

**CAPITAL MARKETS AND SERVICES ACT 2007**

**CAPITAL MARKETS AND SERVICES (AMENDMENT OF SCHEDULES 5, 6 AND 7)  
ORDER 2012**

IN exercise of the powers conferred by subsection 380(1) of the 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 5, 6 and 7) Order 2012**.

(2) This Order comes into operation on 28 December 2012

**Amendment of Schedule 5**

2. The Capital Markets and Services Act 2007, which is referred to as the principal Act in this Order, is amended by substituting for Schedule 5 the following Schedule:

“SCHEDULE 5

[Subsection 212(8)]

*Proposals not requiring approval, authorization or recognition*

Categories of transactions not subject to the requirements of subsections 212(2), (3), (4) and (6) and paragraph 212(5)(a).

1. Any proposal, scheme, transaction, arrangement or activity, or issuance of securities or offer for subscription or purchase of securities, or issuance of an invitation to subscribe for or purchase securities in relation to—
  - (a) the listing or quotation of securities issued or guaranteed by the Federal Government or Bank Negara on a stock market of the stock exchange;
  - (b) the listing or quotation of securities of a corporation on an alternative market of the stock exchange, except for debentures, sukuk and Islamic structured products;
  - (c) an acquisition or disposal of assets which results in a significant change in the business direction or policy of a corporation—
    - (i) that is listed on the alternative market of the stock exchange except where such acquisition or disposal is carried out in conjunction with paragraph 212(2)(b); or
    - (ii) where only its debentures, sukuk or Islamic structured product are listed on a stock market of the stock exchange;
  - (d) a disposal of assets which results in a significant change in the business direction or policy of a corporation that is listed on the main market of the stock exchange except where the disposal forms part of a proposal falling under paragraph 212(2)(d) or subsection 212(3);
  - (e) the acquisition or disposal of assets which results in a significant change in the business direction or policy of a unit trust scheme that is listed on the main market of the stock exchange other than a business trust; and
  - (f) quotation of structured warrants on a stock market of the stock exchange provided that the issuer complies with eligibility requirements specified by the Commission.
2. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase—

- (a) securities or guaranteed by the Federal Government or Bank Negara;
- (b) securities or derivatives or guaranteed by any State Government;
- (c) securities of a company to existing members of a company within the meaning of section 270 of the Companies Act 1965;
- (d) securities or derivatives of any entity established or registered under the laws of Labuan—
  - (i) exclusively to person outside Malaysia; or
  - (ii) to another entity established or registered under the laws of Labuan;
- (e) securities of a foreign corporation that is listed on an exchange outside Malaysia pursuant to—
  - (i) an employee share or employee share option scheme;
  - (ii) a bonus issue;
  - (iii) a distribution of shares in lieu of dividends;
  - (iv) a distribution of shares held by the foreign corporation in its subsidiary in lieu of dividends;
  - (v) a rights issue;
  - (vi) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;
  - (vii) an entitlement in respect of a warrant, option or right without consideration;
  - (viii) a subdivision or consolidation of shares; or

(ix) any other corporate exercise as may be specified by the Commission,

except debentures, sukuk or Islamic structured product, unit trust and prescribed investments;

(f) securities, except debentures, sukuk or Islamic structured product, unit trust and prescribed investments, of a foreign corporation that is not listed on the stock exchange or an exchange outside Malaysia pursuant to—

(i) an employee share or employee share option scheme;

(ii) a bonus issue;

(iii) a distribution of shares in lieu of dividends; or

(iv) a non-renounceable rights issue;

(g) securities listed or approved for listing and quotation on an exchange outside Malaysia, except debentures, sukuk or Islamic structured product, shares in a closed end fund, units in a unit trust scheme and prescribed investments, to the following persons:

(i) a closed end fund approved by the Commission;

(ii) a holder of a Capital Markets Services Licence;

(iii) a person who acquires securities pursuant to an offer, as principal, if the offer is on terms that the securities may only be acquired at a consideration of not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;

(iv) an individual whose total net personal assets, or total net joint assets with his or her spouse, exceeds three million ringgit or its equivalent in foreign currencies, excluding the value of the primary residence of the individual;

- (v) an individual who has a gross annual income exceeding three hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months;
- (vi) an individual who, jointly with his or her spouse, has a gross annual income of four hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months;
- (vii) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;
- (viii) a partnership with total net assets exceeding ten million ringgit or its equivalent in foreign currencies;
- (ix) a bank licensee or insurance licensee as defined in the Labuan Financial Services and Securities Act 2010 [Act 704];
- (x) an Islamic bank licensee or takaful licensee as defined in the Labuan Islamic Financial Services and Securities Act 2010 [Act 705]; or
- (xi) any other person as may be specified by the Commission,

provided that—

- (A) such exchange is specified by the Commission; and
  - (B) the distribution of such securities is made by a holder of a Capital Markets Services License who carries on the business of dealing in securities;
- (h) units in a unit trust scheme or prescribed investments by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets;
  - (i) securities, except debentures, sukuk of a foreign corporation, Islamic structured products, unit trusts and prescribed investments, that is not listed on the stock exchange or an exchange outside Malaysia to existing holders of those

securities or any other person as may be specified by the Commission in any guideline issued under section 377;

