



CONSULTATION PAPER NO. 2/2017

PROPOSED AMENDMENTS TO THE RULES OF BURSA MALAYSIA SECURITIES CLEARING SDN BHD, RULES OF BURSA MALAYSIA DEPOSITORY SDN BHD AND RULES OF BURSA MALAYSIA SECURITIES BHD IN RELATION TO THE INTRODUCTION OF ISLAMIC SECURITIES SELLING AND BUYING – NEGOTIATED TRANSACTIONS

Date of Issue: 21 March 2017

Bursa Malaysia Securities Clearing Sdn Bhd (“BMSC”), Bursa Malaysia Depository Sdn Bhd (“BMDepo”) and Bursa Malaysia Securities Bhd (“BMS”) (“collectively Bursa Malaysia”) invites your written comments on the issues set out in this Consultation Paper by 19 April 2017 (Wednesday) via:

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Respondents to this Consultation Paper are requested to use the reply format as stipulated in Annexure D.

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Please see our Personal Data Notice as set out in the Appendix to this Consultation Paper.

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A. Purpose of Consultation Paper

This Consultation Paper seeks public feedback on the proposed Islamic Securities Selling and Buying – Negotiated Transaction (“**ISSBNT**”) framework and the proposed amendments to the Rules of BMSC, Rules of BMDepo and Rules of BMS to reflect this framework, where relevant.

B. Structure of the Consultation Paper

Details of the proposed ISSBNT framework are set out in Part D of this Consultation Paper and the proposed amendments to the Rules of BMSC, Rules of BMDepo and Rules of BMS (collectively referred to as “**Proposed Amendments**”), in Part E (collectively referred to as “**Proposals**”).

The Proposed Amendments are provided in **Annexures A to C** and are reflected in the following manner:

- Portions underlined are text newly inserted/added/replaced onto the existing rules; and
- Portions struck through are text to be deleted.

C. Summary of Proposals

The ISSBNT framework set out in Part D of this Consultation Paper provides a framework for parties to undertake a transaction that is similar to Securities Borrowing and Lending – Negotiated Transaction (“**SBLNT**”) but based on Shariah principles. The ISSBNT framework covers the following key areas –

- (a) BMSC’s role in facilitating ISSBNT;
- (b) securities that can be the subject matter of a ISSBNT and the purposes in which an ISSBNT can be entered into;
- (c) the parties that can participate in ISSBNT and parties who need to act as their representatives;
- (d) the Shariah principles that are applicable to a ISSBNT;
- (e) the requirements applicable to the agreement that is to be entered into by parties of an ISSBNT, particularly for the purposes of being eligible for income tax exemption or other reliefs; and
- (f) the tax treatment of and other reliefs applicable to an ISSBNT.

The Proposed Amendments to each set of Rules, to cater for the above ISSBNT framework are discussed in Part E of this Consultation Paper. The Proposed Amendments cover the following key areas:

Rules of BMSC

Rules relating to:

- (a) participants in the ISSBNT framework;
- (b) purposes of ISSBNT;
- (c) representatives of the participants, and the functions and responsibilities of these representatives;
- (d) matters to be included in an ISSBNT Agreement in order for the same to qualify for the proposed tax exemption;
- (e) access to the ISSBNT system;
- (f) requirements of ISSBNT;
- (g) actions by BMSC; and
- (h) other proposed amendments such as disclosure of information, fees and charges, liability of BMSC, force majeure, indemnity by the representatives and extending BMSC's disciplinary powers to a participant or representative.

Rules of BMDepo

Rules relating to the authority for BMDepo to effect any debit or credit entries in the depositor's securities account pursuant to an ISSBNT.

Rules of BMS

Rules relating to:

- (a) requirements applicable to a Participating Organisation carrying out ISSBNT activities;
- (b) utilisation of ISSBNT for the purposes of carrying out Permitted Short Selling or Regulated Short Selling;
- (c) non-application of requirements in relation to Direct Business Transaction, commission rates and SC levy to an ISSBNT transaction; and
- (d) inclusion of ISSBNT in the calculation of a Participating Organisation's Position Risk Requirement and Counterparty Risk Requirement to

determine whether a Participating Organisation meets the Capital Adequacy Requirements.

Note: As the Proposals are open to comments and feedback from the public, the final rule amendments may differ from those stated in this Consultation Paper. Further, the Proposed Amendments HAVE NOT been approved by the Securities Commission Malaysia (“SC”) and as such are not the final amendments. Bursa Malaysia will submit the Proposed Amendments to the SC for approval after receipt of comments pursuant to this Consultation Paper and making the relevant changes, where appropriate, to the Proposed Amendments.

