FINANCIAL SERVICES
COMMISSION

GUIDELINE NO. 1

MARKET CONDUCT GUIDELINES

This guideline is issued on March 1, 2013 pursuant to section 53 of the Financial Services Commission Act, 2010-21

MARKET CONDUCT GUIDELINE FOR MARKET ACTORS AND MUTUAL FUND ADMINISTRATORS

INTRODUCTION

This guideline set out standards for the conduct and practice of business by market actors and mutual fund administrators (hereafter referred to as "**financial institutions**"). .

The objectives of this guideline are to ensure that a financial institution:

- acts with high standards of integrity and fair dealing in the conduct of investment business;
- acts with due skill, care and diligence in providing any services which it provides or indicates a willingness to provide.

Applicability

This guideline is of general application to financial institutions. Some aspects of the guideline will only apply to a market actor or mutual fund administrator if the circumstances are relevant to the securities business or mutual fund administration business undertaken by that registrant or licensee.

*In addition to this guideline financial institutions should reference other relevant materials on market conduct, including those published by the International Organisation of Securities Commissions ("**IOSCO**").*

INTERPRETATION

Commission means the Financial Services Commission

Financial Services Commission Act means the Financial Services Commission Act, 2010-21

Securities Act means the Securities Act, Cap. 318A and any amendments thereto

1. PROFESSIONAL CONDUCT

1.1 Each financial institution shall:

- act with due skill, care and diligence in the conduct of the activities for which it is registered and/or licensed;
- meet high standards of market conduct;
- organise and control its internal affairs in a responsible manner and ensure that it has well-defined procedures to facilitate compliance with any regulatory requirements;
- where applicable have adequate arrangements to ensure that employees are suitable, adequately trained and properly supervised.

1.2 Representatives of Financial Institutions

A financial institution shall:

- satisfy itself on reasonable grounds and on a continuing basis that it has appointed representatives who are fit and proper persons to act for it in those capacities;
- satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct;
- have procedures for ensuring that any business carried out by its officers, employees, and other representatives avoids any conflict of interest which is known to the officer, employee or its representatives (whether with a customer of the investment provider or with any business carried on by the financial institution).

1.3 Supervision

- A financial institution must establish and maintain procedures:

  a. for the supervision of each of its officers, employees and other representatives; and
  b. to ensure that the persons referred to in (a) do not give advice or provide services of a nature that is beyond their competence to give or to provide.

- A financial institution should establish and maintain appropriate records relating to the training, experience and qualifications of officers, employees and other representatives; and showing the categories of transaction which the person is competent to conduct.

1.4 Inducements

A financial institution must take reasonable steps to ensure that neither it nor any of its 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 its customers.

1.5 Compliance

1. A financial institution shall:

   a. disclose, in every transaction, whether it is dealing with a customer in its capacity as an agent or on its own account;
   b. take reasonable steps, including the establishment and maintenance of documented procedures, to ensure that:

      i. its officers, employees and other representatives are aware of their obligations under the laws, regulations and guidelines, and that any business executed by these persons is carried out in conformity with them; and
      ii. sufficient information is recorded and retained about its business activities.

   c. keep and maintain all necessary books and records of its business, inclusive of online transactions for such period as is required in the legislation.

2. A financial institution and its customers shall have a fiduciary relationship and the financial institution must treat and conduct its business in full observance of this obligation.

1.6 Administrator (Manager of funds) to observe the terms of fund particulars

A financial institution which is an administrator of a fund within the meaning of the Mutual Funds Act Cap 320B shall take all reasonable steps to comply with every statement in the most recently published prospectus, explanatory memorandum or other documentation describing how the administrator will operate the scheme and shall comply with the duties imposed by or under Mutual Funds Act or any provision of law amending or replacing such legislation. A financial institution shall take similar steps in acting for a fund registered or licensed in any jurisdiction outside Barbados.

1.7 Complaints

A financial institution must have internal procedures to ensure:

1. the proper and efficient handling of complaints from customers through a simple and impartial process;
2. that complaints procedures are clearly disclosed and easily accessible to customers and that any appropriate remedial action on those complaints is promptly taken;
3. that a record of the details of a complaint, the financial institution's response and any actions taken as a result, is established and maintained.

