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SECURITIES (LICENSING) RULES 2007

(Consolidated Version with amendments as at 01 April 2013)

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SECURITIES (LICENSING) RULES 2007

FSC Rules made by the Financial Services Commission under Section 155 of the Securities Act 2005.

PART I

GENERAL PROVISIONS

1. Citation

These rules may be cited as the Securities (Licensing) Rules 2007.

2. Interpretation

In these rules -

"Act" means the Securities Act 2005;

"CDS" means the Central Depository and Settlement Co Ltd;

"FSC Rules" refers to rules made by the Commission under the Act and the Financial Services Act 2007

"GBOT" refers to the Global Board of Trade licensed by the Commission.

Added by FSC Rules [GN No. 172 of 2012]

"licensee" means a person licensed or required to be licensed under the Act as -

- (a) a securities exchange;
- (b) a clearing and settlement facility;
- (c) a trading securities system;

- (d) an investment dealer;
- (e) an investment adviser; and
- (f) a representative of an investment dealer or an investment adviser where specifically mentioned

"officer responsible" means the officer responsible for the securities activities of the licensee and, in the case of a licensee not constituted as a company, a person having the same responsibility;

PART II

LICENSING OF SECURITIES EXCHANGES, CLEARING AND SETTLEMENT FACILITIES AND TRADING SECURITIES SYSTEMS

3. Application for a licence

- (1) An applicant for a licence as a securities exchange, a clearing and settlement facility or a trading securities system shall be constituted as a public company under the Companies Act 2001.
- (2) An application under this Part shall be made as set out in the FSC Rules and shall include -
 - (a) the constitution of the company;
 - (b) proposed operating rules and procedures which satisfy the requirements under sections 12, 13 and 14 of the Act, as applicable;

- (c) duly audited financial statements for the 3 years preceding the application or, in the case of a new company, a financial forecast for 3 years;
- (d) personal questionnaire form specified in the FSC Rules for every officer, proposed director, shareholder and beneficial owner of the applicant;
- (e) fees specified in the FSC Rules; and
- (f) any other information or documents as may be requested by the Commission.

PART III

LICENSING OF INVESTMENT DEALERS, INVESTMENT ADVISERS AND THEIR REPRESENTATIVES

4. Categories of investment dealer licence

- (1) Every person who, by way of business, intends to carry out any of the activities of investment dealer under section 29 of the Act shall apply for a licence as an investment dealer in one of the following categories -
 - (a) full service dealer - authorised to -
 - (i) act as an intermediary in the execution of securities transactions for clients;
 - (ii) trade in securities as principal with the intention of reselling these securities to the public;
 - (iii) underwrite or distribute securities on behalf of an issuer or a holder of securities;

- (iv) give investment advice which is ancillary to the normal course of his business activities; and
 - (v) manage portfolios of clients.
- (b) broker - authorised to execute orders for clients, to manage portfolios of clients and to give advice on securities transactions to clients;
- (c) discount broker - authorised to execute orders for clients without giving advice;
- (d) Investment Dealer (Commodity Derivatives Segment);
- (e) Investment Dealer (Currency Derivatives Segment);

Amended by FSC Rules [GN No. 133 of 2009]

- (f) Investment Dealer (Government of Mauritius Securities and Bank of Mauritius Securities Segment);

Added by FSC Rules [GN No. 219 of 2011]; Amended by FSC Rules [GN No. 172 of 2012]

- (g) Investment Dealer (Equity Segment).

Added by FSC Rules [GN No. 172 of 2012]

- (2) The Commission shall not grant a licence under paragraph (1) unless it is satisfied that the applicant meets all the requirements of these rules, and in particular the minimum stated unimpaired capital requirement.
- (3) A financial institution shall not apply for an investment dealer licence for categories (a), (b), (c), (d) and (g) specified in paragraph (1) unless it has constituted a subsidiary which can meet all the requirements of these rules.

Amended by FSC Rules [GN No. 133 of 2009]; Amended by FSC Rules [GN No. 172 of 2012]

(3A) An investment dealer licence for categories (d), (e) and (g) specified in paragraph (1) shall only be applicable to trading on GBOT.

Added by FSC Rules [GN No. 172 of 2012]

(4) An applicant for an investment dealer licence for category (f) specified in paragraph (1) shall satisfy the criteria laid down by the Bank of Mauritius in relation to primary dealers.

Added by FSC Rules [GN No. 219 of 2011]

5. Categories of investment adviser licence

Every person who, by way of business, intends to carry out any of the activities of an investment adviser under section 30 of the Act, shall apply for a licence in one of the following categories -

- (a) unrestricted - authorised to manage, under a mandate, portfolios of securities and give advice on securities transactions through printed materials or any other means;
- (b) restricted - authorised to give advice on securities transactions through printed materials or any other means.