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D. Details of the proposed ISSBNT framework

Background

1. ISSBNT is an initiative developed by Bursa Malaysia Berhad (“**Bursa**”) to provide a framework for parties to undertake a transaction that delivers the equivalent outcome of a conventional securities borrowing and lending transaction but is structured based on Shariah principles. The ISSBNT framework is based on the SBLNT model which has been in existence since 2007. The SBLNT was chosen as the preferred model to develop the ISSBNT framework because it is more flexible and allows terms to be negotiated and agreed upon by the parties of the transaction. It is more widely used by the market due to this flexibility, as compared to the other securities borrowing and lending model in existence in the market currently, i.e. the Securities Borrowing and Lending – Central Lending Agency (“**SBLCLA**”) model.
2. This ISSBNT framework is expected to grow the Shariah-compliant securities market, in particular the Islamic Exchange Traded Funds (“**iETF**”). Malaysia was one of the first to introduce iETF in the region. However to date, we have only four (4) iETFs listed and traded in the last 6 years since iETF was first introduced. This could be partly due to the absence of a viable Shariah-compliant facility for iETF Market Makers to appropriately discharge their duties. The ISSBNT model will make available such Shariah-compliant facility for iETF Market Makers to enable them to be more effective in their roles as market makers. It will also make available opportunities to other investors who wish to invest according to Shariah principles to deal in their previously inactive portfolio of securities and procure returns on the same, while still retaining the right to recall these securities at any time. There is potential for this to be developed into another viable business for parties involved in this type of transactions.

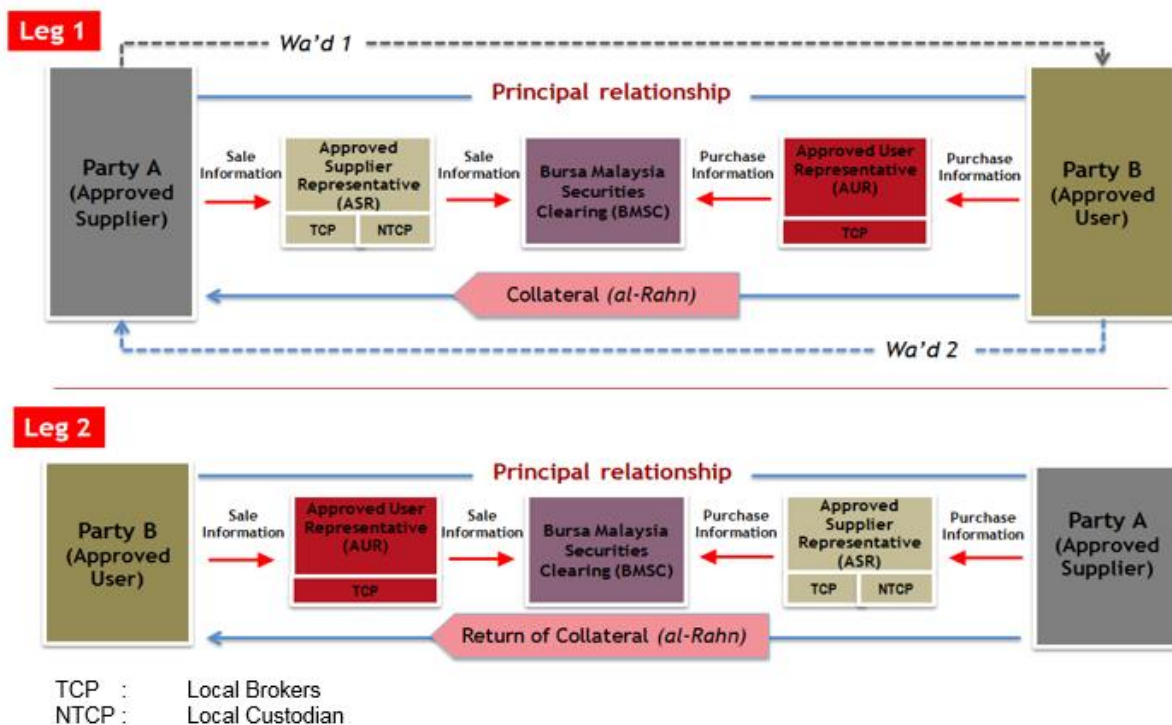
Objectives

3. The key objectives of the ISSBNT are as follows:
 - (a) to improve trading liquidity and velocity of Shariah compliant securities and improve the overall market efficiency;
 - (b) to provide ‘synthetic’ access to short position, to spur the development of the iETF market with enhanced liquidity, to better facilitate hedging and risk management activities of Islamic fund and wealth managers; as well as to reaffirm Bursa’s position as a thought leader in the Islamic capital market sphere by being the first jurisdiction to introduce a Shariah compliant alternative for securities borrowing and lending (“**SBL**”);
 - (c) to enhance value extraction by way of optimisation of portfolio; and
 - (d) for innovation of sophisticated Islamic products and services.

