

Financial Services (Investment and Fiduciary Services)
**FINANCIAL SERVICES (CONDUCT OF BUSINESS: INVESTMENT
FIRMS & INSURANCE INTERMEDIARIES) REGULATIONS 2006**

1989-47

**Subsidiary
2006/057**

Regulations made under s. 53.

**FINANCIAL SERVICES (CONDUCT OF BUSINESS:
INVESTMENT FIRMS & INSURANCE
INTERMEDIARIES) REGULATIONS 2006**

(LN. 2006/057)

27.4.2006

Amending enactments

Relevant current
provisions

Commencement
date

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In exercise of the powers conferred on him by section 53 of the Financial Services Act, 1989 and all other enabling powers, the Minister has made the following regulations—

PART 1

PRELIMINARY

Title.

1. These regulations may be cited as the Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations 2006.

Interpretation.

2. In these regulations, unless the context otherwise requires—

“authorised European investment firm” has the meaning given by the Financial Services Act 1998;

“authorised Gibraltar investment firm” has the meaning given by the Financial Services Act 1998;

“the Authority” means the person or body appointed under section 2 of the Financial Services Act 1989;

“customer” means any person with or for whom a firm carries on, or intends to carry on, any financial services business, or other business for that person carried on in connection with that financial services business, and includes a potential customer;

“customer transaction” does not include an own account transaction;

“financial services business” means investment business and any business falling within paragraph 3 of schedule 3 to the Act, and “financial services” shall be construed accordingly;

“firm” means a person licensed or considered to be licensed under section 8 of the Act or authorised under section 6 of the Financial Services Act 1998 to carry on investment business or the business of an insurance intermediary;

“futures” means an investment falling within paragraph 8 of Schedule 1 to the Act;

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“insurance intermediary” means a firm which is carrying on business falling within paragraph 3 of Schedule 3 to the Act;

“investment” has the meaning given in section 3(2)(a) of, and Schedule 1 to, the Act;

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Schedules 2 and 3 to the Act;

“investment business” has the meaning given in section 3(2)(b) of, and Schedule 2 to the Act;

“non-readily realisable investment” means any investment which is not a packaged product; or a government or public security denominated in the currency of the country of its issuer; or a security admitted to official listing on an exchange in an EEA State, or regularly traded on or under the rules of such an exchange or a recognised investment exchange.

“option” means an investment falling within paragraph 7 of Schedule 1 to the Act;

“own account transaction” means a transaction effected or arranged by the firm in the course of carrying on its financial services business and which was done on its own account or on the account of an associate acting on its own account;

“packaged product” means a life assurance policy, or a unit or share in a collective investment scheme;

“private customer” means a person who is an individual and who is not acting in the course of carrying on investment business;

“professional investor” means a person who is acting in the course of carrying on investment business, or who has elected to be treated as a professional investor in accordance with Regulation 26 and who is not eligible to claim compensation under the Gibraltar Investor Compensation Scheme; and

“regulatory system” means the arrangements for regulating a firm under the Act, the Financial Services Act 1998, subordinate legislation made thereunder, and any rules or directions made by the Authority under any statutory provision thereunto it enabling.

Application.

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3.(1) These regulations apply in relation to investment firms and insurance intermediaries in respect of their financial services business.

(2) These regulations are of general application to firms provided that, where a regulation applies only in particular circumstances, that regulation will apply to a firm only if those circumstances are relevant to the financial services business undertaken by that firm.

(3) These regulations apply to European investment firms carrying on investment business in Gibraltar, and Gibraltar firms carrying on investment business in a host state to the extent specified in schedule 1.

(4) These regulations do not apply to a firm or its activities where compliance with them would be unlawful or prohibited by any law, or regulatory requirement having the force of law, in any territory other than Gibraltar applicable to any activity which it is reasonably necessary for a firm to undertake, and which is in fact undertaken, in that territory.

(5) These regulations do not apply with respect to dissemination of information, or communication with a customer where the customer is resident outside Gibraltar, and has requested the firm not to deliver reports, or where the firm has reasonable grounds for believing that the customer does not want to receive the communication.

(6) The Financial Services (Conduct of Business) Regulations 1991 do not apply to firms insofar as these regulations apply to that firm.

PART 2

STATEMENTS OF PRINCIPLE

Integrity.

4. A firm shall conduct its business with integrity.

Skill, care and diligence.

5. A firm shall conduct its business with due skill, care and diligence.

Market conduct.

