

THE FINANCIAL SERVICES ACT
FSC Rules made by the Financial Services Commission
under section 93 of the Financial Services Act

PART I – GENERAL PROVISIONS

1. Citation

These Rules may be cited as the Financial Services (Spot Commodity Market and Intermediaries) Rules 2023.

2. Interpretation

In these Rules –

“Act” means the Financial Services Act;

“business rules” means rules made by the spot commodity market or the spot commodity clearing house or which are contained in their Memorandum and Articles of Association or altered or supplemented by their Board governing the activities and conduct of -

- (a) the spot commodity market or spot commodity clearing house and its members or clearing members, as the case may be; and
- (b) other persons involved in the spot commodity market;

“carbon offsets” means tradable rights linked to business activities that lower the amount of carbon dioxide in the atmosphere;

“commodity” means any agricultural, livestock, fishery, forestry, mining, energy or environmental good or any product that is manufactured or processed from any such goods;

“commodity derivatives” means options, futures, forwards and other similar derivatives on commodities;

“customer assets” means money received or retained by, or any other property, deposited with, a spot commodity market intermediary in the course of its/his business for which it/he is liable to account to the customer, and any money or other property accruing therefrom;

“member” means a person who holds a membership of any class or description of a spot commodity market or spot commodity clearing house, whether or not the person holds any share in the share capital of that spot commodity market or spot commodity clearing house;

“person” means a legal person, except where otherwise specified in these Rules;

“securities” has the same meaning as in the Securities Act;

“securitisation”, means the process through which commodities may be pooled and repackaged into securities;

“spot commodity broker”, in relation to a spot commodity market, means a person who carries on the business of soliciting, or accepting orders, for the spot purchase or sale of commodities by way of or relating to a contract, whether or not the business is part of, or is carried on in conjunction with, any other business;

“spot commodity broker’s representative” means a natural person who acts for, or by arrangement with, a spot commodity broker (other than a person who is a director of a body corporate holding a spot commodity broker’s licence or is a person who is in the direct employment of a spot commodity broker) and who performs any of the functions of that spot commodity broker in connection with trading in spot commodity contracts, whether the person’s remuneration is by way of commission or otherwise;

“spot commodity clearing house”, in relation to a spot commodity market, means a person that -

- (a) clears and settles spot commodity contracts; and
- (b) makes adjustments to the contractual obligations arising out of those spot commodity contracts;

“spot commodity contracts” –

- (a) means contracts relating to commodities of a fungible nature that are capable of being promptly delivered physically or settled through the exchange of ownership title such as warrants, bills of lading or warehouse receipts;
- (b) which are or can be traded on a secondary market; and
- (c) includes an energy or environmentally linked financial instrument deemed by the Commission to be a carbon offset;

“spot commodity market” means -

- (a) a market, whether in Mauritius or elsewhere, at which spot commodity contracts are regularly transacted; or
- (b) an electronic system, including an electronic facility which is based on distributed ledger technology or any other relevant technologies, whether operating in Mauritius or elsewhere, -
 - (i) through which trading in spot commodity contracts is carried out; and
 - (ii) which provides price or other information relating to spot commodity contracts and permits users of the facility to channel orders for, execute transactions in, or make markets in, spot commodity contracts;

“spot commodity market intermediary” refers to a spot commodity broker, spot commodity broker’s representative, spot commodity trading adviser or spot commodity trading adviser’s representative, ;

“spot commodity trading adviser” means any person who -

- (a) carries on the business of advising others (directly or indirectly, through publications or writings, or by whatever means or media) on the making of spot commodity contracts, including the advisability of trading in any spot commodity contract made or to be made on, or subject to the business rules of, a spot commodity market;
- (b) as part of a regular business, issues or promulgates analyses or reports concerning the making of spot commodity contracts; or
- (c) pursuant to a contract or an arrangement with a customer, undertakes on behalf of that customer (whether on a discretionary authority or otherwise granted by the customer) to make any spot commodity contract for the purposes of managing their funds, but does not include -
 - (i) a bank licensed under the Banking Act; and
 - (ii) a spot commodity broker or spot commodity broker’s representative;

“spot commodity trading adviser’s representative” means a natural person in the direct employment of, or acting for, or by arrangement with, a spot commodity trading adviser, who performs for that spot commodity trading adviser any of the functions of a spot commodity trading adviser, whether his remuneration is by way of salary, wages, commission or otherwise.

