

**BURSA MALAYSIA DERIVATIVES BERHAD**

<b>Date : 09 August 2011</b>	<b>Trading Participant Circular: 19/2011</b>
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- 1. AMENDMENTS TO THE RULES OF BURSA MALAYSIA DERIVATIVES BERHAD (“RULES OF BURSA DERIVATIVES”) IN RELATION TO THE OUTSOURCING ARRANGEMENTS OF A TRADING PARTICIPANT (“TP”)**
- 2. DIRECTIVES ON MATERIAL OUTSOURCING ARRANGEMENTS BY MARKET INTERMEDIARIES**

**1. INTRODUCTION**

The following guidelines on outsourcing which were issued by the Securities Commission (“SC”) on 29 June 2005 and revised on 2 March 2006 have been revoked with effect from 27 July 2011 and replaced with the new Guidelines on Outsourcing for Capital Market Intermediaries (“Guidelines on Outsourcing”):

- (a) Guiding Principles for Outsourcing of Back Office Functions for Capital Market Intermediaries; and
- (b) Guidelines on Performance of Supervisory Functions at Group Level for Capital Market Intermediaries.

The Guidelines on Outsourcing will take effect from 9 August 2011. A copy of the Guidelines on Outsourcing and the Frequently Asked Questions issued by SC are attached as **Annexure 1**.

**2. AMENDMENTS TO THE RULES OF BURSA DERIVATIVES IN RELATION TO THE OUTSOURCING ARRANGEMENTS OF A TP**

The Rules of Bursa Derivatives have been amended accordingly (“the Amendments”) in conjunction with the Guidelines on Outsourcing. The Amendments are set out in **Annexure 2**. In gist, the salient changes to the Rules of Bursa Derivatives are as follows:

- (a) clarification that a TP may outsource its functions if it complies with the Guidelines on Outsourcing and obtains Bursa Derivatives’ prior written approval for any material outsourcing arrangements; and
- (b) the TP is responsible for the acts or omissions of its service providers and sub-contractors.

**3. DIRECTIVES ON MATERIAL OUTSOURCING ARRANGEMENTS BY MARKET INTERMEDIARIES**

Pursuant to Rule 401.4(bb) of the Rules of Bursa Derivatives, Bursa Derivatives has issued directives in relation to material outsourcing arrangements made by market intermediaries (“Directives”) as set out in **Annexure 3**.

Pursuant to item 2.2 of the Directives, Bursa Derivatives is granting an exemption in relation to paragraph 3.02 of the Guidelines on Outsourcing to allow TPs to outsource their back office functions that involve decision making or interaction with clients where the function relates to post trade, financing or custody services.

A TP, being one of the market intermediaries stated in the Directives must comply with the Directives.

**4. EFFECTIVE DATE**

The Amendments and the Directives take effect from **9 August 2011** ("Effective Date").

All rules, directives or circulars in force which make references to or contain provisions relating to the above matters shall have effect from the Effective Date as if such reference or provisions relate to the amended provisions aforesaid.

**5. PREVIOUS DIRECTIVES SUPERSEDED**

Further to the Amendments and Directives, the directives in the TP Circulars 12/2006 and 5/2007 are superseded by the Directives referred to in paragraph 3 above with effect from the Effective Date.

**6. CONTACT PERSONS**

Please direct any queries you may have in relation to the above to the following person:

Name	Contact Details
Ng G-Ming	<a href="mailto:nggming@bursamalaysia.com">nggming@bursamalaysia.com</a> 03-2034 7364

**This Circular is available at**

[http://www.bursamalaysia.com/website/bm/regulation/rules/bursa\\_rules/bm\\_derivatives.html](http://www.bursamalaysia.com/website/bm/regulation/rules/bursa_rules/bm_derivatives.html)

