

BURSA MALAYSIA DERIVATIVES BERHAD

Date : 24 March 2009

Trading Participant Circular : 13/2009

1. **GUIDELINES PERTAINING TO THE DECLARATORY APPROACH IN RESPECT OF READINESS AUDITS ('GUIDELINES')**
2. **AMENDMENTS TO THE TRADING PARTICIPANTS' CIRCULAR 3 OF 2005**

A. INTRODUCTION

In order to increase the efficiency of the approval and readiness audit processes required before new activities as specified in Paragraphs 2(C) and 2(D) of the Guidelines in **Annexure 1** ("New Trading Activities") can be undertaken by Trading Participants ("TPs"), Bursa Malaysia Derivatives Berhad ("Bursa Derivatives"), hereby, effective 24 March 2009:

- (i) streamlines the approval processes as detailed in Paragraphs 2(C) and 2(D) of the Guidelines to clarify under which circumstances approvals are required and the party from which approvals must be obtained;
- (ii) issues Guidelines as attached in **Annexure 1**, introducing the Declaratory Approach ("DA") as a new mode of fulfilling the readiness audit requirements required for approvals in (i) above, in addition to the current Self Assessment Approach introduced by Bursa via a directive dated 10 January 2005 ("SAA Directive"); and
- (iii) amends Trading Participants' Circular 3 of 2005, as detailed in Paragraph C of this circular.

The DA basically allows the TP to complete readiness audits required by carrying out an audit as in the Self Assessment Approach introduced by Bursa via the SAA Directive, but instead of submitting reports and supporting documents, TPs can now, *where DA is allowed*, submit a prescribed Declaration form attached as **Annexure 2** herein, stating that requirements pertaining to certain key areas are satisfied.

B. GUIDELINES

Guidelines in **Annexure 1** are issued to guide the TP as to the approvals it needs to obtain before commencing on New Trading Activities and the application of DA as a mode of fulfilling readiness audit requirements. These Guidelines are to be read together with the SAA Directive, however, the SAA Directive is modified to the extent of that these Guidelines as a mode for completing readiness audits for New Trading Activities have been introduced and the approval requirements have been clarified.

C. AMENDMENT TO TRADING PARTICIPANTS' CIRCULAR 3 OF 2005

Pursuant to the introduction of DA as a mode of completing readiness audits, paragraph 5 of Trading Participants' Circular 3 of 2005 is amended as follows, to allow for the introduction of DA:

- “5. Each time futures broker sponsors DRs from a stockbroking company it shall be subject to an audit as prescribed by Bursa Malaysia Derivatives Berhad. This audit shall be conducted notwithstanding that a prior audit had been carried out on the futures broker for sponsoring DRs from another stockbroking company within the same group with the futures broker.....”

D. EFFECTIVE DATE

In respect of the above, please be informed that the Guidelines herein and the above amendments to the Trading Participants' Circular 3 of 2005 is effective 24 March 2009.

F. CONTACT DETAILS

Please direct any queries you may have in relation to the above to the following persons:-

Pasupathy Velauthah 03-20347141

Vaithyanathan Madavan 03-2034 7142

All rules, directives or circulars in force which make references to or contain provisions relating to the above matters shall have effect as if such reference or provisions relate to the amended provision/s aforesaid.

Please be informed that this circular is available on Bursa Malaysia's website at: http://www.bursamalaysia.com/website/bm/rules_and_regulations/bursa_rules/bm_derivatives.html

Regulatory Policy & Advisory

GUIDELINES PERTAINING TO THE DECLARATORY APPROACH IN RESPECT OF READINESS AUDITS ("GUIDELINES")

1. APPLICATION OF THESE GUIDELINES

These Guidelines are to be read in conjunction with the directives issued by Bursa vide its letter dated 10 January 2005 and referenced RISI/GEN/120 introducing the Self Assessment Approach ("the Directives") adopted in completing pre-requisite readiness audits in respect of the activities requiring prior approval before commencement as detailed in the Directives (hereinafter referred to as "New Trading Activities"). The objective of these Guidelines is to expand the mode of completing such readiness audits to include the Declaratory Approach ("DA"). The DA mode requires the PO or TP or ADA to carry out readiness audits following which the DA Declaration Form prescribed in *Annexure 2* must be submitted to Bursa Malaysia for its review.

Note that the application of the Directives remains in force but is modified to the extent that these Guidelines on the DA as a mode for completing readiness audits for New Trading Activities is introduced and the approval requirements are clarified in paragraph 2 below.

These Guidelines shall not be applicable to readiness reviews/inspection by Bursa in respect of Securities Borrowing & Lending and Regulated Short Selling Activities, for which the relevant provisions of the Rules of Bursa Securities shall continue to apply.

