

CAPITAL MARKETS AND SERVICES ACT 2007  
CAPITAL MARKETS AND SERVICES REGULATIONS 2007

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## CAPITAL MARKETS AND SERVICES ACT 2007

### CAPITAL MARKETS AND SERVICES REGULATIONS 2007

IN exercise of the powers conferred by sections 141, 151 and 378 of the Capital Markets and Services Act 2007 [Act 671], the Minister makes the following regulations:

#### PART I

##### PRELIMINARY

##### **Citation and commencement**

1. (1) These regulations may be cited as the **Capital Markets and Services Regulations 2007**.

(2) These Regulations come into operation on 28 September 2007.

#### PART II

##### INCIDENTAL REGULATED ACTIVITY

##### **Incidental regulated activity**

2. (1) Subject to subregulation (2), a person who is licensed to carry on a particular regulated activity specified in column (1) of the First Schedule may carry on other incidental regulated activity as specified in column (2) of the Schedule.

(2) The incidental regulated activity shall be carried out solely incidental to the licensed regulated activity and shall be deemed to be carried out as such if the licensed person complies with all the requirements specified by the Commission in relation to the incidental regulated activity.

## PART III

### DEPOSITS

#### **Application of this Part**

3. This Part shall apply to the holder of a Capital Markets Services Licence who carries on the—

- (a) business of dealing in securities but who is not a participating organisation; or
- (b) business of fund management.

#### **Deposit**

4. (1) A deposit lodged with the Commission pursuant to section 70 of the Act shall be accompanied with the form as determined by the Commission.

(2) The deposit shall be paid in the following manner—

- (a) in cash or in the form of a bank draft made payable to the Commission;
- (b) by lodgement of a fixed deposit certificate in the name of the Commission for the account of the holder of a Capital Markets Services Licence; or
- (c) by lodgement of a bank guarantee or letter of credit which is issued by a licensed institution upon terms and conditions as may be approved by the Commission.

(3) Where the deposit paid is in the form of a lodgement of a bank guarantee or a letter of credit pursuant to paragraph (2)(c), the holder of a Capital Markets Services Licence shall ensure that the bank guarantee or the letter of credit is at all times valid and is renewed before its expiry.

(4) Where the holder of a Capital Markets Services Licence renews the bank guarantee or the letter of credit as required under subregulation (3), the holder shall lodge the renewed bank guarantee or letter of credit with the Commission.

(5) The Commission shall open and maintain one or more accounts at a licensed institution into which it shall pay all monies received as deposit.

#### **Maintenance of deposit**

5. (1) Where the amount of deposit lodged by the holder of a Capital Markets Services Licence in the form of cash is at any time reduced to below one hundred and fifty thousand ringgit, the holder of a Capital Markets Services Licence shall lodge such additional sum as deposit so that the total deposit lodged is one hundred and fifty thousand ringgit.

(2) Where the amount of deposit lodged by the holder of a Capital Markets Services Licence is in the form of a bank guarantee, letter of credit or where an insurance contract has been entered for the indemnification of claims against the applicant, the holder must at all times ensure and maintain that the deposit which is in the form of a bank guarantee, letter of credit or an insurance contract, as the case may be, is sufficient to satisfy claims made against the holder up to an amount of one hundred and fifty thousand ringgit.

#### **Fixed deposit account**

6. (1) The Commission may deposit all monies lodged pursuant to section 70 of the Act which is not immediately required for any other purposes under these Regulations into a fixed deposit account.

(2) Where the Commission has deposited the monies into a fixed deposit account under subregulation (1), it shall as soon as practicable after the end of the year, by notice in writing to a holder of a Capital Markets Services Licence —

- (a) declare a rate of interest to be paid for that year in respect of the deposit;
- (b) specify in writing the manner and time of payment of that interest; and
- (c) specify in writing an amount to be charged for administrative expenses incurred by the Commission in administering that deposit.

(3) As soon as practicable after the notices are issued under subregulation (2), the Commission shall, after deducting the amount charged in respect of its administrative expenses, pay to the holder of a Capital Markets Services Licence, the appropriate amount of interest due in respect of the deposit for the year in question.

### **Utilization of deposit**

7. (1) A deposit lodged with the Commission shall be utilized for the purposes of compensating a person who suffers monetary loss by reason of—

- (a) defalcation or fraudulent misuse of monies or other property, by any director, officer, employee or representative; or
- (b) insolvency,

of the holder of a Capital Markets Services Licence.

