

**RIGHTS AND OBLIGATIONS OF MEMBERS, AUTHORIZED PERSONS
AND CLIENTS**
as prescribed by FMC and Commodity Exchanges

1. Requirements of professional diligence

a. The Member must exercise professional diligence while entering into a financial contract or discharging any obligations under it.

b. "Professional diligence" means the standard of skill and care that a Member would be reasonably expected to exercise towards a Client, commensurate with

i. honest market practice;

ii. The principle of good faith;

iii. The level of knowledge, experience and expertise of the Client;

iv. The nature and degree of risk embodied in the financial product* or financial service being availed by the Client;

v. The extent of dependence of the Client on the Member.

*Commodity derivative contract

2. The Authorized Person shall provide necessary assistance and co-operate with the Member in all its dealings with the client(s).

CLIENT INFORMATION

3.A. Protection from unfair terms in financial contracts**

a. An unfair term of a non-negotiated contract will be void.

b. A term is unfair if it –

i. Causes a significant imbalance in the rights and obligations of the parties under the financial contract, to the detriment of the Client; and

ii. is not reasonably necessary to protect the legitimate interests of the Member.

c. The factors to be taken into account while determining whether a term is unfair, include –

i. The nature of the financial product or financial service dealt with under the financial contract;

ii. The extent of transparency of the term;

**contracts offered by commodity exchanges

iii. The extent to which the term allows a Client to compare it with other financial contracts for similar financial products or financial services; and

iv. The financial contract as a whole and the terms of any other contract on which it is dependent.

d. A term is transparent if it –

i. is expressed in reasonably plain language that is likely to be understood by the Client;

ii. is legible and presented clearly; and

iii. is readily available to the Client affected by the term.

e. If a term of a financial contract is determined to be unfair under point 3.A.c, the parties will continue to be bound by the remaining terms of the financial contract to the extent that the financial contract is capable of enforcement without the unfair term.

3.B. a. "Non-negotiated contract" means a contract whose terms, other than the terms contained in point 3.C. (given below) are not negotiated between the parties to the financial contract and includes –

i. A financial contract in which, relative to the Client, the Member has a substantially greater bargaining power in determining terms of the financial contract; and

ii. A standard form contract

b. "Standard form contract" means a financial contract that is substantially not negotiable for the Client, except for the terms contained in point 3.C.

- c. Even if some terms of a financial contract are negotiated in form, the financial contract may be regarded as a non negotiated contract if so indicated by –
 - i. an overall and substantial assessment of the financial contract; and
 - ii. the substantial circumstances surrounding the financial contract
 - d. In a claim that a financial contract is a non-negotiated contract, the onus of demonstrating otherwise will be on the Member.
- 3.C. a. The above does not apply to a term of a financial contract if it**
- i. defines the subject matter of the financial contract;
 - ii. sets the price that is paid, or payable, for the provision of the financial product or financial service under the financial contract and has been clearly disclosed to the Client; or
 - iii. is required, or expressly permitted, under any law or regulations.
- b. The exemption under point 3.C does not apply to a term that deals with the payment of an amount which is contingent on the occurrence or non-occurrence of any particular event.**
- 4. A. Protection of personal information and confidentiality**
- a. “Personal information” means any information that relates to a Client or allows a Client’s identity to be inferred, directly or indirectly, and includes –**
- i. name and contact information;
 - ii. biometric information, in case of individual
 - iii. information relating to transactions in, or holdings of financial products
 - iv. information relating to the use of financial services; or such other information as may be specified.
- 4. B. a. A Member must –**
- i. not collect personal information relating to a Client in excess of what is required for the provision of a financial product or financial service;
 - ii. maintain the confidentiality of personal information relating to Clients and not disclose it to a third party, except in a manner expressly permitted under point 4.B.b.;
 - iii. make best efforts to ensure that any personal information relating to a Client that it holds is accurate, up to date and complete;
 - iv. ensure that Clients can obtain reasonable access to their personal information, subject to any exceptions that the Regulator may specify; and
 - v. allow Clients an effective opportunity to seek modifications to their personal information to ensure that the personal information held by the Member is accurate, up to date and complete.
- b. A Member may disclose personal information relating to a Client to a third party only if –**
- i. it has obtained prior written informed consent of the Client for the disclosure, after giving the Client an effective opportunity to refuse consent;
 - ii. the Client has directed the disclosure to be made;
 - iii. the Regulator has approved or ordered the disclosure, and unless prohibited by the relevant law or regulations, the Client is given an opportunity to represent under such law or regulations against such disclosure;
 - iv. the disclosure is required under any law or regulations, and unless prohibited by such law or regulations, the Client is given an opportunity to represent under such law or regulations against such disclosure;
 - v. the disclosure is directly related to the provision of a financial product or financial service to the Client, if the Member –
 - 1. informs the Client in advance that the personal information may be shared with a third party; and