6. Activities authorised

- (1) A licensed investment dealer or investment adviser may solicit any person to enter into securities transactions.
- (2) The licence shall indicate the activities that the investment dealer or the investment adviser is authorised to exercise.

- (3) The Commission may limit the number of activities that an investment dealer may exercise where it feels that the dealer does not have the material or financial resources necessary to carry out some of its activities.
- (4) A licensed investment dealer or investment adviser shall obtain prior approval of the Commission for any modification of its licence.

7. Representative of investment dealer

- (1) No individual shall carry out any of the securities activities of an investment dealer unless he is licensed as a representative of the investment dealer under one of the Types specified in the Third Schedule, as applicable.
- (2) The Commission shall not grant a licence under paragraph (1) unless it is satisfied that the applicant holds such qualifications specified in the Third Schedule or an equivalent qualification as it may approve, and meets all the requirements of these rules.
- (3) An investment dealer shall at all times employ at least one representative, who shall be entitled to carry out the functions of the investment dealer, holding a licence under the following Type, as applicable -
 - (a) for an Investment Dealer (Full Service Dealer) - a Degree in a relevant field and at least 8 years of relevant experience in investment business;
 - (b) for an Investment Dealer (Broker) - a Degree in a relevant field and at least 4 years of relevant experience in investment business;

- (c) for an Investment Dealer (Discount Broker) - a Diploma course in a relevant field and at least 2 years of relevant experience in investment business.
- (4) Notwithstanding paragraph (2) and (3) the Commission may consider an application from a person, licensed or deemed to be licensed as a stockbroker or dealer's representative under the repealed Stock Exchange Act 1988, for a licence as representative of an investment dealer, as it may deem appropriate.

8. Representative of investment adviser

- (1) No individual shall carry out any of the securities activities of an investment adviser unless he is licensed as a representative of the investment adviser.
- (2) The Commission shall not grant a licence under paragraph (1) unless it is satisfied that the applicant holds such qualifications specified in the Third Schedule or an equivalent qualification as it may approve, and meets all the requirements of these rules.
- (3) An investment adviser, as the case may be, shall at all times employ or be represented by at least one representative, as specified in the Third Schedule, who is entitled to carry out the functions of the investment adviser.
- (4) The Commission may consider an application from a person, licensed or deemed to be licensed as a stockbroker or dealer's representative under the repealed Stock Exchange Act 1988, for a licence as representative of an investment adviser, as it may deem appropriate.

9. Application for an investment dealer licence or an investment adviser licence

- (1) An application for an investment dealer licence or an investment adviser licence shall indicate the category of licence sought and shall contain the information and documents set out in the First Schedule.
- (2) No investment dealer or investment adviser shall carry out any type of securities activities, either directly or through a subsidiary, other than that for which it is licensed unless authorised to do so by the Commission.

10. Application for a licence as a representative of an investment dealer or of an investment adviser

- (1) An application for a licence as a representative of an investment dealer or of an investment adviser, as the case may be, shall be filed with the Commission by the investment dealer or the investment adviser in accordance with the FSC Rules, and shall contain the information and documents set out in the Second Schedule.
- (2) The representative shall only be licensed to act on behalf of one investment dealer or one investment adviser, as the case may be, and shall only undertake securities activities for which the investment dealer or investment adviser is licensed.
- (3) A licensed representative may, with the approval of the Commission, and subject to such terms and conditions as the Commission deems appropriate, have its licence transferred to another investment dealer or investment adviser.
- (4) The investment dealer or the investment adviser who wishes to appoint the licensed representative shall submit an application to the Commission under paragraph (3).

10A. Obligations of Investment Dealers

- (1) Any sale or purchase by or on behalf of an investor of securities in Mauritian companies or other Mauritian entities listed on a securities exchange licensed by the Commission shall be carried out through an investment dealer on the securities exchange.
- (2) No investment dealer shall execute any investment transaction if, to its knowledge, having made all reasonable enquiries, it would result in a breach of any restriction provided under any relevant Act.
- (3) Investment dealers shall take all reasonable steps to determine whether a proposed investment transaction is to be made by or on behalf of a foreign investor.

Added by [GN No. 70 of 2013]

11. Licensing conditions for investment dealers

- (1) The Commission shall not grant a full service investment dealer licence, unless it is satisfied that the applicant has established procedures designed to prevent conflicts of interest and the use of inside information by an effective segregation of its different activities.
- (2) The procedures mentioned in paragraph (1) shall ensure that the investment decisions concerning the portfolio of clients shall not be communicated or be available to any unauthorised third party.