(2) The monetary loss referred to under subregulation (1) is loss suffered in respect of monies or other property that was entrusted to or received by-

- (a) a holder of a Capital Markets Services Licence, in connection with its business; or
- (b) any director, officer, employee or representative of a holder of a Capital Markets Services Licence,

for or on behalf of the person suffering the loss or another person or because the holder of a Capital Markets Services Licence was a trustee of the monies or other property.

(3) Subject to these Regulations, every person who suffers monetary loss referred to in subregulation (1) shall be entitled to claim as compensation from the relevant deposit of one hundred and fifty thousand ringgit lodged with the Commission.

(4) The Commission may, if satisfied with the assessment of documents or such other information which are presented in respect of a claim, allow a claim notwithstanding that there has been no prosecution or conviction in respect of the defalcation or fraudulent misuse of monies or other property.

(5) Where the holder of a Capital Markets Services Licence becomes insolvent and a liquidator is appointed in respect of the holder, the Commission shall pay the deposit together with interest, if applicable, to the liquidator.

## **Procedure for claiming compensation**

8. (1) The Commission may cause to be published in not less than two daily newspapers, published and circulated generally in Malaysia, one in the national language and another in the English language, a notice in such form as may be specified by the Commission, specifying a date, not being earlier than three months after the publication of the notice or such other longer period as may be specified in the notice, on which or before which date claims for compensation in relation to the deposit lodged by the person specified in the notice may be made.

(2) Where a notice under subregulation (1) has been published, a claim for compensation shall be made in writing to the Commission on or before the date specified in the notice and any claim which is not so made shall be disallowed unless the Commission determines otherwise.

(3) Where no notice under subregulation (1) has been published, a claim shall be made in writing to the Commission within six months after the person making the claim becomes aware of the defalcation or fraudulent misuse of monies or other property by any director, officer, employee or representative and any claim which is not so made shall be disallowed unless the Commission determines otherwise.

(4) Upon the receipt of a claim under subregulation (3), the Commission shall forthwith publish a notice in accordance with subregulation (1) and subregulation (2) shall apply.

(5) The Commission shall, subject to these Regulations and after such inquiry as it thinks fit, allow or disallow any claim.

(6) Where the Commission allows any claim, it shall—

(a) determine the amount of claim payable;

- (b) determine the time of payment of the amount referred to in paragraph (a); and
- (c) pay or cause to be paid the amount from the deposit of the relevant holder of a Capital Markets Services Licence to the person making the claim.

(7) Subject to subregulation (8), the amount which any person shall be entitled to claim as compensation under these Regulations shall be the amount of actual loss suffered by him and any reasonable costs of and disbursements incidental to the making and proof of his claim less the value of all monies or other benefits received or receivable by him from any source other than the deposits under these Regulations in deduction of the loss.

(8) In allowing the claim under paragraph (6), the Commission shall have regard to the following provisions:

- (a) where only one amount is determined and that amount does not exceed the deposit, the amount shall be paid in full;
- (b) where two or more amounts are determined and those amounts do not exceed the deposit in the aggregate, those amounts shall be paid in full;
- (c) where only one amount is so determined and that amount exceeds the deposit only that much of the amount as does not exceed the deposit shall be payable; and
- (d) where two or more amounts are determined and those amounts exceed the deposit in the aggregate, only that much of each such amount as bears to that amount the

same proportion as that amount bears to the deposit shall be paid.

### **Return of deposit**

9. (1) The Commission shall return the deposit paid by any holder of a Capital Markets Services Licence if –

- (a) a Capital Markets Services Licence is revoked under section 72 of the Act;
- (b) the renewal of a Capital Markets Services Licence is refused under section 64 of the Act; or
- (c) a Capital Markets Services Licence is surrendered under section 81 of the Act.

(2) For the purposes of subregulation (1), the Commission shall upon being satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the holder of a Capital Markets Services Licence return –

- (a) the deposit together with interest, if applicable, less any administrative expenses; or
- (b) the balance of the deposit together with interest, if applicable, less any administrative expenses if-
  - (i) any part of the deposit has previously been paid under subregulation 8; or
  - (ii) a claim in respect of the deposit has previously been allowed under these Regulations.

