



## **CONSULTATION PAPER**

### ***MARKET CONDUCT GUIDELINES FOR SECURITIES DEALERS***

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## Consultation Paper on Market Conduct for the Securities Industry

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### 1.0 Introduction

- 1.1 The Financial Services Commission (FSC) is seeking to enhance its existing regulatory framework on market conduct, which is central to Part V of The Securities (Amendment) Act 2013, and The Securities (Conduct of Business) Regulations, 1999. These enhancements will also aid in the Government of Jamaica's thrust to develop a more financially inclusive market.
- 1.2 The FSC is cognisant of new trends emerging on market conduct issues, which include consideration regarding how licensees deal with the treatment of their clients, the management of conflict of interest, the suitability of products and the advice given to clients.
- 1.3 This paper is intended to outline proposals to strengthen the FSC's standards for market conduct in the securities industry. It proposes guidelines that will govern market behaviour and establish minimum standards expected from our licensees.

### 2.0 Objectives

- 2.1 Market Conduct is the manner in which a licenced dealer designs its products and services, and manages its relationship with clients and the public. The objectives of these proposed guidelines are to ensure that licensees:
- I. act with high standards of integrity and fair dealing in the execution of securities business by placing clients' interest ahead of their own;
  - II. act with due care and diligence to provide information to clients in an accurate, fair and non-misleading manner;
  - III. ensure that the products and or services recommended are suitable for the clients;
  - IV. ensure that they are not engaged in the practice of Tied Selling;
  - V. ensure that clients' assets are segregated and protected;
  - VI. have a governance framework in place to oversee market conduct;
  - VII. ensure that their Human Resource policies and procedures encourage excellent Market Conduct practices;
  - VIII. treat clients' information and circumstance in a confidential manner;
  - IX. have policies and procedures in place to handle complaints in a fair and timely manner;
  - X. have policies and procedures in place to deal with potential and actual conflict of interest matters;
  - XI. have policies and procedures in place to ensure that all clients' agreements are in writing; and
  - XII. have a robust compliance function in place to ensure compliance with the relevant legislations.

### 3.0 Governance

3.1 **The Board of Directors (Board) of each licensee has ultimate responsibility for conduct and should set the tone and provide clear guidance on matters relating to conduct. The Board should also set the premise on which a culture of integrity, honesty and ethical practice is established:**

3.2 The Board should take reasonable steps to ensure that the business of the firm is controlled effectively and a framework for managing market conduct is in place.

3.3 The Board should ensure that:

- I. policies and procedures governing conduct are implemented and that a compliance review is conducted at least annually to determine their effectiveness;
- II. effective policies and procedures are in place to promote compliance with all the applicable legislation and guidelines;
- III. the licensee has policies and procedures in place that allow the company to comply with all the rules governing market conduct within their own operations. These policies should cover areas such as:
  - a) Financial and Accounting Operations;
  - b) Client Services;
  - c) Operations;
  - d) Internal Controls and Auditing;
  - e) Risk and Compliance;
  - f) Human Resources;
  - g) Code of Conduct and Ethical Practices;
  - h) Complaints
- IV. any appointment or delegation of Board or Board Committee functions are given to appropriate individuals who report directly to the Board or the relevant Board Committee at least quarterly in order to ensure effective oversight;
- V. material information related to market conduct issues are reported to the FSC in a timely manner.
- VI. the Board should take reasonable steps to ensure that the entity complies with the relevant requirements and standards set by the FSC and adopts best practices from both national and international standard setting organisations.

### 4.0 Conflict of Interest

4.1 **Licensees should manage conflicts of interest fairly and in a transparent manner, and should ensure that the action of the licensee does not impair the interest of their clients. Licensees should have written internal procedures and controls to identify, eliminate, manage or disclose actual or potential conflicts of interest.**

4.2 Licensees should have an approved conflict of interest policy, which clearly defines the circumstances that may give rise to a conflict of interest with material risk of damage to clients. The definition of what the dealer

considers as material risk to clients should be included in the dealer's policy. This policy should also specify the measures adopted to manage conflicts and should require that all records that are considered necessary are kept and are easily accessible. A licensee's conflict of interest policy should be effective and appropriate for its size, business activities and number of clients. The policy should:

- a. identify activities and or circumstances that could give rise to conflict and how the conflict would be resolved;
- b. specify procedures and measures to manage conflicts;
- c. prevent and control the exchange of information between the persons involved in the conflict;
- d. remove links in remuneration producing possible conflict;
- e. prevent the exercise of inappropriate influence.