12. Licensing conditions for investment advisers

In order to obtain an unrestricted licence, an investment adviser shall provide sufficient justification to the Commission as to the competence of the persons who will be responsible for investment advice and the management of portfolios.

13. Licensing conditions for representatives

- (1) Applicants for a licence as a representative of an investment dealer or of an investment adviser shall satisfy the Commission that they hold such appropriate training or qualification as may be deemed necessary and as the Commission may specify from time to time.
- (2) Notwithstanding paragraph (1), the Commission shall consider such other training, membership to recognised professional bodies or qualifications as it deems acceptable.
- (3) The investment dealer or investment adviser shall demonstrate to the Commission that any person acting as its representative is properly qualified.

14. Minimum stated unimpaired capital requirements

- (1) Subject to paragraph (2), the applicant for a licence shall maintain a minimum stated unimpaired capital as specified in the Fourth Schedule.
- (2) The minimum stated unimpaired capital shall be fully paid and no amount shall be due or payable.
- (3) Where an investment adviser license is granted to an individual, he shall demonstrate to the Commission that he has sufficient means to ensure the continuity of his business and the provision of adequate services to his clients.
- (4) The licensee shall inform the Commission immediately where its minimum stated unimpaired capital falls below the minimum required by these rules.

15. Duration and modification of a licence

The licence of an investment dealer, an investment adviser or its representative is valid as long as the person so licensed meets the conditions set out in the Act, any relevant regulations or rules made thereunder, and any other conditions as may be set out by the Commission and pays the fees as specified in the FSC Rules.

16. Organisation and supervision

- (1) An applicant for a licence of investment dealer or investment adviser shall satisfy the Commission that such internal structures as its organisation, its technical and financial means and its staffing are appropriate and sufficient for the efficient operation of its business.
- (2) Where the applicant for a licence is a subsidiary of another company, the Commission may require that some or all the employees or officers of the applicant shall be able to perform independently from the parent company.
- (3) Whenever a licensee operates or intends to operate branches, it shall designate an officer responsible for each branch and shall inform the Commission thereof:
- (4) Every applicant shall establish systems and procedures to ensure that non-public information is strictly controlled and not circulated to unauthorised third parties.
- (5) Every applicant shall put into place systems and procedures designed to prevent money laundering and the financing of terrorism.
- (6) Where the applicant is part of a group of companies, the systems and procedures put in place shall prevent the circulation of non-public information to other members of the group.

17. Membership of Self-Regulatory Organisations

The Commission may require that an applicant for a licence as an investment dealer or an investment adviser become a member of a securities exchange or a self-regulatory organisation as a condition of obtaining and maintaining its licence.

18. Exemptions

- (1) Rule 4(3) shall not apply to –
 - (a) Investment Dealer (Currency Derivatives Segment);
 - (b) Investment Dealer (Government of Mauritius Securities and Bank of Mauritius Securities Segment).

Amended by FSC Rules [GN No. 219 of 2011]

- (2) Rule 7 shall not apply to –
 - (a) Investment Dealer (Currency Derivatives Segment);
 - (b) Investment Dealer (Commodity Derivatives Segment);
 - (c) Investment Dealer (Government of Mauritius Securities and Bank of Mauritius Securities Segment);
 - (d) Investment Dealer (Equity Segment).

Amended by FSC Rules [GN No. 219 of 2011]; Amended by FSC Rules [GN No. 172 of 2012]

PART IV

MISCELLANEOUS

19. Offences

Without prejudice to any sanction that may be imposed under the relevant Acts and such Regulations or Rules made, any person who contravenes or fails to comply with any provision of these rules shall commit an offence and shall be liable on conviction to a fine not exceeding 500,000 rupees.

Amended by FSC Rules [GN No. 133 of 2009]

20. Commencement

These rules shall be deemed to have come into operation on 28 September 2007.

Amended by FSC Rules [GN No. 133 of 2009]

Made by the Financial Services Commission on 28 September 2007.

