

Effective Date

20-Dec-2010

Applicability

- Banking institutions licensed under the Banking and Financial Institutions Act 1989 (BAFIA) excluding investment banks;
- Islamic banks licensed under the Islamic Banking Act 1983 (IBA) including international Islamic banks
- Insurance companies licensed under the Insurance Act 1996 (IA); and
- Takaful operators registered under the Takaful Act 1984 (TA) including international takaful operators.
- Money brokers licensed under the BAFIA.

Summary

The Guidelines aim to provide guidance to financial institutions deemed as "registered persons" under the Capital Markets and Services Act 2007 (CMSA) in carrying out permitted capital market activities. Section 76(6)(c) of the CMSA requires financial institutions which are registered persons to comply with the investor protection provisions in sections 91, 92, 93 and 97 of the CMSA. Registered persons must also ensure their employees who carry out permitted capital market activities on their behalf are "fit and proper" as well as maintain a register containing the names of such employees.

Phased-in Compliance with Examination Requirements for Existing Staff

In order to avoid disruption to operations, registered persons are given a grace period of one and a half years from 1 January 2011 to ensure compliance with examination requirements for their existing employees as at 20 December 2010 as follows :

- i) At least 50% by the first 6 months;
- ii) At least 75% by the first 12 months; and
- iii) 100% by 18 months.

(Note : New employees of registered persons joining after 1 January 2011 are required to pass the relevant examinations before they can undertake permitted capital market activities.)

The Continuing Professional Education (CPE) points requirements will be effective beginning January 2011 with the operationalisation of the CPE tracker system. Registered persons may refer to the FAQ at the Securities Industry Development Corporation (SIDC) website at www.sidc.com.my for further information on the matter.

Other requirements in these Guidelines would be effective immediately upon the issuance of the Guidelines.

Queries may be directed to:

- i. [salamran@ bnm.gov.my](mailto:salamran@bnm.gov.my)
- ii. nuryati @bnm.gov.my

Issuing Department

Jabatan Konsumer dan Amalan Pemasaran

Download Attachment(s)

[Attachment 1](#)

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PART A OVERVIEW

1. INTRODUCTION

- 1.1 These Guidelines set out the requirements that must be complied with by financial institutions which are specified as “registered persons” in Part 1 of Schedule 4 pursuant to section 76(1)(a) of the Capital Markets and Services Act 2007 (CMSA) in carrying on the regulated activities specified in the second column of Part 1 of Schedule 4 of the CMSA (“permitted capital market activities”).
- 1.2 Both Bank Negara Malaysia and the Securities Commission acknowledge that in order to preserve market integrity and promote confidence in the capital market, there is a need to ensure a level playing field for licensed capital market intermediaries and registered persons such that employees of a registered person carrying out permitted capital market activities meet the “fit and proper” requirements and compliance with the relevant investor protection provisions in the CMSA is observed.
- 1.3 In particular, section 76(6)(c) of the CMSA requires registered persons to comply with the investor protection provisions in sections 91, 92, 93 and 97 of the CMSA. Registered persons must also ensure their employees who carry on permitted capital market activities on their behalf are “fit and proper” as well as maintain a register containing the names of such employees. In addition, section 76(5) of the CMSA requires the registered persons to comply with any guidelines issued by the Securities Commission under section 377 of the CMSA in respect of the carrying on of the particular regulated activity by the registered person.
- 1.4 Pursuant to section 76(11) of the CMSA, Bank Negara Malaysia is the relevant authority who may:

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- (a) pursuant to section 76(6)(c)(ii), determine the “fit and proper” criteria of individuals employed by the registered persons to carry on the permitted capital market activities;
- (b) pursuant to section 76(6)(c)(iii), specify the form and manner in which the register of the relevant employees is maintained by the registered persons; and
- (c) pursuant to section 76(6)(c)(iv), authorise any person as an authorised person for the purposes of ensuring that registered persons comply with the provisions of sections 91, 92, 93 and 97 and any regulations or guideline made pursuant to the aforementioned sections of the CMSA.

1.5 With the implementation of these Guidelines, the Guidelines for Exempt Dealers on Pass -Through Activities jointly issued by Bank Negara Malaysia and the Securities Commission on 24 April 2003 will be revoked.

