

2008

Code of Conduct for Securities Dealers
governing securities transactions

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Preamble

¹The Board of Directors of the Swiss Bankers Association established the following guidelines in an effort to maintain and enhance the good reputation and high standards of the Swiss securities trading business in Switzerland as well as abroad. Clients concluding securities transactions in Switzerland with authorized counterparties must be able to rely on receiving a professional, fair and transparent service.

²This Code of Conduct constitutes the professional ethics and behaviour for all securities dealers subject to the Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act). It substantiates the duties of disclosure, due diligence and trust as set forth fundamentally in Art. 11 of the Stock Exchange Act. This Code of Conduct obliges securities dealers to ensure efficient business organisation, professional training as well as adequate compliance rules appropriate to their corporate structure and activities.

³Moreover, securities dealers must disclose their services to the effect that their clients are able to assess adequately the rights and duties arising from securities transactions as well as special risks inherent in particular types of securities transactions.

A General guidelines to the Code of Conduct

Art. 1 Legal basis

Art. 11 of the Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act) stipulates that:

¹“The securities dealer has vis-à-vis its clients:

- a) the duty of disclosure; the securities dealer shall in particular inform them of the risks associated with certain types of transactions and instruments;
- b) the duty of diligence; in particular to ensure the best possible execution of clients’ orders and the ability to retrace all the steps taken in the execution of their orders;
- c) the duty of loyalty; the securities dealer shall ensure that in the event of any potential conflict of interests, clients’ interests are not adversely affected.

²By discharging these duties the clients’ business expertise and professional knowledge shall be taken into account.”

Annotation

- 1 Where this Code of Conduct quotes terms as used by the Stock Exchange Act, the accompanying ordinances and the circulars issued by the Federal Banking Commission (e.g. securities, securities dealer, derivatives), such terms are deemed to have the same meaning as in the relevant regulations.
- 2 The term “securities” is based on the legal definition as per the Stock Exchanges and Securities Trading Ordinance dated 2nd December, 1996). Derivatives as governed by this Code of Conduct include in particular standardized forward and options contracts (futures and traded options) as well as standardized structured products.

- 3 This Code of Conduct applies to stock-exchange as well as over-the-counter transactions in both cash as well as forward trading. Moreover, certain transactions and markets may be subject to special regulations and guidelines (e.g. regulations on best execution), stock-exchange requirements concerning transaction settlement statements, guidelines on trading in options and financial futures. Foreign legislation may also contain special regulations on securities transactions involving persons from such countries.

Art. 2 Scope

¹This Code of Conduct applies exclusively to the execution of securities transactions.

²By executing securities transactions, the securities dealer assumes duties of disclosure, due diligence and trust, as defined in Art. 11 of the Stock Exchange Act and this Code of Conduct.

³This Code of Conduct does not govern any special rights and duties that may arise for the securities dealer and the client from additional services such as custodian services, investment advice or asset management which the securities dealer may provide on the basis of other agreements with the client or on the securities dealer's own accord.

Annotation

- 4 The phrase "execution of securities transactions" refers to all activities associated directly with the purchase and sale of securities, in particular to the contract, execution, settlement, delivery and payment of the transaction.

B Duty of disclosure

Art. 3 Variability of the Duty of Disclosure

¹The securities dealer's duty of disclosure must be in line with the client's individual business knowledge and experience.

²In principle, the securities dealer may assume that the client is aware of the risk commonly associated with the purchase, sale and holding of securities, in particular the credit and market risks of equities, bonds as well as investment fund units.

³The duty of disclosure applies to the special risks of particular types of transactions and not to any specific risks inherent in any individual securities transactions.

⁴The securities dealer may provide standardized or individual disclosure for transactions where the risk potential exceeds the ordinary risk level for the purchase, sale and holding of securities. Standardized risk disclosure must be presented in a plain and comprehensible manner appropriate to all clients. The securities dealer's individual disclosure must be in accordance with the client's business knowledge and experience. The securities dealer must apply reasonable measures of diligence to determine the level of disclosure required.

⁵The securities dealer is exempted from the duty of disclosure if the client:

- a) is subject to the authorization requirement under the Banking Act, the Stock Exchange Act, the Collective Investment Act or the Insurance Supervision Act, or is a tax-exempted occupational pension fund under Swiss law or is a foreign company subject to similar authorization requirements;
- b) is or has appointed a professional asset manager granting full power of attorney over his/her assets to act on the client's behalf vis-à-vis the securities dealer. If a professional asset manager is acting with full power of attorney on behalf of the client, the securities dealer must make the professional asset manager aware of the duty to inform the client of the risks and must record in writing that it has been done;

- c) declares in writing that the client is aware of the risks inherent in individual transactions and declines to receive supplementary information.

⁶In the case of collective investments, the Swiss Federal Collective Investment Act and its supplementary ordinances and the applicable codes of conduct of the Swiss Bankers Association take precedence.

