



Suruhanjaya Sekuriti
Securities Commission

GUIDELINES ON PERFORMANCE OF SUPERVISORY FUNCTIONS AT GROUP LEVEL FOR CAPITAL MARKET INTERMEDIARIES

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1.0 DEFINITION

1.01 In these guidelines–

auditor	means an approved company auditor within the meaning of the <i>Companies Act 1965</i> .
BAFIA	means the <i>Banking and Financial Institutions Act 1989</i> .
books	shall have the same meaning as provided in the <i>Securities Industry Act 1983 (SIA)</i> , <i>Securities Commission Act 1993 (SCA)</i> and <i>Futures Industry Act 1993 (FIA)</i> .
compliance officer	shall be the person undertaking the compliance function of the market intermediary and this expression wherever used herein shall be consistent with such terms as adopted in the rules of the Exchange and other relevant guidelines.
entity	shall mean the company within the group where the supervisory functions are undertaken on behalf of the market intermediary, notwithstanding that the said entity is located outside Malaysia.
Exchange	shall include Bursa Malaysia Berhad, Bursa Malaysia Securities Berhad, Bursa Malaysia Derivatives Berhad and any of Bursa Malaysia Berhad's subsidiaries not specifically mentioned herein, either collectively or individually, as the context shall require.
external party	shall mean an auditor (as defined above) who is not appointed as the market intermediary's statutory auditor.

group	means a market intermediary's ultimate holding company (whether public-listed company or otherwise) and all the subsidiaries of the said ultimate holding company and excluding subsidiaries of the market intermediary.
head of compliance	means the person responsible for overseeing compliance matters on a group-wide basis.
investment bank	shall mean the entity that is licensed both as a dealer pursuant to section 12 of the SIA and a merchant bank pursuant to section 5 of the BAFIA, and duly established pursuant to the <i>Guidelines on Investment Banks</i> jointly issued by Bank Negara Malaysia and the Securities Commission (SC).
market intermediary	shall mean— <ul style="list-style-type: none">(a) a dealer who is licensed pursuant to the SIA and a participating organisation, as defined in the rules of Bursa Malaysia Securities Berhad;(b) a futures broker who is licensed pursuant to the FIA and a trading participant, as defined in the business rules of Bursa Malaysia Derivatives Berhad;(c) a fund manager who is licensed pursuant to the SIA;(d) a futures fund manager who is licensed pursuant to the FIA;(e) a futures trading adviser who is licensed pursuant to the FIA;(f) an investment adviser who is licensed pursuant to the SIA; and/or

- (g) a unit trust management company or a “management company” as defined in the SCA and that is approved by the SC.
- rules shall have the same meaning as provided in the SIA and the same meaning assigned to the expression “business rules” in the FIA.
- service level agreement referred to herein shall mean a legal agreement or contract between the market intermediary and the relevant entity or the external party, as the case may be.
- supervisory functions means middle office functions, which shall include functions performed by the market intermediary with regards to compliance, risk management and internal audit.

2.0 INTERPRETATION

2.01 In these guidelines, unless the context otherwise requires–

- (a) words importing the singular number shall also include the plural and vice versa;
- (b) words importing the masculine gender shall also include the feminine and neuter genders and vice versa; and
- (c) words importing the term “persons” shall also include companies and corporations.

2.02 A reference in these guidelines to–

- (a) a statute or statutory provision shall be deemed to include all modifications, re-enactments or consolidation thereof and regulations, rules or other statutory instruments made pursuant thereto; and
- (b) a rule, directive or guidelines of the Exchange, exchange holding company, the central depository, the clearing house or such other relevant party shall be deemed to include all modifications, variations, amendments, supplements thereto or substitutions therefore.