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**REGULATION**

# ANNEXURE 1

- Guidelines on Outsourcing for Capital Market Intermediaries
- FAQs



# **GUIDELINES ON OUTSOURCING FOR CAPITAL MARKET INTERMEDIARIES**

Issued/Effective: 9 August 2011

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## Chapter 1

### INTRODUCTION

- 1.01 As the capital market expands, the Securities Commission Malaysia (SC) understands that it may be more cost effective for a market intermediary to outsource some of its functions. As with any outsourcing arrangement, the failure to select an appropriate and efficient service provider may lead to business disruption, with negative consequences to the market intermediary's clients.
- 1.02 In order to ensure that investor's interest is protected, these guidelines set out the manner and the requirements to be complied with by a market intermediary intending to outsource-
- (a) back office function to a service provider;
  - (b) internal audit function to group or an external auditor;
  - (c) risk management and compliance functions to group; and
  - (d) any other function that the SC or the exchange (in consultation with the SC), may determine.
- 1.03 This *Guidelines on Outsourcing for Capital Market Intermediaries* is issued by the SC under section 377 of the *Capital Markets and Services Act 2007*.
- 1.04 These guidelines will replace the following guidelines:
- (a) *Guidelines on Performance of Supervisory Functions at Group Level for Capital Market Intermediaries*; and
  - (b) *Guiding Principles for Outsourcing of Back Office Functions for Capital Market Intermediaries*.
- 1.05 These guidelines do not apply to investment banks, unless otherwise stipulated in any laws, regulations or guidelines as may be amended or issued from time to time by the SC.
- 1.06 The SC or the exchange (upon consultation with SC) may, where it deems appropriate or upon application, grant exemptions or variations from compliance with any requirement of these guidelines.

## Chapter 2

### DEFINITIONS

In these guidelines, the following words have the following meanings, unless the context otherwise requires:

agent	means a person appointed to act on behalf of the SC, the exchange or a market intermediary.
back office function	means any administrative or operational function other than a regulated activity as specified under schedule 2 of the CMSA.
books	has the same meaning as provided for under the CMSA.
BAFIA	means the <i>Banking and Financial Institutions Act 1989</i> .
CMSA	means the <i>Capital Markets and Services Act 2007</i> .
CMSL	means Capital Markets Services Licence.
compliance officer	means the principal person responsible for compliance function.
exchange	means the entity that includes Bursa Malaysia Bhd, Bursa Malaysia Securities Bhd, Bursa Malaysia Derivatives Bhd or any of Bursa Malaysia Bhd's subsidiaries not specifically mentioned herein, either collectively or individually, as the context shall require.
external auditor	means an auditor who is not the current statutory auditor appointed by the market intermediary.
external entity	means an entity which is not within a 'group' as defined under these guidelines.
group	means a market intermediary's direct or ultimate holding company or any of its related corporations.
investment bank	means an entity which holds a CMSL under section 58 of the CMSA for the regulated activity of dealing in securities and a merchant bank licence under section 5 of BAFIA and duly established pursuant to the <i>Guidelines on Investment Banks</i> jointly issued by Bank Negara Malaysia and the SC.
market intermediary	means a CMSL holder and includes a management company approved by the SC under section 289 of the CMSA.
outsourced functions	means back office, internal audit, risk management and compliance functions that are outsourced.

outsourcing arrangement	means any arrangement for the outsourcing of outsourced functions between a market intermediary and a service provider or a sub-contractor.
rules	has the same meaning as provided for under the CMSA.
securities laws	has the same meaning as that provided in the <i>Securities Commission Act 1993</i> .
service level agreement	means a legal agreement or a contract between the market intermediary and the service provider.
service provider	means a group or an external entity, which carries out the outsourced functions.
sub-contracting	means the act of further contracting the back office functions or a sub-component of that function to another service provider.

## Chapter 3

### GENERAL POLICY

- 3.01 Subject to the outsourcing principles as set out under chapter 6, a market intermediary can only outsource its-
- (a) back office function to a service provider;
  - (b) internal audit function to group or an external auditor;
  - (c) risk management and compliance functions to a group; and
  - (d) any other function that the SC or the exchange (in consultation with the SC), may determine.
- 3.02 A market intermediary must not outsource a back office function that involves–
- (a) the decision-making functions of the market intermediary; or
  - (b) any interaction or direct contact with the clients of the market intermediary,
- except where such function or contact is allowed under the rules or directives of the exchange.
- 3.03 A market intermediary-
- (a) may appoint any person as a service provider; or
  - (b) must approve any appointment of a sub-contractor by a service provider.
- 3.04 Where a service provider or a sub-contractor is located outside Malaysia, the market intermediary must-
- (a) analyse the economic, legal and political conditions of the country that the service provider and the sub-contractor are operating from, which may impact the undertaking of any outsourced functions;
  - (b) refrain from outsourcing to jurisdictions where the SC, the exchange or their agents is/are hindered from having prompt access to information;
  - (c) commit to retrieve information readily available from the service provider and the sub-contractor should the SC, the exchange or their agents request for such information; and
  - (d) inform the SC or the exchange if any foreign authority were to seek access to its clients' information.

- 3.05 A market intermediary must-
- (a) ensure that outsourcing of the back office function is not sub-contracted unless, the service provider first obtains the approval of the market intermediary; and
  - (b) not, at any time, allow the sub-contracting of internal audit, risk management or compliance function.