2. APPLICABILITY

2.1 The Guidelines are applicable to the following financial institutions which carry out permitted capital market activities:

- (a) Licensed banks under the Banking and Financial Institutions Act 1989 (BAFIA), excluding a licensed merchant bank that holds a Capital Market Services Licence (CMSL) under the CMSA and which carries on the business of dealing in securities;
- (b) Islamic banks licensed under the Islamic Banking Act 1983 (IBA), including international Islamic banks;
- (c) Insurance companies licensed under the Insurance Act 1996 (IA);

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- (d) Takaful operators registered under the Takaful Act 1984 (TA), including international takaful operators; and
- (e) Money brokers licensed under the BAFIA.

3. LEGAL PROVISIONS

3.1 These Guidelines are issued jointly by Bank Negara Malaysia and the Securities Commission pursuant to:

- section 126 of the BAFIA;
- section 53A of the IBA;
- section 201 of the IA;
- section 69 of the TA; and
- section 377 of the CMSA read with section 76 of the CMSA.

3.2 These Guidelines shall be read together with the CMSA and :

- (a) other relevant guidelines issued by
 - (i) Bank Negara Malaysia; and
 - (ii) Securities Commission; and
- (b) rules of a -
 - (i) recognised self-regulatory organisation under section 323 of the CMSA; and
 - (ii) body approved by the Securities Commission under section 76(1)(d) of the CMSA.

4. SCOPE

4.1 These Guidelines set out the obligations of financial institutions that are specified as registered persons in Part 1 of Schedule 4 and their employees when carrying out permitted capital market activities.

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5. DEFINITIONS

For the purposes of these Guidelines, unless it is specified otherwise:

‘CPE Secretariat’ refers to the representatives of Continuing Professional Education (CPE) under the Securities Industry Development Corporation (SIDC) that administers and monitors the operational function of the CPE related matters;

‘CMSA’ refers to the Capital Markets and Services Act 2007;

‘CMSL’ refers to Capital Market Services License;

‘Employee’ refers to an employee of a registered person undertaking permitted capital market activities;

‘FIMM’ refers to Federation of Investment Managers Malaysia;

‘Islamic bank’ means a bank licensed under the IBA ;

‘Licensed institution’ refers to the meaning assigned to it in the BAFIA;

‘Permitted capital market activities’ refers to the regulated activities specified in the second column of Part I of Schedule 4 of the CMSA and are as listed in Appendix 1;

‘PPKM’ refers to *Persatuan Pasaran Kewangan Malaysia*;

‘Registered person’ refers to an institution mentioned in paragraph 2;

‘Securities’ refers to the definition of securities in the CMSA;

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‘Specified person’ refers to an institution or a person that does not require a license to carry out permitted capital market activities incidental to its core business which is as specified in Schedule 3 of the CMSA.

PART B POLICY REQUIREMENTS

6. SCOPE OF ACTIVITIES BY REGISTERED PERSONS

- 6.1 A registered person is allowed to carry out permitted capital market activities as listed in Appendix 1 without having to hold a CMSL.
- 6.2 If a registered person seeks to engage in activities regulated under the CMSA which are beyond the permitted capital market activities under Appendix 1, a CMSL will be required and guidance in respect of application for a licence can be found in the Licensing Handbook issued by the Securities Commission. *(Note : An insurance company or a takaful operator carrying out regulated activities of fund management solely incidental to the management of its insurance or takaful business respectively is deemed to be a specified person under the CMSA and are not subject to these Guidelines)*

7 BOARD OVERSIGHT

- 7.1 The Board of Directors and the senior management of a registered person is required to ensure, through the implementation of appropriate policies, systems and controls, that the registered person and employees carrying out permitted capital market activities comply with the following requirements of section 76 of CMSA:

- 7.1.1 Standard on “fit and proper” as provided in section 76(6)(c)(ii) of the CMSA;

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7.1.2 Investor protection provisions i.e. sections 91, 92, 93 and 97 of the CMSA as provided in section 76(6)(c)(i) of the CMSA; and

7.1.3 Maintenance of a register of names as provided in section 76(6)(c)(iii) of the CMSA.

7.2 A registered person is also required to establish an effective compliance function.

8. STANDARD ON “FIT AND PROPER”

8.1 Employees of a registered person carrying out permitted capital market activities on behalf of a registered person are not required to hold a capital markets services representative’s licence. However, they must be “fit and proper” as set out in these Guidelines. *(Note : For unit trust activities, financial institutions are required to comply with the requirements set out by FIMM and the Securities Commission)*

