



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES ON CONDUCT FOR CAPITAL MARKET INTERMEDIARIES

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GUIDELINES ON CONDUCT FOR CAPITAL MARKET INTERMEDIARIES

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Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Conduct for Capital Market Intermediaries* (Guidelines) is issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines aim to foster good business conduct and a good corporate culture within all capital market intermediaries that is centred upon the fair treatment of clients and to promote trust in capital market intermediaries.
- 1.03 In this regard, these Guidelines set out the minimum standards of conduct that must be adhered to by a capital market intermediary and its representatives, insofar as applicable, when carrying on a capital market related service.

Chapter 2

APPLICABILITY

- 2.01 These Guidelines apply to a capital market intermediary and its representatives who carry on or provide a capital market related service as defined in paragraph 4.01.
- 2.02 A capital market intermediary and its representatives must carry on any capital market related service–
- (a) with honesty and fairness;
 - (b) with care, skill and diligence;
 - (c) by managing or mitigating any actual or potential conflicts of interest that may affect its clients' interest;
 - (d) with proper safeguards in place to protect clients' assets and information; and
 - (e) in a manner which promotes open and effective communication with clients and regulators at all times.
- 2.03 As the above are the *minimum* standards of conduct expected of a capital market intermediary and its representatives, compliance with these standards shall not be excluded or modified by a capital market intermediary through any provision, clause or term contained in any agreement, contract or document provided to clients.
- 2.04 To assist with the interpretation and application of the requirements under these Guidelines, Guidance has been provided, where appropriate. Any departure from the Guidance will be taken into consideration in the SC's assessment on whether a breach of these Guidelines has occurred.

Chapter 3

RELATED PROVISIONS

- 3.01 These Guidelines are in addition to and not in derogation of any other requirements provided for under securities laws or any other guidelines issued by the SC.
- 3.02 Where a capital market intermediary is subject to more than one conduct requirement, the strictest requirement shall apply.
- 3.03 For avoidance of doubt, compliance with these Guidelines does not relieve any person from other obligations which may be imposed on the person under any other written law or by any other relevant regulator.

Chapter 4

DEFINITIONS

4.01 Unless otherwise defined below, all words used in these Guidelines shall have the same meaning as defined in the CMSA. In these Guidelines, unless the context otherwise requires—

CMSL means the Capital Markets Services Licence granted by the SC pursuant to section 61 of the CMSA;

capital market intermediary means—

- (a) a CMSL holder;
- (b) a registered person; or
- (c) a person registered under section 76A of the CMSA to provide capital market services;

capital market related service means the carrying on of any regulated activity or provision of capital market services;

clients means any person for whom or on whose behalf a capital market intermediary carries on or will carry on a capital market related service;

representatives means a person, by whatever name called, in the direct employment of, or acting for, or in arrangement with, a capital market intermediary, who carries on for that capital market intermediary any capital market related service, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

senior management means—

- (a) a person, by whatever name called, having the authority and responsibility for the planning, directing or controlling the activities of the entity, including the chief executive and chief financial officer; and
- (b) any other person performing any function as may be specified by the SC.

Chapter 5

HONESTY AND FAIRNESS

- 5.01 A capital market intermediary and its representatives, in carrying on a capital market related service, must act with honesty and fairness, and in the best interests of their clients to safeguard the integrity of the capital market.
- 5.02 Pursuant to paragraph 5.01, a capital market intermediary and its representatives must, among others–
- (a) treat all clients in a consistent and fair manner;
 - (b) avoid engaging in any misleading or deceptive acts and avoid making or attempting to make any false or misleading statement including making or submitting any falsified documents;
 - (c) have regard for the informational needs of their clients and communicate information to clients in a manner that is timely, clear, fair and not misleading;
 - (d) have regard for the particular circumstances of each client when advising on a product or service and to offer products or services that are fit for such client's purpose;
 - (e) ensure that clients are sufficiently informed of the risks associated with the product or service that is being recommended;
 - (f) disclose to clients all fees and charges payable by the client and the basis for such fees and charges including any charges that may be payable in the future and which amount is not known at the time of the transaction;
 - (g) ensure that any performance and reward strategies relating to representatives do not result in clients being provided with an unsuitable product or service;
 - (h) deal with clients' complaints and disputes in a fair, transparent, timely and efficient manner which includes ensuring that–
 - (i) clients are kept abreast of the review of a complaint regularly; and
 - (ii) complete records of all complaints received and the outcome of the review of such complaints are kept;
 - (i) inform clients of their right to compensation or other forms of redress including their right to refer their disputes to an alternative dispute resolution body (if applicable) such as the Securities Industry Dispute Resolution Center (SIDREC);