### **Board and senior management's responsibilities and oversight**

3.06 While the responsibility and oversight over any outsourcing arrangement is on a market intermediary, the board and the senior management of the market intermediary must at all times-

- (a) be responsible and accountable for any outsourced function carried out by a service provider or a sub-contractor;
- (b) ensure that any outsourcing arrangement does not jeopardize or prejudice clients' interests;
- (c) ensure that any outsourcing arrangement does not in any way interfere with the ability of the market intermediary to fulfil its legal and regulatory obligations;
- (d) ensure that any outsourcing arrangement does not impede the SC or the exchange from carrying out their regulatory oversight functions over the market intermediary; and
- (e) ensure that policies and procedures are in place to maintain confidentiality of clients' information and, where there is a need to do so pursuant to any written law or contractual obligation, seek approval from or notify clients that their information may be disclosed to a service provider or a sub-contractor, as the case may be.

3.07 A market intermediary must obtain the prior approval of the SC or the exchange as provided for under chapter 7 of these guidelines, where any material outsourcing arrangement-

- (a) is put into effect; or
- (b) is to be carried out by way of sub-contracting.

3.08 Material outsourcing arrangement is discussed in chapter 4 of these guidelines.

## Chapter 4

### MATERIAL OUTSOURCING ARRANGEMENT

- 4.01 Outsourcing of risk management, compliance, internal audit, clearing and settlement, fund accounting, and fund valuation functions as well as the maintenance of register of unit holders should be deemed as a material outsourcing arrangement for the purposes of these guidelines.
- 4.02 In the case of other functions outsourced other than the above, a market intermediary must apply the following assessment criteria in assessing whether the function outsourced is a material outsourcing arrangement:
- (a) The financial, reputational and operational impact on the market intermediary in the event of a default or failure of the service provider;
  - (b) The potential impact of the outsourcing arrangement on the market intermediary's services or support rendered to its clients;
  - (c) The impact of the outsourcing arrangement on the market intermediary's ability and capacity to comply with regulatory requirements; and
  - (d) The degree of difficulty and time required to select an alternative service provider or to bring the outsourced function in-house if the appointed service provider is not able to perform the outsourced function.
- 4.03 A market intermediary must exercise due care and diligence in carrying out the above assessment.

## Chapter 5

### APPROVAL OF MATERIAL OUTSOURCING ARRANGEMENT

- 5.01 The SC or the exchange may only approve a material outsourcing arrangement provided a market intermediary is able to-
- (a) ensure that the service provider or sub-contractor provides their consent through a letter of undertaking, for the SC, the exchange or their agents to have access to and are able to make copies of information, records and documents relating to the outsourced function; and
  - (b) demonstrate that the market intermediary can comply with the outsourcing principles set out in chapter 6.
- 5.02 In granting approval for a material outsourcing arrangement, the SC or the exchange may impose any conditions or restrictions on the approval granted.
- 5.03 A market intermediary must notify the SC or the exchange, as the case maybe, of any variation or termination of the service level agreement and sub-contracting agreement signed by the service provider no later than ten working days from the occurrence of the event.

## **Chapter 6**

### **OUTSOURCING PRINCIPLES**

The following principles should be complied with in respect of material outsourced function. Where a market intermediary outsources non-material functions, a market intermediary shall adopt these principles as best practices for the outsourcing arrangement.

#### **Due care and diligence on selection process**

- 6.01 A market intermediary must always act in the interest of its clients in appointing a service provider or approving a sub-contractor.
- 6.02 A market intermediary must, in appointing a service provider or approving a sub-contractor, consider the service provider's or the sub-contractor's-
- (a) ability to ensure compliance with respective agreements;
  - (b) adequacy of resources and ability to efficiently conduct the function, especially when performing outsourced functions for multiple market intermediaries;
  - (c) adequacy of security and control environment;
  - (d) policies and procedures in preventing abuse of clients' confidential information;
  - (e) business continuity plan;
  - (f) ability to manage any conflict of interest; and
  - (g) present and potential litigation proceedings, which may have potential impact on its performance of the outsourced function.

#### **Continuous monitoring mechanism**

- 6.03 A market intermediary must have policies and procedures to monitor the service delivery, performance reliability and processing capacity of the service provider which should, among others, include the following:
- (a) Periodically review and update the service level agreement; and
  - (b) Holding regular meetings to discuss performance of the service provider, sub-contractor and regulatory matters.
- 6.04 A market intermediary must ensure that the service provider has adequate policies and procedures to monitor the conduct of the appointed sub-contractor.