Key features of the proposed ISSBNT framework

BMSC's role

4. BMSC will provide the platform to effect the movement of the ISSBNT securities between the participants of an ISSBNT ("**ISSBNT Participants**"), i.e. the Approved Supplier and Approved User. The Approved Supplier's role is similar to that of a lender in a conventional SBL transaction whilst the Approved User's role is similar to that of a borrower.
5. An Approved Supplier and Approved User will transact directly with each other in relation to the ISSBNT, just like in the case of SBLNT. They will mutually agree on the terms and conditions of the transaction such as the securities to be sold, the sale price and the collateral to be pledged for the transaction. Each person, however, will need to be represented by a Supplier Representative and User Representative respectively, who will undertake the role, among others, of keying in information regarding the ISSBNT entered into by the parties, into the system for ISSBNT ("**ISSBNT System**"). An overview of the ISSBNT model is set out in the flowchart below.



ISSBNT Eligible Securities and Purposes for ISSBNT

6. The securities eligible for ISSBNT ("**ISSBNT Eligible Securities**") shall be those as prescribed by BMSC. These securities are intended to be a subset of the list of securities approved for lending and borrowing for SBL ("**Eligible Securities list**"),

i.e. they will comprise the Shariah-compliant securities from the Eligible Securities list. There is no minimum units of ISSBNT Eligible Securities for ISSBNT.

7. In line with the current purposes allowed for SBLNT, ISSBNT may be undertaken only for any one of the following purposes:
- (a) to settle a regulated short sale¹ in ISSBNT Eligible Securities executed in accordance with the Rules of BMS;
 - (b) to settle a sale of ISSBNT Eligible Securities where there are no or insufficient securities in the securities account of the seller as will enable the seller to meet its delivery obligations to the purchaser as a result of a mistake howsoever made when executing the sale provided always that the mistake was made in good faith and discovered only after the sale has been executed;
 - (c) to settle a sale in the Exchange Traded Fund related securities which are ISSBNT Eligible Securities, where the following requirements are complied with:
 - (i) the sale was executed by the Approved User in its capacity as a market maker for the particular ETF securities or for its client who is a market maker for the particular ETF related securities; and
 - (ii) the Approved User executed the sale as part of its permitted short selling² activities or as part of the permitted short selling activities of the Approved User's client;
 - (d) to perform another SBLNT or ISSBNT provided that the participants in such transactions comply with the Rules and the Clearing House's requirements in relation to SBLNT or ISSBNT.

ISSBNT Participants and their representatives

Approved Supplier

8. Any person approved by BMSC to be an Approved Supplier may enter into an ISSBNT to sell its own ISSBNT Eligible Securities or ISSBNT Eligible Securities owned by its client to an Approved User. In this regard, anyone can apply to be an Approved Supplier and that there is no eligibility criteria in respect of the same.

¹ A 'regulated short sale' is the sale of securities approved by BMS where the seller does not, at the time of execution of the sale, have an exercisable and unconditional right to vest such securities in the purchaser but has, prior to the execution of the sale, borrowed such approved securities or obtained confirmation from the lender that the lender has such approved securities available to lend pursuant to an SBL Agreement as will enable delivery of the same to be made to the purchaser under the said sale.

² Permitted short selling is the short selling of units of an ETF or constituent securities pursuant to the Capital Markets Services (Non-Application of Subsection 98(1))(Exchange Traded Funds) Order 2009.

9. Similar to a SBLNT, an Approved Supplier must appoint a person to act as a representative and intermediary between the Approved Supplier and BMSC in relation to the ISSBNTs entered into by the Approved Supplier (“**the Supplier Representative**”).

Supplier Representative

10. The following persons may apply to be a Supplier Representative:
- (a) a Trading Clearing Participant;
 - (b) a Non-Trading Clearing Participant; and
 - (c) such other person as BMSC may prescribe.
11. All communications between the Approved Supplier and BMSC will go through the Supplier Representative who will be granted access to the ISSBNT System to among others, key-in notifications, receive notices, and adjust the securities which are the subject matter of the ISSBNT (“**ISSBNT Securities**”) on behalf of the Approved Supplier in respect of all ISSBNT.
12. All payments to or from BMSC and the Approved Supplier shall also be made through the Supplier Representative.

