

CAPITAL MARKETS AND SERVICES ACT 2007

CAPITAL MARKETS AND SERVICES (AMENDMENT OF SCHEDULE 1, 2, 3 AND 4) ORDER
2011

IN the exercise of the powers conferred by subsection 380(1) Capital Markets and Services Act 2007 [Act 671], the Minister, on the recommendation of the Commission, makes the following order:

Citation and commencement

1. (1) This order may be cited as the **Capital Markets and Services (Amendment of Schedules 1, 2, 3 and 4) Order 2011**.

(2) This Order comes into operation on 4 October 2011.

Amendment of Schedule 1

2. Schedule 1 to the Capital Market and Services Act [Act 671], hereinafter referred to as the “principal Act”, is amended in the heading by substituting for the word “futures” the word “derivatives”.

Amendment of Schedule 2

3. (1) Part 1 of Schedule 2 to the principal Act is amended—

(a) by substituting for paragraph 2 the following paragraph:

“2. Dealing in derivatives.”; and

(b) by inserting after paragraph 6 the following paragraph:

“7. Dealing in private retirement schemes.”.

(2) Part 2 of Schedule 2 to the principal Act is amended—

(a) in subparagraph 1(b)(ii) by substituting for the words “futures contract” the word “derivative”;

(b) by substituting for paragraph 2 the following paragraph:

“2. “Dealing in derivatives” means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, or soliciting or accepting any order for, or otherwise—

(a) entering into or taking an assignment of the derivative, whether or not on another person’s behalf;

(b) taking or causes to be taken action that closes out the derivative, whether or not on another person’s behalf;

(c) in relation to an option—

(i) exercising any right under the option; or

(ii) allowing any right under the option to lapse,

whether or not on another person’s behalf; or

(d) initiating, originating, or issuing over-the-counter derivatives.”;

(c) in paragraph 3 by substituting for the words “futures contracts” the word “derivatives”;

(d) in paragraph 5 by substituting for the words “futures contracts” the word “derivatives” wherever it appears; and

(e) by inserting after paragraph 6 the following paragraph:

“7. “Dealing in private retirement schemes” means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person, to enter into or to offer to enter into any agreement for or with a view to—

(a) acquiring, or disposing of beneficial interest under a private retirement scheme; or

(b) making contributions to a private retirement scheme.”.

Amendment of Schedule 3

4. (1) Paragraph 10 of Schedule 3 to the principal Act is amended—

(a) in subparagraph (a) by deleting the word “or” at the end of the subparagraph;

(b) by substituting for subparagraph (b) the following subparagraph:

“(b) his own account or for his customer’s account through a licensed bank for the purposes of lending of securities under any guidelines issued by the Commission under subsection 377(1); or”; and

(c) by inserting after subparagraph (b) the following subparagraph:

“(c) his own account or for his related corporation, where the securities are not listed on a stock exchange.”.

(2) Schedule 3 to the principal Act is amended by substituting for paragraph 11 the following paragraph:

“11. Any person who deals in derivatives—

- (a) on the person’s own account or for his related corporation; or
- (b) where such person is a non-resident acting as principal or agent through the holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives.”.

(3) Schedule 3 to the principal Act is amended by deleting paragraph 12.

(4) Schedule 3 to the principal Act is amended by substituting for paragraph 13 the following paragraph:

“13. A holder of a Capital Markets Services Licence who carries on the business of dealing in derivatives whose dealing in securities—

- (a) is the direct consequence of dealing in a derivative;
- (b) is in connection with the delivery of a security within a class of securities which is the subject of a class of derivatives; or
- (c) is in connection with the transfer of securities as collateral or security, or in realization of any collateral or security, for obligation under a derivative.”.

(5) Paragraph 16 of Schedule 3 to the principal Act is amended by substituting for the word “futures” the word “derivatives” wherever it appears.

(6) Paragraph 17 of Schedule 3 to the principal Act is amended by substituting for the word “futures” the word “derivatives” wherever it appears.

Amendment of Schedule 4

5. The principal Act is amended by substituting for Schedule 4 the following schedule:

“SCHEDULE 4
[Paragraph 76(1)(a)]

Registered persons

Part 1

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
1.	Dealing in securities	
(a)	Quoting two way prices for and dealing in— (i) debenture, stocks or bonds of the Federal Government, any State Government or statutory body; or (ii) corporate debentures or other instruments which are not listed for trading in any stock exchange.	Islamic banks and all licensed institutions
(b)	Arranging for the sale or purchase of securities issued by, belonging to or on behalf of customers through the holders of a Capital Markets Services Licence who carries on the business of dealing in securities.	Islamic banks, licensed banks, KAF Investment Bank Berhad and licensed finance companies
(c)	Arranging for the sale or purchase of securities that are not listed on a stock market of a stock exchange issued by, belonging to or on behalf of customers.	Islamic banks, licensed banks, KAF Investment Bank Berhad, licensed discount houses and licensed finance companies
(d)	(i) Underwriting of securities and placement out of such underwritten securities whether through the holder of a Capital Markets Services Licence who carries on dealing in securities or otherwise.	Islamic banks, licensed banks and KAF Investment Bank Berhad