- 6.05 A market intermediary must perform an assessment on a service provider on a periodic basis, as part of its monitoring mechanism. This assessment should be performed by the market intermediary's internal audit or external auditor and the report should be submitted to the SC or the exchange, as and when requested.
- 6.06 The assessment referred to under paragraph 6.05 should include-
- (a) the service provider's adherence to the criteria specified under paragraph 6.02;
  - (b) the service provider's policies and procedures in monitoring conduct of the sub-contractor; and
  - (c) any new material risk arising from the outsourcing arrangement and strategies for managing such risk.
- 6.07 A market intermediary must submit a report of the assessment referred to under paragraph 6.05 to its board of directors and senior management.
- 6.08 A market intermediary must enter into a written and binding service level agreement with the service provider to formalise the outsourcing arrangement.
- 6.09 The service level agreement should, among others, include the following:
- (a) Roles, responsibilities and obligations of the service provider;
  - (b) Scope of the outsourcing arrangement;
  - (c) Terms and conditions governing the relationship;
  - (d) Provisions for proper reporting and monitoring mechanisms between service provider and market intermediary;
  - (e) The rights of the market intermediary to conduct examination, inspection and to have access to books, records and documents relating to outsourced functions;
  - (f) Provisions relating to the maintenance of books, records and documents for the time period stipulated in these guidelines, securities laws, rules and any other relevant laws or guidelines;
  - (g) Provisions relating to the termination of contract, minimum period to execute a termination, ownership of intellectual property following termination and specifications relating to transfer of information back to the market intermediary;

- (h) Protection of confidentiality and security of market intermediary and clients' information and requirement for immediate notification (if there is a breach);
- (i) Liability of the service provider for unsatisfactory performance or other breach of agreement of the outsourced functions;
- (j) Mechanism to resolve disputes which may arise under the outsourcing arrangement; and
- (k) Limitation or condition, if any, on the service provider's ability to sub-contract (if applicable).

6.10 For sub-contracting arrangement, a market intermediary must ensure that-

- (a) the terms of the sub-contracting agreement do not contradict the initial service level agreement signed between the market intermediary and the service provider; and
- (b) the service provider's ability to comply with obligations under the service level agreement will not be impaired by the sub-contracting arrangement.

#### **Outsourcing compliance function to group**

6.11 Where the compliance function is outsourced to the group level, a market intermediary must ensure that the group-

- (a) appoints at least one registered compliance officer to perform the compliance function; and
- (b) provides regular compliance report to the board of directors and senior management of the market intermediary.

## Chapter 7

### APPLICATION FOR APPROVAL OF MATERIAL OUTSOURCING ARRANGEMENT

- 7.01 A market intermediary must submit all documents stipulated under the application form (*SC/MI-Outsourcing*) for approval of material outsourcing arrangement.
- 7.02 The relevant market intermediary must submit the above documents to the addresses set out in the table below. Where the relevant market intermediary is required to submit the documents to the exchange, the exchange must review such documents in consultation with the SC.

Market Intermediary	Submission of Documents
A holder of CMSL for regulated activity of- (a) dealing in securities; or (b) trading in futures contracts.	Head Participants Supervision Division Bursa Malaysia Bhd 12 Floor, Exchange Square Bukit Kewangan 50200 Kuala Lumpur
1. A holder of CMSL for the regulated activity of: (a) dealing in securities - unit trust products; (b) fund management; (c) advising of corporate finance; (d) investment advice; or (e) financial planning. 2. A management company approved by the SC under section 289 of the CMSA.	Managing Director Market Supervision Division Securities Commission Malaysia 3 Persiaran Bukit Kiara Bukit Kiara 50490 Kuala Lumpur

## **Approval subject to terms and conditions**

7.03 The SC or the exchange-

- (a) reserves the right to return an incomplete application or an application which does not comply with the requirements;
- (b) may request for additional information and/or documents not specified in this schedule; and
- (c) may impose any condition deemed fit in granting its approval for such application.