Approved User

13. Only the eligible persons approved by BMSC to be an Approved User may buy ISSBNT Eligible Securities, whether for itself or its client.
14. The following persons are eligible to be an Approved User:
- (a) a licensed bank, licensed investment bank or approved money-broker institution as defined under Financial Services Act 2013 and its wholly-owned subsidiary that is a nominee company;
 - (b) a financial institution established under any Act of Parliament and its wholly-owned subsidiary that is a nominee company;
 - (c) a licensed Islamic Bank as defined in the Islamic Financial and Services Act 2013 and its wholly-owned subsidiary that is a nominee company;
 - (d) a prescribed institution as defined in the Development Financial Institutions Act 2002 and its wholly-owned subsidiary that is a nominee company;
 - (e) a bank licensee as defined under the Labuan Financial Services and Securities Act 2010 and its wholly-owned subsidiary that is a nominee company;
 - (f) a holder of a Capital Market Services Licence for the purpose of carrying on the business of fund management, its wholly-owned subsidiary that is a

nominee company and its custodian appointed pursuant to s.122 of the Capital Markets and Services Act 2007 (“CMSA”);

- (g) a closed-end fund that is approved by the SC under s.212 of the CMSA and its custodian in relation to closed-end funds’ investments;
 - (h) a foreign fund manager;
 - (i) a person appointed by BMDepo to be an authorised depository agent and its wholly-owned subsidiary that is a nominee company;
 - (j) a person appointed by BMDepo to be an authorised direct member and its wholly-owned subsidiary that is a nominee company;
 - (k) a clearing house approved under s.38 CMSA; and
 - (l) a holder of CMSL for the purpose of carrying on the business of dealing in securities and its wholly-owned subsidiary that is a nominee company.
15. An Approved User is required to have a minimum Effective Shareholders’ Funds of RM50 million. This requirement is also applicable to an approved borrower under the SBLNT framework.

16. Again, similar to a SBLNT, an Approved User must appoint a person to act as a representative and intermediary between the Approved User and BMSC in relation to the ISSBNTs entered into by the Approved User (“**the User Representative**”).

User Representative

17. The following persons may apply to be a User Representative:
- (a) a Trading Clearing Participant; and
 - (b) such other person as BSMC may prescribe.
18. All communications between the Approved User and BMSC will go through the User Representative who will be granted access to the ISSBNT System to among others, key-in notifications, receive notices, and adjust the ISSBNT Securities on behalf of the Approved User in respect of all ISSBNT.
19. All payments to or from BMSC and the Approved User shall also be made through the User Representative.

The criteria for an ISSBNT

20. The SC’s Shariah Advisory Council resolved on 26 February 2015 that an ISSBNT which is structured based on two outright bai’ (sale) transactions that includes the

features of *wa'dan* (two unilateral promises/undertakings), *khiyar al-shart*³ and the provision of collateral as security for the indebtedness (“**ISSBNT model**”) is permissible. These features of the ISSBNT model are further explained in paragraph 21.

21. Consequently, the following criteria must be present before a transaction can be considered an ISSBNT:
- (a) Each transfer of securities from a principal contracting party to another principal contracting party is supported by a contract of sale (*bai*). The ISSBNT model proposes the following two (2) outright sale transactions:
 - (i) Leg 1 – Approved Supplier sells securities to the Approved User at an agreed sale price (Sale Price for Leg 1) on a deferred payment basis; and
 - (ii) Leg 2– Approved User sells similar or equivalent securities to the Approved Supplier at an agreed sale price (Sale Price for Leg 2) on a cash payment basis via setting-off the Sale Price for Leg 2 against the Sale Price for Leg 1.
 - (b) The concept of *wa'dan* (two unilateral promises or undertakings), i.e. *Wa'd 1* and *Wa'd 2*, which must be executed independently by the principal contracting parties is applicable to reflect the commitment of the principal contracting parties to perform certain obligations such as selling or delivery of securities, buying or acceptance of securities and releasing the pledged collateral upon the settlement of the contract.
 - (c) The principle of *khiyar al-shart* is applied in the ISSBNT model where the Approved User may be granted a grace period to rescind the Leg 1 sale and return the purchased securities to the Approved Supplier without any cost to be incurred between the Approved Supplier and Approved User. For the avoidance of doubt, provided that the Approved User is the owner and in possession of the purchased securities, it reserves the right to exercise the option (*khiyar*) based on mutually agreed terms and conditions. The Approved User may lose the right should there be any impediments that would prevent the Approved User from returning the securities to the Approved Supplier such as the disposal by the Approved User of the purchased securities.
 - (d) The securities sold via Leg 1 and Leg 2 are considered as different assets of sale.
 - (e) Leg 2 should take place when the Approved Supplier exercises his option to purchase equivalent securities as that in Leg 1 in accordance with the *Wa'd* given by the Approved User to the Approved Supplier or upon the triggering of certain events which the parties have agreed upon as circumstances when the Leg 2 transaction is to be executed, e.g. the

³ *Khiyar al-shart* is a conditional option to cancel a previous agreed sale within a specific number of days.

announcement of a corporate action involving the securities in question. This corporate action could include rights issues, bonus issues or mergers and acquisitions. The parties could, in lieu of executing Leg 2 also agree to vary the number of ISSBNT Securities but this would usually be confined to corporate actions such as bonus issues and subdivision of shares.