(j) securities, except debentures, sukuk or Islamic structured product, unit trust and prescribed investments, of—

(i) a private company; or

(ii) a public company that is not listed on the stock exchange and is not seeking listing on the main market of the stock exchange; and

(k) debentures, sukuk or Islamic structured product by a corporation to its related corporation where such debentures, sukuk or Islamic structured product shall include a term that prohibits the transfer of such debentures, sukuk or Islamic structured product, as the case may be, to any other person.

3. All secondary trading of debentures, sukuk or Islamic structured products.

4. Invitation or offering to underwrite or subunderwrite securities pursuant to an underwriting agreement in relation to the listing and quotation of securities of a corporation on a stock market of the stock exchange.

5. Issuance or allotment of securities to an underwriter or subunderwriter pursuant to an underwriting agreement in relation to the listing and quotation of securities of a corporation on a stock market of the stock exchange.

6. In relation to subsection 212(4)—

(a) any proposal of a listed corporation where only its debentures, sukuk or Islamic structured products are listed on a stock market of the stock exchange; or

(b) any proposal of a listed corporation whose shares are already listed on an exchange outside Malaysia.

7. In respect of a corporation that is listed on the main market of the stock exchange, the issuance and subsequent listing and quotation of its securities on the main market pursuant to—
- (a) the exercise of a warrant, option or transferable subscription right, conversion of a convertible note or preference share, or the exchange of an exchangeable note;
  - (b) an entitlement in respect of a warrant, option or right without consideration ;
  - (c) a subdivision or consolidation of shares;
  - (d) an employee share or employee share option scheme;
  - (e) a bonus issue;
  - (f) a rights issue;
  - (g) a private placement exercise; or
  - (h) any other corporate exercise under the rules of the stock exchange as may be specified by the Commission,
- except—
- (A) for debentures, sukuk or Islamic structured product, unit trust schemes other than business trusts and prescribed investments; or
  - (B) where it forms part of a proposal falling under paragraph 212(2)(d) or subsection 212(3).
8. In respect of a unit trust scheme that is listed on the main market of the stock exchange, the issuance and subsequent listing and quotation of its units on the main market pursuant to a bonus issue or a rights issue.

9. Making available, offering for subscription or purchase, or issuing an invitation to subscribe for or purchase of or dealing in over-the-counter derivatives by any person except where—
- (a) the over-the-counter derivative is proposed to be made available, offered for subscription or purchase to;
  - (b) an invitation to subscribe for or purchase the over-the-counter derivative is made to; or
  - (c) the dealing in the over-the-counter derivatives involves,  
  
a retail investor as specified by the Commission.

Note:

Retail investors means any person other than—

- (a) the Central Bank of Malaysia established under Central Bank of Malaysia of 2009;  
or
- (b) persons specified under Part I of Schedule 6 or 7 of this Act.”.

### **Amendment of Schedule 6**

3. The principal Act is amended by substituting for Schedule 6 the following Schedule:

“SCHEDULE 6  
[Section 229]

*Excluded offers or excluded invitations*

#### **Part I**

##### **A. Excluded offers or excluded invitations made to accredited investors**

1. An offer or invitation made to a unit trust scheme, prescribed investment scheme or private retirement scheme.



2. *[Deleted]*
3. An offer or invitation made to—
  - (a) a holder of a Capital Markets Services License; or
  - (b) an executive director or a chief executive officer of a holder of a Capital Markets Services License.
4. An offer or invitation made to a closed end fund approved by the Commission.
5. An offer or invitation made to a bank licensee or insurance licensee as defined under the Labuan Financial Services and Securities Act 2010.
6. An offer or invitation made to an Islamic bank licensee or takaful licensee as defined under the Labuan Islamic Financial Services and Securities Act 2010.
7. An offer or invitation made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
8. An offer or invitation made to an insurance company registered under the Insurance Act 1996 or a takaful operator registered under the Takaful Act 1984.

**B. Excluded offers or excluded invitations made to high net worth entity**

9. An offer or invitation made to—
  - (a) a company that is registered as a trust company under the Trust Companies Act 1949 which has assets under management exceeding ten million ringgit or its equivalent in foreign currencies; or
  - (b) a corporation that is a public company under the Companies Act 1965 which is approved by the Commission to be a trustee under the Act and has assets under management exceeding ten million ringgit or its equivalent in foreign currencies.

10. An offer or invitation made to—
  - (a) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts; or
  - (b) a partnership with total net assets exceeding ten million ringgit or its equivalent in foreign currencies.
11. An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.
12. An offer or invitation made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967 [Act 53].