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
	(ii) Underwriting of securities and placement out of such underwritten securities, whether through the holder of a Capital Markets Services Licence who carries on dealing in securities or otherwise, in relation to proposals for infrastructure project companies as may be specified by the Commission.	Bank Pembangunan Malaysia Berhad
(e)	Underwriting of bond issues that is solely incidental to the management and administration of its insurance or takaful business.	Insurance companies licensed under the Insurance Act 1996 [Act 553] and takaful operators registered under the Takaful Act 1984 [Act 312]
(f)	Private placement of primary issues of securities on behalf of customers.	KAF Investment Bank Berhad and Islamic banks
(g)	Arranging or offering for the sale or purchase as agents for any person any interests in unit trust schemes.	Islamic banks, licensed banks, licensed finance companies, Bank Kerjasama Rakyat Malaysia Berhad and Bank Simpanan Nasional Berhad
(h)	Acting or offering to act as agent for any issuing house in relation to the issue or listing of any securities.	Islamic banks, licensed banks, KAF Investment Bank Berhad and licensed finance companies
(i)	Lending or borrowing of unlisted debt securities for their own account or for their customers' accounts under the Guidelines on Securities Borrowing and Lending Programme under RENTAS or such other equivalent guidelines issued by Bank Negara.	Islamic banks, licensed banks, licensed finance companies and KAF Investment Bank Berhad
(j)	Lending or facilitating the lending of securities for their own account or for their customers' accounts under any guidelines issued by the Commission under subsection 377(1).	Licensed banks
(k)	Arranging or offering as principal or agent for	Licensed banks, KAF Investment

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
	any person, the sale or purchase of structured warrants by eligible issuers approved under any guidelines issued by the Commission under subsection 377(1).	Bank Berhad and Islamic banks
2.	Advising on corporate finance	
(a)	Debentures that are not capable of being converted into equity.	Licensed banks, KAF Investment Bank Berhad and licensed discount houses
(b)	Islamic securities as specified in the Commission's guidelines in respect of Islamic securities.	Licensed banks, KAF Investment Bank Berhad, Islamic banks and licensed discount houses
(c)	Structured products as defined under any guidelines issued by the Commission under subsection 377(1).	Licensed banks, KAF Investment Bank Berhad and Islamic banks
(d)	Structured warrants as defined under any guidelines issued by the Commission under subsection 377(1).	Licensed banks, KAF Investment Bank Berhad and Islamic banks
(e)	Issues of securities for cash or other consideration.	KAF Investment Bank Berhad and Islamic banks
(f)	Takeovers and mergers under Malaysia Code on Takeovers and Mergers.	KAF Investment Bank Berhad and Islamic banks
(g)	Proposals for infrastructure project companies as may be specified by the Commission whether for the purpose of listing such companies or otherwise.	Bank Pembangunan Malaysia Berhad
3.	Investment advice	
	(a) Carrying on a business of advising others concerning securities or as part of a business, issues or promulgates analyses or reports concerning securities; or (b) carrying on a business of advising others concerning derivatives or as part of a business, issues or promulgates	Islamic banks and licensed institutions

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
	derivatives reports.	
4.	Fund Management	
	Acting or offering to act as portfolio managers for customers or as investment or co-investment manager of country funds, trust funds, venture capital funds, unit trust funds or other funds including— (a) the provision of investment advice; and (b) the acquisition or disposal of securities or derivatives, incidental to the fund management activity.	KAF Investment Bank Berhad and Islamic banks
5.	Dealing in derivatives	
	(a) Dealing in derivatives in the money market	Licensed institutions, Islamic banks, insurance companies licensed under the Insurance Act 1996 [Act 553] and takaful operators registered under the Takaful Act 1984 [Act 312]
	(b) Dealing in over-the-counter derivatives	Licensed institutions, Islamic banks, insurance companies licensed under the Insurance Act 1996 [Act 553], takaful operators registered under the Takaful Act 1984 [Act 312] and prescribed institutions under the Development Financial Institutions Act 2002 [Act 618]
6.	Dealing in private retirement schemes	
	Arranging or offering for the sale or purchase as agents for any person, any interests in private retirement schemes.	Islamic banks, licensed banks, licensed finance companies, Bank Kerjasama Rakyat Malaysia Berhad and Bank Simpanan Nasional Berhad

First column	Second column	Third column
Items	Activities	Categories of Registered Persons
1.	(a) Dealing in securities in relation to the investment made by the venture capital corporation and venture capital management corporation; and (b) acting or offering to act as investment managers or co-investment manager of venture capital funds, including the provision of investment advice incidental to its fund management activity.	Any venture capital corporation and venture capital management corporation that is registered under the Commission's Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations.
2.	Investment advice in relation to the provision of ratings for debentures.	A credit rating agency that is registered under the Commission's Guidelines on Registration of Credit Rating Agencies
3.	Investment advice in relation to the pricing of debentures.	A bond pricing agency that is registered under the Commission's Guidelines on the Registration of Bond Pricing Agencies
4.	Dealing in securities in relation to the administration of the duties of Pengurusan Danaharta Nasional Berhad.	Pengurusan Danaharta Nasional Berhad and all its subsidiaries prescribed under subsection 60(2) of the Pengurusan Danaharta Nasional Berhad Act 1998 [Act 587]

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Made 29 September 2011
[KK/BPKA/K1(S)/483/128/1/1;PN(PU²)662/V]

DATO' SERI AHMAD HUSNI MOHAMAD HANADZLAH
Second Minister of Finance