## PART IV

### CONTRACT NOTES AND RETENTION OF RECORDS

#### **Interpretation**

**10.** (1) In this Part –

"market day" means the day the stock exchange or futures exchange is open for trading;

"securities account" has the meaning assigned to it under subsection 2(1) of the Securities Industry (Central Depositories) Act 1991 [*Act 453*];

"transaction" means any transaction for the sale or purchase of securities entered into by the holder of a Capital Markets Services Licence either as principal or on behalf of another person.

(2) A reference in this Part to a holder of a Capital Markets Services Licence dealing in securities or entering into a transaction as principal includes a reference to a person–

- (a) dealing in securities or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has controlling interest; or
- (c) who carries on a business of dealing in securities on behalf of a body corporate in which his interest and the interests of his directors together constitute a controlling interest.

(3) For the purposes of subregulation (2), a person is not associated with another person by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

**Contract notes issued by a holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts**

11. (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall, not later than the end of the next market day after the transaction relating to trading in futures contracts was entered into, give a contract note that complies with this regulation to his client in respect of the transaction.

(2) For the purposes of complying with this regulation, a contract note in respect of a transaction relating to futures contracts that are neither eligible exchange-traded options nor futures options shall include the following information:

- (a) the name and address of the principal place of business of the holder of a Capital Markets Services Licence;
- (b) the name and address of the client;
- (c) a description of the futures contract sufficient to identify the nature of the transaction, including—
  - (i) in the case of an eligible delivery agreement, a description of the instrument;
  - (ii) in the case of an adjustment agreement, a description of the state of affairs that is the subject of the adjustment agreement; and

- (iii) the month and year for the performance or settlement of the futures contract;
- (d) the name of the futures exchange of which the holder of a Capital Markets Services Licence is an affiliate;
- (e) the deposit paid or payable in respect of the transaction;
- (f) the price at which the transaction was effected by the holder of a Capital Markets Services Licence;
- (g) the date of the transaction;
- (h) whether the transaction –
  - (i) is to buy futures contracts;
  - (ii) is to sell futures contracts; or
  - (iii) consists of a combination of the acts referred to in subparagraph (i) or (ii);
- (i) the quantity or number of the futures contracts;
- (j) whether or not the transaction is a liquidating trade;
- (k) the name, or any other type of identification of the holder's representative who is handling the client's account;
- (l) the client's account number;

- (m) a statement stating that the transaction in the contract note issued shall be subject to the rules of the relevant futures exchange;
- (n) the reference number of the contract note; and
- (o) the rate and amount of commission, levies, duties, and other fees and taxes payable in respect of the transaction.

(3) For the purposes of complying with this regulation, a contract note in respect of a transaction relating to futures contracts that are eligible exchange-traded options or futures options shall include the following information—

- (a) the matters specified in paragraphs (2)(a), (b), (d), (e), (f), (g), (i), (j), (k) and (o);
- (b) a description of the option sufficient to identify the nature of the transaction, including—
  - (i) in the case of an eligible exchange-traded option—
    - (A) a description of the instrument or state of affairs that is the subject of the option; and
    - (B) the price or value of the instrument or numerical level of the state of affairs that is the subject of the option at which the buyer of the option may exercise the option;
  - (ii) in the case of a futures option—

- (A) a description of the futures contract that is the subject of the option;
  - (B) the month and year for the performance or settlement of the futures contract that is the subject of the option; and
  - (C) the price of the futures contract that is the subject of the option at which the buyer of the option may exercise the option; and
- (iii) whether the option is a call or put option;
- (c) the date by or on which the purchaser of the option, in order to exercise the option, must declare an intention to exercise the option;
- (d) whether the transaction—
- (i) is to buy options;
  - (ii) is to sell options;
  - (iii) is to exercise options; or
  - (iv) consists of a combination of two or more of the acts referred to in subparagraph (i), (ii) or (iii);
- (e) the client's account number;
- (f) a statement stating that the transaction in the contract note issued shall be subject to the rules of the relevant futures exchange; and

(g) the reference number of the contract note.

(4) A contract note may contain the particulars of more than one transaction which have been transacted in the course of one market day in relation to one client.

(5) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall not include in a contract note issued under this regulation a name that he knows or could reasonably be expected to know is not the name by which that client is ordinarily known as the name of that client with or for whom he has entered into the transaction.

