

## **Resolution No. (54) of 2022**

### **Regarding**

### **The Regulation of Procedures for the Handing Over of Clients' Funds and Clients' Assets after the Cancellation of the Licensed Person's License**

Having Perused:

- Law No. (7) of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Executive Bylaws, and their amendments; and
- CMA Board of Commissioners Resolution passed in its meeting No. (13) of 2022 held on 06/04/2022.

The Following Was Resolved

Article (1)

Module Five (Securities Activities and Registered Persons) and Module Seven (Clients' Funds and Clients' Assets) of the Executive Bylaws of Law No. (7) of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and their amendments are hereby amended pursuant to Annex (1) attached to this Resolution.

Article (2)

Appendix (3) (General Procedures for the Handing Over of Clients' Funds and Clients' Assets to the Party Concerned with Holding, Managing or Safe-keeping in the event the Licensed Person's License is Canceled by the Authority Pursuant to the Provisions of Article 67 of the Law) is hereby added to Module Seven (Clients' Funds and Clients' Assets) of the Executive Bylaws of Law No. (7) of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and their amendments pursuant to Annex (2) attached to this Resolution.

Article (3)

Companies whose license has been canceled by the Authority shall comply with the provisions regarding the handing over of clients' funds and clients' assets to the party concerned with holding, managing, or safe-keeping in the event the Licensed Persons' license is canceled by the Authority pursuant to the Executive Bylaws of Law No. (7) of 2010 and their amendments and the resolutions and instructions issued by Authority in this regard.

Article (4)

Licensed persons addressed by these amendments shall update their current contracts with their clients according to the Authority's requirements in this regard, by including provision regarding the handing over of clients' funds and clients' assets to the party concerned with holding, managing, or safe-keeping in the event the Licensed Persons' license is canceled by the Authority pursuant to the Executive Bylaws of Law No. (7) of 2010 and their amendments and the resolutions and instructions issued by the Authority in this regard.

Licensed Persons addressed by these amendments shall update their policies and operational procedures and submit these to the Authority.

Provided that the Licensed Persons shall fulfill the requirements stipulated in this Article within a maximum period of 6 months from the date of this Resolution.

Article (5)

The concerned bodies shall execute this Resolution, each within its jurisdiction. This Resolution shall come into force from the date of its issuance, and it shall be published in the Official Gazette.

Prof. Ahmad Almelhem

Issued on: 11/04/2022

**Annex No. (1)**

#	Module	Chapter	Article	Item	Amendment Type	Text Before Amendment	Text After Amendment
1	Five	One	1-14-2	-	Adding Article	-	<p>In the event of cancelation of the licensed activities of a <u>Licensed Person</u> who manages or safekeeps <u>Clients' Funds</u> and <u>Clients' Assets</u> by the <u>Authority</u>, the following actions shall be taken:</p> <p>1- The <u>Person</u> whose license has been canceled shall immediately notify his <u>Clients</u> - by the means agreed upon in the contract between the two parties - regarding his work termination due to the license cancelation by the <u>Authority</u> and his taking of the necessary measures to hand over the <u>Clients' Funds</u> and <u>Clients' Assets</u> to the party concerned with holding, managing, or safe-keeping.</p> <p>The <u>Licensed Person</u> shall safe-keep the <u>Clients' Funds</u> and <u>Clients' Assets</u> until completing the handing over process within the time period specified by the <u>Authority</u> in its resolution.</p> <p>2- The <u>Person</u> whose license is canceled shall submit follow up reports of the handing over process of <u>Clients' Funds</u> and <u>Clients' Assets</u> to them or to the party concerned with holding, managing or safe-keeping in accordance with the instructions stipulated in Appendix (3) of Module Seven (<u>Clients' Funds</u> and <u>Clients' Assets</u>) of these <u>Bylaws</u>, from the issuance date</p>