- (f) The parties may also agree upfront that the ISSBNT may be extinguished without the execution of Leg 2 in certain circumstances such as if the Shariah-compliant securities which are the subject matter of ISSBNT change to being Shariah non-compliant. As a result, there is no need for the Approved User to buy the Shariah non-compliant securities from the market in order to execute Leg 2.
- (g) The risks and liabilities in the securities sold in an ISSBNT reside with the beneficial owner of the securities at the particular point in time. The beneficial owner of the securities has the complete right to freely deal with the securities without any restriction or limitation, including the right to sell the securities to a third party.
- (h) The execution of Leg 2 in an ISSBNT must not be on the same day with the execution of Leg 1.
- (i) Sale values for both Leg 1 and Leg 2 take into consideration the market price of the securities at the contracted date, fees, and dividend payout, as demonstrated by the following formula:
- | | | | |
|------|--------|---|---|
| (i) | Leg 1 | : | Selling Price = MPt x Q |
| | Where, | | |
| | MPt | : | Market Price of the shares at Leg 1 contracted date |
| | Q | : | Quantity of the shares |
| (ii) | Leg 2 | : | Exercise Price = (MPt x Q) – MI – D |
| | Where, | | |
| | MI | : | Monthly Instalment (reflects the “lending fee” in conventional SBL) |
| | D | : | Dividend |
- (j) Unless the parties agree otherwise, the indebtedness arising from Leg 1 is to be secured against acceptable collateral as set out below. The significance of the pledged collateral is to ensure the payment of the Leg 1 transaction by the Approved User to the Approved Supplier through the set-off settlement mechanism.
- | | |
|-------|---|
| (i) | Cash or cash equivalent instruments; |
| (ii) | Shariah compliant securities; |
| (iii) | Sukuk (Malaysia); |
| (iv) | Sukuk (Foreign); |
| (v) | Sovereign bonds (Foreign) – in the event of non-availability of (i) – (iv). |

- (k) The imposition of compensation charges at actual loss based on the principle of ta'widh (compensation) on the defaulting party is permissible.
22. Only an ISSBNT that is transacted in accordance with the ISSBNT model should be keyed-in to the ISSBNT system and in this regard, the onus to ensure Shariah compliance of the ISSBNT lies with the ISSBNT Participants.
23. The ISSBNT Participants are to declare to BMSC that all ISSBNT performed will be Shariah compliant and in line with the ISSBNT model. This declaration is to be made at the point of application to become an ISSBNT Participant.
24. Similar to BMSC's role in SBLNT, BMSC's role in an ISSBNT will be restricted to facilitating the transfers of securities pursuant to the ISSBNT, including transfers of securities which have been pledged as collateral, where applicable and will not extend to Shariah compliance of the ISSBNT entered into.

ISSBNT Agreement and *wa'dan*

25. The ISSBNT Participants are free to execute their own ISSBNT Agreement and *wa'dan*, provided that these documents are in line with the ISSBNT Model.
26. A similar income tax exemption and other reliefs as that for SBLNT are being sought for ISSBNT and this is subject to approval of the relevant authorities. Details of these exemptions/reliefs are set out in paragraphs 29 and 30 below. The proposal is that in order to qualify for the proposed tax exemption, the ISSBNT Agreement must include certain specific matters which are elaborated in paragraph 40(b)(ii) below.
27. As set out in paragraph 21(b), the Approved Supplier and Approved User must execute the *wa'dan* as follows:
- (a) *Wa'd 1* is the unilateral promise/undertaking issued by the Approved Supplier to buy or to accept if the Approved User sells or delivers or upon occurrence of the agreed upon trigger events; and
 - (b) *Wa'd 2* is the unilateral promise/undertaking issued by the Approved User to:
 - (i) execute Leg 2 upon recall by the Approved Supplier or upon the occurrence of the agreed upon trigger events; and
 - (ii) adjust the value of pledged collateral in accordance to the market price of the securities on a marked to market basis.
28. There is no requirement for the ISSBNT Agreement and *wa'dan* to be submitted to BMSC for approval or registration. The ISSBNT Participants are only required to report the ISSBNT at the point of needing to move the ISSBNT Securities from the Approved Supplier to the Approved User pursuant to the ISSBNT.

Tax treatment and other reliefs

29. Similar tax treatment and other reliefs currently available for SBLNT as set out below are being sought for ISSBNT and are subject to the approvals of the relevant authorities:
- (a) income tax exemption under the Income Tax (Exemption) (No. 30) Order 1995 which exempts the borrower and lender from tax on any income (other than dividends, lending fees and interest earned on collateral) arising from a loan of securities listed on BMS and, the return of the same or equivalent securities and, the corresponding exchange of collateral under a securities borrowing and lending transaction;
 - (b) exemption from the substantial shareholding reporting requirements under the Companies (Prescribed Interest) Regulations 2011 where a lender and a borrower (if the borrower does not keep the borrowed securities for more than 3 business days) is exempted from the requirement under the Companies Act 2016 to notify the company of any change in their interests in the loaned securities; and
 - (c) exemption from the relevant provisions of the Code on Takeovers and Mergers (“**Code**”) where the lender, upon providing the relevant declaration to the SC, is exempted from a mandatory offer obligation arising from the return of the loaned securities in a situation where such return would cause the lender to trigger the control threshold or the creeping provision under the Code.
30. In addition to the exemptions sought in paragraph 29, we are also seeking, in respect of ISSBNT, an exemption from the requirements in Regulation 4 of the Capital Markets and Services Regulations 2012 (“**Contract Note Regulation**”). The Contract Note Regulation requires a Participating Organisation to issue a Contract Note to its Client following a sale or purchase of securities.