3. Application of these Rules

- (1) These Rules shall apply to any person involved in the trading, clearing, settlement and intermediation of spot commodity contracts in and from within Mauritius.
- (2) These Rules shall not apply to -
 - (a) any business activity involving commodity derivatives;
 - (b) capital formation or raising;
 - (c) the securitisation of any commodity or group of commodities; or
 - (d) any other business activity or arrangement using commodities that is not deemed by the Commission to constitute financial services.

PART II – SPOT COMMODITY MARKET AND SPOT COMMODITY CLEARING HOUSE

4. Establishment and licensing of spot commodity market and spot commodity clearing house

- (1) No person shall establish or maintain, assist in establishing or maintaining or hold himself out as providing or maintaining any spot commodity market in Mauritius, unless the spot commodity market has been licensed by the Commission in accordance with Part IV of the Act and these Rules.
- (2) No person shall establish, maintain, provide or assist in establishing, maintaining or providing, or holding himself out as maintaining or providing a spot commodity clearing house for a spot commodity market unless the spot commodity clearing house has been licensed by the Commission in accordance with Part IV of the Act and these Rules.
- (3) Without prejudice to section 18 of the Act, the Commission shall not grant a spot commodity market licence or a spot commodity clearing house licence unless it is satisfied that -
 - (a) the applicant has appropriate and competent staff commensurate with the size, nature and complexity of the business activity;
 - (b) the applicant has the minimum stated unimpaired capital as specified in Rule 7;
 - (c) the applicant will operate its business and operations in an orderly, informed and fair manner;
 - (d) the applicant will manage any risks associated with its business and operations prudently;
 - (e) the applicant will conduct due diligence of its members, in accordance with the requirements of the laws governing anti-money laundering and terrorism financing in force in Mauritius;
 - (f) make satisfactory provision, in its business rules, for the matters referred to in Rule 5 or Rule 6, where applicable, and for compliance thereof by its members; and
 - (g) the applicant meets the requirements for responsible and sustainable sourcing as specified in Rule 8.
- (4) A person issued with a licence under Part IV of the Act and these Rules shall, at all times, continue to satisfy the requirements specified in subsection (3), after the grant of the licence.
- (5) A spot commodity market or spot commodity clearing house licensed by the Commission shall not engage in any business activity other than those for which it is licensed, except with the prior approval of the Commission.

5. Business rules of spot commodity market

- (1) A spot commodity market may make business rules, not inconsistent with the Act, these Rules or any other applicable enactment, with respect to the operation of the spot commodity market.
- (2) A spot commodity market or spot commodity clearing house shall not issue or amend its business rules, unless it has obtained the prior written approval of the Commission.
- (3) Any business rules made under paragraph (1), and amendments to the business rules, shall be of no effect unless approved by the Commission.
- (4) The business rules made under paragraph (1) shall at least provide –
 - (a) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (b) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of the business rules of the spot commodity market;
 - (c) for the terms and conditions under which spot commodity contracts may be made;
 - (d) where applicable, with respect to the clearing and other arrangements made, and the financial conditions of the spot commodity market, its spot commodity clearing house and its members, reasonable assurance that all obligations arising out of any contracts entered into on that spot commodity market will be met;
 - (e) that trading practices are fair and properly supervised;
 - (f) that adequate measures have been taken to prevent manipulation and excessive speculation;
 - (g) that adequate provision has been made to record and publish details of trading; and
 - (h) for general provisions for carrying on the business of the spot commodity market with due regard to the interests and protection of the public.

6. Business rules of spot commodity clearing house

- (1) A spot commodity clearing house may make business rules, not inconsistent with the Act, these Rules or any other applicable enactment, with respect to the operation of the spot commodity clearing house.