6. A firm shall observe proper standards of market conduct.

Customers' interest.

7. A firm shall pay due regard to the interest of its customers and treat them fairly.

Know your customer.

8. A firm must seek from private customers it advises, or for whom it exercises discretion, relevant personal and financial information which might reasonably be expected to be sufficient and suitable to enable it to fulfill its responsibilities to them.

Information for customers.

9. A firm shall take reasonable steps to ensure that a customer it advises is given, in a timely way, any information needed to enable him to make a balanced and informed investment decision, and that information given is clear, fair and not misleading.

Conflicts of interest.

10.(1) A firm shall either avoid any conflict of interest arising or, where conflicts arise, shall ensure fair treatment for all its customers by disclosure, internal rules of confidentiality, declining to act or otherwise.

(2) A firm shall not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm shall live up to that expectation.

Customer assets.

11. Where a firm, in connection with or for the purposes of financial services business, has control of or is otherwise responsible for assets belonging to a customer, it shall arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

Financial resources.

12. A firm shall maintain, without prejudice to specific requirements that may be imposed as a condition of authorisation, adequate financial resources to meet the commitments of its business, and to withstand the risks to which its business is subject.

Management and control.

13. A firm shall organise and control its internal affairs in a responsible and effective manner with adequate risk management systems, keeping proper records, and where the firm employs staff, or is responsible for the conduct of financial services business by others, it shall have adequate arrangements

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to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined procedures to facilitate compliance with the regulatory system.

Relations with the Authority.

14. A firm shall deal with the Authority, its employees and agents in an open and cooperative manner, and keep the Authority promptly informed of anything concerning the firm and its business that might reasonably be expected to be disclosed.

PART 3

CORE RULES

I. Independence

Independence.

15. Where a firm is advising or acting for a customer—

- (a) it shall not claim it is independent or impartial if it is not;
- (b) it shall ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either; and
- (c) it shall ensure that any claim it makes as to the range of products and services it offers includes adequate information about any limitation that there may be on either.

Material Interest.

16. Where a firm 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 such a transaction, the firm shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless it has—

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

Inducements.

17. A firm must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits, or accepts, any inducement that is likely to conflict with any duty owed to customers.

Use of Dealing Commission.

18.(1) Where a firm receives goods or services which are in addition to the execution of its customers' orders it must not pass on such charges to its customers unless the following conditions are satisfied—

- (a) the only benefits to be provided under the agreement are goods and services which can reasonably be expected to be related to the execution of trades on behalf of the firm's customers;
- (b) the goods and services comprise the provision of research which—
 - (i) is capable of adding value to the investment or trading decision;
 - (ii) represents original thought and careful consideration and assessment of new existing facts;
 - (iii) has intellectual rigour and does not merely state what is self-evident; and
 - (iv) involves the analysis of data to reach meaningful conclusions;
- (c) the firm is satisfied on reasonable grounds that the terms of business and methods by which the relevant broking services or packaged product will be supplied do not involve any potential for comparative price disadvantage to the customer or impair compliance with the duty of the firm to act in the best interest of its customers; and
- (d) adequate prior and periodic disclosure is made to the customer.

(2) Where a firm pays for execution and research services with dealing commission it must disclose the following to its customers—

- (a) a description of its policies, process and procedures in the management of costs paid on behalf of its customers;

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- (b) information on how commissions paid have been generated and how this has been used, including a split between commission spent on execution and research;
 - (c) the firm's pattern of trading and sources and uses of commissions for all customers in that asset class to enable the comparison of the use of commission between a particular customer and the rest of the firm's customers.
- (3) A firm may not acquire any of the following list of goods or services with dealing commission—
- (a) services relating to the valuation or performance of portfolios;
 - (b) computer hardware or administrative software;
 - (c) dedicated telephone lines;
 - (d) seminar fees;
 - (e) subscriptions for publication, including electronic publications;
 - (f) travel, accommodation or entertainment costs;
 - (g) membership fees for professional associations;
 - (h) employees' salaries.

II. Financial Promotion

Issue or approval of advertisements.

19. Where a firm issues or approves an advertisement concerning an investment or financial services business, it shall apply appropriate expertise in relation to the service concerned and take all reasonable steps to ensure that—

- (a) the contents and presentation of the advertisement are demonstrably fair and not misleading;
- (b) the advertisement discloses adequately and fairly the terms of and the risks involved in the investment or service concerned; and
- (c) where the advertisement is directed principally to persons not resident in Gibraltar, that the advertisement discloses

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adequately the potential customer's protection or compensation rights.