4.3 Licensees and their employees should make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interfere with their respective duties to their clients, prospective clients, and employer. These disclosures should be prominent, timely, clear, concise, and specific; delivered in plain language which effectively communicates the relevant information.

4.4 Licensees should have in place procedures to ensure that employees affected by or involved in a conflict of interest situation recuse themselves, decline to act, or take any other appropriate action necessary to ensure fairness and transparency in the process.

4.5 Licensees should take all the necessary steps to ensure that where a conflict of interest arises between the entity, the managers, the employees, and any appointed representative or agent in providing a service, the following is taken into account:

- a. financial gains or avoidance of losses, at the expense of a client;
- b. interest in the outcome of the service provided which are contrary to the client's interest;
- c. financial incentives which favour some clients or group of clients.

## 5.0 Confidentiality

5.1 Licensees should ensure that they protect all confidential information relating to clients. Appropriate policies and procedures should be in place which penalizes staff for breaches of confidentiality.

5.2 Clients' confidential information and transactions should not be disclosed to non-authorized personnel within the organisation.

5.3 Licensees may disclose information relating to their clients outside the organisation without the specific permission of their clients, only when required to do so to the FSC, as required by law or when ordered to do so by the Court.

5.4 Licensees should ensure that prior written consent is obtained from clients if they receive requests for clients' information outside those mentioned in the paragraph above.

## **6.0 Human Resources and Internal Discipline**

**6.1 Licensees should establish a robust Human Resource Policy, which ensures that suitable personnel are employed for their operations and that all sensitive positions including directors, senior management and all staff dealing with clients and client assets are deemed suitable for these positions. This policy should also address remuneration in order to maintain an environment of honesty, integrity and fairness.**

6.2 Licensees should establish and maintain procedures to ensure that all their employees are appropriately trained and/ or certified; have the requisite skills, knowledge and experience; and are suitable to give advice and or make recommendations to clients on investments.

6.3 Licensees should ensure that employees read and sign the Code of Ethics Policy, which should indicate their obligation under the Securities Act and Regulations as well as the FSC Guidelines and that any business executed by staff on behalf of the company is in compliance with this policy.

6.4 All employees should obtain the prior written consent from the licensee in order to deal for his or her own account. The employees should not deal in securities for their own account with any of the licensee's clients and should not deal for their own account at a time or in any manner, which they know or should know, is likely to have an adverse effect on the interest of any client.

6.5 Licensees should ensure that:

- a) none of their employees or representatives either offers, gives, solicits or accepts, any gifts or other direct or indirect benefits that is likely to conflict with any duties owed to clients;
- b) they have policies in place to monitor the payment of bonuses and incentives to their employees and ensure that payments that are linked to sales targets do not encourage unethical behaviour;
- c) disciplinary procedures are implemented to address any breach of the policies, procedures, Securities Act and Regulations or FSC Guidelines. Disciplinary actions taken by licensees against staff should be properly documented and records maintained.  
Information kept should include:

- I. The offence for which the employee was disciplined; The steps taken to discipline the employee; and
- II. The period of the disciplinary action.
- III. instances of material breaches by employees should be reported to the FSC

## **7.0 Complaints**

**7.1 Licensees should have a robust and transparent complaints process to ensure that clients are treated fairly and that areas of inconsistencies relating to complaints and disputes are addressed in order to prevent future occurrences.**

7.2 Licensees should:

- a) have a complaints handling procedure in place which guides the process in dealing with complaints in a manner that is not prejudicial to its clients;
- b) ensure that clients are aware of the complaints handling procedure and the specific time frames;
- c) report material matters (such as fraud, misconduct, dismissal, lawsuits) relating to complaints to the FSC immediately in writing;
- d) publish on their website a summary of their complaints handling procedures for client's awareness. The complaint handling procedures should:
  - i. be effective and transparent;
  - ii. allow for a variety of mechanisms for complaints to be made (e.g. email, telephone calls or in person);
  - iii. acknowledge complaints by way of writing to clients within 3 working days of receipt ;
  - iv. follow through and ensure that all complaints are resolved within the required time frame.
- e) put procedures in place to ensure that all complaints handling processes are done by personnel that are independent of the complaint;
- f) ensure that procedures are in place to ensure that clients who were identified through either internal audit or compliance reviews as having been treated unfairly or disadvantaged are notified and have their matters resolved in a timely manner;
- g) have procedures in place to ensure that all complaints are acknowledged in writing within the specified timeline and that the complainant is kept informed of the progress of the complaint resolution;
- h) ensure that if a complaint was resolved or remains unresolved after the stipulated timeline, the complainant receives one of the following:
  - a final response.
  - a holding response, which explains why a final response cannot be made and gives the expected time in which it will be provided;
  - information of his rights to complain directly to the FSC if he is not satisfied with the delay;
  - information of his rights to complain directly to the FSC at any given time.

