

## Bursa Malaysia Rules – Key Enforcement Cases in 2022

### C. Cases of misconducts/unlawful, irregular or unhealthy practices/lapses/non-compliances by:

#### (I) DRs:-

- (a) who unlawfully traded in a third party's account at another PO;
- (b) who unlawfully traded in/used a client's account/online trading facility to:-
  - facilitate another DR's front-running activities via cross trading and pre-arranged trades; and/or
  - execute the DR's personal trades (including unlawful/unpermitted short selling activities);
- (c) who undertook prohibited discretionary trading in client's accounts;
- (d) who misapplied/misused client's monies/trading limits/sales proceeds and shared common address/joint bank account with client; and/or
- (e) who acted on instructions of beneficiary of the estate of a deceased client without prior proper authorisation.

#### (II) PO in relation to supervision and monitoring of deceased client's margin trading account.

### Bursa Malaysia Securities says:-

- (a) **The protection of clients' accounts/monies/interest is one of the fundamental obligations/duties of a DR and cornerstone of market integrity which must be upheld at all times and must not be compromised. In this regard:-**
  - any concealment of a DR's personal trades/unlawful trading activities by undertaking the trades in another client's account will be viewed seriously as these impinge on the integrity and professional conduct of the DR; and
  - a DR must not allow the client's account to be used for personal/third party trading or act as a mere order taker.
- (b) **Upon the demise of a client, a DR must not act on the instructions of the executor (named in the deceased client's will) or any third party (including any family member, lawyers, agents or personal representative of the deceased client's estate) without first obtaining the Grant of Probate/Letters of Administration for the deceased's estate and other relevant documents to verify and ensure that the third party has legal authority to act (e.g. letter of authorisation from the executor of the deceased's estate).**
- (c) **A PO must have in place adequate and effective written policies and procedures ("P&P"), supervision, monitoring system and internal controls and exercise due diligence vis-à-vis management of a deceased client's account to safeguard the deceased client's accounts/assets.**

#### Glossary:

Bursa Malaysia Securities	Bursa Malaysia Securities Berhad
CDR	Commissioned Dealer's Representative
DR	Dealer's Representative
Mandatory Training	Requirement to undergo training on conduct or professionalism of DRs/Registered Persons/market offences
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- (I) Bursa Malaysia Securities had imposed a public reprimand, fines and/or suspension/striking off and/or Mandatory Training on the following DRs for engaging in various misconducts, details of which can be found in the media release issued:

No.	DR	Type of misconducts	Date of media release
1.	Abdul Karim bin Yasin (“ <b>KARIM</b> ”)	<ul style="list-style-type: none"> <li>unlawful trading in a third party’s account (with elements of market abuse i.e. front-running activities via pre-arranged/cross trades with another DR from another broker (i.e. SOBRI in item No. 2 below) and bidding-up activities)</li> </ul>	4 October 2022
2.	Sobri bin Ahmad (“ <b>SOBRI</b> ”)	<ul style="list-style-type: none"> <li>abuse of client’s account to facilitate KARIM’s front-running activities via pre-arranged/cross trades</li> <li>unlawful trading in client’s account and used client’s online trading facility to execute personal and third party’s (i.e. KARIM’s) trades</li> </ul>	
3.	Tye Lim Huat (“ <b>TYE</b> ”)	<ul style="list-style-type: none"> <li>used client’s account for personal trades (including to carry out unlawful/unpermitted short selling)</li> <li>undertook prohibited discretionary trading in client’s accounts</li> <li>misapplied/misused monies in client’s trust accounts and client’s trading limits/sales proceeds to fund his personal trades</li> <li>unlawful/irregular/unhealthy practices</li> </ul>	7 December 2022

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- (II) Bursa Malaysia Securities had also imposed a private reprimand and fine on the following DR and PO and imposed a Mandatory Training on the DR for engaging in the misconducts and supervisory breach respectively as set out below:-

### **Case C1: Supervisory breach by PO which facilitated/resulted in breaches by DR vis-à-vis trades undertaken in deceased client’s account**

