

BURSA MALAYSIA DERIVATIVES BERHAD

Date : 28 December 2012

Trading Participant Circular: 36/2012

FIDELITY FUND:

1. **CONSEQUENTIAL AMENDMENTS TO THE RULES OF BURSA MALAYSIA DERIVATIVES BERHAD (“RULES OF BURSA DERIVATIVES”)**
2. **SAVINGS AND TRANSITIONAL PROVISIONS**

1. INTRODUCTION

- 1.1 Pursuant to the Capital Markets and Services (Amendment) Act 2012 (CMSA Amendment Act 2012), the Capital Market Compensation Fund is established with effect from 28 December 2012 under Part IV of the Capital Markets and Services Act 2007 (CMSA).
- 1.2 The Fidelity Fund established by Bursa Malaysia Derivatives Berhad as required under the previous CMSA prior to 28 December 2012 will no longer be in existence with effect from 28 December 2012. Pursuant to the above changes in the CMSA Amendment Act 2012, the Rules of Bursa Derivatives are amended as set out in paragraph 2.

2. RULE AMENDMENTS

- 2.1 Rule 305.3(a) and the provisions in Rule 502 of the Rules of Bursa Derivatives are deleted (“Rule Amendments”).
- 2.2 The details of the Rule Amendments are set out in **Annexure 1**.

3. SAVINGS AND TRANSITIONAL PROVISIONS

- 3.1 Participants are reminded of the savings and transitional provisions of the CMSA Amendment Act 2012, particularly section 27(4) which states:

Unless the contrary intention appears in this Act, in respect of claims made against relevant funds or relevant deposits-

- (a) any decision made by the relevant stock exchange, relevant derivatives exchange or the Commission before the effective date in relation to any claim made against the relevant funds or the relevant deposits shall continue to be valid after the effective date as if it is made by the Corporation¹;
- (b) any claims made against the relevant funds or the relevant deposits prior to the effective date but has not been decided by the relevant stock exchange, relevant derivatives exchange or the Commission, by the effective date, shall

¹ Corporation means the Capital Market Compensation Fund Corporation.

continue to be considered and decided by the relevant stock exchange, relevant derivatives exchange or the Commission;

- (c) any appeal to the Commission against the decision made by the relevant stock exchange or relevant derivatives exchange prior to the effective date shall continue to remain valid;
- (d) any payment for a successful claim-
 - (i) decided by the relevant stock exchange, relevant derivatives exchange or the Commission under paragraph (a) or (b); or
 - (ii) pursuant to the Commission's decision on an appeal under paragraph (c),shall be made from the Capital Market Compensation Fund by the Corporation;
- (e) a person aggrieved by a decision of the relevant stock exchange or relevant derivatives exchange in paragraph (a) or (b) may appeal to the Commission and the decision of the Commission shall be final; and
- (f) if the Corporation makes a payment under paragraph (d)-
 - (i) the Corporation is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
 - (ii) the claimant shall not have any claim or right under bankruptcy or legal proceeding or otherwise-
 - (A) to any sum out of the assets of the relevant person concerned in respect of the loss; or
 - (B) to any sum in respect of the loss caused by an act or omission of a director, officer, representative or employee of a relevant person,until the Corporation has been reimbursed the full amount of the payment made by it out of the Capital Market Compensation Fund, including any interest paid.

3.2 Please note that pursuant to section 27(4)(b) of the CMSA Amendment Act 2012, all claims made in relation to the Fidelity Fund before 28 December 2012 will continue to be considered and decided by the Exchange. The claim will be reviewed following the provisions of the Rules of Bursa Derivatives and the provisions of the CMSA in effect before 28 December 2012.

3.3 Any payment for a successful claim decided by the Exchange pursuant to section 27(4)(b) will be made from the Capital Market Compensation Fund by the Capital Market Compensation Fund Corporation in accordance with section 27(4)(d) of the CMSA Amendment Act 2012.

3.4 Pursuant to section 27(4)(e) of the CMSA Amendment Act 2012, a person aggrieved by the decision of the Exchange may appeal to the Securities Commission.

4. EFFECTIVE DATE

4.1 The Rule Amendments take effect on **28 December 2012**.

5. CONTACT PERSONS

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This Circular is available at

http://www.bursamalaysia.com/website/bm/regulation/rules/bursa_rules/bm_derivatives.html

