

PARTICIPATING ORGANISATIONS' CIRCULAR

Date : 28 December 2012

No : R/R 13 of 2012

COMPENSATION FUND:

1. **CONSEQUENTIAL AMENDMENTS TO THE RULES OF BURSA MALAYSIA SECURITIES BERHAD (“RULES OF BURSA SECURITIES”)**
2. **SAVINGS AND TRANSITIONAL PROVISIONS**

1. INTRODUCTION

- 1.1 Pursuant to the Capital Markets and Services (Amendment) Act 2012 (CMSA Amendment Act 2012), the Capital Market Compensation Fund is established with effect from 28 December 2012 under Part IV of the Capital Markets and Services Act 2007 (CMSA).
- 1.2 The Compensation Fund established by Bursa Malaysia Securities Berhad as required under the previous CMSA prior to 28 December 2012 will no longer be in existence with effect from 28 December 2012. Pursuant to the above changes in the CMSA Amendment Act 2012, the Rules of Bursa Securities are amended as set out in paragraph 2.

2. RULE AMENDMENTS

- 2.1 The rules in Chapter 14 of the Rules of Bursa Securities are deleted (“Rule Amendments”).
- 2.2 The details of the Rule Amendments are set out in **Annexure 1**.

3. SAVINGS AND TRANSITIONAL PROVISIONS

- 3.1 Participants are reminded of the savings and transitional provisions of the CMSA Amendment Act 2012, particularly section 27(4) which states:

Unless the contrary intention appears in this Act, in respect of claims made against relevant funds or relevant deposits-

- (a) any decision made by the relevant stock exchange, relevant derivatives exchange or the Commission before the effective date in relation to any claim made against the relevant funds or the relevant deposits shall continue to be valid after the effective date as if it is made by the Corporation¹ ;

¹ Corporation means the Capital Market Compensation Fund Corporation.

- (b) any claims made against the relevant funds or the relevant deposits prior to the effective date but has not been decided by the relevant stock exchange, relevant derivatives exchange or the Commission, by the effective date, shall continue to be considered and decided by the relevant stock exchange, relevant derivatives exchange or the Commission;
- (c) any appeal to the Commission against the decision made by the relevant stock exchange or relevant derivatives exchange prior to the effective date shall continue to remain valid;
- (d) any payment for a successful claim-
 - (i) decided by the relevant stock exchange, relevant derivatives exchange or the Commission under paragraph (a) or (b); or
 - (ii) pursuant to the Commission's decision on an appeal under paragraph (c),shall be made from the Capital Market Compensation Fund by the Corporation;
- (e) a person aggrieved by a decision of the relevant stock exchange or relevant derivatives exchange in paragraph (a) or (b) may appeal to the Commission and the decision of the Commission shall be final; and
- (f) if the Corporation makes a payment under paragraph (d)-
 - (i) the Corporation is subrogated to the extent of the payment to all the rights and remedies of the claimant in respect of the loss suffered by the claimant; and
 - (ii) the claimant shall not have any claim or right under bankruptcy or legal proceeding or otherwise-
 - (A) to any sum out of the assets of the relevant person concerned in respect of the loss; or
 - (B) to any sum in respect of the loss caused by an act or omission of a director, officer, representative or employee of a relevant person,until the Corporation has been reimbursed the full amount of the payment made by it out of the Capital Market Compensation Fund, including any interest paid.

- 3.2 Please note that pursuant to section 27(4)(b) of the CMSA Amendment Act 2012, all claims made in relation to the Compensation Fund before 28 December 2012 will continue to be considered and decided by the Exchange. The claim will be reviewed following the provisions of the Rules of Bursa Securities and the provisions of the CMSA in effect before 28 December 2012.
- 3.3 Any payment for a successful claim decided by the Exchange pursuant to section 27(4)(b) will be made from the Capital Market Compensation Fund by the Capital Market Compensation Fund Corporation in accordance with section 27(4)(d) of the CMSA Amendment Act 2012.
- 3.4 Pursuant to section 27(4)(e) of the CMSA Amendment Act 2012, a person aggrieved by the decision of the Exchange may appeal to the Securities Commission.

4. EFFECTIVE DATE

4.1 The Rule Amendments take effect on **28 December 2012**.

5. CONTACT PERSONS

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Regulation



RULES OF BURSA MALAYSIA SECURITIES BHD
CONSEQUENTIAL RULE AMENDMENTS IN RELATION TO THE COMPENSATION FUND

EXISTING PROVISIONS		AMENDED PROVISIONS
Rule 1401.1	<p>ESTABLISHMENT OF COMPENSATION FUND</p> <p>(1) The Exchange shall, pursuant to the requirement under Section 141 of the Capital Markets and Services Act, establish and maintain a Compensation Fund in accordance with Part IV of the Capital Markets and Services Act.</p>	[This Rule has been deleted.]
Rule 1401.2	<p>MANAGEMENT OF COMPENSATION FUND</p> <p>(1) The Exchange shall administer and manage the Compensation Fund in accordance with Part IV of the Capital Markets and Services Act and the Capital Markets and Services Regulations 2007 (in this Chapter 14 referred to as "the said Regulations").</p> <p>(2) Subject to such extent permissible by law, the Exchange may appoint such Committee to which the Exchange may, as it deems expedient, delegate any of its powers, authorities or discretions insofar as it relates to the Compensation Fund.</p>	[This Rule has been deleted.]
RULE 1401.3	<p>CONTRIBUTION BY PARTICIPATING ORGANISATIONS</p> <p>(1) Every Participating Organisation shall -</p> <p style="padding-left: 20px;">(i) upon being registered as a Participating Organisation and issued a dealer's licence under Section 58(1) of the Capital Markets and Services Act contribute a sum in the amount as stipulated in the Capital Markets and Services Act to the Compensation Fund;</p>	[This Rule has been deleted.]

