

CHAPTER 7

BURSA SBL TRANSACTIONS

7.1 PARTIES WHO MAY ENTER INTO A BURSA SBL TRANSACTION

Only a Bursa SBL Participant may enter into a Bursa SBL Transaction subject to compliance with the relevant requirements set out in these Rules.

7.2 APPLICATION TO BE A LENDING PARTICIPANT OR LENDER

Any person who wishes to be a Lending Participant or Lender must –

- (a) submit a complete and duly executed application and undertaking in the prescribed form via its Lending Agent to the Clearing House; and
- (b) comply with all requirements prescribed by the Clearing House for a Lending Participant or Lender as contained in these Rules, the SBL Conditions or as prescribed by the Clearing House from time to time in relation to the Bursa SBL.

7.3 APPLICATION TO BE A BORROWER

To become a Borrower, the person must:–

- (a) be a Trading Clearing Participant or such other category of persons who is prescribed by the Clearing House to be eligible to become a Borrower;
- (b) submit a complete and duly executed application and undertaking in the prescribed form to the Clearing House;
- (c) comply with all requirements prescribed by the Clearing House for a Borrower as contained in these Rules, the SBL Conditions or as prescribed by the Clearing House in relation to the Bursa SBL; and
- (d) comply with Rules 7.20 of the Exchange Rules as if it were the Participating Organisation referred to in such Rules.

7.4 DISCRETION OF THE CLEARING HOUSE

The Clearing House may exercise discretion over the approval of an application to be a Bursa SBL Participant and may approve or reject such application as it deems fit. The Clearing House may also approve an application unconditionally or subject to such conditions, as it deems fit.

7.5 BORROWING AND LENDING BY BURSA SBL PARTICIPANTS

- (a) A Clearing Participant who is a Trading Clearing Participant may borrow Eligible Securities from :-
 - (i) the Clearing House via a Bursa SBL Transaction whether for itself or its client; or
 - (ii) its client provided that such borrowing is for the sole purpose of lending such Securities to the Clearing House via a Bursa SBL Transaction.
- (b) A Clearing Participant may lend Eligible Securities to :-
 - (i) the Clearing House via a Bursa SBL Transaction whether for itself or its client; or
 - (ii) its client provided that the Clearing Participant is a Trading Clearing Participant and the Eligible Securities being lent are Securities that had been borrowed from the Clearing House via a Bursa SBL Transaction for the sole purpose of lending to such client.
- (c) The borrowing and lending of Eligible Securities by the Clearing Participant referred to in this Rule 7.5 may only be done subject to such requirements as may be contained in these Rules, the SBL Conditions or prescribed by the Clearing House in relation to Bursa SBL (as applicable).
- (d) For the avoidance of doubt, in either of the circumstances stated in Rule 7.5(a) or Rule 7.5(b) above, the Borrower or Lender must act as the principal to the Bursa SBL Transaction.

7.6 PURPOSE OF SECURITIES BORROWING

- (a) Any Borrower may borrow Eligible Securities only for any one of the following purposes subject to such requirements as may be prescribed by the Clearing House:
 - (i) to facilitate the settlement of a regulated short sale in Eligible Securities executed in accordance with the Exchange Rules;
 - (ii) to facilitate the settlement of a sale of Eligible Securities where there are no Securities or insufficient Securities in the securities account of the seller as will enable the seller to meet its delivery obligations to the purchaser (in accordance with the Exchange Rules relating to delivery and settlement) 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;
 - (iii) in relation to Eligible Securities that are ETF units or the Constituent Securities (the ETF Units, the Constituent Securities or any one of the Constituent Securities shall hereinafter be collectively referred to as “the ETF Related Securities”), to facilitate the settlement of a sale in the ETF Related Securities where the following requirements are complied with:-
 - (aa) the sale was executed by the Borrower in its capacity as a Market Maker for that particular ETF Related Securities or executed by the Borrower for its client who is a Market Maker for that particular ETF Related Securities; and

- (bb) the Borrower executed the sale as part of its Permitted Short Selling activities or as part of the Permitted Short Selling activities of the Borrower's client in accordance with the rules on Permitted Short Selling as contained in the Exchange Rules; or
 - (iv) for such other purposes as may be determined by the Clearing House in consultation with the Commission.
- (b) For the purpose of this sub-rule (a), unless the context otherwise requires –
 - (i) "Constituent Securities" shall have the meaning as is assigned to that expression in the Exchange Rules;
 - (ii) "ETF" means exchange traded fund as defined in the Commission's Guidelines on Exchange Traded Funds;
 - (iii) "Market Maker" shall have the meaning as is assigned to that expression in the Exchange Rules;
 - (iv) "Permitted Short Selling" shall have the meaning as is assigned to that expression in the Exchange Rules; and
 - (v) "regulated short sale" shall have the same meaning as is assigned to that expression in the Exchange Rules.

