

Bursa Malaysia Rules – Key Enforcement Cases in 2016

C. Cases of misconduct including cases involving unlicensed persons/ unauthorised trades where Enforcement Actions were taken against RPs/the company (POs/TPs) for lapses of supervision

Bursa Malaysia Securities says:

- (a) **POs and its RPs (including DRs having supervisory duties) must effectively discharge their supervisory duties and ensure adequate supervision and monitoring of the activities/dealing activities of the RPs/employees under their supervision to ensure compliance with the relevant Rules.**
- (b) **POs and RPs must ensure that all information submitted to Bursa Malaysia Securities are accurate and take necessary steps to verify such information.**
- (c) **RPs should refrain from engaging in/facilitating private arrangement/irregular and unhealthy practice involving the use of their clients' accounts. Client's account must only be used for the client's trades and not third parties' trades.**

Bursa Malaysia Securities had imposed a private reprimand, fine and/or suspension and/or Mandatory Training on the following POs/RPs/DRs for engaging in the misconducts set out below:-

Case C1: Unauthorised trades

- (1) A CDR was imposed a private reprimand, fine of RM10,000 and Mandatory Training for she had:-
 - (a) allowed her client's account to be used by third parties to undertake trading activities for third parties and/or based on the third parties' instructions; and

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CMSA: Capital Markets & Services Act 2007

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Mandatory Training: Requirement to undergo training on conduct or professionalism of DRs/Registered Persons/Head of Dealing/Compliance Officer/market offences

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(b) unlawfully transacted in her client's account,

arising from a purported family arrangement between her client and the CDR's family members/relatives.

(2) In imposing the sanctions, various factors were taken into consideration, amongst others:-

(a) the materiality of the breaches including the extent of the unauthorised trades;

(b) the commission derived by the CDR from the unauthorised trades; and

(c) the asserted mitigating factors (including there was no evidence of losses suffered by her client and there was no evidence of fraud, dishonesty or bad faith on the CDR's part).

Case C2: Engaging in irregular and unhealthy practice

(1) A CDR was imposed a private reprimand and fine of RM5,000 for he had:-

(i) accessed his client (Client A)'s internet trading account using her User ID and password and executed trades on her behalf; and

(ii) executed trades in Client A's trading account on her behalf without prior instructions from her and/or based on the CDR's own discretion/decision to trade,

with Client A's knowledge/acquiescence, which resulted in losses in Client A's account. Hence, the CDR had engaged in an irregular and unhealthy practice. Notwithstanding that Client A had knowledge of/acquiesced to the CDR's misconduct, it would not absolve the CDR from liability for the breach.

(2) In imposing the sanctions including the fine of RM5,000, various factors were taken into consideration, amongst others:-

(a) the extent and the impact/materiality of the breach by the CDR which caused losses to Client A;

(b) the commission derived by the CDR; and

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- (c) the asserted mitigating factors by the CDR, amongst others, that:-
 - (i) the CDR had paid part of the losses to Client A;
 - (ii) there was no element of dishonesty/fraud/concealment/personal gain by the CDR; and
 - (iii) there was evidence that he had acted with Client A's consent/knowledge.

Case C3: Trading Clerk undertook functions of a DR, supervisory lapses by PO and SDR vis-à-vis the dealing activities of Trading Clerk and failure to submit accurate and material information to Bursa Malaysia Securities

- (1) Bursa Malaysia Securities had imposed:-
 - (a) a private reprimand and fine of RM200,000 on a PO and a private reprimand, fine of RM20,000 and Mandatory Training on a SDR cum Head of a dealing department (said Department) of the said PO (who had supervisory duties over the activities of the said Department) for:-
 - (i) the PO and the SDR had failed/omitted to disclose material information vis-à-vis the identity of the person who executed dealing activities in several counters to Bursa Malaysia Securities (Misrepresentation Breach) which had impeded and prolonged Bursa Malaysia Securities' investigation; and
 - (ii) there were supervisory and monitoring lapses/weaknesses by the PO and the SDR over the activities/dealing activities of the said Department (Supervisory Breach) which resulted in a Trading Clerk being allowed to carry out the functions of a DR which were beyond the permitted functions/duties of a Trading Clerk; and
 - (b) a private reprimand, fine of RM10,000 and Mandatory Training on the PO's Trading Clerk for undertaking the functions of a DR which were outside the scope of a Trading Clerk's functions for the Trading Clerk had carried out dealing activities in several counters (Breach by the Trading Clerk).

