



**BURSA MALAYSIA**

**CONSULTATION PAPER**

**No. 2/2010**

**PROPOSED AMENDMENTS IN RELATION TO ENFORCEMENT/DISCIPLINARY PROCEEDINGS**

Date of Issue: 18 June 2010

Bursa Securities invites your written comments on the issues set out in this Consultation Paper by 2 July 2010 (Friday) via:

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Respondents to this Consultation Paper are requested to use the reply format as stipulated in Annexure 3.

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## 1 Executive Summary

This consultation paper seeks comments on the amendments proposed to the Rules of Bursa Malaysia Securities Berhad (“**Rules of Bursa Securities**”) and Bursa Malaysia Securities Berhad Main Market and ACE Market Listing Requirements (collectively “**LR**”) to enhance the current framework for enforcement action in the Rules of Bursa Securities and the LR.

The changes are aimed at improving and expediting the current approach and processes for enforcement action by Bursa Malaysia Securities Berhad (“**the Exchange**”) as well as to enhance transparency on enforcement-related processes.

The key proposals in this respect are –

- (1) introducing an expedited enforcement proceeding for less material breaches;
- (2) reflecting in the Rules of Bursa Securities and LR (collectively “**the Rules**”) an avenue for an agreed settlement between the party in breach and the Exchange; and
- (3) clarifying the appeal procedures.

The salient proposals to enhance the current framework for enforcement action in the Rules are explained in Part 3 of this paper.

The Exchange invites comments on the proposed amendments to the Rules of Bursa Securities and LR as contained in Annexure 1 and 2 respectively, by completing and returning to the Exchange, Annexure 3 via fax or email by **2 July 2010 (Friday)**.

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## 2 Introduction

### 2.1 Background

- (1) The Exchange currently has an existing framework for enforcement action taken for breaches of the Rules of Bursa Securities (Chapter 13) and the LR (Chapter 16) against persons who are bound to comply with the Rules of Bursa Securities and the LR respectively.
- (2) The Exchange proposes to enhance the current framework for enforcement action in the Rules of Bursa Securities and the LR respectively, in particular on the approach to processes involved for enforcement action.
- (3) The changes are aimed at improving and expediting the current approach and processes for enforcement actions by the Exchange, as well as to enhance transparency on enforcement-related processes. A framework that provides efficient and timely enforcement actions is crucial to ensure that the market participants adhere to high standards of regulation and compliance. This would contribute to a better governance and orderliness in the market place and better investor protection.
- (4) The proposed enhancements to the enforcement framework are also part of the Exchange’s on-going efforts to ensure that the framework remains current, relevant and comparable to the practices in other markets.

### 2.2 Public Consultation

- (1) The proposals to enhance the current framework for enforcement action in the Rules are discussed in Part 3 of this paper.
- (2) The summary of the amendments to the Rules of Bursa Securities and the LR are

discussed in Parts 4 and 5 of this paper respectively.

- (3) The text of the amendments to the Rules of Bursa Securities and the LR are attached in this paper as Annexure 1 and 2 respectively.
- (4) The proposed amendments to the Rules are reflected in the following manner:
  - (a) all deletions to the current Rules of Bursa Securities and the LR are denoted in 'strike through'; and
  - (b) all new insertions to the current Rules of Bursa Securities and the LR are underlined.
- (5) The proposed rule amendments attached to this Consultation Paper HAVE NOT been approved by the Securities Commission ("SC") and as such are not the final rule amendments. The Exchange will submit the finalised rule amendments to SC for approval after receipt of comments on the rule amendments pursuant to this Consultation Paper and making the relevant changes, where appropriate, to the rule amendments.
- (6) This Consultation Paper can be downloaded from the Exchange's website at [http://www.bursamalaysia.com/website/bm/regulation/rules/public\\_consultation.html](http://www.bursamalaysia.com/website/bm/regulation/rules/public_consultation.html).
- (7) The Exchange invites your comments on the proposed amendments to the Rules of Bursa Securities and LR as contained in Annexure 1 and 2 respectively, by completing and returning to the Exchange Annexure 3 via fax or e-mail by **2 July 2010 (Friday)**.