- (2) Business rules made under paragraph (1), and amendments to the business rules, shall be of no effect unless approved by the Commission.
- (3) The business rules made under paragraph (1) shall *inter alia* provide –
 - (a) for the clearing and settlement procedures;
 - (b) information relating to the registration of, and guaranteeing to the members of the spot commodity clearing house of the performance of, spot commodity contracts made in a spot commodity market; and
 - (c) general provisions for carrying on the business of the spot commodity clearing house with due regard to the interests and protection of the public.

7. Minimum Capital Requirements of spot commodity market or spot commodity clearing house

- (1) A spot commodity market or spot commodity clearing house shall, at all times, maintain a minimum stated unimpaired capital of 6.5 million rupees or its equivalent in any other currency, or such higher amount as the Commission may determine taking into account the nature, scale and complexity of its activities and the risks to which it is or could be exposed.
- (2) The spot commodity market or spot commodity clearing house shall inform the Commission within 5 business days where its minimum stated unimpaired capital falls below the minimum required.

8. Obligations of spot commodity market

- (1) A spot commodity market shall -
 - (a) operate its activities in accordance with the Act, these Rules and its business rules duly approved by the Commission under these Rules;
 - (b) ensure an orderly, fair and transparent market in spot commodity contracts traded on the spot commodity market;
 - (c) ensure that risks associated with its business and operations are managed prudently;
 - (d) regulate the operations, standards of practice and business conduct of its members (and their employees and representatives) in accordance with its business rules, procedures and practices;
 - (e) ensure compliance with continuous disclosure requirements and that adequate market information is readily available;
 - (f) give equitable treatment to trading members and potential members;
 - (g) subject to paragraph (2), preserve confidentiality with regard to all information in its possession concerning its members and their customers;
 - (h) ensure that its information technology systems are resilient and not prone to failure, damage, tampering, misuse or unauthorised access;

- (i) keep such records as are necessary for the proper recording of each transaction on the spot commodity market;
 - (j) publish its business rules, fees and charges;
 - (k) identify and manage conflicts of interest;
 - (l) monitor market activity;
 - (m) provide a means for the resolution of disputes between members, and between members and their customers;
 - (n) provide access to a robust mechanism for clearing and settlement; and
 - (o) immediately notify the Commission if it becomes aware -
 - (i) that a member is unable to comply with any part of its business rules or any financial requirements; or
 - (ii) of a financial irregularity or other matter which in the opinion of the spot commodity market may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet his legal obligations.
- (2) Paragraph (2)(g) shall be without prejudice to the spot commodity market's obligation to furnish information –
- (a) where such information is requested by Commission's or the Chief Executive under the Act or these Rules;
 - (b) where such information is requested by the spot commodity clearing house in writing; or
 - (c) where disclosure is ordered by the Court.
- (3) A spot commodity market shall ensure compliance with appropriate standards for responsible and sustainable sourcing in regard to -
- (a) its products, services and activities,
 - (b) activities of its members, and
 - (c) the spot commodity contracts being traded.
- (4) A spot commodity market shall –
- (a) have arrangements in place to ensure, where applicable, that the spot commodity market and its members are certified as compliant with:
 - (i) ISO 14001 (Environmental Management Systems (EMS));
 - (ii) OHSAS 18001 / ISO 45001 (Health & Safety Management); or
 - (iii) equivalent certification standards;
 and
 - (b) ensure its arrangements are aligned with the OECD's Due Diligence Guidance for Responsible Mineral Supply Chains, as may be applicable.