**Contract Notes issued by a holder of a Capital Markets Services Licence who carries on the business of dealing in securities**

**12.** (1) The holder of a Capital Markets Services Licence who carries on the business of dealing in securities shall, not later than the end of the next market day after the transaction was entered into, give a contract note which complies with this Part to his client in respect of the transaction.

(2) A contract note given by the holder of a Capital Markets Services Licence who carries on the business of dealing in securities shall include the following information:

- (a) the name and address of the principal place of business of the holder of a Capital Markets Services Licence;
- (b) the name of the stock exchange of which the holder of a Capital Markets Services Licence is a participating organisation;
- (c) the name and address of the client;
- (d) the date of the transaction;

- (e) the client's account number;
- (f) the securities account number related to the transaction, where applicable;
- (g) a statement stating that the transaction in the contract note issued shall be subject to the rules of the relevant stock exchange;
- (h) the reference number of the contract note;
- (i) the name, or any other type of identification, of the holder's representative who is handling the client's account;
- (j) in respect of a transaction where the holder of a Capital Markets Services Licence is acting for a person who is not a holder, a statement whether he is acting as principal in respect of that transaction;
- (k) in respect of a transaction which is not in the ordinary course of business on a stock market of a stock exchange, a statement to that effect;
- (l) the quantity and description of the securities transacted;
- (m) the price per unit of the securities;
- (n) the total amount of consideration for the transaction;
- (o) reference particulars of the securities such as the code numbers by which the securities are identified by a stock exchange;

- (p) a statement as to whether the price paid for the transaction includes or excludes the benefit of any corporate action which is attached to that transaction such as payment of dividends, rights or bonus issues;
- (q) the rate and amount of commission charged;
- (r) the amount of stamp duty payable;
- (s) the date of the delivery of securities and settlement;
- (t) other fees, if any, charged; and
- (u) in respect of non-equity securities which have a maturity or expiry date, the maturity or expiry date of such securities.

(3) A contract note may contain the particulars of more than one transaction which has been transacted in one market day in relation to one client and if this is the case, the following shall apply:

- (a) there shall be a breakdown of particulars in paragraphs 2(i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s) and (t) for each transaction; and
- (b) there shall be a statement to the effect that the invalidity of any one transaction for any reason whatsoever shall not operate as to invalidate all other transactions recorded in that contract note.

(4) A holder of a Capital Markets Services Licence who carries on the business of dealing in securities shall not include in a contract note under

this regulation a name that he knows or could reasonably be expected to know is not the name by which that client is ordinarily known as the name of that client with or for whom he has entered into the transaction.

### **Electronic contract notes**

**13.** A contract note that is issued by the holder of a Capital Markets Services Licence under regulation 11 or 12 may be in electronic form provided that the issuance of such contract note fully complies with regulations 11 and 12 and the requirements specified by the Commission, if any.

**14.** (1) A holder of a Capital Markets Services Licence who carries on the business of trading in futures contracts shall keep records which correctly record and explain trading in futures contracts by the holder on the holder's own account.

(2) Without prejudice to the generality of subregulation (1) and to subsection 104(7) of the Act, the holder shall keep records of the particulars referred to in subregulation (1) in accordance with the rules of the futures exchange.

(3) The records shall be retained for a period of five years except records that are kept in the form of audio magnetic tapes for which the retention period shall be specified in accordance with the rules of the futures exchange.

## PART V

### COMPENSATION FUND

#### **Administration of compensation fund**

**15.** A compensation fund established and maintained by a relevant stock exchange under section 141 of the Act shall be administered in the manner and under the circumstances set out in these Regulations.

#### **Information to be supplied to the Commission**

**16.** As soon as practicable after the end of each financial year, the relevant stock exchange shall notify the Commission in writing of the following:

- (a) where the fund is invested under paragraph 151(a) of the Act-
  - (i) the particulars of the licensed institution in which the fixed deposit is made;
  - (ii) the relevant rate or rates of interest paid on the fixed deposit for that financial year;
  - (iii) the total amount of interest earned on the fixed deposit in that financial year; and
  - (iv) the manner and time of payment of such interest;
- (b) where the fund is invested under paragraph 151(b) of the Act-
  - (i) the securities in which the relevant stock exchange has invested the funds;

- (ii) the appreciation or depreciation in value of investments held; and
  - (iii) dividends declared and paid in respect of those securities;
- (c) the amount to be charged to meet the expenses incurred or involved in the administration of the compensation fund;
- (d) a copy of the auditor's report made under subsection 145(3) of the Act; and
- (e) any other information pertaining to the fund.