**8.0 Communication and Marketing**

**8.1 Licensees should pay due regard to their clients' information needs by communicating information to them in a manner that is clear, concise and not misleading. The marketing of products and services must abide by the FSC Guidelines..**

8.2 Licensees should ensure that:

- I. clients are appropriately informed about products and services using a medium that is easily understood and language that is clear and comprehensible;

II. all terms and conditions applied to products and services are disclosed to the clients before an agreement is signed;

- 8.3 Licensees should keep a record of all information disclosed to clients and must keep that record for at least seven (7) years starting from the date the information was first given.
- 8.4 Licensees should maintain adequate records of any scripts used for telephone marketing campaigns or advice given to clients over the phone.
- 8.5 Licensees should not engage in practices that misrepresent market or product information, misrepresent prices or inflate trading volumes with the intent of misleading investors.
- 8.6 Licensees should make a clear distinction between facts and opinions in the presentation of investment advice and recommendations.
- 8.7 Ensure that their clients receive the necessary information within a reasonable time before entering into a transaction, so that they can use the information while making their investment decisions.
- 8.8 Inform their clients of the risks and consequences of:  
(i) investing in any financial product and  
(ii) engaging in any financial services.
- 8.9 Consistently update their website and brochures to reflect changes and new information on product offering.
- 8.10 When a client signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format and provided in a durable medium. These materials must disclose the fact that the entity is regulated and by whom.

## 9.0 Client Interest

9.1 Licensees should act honestly, fairly and professionally and ensure that they pursue clients' interests ahead of their own. Licensees should manage conflicts where the interests of one client may be in competition with those of another client, staff, or other stakeholders. Clients should be provided with full disclosure of all agreements made with the licensee. They should also be given access to all contractual agreements signed with the licensee.

9.2 Licensees should ensure that:

- a) clients feel comfortable when dealing with the firm by making fair treatment central to the corporate culture of the entity;
- b) proper standards of market conduct are observed;
- c) all products and services marketed to clients are suited to their needs based on their financial and other circumstances and within the targeted niche;
- d) clients are provided with clear information and are kept appropriately informed before, during and after contracts are signed;



- e) procedures are in place to ensure that fees and associated charges are disclosed to clients before any contractual agreement is finalised.

## **10.0 Suitability**

**10.1 Licensees should obtain adequate information to evaluate the clients' needs and financial circumstances and ensure that recommended transactions or decisions to trade are suitable for the clients' circumstance. Licensees should also ensure that appropriate tools are being used to conduct suitability assessments for all clients.**

10.2 Licensees should:

- a) have procedures in place to capture and identify the level of clients' or prospective clients' investment experience, their appetite for risk and return, as well as their financial constraints, prior to making any recommendation or taking investment action;
- b) ensure that appropriate tools are in place to guide the process of establishing the client's risk profile, which should be reassessed and updated as needed. Assessment tools should examine the length of time the client wishes to make the investment, the client's profile and the reason for making the investment;
- c) establish the risk a client is willing and able to take, prior to making an investment selection;
- d) engage each client in a suitability assessment, which includes evaluating the client's risk appetite and capacity for loss;
- e) ensure that the client's financial situation and investment objectives are taken into consideration, before a recommendation and or decision is taken with regard to the type of investment required; and
- f) interpret appropriately client's responses to questions and not attribute inappropriate weight to certain answers.

## **11.0 Client Agreement**

**11.1 Licensees should put procedures in place to ensure that an entity does not enter into an agreement with any clients unless a written agreement setting out the basis under which the services are provided is given to the client. This should include:**

- a) all information on the licensee such as its legal name, address and contact information;
- b) the fees that will be charged and also the way the fees are calculated;
- c) the way commissions will be received by the licensee in instances where a third party is involved in the transaction;
- d) obligation of the client with regard to giving instructions to the licensee;
- e) the rights of the client such as to:
  - (i) receive the title or contract evidencing interest in any security purchased;
  - (ii) receive a statement on all fees and taxes charged;
  - (iii) ask for information on the licensee such as whether it is registered and has the requisite knowledge, skills and experience to carry out the transaction;
  - (iv) see the licensee's conflict of interest policy;

- (v) complain and have the compliant dealt with in a fair and transparent manner.
- f) the arrangements made for securing the titles to and for the custody of securities bought; including through the use of nominee accounts or a custodian where appropriate;
- g) any conflict of interest relating to the market;
- h) the licensees' and clients' commitments to abide by the terms of the agreement.