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### 3 Details of Proposals

#### 3.1 Expedited Proceeding

- (1) Currently there is only one approach in which the Exchange initiates and deliberates on enforcement actions taken by the Exchange.
- (2) Arising from the audits and investigation conducted by the Exchange, where the Exchange finds that a person who is bound to comply with the Rules has breached the Rules ("**Errant Party**"), the Exchange issues a notice to the Errant Party.
- (3) The notice sets out the alleged breach and provides the Errant Party opportunity to reply to the notice and give reasons why enforcement action should not be taken against the Errant Party.
- (4) Based on the reply given by the Errant Party, the Exchange tables the matter to the relevant person/committee to decide whether the Errant Party has breached the relevant Rules.
- (5) The Errant Party may upon request be present at the meeting of the relevant committee. The relevant committee after its deliberation notifies the Errant Party of its decision.
- (6) The above approach is referred to as "**Full Enforcement Proceeding**" in this paper.
- (7) The Exchange proposes to introduce another approach to enforcement action called expedited proceeding ("**EP**").
- (8) An EP is applicable where the Exchange views the breach as less material, which

generally triggers penalty ranging from a private reprimand or fine of RM5,000 or less.

- (9) Under the EP, the Errant Party will be issued a notice specifying the breach and penalty imposed for that breach ("**Determination**"). This is different from the Full Enforcement Proceeding where no decision on the breach and penalty is made yet under the notice issued under the Full Enforcement Proceeding. Under the EP, a decision has already been made and stated in the notice.
- (10) The Errant Party will then have the opportunity to respond within a specified time on whether the Errant Party agrees with the Determination.
- (11) The Errant Party must, within the time specified in the Determination, inform the Exchange in writing whether or not the person agrees with the Determination. A person is deemed to have agreed with the Determination if the person does not respond within the specified time.
- (12) If the person agrees or is deemed to have agreed with the Determination, the enforcement action will be recorded as having been taken against the person upon the expiry of the specified time frame. The person must then give effect to the penalty imposed.
- (13) If the Errant Party does not respond or disagrees with the Determination, after the expiry of the specified time in the notice, the penalty stated in the notice will be effective against the Errant Party.
- (14) If the Errant Party does not agree with the Determination or any part of the Determination, the matter will proceed based on the Full Enforcement Proceeding. In this circumstance, the matter will be tabled to the relevant regulatory committee for a decision. The relevant regulatory committee is not bound and can vary the Determination.
- (15) The EP will not prevent the Exchange from adopting a Full Enforcement Proceeding where it sees fit.

### 3.2 Agreed Settlement

- (1) Under the Full Enforcement Proceeding, as explained earlier, the alleged breach by the Errant Party will be deliberated by the relevant regulatory committee. The Errant Party will be given the opportunity to respond to the notice specifying the breach prior to the deliberation and decision by the relevant regulatory committee.
- (2) In these circumstances, an Errant Party, may wish to and can agree with the Exchange on certain set of facts, liability or penalty in relation to the breach alleged to have been committed by the Errant Party ("**Agreed Settlement**").
- (3) Such Agreed Settlement saves the parties' costs and time.
- (4) The Agreed Settlement also complements the EP. Breaches that do not come within the scope of the EP may be resolved expeditiously at the option of the Errant Party.
- (5) As such, the Exchange proposes to reflect the Agreed Settlement in the Rules to further enhance market awareness on the availability of the Agreed Settlement.
- (6) The Agreed Settlement works in the following manner:
  - (a) An Agreed Settlement can be proposed and negotiated by the Errant Party at any stage of investigation, in the course of enforcement action

and before a decision on enforcement action is made against the Errant Party.

- (b) The Exchange has the discretion to accept, reject or vary the settlement proposed by the Errant Party guided by the regulatory outcome which is acceptable to the Exchange.
- (c) Where the Exchange accepts the proposed settlement, the settlement will be recorded as a decision of the Exchange.
- (d) If the Exchange is not agreeable to the proposed settlement, the Full Enforcement Proceeding will apply.
- (e) Any representation, information or document provided by the person in the course of negotiating the proposed settlement will not be used as evidence against that person without the person's consent.