7.7 APPROVAL AS LENDING AGENT

- (a) A Clearing Participant seeking approval to act as a Lending Agent must:-
 - (i) satisfy the requirements of Rule 7.8(c) below;
 - (ii) apply to the Clearing House to be approved as a Lending Agent for Bursa SBL Transactions; and
 - (iii) submit to the Clearing House a written declaration in the form prescribed in Appendix 1, together with its application as referred to above.
- (b) Without prejudice to the power conferred on the Clearing House in Rule 2.11 pertaining to the conduct of inspection on a Clearing Participant, the Clearing House may, at any time and/or from time to time prior to or after the receipt of the prescribed declaration in Appendix 1, undertake any inspection and/or audit on the Clearing Participant seeking approval to act as a Lending Agent in the manner determined by the Clearing House.
- (c) The Clearing House may, in approving any application made by a Clearing Participant pursuant to Rule 7.7(a), impose such requirements or conditions as it deems necessary to ensure the smooth operation of the Bursa SBL Transactions.
- (d) Notwithstanding and without prejudice to any other provisions in this Chapter, the Clearing House shall not be obligated to approve the application of every Clearing Participant to be a Lending Agent.
- (e) A Clearing Participant who has been approved to act as a Lending Agent must act as the duly appointed agent of the Lending Participant or Lender when performing the functions and responsibilities set out under Rule 7.8(a) and as may be specified from time to time.
- (f) A Clearing Participant must not perform the functions and responsibilities set out under Rule 7.8(a) for any Lending Participant or Lender as its agent, unless it has first

been approved as a Lending Agent and has entered into a written agreement with such Lending Participant or Lender to be appointed as his or its Lending Agent, which agreement must include the matters specified in Appendix 2.

7.8 FUNCTIONS AND RESPONSIBILITIES OF LENDING AGENT FOR BURSA SBL TRANSACTIONS

- (a) A Clearing Participant who is approved and appointed to be a Lending Agent for a Lending Participant or Lender must have, amongst others, the following functions and responsibilities:-
- (i) To process the application of any person applying to be a Lending Participant (hereinafter in this Rule referred to as “the Said Lending Participant”);
 - (ii) To give effect to any instructions or orders given by the Said Lending Participant or Lender (hereinafter in this Rule referred to as “the Said Lender”) which include, inter alia, the keying-in of Lending Interests into the Bursa SBL System;
 - (iii) To transmit or forward to the Said Lending Participant or Said Lender any notification or update communicated by the Clearing House via the Bursa SBL System in relation to the transactions entered into by the Said Lending Participant or Said Lender relating to the Bursa SBL (other than notices pertaining to the issue of announcements made by an issuer of the Securities comprised in the Loaned Securities of any action taken by such issuer in relation to or arising from its Securities including payment of dividend, issue of bonus Securities and other rights and interests associated with its Securities, capital restructuring and Securities consolidation) or received by the Lending Agent from the Clearing House for the information of the Said Lending Participant or Said Lender, including but not limited to, such matters relating to any approval of Lending Interests, recall of Loaned Securities, entitlement received or is to be received by the Said Lender arising from any corporate action with respect to the Loaned Securities in accordance with the SBL Conditions;
 - (iv) To collect all Documents, forms, invoices, agreements, deeds including any amendments or variations thereof relating to or governing the Bursa SBL as the Clearing House may require from time to time, from the Said Lending Participant or the Said Lender for submission to the Clearing House and from the Clearing House for transmission to the Said Lending Participant or the Said Lender;
 - (v) To receive into the Lending Agent’s designated bank account (“Designated Bank Account”), any fees, charges or income arising with respect to any Loaned Securities due and payable by the Clearing House to the Said Lender relating to the Bursa SBL and to pay to the Said Lender such fees, charges or income as may be prescribed by the Clearing House from time to time that have been credited into the Lending Agent’s Designated Bank Account by the Clearing House subject to the deduction of any fees and charges, as may be agreed between the Said Lender and the Lending Agent, and to collect from the Said Lender and to pay to the Clearing House, any fees and charges due and payable by the Said Lender to the Clearing House relating to the Bursa SBL as may be prescribed by the Clearing House from time to time without any deduction or set off;
 - (vi) To furnish to the Clearing House such information or Documents relating to the Bursa SBL and such advice, statement and report on the operation of transactions relating to the Bursa SBL at such times and in such manner as may be prescribed by the Clearing House;