1.8 Disciplinary Action

A record shall be maintained of the names of any employees disciplined by a financial institution in connection with a breach of these Guidelines or for any other act or omission which may reasonably be expected to affect the conduct of the financial institution's securities business. The record should include the following particulars:

1. the offence for which the employee was disciplined; and
2. the steps taken to discipline the employee.

1.9 Communication with customers

1. A financial institution may make a communication with another person that is designed to promote the provision of services only if it can show that it believes on reasonable grounds that the communication is fair, comprehensive and not misleading.
2. A financial institution shall take reasonable steps to ensure that any

agreement, written communication, notification or information that it gives or sends to customers to whom it provides services is presented fairly, clearly and in a timely manner.

1.10 Independence

If a financial institution is advising or acting for a customer, the financial institution shall:

1. not claim it is independent or impartial if it is not; and
2. ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

1.11 Cessation of business

If a financial institution withdraws from the securities business it shall:

1. immediately notify the Commission and each of its customers of its decision;
2. ensure to the satisfaction of the Commission that any outstanding business is properly completed or transferred to another financial institution; and
3. make provision for the protection of its customers in the event of the cessation of the whole or any part of its investment business.

2. CUSTOMER RELATIONSHIPS

2.1 Information about the financial institution

A financial institution must take reasonable steps to ensure that a customer to whom it provides services is given adequate information about its identity and business address and the identity and status of employees and other relevant representatives with whom the customer has contact.

2.2 Customer agreements

1. A financial institution shall not provide to a customer any securities investment business services relating to :

    a. the discretionary management of a portfolio; or
    b. any other type of business that may be specified by the Commission,

except under a written agreement signed by the customer and returned to the financial institution.

2. The agreement shall set out in adequate detail the basis on which those services are provided.

3. A financial institution shall comply with the terms of the relevant customer agreement in all dealings with or on behalf of customers.

2.3 Customers’ understanding of risk

A financial institution shall not:

1. recommend a transaction to a customer, or effect a discretionary transaction with or for the customer, unless it has taken all reasonable steps to enable the customer to understand the risks involved;
2. mislead a customer as to any advantages or disadvantages of a contemplated transaction; or
3. promise a return unless the return is contractually guaranteed

2.4 Suitability

1. A financial institution must take all reasonable steps to ensure that it does not give securities investment business advice to, nor effect a discretionary transaction with or for, a customer unless that advice or transaction is suitable for the customer having regard to the facts disclosed by that customer and other relevant facts about the customer of which the licensee is or ought reasonably to be aware.
2. A financial institution must not recommend a security to a customer unless the financial institution has adequate current information in its possession to enable it to form a basis for the recommendation.

2.5 Informed investment decisions

A financial institution shall take all reasonable steps to enable customers to make informed investment decisions and shall avoid misleading or deceptive representations or practices.

2.6 Customer confidentiality

1. Subject to paragraph (2), all information in the possession of a financial institution relating to a customer must be kept confidential by it.

2. A financial institution may disclose information relating to a customer when properly required to do so by the Commission, a clearing house or the market supervision department of a securities exchange of which it is a member, or if it is ordered to do so by a court of competent jurisdiction.

2.7 Disclosures

Information

A financial institution shall take all reasonable steps to ensure that a customer is given sufficient information, which the customer is able to understand, to enable the making of balanced and informed investment decisions.

Fees, Remuneration and Commissions

A financial institution's fees must not be unfair in their incidence or unreasonable in their amount having regard to all relevant circumstances. A financial institution must before it provides services to a customer disclose to the customer the basis and nature of all fees.
Before a financial institution undertakes investment transactions for or advises a customer, it shall inform the customer of all relevant facts relating to its remuneration (including the remuneration of any intermediary which is payable by the customer) attributable to the transaction or advice unless it has been specifically in writing agreed with the customer that this is unnecessary or has disclosed a detailed fee schedule in a standard customer agreement.

Performance information

A financial institution should ensure that performance information is disclosed in a manner that represents a fair view and data must be accurate, relevant, timely, and complete. Financial institutions must guard against any form of misrepresentation in the performance of individual portfolios. Valuations must be determined utilising fair market values. Where fair-market values for illiquid securities and any other financial instruments cannot be determined from independent third party sources, disclosures of the policies and valuation methods used must be made.

Funds: disclosure of particulars

A financial institution shall ensure that before or immediately after a recommendation is made to buy any interest in a fund, a customer is given or sent a statement, prepared by the recommender or by the fund, which informs the customer of details of the fund, which shall include fees or other amounts payable then and in the future and the factors relevant to the ultimate value of the investment.