REGULATION

RULES OF BURSA MALAYSIA DERIVATIVES BHD
CONSEQUENTIAL RULE AMENDMENTS IN RELATION TO THE FIDELITY FUND

EXISTING PROVISIONS		AMENDED PROVISIONS
Rule 305.3	<p>Following approval by the Exchange, the applicant shall, upon being licensed under the Capital Markets and Services Act, lodge with the Exchange:</p> <ul style="list-style-type: none"> (a) subject to Rule 502.3, an initial contribution to the Fidelity Fund as prescribed by the Capital Markets and Services Act; (b) such portion of the annual registration fee as the Exchange may determine; and (c) if not already acquired, the acquisition of a particular class or classes of Preference Share required for Trading Participantship. 	<p>Following approval by the Exchange, the applicant shall, upon being licensed under the Capital Markets and Services Act, lodge with the Exchange:</p> <ul style="list-style-type: none"> (a) [Deleted] (b) such portion of the annual registration fee as the Exchange may determine; and (c) if not already acquired, the acquisition of a particular class or classes of Preference Share required for Trading Participantship.
Rule 502.3	<p>Contributions by Trading Participant</p> <ul style="list-style-type: none"> (a) A Trading Participant shall, upon being licensed under the Capital Markets and Services Act contribute to the Fidelity Fund a sum of Ringgit Malaysia Thirty Thousand (RM30,000) and thereafter, on or before 31st of December of each of the next five (5) years in which it is licensed, the sum of Ringgit Malaysia Ten Thousand (RM10,000). The Exchange may, with the approval of the Commission, vary the amount and manner of the contributions by Trading Participant to the Fidelity Fund; (b) All contributions to the Fidelity Fund by a Trading Participant are nonrefundable; and (c) In the event that the contribution by a Trading Participant to the Fidelity Fund is due and remains unpaid for seven (7) Business Days, the Trading 	[This Rule has been deleted.]

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	Participant shall be suspended immediately. If the amount outstanding remains unpaid for another twenty one (21) Business Days from the date of suspension, the Trading Participant may be terminated. The Exchange may levy interest on late payments at a rate determined by the Exchange.	
Rule 502.4	<p>Payments out of Fidelity Fund</p> <p>Subject to the Capital Markets and Services Act and Rule 502, the Exchange shall pay out of the Fidelity Fund in the following priority:</p> <ul style="list-style-type: none"> (a) the amount of all claims, including costs, allowed under Rule 502; (b) legal and other expenses of the Exchange incurred in investigating or defending claims under this Rule 502 in relation to the Fidelity Fund or in the exercise of the rights, powers and authorities vested in the Exchange or a committee or sub-committee established by the Exchange pursuant to these Rules; (c) premiums payable in respect of contracts of insurance or indemnity entered into by the Exchange pursuant to Rule 502.18; (d) all expenses incurred in the administration of the Fidelity Fund, including remuneration and allowances of the members of the appropriate committee or sub-committee established by the Exchange, and of persons employed by the Exchange in relation to the fund; and (e) other monies payable out of the Fidelity Fund under this Rule 502 and the Capital Markets and Services Act. 	[This Rule has been deleted.]
RULE 502.5	Claims	

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	<p>(a) A claim against the Fidelity Fund shall be considered in accordance with the provisions of the Capital Markets and Services Act, and Rule 502;</p> <p>(b) The Exchange shall not be obliged to consider and determine a claim against the Fidelity Fund unless the person making the claim has satisfied the Exchange that he had made all efforts (other than by an action in court) to recover his loss from the Trading Participant in relation to whom the claim arose or from any other person who is liable in respect of the loss;</p> <p>(c) The Exchange shall only consider a claim lodged against a Trading Participant; and</p> <p>(d) Any person suffering a loss in the manner as referred to in Section 167 (1) of the Capital Markets and Services Act shall be entitled to claim from the Fidelity Fund.</p>	[This Rule has been deleted.]
RULE 502.6	<p>Notice of Claims</p> <p>(a) Where the Exchange has reason to believe that a Trading Participant has committed a defalcation or fraudulent misuse of monies or other property which might give rise to compensation under this Rule 502, the Exchange may cause to be published a notice in two (2) daily newspapers, one (1) in Bahasa Malaysia and one (1) in English, specifying a date, no earlier than three (3) months after publication of the notice or such other longer period as may be specified in the notice, on or before which claims for compensation from the Fidelity Fund may be made in relation to the Trading Participant specified in the notice; and</p> <p>(b) An action for damages shall not lie against the Exchange by reason of any notice published in good faith and without malice.</p>	[This definition has been deleted.]

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RULE 502.7	<p>Time Limitation</p> <p>(a) Where a notice has been published pursuant to Rule 502.6, the claimant shall lodge his claim on or before the date specified in such notice;</p> <p>(b) Where a notice has not been published pursuant to Rule 502.6, the claimant shall lodge his claim within six (6) months after becoming aware of the defalcation or fraudulent misuse of monies or other property giving rise to the claim; and</p> <p>(c) Any claim, which is received after the date, specified in paragraph (a) and (b) of this Rule 502.7 shall be barred, unless the Exchange shall otherwise determine.</p>	[This Rule has been deleted.]
RULE 502.8	<p>Form of Claim</p> <p>(a) All claims against the Fidelity Fund shall be filed in a form approved by the Exchange and shall be accompanied by evidence necessary to substantiate the claim; and</p> <p>(b) Subject to the provisions of the Capital Markets and Services Act and Rule 502.13, the amount of compensation which a claimant is entitled to claim is the amount of the actual monetary loss suffered including the reasonable costs and disbursements incidental to the making and pursuit of the claim less any amount or value of money or other benefits received or receivable in reduction of the loss from any other source.</p>	[This Rule has been deleted.]
RULE 502.9	<p>Submission of Documents and Appearances before the Exchange</p> <p>(a) A claimant shall submit evidence in support of his claim as required by the Exchange. Where a claimant fails to produce the required evidence within one (1)</p>	[This Rule has been deleted.]