8.2 The standard on “fit and proper” is met through compliance with :

8.1.1 Minimum “fit and proper “ criteria;

8.1.2 Examination requirements; and

8.1.3 Continuing Professional Education requirements.

8.3 The minimum “fit and proper” criteria which must be met by employees carrying on permitted capital market activities are as follows :

(a) the employee is not an undischarged bankrupt whether within or outside Malaysia;

(b) the employee does not have a judgment debt that has been returned unsatisfied in whole or in part;

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- (c) the employee has not been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonest act or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;
- (d) the employee has not been convicted of an offence whether within or outside Malaysia in respect of banking, securities and insurance laws;
- (e) the employee has not engaged in any business practices appearing to Bank Negara Malaysia and Securities Commission to be deceitful or oppressive or which otherwise reflect discredit on his method of conducting business; and
- (f) the employee has not been engaged in or associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

A registered person shall immediately notify Bank Negara Malaysia if any of its employees who carry on the permitted capital market activities do not comply with the “fit and proper” criteria in paragraph 8.3. The registered person should also take immediate action to stop such employees from continuing to carry on permitted capital market activities on its behalf.

8.4 Examination Requirements

8.4.1 Employees of registered persons carrying out permitted capital market activities are required to pass all the relevant examination modules as listed in Appendix 2 prior to carrying out the permitted capital market activities.

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8.4.2 Employees of registered persons are only required to take the examination once. The validity period of the results of examination conducted by SIDC is two years from the date of passing of each examination module. An employee who does not undertake permitted capital market activities within the two years validity period shall be required to pass the respective examination modules organised by SIDC again, prior to engaging in permitted capital market activities.

8.4.3 Under certain circumstances, employees of registered persons may be exempted from the examination requirements. The employee, through the registered person, may apply for exemption from Bank Negara Malaysia, if he is an individual with distinguished services, which shall include having a total of at least 20 years of relevant working experience:

- (a) of which at least 10 years relates to working experience in the capital market or the financial services industry or in a regulatory body which regulates the capital market or the financial services industry and the employee was directly involved in the area in which the employee seeks exemption; and
- (b) held a senior management position during his tenure in the capital market or the financial services industry or in the regulatory body.

Bank Negara Malaysia may consider an application for exemption, in consultation with the Securities Commission.

8.5 Continuing Professional Education (CPE) Programme Requirement

8.5.1 The CPE programme is introduced to foster a culture of continuous learning among employees who carry out permitted capital market activities. Registered persons must ensure that their employees fulfil the CPE

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requirements in order to keep up with the latest developments in the capital market. Employees are required to obtain 40 CPE points every two years. *(Note : Employees undertaking unit trust activities are exempted from this requirement and are required to comply with the requirements set out by FIMM and the SC's guidelines)*

8.5.2 An employee may collect CPE points through any of the following CPE activities:

- (a) Attend any of SIDC CPE-approved programmes;
- (b) Obtain CPE-recognised qualifications;
- (c) Serve in SIDC CPE-approved industry associations/committees;
- (d) Conduct public speaking on topics or subjects relating to the capital market;
- (e) Contribute written materials in recognised business publications;
- (f) Serve as an expert witness for the Securities Commission; and
- (g) Conduct any other activities approved by the CPE Working Committee.

8.5.3 Registered persons may also apply to the CPE Secretariat to become a CPE-approved training provider. Upon obtaining approval, such registered persons will be able to conduct in-house training programmes for the employees and accumulate CPE points.

8.5.4 Employees are advised to check the CPE portal available at www.sc.com.my or www.sidc.com.my for further updates and information relating to the fulfilment of the CPE requirements.

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9 INVESTOR PROTECTION REQUIREMENTS

- 9.1 A registered person carrying out permitted capital market activities is required to comply with sections 76, 91, 92, 93 and 97 of the CMSA and any regulations or guidelines made pursuant to these sections. The main intention of the investor protection provisions of sections 91, 92, 93 and 97 are to accord protection to the customers through appropriate disclosures by registered persons to mitigate conflict of interest situations. The investor protection provisions are not intended to be used by any parties to secure market advantage.
- 9.2 A registered person is required to make reference to Appendix 3 for full and detailed provisions of sections 91, 92, 93 and 97 of the CMSA. In respect of dealings in the wholesale markets, a registered person and its employees are also required to comply with the requirements listed under the Malaysian Code of Conduct for Principals and Brokers in the Wholesale Money and Foreign Exchange Markets.