- (vii) To give effect to any instructions, directives or orders given by the Clearing House to facilitate the operation of any transactions by the Lending Participant or Lender relating to the Bursa SBL or the SBL Conditions; and
 - (viii) Such other functions and responsibilities as may be specified by the Clearing House from time to time.
- (b) The Clearing House may, by notice given to the Clearing Participant from time to time, amend, vary or modify the functions and responsibilities of the Clearing Participant in relation to the Bursa SBL.
- (c) A Clearing Participant seeking approval to act as a Lending Agent or who is approved to act as a Lending Agent must ensure that it has in place, at all times, the requisite systems, infrastructure, functionalities and controls for the performance of the functions and responsibilities stipulated in Rule 7.8(a).
- (d) In performing the functions and responsibilities stipulated in Rule 7.8(a) on behalf of the Said Lending Participant or Said Lender, a Clearing Participant approved as a Lending Agent must comply with the procedures or requirements as may be imposed by the Clearing House from time to time.

7.9 ACCESS TO BURSA SBL SYSTEM

- (a) Upon approval of an application to be a Lending Agent made pursuant to Rule 7.7(a), the Clearing Participant shall be given access to the Bursa SBL System to perform any of its functions and responsibilities as a Lending Agent in relation to the Bursa SBL.
- (b) Such Clearing Participant shall comply with any conditions or requirements prescribed by the Clearing House from time to time in relation to the access to or usage of the Bursa SBL System.

7.10 DESIGNATED SECURITIES ACCOUNT

A Borrower must ensure that all Loaned Securities are held in and where relevant, transferred to, the designated securities accounts as prescribed by the Clearing House and no other securities account.

7.11 ACTION BY THE CLEARING HOUSE

- (a) The Clearing House may exercise any of the powers set out in Rule 7.11(b) immediately without further reference to a Bursa SBL Participant or Lending Agent:
- (i) if the Bursa SBL Participant or Lending Agent commits a breach of any of the conditions or requirements imposed by the Clearing House in relation to the Bursa SBL Transactions;
 - (ii) if the Clearing House determines in its absolute discretion that the Bursa SBL Participant or Lending Agent is unable to conduct any of the Bursa SBL Transactions due to any circumstances including bankruptcy and insolvency;
 - (iii) if the Clearing House determines that the Bursa SBL Participant or Lending Agent is likely to cause damage to other Bursa SBL Participants or Lending Agents as a result of violating any of the requirements or obligations in relation to the Bursa SBL Transactions; or