FIRST SCHEDULE

(Rule 9)

APPLICATION FOR A LICENCE AS INVESTMENT DEALER OR INVESTMENT ADVISER

- (1) The person applying for a licence as an investment dealer or investment adviser shall file the following information and documents with the Commission -
 - (a) certified copy of the resolution of the board of directors authorising two members of the board to sign the application and appointing an officer responsible and a manager responsible for any branch office;
 - (b) copy of the constitution or similar constitutive document;
 - (c) complete description of the proposed activities: type of customers, products and services to be offered (brokerage, CIS securities, underwriting, portfolio management, etc.);
 - (d) amount, type and distribution of the shares of the applicant, including the list of shareholders and the number of shares owned directly or indirectly;
 - (e) if the applicant wishes to offer portfolio management services, a copy of a model of the contract to be signed between the investment dealer or investment adviser (unrestricted) and the client;
 - (f) copy of the contract relating to internet trading, if any;
 - (g) copy of the internal procedures manual;
 - (h) details of membership, applications for membership or shareholding in a securities exchange, a clearing and settlement facility, a securities trading system or a self-regulatory organisation or of applications for membership;

- (i) detailed description of systems and procedures to prevent: conflicts of interest, money laundering and financing of terrorism;
 - (j) personal questionnaire form specified in the FSC Rules for every officer or proposed officer, shareholder and beneficial owner of the applicant.
- (2) In the case of an application for a licence as an investment adviser where the applicant is not constituted as a company, only paragraphs (1)(c), (e), (f), (g), (i) and (j) shall apply.
- (3) Subject to paragraph (4), in the case where the person applying for the licence is not yet legally constituted, the information or the documents that would apply to a legally constituted person may be filed in draft form.
- (4) In the case mentioned in paragraph (3), the Commission shall only grant approval in principle for a licence and the licence shall only be issued when the Commission has received final documents and information from the applicant and is satisfied that the final information and documents are consistent with the drafts filed.

SECOND SCHEDULE

(Rule 10)

APPLICATION FOR A LICENCE AS A REPRESENTATIVE

- (1) The person applying for a licence as representative shall file the Personal Questionnaire Form, as specified in the FSC Rules, with the Commission.
- (2) If the Personal Questionnaire Form has already been filed with the application for the licence of the investment dealer or the investment adviser, for a period not exceeding 6 months, the applicant may not need to file a new Personal Questionnaire Form, unless there is a material change in the information filed.
- (3) Where Personal Questionnaire Form has already been filed as specified in paragraph (2), the applicant shall include in his application a signed letter to the Commission indicating that the Personal Questionnaire Form has already been filed and the date on which it was filed.
- (4) The applicant shall include any document that is necessary to complete the information included in the Personal Questionnaire Form.
- (5) The Personal Questionnaire Form shall carry the signatures of the applicant and the investment dealer or investment adviser responsible to file it on behalf of the representative.

THIRD SCHEDULE

(Rule 7 and 8)

REPRESENTATIVES OF INVESTMENT DEALER AND INVESTMENT ADVISER

Representative of:	Type	Relevant Qualifications*
Investment Dealer (Full Service Dealer)	1	A Degree in a relevant field** and at least 8 years of relevant experience in investment business
	2	A Degree in a relevant field and at least 5 years relevant experience in investment business
	3	A Diploma in a relevant field and at least 3 years relevant experience in investment business
Investment Dealer (Broker)	1	A Degree in a relevant field and at least 4 years of relevant experience in investment business
	2	A Diploma in a relevant field and at least 3 years relevant experience in investment business
Investment Dealer (Discount Broker)	1	A Diploma course in a relevant field and at least 2 years of relevant experience in investment business
Investment Adviser		A Degree in a relevant field and at

(unrestricted)		least 4 years of relevant experience in investment business
Investment Dealer (Restricted)		A Degree in a relevant field and at least 3 years of relevant experience in investment business

*Relevant Qualification refers to a Degree or Diploma from a University, as the Commission may consider appropriate;

**Relevant field refers to Accounting, Finance or Economics.

FOURTH SCHEDULE

(Rule 14)

MINIMUM STATED UNIMPAIRED CAPITAL REQUIREMENTS

Category	MUR (Rs.) or an equivalent amount
Investment Dealer (Full Service Dealer – including underwriting)	10,000,000
Investment Dealer (Full Service Dealer – excluding underwriting)	1,000,000
Investment Dealer (Broker)	700,000
Investment Dealer (Discount Broker)	600,000
Investment Adviser (Unrestricted)	600,000
Investment Adviser (Restricted)	500,000
Investment Dealer (Commodity Derivatives Segment)	1,000,000
Investment Dealer (Currency Derivatives Segment)	1,000,000
Investment Dealer (Government of	200,000,000

Mauritius Securities and Bank of Mauritius Securities Segment)	
Investment Dealer (Equity Segment)	1,000,000

**Amended by FSC Rules [GN No. 133 of 2009]; [GN No. 219 of 2011];
Amended by FSC Rules [GN No. 172 of 2012]**