised person;
9. a significant act of misconduct by the authorised person or any of its registered persons;
10. the resignation or dismissal of any of the following persons:
  - 1) CEO or Managing Director;
  - 2) finance officer;
  - 3) director or partner;
  - 4) senior officer or manager;
  - 5) compliance officer;
  - 6) MLRO.

In cases of dismissal, full details of reasons for dismissal must be provided.

11. any matter which would be material to the requirements of the authorised person, any of its controllers, or any of its registered persons to remain fit and proper in accordance with the requirements under these Regulations;
12. any other matter which would be material to the Authority's supervision of the authorised person or any of its registered persons; or
13. any material changes to the information previously provided by the authorised person in any application for registration for one of its employees or prospective employees.

The duty to notify in connection with the matters set out in paragraphs 11, 12 and 13 arises immediately when the authorised person knows, or has reasonable grounds for believing, that any of these changes has occurred or will occur.

**IV. An authorised person must inform the Authority immediately in writing of any material event or change in its business or operations.**

**V. An authorised person must give the Authority prior written notice, or where the event has occurred, written notice as soon as it becomes aware, of:**

1. a proposed reorganisation or business expansion or other change that could have a material impact on the authorised person's business, risk profile or resources, including, but not limited to, the following:
  - setting up a new business within an authorised person's group, or establishing a new branch;
  - commencing the provision of cross border services into a new territory;
  - commencing the provision of a new type of product or service;
  - sale or transfer of any material assets or parts of its business; or

- ceasing to undertake a securities business activity, or significantly reducing the scope of any activity;
2. entering into, or significantly changing, a material outsourcing arrangement of a function of an authorised person of sufficient importance that failure of the function would jeopardise the authorised person's ability to comply with these Regulations;
  3. any significant failure in the authorised person's systems or controls, including those reported to the authorised person by the authorised person's auditor; or
  4. any event related to the authorised person that results in a material change in its capital adequacy, including:
    - any action that would result in a material change in the authorised person's financial resources or financial resources requirements under these Regulations;
    - the payment of a special or unusual dividend or the repayment of share capital or a subordinated loan;
    - for authorised persons which are subject to the rules on consolidated financial supervision, any proposal under which a member of the authorised person's group may be considering an action such as the actions mentioned above; or
    - any significant losses, whether recognised or unrecognised.

## **PART 4: REGISTERED PERSONS**

### **Chapter One - Background and scope**

#### **Article 18: Scope of Application**

This Part applies to authorised persons, registered persons, applicants for individual registration and persons performing registrable functions.

#### **Article 19: Registrable functions**

- a. The Authority shall prescribe the registrable functions.
- b. The following functions are considered functions that must be performed by registered persons:
  - 1) CEO or Managing Director;
  - 2) finance manager;
  - 3) a director or partner;
  - 4) senior officers or managers;
  - 5) compliance officer;
  - 6) MLRO;
  - 7) client functions, including sales representatives, investment advisors, portfolio managers and corporate finance professionals as defined by the Authority.

#### **Article 20: Performance of registrable functions**

- a. No person other than a registered person may perform a registrable function without the Authority's prior written consent.

- b. Every authorised person must at all times have a person who is registered for each of the following functions:
- 1) CEO or Managing Director;
  - 2) finance manager;
  - 3) compliance officer; and
  - 4) MLRO.
- c. The Authority will not take action against an authorised person for failure to comply with paragraph (b) of this Article where there is a temporary gap in the performance of the registrable functions, provided that the authorised person actively seeks an appropriate substitute and notifies the Authority of another registered person who will temporarily take responsibility for that registrable function.
- d. A person may perform more than one registrable function for an authorised person, except that:
- 1) the CEO, finance manager and compliance officer must be separate persons unless the Authority specifically approves another arrangement; and
  - 2) the compliance officer should not perform a client function.
- e. Except as provided in paragraph (a) of this Article, and without prejudice to the provisions of Article (59) of this regulations, an authorised person whose activity is limited to managing private non-real estate investment funds or managing sophisticated investor portfolios, arranging or advising may delegate the function of finance officer, compliance officer or MLRO to an external party, if the following conditions are met:
- 1) The external party responsible for the function of finance officer shall be a certified accounting firm licensed by the Saudi Organization for Certified Public Accountants, where one of its employee is assigned as finance officer for the authorized person;

- 2) the external party responsible for the function of compliance officer or the MLRO shall be an authorised person, a certified accounting firm licensed by the Saudi Organization for Certified Public Accountants or a law firm authorized to practice law in Saudi Arabia, where one of its employee is assigned as compliance officer or MLRO for the authorized person;
  - 3) the employees assigned by the delegated third parties, aforementioned in paragraph (1) and (2), must pass the qualification examinations required by the Authority, or secure an exemption from the Authority from such requirement; and
  - 4) any other conditions that the Authority specifies.
- f. Paragraph (b) of this Article does not apply where an authorised person activities are limited to managing private non-real-estate investment funds, managing sophisticated investor portfolios, arranging and advising, provided that he has two persons registered at all times one of which performs the functions of the Chief Executive Officer, and without prejudice to the provisions of paragraph (c) of this Article if one of their positions became vacant.

## **Chapter Two - Registration**

### **Article 21: Requirements for application for registration**

- a. An authorised person must not apply for registration of a person to perform a registrable function without the consent of the relevant person.
- b. The application for registration must be made on the form prescribed by the Authority.
- c. An applicant for registration becomes subject to these Regulations from submission of the application.
- d. An applicant for registration must have passed the qualification examinations required by the Authority, or secured an exemption from the Authority from such requirement.



- e. The Authority will specify the examination requirements associated with the registrable functions, together with guidance on eligible qualifications and criteria for an exemption from the required examination.
- f. The authorised person must pay such fees as may be determined by the Authority.

**Article 22: Procedure and powers of the Authority**

- a. In considering an application for registration, the Authority may take any of the following actions:
  - 1) carry out any enquiries which it considers appropriate;
  - 2) require the authorised person or the applicant for registration to appear before the Authority to answer any questions and explain any matter it considers relevant to the application;
  - 3) require that additional information be provided;
  - 4) verify the accuracy of any information furnished by the applicant for registration;
- b. The Authority will aim to process an application for registration within 30 days of receiving all information and documents that it considers pertinent.
- c. The Authority may, after considering the application, take any of the following actions:
  - 1) approve the application for registration;
  - 2) approve the application for registration subject to such conditions as it considers appropriate;
  - 3) defer making a decision for such period as may be necessary to carry out further investigation or to allow for the provision of additional information;  
or

- 4) refuse the application for registration, giving reasons.
  
- d. If the Authority resolves to register the applicant for registration, the Authority will add the applicant's name to the register of registered persons that the Authority shall maintain for this purpose and so inform the authorised person.
  
- e. If the Authority resolves to reject the application, the Authority shall notify the applicant for registration and the authorised person named in the application in writing.
  
- f. An applicant for registration must not perform the registrable function until he has been registered by the Authority.

**Article 23: Right of appeal**

An applicant for registration or the authorised person named in the application may appeal to the Committee in respect of any decision or action that the Authority takes under this Part.

**Chapter Three - General provisions**

**Article 24: Responsibilities of registered persons**

- a. A registered person must comply with the Principles stated in Part 2 of these Regulations, as applicable.
  
- b. A registered person must be resident in the Kingdom unless the Authority exempts him from this requirement.
  
- c. This Article applies to any person performing a registrable function who is not registered.

**Article 25: Cancellation of registration**

- a. If a registered person's registration is cancelled, the authorised person must ensure that the person immediately ceases to perform a registrable function.

- b. Within seven days of a registered person ceasing to carry on a registrable function or ceasing to be employed or associated with an authorised person, the authorised person must notify the Authority of that fact on the appropriate form. Upon receipt of the notice, the registration will be suspended, and the suspension shall remain in force until the Authority resolves any of the following:
  - 1) agrees to the termination of the registration;
  - 2) consent to the person becoming employed by an authorised person in a similar capacity; or
  - 3) removes the person from the register of registered persons.
- c. A registered person who is removed from the register by the Authority has a right of appeal to the Committee.
- d. A registered person continues to be subject to the jurisdiction of the Authority in respect of any act or omission that occurred before the cancellation of his registration and for two years thereafter. If at any time during this period the Authority commences any enforcement investigation or proceedings, the registered person shall continue to be subject to the jurisdiction of the Authority until the end of the enforcement investigation or proceedings.
- e. The Authority shall have the power to cancel the registration of a registered person if the registered person violates any provision of the Capital Market Law or its Implementing Regulations.

## **PART 5: CONDUCT OF BUSINESS**

### **Chapter One: General Provisions**

#### **Article 26: Preliminary provisions**

- a. This Part applies to all securities business carried on by an authorised person in the Kingdom or outside the Kingdom with or for a client who is in the Kingdom.
- b. An authorised person must clearly state that it has obtained a license from the Authority on all communications, advertisements and notices that are issued to the public that are used by its employees and agents, whether in physical or electronic form.

#### **Article 27: Inducements**

- a. An authorised person must not:
  - 1) induce a client to engage in any transaction by offering or giving gifts or inducements; or
  - 2) accept gifts or inducements if doing so would conflict to a material extent with any duty which it owes to a client.
- b. The Authority will regard any gift or inducement given or received by an affiliate of an authorised person or by a third party at the direction of an authorised person as being given or received by the authorised person itself for the purposes of paragraph (a) of this Article.
- c. An authorised person must not participate or offer to participate in any losses made by a client.

#### **Article 28: Special commission arrangements**

- a. Special commission arrangement means an arrangement where an authorised person receives goods or services in addition to trade execution services from an

intermediary in return for the commission paid on transactions directed through that intermediary.

- b. An authorised person may enter into a special commission arrangement if the following conditions are met:
- 1) the person responsible for executing the transaction provides best execution to the authorised person;
  - 2) the goods or services received by the authorised person may reasonably be regarded as being for the benefit of the authorised person's clients;
  - 3) the authorised person has disclosed in its terms of business with clients that it may receive special commission; and
  - 4) the amount of any fees or commission paid to the provider of the goods or services is reasonable in the circumstances.

#### **Article 29: Confidentiality**

An authorised person must keep information obtained from clients confidential, except where:

- 1) its disclosure is required by the Capital Market Law or its Implementing Regulations or the applicable laws of the Kingdom;
- 2) the client has consented to its disclosure;
- 3) its disclosure is reasonably necessary to perform a particular service for the client; or
- 4) the information is no longer confidential.