- 2. makes arrangements to ensure that the third party maintains the confidentiality of the personal information in the same manner as required under this Part; or
- vi. the disclosure is made to protect against or prevent actual or potential fraud, unauthorised transactions or claims, if the Member arranges with the third party to maintain the confidentiality of the personal information in the manner required under this Part.-
- c. "Third party" means any person other than the concerned Member, including a person belonging to the same group as the Member.

5.A Requirement of fair disclosure both initially and on continuing Basis

- a. Member must ensure fair disclosure of information that is likely to be required by a Client to make an informed transactional decision.
- b. In order to constitute fair disclosure, the information must be provided –
 - i. sufficiently before the Client enters into a financial contract, so as to allow the Client reasonable time to understand the information;
 - ii. in writing and in a manner that is likely to be understood by a Client belonging to a particular category; and
 - iii. in a manner that enables the Client to make reasonable comparison of the financial product or financial service with other similar financial products or financial services.
- c. The types of information that must be disclosed to a Client in relation to a financial product or financial service, which may include information regarding –
 - i. main characteristics of the financial product or financial service, including its features, benefits and risks to the Client;
 - ii. consideration to be paid for the financial product or financial service or the manner in which the consideration is calculated;
 - iii. existence, exclusion or effect of any term in the financial product or financial contract;
 - iv. nature, attributes and rights of the Member, including its identity, regulatory status and affiliations;
 - v. contact details of the Member and the methods of communication to be used between the Member and the Client;
 - vi. rights of the Client to rescind a financial contract within a specified period; or
 - vii. rights of the Client under any law or regulations.

5.B. a. Member must provide a Client that is availing a financial product or financial service provided by it, with the following continuing disclosures –

- i. any material change to the information that was required to be disclosed under point 5A at the time when the Client initially availed the financial product or financial service;
 - ii. information relating to the status or performance of a financial product held by the Client, as may be required to assess the rights or interests in the financial product or financial service; and
 - iii. any other information that may be specified.
- b. A continuing disclosure must be made –**
- i. within a reasonable time-period from the occurrence of any material change or at reasonable periodic intervals, as applicable; and
 - ii. in writing and in a manner that is likely to be understood by a Client belonging to that category.

DISPUTE RESOLUTION

- 6. Requirement for each Member to have an effective grievance redress mechanism which is accessible to all its Clients

a. A Member must have in place an effective mechanism to receive and redress complaints from its Clients in relation to financial products or financial services provided by it, or on its behalf, in a prompt and fair manner.

b. A Member must inform a Client, at the commencement of relationship with the Client and at such other time when the information is likely to be required by the Client, of –

- i. the Client's right to seek redress for any complaints; and
- ii. the processes followed by the Member to receive and redress complaints from its Clients.