**FREQUENTLY-ASKED QUESTIONS  
GUIDELINES ON OUTSOURCING FOR CAPITAL MARKET INTERMEDIARIES**

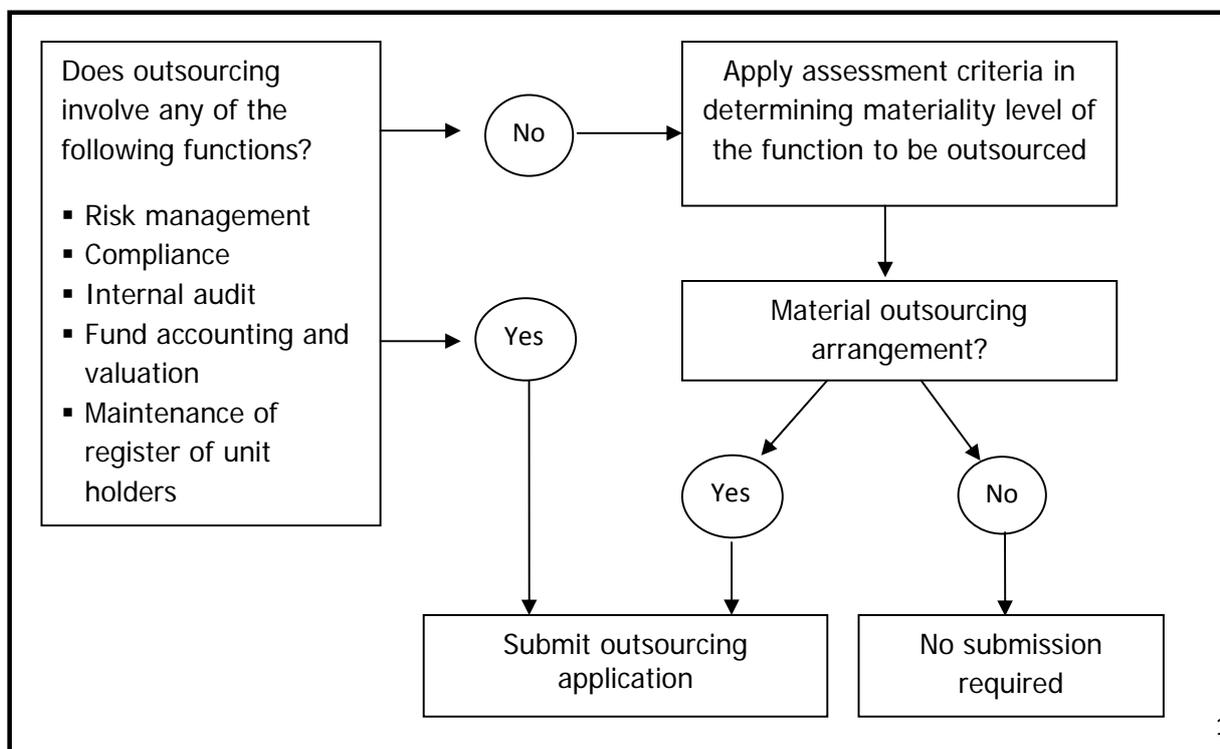
**Introduction**

This list of FAQs is intended to provide guidance and clarification on various requirements in the *Guidelines on Outsourcing for Capital Market Intermediaries*.

**1. Is a market intermediary required to seek prior approval from the Securities Commission Malaysia (SC) or Bursa Malaysia (exchange) for all outsourcing arrangements?**

No. Prior approval from the SC or the exchange is not required for outsourced functions that are determined as non-material. A market intermediary is to be guided by chapter 4 of the Guidelines in determining whether the outsourced function is a material or a non-material function (refer diagram below on illustration of the outsourcing framework). This assessment process has to be documented.

In addition, a holder of a Capital Markets Services Licence (CMSL) for regulated activities of dealing in securities or trading in futures contracts must also be guided by the Rules of the exchange in outsourcing any of its functions.



**2. Is prior approval of the SC or the exchange required for all outsourcing arrangements to service provider outside Malaysia or if there is a sub-contractor?**

A market intermediary has to seek the prior approval of the SC or the exchange if a **material** function is outsourced to a service provider outside Malaysia or involves a sub-contractor.

**3. Is a market intermediary required to notify the SC or the exchange if the service level agreement is amended to factor in a new outsourced function?**

If the changes in the said agreement resulted from an addition of a new material function, a market intermediary has to submit fresh a outsourcing application to the SC or the exchange.

**4. Is a market intermediary allowed to sub-contract its supervisory functions such as internal audit, risk management or compliance functions?**

No. Paragraph 3.04 (b) stipulates that these functions are not allowed to be sub-contracted.

**5. Can a market intermediary outsource the maintenance of unit holder register to a service provider outside Malaysia?**

In outsourcing the maintenance of unit holder register, a market intermediary has to comply with sections 308 and 309 of the *Capital Markets and Services Act 2007* which stipulates that the unit holder register must be maintained at the registered office of the market intermediary in Malaysia.

**6. If a market intermediary outsources maintenance of unit holder register, could there be interaction or contact with the clients of the market intermediary in the course of performing the function?**

The interaction must not have the elements of core functions that formed part of licensed activities.

**7. Where it involves outsourcing of a compliance function, is the designated compliance officer required to be registered with the SC?**

Yes. The compliance officer must have the necessary qualifications and passed the necessary examinations or courses set out by the SC.

**8. What can be considered as non-material functions which do not require the SC's approval?**

Examples of non-material functions that do not require the SC's approval are human resource (e.g. payroll, performance of appraisal, employment of personnel) and finance.

**9. What are the functions/services which are not subject to the Guidelines?**

The following are examples of functions/ services which are not subject to the Guidelines-

Functions:

- Advisory services e.g. legal opinions;
- Tax advisory services; and
- Secretarial.