#### **Article 30: Chinese Walls Arrangements**

- a. "Chinese wall arrangements" means written policies and procedures established by an authorised person to secure confidential or inside information obtained by the authorised person in the course of carrying on securities business that are designed to

ensure that the information is known only to employees of the authorised person who are authorised to receive it, and to ensure that the information is not disclosed to any other persons.

- b. An authorised person that provides corporate finance services and also provides other types of dealing, advising or managing services must establish Chinese wall arrangements.
- c. An authorised person or an employee acting on behalf of an authorised person is not in violation of the provisions of articles 5 or 6 of the Market Conduct Regulations if the authorised person deals or advises in a security related to inside information while another department of the authorised person is in possession of inside information, if the following conditions are met:
  - 1) the authorised person has established appropriate Chinese wall arrangements in view of the nature and size of its securities business;
  - 2) the authorised person has effectively implemented and maintained its Chinese wall arrangements; and
  - 3) none of the individuals involved in the dealing or advising activity has knowledge of the inside information or has received advice on the dealing or advising activity from an individual who has knowledge of the inside information.

### **Article 31: Exclusions of liability**

Any condition providing for the exclusion or restriction of the liability of an authorised person, whether under terms of business or otherwise, shall be void if the exclusion or restriction contravenes the authorised person's obligations under the Capital Market Law or the Implementing Regulations.

## **Chapter Two - Securities advertisements**

### **Article 32: Scope of Application**

This Chapter applies to all securities advertisements made by an authorised person in the Kingdom, or approved by an authorised person for communication by another person. This Chapter does not apply to an advertisement that is excluded under the Securities Business Regulations.

### **Article 33: Prepared securities advertisements**

- a. A prepared securities advertisement means any securities advertisement that is prepared in advance and is communicated in writing, electronically or otherwise to one or more persons.
- b. Before communicating a prepared securities advertisement, or approving one to be communicated by another person, an authorised person must ensure that:
  - 1) the advertisement complies with the requirements of this Part after it is approved by a designated officer of the authorised person; and
  - 2) the advertisement is clear, fair and not misleading.
- c. A prepared securities advertisement must comply with the content requirements set out in Annex 5.1.
- d. If the prepared securities advertisement relates to specific securities then it must contain sufficient information to enable a person to make an informed assessment of the securities or securities activity to which it relates.
- e. If an authorised person becomes aware that a prepared securities advertisement does not comply with the requirements of this Part, it must withdraw the advertisement as soon as possible.
- f. An authorised person must maintain a complete record of each prepared securities advertisement that it has approved and confirmed compliance for.

### **Article 34: Direct Communications**

- a. Direct communications means any securities advertisement that is not a prepared securities advertisement, including a meeting with a customer or potential customer, a telephone call, a presentation or any direct interaction with one or more persons.
  
- b. Before making any direct communication an authorised person must ensure that:
  - 1) the recipient has consented to receiving the securities advertisement; or
  
  - 2) the recipient has an existing customer relationship with the authorised person and contemplates pursuant to such relationship that such securities advertisements will be made.
  
- c. An authorised person must ensure that an individual who makes a direct communication on the authorised person's behalf, including any registered person or other employee:
  - 1) does so in a way which is clear, fair and not misleading;
  
  - 2) does not make any false or misleading statements;
  
  - 3) makes clear the purpose of the securities advertisement at the initial point of communication, and identifies himself and the authorised person who he represents; and
  
  - 4) does not communicate with a person outside of business hours, unless the person has previously agreed to such a communication.
  
- d. An authorised person must have a Code of Conduct that require individuals seeking to obtain business on behalf of the authorised person to avoid using any undue pressure or making any misleading or deceptive statements, and to make clear their purpose and identity to customers or potential customers.



### **Article 35: Non-retail investment funds and derivatives**

An authorised person must not communicate a securities advertisement to a customer relating to a non-retail investment fund or to derivatives securities unless it has determined that the securities are suitable for the customer.

## **Chapter Three - Accepting clients**

### **Article 36: Client classification**

- a. Before conducting securities business with or for any client, an authorised person must classify the client as one of the following:
  - 1) a customer;
  - 2) an execution-only customer;
  - 3) a counterparty.
- b. An authorised person must not classify a client in more than one of the categories set out in paragraph (a) of this Article.
- c. An authorised person's dealing with its client classified as an execution-only customer must be restricted to dealing as his agent in accordance with the instructions that it receives from him, and the authorised person must not advise such client.
- d. An authorised person must make a record of the classification established for each client under this Article, including sufficient information to support that classification.

### **Article 37: Money laundering and terrorism financing**

Before conducting securities business with or for any client, an authorised person must ensure that it complies with all obligations under the Anti-Money Laundering Law and the rules and regulations on anti-money laundering and terrorism financing as in force in the Kingdom.

### **Article 38: Terms of business with clients**

- a. An authorised person must provide a client with terms of business setting out the basis on which securities business is to be conducted with or for the client. Such terms must be provided before conducting any securities business with or for the client.
- b. The terms of business with a client must take the form of an agreement which takes effect once an executed copy of the terms of business has been provided by the client.
- c. An authorised person must ensure that its terms of business set out in adequate detail the basis on which securities business is to be conducted.
- d. An authorised person must ensure that its terms of business with its customers conform to the terms of business requirements set out in Annex 5.2.
- e. An authorised person must retain a record of the terms of business it provides to a client, and any amendment to them.

### **Article 39: Know your customer**

- a. Before an authorised person deals, advises, or manages for a customer, it must obtain information from the customer concerning the customer's financial situation, investment experience and investment objectives relevant to the services to be provided. Such information must be obtained as a precondition to providing such services.
- b. The information required under paragraph (a) of this Article must at a minimum include the information required by Annex 5.3.
- c. The authorised person must request an update of such information from each customer at least once every three years.
- d. If the customer refuses to provide the information required under this Article, the authorised person may not deal, advise or manage for him.

- e. An authorised person must retain a record of all information obtained from the customer pursuant to this Article.

## **Chapter Four - Client relations**

### **Article 40: Fiduciary duties**

An authorised person owes the statutory fiduciary duties set out in Annex 5.4 to its customers.

### **Article 41: Conflicts of interest**

- a. An authorised person must ensure that it safeguards at all times the interests of its customer, and that no conflict of interest between its interest and the interest of its customer affects the transactions or the services that the authorised person carries out for its customer.
- b. Where an authorised person who acts for a customer has an actual or a potential conflict of interest in relation to a transaction it shall disclose that conflict of interest to the customer in writing.
- c. An authorised person is not required to disclose a conflict of interest if this information would constitute provision of inside information. In that instance an authorised person shall take reasonable steps to ensure fair treatment for the customer.
- d. If there is a conflict between an interest of an authorised person and an interest of the customer in any transaction, the authorised person must pay to the customer the value of any loss incurred by the customer as a result of the conflict unless:
  - 1) the authorised person has disclosed the conflict of interest to the customer in accordance with paragraph (b) of this Article; and
  - 2) the customer has agreed in writing that the authorised person can proceed notwithstanding the conflict.
- e. An authorised person must in all cases comply with Article 14 of the Market Conduct Regulations in any dealing as principal with a customer.

#### **Article 42: Understanding risk**

- a. An authorised person must not deal, advise or manage for a customer, or take collateral for its own account from a customer, unless it has taken reasonable steps to enable the customer to understand the nature of the risks involved in the type of transaction in which the customer would be engaging.
- b. An authorised person must not deal, advise, or manage for a customer:
  - 1) in derivatives securities, contingent liability securities or non-retail investment funds, unless it has informed the customer of the nature and extent of the risks involved in such securities; or
  - 2) in illiquid or speculative securities, unless it has informed the customer of the nature and extent of the risks involved in such securities, including any difficulties in determining their value.

#### **Article 43: Suitability**

- a. An authorised person must not deal, advise or manage for a customer or take collateral for its own account from a customer, unless the advice or transaction is suitable for that customer having regard to the facts disclosed by that customer and other relevant facts about that customer of which the authorised person is, or reasonably should be, aware.
- b. In reviewing the suitability of advice or a transaction for a customer, an authorised person must have regard to:
  - 1) the customer's knowledge and understanding of the relevant securities and markets, and of the risks involved;
  - 2) the customer's financial standing, including an assessment of his net worth or of the value of his portfolio based on the information disclosed by that customer;

- 3) the length of time the customer has been active in the relevant markets, the frequency of business and the extent to which he relies on the advice of the authorised person;
  - 4) the size and nature of transactions that have been undertaken for the customer in the relevant markets; and
  - 5) the customer's investment objectives.
- c. Notwithstanding paragraph (a) of this Article, if an authorised person has advised a customer that a transaction is not suitable for him and the customer decides to proceed with the transaction, an authorised person may accept an order to buy or sell the security from the customer, provided that a record of the advice provided to the customer is retained.
- d. This Article does not apply to dealing for an execution-only customer.

**Article 44: Customer borrowing**

- a. An authorised person shall not, in relation to securities business, knowingly lend money or extend credit to a customer and must not arrange for any other person to do so, unless:
- 1) the authorised person has made and recorded an assessment of the customer's financial standing, based on information disclosed by that customer, and is satisfied that the amount and the arrangements for the loan or credit are suitable for the customer; and
  - 2) the customer has given his prior written consent to the lending or credit facility, specifying the maximum amount of the loan or credit together with details of the amount and of any charges to be levied.
- b. Paragraph (a) of this Article does not apply where an authorised person:
- 1) settles a transaction in the event of a default or late payment by the customer;  
or

- 2) pays an amount to cover a margin call made for a customer for a period no longer than five days.

**Article 45: Margin Requirements**

- a. An authorised person may not effect a margined transaction with or for a client unless the client has entered into terms of business specifying the following:
  - 1) the circumstances under which the client may be required to provide margin;
  - 2) particulars of the form in which the margin may be provided;
  - 3) particulars of the steps which the authorised person may be entitled to take if the client fails to provide the required margin, including the communication method(s) by which the margin call will be made on the client;
  - 4) that failure by the client to meet a margin call may lead to the authorised person closing out the client's position after a time limit specified by the authorised person, and that the authorised person is entitled to close out the position in any event after a period of five days from such failure; and
  - 5) any circumstances, other than failure to provide margin, which may lead to the client's position being closed without prior reference to him.
- b. An authorised person may make a secured or unsecured loan or grant credit to a client for a period of more than five days for the purpose of making a deposit of margin or required margin payment if:
  - 1) a credit assessment is made of the client by an employee of the authorised person who is independent of the trading or marketing functions; and
  - 2) the client has given his prior written consent to the lending or credit facility, and such consent specifies the maximum amount of the loan or credit together with details of the amount and of any charges to be levied.