Delivery of disclosure documents and other information

1. A financial institution which uses the internet to communicate with and send

offering material to shareholders and potential investors must provide the same disclosure about their operations, financial condition and investments that would be provided in a paper-based medium, so that shareholders and potential investors can fully evaluate the risk and value of the investment.

2. A financial institution may deliver the necessary disclosure documents and other information electronically where a shareholder has given informed consent to this form of delivery.

2.8 Communications and customer orders

1. A financial institution must continue to satisfy suitability and general conduct requirements when transacting business over the internet.
2. A financial institution must ensure that its computer networks have sufficient operational integrity (security, reliability, capacity, backup systems and alternative means of communications) and that it has adequate personnel to handle internet communications, including, but not limited to, trading instructions.

2.9 Safeguarding of customer investments

A financial institution which has custody of a customer's securities in connection with securities or mutual fund administration shall:

a. keep safe, or arrange for the safekeeping of, any documents evidencing title, relating to them; and
b. ensure that any securities that it buys or holds for a customer are properly registered in the customer's name or, with the consent of the customer, in the name of an appropriate nominee.

3.0 CUSTOMER MONEY

3.1 Application

This Part applies to any customer money held or received by a financial institution in the course of carrying on its securities business.

3.2 Customer money

1. For the purposes of this Guideline customer money is money of any currency which, in the course of carrying on its securities business, a financial institution holds or receives on behalf of a customer or which it owes to a customer.

2. Customer money shall be held by the financial institution in trust for and on behalf of the respective customers for whom that customer money is received or held according to their respective shares in it.
3. Customer money shall not form part of the assets of the financial institution for any purpose and shall not be available in any circumstances for payment of any debt of the financial institution.
4. A financial institution must account properly and promptly for customer money and, in particular, must ensure that:

    a. customer money and other money do not become comingled;
    b. the financial institution can at all times be sure how much customer money stands to the credit of each customer; and
    c. money belonging to one customer is not used for another customer.

4.0 MARKET CONDUCT

4.1 Independence

A financial institution must not make false claims and shall use reasonable care and judgement to achieve and maintain independence and impartiality in making investment recommendations or taking investment action

4.2 Customer order priority

A financial institution shall deal with its customer and own account orders fairly and in due turn.

4.3 Timely execution

A financial institution shall effect or arrange the execution of an order as soon as is reasonably practicable after it has agreed or decided in its discretion to effect or arrange a customer order.

4.4 Best execution

A financial institution must take all reasonable steps to find and deal on the terms which are the best available to the customer when dealing with or for a customer.

4.5 Timely allocation

A financial institution must ensure that a transaction it executes is promptly allocated.

4.6 Fair allocation

If a financial institution aggregates an order for a customer transaction with an order for an own account transaction, or with an order for another customer transaction, then in the subsequent allocation:

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

4.7 Front running

If a financial institution intends to publish to customers a price-sensitive recommendation or research or analysis, it must not knowingly effect an own account transaction in the investment concerned or in any related investment until the customers for whom the publication was principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

4.8 Excessive transactions/Churning

A financial institution shall not:

a. deal or arrange a deal in the exercise of discretion for any customer; or
b. advise a customer to deal, if the dealing could in the circumstances reasonably be regarded as too frequent or excessive.

4.9 Insider dealing

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

4.10 Use of Material Non-Public Information

A financial institution shall not act or cause others to act on material non- public information that could affect the value of a publicly traded investment.

4.11 Market manipulation

In any activities relating to trading in investments, a financial institution must not engage in any market manipulation or any other conduct directly or indirectly with the aim of manipulating market prices of investments.

5.0 CONFLICTS OF INTEREST

5.1 Material interest

If a financial institution has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to the transaction, the financial institution shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless the financial institution has:

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

5.2 Conflicts of interest

1. A financial institution shall endeavour to avoid conflicts of interest on any matter that could reasonably be expected to impair its independence or objectivity. If conflicts exist or arise, the financial institution shall make full and fair disclosure, and any such disclosure shall be prominent, delivered in plain language, and communicate the relevant information effectively. The financial institution shall establish internal rules or procedures to ensure fair treatment to all its customers.

2. A financial institution shall not undertake or recommend an investment transaction in which it has a material interest without prior notification to the customer and receipt of the customer's acknowledgement of notification.