Annotation

- 5 The securities dealer may satisfy the duty of disclosure by providing the client with the respective information in a standardized written form (e.g. the brochure “Special risks of securities transactions” issued by the Swiss Bankers Association).
- 6 For bonds, the commonly known risks that the client may be assumed to be aware of include in particular the credit risk, i.e. the risk that the borrower may default on the payment of the coupons or the repayment of the nominal amount at maturity. For equities, bonds, as well as investment fund units etc. the common risks also include in particular the market risks arising from interest rate fluctuations and/or currency movements as well as general market influencing factors. As a consequence, the duty of disclosure applies, above and beyond such commonly known risks, to risk factors inherent in types of transactions with greater risk potential (e.g. derivatives) or a more complex risk profile (e.g. structured products). The scope of disclosure must be in line with the increasing risk potential and the complexity of the risk profile of the respective transaction.
- 7 The securities dealer may assume that the client is aware of the commonly known risks, provided that the securities dealer has no clear indication of evidence to the contrary.
- 8 The disclosure of risks is restricted to the description of the risks inherent in a specific type of transaction only.
- 9 The duty of disclosure may also be performed by referring to prospectuses, publications, legally binding sales documentation or equivalent, publicly available information relative to the issue or initial placement, provided that such material refers adequately to the risk potential of the relevant type of transaction. In assessing if a securities dealer has provided the client with adequate information on a particular transaction, a holistic approach must be taken, taking into consideration, where applicable the documentation described

above (prospectuses, publications etc.) and not only the information as set out under Art. 11 of the Stock Market Act.

- 10 The securities dealer should keep a record of the manner in which the client has been informed as evidence of having satisfied the duty of disclosure. The form of such record is at the security dealer's own discretion. No written confirmation from the client is needed. Where the exemption to the duty of disclosure under Art. 3, Para. 5 (b) applies, the securities dealer must record clearly that the securities dealer has made the professional asset manager aware of the duty to inform the client of the risks.

Art. 4 Timing and contents of disclosure

The securities dealer must perform the duty of disclosure as set forth in Art. 3 pro-actively and in good time, prior to the execution of the transaction, by informing the client accurately and clearly of the fundamental risks inherent in the relevant type of transaction.

Annotation

- 11 Information in a standardized form is deemed adequate if performed well in advance of the first securities transaction. Such information must be updated and given if the client announces an intention to engage in new types of products with a substantially different risks and if the securities dealer has a clear indication that the client's level of expertise in this area is not deemed adequate.
- 12 If, during a business relationship, the securities dealer identifies that the client is unaware of the risks inherent in a securities transaction, the securities dealer is obliged to inform the client of the risks in either a standardized or individualized form.

C Duty of diligence

Art. 5 Best execution in terms of price, timing and quantity

¹The securities dealer must execute the securities transaction on a generally recognised execution venue where proper handling in terms of execution is ensured.

²Subject to the relevant market regulations, the securities dealer may act as the sole counterparty or as “crossing agent” in the execution of the securities transaction, provided that the best execution principle is always adhered to and not in conflict with the clients mandate.

Annotation

- 13 In general, the best execution principle provides that the securities dealer must execute client transactions without delay, completely and at the best possible market price, taking into account any limits, special instructions and reservations specified by the client. This however is not applicable to block transactions in accordance with Para. 24 ff below. The securities dealer may delay an execution in part or in full only if the order is not in line with prevailing market conditions, such as lack of liquidity or if it would not be in the client’s best interest. Transactions with securities traded over the counter, such as Eurobonds for instance must be executed at a price which is in line with the then prevailing market price. The securities dealer must advise the client of any significant price discrepancy from the indicated market price.
- 14 In the absence of any particular client instructions the securities dealer is deemed to have satisfied the duty of diligence by executing the securities transactions on the local stock exchange (or the local OTC market) on which the securities dealer usually transacts, or on the domestic stock exchange (or the domestic OTC market) for the respective security, or on another market with the appropriate liquidity. Securities transactions may also be executed on Multilateral Trading Facilities or via other authorized brokers and other liquidity providers if a proper order execution is warranted and the required liquidity exists.
- 15 Unless specifically agreed with the client, securities transactions may not be executed at a price which varies substantially from the market price.

Art. 6 Immediate allocation and accountability

¹Executed securities transactions must be allocated and recorded without delay, settled within the usual period in the markets and documented accordingly.

²Generally, the execution of a transaction must be confirmed and processed by the close of business on the same day of the transaction and the corresponding contract note must be dispatched to the client in the agreed form (e.g. in writing or through electronic banking in paperless form). Alternatively, and subject to the client's approval, a list of transactions may be provided at regular intervals but at least once per annum.

Art. 7 Transparency of settlement

¹The contract note for the client must disclose at least the number of securities traded, date and place of execution, the price or rate as well as transaction costs (commissions, fees, taxes, charges etc.).

²With the client's consent, the securities dealer may base the contract note on a flat rate for his services (own commission) and services provided by third parties (third party commissions) including all expenses incurred. Official fees and taxes (stock exchange fees, stamp duty etc.) may be either included in the flat rate or charged separately.