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	<p>month or such longer period as may be determined by the Exchange, and the Exchange is satisfied that such evidence is in the possession of or available to the claimant, the Exchange may dismiss the claimant's claim for such failure to comply; and</p> <p>(b) A claimant, Trading Participant or a director, employee or representative of a Trading Participant or any other person may be required to appear before the Exchange to provide evidence or to answer queries in respect of a claim. Should a claimant fail to appear before the Exchange when requested to do so without a satisfactory explanation, the Exchange may dismiss the claim.</p>	
RULE 502.10	<p>Powers Of Exchange In Relation to Claims Against the Fidelity Fund</p> <p>(a) The Exchange shall after due inquiry make a determination on the following matters:-</p> <p>(i) whether the claim should be allowed, partially allowed, disallowed or impose such conditions as it thinks fit;</p> <p>(ii) if the claim is allowed or partially allowed, to specify:-</p> <p>(1) the total amount of compensation determined to be payable;</p> <p>(2) the amount of reasonable costs and disbursements payable thereon; and</p> <p>(3) the time of payment of the amounts referred to in subparagraphs (i) and (ii); and</p> <p>(iii) if the claim is disallowed or partially allowed, the reasons for the disallowance or partial allowance, as the case may be;</p>	[This Rule has been deleted.]

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	<p>(b) The Exchange shall determine a claim within six (6) months of the date on which the claim was made or such longer period as the Exchange may authorise; and</p> <p>(c) The Exchange upon deciding a claim shall notify the claimant in writing of its decision.</p>	
RULE 502.11	<p>Right of appeal A person may appeal any decision of the Exchange to the Commission within one (1) month of being notified of that decision. The decision of the Commission on appeal shall be final and conclusive.</p>	[This Rule has been deleted.]
Rule 502.12	<p>Payment Of Compensation</p> <p>(a) The Exchange shall not pay compensation from the Fidelity Fund until after the expiry of the period allowed for appeal as specified in Rule 502.11. Where an appeal is made to the Commission, no payment shall be made to a claimant until after the determination of the appeal; and</p> <p>(b) Interest shall be payable out of the Fidelity Fund on the amount of compensation awarded less costs and disbursements at the prescribed rate, calculated from the day upon which the defalcation or fraudulent misuse of monies or other property was committed and continuing until the day compensation is paid.</p>	[This Rule has been deleted.]
RULE 502.13	<p>Limitations on Compensation</p> <p>(a) No monies or property of the Exchange, other than the Fidelity Fund shall be used for the payment of a claim under this Rule 502. Where the Fidelity Fund is insufficient to pay the claims allowed by the Exchange in entirety, the Fidelity Fund shall, subject to paragraphs (b) and (c) of Rule 502.13, be apportioned</p>	[This Rule has been deleted.]

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	<p>between the claimants in such proportion and manner as the Exchange may equitably determine. Any claim, that remains unpaid wholly or in part, shall be charged against future receipts of the Fidelity Fund.</p> <p>(b) The maximum compensation payable from the Fidelity Fund in respect of all claims against a Trading Participant shall not exceed Ringgit Malaysia Five Hundred Thousand (RM500,000). Where the aggregate of all claims for compensation against a Trading Participant exceeds the sum of Ringgit Malaysia Five Hundred Thousand (RM500,000), the sum shall be apportioned between the claimants in such proportion and manner as the Exchange may equitably determine.</p> <p>(c) All partially fulfilled claims and any other claims for compensation which may subsequently arise or be made in relation to the default of that Trading Participant shall be absolutely discharged vis-à-vis the Fidelity Fund upon payment of the maximum compensation sum in accordance with Rule 502.13(b).</p>	
RULE 502.14	<p>Subrogation Right Upon the Exchange paying compensation from the Fidelity Fund, the Exchange shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in respect of the monetary loss sustained by him by reason of the default on which the claim was based together with such interest on that sum as may have been paid by the Exchange.</p>	[This Rule has been deleted.]
RULE 502.18	<p>Insurance (a) The Exchange may insure the Fidelity Fund with any registered insurance company in Malaysia for the</p>	[This Rule has been deleted.]

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	<p>purpose of insuring the Fidelity Fund against depletion due to claims; and</p> <p>(b) A claimant against the Fidelity Fund shall not have a right or action against an insurer with whom a contract of insurance or indemnity is made under Rule 502.18(a), nor have a right or claim in respect of money paid by the insurer in accordance with such contract.</p>	
RULE 502.19	<p>No Cause of Action against the Exchange</p> <p>A person claiming to suffer monetary loss from the defalcation or fraudulent misuse of monies or other property of a Trading Participant shall not have a right of action against the Exchange other than a claim to compensation against the Fidelity Fund in accordance with this Rule 502.</p>	[This Rule has been deleted.]

[End of Rule Amendments]