- c. An authorised person who effects a margin transaction with or for a client must:
  - 1) require the client to provide a minimum margin of 25 per cent of the value of the transaction prior to effecting the transaction;
  - 2) take reasonable steps to satisfy itself that the client is aware of the risks of margin transactions; and
  - 3) monitor the margin provided by the client daily, and ensure that the margin is maintained at a minimum level of 25 per cent of the current value of each applicable security position.
- d. The Authority may prescribe a higher rate of margin to be provided for transactions in any security or category of securities, and the authorised person must require a client to provide any such prescribed rate of margin.
- e. The Authority may prohibit margined transactions in relation to any security or category of securities.
- f. Margin payable by a client in respect of a margin transaction on a regulated exchange or market must be of an amount or value at least equal to the margin requirements of the relevant exchange, market or clearing house.
- g. Margin must be in the form of cash, fully-paid security positions or other acceptable collateral.

#### **Article 46: Fees and commissions**

Fees and commission charged by an authorised person to its clients must be fully disclosed in advance of providing any services.

## **Chapter Five - Reporting to clients**

### **Article 47: Contract notes**

- a. An authorised person who effects a sale or purchase of a security with or for a client must send the client a contract note forthwith.
- b. A contract note does not have to be sent where the authorised person is acting as manager and the client has confirmed that he will not require such contracts notes to be provided in writing.
- c. Contract notes must provide the information required in Annex 5.5.

### **Article 48: Periodic reporting**

- a. An authorised person who acts as manager for a client must send a valuation report at least every three months in respect of securities or securities-related cash balances contained in the client's account.
- b. Valuation reports must provide the information required in Annex 5.6.

## **Chapter Six - Miscellaneous**

### **Article 49: Client records**

- a. An authorised person must keep and maintain proper records of each transaction it effects. Such records must be current at all times and be sufficient to demonstrate compliance with these Regulations.
- b. An authorised person must keep and maintain proper records of client accounts. Such records must:
  - 1) accurately record at all times the assets and liabilities of each client and of all clients collectively;



- 2) contain such information as is necessary to enable the authorised person to prepare a statement of each client's assets and liabilities, and details of transactions effected for the client; and
  - 3) identify all client money and client assets that the authorised person, or its custodian, are responsible for.
- c. The records of the authorised person must contain:
- 1) details of all orders in a security entered by a client;
  - 2) details of all purchases and sales of a security made by the authorised person for a client, or by the authorised person for its own account;
  - 3) a record of all income and expenses for each client, explaining their nature;
  - 4) details of all receipts and payments of client money and client assets;
  - 5) a record of the cash and securities held in each client account; and
  - 6) a record of client money and client assets.

**Article 50: Employees' personal dealings**

- a. An employee of an authorised person must not knowingly:
- 1) be a party to any transaction in a security where a client of the authorised person is a party; or
  - 2) establish a trading account at another authorised person, except where the employee's authorised person does not offer the same service.
- b. An employee of an authorised person must disclose to the compliance officer all transactions in securities transacted at an authorised person other than his/her own.

- c. The compliance officer must establish procedures to monitor employees' personal dealings in securities to ensure compliance with the Capital Market Law and the Implementing Regulations.
- d. An authorised person must implement personal account dealing procedures consistent with the provisions of Annex 5.7.

**Article 51: Recording telephone calls**

- a. An authorised person must not make or accept telephone communications from clients or prospective clients in relation to securities business unless the authorised person records the telephone communications.
- b. An authorised person must disclose to its clients or prospective clients that telephone communications in relation to securities business will be recorded.
- c. An authorised person must retain the records of telephone communications in relation to securities business for a period of three years following the date of the telephone communication. In the event a telephone communication is relevant to a dispute with a client or a regulatory enquiry, the record must be retained until the dispute is fully resolved or the enquiry completed.

## ANNEX 5.1

### CONTENTS REQUIREMENTS FOR SECURITIES ADVERTISEMENTS

#### I. GENERAL CONTENTS REQUIREMENTS FOR ALL SECURITIES ADVERTISEMENTS

<b>1</b>	<b>Clarity of Purpose</b>
	The purpose of the advertisement must be clear.
<b>2</b>	<b>Clarity of subject</b>
	The nature or type of securities business and the type of securities being advertised must be clear.
<b>3</b>	<b>Statements, promises or forecasts</b>
	Any statement, promise or forecast must be fair and not misleading in the form and context in which it appears. If any promise or forecast is based on assumptions, the assumptions must be stated. An advertisement must not forecast the possible future price of securities.
<b>4</b>	<b>No false or misleading statements</b>
	The advertisement must not include false or misleading statements relating to the securities business, size or resources of the authorised person or any type of securities.
<b>5</b>	<b>Name, address and regulatory status</b>
	The advertisement (or the person making the advertisement) must state the name and address of the authorised person, and that the authorised person is authorised by the Authority.

#### II. CONTENTS REQUIRED FOR PREPARED SECURITIES ADVERTISEMENTS PROMOTING A SPECIFIC SECURITY OR SECURITIES OR A SPECIFIC SECURITIES SERVICE

<b>6</b>	<b>Guarantees</b>
	The advertisement must not describe a security as guaranteed unless there is a legally enforceable arrangement with a third party who undertakes to meet in full an investor's claim under the guarantee. If so, the advertisement must give details about both the guarantor and the guarantee sufficient for an investor to make a fair assessment about the value of the guarantee.

<b>7</b>	<b>Comparisons</b>
	<p>Advertisements that compare different securities or services must:</p> <ol style="list-style-type: none"> <li>1. be based either on facts verified by the authorised person or on assumptions stated within the advertisement;</li> <li>2. be presented in a fair and balanced way; and</li> <li>3. not omit anything material to the comparison.</li> </ol>
<b>8</b>	<b>Material interest</b>
	<p>An authorised person must include a statement acknowledging circumstances where the authorised person knows that it or its affiliates:</p> <ol style="list-style-type: none"> <li>1. has or may have a position or holding in the securities concerned or in related securities; or</li> <li>2. is providing or has provided within the previous 12 months significant advice or securities business services to the issuer of the securities concerned or of a related security.</li> </ol>
<b>9</b>	<b>Past performance</b>
	<p>Any information about the past performance of securities or of an authorised person that is included in an advertisement must:</p> <ol style="list-style-type: none"> <li>1. be a fair representation of the past performance of the securities or authorised person;</li> <li>2. not be selected so as to exaggerate the performance of the securities or authorised person;</li> <li>3. state the source of the information;</li> <li>4. be based on verifiable information; and</li> <li>5. warn that past performance is not necessarily a guide to future performance.</li> </ol>

<b>10</b>	<b>Zakat and Taxation</b>
	<p>If the advertisement contains any reference to the impact of zakat or taxation, it must:</p> <ol style="list-style-type: none"> <li>1. state the assumed rate of zakat or taxation and any relief; and</li> <li>2. state that such rates and relief may change over time.</li> </ol>
<b>11</b>	<b>Cancellation rights</b>
	Any advertisement for securities to which cancellation rights apply must contain details of such rights, including the period within which they may be exercised.

### **III. RISK WARNINGS FOR PREPARED ADVERTISEMENTS OF SPECIFIC SECURITIES**

<b>12</b>	<b>Fluctuations in value</b>
	Where the securities can fluctuate in price or value, a statement must be made that prices, values or income may fall and, if applicable, a warning that the investor may get back less than he invested.
<b>13</b>	<b>Suitability</b>
	Where the advertisement contains or refers to a recommendation about a specific security or securities service, a statement must be made warning that it may not be suitable for all recipients of the advertisement and a recommendation that, if they have any doubts, they should seek advice from their investment adviser.
<b>14</b>	<b>Volatile securities</b>
	<p>Where the advertisement relates to a security which is a geared security or a contingent liability security, it must state, if it is the case:</p> <ol style="list-style-type: none"> <li>1. that the security may be subject to sudden and large falls in value which could cause a loss equal to the amount invested; and</li> <li>2. that the investor's loss may not be limited to the amount originally invested or deposited, but may have to pay more.</li> </ol>
<b>15</b>	<b>Investment income</b>
	Where a security is described as being suitable for an investor particularly seeking income from his security, the investor must be warned, if it is the case, that:

	<ol style="list-style-type: none"> <li>1. income from the security may fluctuate; and</li> <li>2. part of the capital invested may be used to pay that income.</li> </ol>
<b>16</b>	<b>Foreign currency denominated securities</b>
	Where a security is denominated in a foreign currency, the investor must be warned that changes in currency rates may have an adverse effect on the value, price or income of the security.
<b>17</b>	<b>Illiquid Securities</b>
	<p>An advertisement for an illiquid security must state that it may be difficult:</p> <ol style="list-style-type: none"> <li>1. for the investor to sell or realise the security; and</li> <li>2. to obtain reliable information about its value or the extent of the risks to which it is exposed.</li> </ol>
<b>18</b>	<b>Sales charges and fees</b>
	<ol style="list-style-type: none"> <li>1. If an advertisement relates to a security on which deductions for charges and expenses are made at the time of the initial investment or on the sale of the investment, a warning that such charges apply must be included.</li> <li>2. If an advertisement relates to a security on which performance fees are charged, a warning that such charges apply must be included.</li> </ol>

## ANNEX 5.2

### TERMS OF BUSINESS REQUIREMENTS

An authorised person's terms of business to be entered into with or for a customer should, where relevant, provide for the following:

<b>1.</b>	<b>Commencement</b>	The date on which the terms of business come into force.
<b>2.</b>	<b>Name, address and regulator</b>	The name and address of the authorised person and a statement that the authorised person is regulated by the Authority.
<b>3.</b>	<b>Investment objectives</b>	The customer's investment objectives.
<b>4.</b>	<b>Restrictions</b>	Any restrictions on: <ul style="list-style-type: none"><li>• the types of securities in which the customer wishes to invest; and</li><li>• the markets on which the customer wishes transactions to be executed.</li></ul>
<b>5.</b>	<b>Services</b>	The services which the authorised person will provide.
<b>6.</b>	<b>Payments for services</b>	Details of any payment for services payable by the customer to the authorised person, including the following: <ol style="list-style-type: none"><li>1. structure and methods of the payments;</li><li>2. how it is to be paid and collected;</li><li>3. how frequently it is to be paid, and</li><li>4. any other payment that is receivable by the authorised person (or by any of its affiliates) in connection with any transaction executed by the authorised person, with or for the customer, in addition to or in lieu of any fees.</li></ol>

7.	<b>Investment manager</b>	<p>If the authorised person is to act as manager, the terms of business must include the following:</p> <ol style="list-style-type: none"> <li>1. the arrangements for giving instructions to the authorised person and acknowledging those instructions;</li> <li>2. the initial value of the managed portfolio;</li> <li>3. the initial composition of the managed portfolio;</li> <li>4. the period of account for which statements of the portfolio are to be provided;</li> <li>5. the extent of the discretion to be exercised by the authorised person, including any restrictions on investments;</li> <li>6. how performance will be measured;</li> <li>7. how valuations will be made.</li> </ol>
8.	<b>Accounting</b>	The arrangements for accounting to the customer for any transaction executed on his behalf.
9.	<b>Cancellation rights</b>	A description of any cancellation right to which the customer may be entitled.
10.	<b>Acting as a principal</b>	That the authorised person may act as principal in a transaction with the customer, if applicable.
11.	<b>Risk warning</b>	Any risk warning required under Part 5 of these Regulations.
12.	<b>Security lending</b>	Whether the authorised person may undertake security lending activity with or for the customer.
13.	<b>Termination method</b>	How the terms of business may be terminated.
14.	<b>Complaints</b>	How to complain to the authorised person.
15.	<b>Right to realise customer's assets</b>	A description of any right of the authorised person to realise the assets of the customer (including any collaterals) or to close out or liquidate positions on a default.
16.	<b>Contingent liability securities</b>	A statement of the basis on which the customer will incur any contingent liability, including margin requirements, and the maximum limits placed on such funding.