10. MAINTENANCE OF REGISTER

10.1 Register of Names

- 10.1.1 As required under section 76(6)(c)(iii) of the CMSA, a registered person shall maintain a register containing the names of employees undertaking permitted capital market activities in the form and manner prescribed in Form A in Appendix 4.
- 10.1.2 The registered person shall immediately update the register whenever a new employee joins the registered person to undertake the permitted capital market activities and whenever an employee ceases to engage in carrying out such activities.

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10.1.3 The register of names may be kept either in physical or electronic form and be readily available upon request by Bank Negara Malaysia.

10.2 Register of Securities

10.2.1 A registered person shall maintain a register of securities, which may be kept either in physical or electronic form and be readily available upon request by Bank Negara Malaysia. A registered person's employees are also required to maintain their personal register of securities in either physical or electronic form and be readily available upon request by Bank Negara Malaysia.

10.2.2 Particulars of the securities in which a registered person or its employee has an interest shall be entered into the register within fourteen days from the time at which the registered person or its employee is reasonably aware of the acquisition.

10.2.3 Where there is a change in a registered person or its employee's interests in securities:

- (a) The registered person or its employee, as the case may be, shall enter in the register full particulars of the change, including the date of the change and the reasons for which the change occurred; and
- (b) the entry shall be made within fourteen days after the date of change.

A registered person or its employee shall be deemed to have a change of interest when the registered person or its employee acquires or disposes of securities, as the case may be.

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11 RECORD OF COMPLAINTS

- 11.1 A registered person shall ensure that any complaint received from a customer is handled accordingly and comply with the requirements on complaints handling procedures imposed on the registered person through the circular issued by Bank Negara Malaysia on *Complaints Handling* dated 17 December 2009.

12 OTHER OBLIGATIONS

- 12.1 A registered person shall at all times maintain adequate operational resources and efficient procedures necessary for the proper conduct of the permitted capital market activities.
- 12.2 The registered person must, at the point before any business transaction begins, make it clear to the customer that the customer is not covered by the compensation fund under section 152 of the CMSA. In this regard, the registered person must inform and ensure that the customer understands that the compensation fund does not extend to investors who have suffered monetary loss as a result of a defalcation, or fraudulent misuse of moneys or other property, by a director, officer, employee or representative of a registered person.
- 12.3 The registered person must, however, inform the customer that where a customer suffers monetary loss in the above circumstances related to the acts of the registered person's employee, the customer can lodge a complaint with the complaints handling unit of the registered person. Any customer who is not satisfied with the decision of the registered person may refer his case to the Financial Mediation Bureau or the Securities Industry Dispute Resolution Centre within six months of receiving a final decision from the registered person. The customer should also be made aware that his complaint will only be dealt with by either one of the above channel that the customer chooses to refer his case to.

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- 12.4 A registered person shall ensure that the customer's assets which for the time being are in the registered person's custody are adequately safeguarded and are properly accounted for in the next business day.
- 12.5 A registered person shall send monthly statements to the customer on the movement of the customer's assets (which shall include moneys, other assets and collateral) by a certain date every month in physical or electronic form. Such monthly statements shall also include interest/profit and other charges imposed on the customer.
- 12.6 A registered person shall establish and maintain effective systems and procedures in order to safeguard the customer's moneys within such accounts used to facilitate the carrying out of the permitted capital market activities.
- 12.7 A registered person carrying out permitted capital market activities through the holders of a CMSL must inform customers at the outset that such activities are passed to or affected by the CMSL holder. As the activity is ultimately carried out by the CMSL holder, the registered person must also ensure that there is a clear contractual relationship between the customers and the CMSL holder. As such, the onus is on the registered person to ensure that the CMSL holder issues the contract note to the customers as proof of the sale or acquisition.

13 NON-COMPLIANCE

- 13.1 The Bank or the Securities Commission may institute action against any registered person or its employees for any breach of these Guidelines.

