



VANUATU FINANCIAL SERVICES COMMISSION

GUIDANCE NOTES ON MARKET PRACTICE

AND

CODE OF CONDUCT FOR FINANCIAL DEALERS

SUPERVISION DEPARTMENT

MARKET PRACTICE AND

CODE OF CONDUCT FOR FINANCIAL DEALERS

These Guidelines on Market Practice and Code of Conduct [“these Guidelines”] are issued pursuant to section 19(A) of the Financial Dealers Act of 2017.

These Guidelines provide general guidance, and are not intended to replace or override any legislative provisions. They should be read in conjunction with the provisions of the Financial Dealers Acts, the rules made under the Acts, as well as written directions, notices, and other guidelines that the Commission may issue from time to time pursuant to the Act.

INTEGRITY

1. A licensed dealer should observe high standards of integrity and fair dealing in the conduct of its business. A license dealer must ensure any person who is, or is to be employed as a dealer:
 - (a) must not have:
 - (i) a judgment debt returned unsatisfied in whole or in part;
 - (ii) committed an offence involving fraud or other dishonest act or violence, whether in or outside Vanuatu;
 - (iii) committed an offence, or subject to a pending proceeding which may lead to a conviction, whether in or outside Vanuatu for breach of banking, securities or insurance laws; or
 - (iv) committed a material breach of this policy document.
 - (b) must not have been:
 - (i) an undischarged bankrupt whether in or outside Vanuatu;
 - (ii) issued a prohibition order from dealing or broking in or outside Vanuatu;
 - (iii) engaged in a business practice appearing to the VFSC and other supervisory authorities to be deceitful, oppressive or which otherwise reflect discredit on the person’s method of conducting business; or
 - (iv) engaged in, or associated with, a business practice or otherwise conducted himself in such a way as to cast doubt on the person’s competence and soundness of judgement.

SKILL, CARE AND DILIGENCE

2. A licensed dealer should act with all skill, care and diligence towards its customers and other parties.

CONFLICT OF INTEREST

3. Where a conflict of interest arises a Dealer should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act or otherwise.

It should not unfairly place its interests above those of its customers. Where a properly informed customer would reasonably expect that the licensed dealer would place his interests above its own, the licensed dealer should live up to that expectation.

CUSTOMER INFORMATION

4. A licensed dealer should obtain from the customers it advises, or for whom it exercises discretion, any information about their circumstances and financial objectives, which may be relevant to enable it to be in compliance with the current financial regulations

5. DISCLOSURE TO CUSTOMERS

A licensed dealer should take all steps necessary to give a customer it is advising, in an understandable and timely way, all information to enable him to make a balanced and informed decision.

6. CUSTOMER ASSETS

Where a licensed dealer is in control of or responsibility for clients funds, they should be suitably protected, by way of separation and identification, in accordance with the requirements under the relevant Financial Dealers Act and Regulations.

7. MARKET CONDUCT

A licensed Dealer should observe the highest standards of market practice and conduct and must comply with any code or standard in force at any time and issued or approved by the VFSC.

All licensed dealers must observe proper standards of market conduct at all times. Licensed Financial Dealers should implement internal policies and procedures which prohibit all forms of market misconduct. Dealers must exercise skill, care and diligence, and act in good faith, and in the best interests of clients. Dealers shall not engage in manipulative or deceptive conduct or any form of conduct which would give other users of the market a false or misleading impression as to prevailing market conditions, including but not limited to price, supply or demand, etc.

Dealers should not enter into any transaction which may conflict with a duty of care owed to a customer, unless such conflict is disclosed to the customer and the customer consents to the transaction. In particular where market participants are handling customer orders, these orders should be handled appropriately and with due regard to the best interests of the customer.

Dealers must exercise extreme care when in possession of material non-public, price sensitive information in relation to the financial instruments. Subject to applicable laws and internal policies and procedures, when in possession of such information Dealers must ensure that they do not deal for their own account or the account of the institution which they represent, or induce another party to so deal, on the basis of such information. For the avoidance of doubt if a Dealer is working a pending order from a client and which could have a significant impact on the price of that instrument, the knowledge of that order would constitute material non-public, price sensitive information for the purposes of this code of conduct.

Dealers must not willfully spread rumors or disseminate false or misleading information. In addition, care must be exercised when handling unsubstantiated market information. Client communications in particular should have a reasonable basis, be fair and balanced, and not contain any inaccurate or misleading information.

8. PROHIBITED CONDUCT

The following conducts are prohibited under the Financial Dealers Act:

- (a) market manipulation;**
- (b) misinformation and rumour; and**
- (c) insider dealing;**

A contravention of which is an offence for which criminal, civil or administrative actions can be taken against the offender.

9. MARKET MANIPULATION

- (a) taking part in or carrying out a transaction that has or is likely to have the effect of creating a rate which is an off-market rate which results in an artificial rate for dealing in financial instruments in the money market or foreign exchange market; and
- (b) creating or causing anything that creates a false or misleading appearance of active dealing in financial instruments in the money market or foreign exchange market.

Without limiting the generality of the scope of the Financial Dealers Act, the following is a market manipulation which constitutes offences under Part 4B of the Act:

- (a) trading with an intent to benefit from influencing the closing price of a financial instrument;
- (b) interfering with the normal supply and demand factors in the market for a financial instrument;
- (c) dealing without a legitimate or genuine trading and commercial intention;
- (d) colluding or manipulating in the calculation of a benchmark fixing rate;
- (e) bidding or offering with an intent to cancel the bid or offer before execution, such as spoofing to mislead the market; and
- (f) manipulating the price on an electronic trading or broking system by entering prices without intent to deal, such as price flashing, in order to create false impression of the market price or liquidity.