Annotation

16 Art. 7, Para. 1 stipulates that the information the securities dealer must automatically include in the contract note, unless otherwise agreed with the client. Within the duty of accountability, the securities dealer must also comply with the client's request for all such additional information regarding the execution of the transaction provided that such information is available from the dealer's mandatory journal. This journal must include is the time of execution, market (stock exchange or OTC) and whether trading is for the dealer's own account or acting as agent on behalf of the client.

- 17 Unless otherwise agreed with the client, a detailed contract note must contain all third party commissions, fees, taxes and charges borne by the client. The agreement on flat charges must specify the elements of the total transaction cost covered by the flat charge. However, details of the cost calculation involved need not to be disclosed.
- 18 The transaction costs may vary depending on the market or country of execution, type of security, trade volume etc. Where flat rate charges apply, the securities dealer may accommodate such variations by establishing an appropriate scale of flat charges.

D Duty of loyalty

Art. 8 Handling conflicts of interest

¹The securities dealer must take appropriate organizational measures to prevent conflicts of interest either between the securities dealer and the client, or employees of the securities dealer and the client, and to ensure that such conflicts of interest are not in adverse to the client's interests.

²If a conflict of interest, which may lead to a disadvantage for the client cannot be avoided this circumstance must be disclosed to the client in an appropriate manner.

Annotation

19 Based on the corporate size and structure of the securities trading firm, the choice of organizational measures is at the securities dealer's discretion. Where conflicts of interest cannot be entirely ruled out the securities dealer must take appropriate measures to prevent such conflicts of interest from adversely affecting the client's interests. Depending on the corporate size and structure of the securities trading firm, such measures include operational segregation of proprietary and client trading business, restriction on information flows ("information barriers") and the execution of orders in strict chronological order.

20 The securities dealer must implement appropriate rules governing securities transactions for the securities dealer's employees, in order to prevent any potential conflict of interest that may adversely affect the client's interests.

Art. 9 Execution of client transactions

Clients must be treated fair and equal.

Annotation

21 Client transactions must be treated in an equal manner under the same circumstances. The securities dealer must be able to deliver to the client all explanatory information if competing client transactions were unable to be executed in line with the instructions received, due to prevailing market conditions (with respect to price, timing or quantity).

Art. 10 Chronological execution of transactions

Securities orders must be executed or scheduled for execution in the chronological order of entry, irrespective of whether such orders are executed for client accounts, the dealer's own account or an employee's account.

Annotation

- 22 The principle of chronology applies unless a conflict of interest is prevented by operational segregation (e.g. segregation of proprietary from client trading business). To act in the client's best interest, the securities dealer may divert from the principle of chronological execution of securities orders.

Art. 11 Prohibition of front-running, parallel-running and after-running

Front-running, parallel-running and after-running (i.e. the insertion of own account transactions between tranches of client orders which are not executed at the same time) is prohibited. This restriction also applies to orders executed for the securities dealer's employees.

Art. 12 Prohibition of price fraud

Price fraud is prohibited. Price fraud is committed if the trading price listed on the contract note differs from the actual execution price. Price fraud is not committed if the securities dealer has carried an element of risk associated with the underlying transaction or an agreement has been concluded where the client agrees to a trading price that differs from the actual execution price. No such agreement may form part of the General Terms and Conditions of Business or of standard contract forms.

Annotation

- 23 If transactions are executed through an exchange (on-exchange), price fraud is committed if the securities dealer provides a contract note price that differs from the matcher or comparable trading system to the disadvantage of the client.
- 24 For over-the-counter block transactions in exchange-traded securities, the price which has been agreed with the client applies.

- 25 For transactions in non-exchange-traded securities, mark-ups or mark-downs on the traded price are permitted as an alternative to commission charge if the securities dealer has assumed an element of risk. The disclosure of any mark-ups as well as mark-downs by the securities dealer versus the client must be made in a suitable manner. If the securities dealer acts purely as an intermediary between two counter-parties; hence crosses trades the securities dealer must apply the mid-market price as the contract note price, equal for both parties but may charge each party the normal rate of commission.
- 26 Price fraud is not committed in cases where the order execution is conducted in several partial executions and where the average price is rounded up or rounded down. This also applies when block orders involving several clients are executed as part of asset management/portfolio management.

Art. 13 Cover for short positions entered into by the securities dealer

The securities dealer must meet any and all delivery obligations arising from proprietary trading exclusively from his own holdings. The securities dealer may cover short positions by borrowing securities. Subject to corresponding agreement with the client, the securities dealer may borrow securities from client holdings.

Art. 14 Supervision of employee transactions

The securities dealer must issue an internal directive on supervision of employee transactions.

Annotation

- 27 The directive must “provide measures on supervision of employee transactions. These measures must be primarily aimed at preventing and detecting misuse of confidential price sensitive information for own transactions by the employees. Banking relationships of employees of the securities dealer with third party institutions as well as conflicts of interest with the employer are to be taken into account in the appropriate form” (“Code of market conduct” circular issued by the Swiss Federal Banking Commission on 19 March 2008, Para. 56).

E Transitional provisions

Art. 15 Enactment

¹This Code of Conduct entered into effect on 1st August, 1997.

²It applies to all securities transactions effected from that date.

³The revised version of the Code of Conduct enters into effect on 1st May 2009.

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