Services:

- Utilities e.g. telephone, electricity;
- Procurement of office supplies;
- Procurement of fixtures and fittings;
- Maintenance of office and premises;
- Servicing of commercially available computers and operating systems;
- Mail and courier; and
- Printing services.

**10. Is outsourcing of clearing and settlement as provided under paragraph 4.01 applicable to all market intermediaries?**

No. The outsourcing of clearing and settlement function is applicable only for a holder of a CMSL for regulated activities of dealing in securities or trading in futures contracts.

**11. Is there a standard letter of undertaking to be submitted by a service provider or a sub-contractor, as required under paragraph 5.01 (a)?**

No. There is no standard format. Nonetheless, the letter of undertaking is to be addressed to the SC or the exchange, as the case may be. The content should stipulate that the service provider or the sub-contractor will allow the SC, the exchange, or their agents to have access to and are able to make copies of information, records and documents relating to the outsourced functions.

**12. What type of variation requires notification to the SC or the exchange, as required under paragraph 5.03?**

Any variation of the commercial terms need not require notification to the SC or the exchange. Commercial terms can be defined as those terms which are not stipulated in paragraph 6.09 (a) to (k).

**13. Does a market intermediary need to monitor the conduct of a sub-contractor?**

Yes. A market intermediary must ensure that the service provider has the necessary monitoring mechanism to monitor conduct of its sub-contractor.

**14. Is a market intermediary required to conduct an assessment on internal audit that is being outsourced?**

An assessment is not required where the internal audit function of a market intermediary is outsourced. However, the audit committee or the board of directors of the market intermediary is required to ensure the effectiveness of the internal audit function outsourced.

**15. What is the frequency of the assessment to be carried out as provided under paragraph 6.05?**

The first assessment must be carried out on the twelfth month from commencement of the outsourcing arrangement and a report of this assessment must be submitted immediately to the SC or the exchange, as the case may be. Report of any subsequent assessments shall only be submitted to the SC or the exchange, as and when requested.

**16. Is the market intermediary required to change the existing outsourcing agreement to reflect current requirements?**

No. This requirement does not have a retrospective effect as long as the said outsourcing arrangement is approved by the SC or the exchange. However, it would be a good measure for the market intermediary to adopt the revised criteria stated in paragraph 6.09 in the said agreement.

Nevertheless, the market intermediary has to be guided by these Guidelines for future obligations e.g. the need to notify the SC or the exchange of any variations of non-commercial terms in the agreement.

**17. What other written laws are required to be adhered to in maintaining confidentiality of clients' information?**

A market intermediary, that is a holder of a CMSL for regulated activities of dealing in securities, must give due attention to the requirements stipulated under Sections 43 and 45 of the *Securities Industry (Central Depositories) Act 1991*.



**RULES OF BURSA MALAYSIA DERIVATIVES BERHAD  
RULE AMENDMENTS CONSEQUENTIAL TO THE  
SECURITIES COMMISSION'S GUIDELINES ON OUTSOURCING FOR CAPITAL MARKET INTERMEDIARIES**

RULE	EXISTING PROVISIONS	AMENDED PROVISIONS
<b>Rule 201 Definitions</b>	"Entity" shall bear the same meaning as is ascribed thereto in the Guidelines on Supervisory Functions;	<del>"Entity" shall bear the same meaning as is ascribed thereto in the Guidelines on Supervisory Functions;</del>
	"Group" shall bear the same meaning as is ascribed thereto in the Guidelines on Supervisory Functions;	"Group" <del>shall bear the</del> <u>has the</u> same meaning as <del>is ascribed thereto</del> <u>provided for</u> in the Guidelines on <del>Supervisory Functions</del> <u>Outsourcing</u> ;
	"Guidelines on Supervisory Functions" means the "Guidelines on Performance of Supervisory Functions at Group Level for Capital Market Intermediaries" issued by the Commission on 29 June 2005, including any subsequent amendments, modifications, variations, supplements or substitutes thereto and any directives or guidelines as may be issued thereunder;	"Guidelines on <del>Supervisory Functions</del> <u>Outsourcing</u> " means the "Guidelines on <del>Performance of Supervisory Functions at Group Level</del> <u>Outsourcing</u> for Capital Market Intermediaries" issued by the Commission <del>on 29 June 2005,</del> including any subsequent amendments, modifications, variations, supplements or substitutes <del>thereto</del> and any directives or guidelines as may be issued <del>thereunder</del> <u>under the Guidelines</u> ;
	"Head of Compliance" mean 'Head Of Compliance' as referred to in the Guidelines on Supervisory Functions;	<del>[Deleted]"Head of Compliance" mean 'Head Of Compliance' as referred to in the Guidelines on Supervisory Functions;</del>
	"Supervisory Functions" shall bear the same meaning as is ascribed thereto in the Guidelines on Supervisory Functions;	<del>[Deleted]"Supervisory Functions" shall bear the same meaning as is ascribed thereto in the Guidelines on Supervisory Functions;</del>
	New Definition	<u>"service provider"</u>  <u>has the same meaning as is assigned to it in the Guidelines on Outsourcing.</u>



