

FSC Guidance Note No. 7.00



Personal Trading

July 1999

Main features of the Guidance Notes are:

- **to specify the principles to be adopted in relation to the conduct of Personal Trading;**
- **to provide guidance in the interpretation and application of those principles;**
- **to standardise the practices and procedures relating to the conduct of Personal Trading; and**
- **to specify the basis of suitable compliance of such Personal Trading activities.**

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1 Title

1.1 This Guidance Note may be cited as FSC Guidance Note No. 7.00 'Personal Trading'.

2 Guidance Note and Commentary

2.1 The guidelines set out in this Guidance Note are shown in bold print. Commentary is shown in normal print immediately after the guideline to which it relates, as an aid to interpretation of the guidelines.

3 Date of Issue

3.1 19 July 1999

4 Effective Date

4.1 This Guidance Note should be applied in relation to an FSC Member's operations on or after 1 August 2000. Earlier application of this Guidance Note is permitted and encouraged.

5 Application

5.1 This Guidance Note should be applied by the Investment Manager.

5.2 Where there is a conflict between the requirements of this Guidance Note, applicable legislation, and the Constitution of a Scheme, the requirements of this Guidance Note should, having regard to the purpose of the Guidance Note, be modified appropriately so that, as far as is practicable, the Operator complies with the requirements of this Guidance Note.

6 Statement of Purpose

6.1 The purposes of this Guidance Note are:

- to assist Members to comply with the Laws pertaining to Statute, Common Law, securities, superannuation and insurance. These responsibilities include:
 - to place clients first at all times;
 - to avoid and be seen to avoid actual or potential conflict between personal interest and duty to clients;
 - to uphold fiduciary responsibilities; and
 - not to act on inside, privileged, confidential or price sensitive information.

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- **to ensure that Personal Trading is not on a scale which impinges on normal duties and responsibilities; and**
- **that Directors and employees should not take advantage of their positions in their Personal Trading.**

7 Application of Materiality

7.1 Failure by an Investment Manager to adopt or implement this Guidance Note is material if such failure has the potential to adversely affect the confidence of Investors, prospective Investors, other scheme operators, and other interested parties involved in the Investment and Financial Services Industry.

8 Definitions

8.1 Refer to FSC Guidance Note No. 5.00 'Industry Terms and Definitions'.

9 Guidance Note Overview

9.1 With the emphasis of good Corporate Governance in recent years and the media coverage that this has received, it has become even more important that the investment and financial services industry operates under a set of guidelines that complement statutory requirements and rules. It is critically important that this industry which demands such high standards of behaviour from the corporate sector acts with similar integrity. It is for this reason that this Guidance Note on Personal Trading has been written and issued to Investment Managers.

9.2 There is very clear statutory direction on insider trading and other market activity which requires strict adherence. However, with Personal Trading, not only must directors and employees of Investment Managers adhere to the strict legal requirements in relation to trading, but they must also be seen to be doing the right thing with regard to the execution of their fiduciary responsibilities.

9.3 Directors and employees are exposed to financial markets and financial information as employees in the investment and financial services industry. Accordingly, there is a need to

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initiate practices in relation to Personal Trading which are designed to assist directors and employees in dealing appropriately with conflicts of interest.

- 9.4 Where other parties are engaged by the Investment Manager to supply support services, the Investment Manager should use reasonable endeavours to ensure that, where appropriate, those parties and employees are subject to similar guidelines.
- 9.5 Directors and employees must not circumvent the principles of this Guidance Note by enabling benefits to be derived by their relatives, associates, corporations, or trusts rather than personally themselves.
- 9.6 In the context of this Guidance Note, Personal Trading extends to the broader family of directors and employees, related parties or associates of directors and employees including related corporations or trusts. This extension applies where the director or employee has influence over the related parties “judgement in relation to investment decisions made by them.”
- 9.7 It is essential for Investment Managers to ensure that their employees understand the fiduciary element of their position, and to take all appropriate measures to engender a corporate culture which reflects complete commitment to the fiduciary standards.

10 Personal Trading philosophy

- 10.1 Directors and employees of Investment Managers should avoid situations in which any private interest would or could conflict with the Investment Manager’s duty to provide the highest standard of service to their clients.**

11 Personal Trading principles and guidelines

- 11.1 Each Investment Manager should adopt rules with respect to Personal Trading based on the following principles and guidelines. These principles and guidelines apply to directors and employees of Investment Managers. They should:**

- **place the interests of clients and Investment Manager first at all times;**
- **avoid and be seen to avoid, actual or potential conflict between personal interest and duty to clients and/or to the Investment Manager;**

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- **not derive any personal advantage from information which is not generally available and which has been obtained by reason of, or in the course of, their employment;**
- **not trade, where the Investment Manager is precluded from trading by law or FSC guidelines or where the Investment Manager has outstanding client orders for the same security or class of security;**
- **seek prior approval to trade from a designated officer to ensure client interests are not compromised;**
- **ensure that Personal Trading is on a scale that reflects the individual's financial ability to fund and maintain an appropriately sized portfolio;**
- **ensure that Personal Trading does not adversely impact on the individual's ability to perform normal duties;**
- **not utilise Broker credit. Relevant exchange settlement terms must apply on all occasions and all transactions must be settled as detailed in industry standards. This prohibition does not extend to normal documented margin lending or loan facilities offered to the general public by Brokers; and**
- **refer offers to participate in a float or placement to the head of the investment management firm for guidance and approval to participate (see commentary under compliance).**

12 Compliance

- 12.1 Directors and employees should be required to sign a written acknowledgement upon appointment that they have read and understand the Investment Manager's trading rules, and will comply with them.**
- 12.2 Where an individual undertakes a transaction on behalf of any person or corporation other than clients, all dealings should be executed by one of a panel of Brokers approved by the Investment Manager.**
- 12.3 Investment Managers should require directors and employees, whether proper authority holders or not, to maintain the register of interests in securities required to be maintained by proper authority holders under the Corporations Law. The employer has the right to inspect these records at any time and should have procedures to ensure at least an annual inspection.**
- 12.4 Any offer of securities made personally to directors or employees by a sharebroking firm or equivalent body, to participate in a float or placement should ensure that the**

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fiduciary obligations of the Investment Manager to its clients are not compromised. In particular:

- **all offers should be addressed to the Chief Investment Officer or designate to ensure the Investment Manager is aware of the offer;**
- **the offer must be a firm offer with a designated number of shares and price per share and the letter of offer clearly stating that the offer is made to the staff of the Investment Manager;**
- **the offer must state that it is in addition to any other offer made to the investment manager on a professional basis for its clients and the rights of those clients have not been prejudiced in any way;**
- **any offer (including offers to individuals) should be disclosed to the Chief Executive Officer or designate for approval in accordance with these guidelines; and**
- **it is recommended that offers to directors and employees be rigidly policed to ensure that strict guidelines are met. Offers to participate in such floats and placements could be construed as a privilege of employment and as such Investment Managers should be on notice to ensure that the investment and financial services industry is not brought into disrepute through non compliance with guidelines.**

12.5 Employees should be aware that breaches of an Investment Manager's requirements in the matter of Personal Trading would have serious consequences, which may include immediate dismissal.

12.6 A client of an Investment Manager should be entitled, on request, to a copy of the Investment Manager's Personal Trading policy.

13 Other market activity

13.1 Investment Managers and their directors and employees should ensure that Personal Trading does not contravene legal requirements, including laws concerning insider trading, price manipulation, false trading and market rigging and short selling.