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- (2) With regard to the Misrepresentation Breach by the PO and SDR, it was noted that in responding to Bursa Malaysia Securities' query letter on dealing activities undertaken in several counters by the said Department, the PO and SDR (who was one of the personnel involved in drafting/reviewing the PO's reply to the query letter) did not reveal that the trades were executed by the Trading Clerk even though they were aware of/knew/ought to have known of/was in the position to ascertain the person who executed the orders.
- (3) As for the Supervisory Breach by the PO and SDR and the Breach by the Trading Clerk, the following were noted:-
 - (a) Notwithstanding the assertions by the parties that the Trading Clerk was merely undertaking the functions of a Trading Clerk as he was acting mechanically/in an administrative/clerical role, the evidence clearly showed that the Trading Clerk had exercised discretion/judgment in undertaking the dealing activities in several counters and/or carried out the functions of a DR, which were beyond the scope of clerical and administrative functions permitted to be undertaken by a Trading Clerk.
 - (b) The governance structure/framework of the said Department whereby Trading Clerks were allowed to undertake dealing activities was allowed/condoned by the PO which had approved/permitted the same.
- (4) In imposing the sanctions against the PO, SDR and Trading Clerk, various factors were taken into consideration, including:-
 - (a) The materiality/extent of the breaches including the multiple breaches by the PO and SDR.
 - (b) With regard to the PO:-
 - (i) Whilst the PO was not prohibited from delegating/granting authority and/or supervisory duties/responsibilities to the SDR, the PO has the ultimate responsibility to ensure compliance with the Rules. As such, the PO must have in place adequate supervision and monitoring over the activities and dealing activities of the said Department instead of

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unreasonably relying on the SDR to supervise and monitor the activities of the said Department without adequate check and balance.

- (ii) The PO's acceptance of the finding of breaches and the rectification and remedial actions taken by the PO (e.g. top-level management changes, improvements in its regulatory and internal policies compliances and improvements in its market risk management and business operations).
- (c) With regard to the SDR:-
- (i) The SDR's primary role and knowledge/awareness as the Head of the said Department vis-à-vis the dealing activities undertaken by her subordinates, in particular the Trading Clerk, who was under her direct supervision.
 - (ii) As the SDR cum Head of the said Department at the material time, she had supervisory duties/role including duty to supervise and monitor the dealing activities of the traders of the said Department. Whilst the SDR might not have the authority to decide on the licensing framework of the PO as claimed by her, as the Head, she could and should have advised the PO that the Trading Clerk ought to have been registered as a DR and not a Trading Clerk in order to ensure compliance with the Rules. Alternatively, she could have sought clarification from the Compliance Officer of the PO.
 - (iii) By allowing/failing to restrain the Trading Clerk to undertake/from undertaking the functions of a DR, the SDR (who had supervisory duties over the activities of the said Department) had failed to ensure compliance with the Rules and failed to perform her duties efficiently, honestly and fairly.
- (d) With regard to the Trading Clerk:-
- (i) Ignorance of the Rules of Bursa Malaysia Securities was not a defence and hence the Trading Clerk's purported ignorance/misinterpretation in this respect should not absolve him of the breach committed. In any event, prior to joining the PO, the Trading Clerk was registered as a SDR of another PO. Hence, he knew/ought to have known the difference between the roles of a DR and a Trading Clerk or sought clarification if he was unclear.

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- (ii) The asserted mitigating factors put forth by the Trading Clerk including that he was carrying out his duties as mandated and followed the risk framework of the PO, he did not receive any benefit from the said dealing activities and his contribution to the capital market.

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