2. NEW TRADING ACTIVITIES REQUIRING APPROVAL OF THE SECURITIES COMMISSION OR/AND BURSA

A. Initial Commencement of New Trading Activities By POs and ADAs that Require Approval Of Both Bursa And The Securities Commission

- (i) *Commencement of operations as a new PO (Principal Office);*
- (ii) *Commencement of operations as a Universal Broker;*
- (iii) *Commencement of operations as a new Islamic Stock Broker;*
- (iv) *Offering of Margin Financing facilities;*
- (v) *Offering of Corporate Finance Activity Services;*
- (vi) *Trading Activities In Unquoted Debt Securities;*
- (vii) *Commencement of Proprietary Trading; and*
- (viii) *Commencement of operations as a New Authorised Depository Agent ("ADA");*

ANNEXURE 1

B. Activities by existing POs and ADAs Involving New Premises And Activities That Requires The Approval Of Bursa Only

- (i) *Setting up of Disaster Recovery Sites ("DRS");*
- (ii) *Establishment of new/additional Trading Floor;*
- (iii) *Relocation of Business Premises or Change of Business Address (applicable to Principal Office and Branch Office);*
- (iv) *Opening of a new Branch Office of POs;*
- (v) *Opening of a new Electronic Access Facilities; and*
- (vii) *Opening of a new ADA Branch; and*
- (viii) *Activities under Paragraph A(iv)-(vii) which Recur after Initial Approval from the Securities Commission is Obtained under Paragraph A.*

C. Initial Commencement Of New Trading Activities By TPs that Require Approval Of Both Bursa And The Securities Commission

- (i) *Commencement of trading activities as a new TP (Principal Office);*
- (ii) *Offering of Discretionary Account Trading facilities to clients; and*
- (iii) *Commencement of Proprietary Trading.*

D. Activities by existing TPs of Bursa Derivatives Involving New Premises And Activities That Requires The Approval Of Bursa Only

- (i) *Establishment of new/additional Trading Floor;*
- (ii) *Commencement of trading in a dual licensed branch of a related stock broking company; and*
- (iii) *Commencement of trading in a new category of contracts traded on the Bursa Derivatives.*

3. READINESS AUDITS FOR COMMENCEMENT OF NEW TRADING ACTIVITIES

A. Readiness Audits for Commencement of New Trading Activities.

- Step 1) Bursa will, upon receiving an application for approval from a PO or TP or ADA to commence a New Trading Activity pursuant to the processes outlined in the Directives, upon due consideration, give a conditional approval setting out the relevant conditions that need to be complied with by the PO or TP or ADA prior to commencement of the activity, including whether the PO or TP is required follow the Self Assessment Approach ("SAA") or the Declaratory Approach ("DA") in relation to readiness audits.

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The aforementioned requirement to follow either the SAA or DA is assessed based on the following principles:

(i) New POs or TPs or ADAs

The DA shall only be applicable to existing POs, TPs and ADAs thereby excluding any new applications from entities aspiring to become a new PO, TP or ADA. Those falling under the category of new PO, TP or ADA shall continue to be subjected to SAA readiness audits as this would be the first instance they are being assessed before commencing their operations.

(ii) Opening of New Branch Offices By POs/ADAs

Where a given PO or ADA has cumulatively established 3 branch offices, it shall be required to provide the Declaration only in relation to readiness audit in respect of the opening of the 4th branch office onwards.

Where a given PO or ADA has not established the requisite number of at least 3 branch offices, it shall be required to follow the SAA method for readiness audits, until such time when the given PO and ADA has cumulatively established the requisite number of 3 branch offices.

(iii) All other Activities Of POs/TPs/ADAs

Where the application is received in respect of a New Trading Activity that is being proposed for the first time by a given PO, ADA or TP and where such activities requires the approvals of both Bursa and the Securities Commission as detailed in paragraph 2 above, the said PO, ADA or TP shall be required to carry out a readiness audit adopting the SAA method.

For subsequent applications of same nature and where such activities requires the approval of Bursa only as detailed under paragraph 2 above, the given PO, ADA or TP shall only be required to submit the Declaration to fulfill the requirement for the completion of a readiness audit.

Note that notwithstanding the provisions of item (i), (ii) and (iii) above, Bursa reserves the right to require any POs or TPs to adhere to the SAA method in place of DA under any circumstances, at its absolute discretion.

Step 2) In respect of the readiness audit required in Step 1:

- (i) Where the PO or TP or ADA is required to adopt SAA for readiness review in respect of the New Trading Activity in Step 1, the processes detailed in the Directives apply.

ANNEXURE 1

- (ii) Where the PO or TP or ADA is required to adopt DA for readiness review in respect of the New Trading Activity in Step 1, the PO or TP or ADA shall commence to evaluate its readiness prior to commencement of the proposed New Trading Activity. To this end, the PO or TP or ADA will be required to carry out an independent readiness review and complete and prepare the relevant documentation as prescribed by Bursa in paragraph B below. Note that the aforementioned readiness review shall be carried out by a party that is independent of trading and operations of the PO or TP or ADA i.e. Internal Audit and/or External Auditors.

The PO, TP or ADA must submit all the relevant documents as prescribed under paragraph B below at least **two (2) clear weeks** before the above intended commencement date.

- Step 3) Where the PO or TP or ADA is placed under the DA approach, Bursa will process the application based on the Declaration provided by the PO or TP or ADA.