17.	<b>Authority to borrow</b>	Details of any authority to borrow or raise money on the customer's behalf, or enter into transactions which will involve the customer having to borrow or raise money and the maximum borrowing limit must be clarified.
18.	<b>Special commission arrangements</b>	A statement explaining the authorised person's policy regarding special commission arrangements.
19.	<b>Custody</b>	<p>Arrangements for:</p> <ol style="list-style-type: none"> <li>1. registration of client assets if these will not be registered in the customer's name;</li> <li>2. claiming and receiving dividends, commission payments and other entitlements accruing to the customer;</li> <li>3. exercising conversion and subscription rights;</li> <li>4. dealing with takeovers, other offers or capital re-organisations;</li> <li>5. exercising voting rights;</li> <li>6. the authorised person's liability in the event of a default by an eligible custodian;</li> <li>7. the giving and receiving of instructions by or on behalf of the client or other person accredited by the client, and any restrictions to that authority; and</li> <li>8. any agreement to lien or pledge interests over the client asset taken by the authorised person or an eligible custodian except in respect of charges relating to the administration or custody of the client assets.</li> </ol>
20.	<b>Pooling</b>	An authorised person must notify a customer where it intends to pool his client asset with that of one or more other clients and explain the meaning of pooling and warn the customer that:

		<ol style="list-style-type: none"> <li>1. customer assets or entitlements may not be separately identifiable by certificates, other physical documents of title or electronic record; and</li> <li>2. customers may participate pro rata in any irreconcilable shortfall resulting from the default of a custodian.</li> </ol>
<b>21.</b>	<b>Client assets held overseas</b>	Where an authorised person in accordance with these Regulations arranges for client assets to be held overseas, it must notify a client in writing that there may be different settlement, legal and regulatory requirements in overseas jurisdictions from those applying in the Kingdom.
<b>22.</b>	<b>Client money</b>	An authorised person must notify a customer in writing of the arrangements for holding client money.

**ANNEX 5.3**  
**KNOW YOUR CUSTOMER FORM**

Customers must provide the information required by this Annex.

<b>FILL THE FOLLOWING IF: CUSTOMER IS AN INDIVIDUAL</b>	
<b>PERSONAL INFORMATION</b>	
<i>Name:</i>	
<i>Date of birth:</i>	
<i>ID Number/passport No.:</i>	
<i>Marital Status:</i>	
<i>Number of dependants:</i>	
<i>Citizenship:</i>	
<i>Address for Correspondence:</i>	
<i>Home Phone:</i>	
<i>Mobile Number:</i>	
<i>Approximate annual income (in SAR)?</i>	
• 25,000 or less	<input type="checkbox"/>
• 25,001 to 50,000	<input type="checkbox"/>
• 50,001 to 100,000	<input type="checkbox"/>
• 100,001 to 250,000	<input type="checkbox"/>
• 250,001 to 500,000	<input type="checkbox"/>
• 500,001 to 1,000,000	<input type="checkbox"/>
• Over 1,000,000	<input type="checkbox"/>
<i>Approximate net worth (excluding residence) (in SAR)?</i>	
• 25,000 or less	<input type="checkbox"/>
• 25,001 to 100,000	<input type="checkbox"/>
• 100,001 to 500,000	<input type="checkbox"/>
• 500,001 to 1,000,000	<input type="checkbox"/>
• 1,000,001 to 5,000,000	<input type="checkbox"/>
• Over 5,000,000	<input type="checkbox"/>

<b>EMPLOYER INFORMATION</b>	
<i>Employer's Name:</i>	
<i>Employer's Address:</i>	
<i>Employer's Phone Number:</i>	
<i>Position / Title:</i>	
<i>How long employed:</i>	
<b>BANK INFORMATION</b>	
<i>Bank's Name:</i>	
<i>Branch:</i>	
<i>Main Account Number</i>	
<b>GENERAL INFORMATION</b>	
<i>Is the customer a director or officer of a publicly listed company? YES / NO</i>	
<i>Any other financial information on the customer's financial situation?</i>	

**FILL THE FOLLOWING IF:  
CUSTOMER IS A SOLE PROPRIETORSHIP OR A COMPANY**

**GENERAL INFORMATION**

<i>Name:</i>	
<i>Commercial Registration No:</i>	
<i>Registered Address:</i>	
<i>Country of Registration:</i>	
<i>Date of incorporation or start of business:</i>	
<i>Business Phone:</i>	
<i>Business Fax:</i>	
<i>Number of employees:</i>	
<i>Paid-up capital:</i>	
<i>Annual Turnover:</i>	

**COMPANY CONTACT**

<i>Name of Contact:</i>	
<i>Address for Correspondence:</i>	
<i>Business Phone:</i>	
<i>Business Fax:</i>	
<i>Mobile Number:</i>	

**BANK INFORMATION**

<i>Bank's Name:</i>	
<i>Branch:</i>	
<i>Main Account Number</i>	

**OTHER INFORMATION**

<i>Any other financial information on the customer's financial situation?</i>	
---	--

<b>CUSTODIAN DETAILS</b>	
Name	
Address for correspondence	
Account name	
Account number	

<b>Indicate where the following should be forwarded</b>	The customer	The custodian	Other: Specify all details as instructed by client
1) Certificates			
2) Dividends/other income			
3) Sale proceeds			

**INVESTMENT INFORMATION**

*Breakdown of Current Investment Portfolio*

	<b>Amount</b>
• Shares	<input type="text"/>
• Debt instruments	<input type="text"/>
• Foreign exchange	<input type="text"/>
• Deposits	<input type="text"/>
• Trade finance	<input type="text"/>
• Investment funds	<input type="text"/>
• Commodities	<input type="text"/>
• Contracts for difference and options	<input type="text"/>
• Real-estate	<input type="text"/>
<i>Total</i>	<input type="text"/>

*Investment knowledge and experience*

- Limited .....
- Good .....
- Extensive .....

<b>INVESTMENT PROFILE</b>			
<i>Customer's appetite for risk</i>			
High	<input type="checkbox"/>	Medium	<input type="checkbox"/>
	<input type="checkbox"/>	Low	<input type="checkbox"/>
<i>General investment objectives?</i>			
•	protection of capital .....		<input type="checkbox"/>
•	income .....		<input type="checkbox"/>
•	balanced .....		<input type="checkbox"/>
•	growth of capital .....		<input type="checkbox"/>
<i>What are the customer's preferred investment assets [tick as many as required]:</i>			
•	denominated in Saudi Riyals? .....		<input type="checkbox"/>
•	denominated in other foreign currencies? .....		<input type="checkbox"/>
•	State the foreign currencies: .....		

<b>FILL THE FOLLOWING IF: THE APPLICANT IS AN INDIVIDUAL</b>			
<i>Customer's ideal investment portfolio profile:</i>			
	<b>low risk</b> (short-dated debt instruments main-stream investment funds)	<b>medium risk</b> (long-dated debt instruments; large companies)	<b>high risk</b> (small and single product companies; leveraged and high-yield products)
Shares		%	%
Debt instruments	%	%	%
Investment funds	%	%	%
Trade finance	%		
Commodities			%
Options			%

*Ensure that the sum of all Percentages above equal 100%*



**ANNEX 5.4**  
**FIDUCIARY DUTIES**

**1. Loyalty**

An authorised person must act in all cases in good faith and in the interests of the customer.

**2. Conflict of interest**

An authorised person must comply with principle 10 provided for at paragraph (b) of Article 5 and with the provisions of Article 41 of these Regulations.

**3. No secret profits**

An authorised person must not use the customer's property, information or opportunities for its own or anyone else's benefit unless the authorised person makes full disclosure of such usage to the customer and obtains his consent.

**4. Care, skill and diligence**

An authorised person owes the customer a duty to exercise the care, skill and diligence which would be exercised in the same circumstance by a person having both:

- a. the knowledge and experience that may reasonably be expected of a person in the same position as the authorised person; and
- b. the knowledge and experience which the authorised person has

**ANNEX 5.5**  
**REQUIRED CONTENTS OF CONTRACT NOTES**

	<b>Particulars</b>
<b>1.</b>	The authorised person's name and a statement that it is authorised by the Authority.
<b>2.</b>	The trade date and time.
<b>3.</b>	The client's name, account number, address or other identifier.
<b>4.</b>	<p>The security concerned, the size involved and the type of the transaction (sale or purchase), and:</p> <ol style="list-style-type: none"> <li>1. the maturity and delivery or expiry date if the security is a contractually based security;</li> <li>2. if the security is an option that has been exercised: <ul style="list-style-type: none"> <li>• the strike price of the option; and</li> <li>• whether the exercise of the option creates a sale or purchase in the underlying asset.</li> </ul> </li> </ol>
<b>5.</b>	The per security price at which the transaction was executed, or averaged and the total consideration due from or to the client, and a statement if applicable, that the price is an averaged price.
<b>6.</b>	The settlement date where agreed.
<b>7.</b>	The authorised person's charges to the client in connection with the transaction.
<b>8.</b>	The amount of any front-end loading if the transaction is a purchase of a unit in an investment fund.
<b>9.</b>	Whether the authorised person executed the transaction as principal, or with or through an affiliate.
<b>10.</b>	Where any commission or other return which has accrued or will accrue on the relevant securities is accounted for separately from the transaction price, the amount of the commission or other return which the purchaser will receive or the number of days for which he will receive commission must be clarified.
<b>11.</b>	A statement, if this is the case, that any dividend, bonus or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the relevant security, will not pass to the purchaser under the transaction.