**Notice calling for claims against the compensation fund**

**17.** (1) A relevant stock exchange may cause to be published a notice calling for claims against the compensation fund specifying a date, not earlier than three months after the publication of the notice or such other longer period as may be specified in the notice, on which or before which date claims for compensation may be made from the compensation fund in relation to the matters specified in the notice.

(2) The notice referred to in subregulation (1) shall be published in-

- (a) a daily newspaper in the national language; and
- (b) a daily newspaper in the English language,

which is published and circulated generally in Malaysia.

## **Procedure for claims**

**18.** (1) A claim for compensation shall be made in writing to the relevant stock exchange—

(a) if a notice under regulation 17 has been published, within the period specified in the notice; or

(b) if no such notice has been published, within six months after the person making the claim becomes aware of the circumstances referred to in section 152 of the Act giving rise to the claim.

(2) Any claim which is not made within the period specified in subregulation (1) shall be disallowed unless the relevant stock exchange determines otherwise.

## **Functions and powers of the relevant stock exchange**

**19.** (1) The relevant stock exchange may establish procedures that are fair and reasonable in its inquiry into any claim made under these Regulations.

(2) The relevant stock exchange may, whether on its own or on an application made by any person, summon and examine witnesses whom it considers to be material in its inquiry into a claim.

(3) The relevant stock exchange shall cause all records of its proceedings to be maintained in proper form.

## **Production of documents**

**20.** (1) The relevant stock exchange may at any time require any person to provide any information or produce any documents or statements of evidence for the purpose of—

- (a) supporting a claim for compensation from the compensation fund of the relevant stock exchange;
- (b) exercising its powers against a participating organisation of the relevant stock exchange; or
- (c) enabling civil or criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of money or other property.

(2) The relevant stock exchange may disallow the claim of a person who fails to provide any information or produce any documents or statements of evidence as required by the relevant stock exchange under paragraph (1)(a) within one month or such other longer period as the relevant stock exchange may determine.

## **Determination of claims by the relevant stock exchange**

**21.** (1) The relevant stock exchange shall after due inquiry make a determination on the following matters—

- (a) whether the claim should be allowed, partially allowed or disallowed;
- (b) if the claim is allowed or partially allowed —
  - (i) the total amount of compensation to be payable;

- (ii) the amount of reasonable costs and disbursements payable thereon; and
  - (iii) the time of payment of the amounts referred to in subparagraphs (i) and (ii);
- (c) if the claim is allowed or partially allowed, the conditions to be imposed thereon if any; and
- (d) if the claim is partially allowed or disallowed, specify the reasons for the partial allowance or disallowance, as the case may be.

(2) The determination referred to in subregulation (1) shall be made within a period of six months from the date a claim is made against the fund or within such longer period as the relevant stock exchange may authorise in any particular case.

(3) A determination of the relevant stock exchange shall be in writing and may be in respect of any person or any class of persons.

(4) Where the relevant stock exchange makes a determination, it shall as soon as practicable serve notice in writing by registered post of its determination on the person making the claim.

(5) A notice of determination shall—

- (a) state whether the claim has been allowed, partially allowed or disallowed ;
- (b) in the case of a claim which has been allowed or partially allowed, specify the following:
  - (i) the total amount of compensation to be payable;

- (ii) the amount of costs payable thereon; and
  - (iii) the time of payment of the amounts referred to in subparagraphs (i) and (ii);
- (c) if the claim is allowed or partially allowed, state the conditions to be imposed thereon, if any; and
- (d) in the case of a claim which has been partially allowed or disallowed, specify the reasons for the partial allowance or disallowance, as the case may be.

(6) If the relevant stock exchange is satisfied that an event of defalcation or fraudulent misuse of monies or other property or insolvency of a participating organisation has occurred on which a claim may be founded, it may allow the claim notwithstanding any proceedings which may have been instituted or taken in a court in respect of such defalcation, fraudulent misuse of monies or other property or insolvency.

### **Claims for compensation from the compensation fund**

**22.** (1) The maximum amount of compensation that may be paid to a person under these Regulations, after deducting the total amount or value of all amounts or other benefits received or receivable by the person from a source other than the fund in deduction of the loss under these Regulations, shall be one hundred thousand ringgit per claim including the reasonable costs of and disbursements to the making and proof of the claim.