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PART C APPENDICES

14 APPENDIX 1 : PERMITTED CAPITAL MARKET ACTIVITIES

NO.	ACTIVITIES AS LISTED IN PART 1, SCHEDULE 4 OF THE CMSA	CATEGORIES OF REGISTERED PERSONS
1	DEALING IN SECURITIES	
a	Quoting two way prices for, and dealing in :- (i) debentures, stocks or bonds of Federal Government, any State Government or statutory body; or (ii) corporate debentures or other instruments which are not listed for trading in any stock exchange	Islamic banks and all licensed institutions
b	Arranging for the sale or purchase of securities issued by, belonging to or on behalf of, customers through the holders of capital markets services license who carries on the business of dealing in securities	Islamic banks, licensed banks, licensed merchant banks and licensed finance companies
c	Arranging for the sale or purchase of securities that are not listed on a stock market of a stock exchange, issued by, belonging to or on behalf of, customers	Islamic banks, licensed banks, licensed merchant banks, licensed discount houses and licensed finance companies
d	Underwriting of securities and placement out of such underwritten securities whether through the holder of a Capital Market Services License who carries on dealing in securities or otherwise	Islamic banks, licensed banks and licensed merchant banks
e	Underwriting of bond issues that is solely incidental to the management and administration of its insurance or takaful business	Insurance companies licensed under the Insurance Act 1996 and takaful operators registered under the Takaful Act 1984
f	Private placement of primary issues of securities on behalf of customers	Licensed merchant banks and Islamic banks in respect of Islamic products

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NO	ACTIVITIES AS LISTED IN PART 1, SCHEDULE 4 OF THE CMSA	CATEGORIES OF REGISTERED PERSONS
g	Arranging or offering for the sale or purchase as agents for any person, any interests in unit trust schemes	Islamic banks, licensed banks and licensed finance companies
h	Acting or offering to act as agent for any issuing house in relation to the issue of listing of any securities	Islamic banks and licensed banks
i	Lending or borrowing of unlisted debt securities for their own account or for their customers under the Guidelines on Securities Borrowing and Lending Programme under RENTAS or such other equivalent guidelines issued by Bank Negara Malaysia	Islamic banks, licensed banks, licensed finance companies and licensed merchant banks
j	Lending or facilitating the lending of securities for their own account or for their customers under any guidelines issued by the Commission under subsection 377(1) of the CMSA.	Licensed banks
2	ADVISING ON CORPORATE FINANCE	
a	Debentures that are not capable of being converted into equity	Licensed banks, licensed merchant banks, licensed discount houses and Islamic banks in respect of Islamic debentures
b	Islamic securities specified in the Securities Commission's guidelines in respect of Islamic securities	Licensed banks, licensed merchant banks, Islamic banks and licensed discount houses
c	Structured products as provided under the Securities Commission's guidelines in respect of structured products	Licensed banks, licensed merchant banks, Islamic banks in respect of Islamic structured products
d	Structured warrants provided under the Securities Commission's Guidelines for the Issue of Structured Warrants	Licensed merchant banks, licensed banks and Islamic banks in respect of Islamic structured warrants

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NO	ACTIVITIES AS LISTED IN PART 1, SCHEDULE 4 OF THE CMSA	CATEGORIES OF REGISTERED PERSONS
e	Making submissions on behalf of customers to relevant authorities or persons in respect of issues of securities for cash or other consideration	Licensed merchant banks and Islamic banks in respect of Islamic products
f	Issuing any documents which is or is deemed to be a prospectus under the relevant securities laws and the Companies Act 1965	Licensed banks, licensed finance companies, licensed merchant banks and licensed Islamic banks
3	INVESTMENT ADVICE	
a	Carrying on a business of advising others concerning securities or futures contracts; or as part of a business, issues or promulgates analyses or reports concerning securities or futures contracts	Islamic banks and all licensed institutions
4	FUND MANAGEMENT	
a	Acting or offering to act as portfolio managers for customers or an investment or co-investment manager of country funds, trust funds, venture capital funds, unit trust funds, or other funds including : i) the provision of investment advice; and ii) the acquisition or disposal through a holder of a Capital Market Services License who carries on dealing in securities, in relation to such activity,	Licensed merchant banks and Islamic banks in respect of Islamic funds

Note: Schedule 4 shall not apply to a licensed merchant bank that holds a Capital Markets Services Licence who carries on the business of dealing in securities.