Identification of issuer.

20. Where a firm issues an advertisement concerning an investment or financial services business, it shall ensure that the advertisement identifies it as the issuer and its regulator.

Fair and clear communications.

21.(1) A firm may make a communication with another person which is designed to promote an investment or the provision of financial services only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(2) A firm shall take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to a private customer to whom it provides an investment or financial services is fair and clear.

Customers' understanding of risk.

22.(1) A firm shall not—

- (a) recommend a transaction to a private customer, or effect a discretionary transaction with or for him, unless it has taken all reasonable steps to enable the customer to understand the nature of the risks involved ; or
- (b) mislead a customer as to any advantages or disadvantages of a contemplated transaction.

(2) In respect of a warrant, derivative, or non-readily realisable investment, before a firm recommends a transaction, arranges or executes a transaction, or acts as a discretionary manager, it must have sent a private customer an appropriate warning notice, detailing the risks involved in the investment, and obtained a copy, signed by the customer, confirming that he has had a proper opportunity to consider its terms and accept the risks involved.

(3) A firm shall not state or imply that the performance of an investment or financial service is guaranteed unless there is a legally enforceable arrangement to meet in full a customer's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the customer to make a fair assessment of the guarantee.

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23. A firm shall take reasonable steps to ensure that a customer to whom it provides an investment or financial services is given the following information prior to the commencement of provision of financial services—

- (a) the identity of the firm and, if applicable of the group to which it belongs, its business address and telephone number;
- (b) the fact that the firm is regulated and the identity of its regulator;
- (c) the activities the firm undertakes so that the customer is able to assess the scope of the firm's responsibilities;
- (d) the identity and status within the firm of employees and other relevant representatives with whom the customer will have contact;
- (e) details of any cancellation rights or rights of reflection that may apply;
- (f) the applicable compensation scheme (if any);
- (g) the procedure by which any complaint may be made;
- (h) an outline of policies in relation to conflicts of interest and inducements; and
- (i) the languages in which the customer may communicate with the firm.

Information about packaged products.

24.(1) Before or when making a personal recommendation to a private customer to buy a packaged product, a firm shall give him information about the product which is adequate to enable him to make an informed investment or insurance decision.

(2) Before or, if any delay is in the customer's interest, as soon as practicable after a private customer buys a packaged product in a transaction recommended, effected or arranged by a firm, the firm shall provide him or arrange for him to be provided with appropriate written product particulars.

Representatives of the firm.

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25.(1) A firm shall satisfy itself on reasonable grounds and on a continuing basis that any representative it appoints is fit and proper to act for it in that capacity.

(2) A firm shall 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.

III. Customer Relations**Customer status.**

26.(1) Before dealing with or for any customer, a firm must take reasonable steps to establish whether that customer is a private customer or a professional investor. A firm must review a customer's status at least once a year.

(2) Private investors may be treated as professional on request provided that an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved. As part of this assessment the following criteria and procedure must be fulfilled.

As a minimum, two of the following criteria should be satisfied—

- (a) the investor has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- (b) the size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0.5 million Euro; and
- (c) the investor works or has worked in the financial sector for at least a year in a professional position, which requires knowledge of the transactions or services envisaged.

The investor must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product.

The investment firm must give the investor a clear written warning of the protections and investor compensation rights they may lose.

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The investor must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Firms must implement appropriate written internal policies and procedures to categorise investors.

Professional investors are responsible for keeping the firm informed about any change, which could affect their current categorization. Should the investment firm become aware however that the investor no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.

(3) A professional investor may be treated as a private customer, if the firm and the customer so agree in writing.

Customer agreements.

27.(1) Where a firm provides financial services to a private customer on written contractual terms, the agreement shall set out in adequate detail as set out in schedule 2 the basis on which those services are provided.

(2) A firm shall not provide to a private customer any financial services relating to—

- (a) futures, options or contracts for differences;
- (b) the discretionary management of a portfolio;
- (c) the provision of non-discretionary portfolio management services;
- (d) investments that are not readily realisable investments; or
- (e) any other type of business that is prescribed by the Authority, except under a written agreement signed by the private customer and returned to the firm which sets out in adequate detail the basis on which the services are to be provided.

Customers' rights.

