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**SECURITIES (RECORD KEEPING) RULES 2023**

**ARRANGEMENT OF RULES**

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**SECURITIES (RECORD KEEPING) RULES 2023**

**FSC Rules made by the Financial Services Commission under Section 93 of the Financial Services Act and Section 155 of the Securities Act**

## PART 1

## PRELIMINARY

1 Citation

This Act may be cited as the Securities (Record Keeping) Rules 2023.

2 Interpretation

In these Rules —

“asset management” means real estate investment scheme management and securities or futures contracts management;

“associated entity” in relation to an entity means an entity –

1. that is a subsidiary or holding company of an entity;
2. an entity not being a subsidiary of the entity has an interest in the shares of in a class comprised in its share capital exceeding in number of one-fifth of the number of the issued shares of that class;

“margined transaction” means a contract entered into in Mauritius by an intermediary with or on behalf of a client of the intermediary in the conduct by the intermediary of any of the businesses which constitute—

(a) any regulated activity for which the intermediary is licensed or registered, that is a contract for—

(i) a dealing in securities (except a market contract); or

(ii) a dealing in futures contracts (except a market contract); or

(b) the regulated activity of leveraged foreign exchange trading for which the intermediary is licensed, that is a leveraged foreign exchange contract,

which requires the client to—

(c) pay a margin to the intermediary; or

(d) provide security to the intermediary to meet the client’s obligations,

other than under an arrangement where financial accommodation is provided to the client by the intermediary;

“margin value” in relation to each description of securities collateral deposited with an intermediary, means the maximum amount of money which the client by whom and on whose behalf the securities collateral is deposited is permitted to borrow, or otherwise secure other forms of financial accommodation, from the intermediary against that particular description of securities collateral;

“record” does not include any tape or other sound recording of any telephone conversation;

“systems of control”, in relation to an intermediary or an associated entity of an intermediary, means any internal controls and trading, accounting, settlement and stock holding systems it has implemented to ensure its compliance with FSC rules relating to client money and client security.

## PART 2

## KEEPING OF RECORDS

### Division 1—General rules

3 General record keeping requirements for intermediaries

(1) An intermediary shall, in relation to the businesses which constitute any regulated activities for which it is licensed or registered—

(a) keep, where applicable, such accounting, trading and other records as are sufficient to—

(i) explain, and reflect the financial position and operation of, such businesses;

(ii) enable profit and loss accounts and balance sheets that give a true and fair view of its financial affairs to be prepared from time to time;

(iii) account for all client assets that it receives or holds;

(iv) enable all movements of such client assets to be

traced through its accounting systems and, where applicable, stock holding systems;

(v) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—

(A) its associated entities;

(B) securities exchanges

(C) clearing houses;

(D) other intermediaries;

(E) custodians; and

(F) banks,

and show how such differences were resolved;

(vi) demonstrate—

(A) compliance by it with relevant FSC Rules;

(B) that it has systems of control in place to ensure compliance with relevant the FSC Rules; and

(vii) enable it readily to establish whether it has complied with the relevant FSC Rules;

(b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and

(c) make entries in those records in accordance with generally accepted accounting principles.

(2) Without limiting the generality of paragraph (1)(a), the records referred to in that paragraph shall, where applicable, include—

(a) the records specified in the Schedule; and

(b) the records specified in Rule 5, 6, 7(2) or 8.

4 Record keeping requirements for associated entities

(1) An associated entity of an intermediary shall, in respect of client assets of the intermediary that it receives or holds—

(a) keep, where applicable, such accounting and other records as are sufficient to—

(i) account for the client assets;

(ii) enable all movements of the client assets to be traced through its accounting systems and, where applicable, stock holding systems;

(iii) show separately and account for all receipts, payments, deliveries and other uses or applications of the client assets effected by it, or on its behalf, and on whose behalf such receipts, payments, deliveries or other uses or applications of the client assets have been effected;

(iv) reconcile, on a monthly basis, any differences in its balances or positions with other persons, including—

(A) the intermediary of which it is an associated entity;

(B) recognized exchange companies;

(C) clearing houses;

(D) other intermediaries;

(E) custodians; and

(F) banks,

and show how such differences were resolved; and

(v) demonstrate—

(A) compliance by it relevant FSC Rules;

(B) compliance by it with relevant FSC Rules; and

(C) that it has systems of control in place to ensure compliance with relevant FSC Rules;

(b) keep those records in such manner as will enable an audit to be conveniently and properly carried out; and

(c) make entries in those records in accordance with generally accepted accounting principles.

