



GUIDANCE NOTE on the Secondary Trading of Foreign Currency Denominated Debentures and Foreign Currency Denominated Islamic Securities

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Introduction

1. A Ministerial Order came into effect on 15 September 2005 to exempt the requirement to obtain the approval of the Securities Commission ("SC") under section 32 of the Securities Commission Act 1993 ("SCA") for trades in foreign currency denominated debentures and foreign currency denominated Islamic securities (collectively, "foreign currency denominated bonds") which are effected in such manner as specified by the SC.

Definitions

2. A "sophisticated investor" is:
 - (a) a person who acquires securities pursuant to an offer, as principal, and the aggregate consideration for the acquisition is not less than RM250,000 or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;
 - (b) an individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies; or
 - (c) a corporation (including an offshore company as defined under the Offshore Companies Act 1990) with total net assets exceeding RM10 million, or its equivalent in foreign currencies, based on the last audited accounts.
3. A "regulated seller" is a sophisticated investor who makes available, offers for purchase or issues an invitation to purchase, foreign currency denominated bonds, and who is also a:
 - (a) licensed institution under the Banking And Financial Institutions Act 1989;

- (b) licensed institution under the Islamic Banking Act 1983;
- (c) universal broker; or
- (d) consolidated broker.

SC's Approval Exempted for Trades Between Sophisticated Investors

- 4. Pursuant to the abovementioned Ministerial Order, secondary trades of foreign currency denominated bonds in Malaysia effected between sophisticated investors is hereby exempted from the requirement to seek the prior approval of the SC under section 32 of the SCA.

Fair Dealing

- 5. Regulated sellers should adhere to best practices on fair dealing. The following are key measures that regulated sellers are expected to observe to ensure adequate investor protection:

- (a) *Know Your Client*

- The regulated seller should take all reasonable steps beforehand to establish the financial position, investment experience and investment objectives of a sophisticated investor in order to ascertain whether foreign currency denominated bonds are a suitable investment for that sophisticated investor.

- (b) *Duty of Care*

- The regulated seller should ensure that the sophisticated investor is informed of and fully understands the financial risks and potential losses that may arise from investing in foreign currency denominated bonds.

- (c) *Provide Risk Disclosure Statement*

- The regulated seller's duty of care may be discharged in part by providing the sophisticated investor with pertinent information regarding the foreign currency denominated bond being offered. A risk disclosure statement should inform and explain the various types of risks that may apply including, but not limited to, foreign currency risk, interest rate risk, market risk, early redemption risk, and other sensitivity analyses.

- (d) *Confirmation by Sophisticated Investor*

- The regulated seller should obtain written confirmation from the sophisticated investor that the sophisticated investor had been invited to read the risk disclosure statement, ask questions and take independent advice.

Reporting Obligation

6. Regulated sellers are required to submit information on their foreign currency denominated bond trades on a monthly basis to the SC in the format provided in Appendix 1, within seven days from the end of each calendar month.

Other Regulatory Requirements

7. The foreign exchange administration rules of Bank Negara Malaysia, and other relevant rules or regulations, shall continue to apply to persons offering and acquiring foreign currency denominated bonds.

Monthly Report on Trades of Foreign Currency Denominated Bonds

| No. | Info on Non-RM Bonds Sold | Trade Date | Trade Size | Category of Counterparty ¹ |
|-----|---|------------|------------|---------------------------------------|
| 1. | <i>Instrument</i> <i>Rating</i> <i>Issuer</i> <i>Maturity Date/YTM</i> <i>Tenor</i> <i>Other Info</i> <i>Coupon</i> <i>Currency Denomination</i> | | | |
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¹ For example, insurance company, unit trust, pension fund, corporate investor, high net worth individual, etc.