



CMDA Policy Statement 10/00

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Licensing Of Unit Trust Representatives

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Subject: **Licensing Of Unit Trust Representatives**

In addition to the requirements set out in the Capital Markets Development Authority Act 1996 and the Capital Markets Development Authority (Securities Exchanges and Licensing) Regulations 1997, the Authority has adopted the following policy relating to the licensing of unit trust representatives.

A. Qualifications For Grant Of A Licence For A Unit Trust Representative

1. A licence to operate as a representative of a unit trust, required by section 38 of the Act, shall not be granted to an applicant unless the applicant is a natural person who:
 - (a) holds a diploma or certificate or higher qualification in economics, accounting or business related subjects from a tertiary institution approved by the Authority or has successfully completed a program of study in securities approved by the Authority; or
 - (b) has been dealing in securities, or has been engaged in giving advice on securities for a continuous period of at least two years immediately preceding the date of commencement of the Regulations; or
 - (c) is able to satisfy the requirements of paragraph 2.
2. Where -
 - (a) there is a relationship of principal and agent existing between the representative and the unit trust licence holder ("the principal") such that the representative's activities are or will be confined to a defined range of the principal's financial products; and
 - (b) the representative is unable to satisfy the requirements of paragraphs 1 (a) or (b) above,

a licence may be granted to the representative by the Authority in the following circumstances:-

- (c) the principal shall first satisfy the Authority that it has investigated the expertise, character and integrity of the representative and is prepared to accept financial responsibility for the activities of the representative in relation to its products, and
 - (d) the principal shall enter into a bond with the Authority or otherwise give security in such sum as the Authority thinks fit for the purpose of indemnifying the Investor Compensation Fund against any future claim by an investor in respect of the principal's financial products which may arise out of the activities of a representative holding a licence issued under this paragraph.
3. On any application to renew a licence issued under paragraph 2: -

- (i) the principal shall support the application by submitting a return as to the value of sales of the products achieved by the representative concerned during the previous licence period;
- (ii) the principal may be called upon by the Authority to execute a fresh bond or security in such greater or lesser amount as the Authority may deem appropriate.

B. Terms And Conditions Of A Unit Trust Representative Licence

Every licence granted to a unit trust representative shall be subject to the following terms and conditions:

1. Every person who is licensed as a unit trust representative shall comply with the Act and all Regulations and Rules at any time in force thereunder and shall abide by such code of conduct and rules or regulations as may be promulgated by the Authority or a securities exchange.
2. No representative of a licensed unit trust shall engage in conduct otherwise prohibited by the Authority or by the Rules made by the Authority.
3. Every representative of a unit trust shall comply with the Rules made by the Authority regulating the conduct of representatives and regulating the business of the unit trust for whom the representative acts and any breach of those Rules shall be a contravention of the terms and conditions of his or her licence.
4. A contravention of the Rules by a representative of a unit trust shall be deemed to be also a contravention by the licensed unit trust, unless the unit trust establishes on the balance of probabilities that:
 - (i). the unit trust took all reasonable care to ensure that the representative did not contravene the instruments specified in paragraph 1 above, and
 - (ii). the unit trust was not party to, knowingly concerned in, or aware of any conduct of the representative involved in the contravention.
5. No representative of a unit trust shall represent or hold himself or herself out as representing any broker, dealer, investment adviser or other unit trust without the prior written approval of the Authority.
6. A representative of a unit trust shall, in relation only to the receipt of orders from a customer, be deemed to be the agent for the customer and shall transmit a customer's orders only to the unit trust for whom he or she is a representative.
7. Every representative employed by or appointed as an agent for a unit trust shall be subject to the supervision of a supervisor designated by the unit trust, who may be an officer, office manager or any qualified unit trust representative and whose name shall be disclosed to the Authority in writing within 14 days of assuming such a position.

C. Code of Conduct For Unit Trust Representatives

1. No unit trust representative shall -
 - (a) recommend to a client the purchase or sale of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or obtained by the unit trust representative;
 - (b) place an order to purchase or sell a security for the account of a client without proper written authority to do so;
 - (c) borrow money or securities from a client unless the client is a broker or dealer or investment adviser, or a financial institution engaged in the business of lending funds or securities;
 - (d) lend money to a client;
 - (e) misrepresent to any client, or prospective client, his or her qualifications, or misrepresent the nature of the services being offered, or omit to state a material fact necessary to ensure the statements made regarding qualifications or services, in light of the circumstances in which they are made, are not misleading;
 - (f) provide a report or recommendation to any client prepared by someone other than the unit trust without disclosing that fact;
 - (g) charge any type of fee which is contingent on capital gains or an appreciation in a client's account;
 - (h) fail to disclose to a client in writing, before any advice is rendered, any material conflict of interest which could reasonably be expected to impair the rendering of unbiased and objective advice including -
 - (i). compensation arrangements with a unit trust or any other party connected with advisory services to clients which are in addition to compensation received or to be received from such clients for such services; or
 - (ii). that he or she will charge a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received from the unit trust;
 - (i) guarantee a client that a specific result will be achieved arising from advice or services rendered;
 - (j) publish, circulate or distribute any advertisement which does not comply with the Act or the Regulations or Rules;
 - (k) disclose the identity, affairs, or investment of any client to any third party unless required by law to do so, or unless consented to by the client;

2. Every unit trust representative shall keep full and complete records of all matters relevant to the purchase and sale orders received from clients, including copies of applications received and lodged, and any subsequent correspondence.

D. Definitions

For the purposes of this notice, the following terms have the following meanings:

"the Act" means the Capital Markets Development Authority Act, 1996;

"the Authority" means the Capital Markets Development Authority established by the Act;

"the Regulations" means the Capital Markets Development Authority (Securities Exchanges and Licensing) Regulations 1997 as amended from time to time;

"the Rules" means the Capital Markets Development Authority Rules 1997 as amended from time to time;

"representative", in relation to a unit trust means a person, by whatever name described, in the direct employment of or acting for, or by arrangement with the unit trust, who performs for the unit trust any of the functions of the unit trust, or in the gaining or managing of client business of the unit trust (other than work ordinarily performed by accountants, clerks or cashiers, whether that person's remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of a body corporate who performs for the body corporate any of those functions;

"unit trust" means a unit trust as defined in the Unit Trusts Act 1978 and licensed by the Capital Markets Development Authority.

Where any term or expression used in this policy statement is not defined in the policy statement but is defined in the Act, that term or expression shall, unless the context otherwise requires, have, in this policy statement the meaning given to it by the Act.

Please contact Mr Suren Kumar at the Authority's Offices should any further clarification be required.

Capital Markets Development Authority
15 March 2000