9. Obligations of a spot commodity clearing house

- (1) A spot commodity clearing house shall -
 - (a) operate its activities in accordance with the Act, these Rules and its business rules duly approved by the Commission under these Rules;
 - (b) formulate and implement appropriate procedures for ensuring that its clearing members comply with its business rules;
 - (c) prudently remedy all the risks associated with its business and operations;
 - (d) regulate the operations, standards of practice and business conduct of its members, its employees and representatives in accordance with its business rules, policies, procedures and practices;
 - (e) keep necessary records for the proper recording of the spot commodity clearing house's transactions;
 - (f) ensure that its information technology systems are resilient and not prone to failure, damage, tampering, misuse or unauthorised access;
 - (g) publish its business rules, fees and charges;
 - (h) identify and manage conflicts of interest;
 - (i) establish a means for the resolution of disputes;
 - (j) match and verify trades in a timely manner;
 - (k) arrange for secure payment and final settlement;
 - (l) put in place risk management arrangements to minimise the effect of any payment default;
 - (m) provide monitoring facilities that can detect the build-up of positions that may threaten the system;
 - (n) subject to paragraph (2), preserve confidentiality with regard to all information in its possession concerning its clearing members and their customers; and
 - (o) notify the Commission if it becomes aware -
 - (i) that a clearing member is unable to comply with any business rule of the spot commodity clearing house;
 - (ii) of a financial irregularity or other matter which in the opinion of the spot commodity clearing house may indicate that the financial standing or integrity of a clearing member is in question, or that a clearing member may not be able to meet their obligations provided for by its business rules.
- (2) Paragraph (1)(n) shall be without prejudice to the spot commodity clearing house's obligation to furnish information -
 - (a) where such information is requested by Commission's or the Chief Executive's powers under the Act or these Rules;
 - (b) where such information is requested by the spot commodity clearing house in writing; or
 - (c) where disclosure is ordered by the Court.

10. Reporting obligations of spot commodity market or spot commodity clearing house

- (1) A spot commodity market or spot commodity clearing house shall produce any books, accounts and records kept by it, in connection with, or for the purposes of, its business, or in respect of any trading in spot commodity contracts, as the Commission may require.
- (2) A spot commodity market shall, notwithstanding any other reporting obligations under the Act, furnish the following quarterly information to the Commission, not later than 45 days after the closing date of the relevant quarter -
 - (a) purchases and sales of commodities during the relevant quarter;
 - (b) names of members that have failed to comply with any of the continuing trading requirements of the spot commodity market;
 - (c) details of spot commodity contracts traded; and
 - (d) details of spot commodity contracts in respect of which trading was suspended or cancelled during the relevant quarter and the reasons for the suspension or cancellation.
- (3) A spot commodity market shall furnish to the Commission, together with the audited financial statements required to be filed pursuant to section 30 of the Act, a report of its business activities during the preceding financial year containing information on -
 - (a) amendments made to the business rules of the spot commodity market;
 - (b) changes in the composition of the governing body;
 - (c) any new sub-committees established or changes in membership of existing sub-committees;
 - (d) admission, readmission, resignation or expulsion of members;
 - (e) disciplinary action taken against members;
 - (f) settlement of disputes between members;
 - (g) trade failures;
 - (h) actions taken to meet any trading emergencies; and
 - (i) details of spot commodity contracts in respect of which trading was suspended or cancelled.

PART III – SPOT COMMODITY MARKET INTERMEDIARIES

11. Licensing of spot commodity broker and spot commodity trading adviser

- (1) No person shall carry on the business of a spot commodity broker, whether as principal or agent, without a spot commodity broker licence issued by the Commission in accordance with Part IV of the Act and these Rules.
- (2) No person shall carry on the business of a spot commodity trading adviser without a spot commodity trading adviser licence issued by the Commission in accordance with Part IV of the Act and these Rules.
- (3) A bank may, with the written approval of the central bank, apply for a spot commodity broker licence through a subsidiary incorporated for such purpose.
- (4) Without prejudice to section 18 of the Act, the Commission shall not grant a spot commodity broker licence or spot commodity trading adviser licence unless it is satisfied that -
 - (a) the applicant has appropriate and competent staff commensurate with the size, nature and complexity of the business activity;
 - (b) the applicant has employed or will employ at least one individual who is licensed as its representative;
 - (c) the applicant has the minimum stated unimpaired capital as specified in rule 13;
 - (d) the applicant will operate its business and operations in an orderly, informed and fair manner;
 - (e) the applicant will manage any risks associated with its business and operations prudently;
 - (f) conduct due diligence of its members, in accordance with the requirements of the laws governing anti-money laundering and terrorism financing in force in Mauritius.
- (5) A person issued with a licence under Part IV of the Act and these Rules shall, at all times, continue to satisfy the requirements specified in subsection (4), after the grant of the licence.
- (6) A person licensed under this Rule as a spot commodity broker or spot commodity trading adviser shall not engage in any business activity other than the business activity for which it is licensed and such other matters ancillary or incidental thereto, as may be expressly approved by the Commission.

