



Suruhanjaya Sekuriti
Securities Commission
Malaysia

Guidelines on Securities Borrowing and Lending

Issued Date: 27 December 2006

(Amended as at 11 January 2008)

1.0 INTRODUCTION

- 1.01 The *Guidelines on Securities Borrowing and Lending* replace the *Guidelines on Securities Borrowing and Lending in Malaysia* released in December 1995.
- 1.02 These Guidelines introduce a new framework where a recognised clearing house authorised by the Securities Commission (SC) will assume the role of the Central Lending Agency (CLA) for all securities borrowing and lending (SBL) activities conducted in Malaysia.
- 1.03 These Guidelines were established to assist participants in SBL transactions in understanding the broad regulatory framework that governs the SBL market in Malaysia and the application of the *Income Tax (Exemption) (No. 30) Order 1995* to SBL transactions. These SBL participants are required to observe and give effect to the requirements and provisions relating to SBL as provided in the rules and directives of the Stock Exchange, Clearing House and Central Depository.
- 1.04 These Guidelines shall come into effect on 3 January 2007.

2.0 DEFINITIONS

- 2.01 In these guidelines:

“authorised Clearing House”	means a recognised clearing house that is authorised by the SC to be the lender or borrower in respect of SBL transactions under these Guidelines;
“Central Depository”	means a company approved by the Minister of Finance under section 5 of the <i>Securities Industry (Central Depositories) Act 1991 (SICDA)</i> ;
“Eligible Participant”	means any borrower or lender as may be approved by the authorised Clearing House pursuant to its rules or directives as may be specified by the authorised Clearing House;
“Eligible Securities”	means securities that are specified by the authorised Clearing House from time to time as being eligible for lending or borrowing through the authorised Clearing House;
“recognised Clearing House”	means a body corporate declared by the SC as a recognised Clearing House under section 8A of the <i>Securities Industry Act 1983 (SIA)</i> ;

“SBL transaction”	means any securities borrowing and lending transaction that is entered into between the authorised Clearing House and Eligible Participants enabling the authorised Clearing House to borrow or lend Eligible Securities from or to such Eligible Participants as the authorised Clearing House may determine;
“Stock Exchange”	means the body corporate which has been approved by the Minister of Finance under section 8 of the SIA;
“Trading Clearing Participant” or “Non-Trading Clearing Participant”	means a person who, in accordance with the rules of a recognised clearing house, may participate in one or more of the services provided by the recognised clearing house for the clearing and settlement transactions or trades effected on the stock market of a stock exchange or subject to the rules of a stock exchange.

3.0 REGULATORY FRAMEWORK

- 3.01 Subject to paragraph 3.01A, all SBL activities must be made through an authorised Clearing House acting as a CLA.
- 3.01A Paragraph 3.01 shall not apply to SBL activities entered into in relation to an over-allotment of shares which has been approved by the SC.
- 3.02 All Eligible Participants who are Trading Clearing Participants planning to engage in SBL transactions must ensure that they have obtained the prior approval of the authorised Clearing House and the Stock Exchange pursuant to their rules and directives. Eligible Participants who are Non-Trading Clearing Participants planning to engage in SBL transactions must ensure that they have obtained the prior approval of the authorised Clearing House pursuant to its rules and directives.
- 3.03 Only Eligible Securities are available for lending or borrowing through the authorised Clearing House.
- 3.04 An Eligible Participant shall carry out SBL activities in accordance with the rules and directives of the authorised Clearing House, Central Depository and Stock Exchange; and must comply with or give effect to requirements in the rules or directives of the authorised Clearing House, Central Depository and Stock Exchange, as the case may be.
- 3.05 Where relevant, a readiness assessment or audit as prescribed in the rules and directives of the Stock Exchange may be conducted to the satisfaction of

the Stock Exchange or authorised Clearing House on Eligible Participants that intend to carry out or undertake SBL activities.

- 3.06 An authorised Clearing House must carry out SBL transactions in accordance with these Guidelines, the rules or directives of the authorised Clearing House and the Central Depository and any directions as may be given to the authorised Clearing House by the SC.

4.0 AUTHORISED LENDER AND BORROWER AND APPROVED SBL AGREEMENT UNDER THE TAX FRAMEWORK

- 4.01 The authorised Clearing House and the Eligible Participants are, for the purposes of the *Income Tax (Exemption) (No. 30) Order 1995*, deemed to be the authorised lender and/or authorised borrower, and the agreement between the authorised Clearing House and the Eligible Participants constituted by the documents (including the Terms and Conditions for Lending Participant or Lender, Terms and Conditions for Borrower, Circulars and Rules of the authorised Clearing House) specified in the rules of the authorised Clearing House for the borrowing or lending of Eligible Securities in accordance with the requirements of the rules of the authorised Clearing House are deemed to be Securities Borrowing and Lending Agreements approved by the SC ("Approved SBL Agreement").

- 4.02 Any person other than the authorised Clearing House and Eligible Participants–

(a) is deemed to be an authorised borrower or lender for the purposes of the abovementioned income tax exemption order only if the person has entered into an SBL agreement with an Eligible Participant the terms of which are fully in compliance with the rules and directives of the Stock Exchange and the authorised Clearing House; and

(b) the agreement referred to in paragraph 4.02(a) is deemed to be the Approved SBL Agreement for the purposes of the abovementioned income tax exemption orders.

- 4.03 All enquiries regarding these Guidelines may be addressed to:

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