28. A firm shall not, in any written communication or agreement, seek to exclude or restrict—

- (a) any duty or liability to a customer which it has under the Act, the Financial Services Act 1998, and any subordinate legislation made thereunder;

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- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to him of financial services; or
- (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of financial services.

Suitability.

29.(1) A firm shall take all reasonable steps to ensure that it does not give advice on financial services business to, nor effect a discretionary transaction with or for, a private customer unless that advice or transaction is suitable for him having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or ought reasonably to be aware. A firm shall not advise a customer to buy a packaged product if it is aware of a generally available packaged product which would better meet his needs.

(2) A firm shall take reasonable steps to ensure that the facts it is required to take into account by subregulation (1) are recorded as soon as the firm becomes aware of them, and that such records are kept for at least three years after the firm performs its last service for the customer on the basis of those facts.

(3) In the case of a recommendation to a private customer, prior to the transaction, to which the recommendation relates, taking place the firm must provide the customer with a suitability letter to enable the customer to make an informed decision.

(4) The suitability letter shall—

- (a) explain why the firm has concluded that the transaction is suitable for the customer, having regard to his personal and financial circumstances;
- (b) contain a summary of the main consequences and any possible disadvantages of the transaction; and
- (c) identify the individual who is authorised by the firm to advise on the kind of product that has been recommended.

(5) Subregulation (3) does not apply if the recommendation is made by a firm acting as the customer's investment manager under the terms of an agreement issued in accordance with Regulation 27.

Charges.

30.(1) A firm's charges to a customer shall not be unfair in their incidence, or unreasonable in their amount, having regard to all relevant circumstances.

(2) Before a firm provides financial services to a customer, it shall disclose to him the basis or amount of its charges for the provision of those services and the nature of and amount of any other remuneration receivable by it and attributable to them.

Commission.

31. A firm shall provide a customer at his request with information in cash terms of any remuneration or commission it receives, or will receive, in respect of a transaction in a packaged product which it advises the customer to carry out, or which it carries out with or for a customer.

Confirmations and periodic information.

32.(1) Where a firm effects a sale or purchase of an investment (other than a life policy) with or for a customer, it shall ensure that the customer is sent with due dispatch a note containing the essential details of the transaction.

(2) Where a firm acts as an investment manager for a customer, it shall ensure that the customer is sent at suitable intervals a report stating the value of the portfolio or account at the beginning and end of the period, its composition at the end and, in the case of a discretionary portfolio or account, changes in its composition between those dates.

(3) If a customer has requested a firm not to send him the information in subregulation (1) or (2) the firm need not send the information.

IV. Dealing for Customers

Customer order priority.

33. A firm shall deal with customer and own account orders fairly and in due turn.

Timely execution.

34. When a firm has agreed or decided in its discretion to effect or arrange a customer order, it shall effect or arrange the execution of the order as soon as is reasonably practicable in the circumstances having regard to the best interests of the customer.

Best execution.

35. Where a firm deals with or for a customer, it shall take all reasonable steps to find and deal on the terms which are the best available to the customer.

Timely and uniform allocation.

36. A firm shall ensure that a transaction it executes is promptly allocated in accordance with standards and procedures which are uniform for all allocations made by the firm.

Fair allocation.

37. Where a firm has aggregated 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 which must be recorded—

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

Dealing ahead of published research or analysis.

38. Where a firm intends to publish to customers a recommendation or research or analysis, it shall 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.

Churning.

39. A firm 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 otherwise unjustified from the customer's viewpoint.

Customer borrowing.

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40. A firm shall not knowingly lend money or extend credit to a private customer, and shall not arrange for any other person to do so unless the firm has made and recorded an assessment of the private customer's financial standing, based on information disclosed by that private customer, and is satisfied that the arrangements for the loan or credit and the amount concerned are suitable in relation to the type of investment agreement proposed or likely to be entered into by him; and the private customer has given his prior written consent, specifying the maximum amount of the loan or credit together with details of the amount or basis of any charges to be levied in connection with the loan or credit. This does not apply where a firm settles a securities transaction in the event of default or late payment by the private customer; or pays an amount to cover a margin call made on a private customer for a period no longer than five business days.

Margin requirements.