12. Licensing and Accreditation of spot commodity broker representative and spot commodity trading adviser representative

- (1) No person shall act as, or hold himself out as, a representative of a spot commodity broker without being accredited to a principal and without holding a spot commodity broker's representative licence issued by the Commission in accordance with Part IV of the Act and these Rules.
- (2) No person shall act as, or hold himself out as, a representative of a spot commodity trading adviser without being accredited to a principal and without holding a spot commodity trading adviser's representative licence issued by the Commission in accordance with Part IV of the Act and these Rules.

- (3) Without prejudice to section 18 of the Act, the Commission shall not grant a spot commodity broker's representative or a spot commodity trading adviser's representative licence unless –
 - (a) the applicant is a natural person; and
 - (b) the application is supported by a principal who is the holder of, or who has applied for, a spot commodity broker licence or spot commodity trading adviser licence, as may be applicable.
- (4) A representative is accredited to a principal for the purposes of these Rules only if the licence of the representative states that he is accredited to the principal.
- (5) Where the accreditation of the representative has been terminated, by the principal or the representative, the principal shall -
 - (a) immediately notify the Commission in writing of such termination;
 - (b) ensure that the representative surrender his licence to the Commission in accordance with section 28 of the Act.
- (6) A spot commodity broker's representative or spot commodity trading adviser's representative shall not be allowed to trade in spot commodity contracts for his own account, unless such trading is carried out in accordance with the approved policies and procedures for managing conflicts of interests implemented by the spot commodity broker or spot commodity trading adviser respectively.

13. Minimum Capital Requirements for spot commodity broker and spot commodity trading adviser

- (1) A spot commodity broker shall, at all times, maintain a minimum stated unimpaired capital of 700,000 rupees or its equivalent in any other currency, or such higher amount as the Commission may determine taking into account the nature, scale and complexity of its activities and the risks to which it is or could be exposed.
- (2) A spot commodity trading adviser shall, at all times, maintain a minimum stated unimpaired capital of 600,000 rupees or its equivalent in any other currency, or such higher amount as the Commission may determine taking into account the nature, scale and complexity of its activities and the risks to which it is or could be exposed.
- (3) The spot commodity broker or spot commodity trading adviser shall inform the Commission immediately where its minimum stated unimpaired capital falls below the minimum required.

14. Responsibility for conduct of spot commodity broker representative and spot commodity trading adviser representative

- (1) A spot commodity broker or spot commodity trading adviser shall be responsible for the conduct of its representatives.

- (2) Paragraph (1) shall not apply where —
- (a) the conduct was not related to spot commodity contracts; and
 - (b) the representative clearly disclosed that fact to the customer before the customer relied on the conduct.

15. Issue of trade contract confirmation note

A spot commodity broker or spot commodity broker's representative shall, not later than two (2) working days after any transaction in spot commodity contract, furnish to its/his customer a contract confirmation note, in writing, confirming that the spot commodity contract was executed by the spot commodity market, on behalf of the customer.