RULE	EXISTING PROVISIONS	AMENDED PROVISIONS
	New Definition	<p><u>"sub-contractor"</u></p> <p><u>means the service provider to whom the initial service provider has further contracted the outsourced functions.</u></p>
Rule 301.11	New Provision	<p><u>A Participant is responsible to the Exchange for all acts and omissions of its employees, agents, service providers and sub-contractors.</u></p>
Rule 601.4	<b>OUTSOURCING OF BACK OFFICE FUNCTIONS</b>	<p><b>OUTSOURCING OF BACK OFFICE FUNCTIONS ARRANGEMENTS</b></p>
	(a) A Trading Participant may be permitted to outsource its Back Office Functions subject to the prior approval of the Exchange and compliance with the Guiding Principles.	(a) A Trading Participant <del>is not permitted to</del> <u>may be permitted to</u> outsource its Back Office Functions subject to the prior approval of the Exchange and compliance with <del>any of its functions except in accordance with these Rules</del> <u>the Guiding Principles.</u>
	(b) The Guiding Principles shall be regarded as part of these Rules and consequently any breach by the Trading Participant of the Guiding Principles shall be deemed to be a breach of these Rules.	(b) <del>The Guiding Principles shall be regarded as part of these Rules and consequently any breach by the Trading Participant of the Guiding Principles shall be deemed to be a breach of these Rules.</del> <u>A Trading Participant may outsource its functions if it –</u> <ul style="list-style-type: none"> <li><u>(i) complies with requirements that must be met prior to the outsourcing as set out under the Guidelines on Outsourcing; and</u></li> <li><u>(ii) has obtained the prior written approval of the Exchange for any material outsourcing arrangement as required under the Guidelines on Outsourcing.</u></li> </ul>

RULE	EXISTING PROVISIONS	AMENDED PROVISIONS
	<p>(c) The Exchange may issue any directives, rulings and guidelines in relation to the outsourcing of the Back Office Functions of a Trading Participant, in consultation with the Commission, from time to time.</p>	<p><del>(c) The Exchange may issue any directives, rulings and guidelines in relation to the outsourcing of the Back Office Functions in consultation with the Commission, from time to time. A Trading Participant which has outsourced its functions in accordance with this Rule 601.4 must, in relation to such functions:</del></p> <p><u>(a) comply with these Rules, the Guidelines on Outsourcing and any directives that may be issued by the Exchange on this matter; and</u></p> <p><u>(b) ensure that its service provider or sub-contractor complies with the Rules that are applicable to the outsourced functions in the same manner as the Trading Participant is required to.</u></p>
	<p>(d) For the purposes of this Rule 601.4:</p> <p>(i) “Back Office Functions” shall mean the back office functions as envisaged under clause 4 of the Guiding Principles; and</p> <p>(ii) “Guiding Principles” shall mean the Guiding Principles For Outsourcing of Back Office Functions For Capital Market Intermediaries issued by the Securities Commission on 29 June 2005 including subsequent amendments, modifications, variations, supplements or substitutes thereto and any directives or guidelines as may be issued thereunder.</p>	<p><del>(d) For the purposes of this Rule 601.4:</del></p> <p><del>(i) “Back Office Functions” shall mean the back office functions as envisaged under clause 4 of the Guiding Principles; and</del></p> <p><del>(ii) “Guiding Principles” shall mean the Guiding Principles For Outsourcing of Back Office Functions For Capital Market Intermediaries issued by the Securities Commission on 29 June 2005 including subsequent amendments, modifications, variations, supplements or substitutes thereto and any directives or guidelines as may be issued thereunder.</del></p> <p><u>The Exchange may, at any time, revoke any approval given to the Trading Participation for its material outsourcing or direct the Trading Participant to</u></p>