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EXISTING PROVISIONS		AMENDED PROVISIONS
	<p style="text-align: center;">and</p> <p>(ii) thereafter, on or before the 31st day of December every year, contribute a sum in the amount as stipulated in the manner envisaged in the Capital Markets and Services Act to the Compensation Fund.</p> <p>(2) Contributions made to Participating Organisations shall not be refundable.</p> <p>(3) Notwithstanding the foregoing provisions, the Exchange may, from time to time, with the approval of the Commission, vary the amount and manner of the contributions payable by Participating Organisations to the Compensation Fund.</p>	
RULE 1402.1	<p>DEFINITION</p> <p>In this Rule 1402, "books" shall include any register or other record of information and any accounts or accounting records, howsoever compiled, recorded or stored, and shall also include any document.</p>	[This definition has been deleted.]
RULE 1402.2	<p>ENTITLEMENT TO CLAIM</p> <p>Any person ("the Claimant") suffering a loss in the manner as referred to in Section 152 of the Capital Markets and Services Act ("Claimable Loss") shall be entitled to claim from the Compensation Fund.</p>	[This Rule has been deleted.]
RULE 1402.3	<p>PROCEDURE FOR CLAIM</p> <p>(1) Where a claim is made for compensation pursuant to Rule 1402.2 and in accordance with the said Regulations, the Exchange may cause to be published, in two (2) daily newspapers, one in the</p>	[This Rule has been deleted.]

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EXISTING PROVISIONS		AMENDED PROVISIONS
	<p>National Language and the other in the English Language, published and circulated generally in Malaysia, a notice specifying a date, not being earlier than three (3) months or such other longer period as may be specified in the notice after the date of the said publication, on or before which claims for compensation in relation to the person specified in the notice may be made.</p> <p>(2) A claim for compensation from the Compensation Fund in respect of any Claimable Loss shall be made by notice in writing to the Exchange ("Notice of Claim") -</p> <p style="margin-left: 20px;">(a) where a notice under Rule 1402.3(1) has been published, on or before the period stated in the notice; or</p> <p style="margin-left: 20px;">(b) where no notice pursuant to Rule 1402.3(1) has been published, within six (6) months after the Claimant becomes aware of the circumstances referred to in Section 152 of the Capital Markets and Services Act.</p> <p>(3) Unless otherwise determined by the Exchange, a claim not made in accordance with Rule 1402.3(2) shall be barred.</p> <p>(4) [Deleted]</p>	
RULE 1402.5	<p>POWERS OF THE EXCHANGE IN RESPECT OF CLAIMS</p> <p>(1) The Exchange shall make a determination in respect of a claim under this Chapter within six (6) months from the date of the Notice of Claim, or such longer period as the Exchange decides.</p>	[This Rule has been deleted.]

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EXISTING PROVISIONS	AMENDED PROVISIONS
<p>(2) Subject to this Chapter, Part IV of the Capital Markets and Services Act and the said Regulations, the Exchange shall after due inquiry make a determination on the following matters :-</p> <p>(a) whether the claim should be allowed, partially allowed, disallowed or impose such conditions as it thinks fit;</p> <p>(b) if the claim is allowed or partially allowed, to specify :-</p> <p style="padding-left: 20px;">(i) the total amount of compensation determined to be payable;</p> <p style="padding-left: 20px;">(ii) the amount of reasonable costs and disbursements payable thereon; and</p> <p style="padding-left: 20px;">(iii) the time of payment of the amounts referred to in sub-paragraphs (i) and (ii); and</p> <p>(c) if the claim is disallowed or partially allowed, the reasons for the disallowance or partial allowance, as the case may be.</p> <p>(3) [Deleted]</p> <p>(4) The Exchange shall notify the Claimant of its determination on a claim by notice in writing ("Notice of Determination") by registered post.</p> <p>(5) The Exchange may at any time require a Claimant or any other person to provide information or to produce any books, documents or statement of evidence or summon and examine witness which it considers material to for the purpose of -</p> <p style="padding-left: 20px;">(a) supporting a claim for compensation from the Compensation Fund;</p>	

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	<p>(b) exercising its powers against a Participating Organisation; or</p> <p>(c) enabling civil or criminal proceedings to be taken against the Participating Organisation or a person in respect of a defalcation or fraudulent misuse of money or other property.</p> <p>(6) The Exchange may disallow the claim of the Claimant who in person fails, within one (1) month or such longer period as the Exchange may allow, to provide information or to produce any books, documents or statement of evidence as required under Rule 1402.5(5) if it is satisfied that the information, securities, documents or statements of evidence are in the possession of or are available to the Claimant.</p> <p>(7) A Participating Organisation or its registered person(s) or employee who refuses or fails to comply with a requirement made under Rule 1402.5(5) shall be deemed to have violated the provisions of these Rules and shall be liable to any disciplinary action as the Exchange deems necessary.</p>	
RULE 1403.1	<p>RIGHT TO APPEAL</p> <p>A person aggrieved by a determination of the Exchange made under Rule 1402.5 may, within one (1) month of receipt of a Notice of Determination, appeal against such determination to the Commission whose decision shall be final.</p>	[This Rule has been deleted.]

[End of Rule Amendments]