10. MISINFORMATION AND RUMOUR

Section 15H (2) prohibit a person from making a statement or disseminating information that is false or misleading in a material particular and is likely to induce another person to deal in financial instruments or is likely to have the effect of raising, lowering, maintaining or stabilising the market rate of such financial instruments in the money market or foreign exchange market and when the person makes the statement, or disseminates the information:

- (a) the person does not exercise due care whether the statement or information is true or false; or
- (b) the person knows, or ought reasonably to have known, the statement or information is false or is materially misleading.

Without limiting the generality of the scope of the FDL Act, the following amounts to making of statement or dissemination of information which is false or misleading in a material way and constitutes offences under Part 4B of the Act:

- (a) start and spread rumours to move markets or to deceive other market participants; and
- (b) discuss with any other person without care, unsubstantiated information which is suspected to be false or materially misleading and damaging to third parties.

11. INSIDER DEALING

Part 4 A of the FDL Act prohibits a person from taking part in or carrying out a transaction based on information that is not generally available to persons who regularly deal in the money market or foreign exchange market that would, or would tend to, have a material effect on the price or value of financial instruments.

Without limiting the generality of the scope of the FDL Act, the following amounts to insider dealing and constitutes offences under Act:

- (a) profit or seek to profit from insider's information with intent or through negligence; and
- (b) provide any other person with such information to make a profit for their institutions, clients or third parties with intent or through negligence.

Market participants, who possess insider's information, must not disclose such information, except where the disclosure is required as a part of the course of employment, required by laws or relevant supervisory authorities.

12. FINANCIAL RESOURCES

A license dealer should ensure that it maintains sufficient resources to settle its outstanding claims and provision of reserves to withstand the risks that it accepts.

13. CORPORATE GOVERNANCE

The board and management of a licensed dealer should organise and control its internal operations, in a responsible manner, for the protection of its customers, and ensure that adequate arrangements are in place for the training of staff and compliance procedures.

Licensed dealers should conduct business with the VFSC in an open and co-operative manner to ensure the smooth development of the industry.

14. MONEY LAUNDERING AND TERRORIST FINANCING

Licensed dealers must follow the instructions/regulations issued by the FIU regarding Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) from

time to time and have clearly documented policies and procedures, and strong systems and controls, to avoid being exploited for money laundering or terrorist financing. Licensed dealers must also ensure that, where any member of staff has any knowledge or suspicion of these activities or reasonable grounds for suspicion, this knowledge or suspicion is promptly reported by the institution to the responsible authority.

Measures must include effective training for staff in the front, middle and back offices.

Training should ensure that staff are aware of the serious nature of these activities and the obligations on them to promptly report any knowledge or suspicions, while not revealing their knowledge or suspicions to the suspected criminal or terrorist. They should be trained to recognize an offence or form a suspicion where there are responsible grounds for doing so. They must also know to whom to report within their institution. A licensee must register with the FIU before commencement of its operations.

15. CONFIDENTIALITY

Confidentiality and customer anonymity are essential for preserving a reputable and efficient market place. Dealers must preserve, and aid in preserving, confidentiality in all matters including information on customers and dealing counterparties coming to their knowledge in the performance of their duties. They share an equal responsibility for preserving the integrity of the market through the proper maintenance of confidentiality. Management is responsible for ensuring that their staff have been trained to identify and to treat information that is sensitive and to deal appropriately with situations that require anonymity and discretion. Also, managers must not condone staff utilizing confidential material for personal benefit.

Dealers shall ensure that the identity of customers and counterparties is always kept confidential. Client's names should never be disclosed until the deal is closed.

A dealer should not, in any way, pressure a broker by inducement, threat or promise, for information, which would be improper for the latter to divulge. Pressure includes any statement to the effect, or which could be construed as implying, that a failure to cooperate would lead to a reduction in the business given by the dealer or other dealers to the broker. Dealers should similarly resist any pressure from their clients to divulge confidential information and should report any such incidents to their management.

16. COMPLAINTS PROCEDURE

License dealers are expected to have in place documented procedures in dealing with customer complaints. All license dealers are expected to deal with customer complaints in a smooth and transparent manner. A complaint must be forward to the licensee first and all possible avenues to deal with the complaint under its respective complaint procedure manual must be followed thoroughly and exhausted

before referring the complaint to the Commission. The Commission shall consider a complaint only if the audit trails of the complaint are presented as facts and any complaint which lacks supporting documents will not be considered. A complaint that is presented direct to the Commission will not be dealt with unless the procedure mentioned above are followed. A complaint received by the Commission can be use as grounds for revocation of the license.

17. PROSPECTUS

A licensee is required to issue a prospectus in respect of each product it offers in the money market or foreign exchange market and copies of which must be submitted to the Commission for approval. Without limiting the obligation of the licensee, a prospectus shall contain the following:

- Name of the issuer;
- Jurisdiction of incorporation and licensed;
- Address of the principal place of business;
- Full description of the securities being offered
- Date of the prospectus under which the securities are offered;
- Date on which the securities are matured;
- Name of the agent acting on behalf of the issuer (if applicable);
- Address of the registered Agent in Vanuatu;
- Full, true and plain disclosure of all material facts relating to the securities to be issued and must not contain any misrepresentation likely to affect the value or the market price of the securities.
- A statement of the cancellation rights given to the purchaser;
- Provide each purchaser the contractual rights of action in the event of a misrepresentation;

Each prospectus must be signed by the manager, director or any authorised person acting in such capacities for the issuer.

Please contact the following person should you have any questions:

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