

CAPITAL MARKETS AND SERVICES ACT 2007

CAPITAL MARKETS AND SERVICES (SECURITIES BORROWING AND LENDING) REGULATIONS
2012

IN exercise of the powers conferred by subsection 378(1) and paragraph 98(4)(e) of the Capital Markets and Services Act 2007 [Act 671], the Commission, with the approval of the Minister, makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Capital Markets and Services (Securities Borrowing and Lending) Regulations 2012**.

(2) These Regulations come into operation on 9 January 2012.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the Capital Markets and Services Act 2007;

“borrower” means a person who borrows securities from a lender under a securities borrowing and lending transaction;

“lender” means a person who lends securities to a borrower under a securities borrowing and lending transaction;

“loaned securities” means any eligible securities which has been delivered by a lender to a borrower under a securities borrowing and lending transaction;

“eligible securities” has the same meaning assigned to it in the rules of the clearing house;

“securities borrowing and lending transaction” means any securities borrowing and lending transaction entered into under the rules of the stock exchange and the clearing house.

Sale before recall of loaned securities

3. (1) For the purposes of subsection 98(1) of the Act, a lender who sells loaned securities under a securities borrowing and lending transaction before recalling the loaned securities shall be deemed to have a presently exercisable and unconditional right to vest the securities in a purchaser of the securities, subject to the following conditions:

- (a) the sale is a bona fide sale transaction;
- (b) at the time of sale, the lender is entitled to recall from the borrower, at least the number of loaned securities which are the subject of the sale;
- (c) the lender recalls the loaned securities as soon as practicable within the same market day the loaned securities were sold; and
- (d) the sale of the loaned securities is settled on the settlement date as may be prescribed by the stock exchange or the clearing house.

(2) Notwithstanding anything contained in this regulation, paragraph 3(1)(d) shall not apply to a lender if the borrower fails to deliver the loaned securities to the lender in circumstances where:

- (a) the securities has been suspended;
- (b) the borrower is only able to make partial delivery of the recalled loaned securities; or
- (c) the borrower is unable to make delivery of the recalled loaned securities.

Made 21 December 2011

[RS(A&R)/SBL-Crpdn.13/11(060)-1D; PN(PU²)662/VI]

TAN SRI ZARINAH ANWAR
Chairman Securities Commission

Approved 4 January 2012

[KK/BPKA/K1/(S)/483/128/1/1 Jld.4; PN(PU²) 662/V]

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