B. Documentation Requirements for POs or TPs or ADAs Placed Under DA

The following documents are required for POs or TPs or ADAs placed under DA:

- Formal Application Letter of proposed activity.
- DA Declaration Form in the prescribed format appended herein as ***Annexure 2***.

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READINESS DECLARATION

To: Head
Participants Supervision
Regulation
BURSA MALAYSIA BERHAD
12th Floor, Exchange Square
Bukit Kewangan
50200 Kuala Lumpur

[Insert name of Participating Organisation (PO) /Trading Participant (TP)/ Authorised Depository Agent (ADA)]

DECLARATION ON COMPLIANCE FOR PURPOSES OF READINESS TO COMMENCE OPERATIONS

PART I

We refer to our application to commence the operation of our *[insert the particulars of the Readiness concerned]* referenced *[insert reference]* dated *[insert date]*, full details of which are contained in the proposal accompanying our aforesaid application.

We, *[insert name of PO/TP/ADA]*, hereby declare and confirm as follows:-

1. that *[insert name of PO/TP/ADA]* has carried out an independent readiness assessment through the appointed (Internal Auditors* / External Auditors*) in regard of *[insert the particulars of the Readiness concerned]*, and we have reasonable assurance that all the relevant systems, policies and procedures and relevant front office and back office systems IT systems that are required for the effective establishment, maintenance or operation of *[insert the particulars of the Readiness concerned]* are readily available, operative, and functional and are adequate and effective in achieving the intended purpose;
2. we are satisfied that the relevant controls and monitoring policies and procedures pertaining to the establishment, maintenance or operation of the *[insert the particulars of the Readiness concerned]* is/are adequate and effective;
3. we shall comply at all times with the relevant rules, directives, circulars and guidelines issued from time to time by Bursa Malaysia Berhad and/or other subsidiaries of Bursa Malaysia Berhad (collectively referred to hereinafter as the Exchange) in relation to the establishment, maintenance or operation of the *[insert the particulars of the Readiness concerned]* by the Participating Organisation/Trading Participant*;
4. that to the best of our knowledge, the *[insert the particulars of the Readiness concerned]* to be established, maintained or operated by us complies fully with all requirements prescribed by the Exchange in relation to the establishment, maintenance or operation of the *[insert the particulars of the Readiness concerned]* by *[insert name of PO/TP/ADA]*;
5. that the *[insert the particulars of the Readiness concerned]* that is established, maintained or operated, or as the case may be, intended to be established, maintained or operated, outside our principal office, branch office(s) and/or any of electronic access facility(s) contains

* delete accordingly

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adequate and effective specifications and capabilities to ensure that the security of transactions and confidentiality of clients are at all times reasonably and adequately preserved.

6. that the [*insert the particulars of the Readiness concerned*] is, in terms of the applications or software, the physical site location and the hardware, reasonably secured from unauthorised tampering and intrusion and in this respect we have at the minimum strictly complied with all relevant directives, guidelines, circulars and codes relating to security issued by the Exchange for the time being in force, including but not limited to the Member Company IT Security Code or the use of information technology (as may be amended from time to time);
7. the [*insert the particulars of the Readiness concerned*] conforms in all material respects with all relevant rules, directives, circulars and guidelines issued by the Exchange with respect to trading of securities or derivatives on the Exchange by Participating Organisations/Trading Participants/Authorised Depository Agents generally; and
8. we shall indemnify the Exchange and not hold the Exchange liable to any claims made by any party as a result of the establishment, maintenance or operations of the [*insert the particulars of the Readiness concerned*] and its activities.

PART II: NOTIFICATION [*this notification is only relevant to Participating Organisations proposing to establish a New Branch Office*]

9. The following key appointments have been made and/or arrangements to the effect the same are in place:-

Key Appointments At Branch Office	Tick (3) If Applicable
Head Of Branch	
Head Of Dealing	
Head Of Operations	
Compliance Officer	

READINESS DECLARATION

10. The following are the activities that will be undertaken at the proposed Branch Office:-

Activities To Be Undertaken At Branch Office	Tick (3) If Applicable
Securities Trading	
Back Office Operations	
Margin Financing	
Proprietary Trading	
<u>Other Permitted Activities – (To Describe)</u>	
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11. The following applies in relation to back office systems and operations to be undertaken at the proposed Branch Office:-

Front Office Trading Systems	Tick (3) If Applicable
BFE Sever connected to Exchange	
Remote terminals connected to server at another designated branch office (to name the branch office)	
ECOS only	
Others – To Elaborate	

12. The following applies in relation to back office systems and operations to be undertaken at the proposed Branch Office:-

Back Office Systems and Operations	Tick (3) If Applicable
Centralised At The Principal Office; no backoffice system at Branch Office	
Centralised At The Principal Office; with remote backoffice terminals at Branch Office	
Localised At The Branch Office With Links Established With The Principal Office to Enable Transmission Of Data To Principal Offices	
Other – To Elaborate	



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READINESS DECLARATION

Dated this _____ day of _____ 20__

Signed _____
Executive Director / Head of Operations*

Date _____

Signed _____
Executive Director Compliance / Head of Compliance / Compliance Officer*

Date _____

* delete accordingly