16. Conduct of business of spot commodity market intermediary

A spot commodity market intermediary shall at all times -

- (a) observe a high standard of integrity and fair trading;
- (b) act with due skill, diligence and quick service;
- (c) observe standards of market conduct;
- (d) seek information from customers about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling spot commodity market intermediary to fulfil its/his duties to the customers;
- (e) take reasonable steps to give every customer that it advises, any information in a comprehensible way that would enable the customer to make a balanced and informed investment decision;
- (f) avoid any circumstances of conflict of interest with customers and where such a conflict unavoidably arises, ensure fair treatment to the customer by complete disclosure or by refraining to act;
- (g) protect properly, by way of segregation and identification of customers' assets, those customers' assets under its responsibility;
- (h) maintain adequate financial resources to meet its/his business commitments and withstand the risks to which the business is subject;
- (i) organise and control its/his affairs in an adequate and clear manner;
- (j) ensure that its information technology systems are resilient and not prone to failure, damage, tampering, misuse or unauthorised access;
- (k) keep proper records;
- (l) have adequate arrangements to ensure that all staff employed are qualified, adequately trained and properly supervised; and

- (m) deal with the Commission in an open and co-operative manner and keep the Commission informed of anything that might reasonably be expected to be disclosed.

17. Customer agreement of spot commodity market intermediary

No spot commodity market intermediary shall act for any customer other than in accordance with the terms of a written customer agreement.

18. Risk disclosure by spot commodity market intermediary

No spot commodity market intermediary shall open a spot commodity trading account for a customer unless the spot commodity market intermediary -

- (a) furnishes the customer with a written risk disclosure statement setting out clearly all the risks involved in the trading of spot commodity contracts; and
- (b) receives from the customer a signed and dated risk acknowledgement form confirming that the customer has received and understood the nature and contents of the risk disclosure statement.

19. Segregation of customers' assets

(1) A spot commodity market intermediary shall, at all times, -

- (a) treat and deal with all customer assets received from a customer to margin, guarantee or secure contracts in spot commodity exchange trading, or accruing to a customer as a result of such trading, as belonging to that customer;
- (b) deposit all customer assets received from the customer, or accruing to the customer pursuant to paragraph (a), in appropriately identified bank accounts which shall be separated from any account which the spot commodity market intermediary may open and maintain for its own funds; and
- (c) manage the customer assets in a fiduciary capacity.

(2) The dedicated bank accounts, referred to in paragraph (1), -

- (a) shall be non-interest bearing bank accounts; and
- (b) shall be held with a commercial bank duly licensed by the Bank of Mauritius.

(3) Customers' assets held by any spot commodity market intermediary in the dedicated bank accounts referred to in paragraph (1) shall not be -

- (a) available for payment of the debts of the spot commodity market intermediary, to any of its/his creditors; or

- (b) liable to be attached or taken under or pursuant to an enforcement order or process of any Court at the instance of a creditor, unless the creditor is also a customer and the debt owed to the creditor was incurred in connection with trading or advising in any spot commodity contract.
- (4) A spot commodity market intermediary shall, whenever holding customers' funds –
 - (a) make adequate arrangements to safeguard customers' ownership rights, especially in the event of its/his insolvency; and
 - (b) except as provided in rule (5), not use a customer's funds on its/his own account except with the customer's express consent.
- (5) Nothing in these Rules shall prevent a spot commodity market or a spot commodity clearing house, with the prior approval of the Commission, from using a customer's funds held in the dedicated bank accounts to meet the obligations of a spot commodity market intermediary, being a member of the spot commodity market or spot commodity clearing house, who defaults, if -
 - (a) the default of the spot commodity market intermediary is directly attributable to the failure of the spot commodity market intermediary's customer to meet the obligations under a spot commodity contract; and
 - (b) the failure to use the customer's assets held in a dedicated bank account may jeopardise the financial integrity of the spot commodity market or the spot commodity clearing house.
- (6) In this Rule, "customer" means a person on whose account a spot commodity market intermediary, carries on trading or advising in any spot commodity contract, but does not include directors, employees and related corporations of the spot commodity market intermediary.

20. Exemptions

This Part shall not apply to any person specified in the Schedule are exempted, to the extent specified in the Schedule.

PART IV – MARKET ABUSE

21. Application of certain provisions of the Securities Act

Part IX of the Securities Act on Market Abuses shall apply *mutatis mutandis* to the market abuses that may arise in the course of spot commodity trading, clearing or intermediation activities conducted by a spot commodity market, spot commodity clearing house or any spot commodity market intermediary respectively.