<b>12.</b>	The amount of any costs including transaction taxes which are incidental to the transaction and which will not be paid by the authorised person out of the charges mentioned in 7 above.
<b>13.</b>	If the transaction involved or will involve the purchase of one currency with another, the currency conversion rate involved or a statement that the rate will be supplied on request.
<b>14.</b>	<p>If the security to which the contract note relates closes out an open position in a derivatives contract, the contract note must set out:</p> <ol style="list-style-type: none"> <li data-bbox="328 656 1150 689">1. each derivatives contract that forms part of the open position;</li> <li data-bbox="328 757 1305 790">2. each derivatives contract that forms part of the closing of the position; and</li> <li data-bbox="328 857 1214 891">3. the net profit or loss made by the client on closing out the position.</li> </ol>

## ANNEX 5.6

### REQUIRED CONTENTS OF PERIODIC VALUATION STATEMENTS FOR CLIENT PORTFOLIOS

<b>1.</b>	<b>Contents and value of Portfolio</b>  <ol style="list-style-type: none"><li>1. Description of each security held in the portfolio, the number of shares, units or contracts held, and the current value of each security position;</li><li>2. Amount of cash balances;</li><li>3. Total value of the portfolio on the valuation date; and</li><li>4. Change in the value of the portfolio since the last valuation statement.</li></ol>
<b>2.</b>	<b>Basis of valuation</b>  <ol style="list-style-type: none"><li>1. A statement of the basis on which the value of each security has been determined and an explanation of any change in the basis for valuing any securities since the previous valuation report.</li><li>2. Where any securities are valued in a currency other than the currency used to value the portfolio, the relevant currency conversion rates as of the valuation date must be shown.</li></ol>
<b>3.</b>	<b>Transactions and changes in portfolio</b>  <ol style="list-style-type: none"><li>1. Particulars of each transaction entered into for the portfolio during the period;</li><li>2. Total amount of money transferred into and paid out of the portfolio during the period;</li><li>3. Details of any securities transferred into or out of the portfolio during the period; and</li><li>4. Total amount of commissions, dividends and other returns received by the authorised person for the portfolio during the period.</li></ol>

<p><b>4.</b></p>	<p><b>Charges and remuneration</b></p> <ol style="list-style-type: none"> <li>1. Total amount of fees, charges and taxes paid out of the portfolio for purchases and sales of securities during the period;</li> <li>2. Total amount of fees and charges for managing the portfolio and any other services provided by the authorised person during the period; and</li> <li>3. Details of any remuneration received by the authorised person from a third party in respect of transactions entered into for the portfolio, or a statement that the basis or amount of any such remuneration has been separately disclosed in writing to the client.</li> </ol>
<p><b>5.</b></p>	<p><b>Securities pledged or charged</b></p> <ol style="list-style-type: none"> <li>1. Particulars of any securities that have been pledged as collateral for or charged to secure borrowings on behalf of the portfolio, and the identity of the person the securities are pledged to; and</li> <li>2. Total amount of any commission or other payments made in respect of such borrowings during the period.</li> </ol>
<p><b>6.</b></p>	<p><b>Derivatives positions</b></p> <ol style="list-style-type: none"> <li>1. Profit or loss on each transaction to close out a derivatives position during the period (including any commissions or other fees payable for the transaction); and</li> <li>2. Details of each open derivatives position on the valuation date, including: <ul style="list-style-type: none"> <li>- the underlying securities, commodity, index or any other asset;</li> <li>- the trade price and date of the opening transaction;</li> <li>- the current market price of the derivatives contract;</li> <li>- the current unrealised profit or loss on the position; and</li> <li>- the exercise price and expiry date of the contract.</li> </ul> </li> </ol>

## ANNEX 5.7

### PERSONAL ACCOUNT DEALING

An authorised person must provide every employee with a written notice (the personal dealing notice) which must contain statements as prescribed by this Annex. Employees must undertake that they will observe the requirements of the personal dealing notice by signing a copy of it and returning it to the authorised person.

This Annex sets out a model personal dealing notice. An authorised person is free to impose more stringent requirements than those required by this Annex.

#### Model personal dealing notice

	<p>So as to comply with the requirements for personal dealing transactions, it is required to comply with the provisions of this notice.</p>
<b>1.</b>	<p><b>Permission to deal</b></p> <p>It is permitted to buy and sell securities in these categories:</p> <p><b>[An authorised person should insert here types of securities or transactions in which the employee can deal. An authorised person will also need to clarify its procedure for restricting or withdrawing its consent in relation to particular securities in special conflict of interest circumstances.]</b></p> <p>An employee may not buy or sell any other securities without having obtained consent from <b>[the compliance officer or his deputy]</b>.</p> <p>Note that where a general or specific consent is given for a transaction, the other requirements set out in this notice (e.g. reporting) still need to be complied with.</p>
<b>2.</b>	<p><b>Rights issues, takeovers</b></p> <p>The restrictions in this notice extend to making any formal or informal offer to buy or sell, taking up rights on a rights issue and exercising conversion or subscription rights and exercising an option.</p> <p>The restrictions also extend to buying or selling securities under any offer, including a takeover or tender offer, which is made to the public or all (or substantially all) the holders of the security concerned.</p>

<p><b>3.</b></p>	<p><b>Executors and agents</b></p> <p>The restrictions extend to dealings by the employee:</p> <ul style="list-style-type: none"> <li>a. as an executor of a will in which the employee or a relative of the employee has a significant interest;</li> <li>b. as an executor of any other will, unless the employee is relying entirely on the advice of another person (such as another broker or lawyer); or</li> <li>c. for another person, unless the employee is dealing as an employee of the authorised person.</li> </ul>
<p><b>4.</b></p>	<p><b>General Exemptions</b></p> <p>The restrictions do not extend to any transaction in a managed or discretionary account if the transaction is entered into without consultation with the employee.</p>
<p><b>5.</b></p>	<p><b>Selling to or buying from a client</b></p> <p>The employee may not sell to or buy from any client of the authorised person for his own account.</p>
<p><b>6.</b></p>	<p><b>Reporting of transactions</b></p> <p>The employee must immediately report to the authorised person in writing any purchase or sale of a security which the employee enters into otherwise than through [<b>name of the authorised person</b>] or [<b>name of another group company that is an authorised person</b>], including those transactions falling within 1 above. If, however, the employee has made arrangements for the authorised person promptly to receive a copy of the contract note (or similar report) in respect of the transaction, the employee does not have to report it to the authorised person.</p>
<p><b>7.</b></p>	<p><b>Dealing ahead of a research recommendation</b></p> <p>This restriction applies when the employee knows that the authorised person intends to publish a research recommendation and the employee knows, or should know, that the recommendation is likely to cause a price change in the security to which it relates. In that situation, the employee must not deal until the recommendation has been published and the clients for whom it was principally intended have had a reasonable opportunity to react to it. Dealing before the research recommendation has become public may also breach insider trading rules.</p>

<p><b>8.</b></p>	<p><b>Dealing contrary to a client’s interest</b></p> <p>The employee must not deal in a security where he knows that such dealing is likely to have a direct adverse effect on the particular interests of one of the authorised person's clients.</p>
<p><b>9.</b></p>	<p><b>Personal benefits</b></p> <p>If the employee's functions involve giving securities advice, including the preparation of research material, or entering into transactions in securities for the authorised person’s own account or the account of those for whom it deals, the employee must not accept any benefit or inducement which is likely to conflict with the employee's duties to the authorised person or any of the authorised person’s clients.</p> <p>“Benefit or inducement” means credit or any other financial advantages, money, property or gift; any services, facilities, or any opportunity to make, receive or increase a gain or revenue or to avoid or reduce a loss or expense.</p> <p>If in any doubt the employee should consult with [<b>the compliance officer or his deputy</b>].</p>
<p><b>10.</b></p>	<p><b>Counselling and procuring</b></p> <p>If the employee is precluded by the above provisions from entering into any transaction, the employee cannot advise or cause another person to enter into such a transaction or communicate any information or opinion to any other person if the employee knows, or has reason to believe, that that other person will as a result enter into such a transaction or cause or advise someone else to do so.</p> <p>This does not apply to actions which the employee takes in the course of his employment with the authorised person.</p>



**11.**

**Summary of insider trading rules**

The employee may not act contrary to the provisions of the Capital Market Law, its Implementing Regulations, especially insider trading rules.

A broad guide to the insider trading rules now follows:

Inside information is information that is not generally available, but would be price sensitive if it were generally available. An insider is a person who obtains inside information from a family, business or contractual relationship. The employee is likely to be an insider as a result of the employment, as is anyone to whom the employee passes the inside information. An insider may not trade in any security related to the inside information or communicate it to another person for him to trade in the security. Another person may not trade in a security after receiving inside information relating to it.

If the employee breaches these rules, the employee may face compensation claims, fines or prison.

**MODEL UNDERTAKING**

To:	<b>[name of the authorised person]</b>
a.	I undertake to observe the provisions of the Capital Market Law and of the Market Conduct Regulations in relation to insider trading as they may be amended or replaced in future, and the requirements regarding personal dealing transactions that are set out in the foregoing notice.
b.	I agree that this undertaking extends to any amended or replacement requirements that <b>[name of the authorised person]</b> set out in any written notice which you subsequently give to me.
c.	I further agree that this undertaking shall form part of the contract of employment (or contract for services) with you and that any breach of this undertaking will entitle you, among other things, to terminate that contract without notice.
[print name]	.....
Signed:	.....
Date:	.....

## **PART 6: SYSTEMS AND CONTROLS**

### **Chapter One – Scope of application**

#### **Article 52: Scope of application**

This Part applies to all the activities carried on by the authorised person.

### **Chapter Two – Management arrangements**

#### **Article 53: Division of responsibilities**

- a. An authorised person must take appropriate measures to maintain a clear and appropriate division of the principal responsibilities among its directors or partners and senior management (if any) so that:
  - 1) it is clear who is responsible for each function; and
  - 2) the business and affairs of the authorised person are adequately monitored and overseen by the directors or partners, relevant senior managers and governing body of the authorised person.
- b. The CEO is responsible for arranging the division of responsibilities under paragraph (a) of this Article, and overseeing the establishment and implementation of the authorised person's systems and controls.