## 12.0 Client Assets

**12.1 Licensees should ensure that a system is in place to protect and properly segregate all client assets from the firms' own assets. The procedures should be clearly documented in the entity's internal records.**

12.2 Licensees should ensure that:

- a) all client assets that are deemed to be in a Trust are in compliance with the terms and conditions of the Legislation and Guidelines issued by the FSC.
- b) clients are fully informed of where their assets are being held;
- c) client assets are separated from the licensees' assets and the accounting records should reflect this.
- d) the firm keeps and maintains accurate books and records in order to provide information of the clients' assets at any given time
- e) timely reconciliations are conducted of its own records with third party custodians to ensure that assets held for clients are properly reconciled;
- f) a system of risk management is established to ensure that the risk associated with clients' investments are properly managed and/ or mitigated;
- g) the services of an external auditor is contracted to review and report at least on an annual basis on the licensees' procedures for safeguarding clients' assets;
- h) the client's assets in the licensees' custody are being dealt with in a fair and equitable manner.
- i) measures are implemented that safeguard client assets from wrongful conversion or inappropriate use by employees;
- j) Clients' funds are not held in excess of five (5) working days without being placed on an agreed investment option. Should the desired investment option of the client remain unavailable after the recommended time period, the client should be contacted for further instructions for the placement of the funds which should at a minimum include:
  - I. returning the funds
  - II. placing in a trust account as per Section 36 of the Securities Act.

### 13.0 Tied Selling<sup>1</sup>

13.1 Licensees should not engage in the illegal practice of tied selling in which a company agrees to sell a customer products or services only if the customer also buys some other product or service from that institution or an affiliate.

13.2 However, licensees may cross sell to clients other products and services that are in the best interest of their clients as long as it is executed in a manner that does not breach any legislative requirements.

### 14.0 Compliance and Relation with Regulator

14.1 Licensees should ensure that systems and procedures are developed and implemented to comply with the Securities Act and its attendant Regulations as well as all Guidelines issued by the FSC.

14.2 Licensees should establish and maintain systems and controls to enable on-going monitoring of compliance with these Guidelines and to ensure that controls and procedures are properly documented.

14.3 Licensees have a duty to inform the FSC of any disciplinary action taken against any executive member, senior officer, dealer representative, compliance officer, risk officer or any person who has the duty of care to investors. The information provided to the FSC should identify the particular individual and the nature of the misconduct. The disciplinary action taken should also be disclosed as well as the length of the disciplinary period where necessary.

14.4 Licensees should notify the FSC immediately in writing, upon obtaining knowledge of any of the following:

- (a) a decision to cease operation, wind up, take-over or merger involving the licensee or any of its subsidiary or holding company;
- (b) any action to be taken against the licensee, or a subsidiary or holding company of the licensee;
- (c) any resignation or dismissal of senior officers, dealer representatives or auditors of the licensee;
- (d) the licensee becomes aware that a senior officer or employee has been engaging in activities involving fraud or other dishonesty;
- (e) the licensee has reason to believe that it will be unable to submit financial reports or other regulatory reports within the statutory period, including the reason for the delay;
- (f) the approval and copies of new marketing materials for both existing and new products and services 2 weeks before public dissemination via print, electronic or any other medium; and
- (g) any other issues that may impair or impact the viability of the licensee or its ability to meet any of its financial and other obligations to its clientele.

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<sup>1</sup> As defined in the Fair Competition Act

## **15.0 Conclusion**

- 15.1 The FSC will from time to time enhance these Guidelines in line with changes to its legislation, market conditions and recommendations made by standard setting bodies as well as international best practice.
- 15.2 Continued monitoring and assessment of licensees will be carried out through onsite and offsite examinations in order to ascertain compliance with these Guidelines. The FSC may use complaints received from the licensee's clients and other sources to prompt an examination of a licensee's operation on Market Conduct.
- 15.3 Good market conduct is essential in mitigating reputational risk in the Securities Industry and as such the FSC expects that all licensees will comply with the content of these Guidelines.

## **16.0 Due Date for Comments**

The FSC invites comments on all aspects of the proposals presented in this paper. Comments should be submitted in hard copy or via email, on or before Friday, September 27, 2019 , addressed to Ms Karene Blair, Senior Director, Securities at the following address:

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