41.(1) A firm which effects a contingent liability transaction with or for a customer must require the customer to provide any margin which is payable, whether at the outset or subsequently, and take reasonable care to satisfy itself that the customer is aware of the consequences of not paying it; and monitor daily the amount of margin which must be paid by the customer, so that the aggregate amount of such margin is always covered by cash, equity balances or acceptable collateral; and, unless the firm is an approved bank which is holding a customer's money in an account with itself, where there is a shortfall, the firm must fund the difference until the shortfall is eliminated.

(2) A firm may not effect a contingent liability transaction for a customer unless it can show that it believes on reasonable grounds that the customer understands—

- (a) the circumstances under which he may be required to provide any margin;
- (b) particulars of the form in which the margin may be provided;
- (c) particulars of the steps which the firm may be entitled to take if the customer fails to provide the required margin;
- (d) that failure by the customer to meet a margin call may lead to the firm closing out his position after a time limit specified by the firm, and that the firm will be required to close out the position in any event after a period of five business days; and
- (e) the circumstances, other than failure to provide the margin, which may lead to the customer's position being closed out without prior reference to him.

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(3) In the case of a private customer, the matters referred to in subregulation (2) above must be set out in a customer agreement.

(4) The margin to be payable by the customer of an on-exchange contingent liability transaction in accordance with paragraph (1) above must be of an amount or value which at least equals the margin requirements of the relevant exchange or clearing house.

(5) Subject to subregulation (6) below, a firm must close out a private customer's open position, where he fails to meet a margin call after a period of five business days.

(6) A firm may make a secured or unsecured loan or grant credit to a customer for the purpose of making a deposit or required margin payment if–

- (a) a credit assessment is made on the customer by an employee of the firm who is independent of the trading or marketing functions of the firm; and
- (b) the maximum amount of the loan or credit to be granted has been set out in writing and agreed to by the customer.

V. Market Integrity**Insider dealing.**

42. A firm must not effect (either in Gibraltar or elsewhere) an own account transaction, or a transaction for a customer, when it knows of circumstances which mean that it, or its associates, or an employee of either, or the customer, is prohibited from effecting that transaction by the statutory restrictions on insider dealing.

Reporting transactions.

43.(1) A firm shall make available to the Authority on written request details about transactions including own account transactions in securities that it effects other than on an established investment exchange.

(2) A firm shall comply with any obligation it may have to report transactions under the rules of a recognised or designated investment exchange, including in the case of a firm authorised under the Financial Services Act 1998, the rules of a regulated market.

VI. Administration

Safeguarding of customer investments.

44.(1) A firm which has custody of a customer's investments in connection with or with a view to financial services business shall—

- (a) keep safe, or arrange for the safekeeping of, any documents of title relating to them;
- (b) ensure that any registerable investments that it buys or holds for a customer are properly registered in his name or, with the consent of the customer, in the name of an appropriate nominee; and
- (c) ensure that they are segregated from the firm's own investments.

(2) A firm must require that if a customer's investments are recorded in an account with a custodian, the custodian makes it clear in the title of the account that the investments belong to one or more clients of the firm.

(3) If a firm holds a customer's investments with a custodian, or recommends a custodian to a private customer, it must undertake an appropriate risk assessment of that custodian.

Complaints.

45. A firm shall have internal procedures to ensure the proper handling of complaints from customers, including a register of complaints received and action taken, and ensure that any remedial action required on those complaints is taken promptly.

Compliance.

46.(1) A firm shall take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

- (a) its officers, employees and other representatives are aware of their obligations under the Act, the Financial Services Act 1998, and subordinate legislation made thereunder, and that they act in conformity with them; and
- (b) sufficient information is recorded and retained about its financial services business and compliance with the regulatory system.

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(2) Records required to be maintained by the regulatory system shall be kept available, for a period of not less than 6 years, by the firm for inspection by any person duly authorised by the Authority.

Advisory staff.

47. A firm shall not appoint an individual as, or permit an individual to continue to work as an adviser, unless the firm is satisfied, on reasonable grounds, that he is of good character and of the requisite aptitude and otherwise suitable, including with regard to his financial position, to provide advice on the services or investments or other products on which he is to advise, and that he complies with any requirements set by the Authority with regard to training and qualifications.

Introducers and Counterparties.

48.(1) A firm must not accept introduction of financial services business from an individual, or make any form of payment to an individual who effects introductions between the firm and potential customers, unless the firm is satisfied, on reasonable grounds, that he is of good character.

(2) A firm must ensure that any person or entity with which it is undertaking regulated financial service business is, if applicable, authorised to conduct that business by the relevant regulator.