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							<p>of the resolution until the completion of the handover.</p> <p>3- The <u>Person</u> whose license is canceled shall submit to the <u>Authority</u> the following documents upon completion of the handover in accordance with the closing stage stipulated in Appendix (3) of Module Seven (Clients' Funds and Clients' Assets) of these <u>Bylaws</u>:</p> <p>A- Notification from the <u>Clearing Agency</u> regarding the settlement of all obligations due to the market and <u>Clients</u>.</p> <p>B- Report from an external <u>Auditor</u> registered with the <u>Authority</u> stating that the handing over process of <u>Clients' Funds</u> and <u>Clients' Assets</u> is completed in accordance with the <u>Authority's</u> regulations and instructions in this regard, in addition to confirming that the <u>Person</u> does not own any of <u>Clients' Funds</u> and <u>Clients' Assets</u>.</p> <p>The report referred to above shall be issued by an <u>Auditor</u> registered with the <u>Authority</u> who is different from the external <u>Auditor</u> of the <u>Person</u> whose license is canceled and does not belong to the same office.</p> <p>C- Any other information requested by the <u>Authority</u>.</p>

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							4- The <u>Person</u> whose license has been canceled shall amend the <u>Company's Contract</u> to remove the provision including securities activities in its objectives, within one year from the date of issuing the resolution. The <u>Authority</u> shall be provided with proof thereof.
2	Five	Three	3-4-9	-	Adding Article	-	The <u>Auditor</u> shall take the <u>Care of a Prudent Person</u> when preparing the reports - not related to reviewing and auditing - required based on the <u>Authority's</u> requirements set forth in the <u>Bylaws</u> , and shall practice his work honestly, fairly and professionally.
3	Seven	Chapter Five	5-1-7	-	Amending Article and Adding Item	A Licensed Person shall always consider Client's benefit and endeavours to achieve his Clients' benefits and care for their investment. He shall particularly comply with the following: 1. He shall manage the	A <u>Licensed Person</u> shall always consider <u>Client's</u> benefit and endeavours to achieve his Clients' benefits and care for their investment. He shall particularly comply with the following: 1. He shall manage the <u>Client's</u> investments himself and shall not delegate any other <u>Licensed Person</u> , specialist licensed companies by a regulatory authority similar to the <u>Authority</u> may be delegated to manage <u>Client's</u> investments outside of the State of Kuwait subject to

#	Module	Chapter	Article	Item	Amendment Type	Text Before Amendment	Text After Amendment
						<p><u>Client's</u> investments himself and shall not delegate any other <u>Licensed Person</u> so to do. Subject to the <u>client's</u> approval given in writing, he may delegate specialist companies to manage <u>Client's</u> investments outside Kuwait in accordance with the relevant foreign markets' systems and without violating provisions of the <u>Law</u> and these <u>Bylaws</u>.</p>	<p><u>Client</u> approval in writing, in accordance with the relevant foreign markets' systems and without violating the provisions of the <u>Law</u> and these <u>Bylaws</u>.</p> <p>.....</p> <p>7. In the event that the <u>Licensed Person</u> enters into contract with specialist companies licensed by a regulatory authority similar to the <u>Authority</u> to manage the <u>Client's</u> investments outside the State of Kuwait, this contract shall include the mechanism of handing over <u>Clients' Funds</u> and <u>Clients' Assets</u> to the party concerned with holding, managing, or safe-keeping in accordance with the cases mentioned in item (6) of Article (5- 1- 9) of this Module.</p>
4	Seven	Chapter Five	5-1-9	6	Amending Article	Without prejudice to Article 4-1 of Module Eight	Without prejudice to Article (1-4) of Module Eight (Conduct of Business), each agreement concluded with a <u>Client</u> shall include in particular:

#	Module	Chapter	Article	Item	Amendment Type	Text Before Amendment	Text After Amendment
						<p>(Conduct of Business), each agreement concluded with a Client shall in particular:</p> <p>...</p> <p>6. Describe the way of delivering <u>Investment Portfolio</u> assets to the <u>Client</u>, immediately and without delay, in the event that the <u>Client</u> requires the same or upon non-renewal or termination of the contract between the <u>Licensed Person</u> and the <u>Client</u>.</p>	<p>...</p> <p>6. Describe the way of delivering the <u>Investment Portfolio's</u> components, including <u>Securities</u>, funds and any other assets, to the <u>Client</u>, or to the party concerned with holding, managing, or safe-keeping, in the event that the <u>Client</u> requires the same or upon non-renewal or termination of the contract between the <u>Licensed Person</u> and the <u>Client</u>, or upon the cancelation of the <u>Licensed Person's</u> license, taking into account the <u>Care of the Prudent Person</u>, immediately and without delay in the execution of the <u>Client's</u> requests and the delivery of the <u>Investment Portfolio's</u> components, taking into account the stipulations in Appendix (3) of this Module.</p> <p>.....</p>