7 .A. Suitability of advice for the Client

Right to receive advice that is suitable taking into account the relevant personal circumstances of the Client, such as the Client's financial circumstances and needs. This obligation would apply to persons who render advice to Clients and the regulator may specify categories of financial products and service that necessarily require such advice to be given.

a. A Member must – i. make all efforts to obtain correct and adequate information about the relevant personal circumstances of a Client; and

ii. ensure that the advice given is suitable for the Client after due consideration of the relevant personal circumstances of the Client.

b. If it is reasonably apparent to the Member that the available information regarding the relevant personal circumstances of a Client is incomplete or inaccurate, the Member must warn the Client of the consequences of proceeding on the basis of incomplete or inaccurate information.

c. If a Client intends to avail of a financial product or financial service that the Member determines unsuitable for the Client, the Member –

i. must clearly communicate its advice to the Client in writing and in a manner that is likely to be understood by the Client; and

ii. may provide the financial product or financial service requested by the Client only after complying with point

8.A .a and obtaining a written acknowledgement from the Client.

8. Dealing with conflict of interest

In case of any conflict between the interests of a Client and that of the Member, preference must be given to the Client interests.

a. A member must – i. provide a Client with information regarding any conflict of interests, including any conflicted remuneration that the Member has received or expects to receive for making the advice to the Client; and

ii. give priority to the interests of the Client if the Member knows, or reasonably ought to know, of a conflict between

1. its own interests and the interests of the Client; or

2. the interests of the concerned Member and interests of the Client, in cases where the Member is a financial representative.

b. The information under point 8a.i. must be given to the Client in writing and in a manner that is likely to be understood by the Client and a written acknowledgement of the receipt of the information should be obtained from the Client.

c. In this section, "conflicted remuneration" means any benefit, whether monetary or non-monetary, derived by a Member from persons other than Clients, that could, under the circumstances, reasonably be expected to influence the advice given by the Member to a Client.

ADDITIONAL RIGHTS& OBLIGATIONS

9.A. Protection from unfair conduct which includes misleading conduct & abusive conduct

a. Unfair conduct in relation to financial products or financial services is prohibited.

b. "Unfair conduct" means an act or omission by a Member or its financial representative that significantly impairs, or is likely to significantly impair, the ability of a Client to make an informed

transactional decision and includes –

- i. misleading conduct under point 9.B
- ii. abusive conduct under point 9.C
- iii. such other conduct as may be specified.

9.B.a. Conduct of a Member or its financial representative in relation to a determinative factor is misleading if it is likely to cause the Client to take a transactional decision that the Client would not have taken otherwise, and the conduct involves –

i. providing the Client with inaccurate information or Information that the Member or financial representative does not believe to be true; or

ii. providing accurate information to the Client in a manner that is deceptive.

b. In determining whether a conduct is misleading under point

9.B.a, the following factors must be considered to be “determinative factors” –

i. the main characteristics of a financial product or financial service, including its features, benefits and risks to the Client;

ii. the Client’s need for a particular financial product or financial service or its suitability for the Client;

iii. the consideration to be paid for the financial product or financial service or the manner in which the consideration is calculated;

iv. the existence, exclusion or effect of any term in a financial contract, which is material term in the context of that financial contract;

v. the nature, attributes and rights of the Member, including its identity, regulatory status and affiliations; and

vi. the rights of the Client under any law or regulations.

9.C. a. A conduct of a Member or its financial representative in relation to a financial product or financial service is abusive if it –

i. involves the use of coercion or undue influence; and

ii. causes or is likely to cause the Client to take a transactional decision that the Client would not have taken otherwise.

b. In determining whether a conduct uses coercion or undue influence, the following must be considered –

i. the timing, location, nature or persistence of the conduct;

ii. the use of threatening or abusive language or behaviour;

iii. the exploitation of any particular misfortune or circumstance of the Client, of which the Member is aware, to influence the Client’s decision with regard to a financial product or financial service;

iv. any non-contractual barriers imposed by the Member where the Client wishes to exercise rights under a financial contract, including –

v. the right to terminate the financial contract;

vi. the right to switch to another financial product or another Member and

vii. a threat to take any action, depending on the circumstances in which the threat is made.