

GUIDANCE NOTE ON PROVISION OF INVESTMENT ADVICE

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PART I

INTRODUCTION

Background and Purpose

- 1.1 In the past year, the Securities Commission Malaysia (**SC**) has received an increasing number of queries from the public seeking clarification regarding investment advice activities. Considering that this activity is gaining more attention, this Guidance Note on Provision of Investment Advice seeks to provide clarification as to when the activity of giving investment advice is likely to be considered as a regulated activity, for the purposes of licensing under the *Capital Markets and Services Act 2007* (**CMSA**).
- 1.2 This Guidance Note should be read together with the relevant laws and regulations, and guidelines issued by the SC.
- 1.3 This Guidance Note is not intended to be a legal advice provided by the SC and does not prevent the SC from taking an action should the need arise. Therefore, it is in your interest to seek appropriate legal advice as to whether your activity of giving investment advice, requires a licence under the CMSA.

PART II

GUIDANCE NOTE ON PROVISION OF INVESTMENT ADVICE

General

2.1 When is a person required to hold a licence for carrying on the regulated activity of providing investment advice?

A person is required to be licensed by the SC for providing investment advice under the Schedule 2 of the CMSA when the activity fulfils any one of the following:

- (a) carrying on a business of advising others concerning securities or derivatives; or
- (b) as part of a business, issues or promulgates analyses or reports concerning securities or derivatives.

2.2 What considerations will the SC take into account when determining whether a person is 'carrying on a business of advising others concerning securities or derivatives'?

The SC will take into account the overall circumstances of a person undertaking the activity in making such assessment. For ease of understanding, the considerations are explained in two parts as shown below.

Any communication involving providing recommendations or opinions which are likely to induce a person to take any action or position (e.g. buy, sell or hold) regarding a particular class, sector, or instrument in relation to securities or derivatives, is likely to be considered as "**advising others concerning securities or derivatives**".

The SC is more likely to consider that a person is '**carrying on a business**' if the activity is undertaken in a structured manner with regularity, or where any of the following is in place:

- (a) Pay-for-advice arrangements;
- (b) Offering a fee-based subscription to a channel or group, including on social media, which offers investment advice; or
- (c) Expectation of benefits or gratification, direct or indirectly, from the provision of investment advice.

The factors mentioned above are not intended to be exhaustive.

Having a disclaimer that states that you are not providing an investment advice, in itself, does not relieve you from the requirement of holding a licence.

Illustrations

3.1 **If I discuss on specific stocks on blogs, forums or other social media, would I be required to be licensed to provide such investment advice?**

As discussed in paragraph 2.2, the SC will take into account the overall circumstances in making the assessment.

However, the SC is more likely to consider your discussion on specific stocks on blogs, forums or other social media as an investment advice if they involve the provision of recommendation or opinion which may induce your reader or audience to take an action (e.g. buy, sell or hold) regarding the specific stock.

Your activity of giving investment advice is likely to require a licence under the CMSA, if that activity is considered as carrying on a business. Some of the factors that may be taken into consideration in determining whether an activity is carried on as a business are discussed in paragraph 2.2.

3.2 **If I conduct trainings or seminars on general stock trading techniques for a fee, do I need to be licensed as an investment adviser?**

Generally, conducting trainings or seminars on stock trading would not likely require a licence from the SC. However, a licence is required if your training or seminar includes any material, content or if any of your trainers or speakers makes a statement that amounts to a recommendation or inducement to take action or position (e.g. buy, sell or hold) regarding a particular class, sector, or instrument in relation to securities or derivatives.

3.3 **If I am a licensed representative for dealing in securities and/or derivatives (CMSRL holder), can I conduct stock or derivatives trading seminars on a personal basis?**

The CMSRL holder may only conduct stock or derivatives trading seminars if he is representing his Principal (CMSL) and it is incidental to his role as a CMSRL holder. Incidental in this regard means circumstances where the CMSRL holder is providing advice in his capacity as the commissioned or salaried representative of the CMSL. The CMSRL holder is not allowed to provide recommendations on specific stocks or derivatives beyond such scope.

