

## Bursa Malaysia Rules – Key Enforcement Cases in 2015

### D. Supervisory Failures and/or Ineffective Compliance Function Cases where Enforcement Actions were taken against POs

#### **Case D1: Supervisory lapses by TP resulting in order acceptance and execution by unregistered person**

- (1) A TP was imposed a private reprimand and a fine of RM5,000 for it had:-
  - (a) accepted and executed orders on behalf of its clients through a trainee CMSR whose application to be registered as a RR of the TP with Bursa Malaysia Derivatives had yet to be approved at the material time; and
  - (b) failed to ensure that it had established and maintained a proper system to supervise the activities of its RRs and other personnel that was reasonably designed to achieve compliance with the Rules of Bursa Malaysia Derivatives, i.e. that TPs shall accept orders in behalf of clients only through their RRs.
- (2) In imposing the sanctions on the TP, various factors were taken into account including:-
  - (a) The trainee CMSR was already licensed as a CMSR with the SC at the material time but pending registration with Bursa Malaysia Derivatives.
  - (b) The number of orders accepted and executed by the trainee CMSR.
  - (c) The immediate remedial actions taken by the TP's management to mitigate the breach.
  - (d) The TP's representation that the breach was due to the misinterpretation by its compliance officer (who was new to the futures industry) of the requirements of a CMSR that CMSRs were allowed to resume full responsibility of a CMSR upon being licensed by the SC, which indicated that the breach was unintentional, would not absolve the TP from liability for the breach as the final responsibility for supervision rests with the TP to ensure compliance with the Rules of Bursa Malaysia Derivatives by its RRs and employees.

---

#### Glossary:

Bursa Malaysia Securities: Bursa Malaysia Securities Berhad  
Bursa Malaysia Derivatives: Bursa Malaysia Derivatives Berhad  
CDR: Commissioned Dealer's Representative  
CMSA: Capital Markets & Services Act 2007  
CMSR: Capital Market Services Representative  
DR: Dealer's Representatives  
FBR: Futures Broker's Representative

Mandatory Training: Requirement to undergo training on conduct or professionalism of DRs/Registered Persons/Head of Dealing/Compliance Officer/market offences  
PO: Participating Organisation  
RP: Registered Person  
RR: Registered Representative  
SC: Securities Commission  
TP: Trading Participant

## *Bursa Malaysia Rules – Key Enforcement Cases in 2015*

- (e) This was a repeat breach by the TP as enforcement action was previously taken against the TP for a similar breach.

### **Case D2: Supervisory breach by PO - Unlawful/unethical activities/conduct by DRs (abuse of clients' accounts and monies, unauthorised trades etc)**

- (1) A PO was imposed a public reprimand via e-Rapid link and a fine of RM100,000 for there were gaps/lapses in the PO's supervision and monitoring including its policies & procedures (P&P) and internal controls which resulted in misappropriation/ misapplication of clients' monies by its 2 DRs and substantial losses suffered by several clients of the PO. In addition, the PO was directed to undertake remedial/rectification actions including review and reassess its internal risk management system and put in place the necessary controls to ensure protection of clients' monies.
- (2) The gaps/lapses of supervision/internal controls/monitoring/P&P included as follows:-
- (a) The PO and/or its staff had failed to be alerted, raise any doubt and/or undertake any/further inquiry as to the suspicious/irregular characteristics of the deposits and withdrawals by the clients including verification from the clients as to utilisation of the same in the manner as requested by the DRs despite various red flags including the following:-
- (i) deposit of huge sum of monies by a client which was a co-operative into an individual's account and immediate withdrawal of the monies shortly thereafter from the individual's account which was opened barely a month ago;
- (ii) financial background of the individual client which ought to have raised question on his ability to make such huge payments to the PO; and
- (iii) several payments which involved/by a client (e.g. Client A) and the said payments which were split or apportioned as deposits/towards payments for purchases/contra losses of 2 or more clients (e.g. Client B and Client C). In addition, the amount deposited/paid as declared by the DR (in a form raised by the DR requesting to credit the monies to/for the benefit of Clients B and C) did not tally with the actual amount paid by Client A as shown in the Desktop Banking Report due to the various splitting by the DR of the sum paid by Client A.

---

#### Glossary:

Bursa Malaysia Securities: Bursa Malaysia Securities Berhad  
Bursa Malaysia Derivatives: Bursa Malaysia Derivatives Berhad  
CDR: Commissioned Dealer's Representative  
CMSA: Capital Markets & Services Act 2007  
CMSR: Capital Market Services Representative  
DR: Dealer's Representatives  
FBR: Futures Broker's Representative

Mandatory Training: Requirement to undergo training on conduct or professionalism of DRs/Registered Persons/Head of Dealing/Compliance Officer/market offences  
PO: Participating Organisation  
RP: Registered Person  
RR: Registered Representative  
SC: Securities Commission  
TP: Trading Participant

## *Bursa Malaysia Rules – Key Enforcement Cases in 2015*

- (b) The PO's P&P at the material time were inadequate for they merely set out the steps to be taken (i.e. mere checking and confirming details of the payments) when client bank-in directly or remit payment via telegraphic transfer (TT) into the PO's account based on total reliance of its DRs without more. In this regard, the P&P did not provide any requirement or guidance for the staff to undertake verification/inquiries in handling of clients' monies which showed suspicious/irregular characteristics. The total/mere reliance by the PO on its DRs to ensure that monies paid by clients were correctly identified and paid to the account/benefit of the rightful owner/client without any form of verification process/checks to prevent abuses by its DRs was unreasonable particularly in the light of the irregularities/red flags as set out above.
- (c) Even though the PO knew/was aware of the misapplication of monies by one DR some time in 2009, the PO had failed to take adequate and/or effective steps to improve/enhance its supervision and monitoring including its P&P and internal controls which allowed the subsequent misapplication/ misappropriation of substantial amount of clients' monies by another DR over an extended period of time, undetected by the PO.

*Information on this case can be found in the POs' Circular No. G005 of 2015 dated 24 March 2015 on E-Rapid Link.*

---

### Glossary:

Bursa Malaysia Securities: Bursa Malaysia Securities Berhad  
Bursa Malaysia Derivatives: Bursa Malaysia Derivatives Berhad  
CDR: Commissioned Dealer's Representative  
CMSA: Capital Markets & Services Act 2007  
CMSR: Capital Market Services Representative  
DR: Dealer's Representatives  
FBR: Futures Broker's Representative

Mandatory Training: Requirement to undergo training on conduct or professionalism of DRs/Registered Persons/Head of Dealing/Compliance Officer/market offences  
PO: Participating Organisation  
RP: Registered Person  
RR: Registered Representative  
SC: Securities Commission  
TP: Trading Participant