(2) Where the amount at credit in a compensation fund is insufficient to pay the total amount of all the claims which have been allowed under regulation 21 or in respect of which a decision of the Commission has been made under regulation 23, as the case may be, but is still within the

maximum amount payable under subregulation (1), the amount at credit shall—

- (a) in the case of a single person, be paid out to him and to the extent that the claim remains unpaid, shall be charged against future receipts of the fund and paid out of the fund when there is money available in the fund; or
- (b) in the case of more than one person, be apportioned amongst the persons making the claim in such manner as the relevant stock exchange thinks equitable and to the extent such claims remain unpaid, shall be charged against future receipts of the fund and paid out of the fund when there is money available in the fund.

### **Appeal to the Commission**

**23.** (1) A person aggrieved by a determination of the relevant stock exchange under subregulation 20(2) or 21(1), may within one month of the receipt of a notice under subregulation 21(5), appeal to the Commission and the decision of the Commission shall be final.

(2) In determining an appeal under subregulation (1), the Commission shall have all the powers granted to the relevant stock exchange under regulations 19 and 20 and Division 1 of Part IV of the Act.

(3) The Commission shall determine its own procedures in hearing any appeal made to it against any determination of the relevant stock exchange.

(4) The Commission may, in respect of an appeal under subregulation (1) —

- (a) affirm the determination of the relevant stock exchange;

- (b) set aside the determination of the relevant stock exchange; or
- (c) substitute for the determination of the relevant stock exchange its own determination.

(5) The Commission shall decide on an appeal within a period of three months from the date the appeal is made to it.

### **Stay of payment pending appeal**

24. No payment out of the compensation fund shall be made to a person until—

- (a) the expiry of the period within which an appeal is to be made in accordance with subregulation 23(1); or
- (b) the determination of an appeal under regulation 23.

## PART VI

### FIDELITY FUND

#### **Administration of fidelity fund**

25. A fidelity fund established and maintained by a relevant futures exchange under section 159 of the Act shall be administered in the manner and under the circumstances set out in these Regulations.

#### **Information to be supplied to the Commission**

26. As soon as practicable after the end of each financial year, the relevant futures exchange shall notify the Commission in writing of the following:

- (a) where the fund is invested under paragraph 166(a) of the Act —
  - (i) the particulars of the licensed institution in which the fixed deposit is made;
  - (ii) the relevant rate or rates of interest paid on the fixed deposit for that financial year;
  - (iii) the total amount of interest earned on the fixed deposit in that financial year; and
  - (iv) the manner and time of payment of such interest;
- (b) where the fund is invested under paragraph 166(b) of the Act —
  - (i) the securities in which the relevant futures exchange has invested the funds;
  - (ii) the appreciation or depreciation in value of investments held; and
  - (iii) dividends declared and paid in respect of those securities;
- (c) the amount to be charged to meet the expenses incurred or involved in the administration of the fidelity fund;
- (d) a copy of the auditor's report made under subsection 163(3) of the Act; and
- (e) any other information pertaining to the fund.

## **Notice calling for claims against fidelity fund**

**27.** (1) A relevant futures exchange may cause to be published a notice calling for claims against the fidelity fund specifying a date, not earlier than three months after the publication of the notice or such other longer period as may be specified in the notice, on which or before which date claims for compensation may be made from the fidelity fund in relation to the matters specified in the notice.

(2) The notice referred to in subregulation (1) shall be published in—

- (a) a daily newspaper in the national language; and
- (b) a daily newspaper in the English language,

which is published and circulated generally in Malaysia.

## **Procedure for claims**

**28.** (1) A claim for compensation shall be made in writing to the relevant futures exchange—

- (a) if a notice under regulation 27 has been published within the period specified in the notice; or
- (b) if no such notice has been published, within six months after the person becomes aware of the circumstances referred to in section 167 of the Act giving rise to the claim.

(2) Any claim which is not made within the period specified in subregulation (1) shall not be allowed, unless the relevant futures exchange determines otherwise.

## **Functions and powers of the relevant futures exchange**

**29.** (1) The relevant futures exchange may establish procedures that are fair and reasonable in its inquiry into any claim made under these Regulations.

(2) The relevant futures exchange, whether on its own or on an application by any person, may summon and examine witnesses whom it considers to be material in its inquiry into a claim.