#### **Article 54: Establishment and maintenance of systems and controls**

- a. An authorised person must establish and maintain systems and controls that are appropriate to its business. The systems and controls must conform to the requirements of Chapter 3 of this Part and be sufficient to enable the authorised person to comply with the Capital Market Law and its Implementing Regulations.
- b. The authorised person's governing body is primarily responsible for compliance with the Capital Market Law and its Implementing Regulations and all other regulatory requirements applicable to the authorised person. The governing body must make

appropriate arrangements to ensure that the activities detailed in Chapter 3 of this Part are carried out.

### **Chapter Three – Systems and controls**

#### **Article 55: General Provisions**

- a. The authorised person must establish systems and controls under this Part taking into account the following:
  - 1) the nature, scale and complexity of its business;
  - 2) the diversity of its operations;
  - 3) the number and value of its transactions; and
  - 4) the degree of risk associated with each area of its operation.
  
- b. An authorised person must establish systems and controls to cover at a minimum:
  - 1) the division of responsibilities and reporting lines in accordance with Article 53 of these Regulations;
  - 2) risk management policies and systems;
  - 3) anti-money laundering and terrorism financing procedures;
  - 4) a compliance manual;
  - 5) a compliance monitoring programme;
  - 6) a code of conduct;
  - 7) an operational procedures manual; and
  - 8) continuity of business manuals and plans.

- c. An authorised person must document its systems and controls appropriately and keep such documentation up to date.
- d. The documentation described in this Article must be retained for ten years after it ceases to be used or is amended.

**Article 56: Review by the governing body**

- a. An authorised person's governing body must carry out a regular review of the division of responsibilities and its systems and controls, including the documents referred to in Article 55(c) of these Regulations, at least annually.
- b. An authorised person's governing body must expeditiously monitor the actions arising as a result of the review.
- c. Each review conducted in accordance with paragraph (a) of this Article should be minuted and minutes of such reviews must be maintained for ten years.

**Article 57: Compliance**

- a. An authorised person must appoint a senior officer as compliance officer.
- b. The governing body of the authorised person is responsible for supervising the following:
  - 1) ensuring that appropriate policies and procedures are in place to enable the authorised person to comply with the Capital Market Law, the Implementing Regulations and all other applicable regulatory requirements;
  - 2) ensuring that the compliance officer and his department are appropriately resourced and have access to all of the authorised person's records;
  - 3) the establishment, implementation, enforcement and maintenance of the compliance manual and the compliance monitoring programme;
  - 4) the establishment of and ensuring compliance with the code of conduct;

- 5) the preparation of reports and notifications to be filed with the Authority; and
  - 6) the procedures for reporting to the governing body on compliance matters.
- c. The Authority may review the appropriateness of an authorised person's compliance arrangements at any time.

**Article 58: Compliance committee**

- a. Depending on the nature, scale and complexity of its business, an authorised person may establish a compliance committee to monitor its securities business and its compliance programme.
- b. The Authority may require an authorised person to appoint a compliance committee if it considers one to be necessary based on the nature, scale and complexity of the business.
- c. When a compliance committee is established, its members should include, but are not limited to, the CEO, the compliance officer, the MLRO and a senior officer from internal audit (if any).
- d. The compliance committee must meet at least quarterly. Meetings must be minuted and the minutes must be retained for ten years.

**Article 59: Outsourcing**

- a. An authorised person may delegate specific compliance or other functions to an external party, provided that appropriate safeguards are put in place, including:
  - 1) an assessment of whether the delegate is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved;
  - 2) clear documentation of the extent and limits of any delegation;
  - 3) suitable arrangements to supervise the delegation, and to monitor the discharge of the delegate's functions or tasks; and

- 4) appropriate remedial action if any concern arises about the performance of the delegate's functions or tasks.
- b. An authorised person must exercise due diligence in the selection of an external party to perform specific functions.
- c. The outsourcing of any function by the authorised person will not derogate from the authorised person's, compliance officer's or the compliance committee's regulatory obligations.

**Article 60: Audit committee**

- a. Depending on the nature, scale and complexity of its business, an authorised person may appoint an audit committee.
- b. The Authority may require an authorised person to appoint an audit committee if it considers one to be necessary based on the nature, scale and complexity of the business.
- c. The audit committee must meet at least quarterly.
- d. Meetings of the audit committee must be minuted and the minutes retained for ten years.

**Article 61: Internal audit**

- a. Depending on the nature, scale and complexity of its business, an authorised person may delegate part of the task of monitoring the appropriateness and effectiveness of its systems and safeguards to an internal audit function.
- b. An internal audit function should have clear responsibilities and reporting lines to the audit committee or appropriate senior manager, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the authorised person and have appropriate access to an authorised person's records.
- c. Meetings of the internal audit function must be minuted and the minutes retained for a period of ten years.

#### **Article 62: Audit and inspections**

- a. An authorised person's internal and external auditors must review books, accounts and other records related to securities business at least annually.
- b. All accounts, records, terms of business and other agreements to which an authorised person is party must be retained for the period specified in Part 3 of these Regulations and must be made available to the internal and external auditors.

#### **Article 63: Resolution of complaints**

- a. An authorised person must have written procedures to ensure:
  - 1) timely and proper handling of complaints from clients;
  - 2) that appropriate remedial action in respect of complaints is promptly taken; and
  - 3) where a complaint arises from the conduct of a third party employed or recommended by an authorised person, an authorised person shall intercede on behalf of the client, making best efforts to resolve the complaint.
- b. The authorised person must design the procedures to resolve complaints to ensure that:
  - 1) each employee working with clients is aware of them;
  - 2) a complaint is investigated promptly and fully by an officer of the authorised person who was not originally involved in the matter giving rise to the complaint; and
  - 3) records of the written complaints are made and any action taken documented.

#### **Article 64: Money laundering and terrorism financing**

An authorised person must appoint a senior employees as MLRO. The MLRO is responsible for ensuring compliance with the requirements of the Anti-Money Laundering Law and its



implementing regulation and reporting to the governing body on matters relating to money laundering and terrorism financing.

#### **Article 65: Employees**

- a. An authorised person must establish adequate procedures for the recruitment, training, supervision and discipline of employees.
- b. An authorised person must establish recruitment procedures to ensure that it recruits employees who are appropriately qualified for the role and honest.
- c. An authorised person must establish a programme to ensure that employees are trained appropriately (including passing any examinations required under Part 4 of these Regulations).
- d. An authorised person must maintain records of the names of any employee disciplined by an authorised person in connection with any breach of the Capital Market Law or its Implementing Regulations or any other conduct which may affect the conduct of the authorised person's securities business. The records must also include particulars of:
  - 1) the breach or conduct for which the employee was disciplined; and
  - 2) the steps taken to discipline the employee.
- e. An authorised person must train its employees periodically and such training must cover updates to the Capital Market Law, its Implementing Regulations and any other laws relevant to the business of the authorised person. Such training should occur at least annually.
- f. An authorised person must retain appropriate records relating to its employees in connection with their recruitment procedure, experience and qualifications for a period of ten years from the date on which the authorised person recruited the employee.

#### **Article 66: Business continuity**

- a. An authorised person should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to operate and meet its regulatory obligations in the event of an unforeseen interruption to its activities. These arrangements should be documented and regularly updated and tested to ensure their effectiveness.
- b. Appropriate records relating to the arrangements in connection with business continuity must be retained for a period of ten years after it ceases to be used or is amended.

#### **Article 67: Record retrieval**

All records required to be maintained by an authorised person under the Capital Market Law or its Implementing Regulations must be available for inspection by the Authority.

#### **Article 68: Mandate over an account in the client's name**

An authorised person must establish and maintain adequate records and internal controls in respect of a mandate it has over an account in the client's own name. An authorised person must in particular ensure that all transactions entered into pursuant to a mandate are within the scope of the authority conferred by the mandate and establish procedures for the giving and receiving of instructions under the mandate.

## **Part 7: Client Money and Assets**

### **Chapter One – General provisions**

#### **Article 69: Purpose and Scope**

- a. The provisions in this Part implement Principle 6 which is provided for at paragraph (b) of Article 5 of these Regulations.
- b. An authorised Person must segregate its own money and assets from client money and client assets, and client money and client assets must only be used for the benefit of an authorised person's clients.

#### **Article 70: Effect of Segregation**

- a. Client money and client assets which are segregated are deemed to be held for the authorised person's clients and are not deemed to be assets of the authorised person.
- b. Creditors of an authorised person do not have any claim or entitlement to segregated money or assets.

### **Chapter Two – Client Money Rules**

#### **Article 71: Money received by an authorised person**

- a. Subject to Article 72 of these Regulations, all money that an authorised person receives from or on behalf of a client in the course of carrying on securities business is client money.
- b. Client money must be segregated and held in a client account, separately from the assets of an authorised person, except where otherwise provided in this Part.
- c. All money paid into a client account by an authorised person will be treated as client money.
- d. Only client money should be held in a client account unless it is required to open or keep open the account or it is temporarily in the account.

- e. An authorised person may transfer client money to another person for the purpose of settling a securities transaction with or through that other person or to provide collateral for a client.

**Article 72: Money which is not client money**

Money is not client money if it is immediately due and payable to the authorised person for its own account (including, fees and commissions which are lawfully due to the authorised person).

**Article 73: Money to be held with a bank**

- a. An authorised person must hold client money in a client account with a local bank.
- b. An authorised person must assess the risk of a local bank prior to opening a client account and consider whether it is necessary to open client accounts with more than one bank.
- c. An authorised person may open a client account with a local bank in its own group, provided it notifies its client of its intention and the client has not objected.
- d. Client money may be held with an overseas bank but only if this is necessary for the settlement of a transaction in securities outside the Kingdom. Dividends or other income received outside the Kingdom for an authorised person's client may be paid into an account with an overseas bank in the authorised person's name, provided that the funds in question are either transferred to a client account or paid to the client no later than three days after notification of receipt. An authorised person must notify its client of its intention to hold client money with a bank outside the Kingdom.
- e. The requirements specified in paragraphs (b) and (c) of this Article and the requirements in Article 74 of these Regulations apply equally to an account with an overseas bank.

#### **Article 74: Acknowledgement by the bank**

- a. An authorised person must within 20 days of opening a client account obtain a written acknowledgement from the local bank with which a client account has been opened that:
  - 1) the client account will hold client money and not money belonging to the authorised person; and
  - 2) the local bank will not enforce any right or claim that it has against the authorised person against funds held in the client account and will not combine the client account with any other account.
- b. If an authorised person does not receive the acknowledgement referred to in paragraph (a) of this Article within the 20 day period, it must withdraw all money in the account and pay it into another client account with another local bank.