### 3.3 Appeal and fees

- (1) Currently, a person who is dissatisfied with a decision resulting from an enforcement action may appeal against such decision.
- (2) The decision of the Exchange on the appeal is final and binding.
- (3) To facilitate an effective and expeditious deliberation of the appeal, the Exchange proposes to reflect the following in the Rules:
  - (a) if an Errant Party decides to appeal against a decision by the Exchange upon an enforcement action taken, the Errant Party must provide to the Exchange a notice in writing ("**Notice of Appeal**") .
  - (b) The Notice of Appeal must –
    - (i) identify the decision against which the appeal is made; and
    - (ii) set out the ground(s) of the appeal together with representations to justify the ground(s) relied upon.
  - (c) The Errant Party can produce new evidence in the Notice of Appeal if -
    - (i) the evidence was not available at the time of the initial enforcement proceedings; and
    - (ii) the evidence can have an influence upon the decision appealed against.
  - (d) The Exchange can also produce new evidence arising from the Notice of Appeal submitted by the Errant Party.
- (4) The Exchange also proposes that an Errant Party pays an administrative fee of RM2,000 when submitting a Notice of Appeal. This fee will be refunded if the appeal is successful, or if the Errant Party withdraws the appeal before deliberation commences. This seeks to minimize frivolous appeals and ensure only genuine appeals are made.

### 3.4 Others

- (1) Further, the Exchange would like to propose other changes to the Rules for greater clarity
- (2) These proposals are also to reflect the current practices on enforcement action in the Rules.

- (3) These other changes are discussed in Part 4 and 5 respectively.

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## 4 Summary of the Proposed Amendments to the Rules of Bursa Securities

The salient amendments proposed to the Rules of Bursa Securities are set out below.

### 4.1 Types of Disciplinary Actions

Amendment of Rule 1301.2 to add other types of disciplinary actions that can be taken against the PO and Registered Persons.

### 4.2 Agreed Settlement

Insertion of a new rule in Rule 1301.4 to provide for "Agreed Settlement" as explained in paragraph 3.2 in Chapter 3.

### 4.3 Oral Representations

Clarification of Rule 1301.5 as to when a PO or Registered Person can request for an oral hearing

### 4.4 Cost of Proceedings

Clarification of Rule 1301.6 that the Exchange can charge the POs for the cost incurred in bringing disciplinary action.

### 4.5 Expedited Proceedings

Insertion of a new rule i.e. Rule 1304 to provide for EP as explained in paragraph 3.1 in Chapter 3.

### 4.6 Appeal

Insertion of new rules i.e. Rule 1305.2, 1305.3 and 1305.4 to require the PO and Registered Persons to provide for grounds of appeal in the appeal notice, imposition of administrative fees and to allow POs and Registered Persons to produce new evidence.

### 4.7 Disclosure of Information

Amendments to allow disclosure of any information obtained by the Exchange or in its possession to the relevant authorities or persons the Exchange deems fit.

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## 5 Summary of the Proposed Amendments to the Listing Requirements

The salient amendments proposed to the LR are set out below.

### 5.1 Full Enforcement Proceeding

Reflection of the following current practices in the LR:

- (1) Requisite Notice

When the Exchange proposes to take an enforcement action against a person ("**Errant Party**") under the LR, the Exchange will serve a written notice specifying the nature and particulars of the breach the person has alleged to have committed ("**Requisite Notice**").

- (2) Response to Requisite Notice

The Errant Party against whom a Requisite Notice was issued may then submit a written notice to the Requisite Notice ("**Response**") within the time stipulated in the Requisite Notice.

- (3) Notification of decision

After the conclusion of an enforcement proceeding, we will notify the person in writing of the decision including the penalty imposed, if any.

**5.2 Expedited Proceeding (“EP”)**

Introduction of requirements to provide for EP for enforcement actions taken under the LR as discussed in paragraph 3.1 above.

**5.3 Appeal**

Providing for the appeal process as discussed in paragraph 3.3 above in the LR.

**5.4 Agreed Settlement**

Insertion of new provisions relating to an Agreed Settlement as discussed in paragraph 4.2 above.