(3) A firm shall put in place with each introducer an agreement setting out as a minimum the following:

- (a) the duties of each party in respect of relations with customers, including reporting to customers, and advising or dealing for and on behalf of, or managing customers assets;
- (b) complaints;
- (c) the responsibilities of each party in relation to compliance with anti-money laundering requirements; and
- (d) remuneration payable.

Supervision.

49. A firm shall establish and maintain procedures—

- (a) for the supervision of each of its officers, employees and other representatives; and

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- (b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his competence to give or to provide.

Outsourcing.

50.(1) Where a firm outsources some or any of its functions, it must ensure that the Authority may have ready access to documentation and accounting records in relation to the outsourced activities. It must be able to satisfy the Authority that adequate procedures are in place to enable it to monitor and control the outsourced functions on an ongoing basis to enable it to meet its continuing legal responsibility for the functions in question. A firm may only outsource regulated activities to another firm regulated by the Authority, or where such activity is outsourced to an entity in another jurisdiction, it must ensure that the entity in question is regulated to an equivalent standard of regulation and supervision as exists in Gibraltar and where the Authority has granted consent to such an arrangement.

(2) A firm shall put in place with each outsourcing service provider an agreement setting out as a minimum the following—

- (i) each activity that is going to be outsourced and the expected service and performance levels;
- (ii) that the firm is not prevented or impeded from meeting its regulatory obligations, nor the Authority from exercising its regulatory powers;
- (iii) provision for the firm's access to all records and information in relation to the outsourced activity;
- (iv) provision for the continuous monitoring and assessment of the service provider;
- (v) a termination clause and minimum periods for notice of termination;
- (vi) material issues unique to the outsourcing arrangement;
- (vii) where appropriate, conditions of subcontracting by the service provider to a third party for all or part of the outsourced activity, requiring approval from the firm for the use of subcontractors, whilst allowing the firm the ability to maintain control over the subcontracted activity.

Essential staff.

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51. A firm shall at all times have effective arrangements to safeguard the interests of customers in the event of the absence, illness, disability or death of any essential member of its staff. Such arrangements shall enable urgent transactions to be carried out, unfinished transactions to be completed, and any money or assets belonging to a customer and in the possession or under the control of the firm to be released to the customer or otherwise dealt with in accordance with his directions without delay.

Cessation of business.

52. Where a firm decides to withdraw from financial services business, it shall ensure to the satisfaction of the Authority that any such business which is outstanding is properly completed or transferred to another firm.

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Schedule 1

Regulation 3(3)

European Investment Firms.

The following regulations do not apply to European investment firms carrying on business in Gibraltar–

4, 5, 11,12, 13, 43, 44, 46 (1)(b) and (2), 47, 48, 49, 50, 51 and 52 to the extent that they concern matters for which responsibility is reserved to a supervisory authority in the Home State.

Schedule 2

Regulation 27(1)

Content of terms of business provided to a customer: general requirements.

A firm's terms of business provided to a customer should, where relevant, include some provision about—

- (1) Commencement of the terms of business

When and how the terms of business are to come into force.

- (2) Regulator

The firm's regulatory status

- (3) Investment objectives

The customer's investment objectives.

- (4) Restrictions

- (a) any restrictions on—

- (i) the types of designated investment in which the customer wishes to invest; and
(ii) the markets on which the customer wishes transactions to be executed; or

- (b) that there are no such restrictions.

- (5) Services

The services the firm will provide.

- (6) Payments for services

Details of any payment for services payable by the customer to the firm, including where appropriate—

- (a) the basis of calculation;
(b) how it is to be paid and collected;

- (c) how frequently it is to be paid,

whether or not any other payment is receivable by the firm (or to its knowledge by any of its associates) in connection with any transaction executed by the firm, with or for the customer, in addition to or in lieu of any fees.

- (7) Disclosure of status

Where the firm is to transact business in packaged products with private customers, a statement whether advice on investments about packaged products will be—

- (a) independent; or
- (b) restricted to the packaged products of one product provider or marketing group; or
- (c) restricted to the packaged products of one product provider or marketing group but inclusive of adopted packaged products; or
- (d) given for the purposes of managing a portfolio with discretion.

- (8) Investment manager

If the firm is to act as an investment manager—

- (a) the arrangements for giving instructions to the firm and acknowledging those instructions;
- (b) the initial value of the managed portfolio;
- (c) the initial composition of the managed portfolio; and
- (d) the period of account for which statements of the portfolio are to be provided.