(3) The relevant futures exchange shall cause all records of its proceedings to be maintained in proper form.

## **Production of documents**

**30.** (1) The relevant futures exchange may at any time require any person to provide any information or produce any documents or statements of evidence for the purpose of—

- (a) supporting a claim for compensation from the fidelity fund of the relevant futures exchange;
- (b) exercising its powers against an affiliate of the relevant futures exchange; or
- (c) enabling civil or criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of money or other property.

(2) The relevant futures exchange may disallow the claim of a person who fails to provide any information or produce any documents or statements of evidence as required by the relevant futures exchange under paragraph (1)(a) within one month or such longer period as the relevant futures exchange may determine

## **Determination of claims by the relevant futures exchange**

**31.** (1) The relevant futures exchange shall after due inquiry make a determination on the following matters:

- (a) whether the claim should be allowed, partially allowed or disallowed;
- (b) if the claim is allowed or partially allowed—
  - (i) the total amount of compensation to be payable;
  - (ii) the amount of reasonable costs and disbursements payable thereon; and
  - (iii) the time of payment of the amounts referred to in subparagraphs (i) and (ii);
- (c) if the claim is allowed or partially allowed, the conditions to be imposed thereon, if any; and
- (d) if the claim is partially allowed or disallowed, the reasons for the partial allowance or disallowance, as the case may be.

(2) The determination referred to in subregulation (1) shall be made within a period of six months from the date a claim is made against the fund or within such longer period as the relevant futures exchange may authorise in any particular case.

(3) A determination of the relevant futures exchange shall be in writing and may be in respect of any person or any class of persons.

(4) Where the relevant futures exchange makes a determination, it shall as soon as practicable serve notice in writing by registered post of its determination on the person making the claim.

(5) A notice of determination shall-

(a) state whether the claim has been allowed, partially allowed or disallowed;

(b) in the case of a claim which has been allowed or partially allowed, specify the following:

(i) the total amount of compensation to be payable,

(ii) the amount of costs payable thereon; and

(iii) the time of payment of the amounts referred to in subparagraphs (i) and (ii); and

(c) in the case of a claim which has been allowed or partially allowed, state the conditions to be imposed thereon, if any; and

(d) in the case of a claim which has been partially allowed or disallowed, specify the reasons for the partial allowance or disallowance, as the case may be.

(6) If the relevant futures exchange is satisfied that an event of defalcation or fraudulent misuse of monies or other property has occurred on which a claim may be founded, it may allow the claim notwithstanding any proceedings which may have been instituted or taken in a court in respect of such defalcation or fraudulent misuse of monies or other property.

## **Claims for compensation from the fidelity fund**

**32.** (1) The maximum amount of compensation that may be paid to a person under these Regulations shall not exceed five hundred thousand ringgit in respect of each holder of a Capital Markets Services Licence carrying on the regulated activity of trading in futures contracts who is an affiliate of a relevant futures exchange including the reasonable costs of and disbursements to the making and proof of the claim, less the total amount or value of all amounts or other benefits received or receivable by the person from a source other than the fund in deduction of the loss.

(2) Where the amount at credit in a fidelity fund is insufficient to pay the total amount of all the claims which have been allowed under regulation 31 or in respect of which a decision of the Commission has been made under regulation 33, as the case may be, but is still within the maximum amount payable under subregulation (1), the amount at credit shall-

- (a) in the case of a single person, be paid out to him and to the extent that the claim remains unpaid, shall be charged against future receipts of the fund and paid out of the fund when there is money available in the fund; or
- (b) in the case of more than one person, be apportioned among the persons making the claim in such manner as the relevant futures exchange thinks equitable and to the extent such claims remain unpaid, shall be charged against future receipts of the fund and paid out of the fund when there is money available in the fund.

(3) If the aggregate of all claims for compensation which have been allowed in respect of defalcations or fraudulent misuse of money or other property by or in connection with a holder of a Capital Markets Services Licence carrying on the regulated activity of trading in futures contracts who is an affiliate of a relevant futures exchange exceeds the total amount that may

be paid in respect of that holder, the total amount shall be apportioned among the persons making the claim in such manner as the relevant futures exchange thinks equitable.

(4) On payment out of the fund of the total amount in accordance with subregulation (3)-

(a) all such claims; and

(b) all other claims for compensation which may subsequently arise or be made in respect of the defalcations or fraudulent misuse of money or other property,

shall be discharged.