**5.5 Unpaid fine a debt owing to the Exchange**

Clarification in the LR that a fine or any portion of a fine or cost ordered by the Exchange, remaining unpaid by a person is a debt owing by the person to the Exchange which will not be discharged until full payment of such debt.

**5.6 Request for oral representation etc.**

Clarification in the LR that -

- (1) the Exchange may allow an oral representation, oral submissions and attendance of witnesses for any proceedings commenced against an Errant Party;
- (2) the Errant Party against whom the enforcement action is taken may only request for the oral representation, oral submissions and attendance of witnesses if it has submitted a Response or a Notice of Appeal; and
- (3) if the Exchange allows the attendance of a witness, the Errant Party who makes the request bears the onus of procuring the attendance of the witness and all costs of attendance of the witness.

**5.7 Cost of proceedings**

Clarification in the LR that the Exchange may, at the conclusion of an enforcement proceeding or appeal, require the Errant Party or the appellant, as the case may be, to bear all or part of the costs incurred in connection with such enforcement action or appeal.

**5.8 Standard of proof**

Clarification in the LR that the Exchange will not find an allegation proven unless the Exchange is satisfied that the allegation is proven on the balance of probability.

This seeks to provide greater transparency and certainty to the market.

**5.9 Publication of enforcement action**

Clarification in the LR that the Exchange has the power to publish to the public, any action taken against any person under these Requirements in any manner as the Exchange deems fit or expedient.

**5.10 Obligation to comply and give effect to the Exchange’s decision**

Clarification in the LR that a listed issuer, a management company, a trustee, its directors, officers, advisers or any other person to whom these Requirements are directed, must comply and give effect to any decision made, conditions imposed, and instruction or directive issued, by the Exchange, within the time stipulated by the Exchange.



### **5.11 The Exchange's power to deal with documents**

Clarification in the LR that the Exchange has the power to deal with any document and information forwarded to or procured by the Exchange in any manner it wishes. This includes confidential document and information.

### **5.12 Types of actions or penalties**

Clarification in the LR that in an enforcement proceeding, the Exchange may issue a directive to the person against whom an enforcement action is being taken, to take such steps to remedy or mitigate the breach by making restitution or compensation to any person aggrieved by such breach.

### **5.13 Other changes**

Amendments to requirements on enforcement action for greater clarity, as follows:

- (1) moving paragraph/Rule 16.14 of the LR to Chapter 15. Paragraph/Rule 16.14 is in relation to the standard of disclosure on information that provided by the directors. We believe it is more appropriate to provide this requirement in Chapter 15 which caters specifically for directors' obligations;
- (2) moving paragraph/Rule 16.15 of the LR to Chapter 2. Paragraph/Rule 16.15 sets out the obligation of directors, officers, advisers etc. to attend before the Exchange. This obligation is not only relevant in an enforcement proceeding. It is also relevant in a situation where the Exchange requires the said persons' attendance to the Exchange for other purposes. As such, we propose to exclude the requirement from Chapter 16 which deals with enforcement actions. Instead, we propose to incorporate the requirement in Chapter 2 of the LR which is a Chapter on general requirements;
- (3) clarifying the Exchange's power to require documents to be produced not only for its investigation purposes, but also for enforcement; and
- (4) clarifying the title of paragraph/Rule 16.23 to better reflect the content of the requirement.

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**Annexure 1 Proposed Amendments to the Rules of Bursa Securities**

*[Please see attached]*

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**Annexure 2 Proposed Amendments to Bursa Securities Listing Requirements**

*[Please see attached]*

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### Annexure 3 Comments Table

#### COMMENTS TO CONSULTATION PAPER NO. 2/2010 PROPOSED AMENDMENTS TO RULES OF BURSA SECURITIES & BURSA SECURITIES LISTING REQUIREMENTS IN RELATION TO DISCIPLINARY/ENFORCEMENT PROCEEDINGS

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NAME OF RESPONDENT :

CONTACT PERSON & CONTACT NUMBER :

EMAIL ADDRESS :

NO	PROPOSAL/PROPOSED RULE	COMMENTS
1.		