- (iv) in any such circumstances which may be determined by the Clearing House in consultation with the Commission.
- (b) Without prejudice to any of the powers of the Clearing House contained in the Act, these Rules or any directives, circulars or instructions issued by the Clearing House from time to time, the actions which the Clearing House may take upon the happening of any of the events set out in Rule 7.11(a) include one or more of the following:
 - (i) prohibit the Bursa SBL Participant or Lending Agent from entering into any or all new Bursa SBL Transactions and/or transactions contemplated under any directives, circulars or instructions issued by the Clearing House in relation to the Bursa SBL Transactions;
 - (ii) suspend or terminate the Bursa SBL Participant or Lending Agent as a Bursa SBL Participant or Lending Agent;
 - (iii) notify all Bursa SBL Participants and Lending Agents of the suspension or termination of any Bursa SBL Participant or Lending Agent; or
 - (iv) limit the activities or access of the Bursa SBL Participant or Lending Agent to the services and facilities provided by the Clearing House in relation to the Bursa SBL Transactions on such terms and for such duration as the Clearing House may in its absolute discretion determine.
- (c) Where an action has been taken under Rule 7.11(b), a Bursa SBL Participant or Lending Agent may make representations to the Clearing House for the discontinuance of the action taken. The Clearing House may, after representations have been made, discontinue with the action taken. However, such discontinuance shall not be construed as an omission or error of any kind on the part of the Clearing House in undertaking the action under Rule 7.11(b) in the first place.
- (d) The Clearing House shall not be held liable for any loss or damage suffered by any party arising from or in connection with the action taken by the Clearing House under Rule 7.11(b) provided that the Clearing House has acted in good faith.
- (e) Notwithstanding any provisions to the contrary in these Rules, the Clearing House, where it deems necessary, may:
 - (i) suspend its services and facilities for the Bursa SBL Transactions entirely or partially for such duration as the Clearing House in its absolute discretion deems fit; or
 - (ii) terminate a Bursa SBL Transaction in accordance with any directive or instruction issued by the Commission or required by any written law, and further direct the Borrower to re-deliver the Loaned Securities to the Lender within the timeframe and in the manner as prescribed by the Clearing House.

7.12 PROVISION OF INFORMATION

The Bursa SBL Participants and Lending Agents must furnish to the Clearing House or the Commission any information or Documents in relation to any Bursa SBL Transaction as required by the Clearing House or the Commission from time to time.

7.13 DISCLOSURE OF INFORMATION

Notwithstanding any provisions in these Rules, the Clearing House shall be entitled to:

- (a) disclose any information or to produce any Documents in its possession or control in relation to the Bursa SBL Transaction if required or requested to do so by the Commission; and
- (b) disclose any information in its possession or control to the Commission or authorised personnel of the Exchange by way of granting such persons access to the Bursa SBL System for the purpose of facilitating the performance of their duties and functions under the relevant requirements, rules or laws.

7.14 FEES AND CHARGES

- (a) A Bursa SBL Participant or Lending Agent must pay to the Clearing House the relevant fees and charges prescribed by the Clearing House in relation to any or all of the services and facilities provided by the Clearing House in relation to the Bursa SBL Transactions.
- (b) The Clearing House may, from time to time where it deems necessary in its absolute discretion, vary or change any of the fees and charges by prescription in the SBL Circulars and without any further notice to the Bursa SBL Participant or Lending Agent.

7.15 LIABILITY

The Clearing House shall not be liable to any person for any loss or damage that may be incurred or suffered by such person as a result of the exercise or intended exercise of any power or performance of any duty or function conferred or imposed on the Clearing House in relation to the Bursa SBL Transactions and exercised by the Clearing House in good faith.

7.16 FORCE MAJEURE

- (a) In the event that the Clearing House is required to suspend the operation of the Bursa SBL System, and the provision of all ancillary services where for any reason the Records of the Clearing House, the Central Depository or the Bursa SBL System are unavailable, inaccessible, delayed or hindered in any manner, the Clearing House shall not be liable for any failure, hindrance or delay in the provision of services or for the failure to give or the delay in giving effect to any notice or communication from a Bursa SBL Participant or Lending Agent.
- (b) The Clearing House or its directors, officers, employees or agents shall not be liable for any losses or damages that may be incurred or suffered by the Bursa SBL Participant or Lending Agent arising from causes beyond its reasonable control including, without limitation, acts of God or the public enemy, acts of a civil or military authority, natural disasters, embargoes, industrial action, fires, floods, mechanical breakdowns, computer or system failures or sabotage, delay or inability to act by any registrar, interruptions of power supplies or other utility or services, currency restrictions, any law, regulation or order of any government, competent authority or any court or tribunal, war or terrorism.

7.17 INDEMNITY BY LENDING AGENT

Each Clearing Participant shall be responsible for its own operations and functions as a Lending Agent in relation to the Bursa SBL Transactions as are required under these Rules, the SBL Circulars or otherwise and must fully indemnify and hold indemnified the Clearing House, whether such indemnity is claimed by the Clearing House during or after the expiry of the tenure of the Clearing Participant as a Lending Agent, for any loss, legal costs (including third party legal costs), damage or liability suffered or incurred by the Clearing House, whether directly or otherwise, as a result of any negligence, omission, mistake, misrepresentation, fraud or error on the part of the Clearing Participant, its servants or agents, provided always that such action or omission were committed during its tenure as a Lending Agent.