(2) Without limiting the generality of paragraph (1)(a), the records referred to in that paragraph shall, where applicable, include—

(a) contracts entered into by it;

(b) where the client in question is a professional investor—

(i) records showing particulars sufficient to establish that the client is a professional investor; and

(ii) any notice given by it to the client or agreement by the client with it referred to in relevant FSC Rules;

(c) records evidencing any authority given to it by the client and any renewal of such authority; and

(d) records evidencing any direction given to it by the client referred to in relevant FSC Rules

**Division 2—Particular rules for intermediaries**

5 Particular record keeping requirements for dealing in securities

For the purposes of Rule 3(2)(b), an intermediary licensed or registered for dealing in securities shall, in relation to the businesses which constitute that regulated activity, keep, where applicable, such records as are sufficient to show separate particulars of all underwriting and sub-underwriting transactions entered into by it, including particulars showing the dates on which it entered into such transactions.

6 Particular record keeping requirements for leveraged foreign exchange trading

For the purposes of Rule 3(2)(b), a licensee licensed for foreign exchange trading shall, in relation to the businesses which constitute that regulated activity, keep, where applicable, such records as are sufficient to show—

(a) in relation to each recognized counterparty with which it conducts any transaction in leveraged foreign exchange contracts, particulars sufficient to establish that the recognized counterparty is a recognized counterparty; and

(b) for each business day—

(i) the market value of each open position held at the end of that day for its own account and the accounts of each of its clients and recognized counterparties;

(ii) for each leveraged foreign exchange contract executed by it—

(A) the bid and offer prices quoted by it to the client;

(B) the price at which the contract is executed; and

(C) the bid and offer prices at the time of execution of the contract as quoted and disseminated to the public, or to subscribers, by a reputable financial information services organization; and

(iii) the interest rate differentials which are charged or paid by it for being long or short, one currency against another.

7 Particular record keeping requirements for providing securities margin financing or other financial accommodation and entering into margined contracts

(1) This Rule applies to the following intermediaries—

(a) a licensed corporation licensed for securities margin financing;

(b) an intermediary which provides to its clients financial accommodation other than securities margin financing; and

(c) an intermediary which enters into margined transactions.

(2) For the purposes of Rule 3(2)(b), an intermediary to which this section applies shall, in relation to its activities as referred to in subsection (1), keep, where applicable, such records as are sufficient to show—

(a) its margin policy and lending policy;

(b) all securities and client collateral deposited with another person under an arrangement that confers on it a collateral interest in the securities or client collateral;

(c) with whom and on whose behalf the securities or client collateral referred to in paragraph (b) are deposited, showing separately the quantity and market value of—

(i) securities deposited for safe custody; and

(ii) securities and client collateral deposited as security for, or to facilitate, the provision by it of securities margin financing or other financial accommodation (as the case may be), or the entering into by it of margined transactions; and

(d) particulars of clients to whom it provides securities margin financing or other financial accommodation (as the case may be) or with whom or on whose behalf it enters into margined transactions, including particulars in respect of each client showing—

(i) the market value and margin value of each

description of securities collateral deposited with it;

(ii) the aggregate of the market values of such securities collateral;

(iii) the aggregate of the margin values of such

securities collateral; and

(iv) details of margin calls made.

8 Particular record keeping requirements for asset management

For the purposes of Rule 3(2)(b), an intermediary licensed or registered for asset management which holds client assets shall, in relation to the businesses which constitute that regulated activity, keep such records as are sufficient to show, in respect of each client for whom it holds client assets, particulars of the client’s assets and liabilities, including any financial commitments and contingent liabilities.