E. Proposed Amendments

Rules of BMSC (“Annexure A”)

- 31. BMSC proposes to insert a new Chapter 9 into the Rules of BMSC to set out the specific requirements that must be complied with by the ISSBNT Participants and their representatives for purposes of ISSBNT.
- 32. BMSC will also be amending the existing Interpretation section and other relevant provisions pursuant to the introduction of ISSBNT.
- 33. The Proposed Amendments replicate provisions that are applicable to SBLNT framework, with necessary modifications to reflect the ISSBNT framework as described above.

34. The details of the Proposed Amendments in respect of the Rules of BMSC are set out below

Parties to the ISSBNT

35. The proposed rules would govern the relationship between parties to an ISSBNT and BMSC and these rules include:
- (a) the eligibility criteria, application procedure and continuing obligations of an Approved Supplier and an Approved User in relation to ISSBNT;
 - (b) the eligibility criteria, application procedure and respective functions and responsibilities of a Supplier Representative and a User Representative.
 - (c) the obligation on ISSBNT Participants and their representatives to:
 - (i) provide ISSBNT-related information or documents to BMSC and SC; and
 - (ii) pay the relevant fees and charges for the services and facilities provided by BMSC in relation to ISSBNT.

Purposes of the ISSBNT

36. The Approved User may only buy ISSBNT Eligible Securities for the specific purposes as set out in paragraph 7 above and these purposes will be set out in the new chapter on ISSBNT.

ISSBNT requirements

37. The Proposed Amendments also set out the requirements in relation to ISSBNT and these include:
- (a) requiring an Approved User to obtain the relevant confirmation in the prescribed format from an Approved Supplier on the availability of the ISSBNT Eligible Securities for Leg 1 of the ISSBNT;
 - (b) the functions that need to be performed by the ISSBNT Participants and their representatives in relation to ISSBNT:
 - (i) notifying BMSC to effect the delivery of the securities pursuant to the sale transactions in Leg 1 and Leg 2 of the ISSBNT;
 - (ii) keying in adjustments to the number of ISSBNT Securities to incorporate any changes to the quantity of the ISSBNT Securities arising from any corporate actions e.g. a bonus issue of shares where the parties decide to include the bonus issue of shares as ISSBNT Securities instead of executing not Leg 2 of the ISSBNT despite the corporate action;

- (iii) notifying BMSC of the cancellation of Leg 1 pursuant to the exercise of the khiyar al-shart principle referred to in paragraph 20(c) where such cancellation must be done within 2 market days from the date Leg 1 of the ISSBNT is executed; and
- (iv) notifying BMSC of the extinguishment of the ISSBNT without execution of Leg 2 where the same is permitted in limited circumstances such as in the event of a default under the ISSBNT Agreement where the Approved User or Approved Supplier is unable to perform Leg 2.

Powers of BMSC

38. The powers of BMSC in relation to the ISSBNT Participants and their representatives will be set out in the rules and such powers include:
- (a) BMSC's discretionary power to:
 - (i) approve any application to be an ISSBNT Participant; and
 - (ii) revoke any approval of application granted to an ISSBNT Participant; and
 - (b) the types of actions and the circumstances when BMSC may take such action against the ISSBNT Participants, Supplier Representative and User Representative; and
 - (c) BMSC's right to disclose any ISSBNT-related information or documents to the SC and BMS.

Force majeure and indemnification

39. The Proposed Amendments will also contain provisions relating to force majeure and indemnification including the following:
- (a) the extent of BMSC's liability in the event of force majeure; and
 - (b) the duty of ISSBNT Participants to indemnify BMSC for any losses incurred or damage suffered by BMSC as a result of any action or omission of BMSC in relation to ISSBNT where such act or omission was done in good faith.