- 2.03 Where a word or phrase is given a defined meaning in these guidelines, any other grammatical form in respect of such word or phrase has a corresponding meaning.
- 2.04 The headings and sub-headings in these guidelines are inserted for convenience of reference only and shall not affect the interpretation and construction of the provision therein.
- 2.05 These guidelines are in addition to and not in derogation of any provision of any law or rules.
- 2.06 These guidelines shall not apply to investment banks, unless otherwise stipulated in any guidelines as may be amended or issued from time to time by the SC or any other relevant regulatory authority.

3.0 GENERAL REQUIREMENTS FOR THE PERFORMANCE OF SUPERVISORY FUNCTIONS AT GROUP LEVEL

The supervisory functions of a market intermediary may be carried out at group level, in the manner stipulated in these guidelines, the relevant rules and subject to the following requirements:

A. Legal and Regulatory Obligations

- 3.01 The primary obligation, accountability and responsibility with regards to any regulatory requirements and compliance with all relevant securities laws, regulations, guidelines, licensing conditions and rules, shall remain at all times with the market intermediary, its board of directors and management, despite the supervisory functions being performed at group level or the internal audit function being performed by the external party, as the case may be.
- 3.02 The market intermediary shall monitor the performance of the entity that is carrying out the supervisory functions at group level, or the external party undertaking the internal audit function, to ensure that such supervisory function is performed in the manner required by all relevant securities laws, regulations, guidelines, licensing conditions and rules.

- 3.03 The performance of the supervisory functions at group level or the internal audit function performed by the external party, as the case may be, shall not in any way interfere with the ability of the market intermediary to fulfil its legal and regulatory obligations, and effectively and efficiently perform any of its activities or impede the SC and/or the Exchange in carrying out their regulatory oversight functions.
- 3.04 The SC and/or the Exchange may at any time require or direct the relevant market intermediary to assume the said supervisory functions internally in the event the SC and/or the Exchange are not satisfied for any reason whatsoever, with the performance of the supervisory functions at group level or the internal audit function being performed by the external party, as the case may be, without any compensation whatsoever due to the market intermediary, the entity or the external party.

B. Confidentiality of Clients' Information

- 3.05 The market intermediary shall procure from the entity and/or the external party, as the case may be, a written undertaking to maintain the secrecy and confidentiality of the documents and information of clients that the entity and/or the external party shall have access to, from any intentional or inadvertent disclosure to unauthorised person(s).
- 3.06 Dealers shall ensure that the requirements stipulated by sections 43 and 45 of the *Securities Industry (Central Depositories) Act 1991* in relation to the performance of the supervisory function at group level are duly observed.
- 3.07 The market intermediary shall ensure that any requirements pertaining to the confidentiality of clients' information appearing in the relevant laws, rules, regulations and guidelines are adhered to at all times.
- 3.08 The market intermediary shall ensure that the entity's and/or the external party's security policies, procedures and controls enable the protection of confidentiality and security of clients' information.

C. Access to Books, Records And Documents

- 3.09 The market intermediary shall ensure that the SC and the Exchange, and/or their agents shall at all times–
- (a) be able to, without any hindrance, conduct examination or inspection activities on the supervisory functions of the market intermediary;
 - (b) have access to the books, records and documents of the entity and/or the external party relating to the performance of the supervisory functions;
 - (c) be able to obtain copies of any books, records and documents; and
 - (d) be able to obtain promptly other information concerning activities that are relevant for the performance of their regulatory oversight functions.
- 3.10 The market intermediary shall procure a written undertaking from the entity and/or the external party to the effect that SC and/or the Exchange shall without any hindrance, reserve the right to conduct examination or inspection at the entity's and/or external party's premises, including examining their books and documents, and having access to and obtain copies of the relevant books, records and documents as and when required.
- 3.11 Where the entity performs supervisory functions for the market intermediary and other subsidiaries or companies within the group, such as financial institutions or banks, or where the external party performs internal audit function for the market intermediary, the market intermediary shall ensure that the SC and/or the Exchange shall not, in any manner, be hindered from the performance of their regulatory functions and having full access to books, records and documents, especially due to secrecy provisions contained in BAFIA. In this respect, the market intermediary shall ensure that all necessary measures are in place to facilitate the performance of the SC's and/or the Exchange's regulatory functions and for their full access to books, records and documents prior to placing its supervisory functions within the entity or the external party, as the case may be.