- (j) avoid engaging in any unethical practices; and
- (k) avoid acting in a manner that would actually or potentially bring the capital market into disrepute.

Chapter 6

CARE, SKILL AND DILIGENCE

- 6.01 A capital market intermediary and its representatives must exercise reasonable care, skill and diligence when carrying on a capital market related service.
- 6.02 In exercising such care, skill and diligence, the capital market intermediary and its representatives must, among others, take into account the following:
- (a) The client's characteristics, investment objectives, financial situation and any particular needs of the client, as the case may be; and
 - (b) The nature of the product or service provided and the circumstances in which the product or service is provided.
- 6.03 A capital market intermediary and its representatives must exercise reasonable care, among others, when—
- (a) providing information to clients; and
 - (b) making a recommendation or giving an opinion relating to a product or service including the procedure and costs for acquiring or disposing of a product or service.
- 6.04 A capital market intermediary must also ensure that its representatives—
- (a) are competent and have the necessary skills and expertise reasonably expected of a person carrying on such capital market related services;
 - (b) undertake continuous training to maintain and update their knowledge and skills; and
 - (c) are appropriately authorised under securities laws or registered with the capital market intermediary to carry on any capital market related service.

Chapter 7

CONFLICT OF INTEREST

7.01 A capital market intermediary and its representatives, as the case may be, must use their best endeavours to identify and avoid any actual or potential conflict of interest.

Guidance to paragraph 7.01

A conflict of interest may arise as between–

- (a) the capital market intermediary and its clients;
- (b) the capital market intermediary's representatives and its clients; or
- (c) a client and another client.

7.02 Where a conflict of interest cannot be avoided, the capital market intermediary must have adequate arrangements in place to effectively manage or mitigate the conflict of interest including–

- (a) disclosing any material interest or conflict to clients; and
- (b) taking all reasonable steps to ensure fair treatment of clients before proceeding with the transaction.

7.03 Any disclosure made to address an actual or potential conflict of interest must be timely and accurate to enable clients to make an informed assessment as to whether such conflict is managed appropriately and not detrimental to the clients' interests.

7.04 A capital market intermediary must, among others–

- (a) give priority to the clients' interests where there is a conflict between the clients' interests and its own (if any);
- (b) manage any conflict of interest fairly;
- (c) disclose to a potential client any actual or potential conflict of interest which may affect the fair treatment of the client including where a capital market intermediary or its representatives pays or receives any fees, commission or benefit from third parties in respect of its product or service; and
- (d) ensure that any fees, commission or benefit paid to its representatives does not result in the representatives recommending any unsuitable product or service to the client.

Chapter 8

CLIENTS' ASSETS AND INFORMATION

8.01 A capital market intermediary and its representatives must carry on a capital market related service with proper safeguards in place to protect clients' assets and information.

Clients' assets

- 8.02 A capital market intermediary that receives or holds clients' assets must–
- (a) have effective controls for identifying, safeguarding and accounting for clients' assets;
 - (b) provide regular reports to clients in relation to assets held on the clients' behalf;
 - (c) ensure clients' assets are segregated from the capital market intermediary's assets;
 - (d) have effective mechanisms to protect clients' assets from any risk of loss arising from misappropriation of funds, fraud or the insolvency of the capital market intermediary; and
 - (e) inform clients about the capital market intermediary's 'client asset protection' policies including details relating to claims on any interest earned.