#	Module	Chapter	Article	Item	Amendment Type	Text Before Amendment	Text After Amendment
5	Seven	Chapter Five	5-1-9	-	Amending Article and Adding Item	<p>Without prejudice to Article 4-1 of Module Eight (Conduct of Business), each agreement concluded with a Client shall in particular:</p> <p>...</p> <p>11. A statement that the Licensed Person and the Client shall abide by laws and regulations, especially the Law and these Bylaws.</p>	<p>Without prejudice to Article (1-4) of Module Eight (Conduct of Business), each agreement concluded with a <u>Client</u> shall include in particular:</p> <p>...</p> <p>11. Procedures followed by the <u>Licensed Person</u> in the event of termination of the contract at the request of the <u>Client</u> or the <u>Licensed Person</u>, or the cancelation of the licensed activity of the <u>Investment Portfolio Manager</u> by the <u>Authority</u>, provided they include - as a minimum - the following:</p> <p>A- Mechanism of delivering the funds and assets components of the <u>Client's Investment Portfolio</u> managed by the <u>Licensed Person</u> under the activity of <u>Investment Portfolio Manager</u> to be operated by another <u>Licensed Person</u>.</p> <p>B- Mechanism of delivering the <u>Investment Portfolio's</u> components, including assets, <u>Securities</u> and funds held, to the <u>Client</u> or to the party concerned with holding, managing, or safe-keeping.</p> <p>12. The <u>Licensed Person</u> and the <u>Client</u> shall abide by the laws and</p>



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							regulations, especially the <u>Law</u> and these <u>Bylaws</u> .
6	Seven	Five	5-2-2	-	Adding Item	-	A <u>Licensed Person</u> shall, when calculating the fees and commissions due to a him for managing an <u>Investment Portfolio</u> , consider the following:  ... 4. In the event that the <u>Licensed Person's</u> license is canceled by the <u>Authority</u> pursuant to Article (67) of the <u>Law</u> , he shall not calculate the fees and commissions for managing the <u>Investment Portfolio</u> until the <u>Authority's</u> resolution comes into force.
7	Seven	Five	5-3-3	-	Adding Article	-	The <u>Person</u> whose license is canceled by the <u>Authority</u> shall submit monthly reports on the condition of the portfolios subject to the closure, according to forms No. (1) and (2) stipulated in Appendix (2) of this Module. These reports are to be submitted within a period not exceeding 5 <u>Business Days</u> at the end of each month.
8	Seven	Chapter Five	5-4-1	-	Adding Item	-	A <u>Licensed Person</u> shall manage <u>Investment Portfolios</u> according to clear policies, which are consistent with the

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							<p>volume and nature of his activities and suitable to meet <u>Client's</u> investment needs. The guidance in particular shall include the following:</p> <p><u>First: Aspects related to all types of Investment Portfolios:</u></p> <p>...</p> <p>6. Detailed manual of procedures applicable in the event of termination of the contract at the request of the <u>Client</u> or the <u>Licensed Person</u>, or the cancelation of the <u>Licensed Person's</u> license by the <u>Authority</u>, taking into account the stipulation of Appendix (3) of this Module.</p> <p>...</p>
9	Seven	Five	5-5-2	-	Amending Article	The <u>Authority</u> may require any <u>Licensed Person</u> to provide any information or data or reports or additional papers which the <u>Authority</u> deems necessary for the fulfilment of all requirements and conditions	The <u>Authority</u> may require any <u>Licensed Person</u> and a <u>Person</u> whose license is canceled by the <u>Authority</u> , to provide any information or data or reports or additional papers which the <u>Authority</u> deems necessary for the fulfilment of all requirements and conditions stipulated in this chapter.