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15 APPENDIX 2 : EXAMINATION MODULES

Examination Modules

No	Permitted Capital Market Activities	Examination Requirements
1	Dealing in securities	<ul style="list-style-type: none"> • Module 6 : Stock Market & Securities Laws, and (SC Licensing examinations) • Module 7 : Financial Statement Analysis & Asset Valuation (SC Licensing examinations)
2	Dealing in unlisted debt securities	Persatuan Pasaran Kewangan Malaysia (PPKM) examination modules: <ul style="list-style-type: none"> • Module 1: Part A : BNM's Code of Conduct and Market Practices Part B : The Malaysian Financial System • Module 2 : The Money Market • Module 3 : The Foreign Exchange Market; and • Module 4 : Risk Management
3	Dealing in listed debt securities	<ul style="list-style-type: none"> • Module 6 : Stock Market & Securities Laws, and (SC Licensing examinations) • Module 7 : Financial Statement Analysis & Asset Valuation (SC Licensing examinations) • PPKM examination modules as follow : <ul style="list-style-type: none"> ○ Module 1 : Part A : BNM's Code of Conduct and Market Practices Part B :The Malaysian Financial System ○ Module 2 : The Money Market ○ Module 3 : The Foreign Exchange Market; and ○ Module 4 : Risk Management
4	Advising on corporate finance	<ul style="list-style-type: none"> • Module 12 : Investment Management & Corporate Finance (SC Licensing examinations); and • Module 19 : Advisory Services (Rules & Regulations) (SC Licensing examinations) Or <ul style="list-style-type: none"> • Module 12 : Investment Management & Corporate Finance (SC Licensing examinations), and • Module 19A:Advisory Services (Rules & Regulations Part A), and • Module 19B: Advisory Services (Rules & Regulations Part B) (SC Licensing examinations)

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No	Permitted Capital Market Activities	Examination Requirements
5	Investment advice	<ul style="list-style-type: none"> • Module 12 : Investment Management & Corporate Finance (<i>SC Licensing examinations</i>); and • Module 19 : Advisory Services (Rules & Regulations) (<i>SC Licensing examinations</i>) <p>Or</p> <ul style="list-style-type: none"> • Module 12 : Investment Management & Corporate Finance (<i>SC Licensing examinations</i>), and • Module 19A: Advisory Services (Rules & Regulations Part A)
6	Fund management	<ul style="list-style-type: none"> • Module 9 : Fund Management Regulation (<i>SC Licensing examinations</i>) • Module 10: Asset and Funds Management (<i>SC Licensing examinations</i>)
7	Distribution and marketing of unit trust	<ul style="list-style-type: none"> • Persons Dealing in Unit Trust (PDUT) examinations by Federation of Malaysian Unit Trust Managers (FMUTM)

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16 APPENDIX 3 : DETAILED PROVISIONS OF SECTIONS 91, 92, 93 AND 97 OF THE CMSA

Detailed Provisions of sections 91, 92, 93 and 97 of CMSA

Section 91: Disclosure of certain interests in securities

- (1) Where a registered person sends circulars or other similar written communications in which he made a recommendation, whether expressly or by implication, with respect to any securities, or class of securities, the registered person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that the registered person or a person associated with him has at the date on which the registered person last sends the circular or other communication.

- (2) It is a defence to a prosecution for an offence against subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of a relevant interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being a relevant interest or an interest of the defendant or of a person associated with the defendant, if the defendant establishes that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware that—
 - (a) he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
 - (b) the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class, as the case may be.

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(3) For the purposes of paragraphs (1) and (2) –

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where -

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them for purchase; and
- (b) the person offers any of those securities for purchase,

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

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(5) Where -

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the person shall not, during the period of ninety days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a stock market, or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) For the purposes of paragraph (5), “underwriting” includes sub-underwriting.

(7) A registered person shall not send to a person a circular or other communication or written offer or recommendation to which paragraph (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation –

- (a) where the registered person is a natural person, is signed by the licensed person;
- (b) where the registered person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;

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- (c) where the registered person is a natural person who carries on business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; or
 - (d) where the registered person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.
- (8) Where a registered person sends to a person a circular or other communication or a written offer or recommendation to which paragraph (1), (4) or (5) applies, the registered person shall preserve a copy of the circular or other communication, or of a written offer or recommendation, duly signed by the person concerned, for a period of seven years.
- (9) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.
- (10) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall -
- (a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or
 - (b) where it is signed by a director, an executive officer or the secretary of a corporation, be deemed to have been sent by the corporation.