Agreements, declarations and undertakings

40. The Proposed Amendments will also include provisions setting out the following:

- (a) the format of the declaration and undertaking which is required to be submitted to BMSC by the Supplier Representative and User Representative who act in relation to ISSBNT; and
- (b) matters which must be contained in:
 - (i) the agreement entered into between the ISSBNT Participants and their respective Supplier Representative and User Representative, which includes the provision to ensure that the ISSBNT Participants consent to their respective Supplier Representative and User Representative providing ISSBNT-related information or documents to BMSC and the SC as required from time to time; and
 - (ii) the agreement between the ISSBNT Participants or their clients that governs the terms and conditions of the ISSBNT that is facilitated by the BMSC for such agreement to be deemed an ISSBNT agreement for the purposes of the proposed tax exemption order to be issued in connection with ISSBNT. The specific matters include the following:
 - (1) that unless the parties agree otherwise, the ISSBNT Eligible Securities must not be sold under Leg 1 unless collateral has been received or will be received simultaneously with the sale;
 - (2) that the ISSBNT securities sold under Leg 1 and the collateral (if applicable) must be marked to market (at least daily) and the amount of collateral must be adjusted, if necessary; and
 - (3) which party shall be entitled to any dividends or other benefits or distributions accumulating on the ISSBNT securities sold under Leg 1 and any securities provided as collateral.

Other related amendments

41. In addition to the changes made to cater to the ISSBNT framework, we are also proposing to insert a requirement for the borrower in the SBL framework to have and maintain a minimum Effective Shareholders' Funds of RM50 million. This is an existing requirement under Rule 7.20(a) of the Rules of BMS which is now being incorporated under the BMSC Rules because such requirement applies only to the borrower who may not necessarily be a Participating Organisation. The same requirement is proposed to be made applicable to the Approved User in the ISSBNT context, as stated above.

Rules of BMDepo ("Annexure B")

42. The Proposed Amendments in respect of the Rules of BMDepo include the following:
- (a) the introduction of a new provision to provide for the authorisation given by depositors to BMDepo to debit or credit ISSBNT securities from or into the

respective depositors' securities accounts upon receipt of the relevant instructions from BMSC for the purpose of delivery of securities into or from such accounts pursuant to ISSBNT; and

- (b) definitions of the new terms referred to in the Proposed Amendments to the Rules of BMDepo.

Rules of BMS (“Annexure C”)

- 43. BMS proposes to insert a new Part I in Chapter 7 of the BMS Rules to set out the specific requirements that must be complied with by a Participating Organisation for carrying out ISSBNT activities and the actions by BMS in relation to ISSBNT.
- 44. BMS will also be updating the definitions in the rules and other relevant provisions pursuant to the introduction of ISSBNT model.
- 45. In view of the above, the details of the Proposed Amendments in respect of the Rules of BMS are set out below.

Requirements applicable to a Participating Organisation carrying out ISSBNT activities

- 46. The new Part I of Chapter 7 of the Rules of BMS corresponds to the requirements applicable to a Participating Organisation in relation to carrying out SBLNT. The salient requirements are as follows:
 - (a) where the ISSBNT involves a Client, the Participating Organisation must ensure a copy of a risk disclosure statement as prescribed by BMS is given to and acknowledged by its Client prior to the execution of the ISSBNT agreement;
 - (b) a Participating Organisation must formulate a set of internal guidelines for ISSBNT as required by BMS;
 - (c) a Participating Organisation must establish, implement and maintain systems and infrastructures which are operative and have all the relevant functionalities, requirements and controls in place for the carrying out ISSBNT;
 - (d) a Participating Organisation must establish, implement and maintain all the policies, procedures, controls and other requirements set out in the internal guidelines for the ISSBNT;
 - (e) a Participating Organisation must have submitted a written declaration in the form prescribed by BMS at least 2 Market Days before commencing its ISSBNT activities; and

- (f) a Participating Organisation must hold all ISSBNT Eligible Securities sold or purchased pursuant to ISSBNT in the Securities Account(s) prescribed in the Clearing House Requirements.
47. Similar to the SBNLT framework, new Part I of Chapter 7 also sets out the types of actions and the circumstances when BMS may take such action against the Participating Organisations or Registered Persons.

Permitted Short Selling and Regulated Short Selling

48. The provisions on Permitted Short Selling and Regulated Short Selling are proposed to be amended to allow for the utilisation of ISSBNT in addition to SBL for the purposes of carrying out Permitted Short Selling or Regulated Short Selling.

Direct Business Transaction, commission rates and SC levy

49. Similar to Direct Business Transaction, the ISSBNT model involves sale and purchase of securities that is done outside the automated trading system (“ATS”). Due to the similar nature of Direct Business Transaction and ISSBNT in this regard, changes are proposed to the definition of “Direct Business Transaction” to clarify that the requirements in relation to Direct Business Transaction do not apply to an ISSBNT transaction.
50. Changes are also proposed to Rule 11.04 in respect of the SC levy and to Schedule 6 in respect of commission rates to clarify that the requirements for an SC levy and prescribed commission rates do not apply to an ISSBNT transaction.