**C. Excluded offers or excluded invitations made to high net worth individual**

13. An offer or invitation made to an individual—
  - (a) whose total net personal assets, or total net joint assets with his or her spouse, exceed three million ringgit or its equivalent in foreign currencies, excluding the value of the individual's primary residence;
  - (b) who has a gross annual income exceeding three hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months; or
  - (c) who, jointly with his or her spouse, has a gross annual income exceeding four hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months.

## Part II

### D. Other types of excluded offers or excluded invitations

14. An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.
15. All trades in securities, except for debentures, effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognized under the rules of the stock exchange.
16. An offer or invitation of securities made or guaranteed by the Federal Government or any State Government or Bank Negara.
17. An offer or invitation in respect of securities of a private company.
18. An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. All secondary trades in debentures except for secondary trades of debentures that involves retail investors and a prospectus has not been issued.
20. An offer or invitation made to employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An offer or invitation made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 [Act 125] or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 [Act 587] which may not be renounced to any person other than a creditor or holder of securities of the company.
22. An offer or invitation made exclusively to persons outside Malaysia.
23. An offer or invitation to enter into an underwriting or sub-underwriting agreement or an offer or invitation made to an underwriter under such an agreement.

24. An offer or invitation made to a person who acquires securities pursuant to a private placement if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.
25. *[Deleted]*
26. An offer or invitation made by or to Danamodal Nasional Bhd.
27. An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.
28. An offer or invitation in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognized under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such offer of invitation has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.
29. With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 237 applies.

### **Part III**

#### **Non-application**

Excluded offers or excluded invitations to which sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI shall not apply.”.

## **Amendment of Schedule 7**

4. The principal Act is amended by substituting for Schedule 7 the following Schedule:

“SCHEDULE 7  
[Section 230]

*Excluded issues*

### **Part I**

#### **A. Excluded issues made to accredited investors**

1. An issue made to a unit trust scheme, prescribed investment scheme or private retirement scheme.
2. An issue made to a holder of a Capital Markets Services License.
3. An issue made to an executive director or a chief executive officer of a holder of a Capital Markets Services License.
4. An issue made to a closed end fund approved by the Commission.
5. An issue made to a bank licensee or insurance licensee as defined under the Labuan Financial Services and Securities Act 2010.
6. An issue made to an Islamic bank licensee or takaful licensee as defined under the Labuan Islamic Financial Services and Securities Act 2010.
7. An issue made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
8. An issue made to an insurance company registered under the Insurance Act 1996 or a takaful operator registered under the Takaful Act 1984.

**B. Excluded Issues made to High-Net Worth Entities**

9. An issue made to—
- (a) a company that is registered as a trust company under the Trust Companies Act 1949 which has assets under management exceeding ten million ringgit or its equivalent in foreign currencies; or
  - (b) a corporation that is a public company under the Companies Act 1965 which is approved by the Commission to be a trustee under the Act and has assets under management exceeding ten million ringgit or its equivalent in foreign currencies.
10. An issue made to—
- (a) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts; or
  - (b) a partnership with total net assets exceeding ten million ringgit or its equivalent in foreign currencies.
11. An issue made to a statutory body established by an Act of Parliament or an enactment of any State.
12. An issue made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.

**C. Excluded Issues made to High-Net Worth Individuals**

13. An offer or invitation made to an individual—
- (a) whose total net personal assets, or total net joint assets with his or her spouse, exceed three million ringgit or its equivalent in foreign currencies, excluding the value of the individual's primary residence;

- (b) who has a gross annual income exceeding three hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months; or
- (c) who, jointly with his or her spouse, has a gross annual income exceeding four hundred thousand ringgit or its equivalent in foreign currencies per annum in the preceding twelve months.

## **Part II**

### **D. Other types of excluded issue**

- 14. An issue made to an underwriter under an underwriting or subunderwriting agreement.
- 15. An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realization of assets.
- 16. All trades in securities, except for debentures, affected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognized under the rules of the stock exchange.
- 17. An issue in respect of securities of a private company.
- 18. An issue of securities made or guaranteed by the Federal Government or any State Government or Central Bank.
- 19. An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.
- 20. All secondary trades in debentures, except for secondary trades of debentures that involves retail investors and a prospectus has not been issued.
- 21. An issue in respect of securities which are acquired by employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.

22. An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.
23. An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which section 237 applies.
24. An issue made exclusively to persons outside Malaysia.
25. An issue made to a person who acquires securities pursuant to private placement if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.
26. An issue made by or to Danamodal Nasional Berhad.
27. An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
28. An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
29. An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.
30. An issue of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.



31. A bonus issue of securities made by a corporation.
32. An issue in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognized under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue.
33. An issue of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognized under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such issue has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.

### **Part III**

#### **Non-application**

Excluded issues to which sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI shall not apply.”.

Made 27 December 2012

[KK/BPKA/K1/(S)/483/128/1/1 Jld.8; PN(PU2)662/VII]

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