- (9) Accounting

The arrangements for accounting to the customer for any transaction executed on his behalf.

- (10) Rights to withdraw

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An explanation of any rights to withdraw or, if it is the case, a statement that such rights will not apply.

(11) Unsolicited real time financial promotions

In the case of a private customer, the circumstances, if any, in which the firm or its representatives or employees may communicate an unsolicited real time financial promotion to the private customer.

(12) Acting as a principal

That the firm may act as principal in a transaction with the customer, if this is the case.

(13) Conflict of interest and material interest

When a material interest or conflict of interest may or does arise, the manner in which the firm will ensure fair treatment of the customer as required by regulation 16.

(14) Use of dealing commission agreements

If the firm has dealing commission arrangements in place, the prior disclosure required by Regulation 18.

(15) Customer's understanding of risk

When a firm chooses to fulfil any of its obligations under Regulation 22 in the terms of business in relation to any of the following—

- (a) warrants or derivatives;
- (b) non-readily realisable investments;
- (c) penny shares;
- (d) securities which may be subject to stabilisation;
- (e) stock lending activity;

the relevant risk warning.

(16) Unregulated collective investment scheme

That the services to be provided by the firm will or may include advice on investments relating to, or executing transactions in units in unregulated collective investment schemes, if this is the case.

(17) Underwriting

That the firm may enter into transactions for the customer, either generally or subject to specified limitations, when the customer will incur obligations as an underwriter or sub-underwriter, if this is the case.

(18) Stock lending

In the case of a private customer, that the firm may undertake stock lending activity with or for the private customer (if this is the case), specifying the assets to be lent, the type and value of relevant collateral from the borrower and the method and amount of payment due to the private customer in respect of the lending.

(19) Right to realise a private customer's assets

The circumstances in which a firm may be legally entitled to realise a private customer's assets, if this is the case.

(20) Complaints procedure

How to complain to the firm, and a statement, if relevant, that the customer may subsequently complain directly to the Department of Consumer Affairs of the Government of Gibraltar.

(22) Compensation

Whether or nor compensation may be available from the compensation scheme, should the firm be unable to meet its liabilities, and information about any other applicable named compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained.

(23) Termination method

How the terms of business may be terminated, including a statement:

- (a) that termination will be without prejudice to the completion of transactions already initiated, if this is the case;
- (b) that the customer may terminate the terms of business by written notice to the firm and when this may take effect;
- (c) that if the firm has the right to terminate the terms of business, it may do so by notice given to the customer, and specifying the minimum notice period, if any; and

- (d) of any agreed time after which, or any agreed event upon which, the terms of business will terminate.

(24) Termination consequences

The way in which transactions in progress are to be dealt with upon termination.

(25) Contracting out of best execution

When the obligation to provide best execution can be and is to be waived, a statement:

- (a) that the firm does not owe a duty of best execution; or
- (b) the circumstances in which it does not owe such a duty.

Additional contents of terms of business provided to a customer: in respect of managing investments on a discretionary and non-discretionary basis

In respect of discretionary and non-discretionary management, terms of business provided to a customer should include in addition some provision about each of:

(1) Periodic statements

- (a) The frequency of any periodic statements, except when a periodic statement is not required; and
- (b) whether those statements will include some measure of performance, and if so, what the basis of that measurement will be.

(2) Valuation

The basis on which assets comprised in the portfolio are to be valued.

(3) Borrowings

That the firm may commit the customer to supplement funds in the portfolio, including borrowing on his behalf, if this is the case, and, if it may:

- (a) the circumstances in which the firm may do so;
 - (b) whether there are any limits on the extent to which the firm may do so and, if so, what those limits are; and
 - (c) any circumstances in which such limits may be exceeded.
- (4) Underwriting commitments

If it is the case, that the firm may commit the customer to any obligation to underwrite or sub-underwrite any issue or offer for sale of securities, and:

- (a) whether there are any restrictions on the categories of securities which may be underwritten and, if so, what these restrictions are; and
 - (b) whether there are any financial limits on the extent of the underwriting
- and, if so, what these limits are.
- (5) Extent of discretion (discretionary management only)

- (a) the extent of the discretion to be exercised by the firm, including any restriction on:
 - (i) the value of any one investment; and
 - (ii) the proportion of the portfolio which any one investment or any particular kind of investment may constitute; or
- (b) that there are no such restrictions.