D. Service Level Agreement

- 3.12 Where the supervisory functions are to be performed at group level, the relevant market intermediary and the entity shall enter into a service level agreement to formalise the arrangement between both parties, which shall explicitly and carefully define the roles, responsibilities and obligations of the entity in carrying out such functions.
- 3.13 Where the market intermediary's internal audit function is to be outsourced to an external party, the market intermediary shall enter into a service level agreement with such external party, in the manner stipulated in clause 3.12 hereinabove.
- 3.14 The aforesaid service level agreement shall, *inter alia*, contain the following minimum terms and conditions which shall include a representation and an undertaking by the entity or the external party concerned to have the capabilities to carry out the said relevant function(s) in the following manner:
- (a) The entity or the external party has adequate resources and ability to undertake the relevant function(s) efficiently at all times;
 - (b) The entity or the external party has adequate expertise to perform the relevant function(s) as required in line with the business of the market intermediary;
 - (c) The entity or the external party has the ability to manage any conflicts or potential conflicts of interest in the course of performance of the relevant function(s); and
 - (d) The entity or the external party shall ensure compliance with securities laws, regulations, guidelines, licensing conditions and rules.

E. Business Continuity

- 3.15 Where the supervisory functions are performed at group level or the internal audit function is performed by the external party, as the case may be, the market intermediary shall ensure its business continuity as stipulated in the rules and/or guidelines shall not in any way be impaired by such arrangement.

- 3.16 The market intermediary shall have in place a contingency plan in order to mitigate any discontinuity and disruption to the performance of the supervisory functions in the event the service level agreement or part thereof is terminated or the function cannot be performed by the entity or the external party for any reason whatsoever.

4.0 COMPLIANCE FUNCTION

- 4.01 The board of directors and management of the market intermediary shall retain ultimate responsibility for proper supervision and effective compliance arising from the said function being performed at group level which shall, *inter alia*, include–
- (a) compliance with securities laws, regulations, guidelines, licensing conditions and rules;
 - (b) review of monthly compliance report;
 - (c) review of relevant periodic reports especially where there are any non-compliance and/or adverse findings reported;
 - (d) taking necessary remedial actions to remedy any non-compliance; and
 - (e) handling of and taking appropriate actions in relation to complaints.
- 4.02 The market intermediary shall ensure that all systems are in place to ensure that the market intermediary's compliance function can be effectively and efficiently performed at group level, including ensuring sufficiency of resources, expertise and effective day-to-day compliance.
- 4.03 The relevant market intermediary, subject to the applicable rules or guidelines, shall ensure that at least one compliance officer is appointed and dedicated to undertake its compliance function. Such dedicated compliance officer shall be registered with the SC and/or the Exchange, as the case may be, although the compliance officer may be physically located at and employed by the entity or the group.
- 4.04 The said dedicated compliance officer shall abide by all securities laws, regulations, guidelines, licensing conditions and rules. The SC and/or the Exchange may, pursuant to their powers, institute any relevant

action (including deregistration) against the market intermediary as principal and/or the compliance officer (even where such compliance officer is physically located at and employed by the entity or group) for failure to adhere to any securities laws, regulations, guidelines, licensing conditions and rules.

- 4.05 The head of compliance shall not be placed in a position where there are possible conflicts of interest between the compliance responsibilities and any other responsibilities. For the avoidance of doubt, in the event any such situation gives rise to conflicts of interest or potential conflicts of interest, the interest of the market intermediary shall prevail at all times.