#### **Against DR**

- (1) A CDR was imposed a **private reprimand, fine of RM8,170 and Mandatory Training** for selling shares in a deceased client’s (“**Client A**”) margin trading account (“**MTA**”) based on the instructions from Client A’s son:-
- (a) prior to the submission of the Grant of Probate for Client A’s estate; and
  - (b) without the prior written authorisation from the executor of Client A’s estate, after the Grant of Probate was obtained,
- which tantamount to unauthorised trades and trades without prior written authorisation respectively, in breach of the Rules of Bursa Malaysia Securities.
- (2) The CDR’s assertions, amongst others, that he was merely acting on the instructions of the PO’s branch management as the PO had taken over control of Client A’s account and uplifted the suspension on the MTA for him to sell the shares, did not absolve the CDR from liability for the breaches. As an experienced DR, the CDR knew or ought to have known that upon a client’s demise, no trading could be undertaken in the deceased client’s account until the Grant of Probate has been submitted whereupon he could only take instructions from a third party with the prior written authorisation from the executor of the deceased client’s estate.
- (3) The sanctions, including fine and Mandatory Training, were imposed on the CDR (without a suspension/striking off) after considering, amongst others, the following:
- (a) The extent of the breaches which involved numerous transactions of substantial value undertaken on several trading days over a period of about one year after Client A’s demise including the commission earned by the CDR from the unauthorised trades.
  - (b) There was no evidence of bad faith, fraud or dishonesty on the CDR’s part or that the CDR had undertaken the trades for his own benefit/to Client A’s detriment. In this regard:-
    - (i) the CDR had sold the shares in an effort to assist Client A’s estate to regularise/reduce the outstanding margin in Client A’s MTA/to avoid any potential force selling or margin calls;
    - (ii) the sales were based on the instructions of one of Client A’s sons and the executor/beneficiaries of the estate of Client A did not dispute the trades; and
    - (iii) the sales could not have been undertaken had the PO suspended and continued to suspend Client A’s account.

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### Against PO

- (4) Arising from the CDR's breaches above, a **private reprimand and a fine of RM10,000 were imposed on the PO** for supervisory breach as there were inadequacies/gaps/lapses in the PO's internal controls/monitoring system/P&P in handling a deceased client's account ("**Gaps/Lapses**") as follows, which had enabled/facilitated the CDR's breaches:-

(a) Despite:-

- (i) being notified of Client A's death and initially suspending the MTA;
- (ii) knowing that upon a client's death and pending receipt of the Grant of Probate, the selling in a deceased's account could only be undertaken in limited circumstances e.g. force selling or liquidation action by the PO pursuant to the agreement between parties; and
- (iii) knowing that upon issuance of the Grant of Probate, sales in the MTA can only be undertaken based on instructions from the executor of the estate of the deceased client or a third party, with the prior written authorisation from the executor,

the PO had uplifted the suspension on Client A's MTA twice for the CDR to sell the shares in the MTA. The PO had merely relied on the CDR's requests to uplift the suspension, purportedly to facilitate force selling arising from a margin call and rectify margin position/potential margin breach, without performing reasonable due diligence. In addition, there was lack of/no proper monitoring by the PO to ensure that the suspension on the MTA was reinstated after the 2<sup>nd</sup> upliftment. Hence, the MTA had remained active for about 15 months after the demise of Client A.

- (b) The PO's P&P were unclear and not comprehensive as it did not prescribe for, amongst others, the following:-

- (i) proper notification/escalation process of the demise of a client by the CDR, including to who the CDR should notify of the client's demise and submit the relevant documents e.g. death certificate, Grant of Probate etc ("**Relevant Documents**");
- (ii) the immediate tagging of a deceased's MTA as "deceased" upon notification of death, regardless of/prior to submission of death certificate; and
- (iii) policies on suspension/upliftment of suspension of account and/or circumstances when sales can be undertaken in a deceased client's account.

In addition, the P&P was not shared with its DRs and hence the CDR was not aware that he had to submit Client A's death certificate to the PO and there was no proper monitoring/check and balance and follow up to ensure that the death certificate was submitted to the PO. This had resulted in the PO's failure to ensure that Client A's MTA was suspended/remained suspended and delay in terminating the MTA as there was no

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status of death indicated in the back office system/due to non-submission of the death certificate.

- (5) The sanctions were imposed having considered, amongst others, the extent/severity/impact of the breaches, in particular the following:
- (a) The numerous Gaps/Lapses had enabled/facilitated the CDR's breaches over a period of about one year which could have been avoided had:-
    - (i) the PO not placed sole reliance on the CDR to obtain the Relevant Documents to initiate its procedures in handling of a deceased's MTA;
    - (ii) the PO tagged/designated the account as a deceased's account pending submission of the Relevant Documents; and/or
    - (iii) the PO not uplifted the suspension on the MTA twice, without further enquiries and due diligence or reinstated the suspension.
  - (b) Although the sales were not disputed, the estate of Client A had questioned the delay in terminating the margin financing facility, closing of the MTA and disputed the outstanding balance in the MTA.
  - (c) The PO's rectification actions including updating its P&P to address the weaknesses in its procedures.
- (6) Notwithstanding that the PO did not dispute the breaches and had opted for agreed settlement for a reduced fine ("**Proposed Settlement**"), Bursa Malaysia Securities had rejected the Proposed Settlement in view of the extent/severity/impact of the breaches, in particular, the numerous Gaps/Lapses and prolonged period of the breaches i.e. the MTA remained active for about 15 months which had facilitated the CDR's breaches and the delay in closing the MTA two years after Client A's demise.

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