PART V – POWERS OF THE COMMISSION

22. Emergency powers of the Commission

- (1) Without prejudice to the powers of the Commission and the Chief Executive under Part VIII of the Act –
 - (a) where the Commission has reason to believe that an emergency exists, or where the Commission considers it necessary or expedient in the interest of the public or for the protection of investors, the Commission may direct, by notice in writing, the spot commodity market, spot commodity clearing house or spot commodity market intermediary, to take such action as it considers necessary to –
 - (i) maintain or restore orderly trading in spot commodity contracts; or
 - (ii) liquidate any position in respect of any spot commodity contract, including but not limited to:
 - (A) suspending or terminating trading on the spot commodity market;
 - (C) confining trading to liquidation of spot commodity contracts' positions;
 - (D) ordering the liquidation of all positions or part thereof or the reduction in such positions;
 - (E) limiting trading to a specific price range;
 - (F) modifying trading days or hours;
 - (G) altering conditions of delivery;
 - (H) fixing the settlement price at which positions are to be liquidated;
 - (I) requiring any person to act in a specified manner in relation to trading in spot commodity contracts;
 - (J) requiring margins or additional margins for any spot commodity contracts; and
 - (K) modifying or suspending any of the business rules of a spot commodity market or clearing house.
 - (b) where the Commission suspends trading on a spot commodity market, the suspension shall be for a period not exceeding 3 months, provided that the Commission may, where it considers necessary, extend the suspension for one further period not exceeding 3 months at the expiry of which the Commission shall either notify the spot commodity market in writing that the suspension has expired, or proceed to revoke the spot commodity market licence, as it deems appropriate.

- (c) the Commission may, where it considers necessary or expedient -
- (i) for ensuring a fair and orderly spot commodity market, or for ensuring fair, orderly and expeditious clearing and settlement of transactions in spot commodity contracts;
 - (ii) for ensuring the integrity of, and proper management of systemic risks in a spot commodity market; or
 - (iii) for the protection of investors,
- issue a direction to a spot commodity market, spot commodity clearing house or spot commodity market intermediary by notice in writing, either of a general or specific nature.
- (d) Any direction, issued by the Commission under paragraph 1(c), may relate to -
- (i) the clearing or settlement of spot commodity contracts and the making of adjustments of contractual obligations arising out of those spot commodity contracts;
 - (ii) the trading or the termination of trading on or through the facilities of a spot commodity market, spot commodity clearing house or spot commodity market intermediary;
 - (iii) the manner in which the spot commodity market, spot commodity clearing house or spot commodity market intermediary carries on its business, including the manner of reporting off-market trades by members;
 - (iv) the removal from office of an officer in the employment of a spot commodity market, spot commodity clearing house or spot commodity market intermediary;
 - (v) requiring the spot commodity market, spot commodity clearing house or spot commodity market intermediary to submit reports of market transactions, in such form as the Commission may determine; or
 - (vi) any other matter that the Commission considers necessary for the effective administration of these Rules.
- (e) Where a spot commodity market, spot commodity clearing house or spot commodity market intermediary fails to comply with a direction of the Commission within such time as is specified by the Commission, the Commission may -
- (i) set emergency margin levels in any spot commodity contract;
 - (ii) set limits that may apply to market positions acquired in good faith prior to the date of the Commission's direction; or
 - (iii) take such other action as the Commission considers fit to maintain or restore orderly trading in any spot commodity contract, or liquidation of any position in respect of spot commodity contracts.

- (f) In this Rule, “emergency” means -
 - (i) an act of Government affecting relevant commodities;
 - (ii) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for spot commodity contracts;
 - (iii) a threatened or actual market manipulation;
 - (iv) an impending emergency or natural disaster, whether in Mauritius or elsewhere;
 - (v) an economic or financial crisis, whether in Mauritius or elsewhere; or
 - (vi) any other situation or practice which in the opinion of the Commission constitutes an emergency.
- (2) Without prejudice to paragraph (1), where a spot commodity market or a spot commodity clearing house exercises its powers under its business rules to take emergency action, the Commission may modify such emergency action, including but not limited to the setting aside of that emergency action.
- (3) For avoidance of doubt, nothing in this rule shall be construed as limiting the Chief Executive’s power under the Act to refer to the Enforcement Committee a spot commodity market, spot commodity clearing house or spot commodity market intermediary for such action as the Enforcement Committee may deem appropriate where there has been a breach of direction issued under these Rules.