## PART 3

## MISCELLANEOUS

9 Form in which records are to be kept

(1) An intermediary, or an associated entity of an intermediary, shall keep all records that it is required to keep under these Rules—

(a) in writing in the English language; or

(b) in such a manner as to enable them to be readily accessible and readily convertible into written form in the English language.

(2) An intermediary, or an associated entity of an intermediary, shall adopt all reasonably necessary procedures to—

(a) guard against falsification of any of the records that it is required to keep under these Rules; and

(b) facilitate discovery of any such falsification.

10 Record retention period

Except as otherwise provided in the Act (including any subsidiary legislation made under it), an intermediary, or an associated entity of an intermediary, shall retain—

(a) subject to paragraph (b), the records that it is required to keep under these Rules, for a period of not less than 7 years; and

(b) in the case of records showing particulars of any of the orders and instructions referred to in paragraph 1(d) of the Schedule, for a period of not less than 2 years.

11 Reporting of non-compliance with certain provisions of these Rules

If an intermediary, or an associated entity of an intermediary, becomes aware that it does not comply with any provision of Part 2 that applies to it, it shall, within one business day thereafter, give written notice of that fact to the Commission.

12 Penalties

(1) An intermediary, or an associated entity of an intermediary, which, without reasonable excuse, contravenes Rule 3, 4, 9, 10 or 11, commits an offence and is liable on conviction to a fine at level 4.

(2) An intermediary, or an associated entity of an intermediary,

which, with intent to defraud, contravenes Rule 3, 4, 9, 10 or 11, commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine of $500,000 and to imprisonment for 1 year.

13 Commencement

These Rules come into force on [ ].

Made by the Financial Services Commission on [\*]

## Schedule

 (Rule 2)

## Records Kept by Intermediaries under Rule 3(2)(a)

1. Records showing particulars of—

(a) all money—

(i) received by it, whether or not such money—

(A) belongs to it; or

(B) is paid into accounts maintained by it or on its behalf; and

(ii) disbursed by it;

(b) all income received by it, whether such income relates to charges made by it for the provision of services, commissions, brokerage, remuneration, interest or otherwise;

(c) all expenses, commissions and interest incurred or paid by it;

(d) all orders or instructions concerning securities, futures contracts or leveraged foreign exchange contracts that it receives or initiates, including particulars—

(i) of each transaction entered into by it or on its behalf to implement any such order or instruction;

(ii) identifying with whom or for whose account it has entered into such transaction; and

(iii) that enable such transaction to be traced through its accounting, trading, settlement and stock holding systems;

(e) all disposals of client securities or client collateral initiated by it, showing in the case of each disposal—

(i) the name of the client;

(ii) the date on which the disposal was effected;

(iii) the name of the intermediary which effected the disposal;

(iv) the charges incurred for effecting the disposal; and

(v) the proceeds of the disposal and how such proceeds were dealt with;

(f) its assets and liabilities, including financial commitments and contingent liabilities;

(g) all securities belonging to it, identifying—

(i) with whom such securities are deposited;

(ii) the date on which they became so deposited; and

(iii) whether they are held as security for loans or advances or for any other purpose;

(h) all securities held by it but not belonging to it, identifying—

(i) for whom such securities are held and with whom they are deposited;

(ii) the date on which they became so deposited;

(iii) securities which are deposited with another person for safe custody; and

(iv) securities which are deposited with another person as security for loans or advances made to it or for any other purpose;

(i) all bank accounts held by it, including segregated accounts maintained by it;

(j) all other accounts held by it; and

(k) all off-balance sheet transactions or positions.

2. Records of all contracts (including written agreements with clients) entered into by it.

3. Records evidencing—

(a) any authority given to it by a client and any renewal of such authority; and

(b) any direction given to it by a client.

4. In respect of a client who is a professional investor—

(a) records showing particulars sufficient to establish that the client is a professional investor; and

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| (b) any notice given by it to the client or agreement by the client with it. |