5.0 RISK MANAGEMENT FUNCTION

- 5.01 Where the risk management function is performed at group level, the market intermediary, its board of directors and management shall retain ultimate responsibility for the effective management of risks, which shall, *inter alia*, include–

- (a) periodic review of its risk management reports and identification of new areas of material risks as they arise or which may arise;
- (b) identification of the overall business strategy, risk profile and measures to mitigate the impact thereon; and
- (c) identification of risk exposures of the market intermediary in relation to the business of the same and implementation of appropriate risk mitigation strategies.

- 5.02 In order to ensure that the business conduct, integrity and the internal controls of the market intermediary are not compromised or weakened by the performance of the risk management function at group level, the board of directors and management shall be fully aware of and understand the risks involved and the possible impact on the market intermediary. The market intermediary shall accordingly establish and implement appropriate risk management or risk mitigation strategies.

6.0 INTERNAL AUDIT FUNCTION

- 6.01 The internal audit function of the market intermediary may be performed at the group level or be outsourced by the market intermediary to an external party.
- 6.02 Where the internal audit function of the market intermediary is outsourced to an external party, the market intermediary shall ensure that such external party–
- (a) is not the market intermediary's current appointed statutory auditor; and
 - (b) shall, at all times, perform the function in an independent, competent and effective manner.
- 6.03 Where the internal audit function is performed at the group level or by the external party, the market intermediary, its board of directors and management shall retain ultimate responsibility for the effective performance of such function and shall, *inter alia*, ensure that–
- (a) the internal audit plans and programmes are appropriately developed to commensurate with the market intermediary's activities, and appropriate focus and resources shall be allocated for the market intermediary;
 - (b) the internal audit plans and programmes shall continuously be reviewed and where necessary be adjusted accordingly to reflect any significant changes in the market intermediary's business environment, structure, activities, risk exposures or systems; and
 - (c) the activities of internal audit are consistent with the long-term goals of the market intermediary and are in line with its internal controls, policies and procedures.
- 6.04 Albeit the internal audit function is placed at group level or has been outsourced to an external party, there shall be regular communication between the internal audit department or external party and the directors and management of the market intermediary, particularly, with regards to audit findings and improvements that may be required at the market intermediary's level.

- 6.05 All findings of the internal audit shall be promptly reported to the board of directors and management in order to take appropriate corrective measures.

7.0 APPLICATION PROCEDURE

- 7.01 Where a market intermediary intends to carry out its supervisory functions at group level or outsource its internal audit function to an external party, the said market intermediary shall submit a written application in the following manner:

- (a) Dealers and futures brokers shall submit their application to the Exchange, and the Exchange shall review such application in consultation with the SC; and
- (b) A market intermediary that is licensed or approved as a fund manager, futures fund manager, unit trust management company, investment adviser or a futures trading adviser shall submit a written application directly to:

The Director
Market Supervision Division
Securities Commission
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur.

- 7.02 The application submitted by the market intermediary shall, *inter alia*–
- (a) state the objectives for placing the supervisory functions at group level or for outsourcing the internal audit function to the external party, as the case may be;
 - (b) clearly demonstrate the proposed group supervisory structure to be adopted;
 - (c) expressly state that the arrangement between the market intermediary and the entity or the external party, as the case may be, is in compliance with all relevant securities laws, regulations, guidelines, licensing conditions and rules, and that measures are in place to ensure compliance on a continuous basis; and

- (d) include a copy of the duly executed service level agreement.
- 7.03 The SC and/or the Exchange may request for any further information and/ or documents and impose any conditions deemed fit in granting their approval for such application.
- 7.04 Dealers and futures brokers shall notify the Exchange, while fund managers, futures fund managers, unit trust management companies, investment advisers and futures trading advisers shall notify the SC of any changes to the particulars of the entity or the external party, the location where the supervisory functions are performed and any changes, variations, additions or amendments to the service level agreement or the arrangement between the market intermediary and the entity or the external party, as the case may be.