#### **Article 75: Client accounts**

- a. Except as otherwise provided in this Part 7 an authorised person must, where it receives client money, either:
  - 1) pay the money into a client account no later than the next day after receipt; or
  - 2) pay the money out in accordance with Article 76 of these Regulations.
- b. If a remittance comprises part client money and part other money it must be paid in full into a client account. The part of the remittance that is not client money should be transferred out of the client account as soon as possible.
- c. Client money may be held in a client account in a different currency from that of receipt. In such a case an authorised person must daily ensure that the amount held in the different currency is at least equal to the amount of the original currency and must adjust the amount held in the different currency accordingly (if necessary by making up any deficit). In carrying out the currency conversion the authorised person should use the closing spot currency conversion rate on the business day preceding the day on which the conversion calculation is carried out.

#### **Article 76: Money ceasing to be client money**

Money ceases to be client money for which the authorised person is responsible if it is paid:

- 1) to the client;
- 2) to a third party on the instructions of the client;
- 3) into a bank account in the name of the client (not being an account which is also in the name of the authorised person); or
- 4) to an authorised person itself, where it is lawfully due and payable to the authorised person.

#### **Article 77: Commission**

No commission is payable to a client in respect of client money held in a client account.

#### **Article 78: Records and auditor's report**

- a. An authorised person must keep records which are sufficient to demonstrate compliance with the Client Money Rules.
- b. An authorised person's auditors shall annually review the authorised person's compliance with the Client Money Rules and shall report on this review as part of its audit of the authorised person.

#### **Article 79: Amounts to be held in client money bank accounts**

- a. An authorised person must:
  - 1) daily confirm that the aggregate balance on all of its client accounts as at the close of the preceding business day was at least equal to the "client money requirement" calculated in the manner prescribed by the Authority; and

- 2) ensure that any shortfall is paid into a client account by the close of business on the day the calculation is performed, and any excess is withdrawn within the same time period.
- b. For the purposes of paragraph (a) of this Article, an authorised person should use the values contained in its accounting records, such as its cash book, rather than values contained on statements received from banks. Fees and commissions may be excluded from the calculation.
- c. So as to satisfy paragraph (a) of this Article, an authorised person may be required to pay money into a client account. Such money will be client money.
- d. An authorised person must notify the Authority immediately if it is unable to perform the calculation required by this Article.

#### **Article 80: Reconciliations**

- a. An authorised person must, at least once in every 7 days, reconcile:
  - 1) the balance on each client account as recorded by the authorised person with the balance on that account as set out on the statement or other form of confirmation issued by the local bank;
  - 2) the balance on each client transaction account with exchanges, clearing houses, intermediate brokers, settlement agents and counterparties as recorded by the authorised person with the balance on that account as set out in the statement or other form of confirmation issued by the person with whom the account is held; and
  - 3) its records of collateral received from clients with the statement of collateral or other form of confirmation issued by the person with whom that collateral is located.
- b. An authorised person must perform the reconciliations in paragraph (a) of this Article within 10 days of the date to which the reconciliation relates.

- c. Where any difference arises on any of the reconciliations in paragraph (a) of this Article, the authorised person must correct it as soon as possible and in any event within 3 days.
- d. An authorised person must notify the Authority as soon as possible where it is unable to perform any of the reconciliations required by the provisions in this Chapter.
- e. Where an authorised person is unable to resolve a difference arising from a reconciliation, but the records examined by the authorised person during its reconciliation indicate that there might need to be a greater amount of money in the relevant client accounts or collateral than is in fact the case, the authorised person must assume, until the matter is finally resolved, that those records are accurate and pay the difference from its own money into a client account and the amount paid will be client money.

#### **Article 81: Client money reporting requirement**

An authorised person who holds client money must submit to the Authority such accounts as it requests.

### **Chapter Three – Client Asset Rules**

#### **Article 82: Assets received by an authorised person**

- a. An authorised person must not hold client assets unless it is authorised to provide custody services.
- b. All assets which include, or may include, securities that are received by the authorised person in the course of carrying on securities business shall be treated as client assets unless they consist of cash or collateral, to which Article 83(b) of these Regulations applies.
- c. An authorised person must segregate the client assets that it holds from its own assets.
- d. An authorised person must not use client assets for its own account or the account of another client unless it has obtained the prior consent of the client to whom the assets belong.



### **Article 83: Assets which are not client assets**

- a. Client assets shall include collateral taken by way of pledge to satisfy an obligation arising from that pledge until applied to satisfy that obligation.
- b. Collateral retained by an authorised person as Other Collateral (as defined at paragraph (a) of Article 94 of these Regulations) for its own account is not a client asset, provided that the authorised person has complied with the requirements of paragraph (b) of that Article.

### **Article 84: Segregation**

- a. If a client asset is recorded in an account with an authorised person, the authorised person must ensure that the title to the account makes it clear that such assets belong to the client and are segregated from the authorised person's assets.
- b. An authorised person must require that where a client asset is recorded in an account with a custodian or with an overseas custodian, the custodian or overseas custodian makes it clear in the title of the account that the client asset belongs to one or more clients of the authorised person and that the assets are segregated.

### **Article 85: Holding and registration of client assets**

- a. Securities that are eligible for the Depository Centre must be held in an account in the relevant client's name with the Depository Centre.
- b. An authorised person must hold a document of title to a client asset in its physical possession, or with a custodian in an account designated for client assets.
- c. Where an authorised person registers or records title to a client asset it must ensure that it is registered or recorded in the name of the client, unless the client is an authorised person acting on behalf of its own client, in which case the asset must be registered in the name of that client.
- d. Where the asset concerned is a security acquired overseas, title to the asset may be registered or recorded in the name of an overseas custodian or in the name of the authorised person, provided that the authorised person has satisfied itself that is not

feasible for the asset to be registered or recorded in the client's name. An authorised person must obtain the prior written agreement of a client to the client's assets being recorded or registered in the name of an overseas custodian or in the name of the authorised person and must notify the client in writing of any adverse consequences of the assets being registered or recorded other than in its name. An authorised person must in particular:

- 1) before holding or arranging for an overseas custodian to hold client assets outside the Kingdom, notify the client in writing that there may be different settlement, legal and regulatory requirements in the relevant jurisdiction to those which apply in the Kingdom, in particular in relation to the segregation of client assets;
- 2) obtain the clients prior agreement to registering or recording legal title to their assets in the name of the authorised person and to the fact that the client assets may not be segregated from the authorised person's own assets and may be subject to claims from the authorised persons creditors in the event of its failure.

#### **Article 86: Lending of client securities**

- a. An authorised person must not lend securities belonging to a client or engage in such lending activities with a client except after obtaining the client's express consent to this in writing.
- b. Any securities lending activity must be subject to appropriate terms and conditions, including, as relevant, those specified by Annex 5.2 to these Regulations.
- c. An authorised person must at all times during the period of a securities transaction:
  - 1) ensure that the borrower provides collateral to cover the realisable value of the securities being lent;
  - 2) daily monitor whether the amount of the collateral is sufficient to cover the realisable value of the securities; and

- 3) if the amount of the collateral is not sufficient to cover the realisable value of the securities, make up the level of collateral, unless otherwise agreed in writing with the client.
- d. Securities, which are registered or otherwise held together for more than one client must not be used for the purpose of a securities lending transaction unless all of the clients to whom the securities belong consent in writing and, if only some of the clients consent, the authorised person must ensure and demonstrate that only securities belonging to clients who have given their consent are used for this purpose.
- e. An authorised person must ensure that all securities lending transactions are appropriately documented.

**Article 87: Assessment of custodian**

- a. An authorised person owes a duty of care to a client in deciding or recommending where to hold the client assets.
- b. An authorised person must undertake a risk assessment prior to recommending or deciding to hold client assets with a custodian to ensure that the custodian has in place adequate arrangements to safeguard the assets, and is subject to appropriate standards of regulatory oversight. An authorised person must conduct a risk assessment of custodians holding client assets as frequently as required to be satisfied of the above matters on a continuing basis.
- c. An authorised person must notify its client before holding that client's assets with a custodian in the authorised person's group and must not hold the relevant client's assets with a custodian in its group if the client objects.
- d. An authorised person must not hold client assets with or recommend an overseas custodian to a client unless the proposed arrangements with the overseas custodian are necessary for the purpose of the acquisition or holding of securities outside the Kingdom.
- e. The requirements set out in paragraphs (a) to (c) of this Article apply in relation to overseas custodians. In carrying out a risk assessment in relation to an overseas custodian, an authorised person must take into account the extent to which the

overseas custodian is subject to regulatory obligations at least equivalent to those imposed on custodians under the Capital Market Law and the Implementing Regulations.

#### **Article 88: Clients agreements**

- a. Before an authorised person provides custody services to a customer, it must agree in writing with that customer appropriate terms of business which must cover the matters set out in paragraph (b) of this Article. Before an authorised person provides custody services to a counterparty, it must send a written notice to the counterparty which must cover the matters set out in paragraph (b) of this Article.
- b. The agreement or the notice referred to in paragraph (a) of this Article must cover the following matters:
  - 1) the manner in which the client assets will be registered;
  - 2) arrangements for the receiving and giving of instructions by the client in respect of custody services;
  - 3) the authorised person's liability to the client;
  - 4) any lien or security interest taken over the client assets by the authorised person or other party;
  - 5) the circumstances in which the authorised person may realise client assets which are held as collateral, to meet the client's liabilities;
  - 6) how the authorised person will deal with the claiming and receipt of dividends, commissions and other income and entitlements accruing to the client;
  - 7) how the authorised person will deal with corporate actions, such as the voting of shares, capital reorganisations and take-overs;
  - 8) the information to be provided to the client in respect of client assets that the authorised person holds;

- 9) the provision of statements to the client;
- 10) the fees and charges to the client in respect of the custody services; and
- 11) an explanation of whether the client's assets will be pooled with the assets of other clients and an explanation of the effect of that pooling.