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						stipulated in this chapter.	
10	Seven	Chapter Six	6-1-6	-	Amending Article and Adding Item	<p>Without prejudice to Article 1-4 of Module Eight (Conduct of Business), each agreement concluded with a Client shall in particular:</p> <p>...</p> <p>7. A statement that the <u>Licensed Person</u> and the <u>Client</u> shall abide by laws and regulations, especially the <u>Law</u> and these <u>Bylaws</u>.</p>	<p>Without prejudice to Article (1- 4) of Module Eight (Conduct of Business), each agreement concluded with a <u>Client</u> shall include in particular:</p> <p>...</p> <p>7. Describe the manner of delivering <u>the Securities</u>, funds and any other assets to the <u>Client</u>, or to the party concerned with holding, managing, or safe-keeping, immediately and without delay, in the event that the <u>Client</u> requires the same or upon non-renewal or termination of the contract between the <u>Licensed Person</u> and the <u>Client</u>, or upon the cancelation of the <u>Licensed Person's</u> license, taking into account the <u>Care of the Prudent Person's</u> license, without delay in the execution of the Client's requests and the delivery of the <u>Investment Portfolio</u>, taking into account the stipulation of Appendix (3) of this Module.</p> <p>8. A statement that the <u>Licensed Person</u> and the <u>Client</u> shall abide by the laws and</p>

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							regulations, especially the <u>Law</u> and these <u>Bylaws</u> .
11	Seven	Chapter Seven	7-1-6	-	Amending Article and Adding Item	Without prejudice to Article (1- 4) of Module Eight (Conduct of Business), each agreement concluded with a Client shall include in particular: ... 7. A statement that the <u>Licensed Person</u> and the <u>Client</u> shall abide by laws and regulations, especially the <u>Law</u> and these <u>Bylaws</u> .	Without prejudice to Article (1- 4) of Module Eight (Conduct of Business), each agreement concluded with a <u>Client</u> shall include in particular: ... 7. Procedures followed by the <u>Licensed Person</u> in the event of termination of the contract at the request of the <u>Client</u> or the <u>Licensed Person</u> , or the cancellation of the licensed activity of the <u>Custodian</u> by the <u>Authority</u> , provided they include - as a minimum - the following: A- Mechanism of delivering the funds and assets of the <u>Client's Investment Portfolio</u> managed by the <u>Licensed Person</u> under the activity of <u>Custodian</u> to be operated by another <u>Licensed Person</u> . B- Mechanism for delivering the assets, <u>Securities</u> and funds held in custody, to the <u>Client</u> or to the party concerned with holding, managing, or safe-keeping them. Taking into account the stipulation of Appendix (3) of this Module.

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							8. A statement that the <u>Licensed Person</u> and the <u>Client</u> shall abide by the laws and regulations, especially the <u>Law</u> and these <u>Bylaws</u> .

## Annex No. (2)

### Appendix No. (3)

**(General Procedures for Handing Over of Clients' Funds and Clients' Assets to the Party Concerned with Holding, Managing or Safe-keeping in the event of the Licensed Person's License is Canceled by the Authority Pursuant to the Provisions of Article 67 of the Law)**

Steps of the Procedure	Procedures Required of the person whose license has been canceled
<b>First Stage: "Announcement and submission of the required documents to the Authority."</b>	<p>1. The Person whose license is canceled shall announce immediately – within a maximum of 3 Business Days from the date of issuance of the cancelation resolution in the following means of media:</p> <ul style="list-style-type: none"><li>▪ Company's website.</li><li>▪ All approved social media accounts and official, approved electronic applications of the company.</li><li>▪ Two local daily newspapers.</li></ul> <p>A Person whose license is canceled shall consider the following when advertising:</p> <ul style="list-style-type: none"><li>- The announcement shall include the Authority's resolution to cancel the company's license and evidence that the company's Clients are asked to hand over their funds and assets, and the end date of the hand over period.</li><li>- The Listed Company shall comply with the relevant disclosure rules in this regard in accordance with Module Ten "Disclosure and Transparency" of these Bylaws.</li></ul> <p>2. In the event of canceling the licensed activities of an Investment Portfolio Manager, the Person whose license is canceled must notify the specialized companies licensed to manage Clients' investments outside the State of Kuwait of the Authority's resolution and activate the terms of handing over Clients' funds and Clients' assets to the party concerned with holding, managing or safe-keeping contained in the contract concluded between the two parties.</p> <p>3. Based on the issuance of the Authority's resolution, the Person whose license is canceled shall – within a maximum of 10 Business Days from the date of the resolution - submit to the Authority a clear plan for the</p>

procedures that the company shall undertake to hand over the Clients' funds and Clients' assets related to Securities Activities and the time periods for implementing the hand over process, including the following:

- Mechanism for handing over Clients' funds and Clients' assets to the party concerned with holding, managing or safe-keeping.
  - Report that includes the basic data of its Clients - for the purpose of following up on the process of handing over Clients' funds and Clients' assets to the party concerned with holding, managing or safe-keeping - in particular the following:
    - Full name (Individual/Commercial name (company)).
    - Civil ID (Individual/ Commercial license number (Company))
    - Contact Information.
    - Client Balance.
    - A detailed statement of the Client's funds and Client's assets (inside and outside the State of Kuwait) stipulated in Article 1-2 of this Module.
    - Location of funds and assets (specify the country).
    - Any other data the company deems necessary to be mentioned in the plan.
  - Excluded from the above-mentioned report is a Person whose license to practice the activity of an Investment Portfolio Manager is canceled and is replaced with Reports Form 1 and 2 stipulated in Appendix (2) of this Module. The reports are considered for follow-up on the process of handing over Clients' funds and Clients' assets to the party concerned with holding, managing or safe-keeping.
4. The Person whose license is canceled shall update and submit a follow-up report of the process of handing over Clients' Funds and Clients' Assets to the party concerned with to holding, managing or safe-keeping, as referred to in item (3), to the Authority on a monthly basis.
5. In conjunction with the stipulations of this stage, the Person whose license is canceled shall communicate with his Clients according to what is agreed upon in the contracts concluded between them to implement the procedures for handing over Clients' funds and Clients' assets, and settling their obligations immediately or

	transferring them to another Person's account in accordance with the Client's instructions for each Client separately, according to the terms of contracting with Clients for each activity of the Securities Activities.
<p><b>Second Stage: "Implementing the Mechanism for Handing Over Clients' Funds and Clients' Assets."</b></p>	<p><b>General Provisions</b></p> <p>The Person whose license is canceled, during the implementation of the mechanism for handing over Clients' funds and Clients' assets, shall take the Care of a Prudent Person on the following aspects:</p> <ul style="list-style-type: none"> <li>▪ Make every effort of handing over Clients' funds and assets to the party concerned with holding, managing or safe-keeping, as soon as possible, taking into account the manner in which the hand over process will take place in accordance with the contracts and agreements concluded with the Client.</li> <li>▪ The responsibility of communicating with the Capital Markets Authority during the first stage until the final approval of the closing stage rests with the Compliance Officer registered with the Authority or his representative, provided that the Authority is notified in advance of the contact person's data.</li> <li>▪ Providing all information and data to the Authority and the concerned authorities in the hand over process in a clear and accurate manner.</li> <li>▪ Notifying the Authority immediately of any material developments that may delay the hand over process.</li> <li>▪ Preserving supporting documents regarding the Client's receipt of his funds and assets or the receipt of the party concerned with holding, managing or safe-keeping.</li> </ul>
<p><b>The Third Step: "Closing"</b></p>	<p>1. In the event that the Person whose license is canceled is committed to carrying out the hand over process within the period specified by the Authority, the final report of the handover process and clearance certificates shall be submitted from the concerned authorities inside and outside the State of Kuwait (if any).</p> <p>2. In the event that the Person whose license is canceled does not comply with the implementation of the hand over process within the period specified by the</p>



	<p>Authority, for several reasons, for example, but not limited to, failure to contact some of the Licensed Person's clients, the Person whose license has been canceled shall keep the unclaimed Funds and Assets of his Clients with the obligation to ensure the continuity of separating those funds and assets from the company's funds and assets.</p> <p>3. The Authority has the right to issue instructions to transfer Clients' Funds and Clients' Assets to another Licensed Person to ensure the safety of Clients' Funds and Clients' Assets in the event that the person whose license has been canceled is unable to complete the hand over process for any of the reasons that may arise, if the Authority deems it necessary.</p>
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