3.4 **If I am invited as a radio or television guest to express my views on the stock market, is there any guidance or best practices I should observe?**

Whether on radio, television or any other manner of communication, if you are making any comment concerning securities or derivatives, you are expected to disclose to your audience (including readers) in your communication:

- whether or not you are licensed by the SC for providing investment advice; and
- any interest that you may have in the securities or derivatives that you discuss about.

However, the making of such disclosure in itself, does not absolve you from the responsibility to assess your own circumstances before conducting the activity, as to whether you are required to hold a licence under the CMSA, or if you are licensed, whether or not such activity is permitted within the scope of your licence.

3.5 **Other than conducting a regulated activity without holding a valid licence, what are examples of offences that an unlicensed person can be held liable for under the securities laws?**

Provisions under the securities laws which will apply to any person including an unlicensed person include:

- No person shall engage in any transaction which has or likely to have the effect of raising, lowering, or maintaining the price of securities or derivatives, for the purpose which may include inducing others to buy or sell the securities or derivatives;
- A person shall not make false or misleading statements that is likely to induce another person to buy or sell the securities or derivatives or is likely to have the effects of raising, lowering or maintaining the price of securities or derivatives;
- A person shall not recklessly make any statement, promise or forecast that is misleading, false or deceptive to induce or attempt to induce another person to deal in securities or derivatives.

A person who contravenes any of the abovementioned provisions commits an offence under the securities laws and can be punished with imprisonment for maximum 10 years and to a minimum fine of RM 1 million.

3.6 **I am licensed to provide investment advice, what standard of conduct should I observe as part of my fit and proper requirement?**

As a person licensed under the CMSA, you are required to adhere to certain standards in carrying out regulated activity so as not to cast doubt on your competency, sound judgement, and integrity.

For example, you should not make any false or misleading representation that is likely to induce a person to invest in securities or derivatives. Such representations may include stating that an investment is capital guaranteed when it is not, or promising an investment that will give high return with minimum risk of loss to the investor.

If these standards are not adhered to, it can affect your overall fitness and propriety as a licensed person and result in sanction being imposed against you.

3.7 I am an aspiring influencer who is interested in sharing financial insights with my followers, can I share the five investment funds that I think will generate positive return?

Generally, talking or sharing factual information about an investment product or towards educating the followers (as opposed to advising) would not likely require a licence from the SC. However, the SC is more likely to consider your sharing as an investment advice if it involves the provision of recommendation or opinion which may induce your followers or any person who comes across your content to take an action (e.g. buy, sell or hold) regarding those funds.

Your activity of sharing of such information is likely to require a licence under the CMSA, if that activity is considered as carrying on a business. As set out in paragraph 2.2 above, the SC will take into account the overall circumstances which include some of the factors set out therein in making the determination whether the activity is "carrying on a business". Expecting benefits or gratification from the provision of investment advice such as income generated by views on the social media platform or referral rewards will be taken into account for the purposes of determining whether your activity amounts to "carrying on a business".

3.8 I am a social media influencer and I have been approached by an online stock trading platform to promote an investment product, is there any guidance or best practices I should observe?

Any person undertaking a regulated activity without a licence by the SC is a punishable offence under the CMSA which carries a maximum fine of RM 10 million or a maximum imprisonment term of 10 years or both. Depending on how you promote the product, you may be considered as providing investment advice or dealing in securities which requires a licence from the SC.

3.9 I am a social media influencer and I recently invested in a fund. I am generally satisfied with the return generated by my investment in the fund, can I share about it on my social media platform?

Generally, sharing of genuine user experience would not likely require a licence from the SC. However, such sharing may be considered as an investment advice if it involves the provision of recommendation or opinion which may induce your followers or any person who comes across your content to take an action (e.g. buy, sell or hold) regarding the fund.

Your activity of sharing is likely to require a licence under the CMSA, if that sharing activity is considered as carrying on a business. As set out in paragraph 2.2 above, the SC will take into account the overall circumstances which include some of the factors set out therein in making the determination whether the activity is "carrying on a business". Entering into any arrangement where you may expect benefits or gratification such as affiliate marketing will be taken into account for the purposes of determining whether your activity amounts to "carrying on a business".