**Article 89: Custodian agreement**

- a. Before an authorised person holds client assets with a custodian, it must agree in writing with the custodian appropriate terms of business, which must cover the following:
  - 1) that the title of the account in which any client assets will be held indicates that the assets credited to the account do not belong to the authorised person;
  - 2) that the custodian is not to permit withdrawal of any client assets from the account other than to the authorised person or to another person as the custodian may be instructed by the authorised person;
  - 3) that the custodian will hold or record a client asset belonging to the authorised person's client separate from any securities or other assets of the custodian, and that it will treat the assets in the account as client assets;
  - 4) that the custodian will deliver to the authorised person a statement as at a date or dates specified by the authorised person which details the description and amounts of all the securities credited to the account and the statement must be delivered to the authorised person within 7 days of the date of the statement;
  - 5) that the custodian will not claim any lien, right of retention or sale, over the securities standing to the credit of any account designated in accordance with sub-paragraph (a)(1) of this Article, except:
    - where the clients whose assets are held in the account have consented; or

- in respect of any charges relating to the administration or custody of the client asset.
- b. The requirements of paragraph (a) apply if client assets are lodged in an account with an overseas custodian.

#### **Article 90: Reconciliations**

- a. An authorised person must as often as necessary, but at least every 7 days, reconcile its record of client assets which it does not physically hold, with statements obtained from the Depository Centre, custodians or overseas custodians and, in the case of dematerialised securities not held with the Depository Centre or through a custodian or overseas custodian, statements obtained from the person who maintains the record of entitlement.
- b. An authorised person must as often as necessary, but at least every six months, carry out:
- 1) a count of all client assets physically held by it, and reconcile the results of that count to its record in this regard; and
  - 2) a reconciliation between the authorised person's record of client holdings, and its record of the location of client assets.
- c. The count and reconciliation in paragraph (b) of this Article must cover all of the authorised person's books and records, and must be performed by counting and reconciling all securities and other client assets as at the same date.
- d. An authorised person must perform the reconciliations within 10 days of the date to which the reconciliation relates.
- e. An authorised person must within 3 days correct any discrepancy which is revealed by any reconciliation that it has carried out. If the authorised person discovers any discrepancy which amounts to a shortfall, it must within 3 days make good any shortfall and if the discrepancy is not resolved within 7 days, report the matter to the Authority.

## **Article 91: Client statements**

- a. An authorised person must, as often as necessary, but not less frequently than annually, provide each client in writing with a statement prepared in accordance with paragraph (d) of this Article.
- b. An authorised person is required to provide a statement in paragraph (a) of this Article to a client for whom a client asset, collateral or other asset has been held at any time during the authorised person's financial year even when there are no holdings at the statement date. However, there is no requirement to provide a statement where the client's account with the authorised person has been closed, and the authorised person has sent the client a closing statement which demonstrates that the authorised person no longer holds a client asset, collateral or other asset for the client.
- c. Statements may be sent electronically with the client's prior written consent where the authorised person is capable of reproducing the statement and keeping a record of its despatch.
- d. All statements produced by or on behalf of an authorised person in accordance with paragraph (a) of this Article must list all client assets, collateral and other assets owned by the client for which the authorised person is accountable and:
  - 1) identify any securities registered in the client's name, separately from those registered in another name;
  - 2) identify those securities and assets which are being used as collateral, or have been pledged to third parties, separately from any other securities and asset;
  - 3) show the market value of any collateral held, as at the date of the statement;  
and
  - 4) be based on information as of trade date or settlement date, and the basis must be notified to the client.

## **Chapter Four – Collateral and money and assets passed to third parties**

### **Article 92: Scope of Application**

- a. This Chapter applies to authorised persons which hold collateral or provide collateral to third parties, or which pass client money or client assets to settlement agents.
- b. Article 93 of these Regulations applies to:
  - 1) collateral that is subject to the Client Money Rules or the Client Asset Rules;  
and
  - 2) client money and client assets passed to settlement agents.
- c. Article 94 of these Regulations applies to collateral that is not subject to the Client Money Rules or the Client Asset Rules.

### **Article 93: Collateral subject to the Client Money Rules or the Client Asset Rules**

- a. An authorised person must take reasonable steps to ensure that collateral is properly safeguarded. Where the authorised person has reasonable grounds to believe that the collateral will not be properly utilised or safeguarded by a third party, then it must withdraw the collateral from the third party unless the client has indicated otherwise in writing.
- b. Collateral held by the authorised person must be separately identifiable from assets of the authorised person. The authorised person must be able to identify at all times the client providing the collateral.
- c. Where an authorised person passes collateral of a customer which is client money or client assets to a counterparty in the Kingdom, it must:
  - 1) take reasonable steps to ensure that the counterparty treats the collateral as client money or client assets; or
  - 2) have obtained the consent of the customer in the terms of business not to treat the money or assets as client money or client assets.



- d. An authorised person must not undertake a transaction for a client that involves client money or client assets being passed either as collateral to a counterparty or to a settlement agent outside the Kingdom before formally notifying the client that:
- 1) his money or assets may be passed to such person;
  - 2) the regulatory regime applying to such persons is different from that of the Kingdom; and
  - 3) it has taken reasonable steps to ensure that the counterparty or settlement agent will effectively segregate the collateral from its own assets under the law of the country in which the counterparty or settlement agent is located.
- e. An authorised person who transfers clients' collateral to an exchange or clearing house must:
- 1) notify the exchange or clearing house that the collateral is client money or client assets, and that the authorised person is under an obligation to keep clients' collateral separate from the authorised person's collateral; and
  - 2) instruct the exchange or clearing house to:
    - credit the value of that collateral passed by the authorised person to the authorised person's client transaction account with the exchange or clearing house; and
    - treat the sale proceeds of that collateral in accordance with the requirements of that exchange or clearing house.
- f. Before an authorised person deposits a client asset as collateral with, mortgages, pledges, charges or grants another encumbrance over any client asset to, a third party, it must:
- 1) properly consider the credit risk to its clients;

- 2) notify the client that the collateral will not be registered in the client's name;  
and
  - 3) obtain the client's prior written consent whether in the terms of business or otherwise.
- g. The authorised person must have prior written consent from its client if it proposes to return to the client collateral other than the original collateral, or original type of collateral, or money.
- h. An authorised person must:
- 1) notify the Authority as soon as it is aware of the insolvency of a person to whom it has passed collateral; and
  - 2) notify the Authority as soon as reasonably practicable, of its intentions regarding making good any shortfall in client money or client assets that has arisen or may arise, stating the amounts involved.

**Article 94: Other collateral**

- a. Other collateral is collateral that an authorised person is entitled to treat as its own provided the authorised person is obliged to return equivalent assets to the client upon conclusion of a transaction or satisfaction of an obligation.
- b. An authorised person must not receive or hold other collateral under this Article in the case of collateral of a customer before it has:
- 1) determined in accordance with Article 43 of these Regulations that the taking of collateral is suitable for the customer;
  - 2) taken reasonable steps to ensure that the customer understands the nature of the risks involved in his providing other collateral to the authorised person;
  - 3) disclosed to the customer in the terms of business that his collateral will not be subject to the protections under the Client Asset Rules and as a consequence, his collateral will not be separated from the assets of the

authorised person and will be used by the authorised person in the course of the authorised person's business, and he will therefore rank as a general creditor of the authorised person; and

- 4) ensured that it maintains adequate records to enable it to meet any prospective obligations including the return of equivalent assets to the customer.

## **PART 8: INSOLVENCY PROVISIONS**

### **Article 95: Supervision of insolvency proceedings**

The Authority shall supervise the compulsory and voluntary liquidation of authorised persons and shall have the power to take any of the steps set out in this Part, which it considers appropriate to ensure the proper protection of the rights of clients of the authorised person.

### **Article 96: Rights of clients on insolvency of an authorised person holding client money and assets**

- a. If, on an insolvency event of an authorised person holding client money or client assets, the authorised person has or may have insufficient client assets or client money to satisfy its obligations to return such money and assets to its clients, then the claims of clients in respect of any shortfall in client assets and client money rank ahead of all other creditors.
- b. The Authority may represent the interests of all clients who may be entitled to the return of client money or client assets, or who may have any other claim relating to their account, in insolvency, liquidation or settlement proceedings of authorised persons.

### **Article 97: Settlement Proceedings**

- a. If an authorised person proposes to submit a petition to request a settlement under the Bankruptcy Regulations, the authorised person must:
  - 1) notify the Authority of the proposed petition at least 14 days prior to its submission;
  - 2) provide the Authority with any documentation it requests; and
  - 3) cooperate with the Authority prior to initiating settlement proceedings in order to ensure that client money, client assets and all other claims of clients relating to their accounts are resolved.

- b. The Authority may attend and be heard at any proceedings relating to the insolvency or bankruptcy of the authorised person, including:
  - 1) any meeting of members or creditors of the authorised person; or
  - 2) any application for conciliation with creditors or settlement to prevent bankruptcy under the Bankruptcy Regulations.
- c. No settlement proceedings in respect of an authorised person may be granted unless the Authority consents to it.
- d. From the initiation of settlement proceedings to the end of such proceedings, the authorised person may not, without the prior consent of the Authority, undertake any of the following actions:
  - 1) accept further client money or client assets;
  - 2) dispose of client money or client assets; or
  - 3) compromise, effect a mortgage, charge or pledge, give a guarantee, donate any part of its assets or effect a transfer of ownership in relation to any of its assets.
- e. The Authority is an interested party for the purposes of any proceedings relating to an authorised person under the Bankruptcy Regulations.

#### **Article 98: Liquidation Proceedings**

- a. If an authorised person enters into the stage of liquidation under the Bankruptcy Regulations, the authorised person must:
  - 1) notify the Authority of the liquidation and of the proposed date of any meeting of members or creditors relating to the liquidation;
  - 2) provide the Authority with any documentation it requests in relation to the liquidation proceedings; and

- 3) cooperate with the Authority prior to initiating settlement proceedings in order to ensure that client money, client assets and all other claims of clients relating to their accounts are resolved.
- b. No appointment of a liquidator in respect of an authorised person will be effective unless the Authority consents to it.
- c. The Authority may attend and be heard at any proceedings relating to the insolvency or bankruptcy of the authorised person, including:
  - 1) any meeting of members or creditors of the authorised person;
  - 2) any liquidation proceedings under the Bankruptcy Regulations.
- d. From the initiation of liquidation under the Bankruptcy Regulations, the authorised person may not, without the prior consent of the Authority, undertake any of the following actions:
  - 1) accept further client money or client assets; or
  - 2) dispose of client money or client assets; or
  - 3) compromise, effect a mortgage, charge or pledge, give a guarantee, donate any part of its assets or effect a transfer of ownership in relation to its assets.
- e. The Authority may direct the liquidator to take such steps as the Authority considers fit to establish the entitlements of clients of the authorised person at any time, or to appoint a third party to take such steps.

**PART 9: PUBLICATION AND ENTRY INTO FORCE**

**Article 99: Publication and entry into force**

These Regulations shall become effective upon their publication.