Clients' information

- 8.03 A capital market intermediary must have effective mechanisms to protect clients' information from any risk of misuse and unauthorised disclosure.
- 8.04 A capital market intermediary must not use clients' information for its own or a third party's interests nor disclose clients' information to an unauthorised party except under circumstances required by law or where clients permit such disclosure of their information.
- 8.05 A capital market intermediary must have in place appropriate mechanisms for dealing with any unauthorised disclosure of clients' information including where necessary, timely reporting and effective co-operation with the relevant authorities.

Chapter 9

COMMUNICATION WITH CLIENTS AND REGULATORS

9.01 A capital market intermediary and its representatives must at all times carry on a capital market related service in a manner which promotes open and effective communication with clients and regulators.

Communication with clients

- 9.02 A capital market intermediary and its representatives, as the case may be, must–
- (a) be accessible to clients within a capital market intermediary's business or operation hours to ensure that clients are attended to in a timely and efficient manner;
 - (b) communicate with its clients proactively, regularly and in clear and simple language; and
 - (c) review modes of communication regularly to ensure that information is circulated in the most efficient, effective and fair manner possible.
- 9.03 A capital market intermediary and its representatives must ensure that any disclosure of information, among others, is–
- (a) clear, accurate and contains sufficient information to enable clients to make informed investment decisions;
 - (b) not false, misleading or deceptive and does not omit material information; and
 - (c) balanced and fair.

Communication with regulators

- 9.04 A capital market intermediary and its representatives must–
- (a) communicate with the SC and other regulators in an open and professional manner;
 - (b) provide the SC with documents and information when requested and within the time limits prescribed, or where such time limit is not prescribed, within a reasonable time;
 - (c) comply with any directive issued by the SC or take any action required by the SC;

- (d) comply with all terms and conditions imposed on the capital market intermediary or its representatives upon being licensed or registered, and to only act within the authority permitted of the capital market intermediary or its representatives, as the case may be;
- (e) upon becoming aware of any potential breaches of securities laws including guidelines or directives issued or any terms or conditions imposed by the SC, promptly report the matter to the SC; and
- (f) comply with all reporting obligations and submit accurate reporting to the SC in a timely manner.

Chapter 10

COMPLIANCE

- 10.01 A capital market intermediary's board of directors and senior management, where applicable, are responsible for establishing, implementing and maintaining effective controls, policies and procedures for ensuring compliance with these Guidelines by the capital market intermediary and its representatives.
- 10.02 The controls, policies and procedures established must be appropriate to and commensurate with the nature, scale and complexity of the business of a capital market intermediary.
- 10.03 The controls, policies and procedures must be reviewed, and its implementation be monitored, on a regular basis to ensure they remain relevant and effective.
- 10.04 A capital market intermediary's board of directors and senior management must ensure that the representatives of the capital market intermediary observe the controls, policies and procedures that are duly established. To this end, a capital market intermediary must ensure that its representatives are aware of their obligations under these Guidelines.

Chapter 11

THE SC'S ASSESSMENT ON COMPLIANCE WITH THESE GUIDELINES

- 11.01 The SC expects these conduct requirements to be adequately communicated to the representatives of a capital market intermediary and for any breaches to be identified and appropriately acted upon.
- 11.02 In determining a capital market intermediary's compliance with these Guidelines, the SC will look at the following factors, which are non-exhaustive and will help to form a good conduct profile for a capital market intermediary–
- (a) The capital market intermediary and its representatives act honestly and fairly, fulfil their responsibilities and obligations and act with integrity;
 - (b) The capital market intermediary and its representatives have the skills and expertise to competently provide appropriate products or services to clients and meet professional standards of care;
 - (c) The clients' complaints and disputes are handled in a fair, transparent, timely and efficient manner;
 - (d) The capital market intermediary's compliance culture encourages and recognises good conduct to ensure that the capital market intermediary and its representatives will act in the best interests of their clients;
 - (e) The capital market intermediary has in place an effective consequence management framework that deals with non-compliance of these Guidelines or any other relevant guidelines; and
 - (f) The capital market intermediary and its representatives carry on a capital market related service in a manner that instils–
 - (i) clients' trust in the capital market intermediary; and
 - (ii) confidence in the capital market.