Capital Adequacy Requirements

51. Changes are proposed to Chapter 13 (Capital Requirements) to include ISSBNT for the calculation of a Participating Organisation’s Position Risk Requirement and Counterparty Risk Requirement to determine whether a Participating Organisation meets the Capital Adequacy Requirements.

Other related amendments

Requirement for Effective Shareholders’ Funds in relation to SBL

52. Changes are proposed to Rule 7.20(c) to move the requirement for minimum Effective Shareholders’ Funds of RM50 million from the Rules of BMS to the Rules of BMSC as this requirement is to be complied with by a person seeking to be a borrower under the SBL framework, and in this connection, it is viewed that it is more appropriate to place this requirement under the Rules of BMSC.

Inspection or audit by BMS on the Participating Organisation in relation to SBL and Regulated Short Selling

53. The specific rules on inspection or audit by BMS on the Participating Organisation in relation to SBL and Regulated Short Selling respectively in Rules 7.21 and 8.24 are proposed to be deleted as Part B of Chapter 14 already provides for general powers for BMS to conduct inspections and audits.

Changes to Directives of BMS

54. Consequential to the proposed rule amendments above, the following Directives will also be amended to facilitate the introduction of the ISSBNT model:
- (a) Directive No. 2.01(2)-004 (Directive on Submission of Periodic Reports) is amended to clarify that the reporting templates which apply to SBL to also apply to ISSBNT;
 - (b) Directive No. 2.01(2)-006 (Directive on Readiness Audit - Self Assessment Approach, Declaratory Approach and Green Lane) is amended to clarify that this directive does not apply to ISSBNT;
 - (c) Directive No. 5-001 (Directive on Conduct of Business) is amended to clarify the minimum requirements for written policies and procedures and internal controls applicable to a Participating Organisation carrying out ISSBNT (similar to the requirements applicable for SBL activities);
 - (d) Directive No. 7.18-001 (Directive on Securities Borrowing and Lending) is amended amongst others, to set out provisions in relation to ISSBNT including the template of risk disclosure statement and written declaration for ISSBNT (similar to the templates for SBL). We also propose to rename this directive as Directive on Securities Borrowing and Lending and ISSBNT No. 7-001;
 - (e) Directive No. 8-002 (Directive on Regulated Short Selling) is amended to reflect the changes consequential to the insertion of ISSBNT into the Regulated Short Selling framework, including moving the declaration on compliance from the rules into this directive;
 - (f) Directive No. 9-001 (Directive to Prescribe the Scheduled Delivery Time and Scheduled Settlement Time for Recalled Securities) is amended to clarify that the timing for delivery and settlement in Appendix 2 of this directive is applicable to ISSBNT subject to the conditions prescribed, including the condition that the supplier must have recalled the securities sold pursuant to ISSBNT before going on to sell the securities; and

- (g) Directive No. 13-001 (Directive on Capital Adequacy Requirements) is amended to clarify the inclusion of ISSBNT in the calculation of Position Risk Requirement and Counterparty Risk Requirement.

F. Issues for Consultation

With regard to the above, we invite your comments on the Proposals. For your ease of reference, we enclose here **Annexure D** setting out the consultation issues, for your comments.

[End of Consultation Paper]

ANNEXURES A – C PROPOSED AMENDMENTS

*[Please see **Annexures A – C** enclosed with this Consultation Paper]*

ANNEXURE D ISSUES FOR CONSULTATION

*[Please see **Annexure D** enclosed with this Consultation Paper]*

APPENDIX BURSA MALAYSIA'S PERSONAL DATA NOTICE

In relation to the Personal Data Protection Act 2010 and in connection with your personal data provided to us in the course of this consultation, please be informed that the Bursa Malaysia's personal data notice ("**Notice**") is available at www.bursamalaysia.com. Kindly ensure that you read and are aware of the Notice.

If you are submitting personal data of an individual other than yourself ("**data subject**"), please ensure that prior to such submission, you have provided the data subject with written notice of the Notice unless section 41 of the Personal Data Protection Act 2010 ("**PDPA**") applies or Bursa Malaysia otherwise specifies in connection with the PDPA.

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Berhubung Akta Perlindungan Data Peribadi 2010 dan berkenaan semua data peribadi anda yang diberikan di dalam proses konsultasi ini, sila ambil maklum bahawa notis Bursa Malaysia mengenai data peribadi ("**Notis tersebut**") boleh didapati di [www.bursamalaysia.com](http://www.bursamalaysia.com). Sila pastikan yang anda membaca dan memahami Notis tersebut.

Jika anda mengemukakan data peribadi individu pihak ketiga ("**Subjek Data**"), anda mesti memastikan bahawa Subjek Data telah diberi notis bertulis mengenai Notis tersebut terlebih dahulu kecuali seksyen 41 Akta Perlindungan Data Peribadi 2010 ("**APDP**") terpakai atau Bursa Malaysia sebaliknya menyatakan berkenaan dengan APDP

**[End of Appendix]**