7.18 INDEMNITY BY BURSA SBL PARTICIPANT

Each Bursa SBL Participant must fully indemnify and hold the Clearing House indemnified from and against any loss, damage, claim, liability, cost or expense (including but not limited to legal costs on a solicitor and client basis) suffered or incurred by the Clearing House, whether directly or indirectly, for, on account of, or in respect of anything done, any statement made or omitted to be done or made, by the Clearing House in connection with the discharge or performance or purported discharge or performance of any duties or functions under these Rules or in the exercise or intended exercise of any power under these Rules, including, without limiting the generality of the foregoing, any loss, damage, claim, liability, cost or expense suffered or incurred as a result of the act, statement or omission of the Clearing House in the delivery or re-delivery of Loaned Securities in relation to a Bursa SBL Transaction where such act, statement or omission was done in good faith. This obligation to indemnify the Clearing House shall survive the termination of the Bursa SBL Transaction.

7.19 RULES OF CLEARING HOUSE TO TAKE PRECEDENCE

The Bursa SBL Participants or Lending Agents must ensure that the provisions of the agreements entered into amongst the Bursa SBL Participants and Lending Agents shall not in any way be inconsistent with any of these Rules or the requirements imposed by the Clearing House or the provisions of the agreements entered into between the Bursa SBL Participants or Lending Agents and the Clearing House in relation to the Bursa SBL Transaction (“the Rules of the Clearing House”), and the Bursa SBL Participants and Lending Agents must give effect to the Rules of the Clearing House.

APPENDIX 1

To:

Bursa Malaysia Securities Clearing Sdn Bhd
Exchange Square
Bukit Kewangan
50200 Kuala Lumpur

COMPLIANCE WITH REQUIREMENTS IMPOSED BY BURSA MALAYSIA SECURITIES CLEARING SDN BHD (“BURSA CLEARING (S)”) IN RELATION TO THE LENDING AGENT

Pursuant to the requirements of Rule 7.7(a) of the Rules of Bursa Malaysia Securities Clearing Sdn Bhd (“Bursa Clearing (S) Rules”), we [name of Clearing Participant applying to be a Lending Agent] hereby declare and undertake as follows:

- 1) we must provide to Bursa Clearing (S) or the Securities Commission Malaysia, upon request, any information or document required by Bursa Clearing (S) or the Securities Commission Malaysia pertaining to the Lending Participants or Lenders for whom we are acting;
- 2) we have formulated a set of Internal Guidelines for Acting as a Lending Agent which has been approved by our board of directors;
- 3) the Internal Guidelines for Acting as a Lending Agent have been brought to the notice of the relevant employees who have read and understood the contents therein;
- 4) the Internal Guidelines for Acting as a Lending Agent comply with the requirements set out in Bursa Clearing (S) Rules; and
- 5) all relevant systems and infrastructure including front office and/or back office systems have been verified and assessed in terms of application as well as software and the hardware capabilities and are confirmed to be operational and have all the functionalities, requirements and controls in place for the purpose of carrying out activities as a Lending Agent in accordance with Bursa Clearing (S) Rules, the Bursa SBL (Terms and Conditions for Lending Participant and Lender) or directives, circulars or instructions issued by Bursa Clearing (S).

Dated this [] day of [] [].

Signed []
Name:
Designation:
Date:

[End of Appendix]

APPENDIX 2

Matters which must be contained in the written agreement between the Lending Agent and the Lending Participant/Lender
(Rule 7.7(f))

- (1) The Lending Agent is the agent of the Lending Participant/Lender in performing the functions and responsibilities stipulated in these Rules or any directives, circulars or instructions issued by the Clearing House in relation to the Bursa SBL;
- (2) The functions and responsibilities of the Lending Agent stipulated in these Rules or any directives, circulars or instructions issued by the Clearing House in relation to the Bursa SBL, as the same may be amended, modified or varied from time to time; and
- (3) The Lending Agent must comply with the obligations imposed on a Lending Agent, as contained in the SBL Conditions and these Rules.

[End of Appendix]