23. Fixing of position and trading limits to spot commodity contracts

- (1) For the purpose of preventing excessive speculation in relation to any commodity under a spot commodity contract, the Commission may, fix limits as it considers necessary on the amount of trading or positions which may be held by any person, generally or specifically, under a spot commodity contract traded on a spot commodity market.
- (2) Any limits upon positions and trading shall apply to positions held by, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.
- (3) No person shall, directly or indirectly -
 - (a) buy or sell or agree to buy or sell a spot commodity contract, or any number of such contracts, on a spot commodity market, in excess of the trading limits fixed for one business day, or any other stated period set by the Commission, or by a spot commodity market with the approval of the Commission; or

- (b) hold or control a net buy or sell position under a spot commodity contract traded on the spot commodity market, in excess of any position limit fixed by the Commission or by the spot commodity market with the approval of the Commission.
- (4) Nothing in this Rule shall preclude the Commission from -
 - (a) fixing different trading or position limits for different spot commodity contracts, different delivery months, or for different days remaining until the last day of trading in a spot commodity contract; or
 - (b) exempting transactions under this Rule.

24. Information to be provided by market participants

- (1) Where the Commission is of the opinion that information concerning spot commodity trading accounts may be relevant to determine whether manipulation, corner, squeeze or other market disorders exists in any spot commodity market, the Commission may, by written notice, require such information as it thinks necessary from any person, including a member of a spot commodity clearing house or a spot commodity broker or any customer in the spot commodity market, and the person concerned shall provide the required information within such time as may be specified by the Commission.
- (2) Where the Commission has reason to believe that any person has failed to give the information required in the notice, it may without prejudice to any other action that may be imposed, request a spot commodity market or a spot commodity clearing house to prohibit the execution of, or acceptance for orders of, trades on the spot commodity market or spot commodity clearing house and in the months or expiration dates specified in the notice unless such trades offset open contracts of that person.

PART VI – MISCELLANEOUS

25. Commencement

These Rules shall come into operation on XX XXX 2023.

Made by the Financial Services Commission on XX XXX 2023.

SCHEDULE

[Rule 20]

EXEMPTION

1. The following persons are exempted from the specified provisions of these Rules:
 - (a) in respect of Rule 11(1), a person who carries on the purchase or sale of commodities in a market that is not a spot commodity market, where such transaction is made with another person in the ordinary course of business and -
 - (i) it is not intended for resale other than in the ordinary course of business of wholesale or retail; or
 - (ii) where there is physical delivery of such commodities from seller to buyer;
 - (b) in respect of Rule 11(1), a person who solicits or accepts orders for the purchase or sale of any commodity by way of or relating to any spot commodity contract for a customer in the following circumstances -
 - (i) the person is not a party to the spot commodity contract;
 - (ii) the person does not carry the customer's position, margin or account in the person's own books;
 - (iii) the person does not accept funds from the customer as settlement of, or a margin for, or to guarantee or secure, any spot commodity contract; and
 - (iv) there is physical delivery of the commodity from seller to buyer;
 - (c) in respect of Rules 11(1), 11(2), 12(1) and 12(2) –
 - (i) a person holding a global treasury activities licence;
 - (ii) a commodity trading company holding a Global Business Licence;
 - (iii) an oil trading agency/company transacting on behalf of the Government of Mauritius;
 - (d) in respect of Rules 11(1), 11(2), 12(1) and 12(2), a person who carries on spot commodity trading on the person's own account and does not solicit any funds from any member of the public or any section of the public in connection with the carrying out of any spot commodity trading.