### **Appeal to the Commission**

**33.** (1) A person aggrieved by a determination of the relevant futures exchange under subregulation 30(2) or 31(1) may, within one month of receipt of notice under subregulation 31(5), appeal to the Commission and the decision of the Commission shall be final.

(2) In determining an appeal under subregulation (1), the Commission shall have all the powers granted to the relevant futures exchange under regulations 29 and 30 and Division 2 of Part IV of the Act.

(3) The Commission shall determine its own procedures in hearing any appeal made to it against any determination of the relevant futures exchange.

(4) The Commission may, in respect of an appeal under subregulation (1)-

- (a) affirm the determination of the relevant futures exchange;
- (b) set aside the determination of the relevant futures exchange; or
- (c) substitute for the determination of the relevant futures exchange its own determination.

(5) The Commission shall decide on an appeal within a period of three months from the date the appeal is made to it.

### **Stay of payment pending appeal**

- 34.** No payment out of the fidelity fund shall be made to a person until—
- (a) the expiry of the period within which an appeal is to be made in accordance with subregulation 33(1); or
  - (b) the determination of an appeal made under regulation 33.

## **PART VII**

### **FEES**

#### **Fees**

- 35.** The fees payable in respect of —
- (a) an application for the approval of a stock exchange or futures exchange under section 8 of the Act;
  - (b) an application for the approval to establish or operate a clearing house under section 38 of the Act;

- (c) an application for the registration of an electronic facility under subsection 34(1) of the Act;
- (d) the grant, renewal and variation of a Capital Markets Services Licence and Capital Markets Services Representative's Licence under Division 1 Part III; and
- (e) other fees under Part III of the Act,

shall be as specified in the Second Schedule.

## FIRST SCHEDULE

[Regulation 2]

<i>Licensed Regulated Activity</i> (1)	<i>Incidental Regulated Activity</i> (2)
Dealing in securities	Fund management Investment advice
Dealing in securities in relation to unit trust only	Investment advice
Fund management	Dealing in securities Trading futures contracts Investment advice
Trading in futures contract	Fund management Investment advice

## SECOND SCHEDULE

### FEES [Regulation 35]

#### PART I

<i>Activity</i>	<i>Fees (RM)</i>
Approval of a stock exchange or futures exchange under section 8 of the Act	1,000.00 for the application of an approval  10,000.00 for the grant of approval
Approval to establish or operate a clearing house under section 38 of the Act	1,000.00 for the application of an approval  10,000.00 for the grant of approval
Registration of an electronic facility under subsection 34(1) of the Act	5,000.00 on registration

## PART II

Fees payable in respect of the grant, renewal and variation of a Capital Markets Services Licence and Capital Markets Services Representative's Licence.

### Capital Market Services Licence

<i>Activity</i>	<i>Fees payable</i>
1. Application for a - (a) licence; (b) renewal of a licence; or (c) variation of a licence	RM50.00
2. Licence fee payable by a licence holder which is a company, for a period of 12 months or any part thereof for— (a) any first regulated activity; (b) each subsequent regulated activity*	RM2,000.00 RM1,000.00
3. Licence fee payable by a licence holder which is an individual for a period of 12 months or any part thereof for a regulated activity	RM1,000.00
4. Approval of an application for a variation of a licence	RM100.00

## Capital Markets Services Representative's Licence

<i>Activity</i>	<i>Fees payable</i>
1. Application for a - (a) licence; (b) renewal of a licence; or (c) variation of a licence	RM50.00
2. Licence fee payable by a licence holder for a period of 12 months or any part thereof, for any number of regulated activities	RM200.00
3. Approval of an application for a variation of a licence	RM100.00

\* Where at any time during the validity of the Capital Markets Services Licence, the licence holder makes an application to vary the licence to add a subsequent regulated activity, the licence fee payable for that subsequent regulated activity shall be pro-rated in accordance with the licence period for that subsequent regulated activity which shall commence upon the approval of such subsequent regulated activity and which shall expire on the same date as the licence for the first regulated activity.

### PART III

Where the licensed person fails to submit an application for renewal under paragraph 60(1)(b) of the Act, the Commission may pursuant to subsection 60(5) of the Act impose a late renewal fee not exceeding one hundred ringgit for every day or part thereof that the renewal is late, subject to a maximum of three thousand ringgit.