Section 92: Recommendations by registered person

- (1) A registered person shall not make a recommendation with respect to any securities or futures contracts to a person who may reasonably be expected to

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rely on the recommendation without having a reasonable basis for making the recommendation to the person.

- (2) For the purposes of paragraph (1) a registered person does not have a reasonable basis for making a recommendation to a person unless –
 - (a) the registered person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the registered person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;
 - (b) the registered person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and
 - (c) the recommendation is based on such consideration and investigation.
- (3) A registered person who contravenes paragraph (1) does not commit an offence.
- (4) Where the registered person contravenes paragraph (1) or section 91 by making a recommendation to a person and –
 - (a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;
 - (b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

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- (c) the person suffers loss or damage as a result of doing that act or refraining from doing that act, the registered person shall be liable to pay damages to the person in respect of that loss or damage.
- (5) A registered person shall not be liable under paragraph (4) if it is proved that a reasonable person in the circumstances could be expected to have done or omitted to do, as the case may be, that act in reliance on the recommendation even if a registered person had complied with that section in relation to the recommendation.
- (6) In the case of a contravention of paragraph (1) a registered person shall not be liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that, when making the recommendation, the registered person had about the customer's investment objectives, financial situation and particular needs.
- (7) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

Section 93: Priority given to client's order

- (1) Except as permitted by paragraph (2)
 - (a) the registered person when acting as principal or on behalf of a person associated with or connected to the registered person; or
 - (b) an employee of the registered person when acting for his own account or on behalf of a person associated with or connected to the employee,

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shall not enter into a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a customer of that holder or representative who is not associated with or connected to the holder or representative, has instructed the holder or representative to purchase or sell, respectively, securities of the same class and the holder or representative has not complied with the instruction.

- (2) Paragraph (1) shall not apply in relation to the entering into of a transaction by the registered person as principal or on behalf of a person associated with or connected to the registered person, or by an employee of such a registered person for his own account or on behalf of a person associated with or connected to the employee, if –
 - (a) the instructions from the client of such holder required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the holder or a representative of the holder has been unable to purchase or sell the securities by reason of those conditions; or
 - (b) the transaction is entered into in prescribed circumstances.

Section 97: Dealings as principal

- (1) A registered person shall not, as principal, deal in any securities with a person who is not such a holder of a Capital Markets and Services License or registered person unless the registered person first informs such person that the holder is acting in the transaction as principal and not as agent.
- (2) A reference in this section to a registered person who carries on the business of dealing in securities as principal includes a reference to a person—

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- (a) dealing or entering into a transaction on behalf of a person associated with such holder;
 - (b) dealing in securities on behalf of a corporation in which it has a controlling interest; or
 - (c) where it carries on a business of dealing in securities on behalf of a corporation in which its interest and the interests of its directors together constitute a controlling interest.
- (3) A registered person who carries on the business of dealing in securities, who as principal, deals in securities with a person who is not such a holder shall state in the contract note that the holder is acting in the transaction as principal and not as agent.
- (4) Subsection (1) shall not apply to a transaction of sale or purchase of an odd lot of securities entered into by a registered person who is a participating organisation and specialises in transactions relating to odd lots of securities.
- (5) Where a holder of a registered person who carries on the business of dealing in securities contravenes subsection (1) or (3) in respect of a contract—
- (a) for the sale of securities by the holder, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or on becoming aware of the contravention of subsection (1) or (3), whichever is the later; or
 - (b) for a purchase of securities by the holder, the vendor of the securities may rescind the contract by a notice of rescission in writing given to the holder not later than fourteen days after the receipt of the contract note or

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on becoming aware of the contravention of subsection (1) or (3), whichever is the later.

- (6) Any right of action that is conferred on a purchaser or vendor under subsection (5) is in addition to any right that such purchaser or vendor has under any other law.
- (7) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

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17 APPENDIX 4 : FORM : REGISTER FOR EMPLOYEES OF REGISTERED PERSONS

Form A : Register for employees of registered persons

Name of Registered Persons : _____

Branch : _____

Address : _____

No	Name of Employee	IC No	Type of Permitted Activities
1			
2			
3			