RULE	EXISTING PROVISIONS	AMENDED PROVISIONS
		<u>discontinue any outsourcing, partly or wholly, for any reason whatsoever.</u>
<b>Rule 610.1A</b>	<p>(a) Notwithstanding Rule 6101.1, a Trading Participant may be permitted to have its compliance functions as envisaged under Rule 6101.1 at its Group level provided it obtains the prior written approval of the Exchange pursuant to the Guidelines on Supervisory Functions and provided further that it is in compliance with, on a continuing basis, the Guidelines on Supervisory Functions in relation to the compliance functions mentioned therein and all rules, directives, rulings and guidelines issued by the Exchange pertaining to the same.</p> <p>(b) The Guidelines on Supervisory Functions in relation to the compliance functions mentioned therein shall be regarded as part of the Rules and consequently any breach by the Trading Participant of the Guidelines on Supervisory Functions in relation to the compliance functions mentioned therein shall be deemed to be a breach of these Rules.</p> <p>(c) The Exchange may issue any rules, directives, rulings and guidelines in relation to the performance of compliance functions at a Trading Participant's Group level, as it deems fit, from time to time.</p>	<p>(a) <del>[Deleted]Notwithstanding Rule 6101.1, a Trading Participant may be permitted to have its compliance functions as envisaged under Rule 6101.1 at its Group level provided it obtains the prior written approval of the Exchange pursuant to the Guidelines on Supervisory Functions and provided further that it is in compliance with, on a continuing basis, the Guidelines on Supervisory Functions in relation to the compliance functions mentioned therein and all rules, directives, rulings and guidelines issued by the Exchange pertaining to the same.</del></p> <p>(b) <del>[Deleted]The Guidelines on Supervisory Functions in relation to the compliance functions mentioned therein shall be deemed to be a breach of these Rules.</del></p> <p>(c) <del>[Deleted]The Exchange may issue any rules, directives, rulings and guidelines in relation to the performance of compliance functions at a Trading Participant's Group level, as it deems fit, from time to time.</del></p>
<b>Rule 610.1A (cont.)</b>	<p>(d) The Trading Participant shall ensure that-</p> <p>(i) the company within the Entity where the compliance functions are undertaken on behalf of the Trading Participant designates at least one (1) dedicated Compliance Officer who shall be responsible to</p>	<p>(d) <u>Where a Trading Participant outsources its compliance functions to the Group under Rule 601.4, The the</u> Trading Participant <del>shall</del><u>must</u> ensure that-</p> <p>(i) the company within the <del>Entity</del><u>Entity Group</u> where the compliance functions are undertaken on behalf of</p>



RULE	EXISTING PROVISIONS	AMENDED PROVISIONS
	<p>ensure that the compliance functions of the Trading Participants as envisaged under Rule 610.1 are carried out;</p> <p>(ii) the dedicated Compliance Officer is registered with the Exchange in accordance with these Rules, the provisions of which shall mutadis mutandis apply to the dedicated Compliance Officer in all respects unless expressly provided to the contrary; and</p>	<p>the Trading Participant designates at least one(1) dedicated Compliance Officer who <del>shall</del><u>must</u> be responsible to ensure that the compliance functions of the Trading Participants <del>as envisaged</del> under Rule 610.1 are carried out; <u>and</u></p> <p>(ii) the dedicated Compliance Officer is registered with the Exchange in accordance with these Rules, <del>the provisions of which shall mutadis mutandis apply to the dedicated Compliance Officer in all respects unless expressly provided to the contrary;</del> and</p>
<b>Rule 610.1A(cont.)</b>	<p>(e) The provisions in this Rule are not applicable to an Investment Bank and are substituted with the provisions in the Guidelines on Investment Bank and the requirements of Bank Negara Malaysia relating to the performance of the Supervisory Functions of an Investment Bank by an entity other than the Investment Bank (“the Relevant Guidelines and Requirements”). The Relevant Guidelines and Requirements are deemed to be part of these Rules.</p>	<p>(e) <del>The provisions in this Rule are</del> <u>is</u> not applicable to an Investment Bank, <del>and are substituted with</del> <u>The Investment Bank must comply with the provisions in</u> the Guidelines on Investment Bank and <u>such other</u> <del>the</del> requirements of Bank Negara Malaysia relating to <del>the performance of the Supervisory Functions of an Investment Bank by an entity other than the Investment Bank</del> <u>this matter</u> (“<del>the Relevant Guidelines and Requirements</del>”). <del>The Relevant Guidelines and Requirements are deemed to be part of these Rules.</del></p>

[End of Rule Amendments]

**DIRECTIVES ON MATERIAL OUTSOURCING ARRANGEMENTS BY MARKET INTERMEDIARIES**

**1. APPLICATION AND DEFINITIONS**

**1.1 Application**

These directives apply to material outsourcing arrangements. A material outsourcing arrangement is as described in chapter 4 of the Guidelines on Outsourcing.

**1.2 Definitions**

In these directives, unless the context otherwise requires:-

Back Office functions means back office functions as defined under the Guidelines on Outsourcing.

Bursa means the following entities either collectively or individually as the context shall require.

- Bursa Malaysia Securities Berhad;
- Bursa Malaysia Derivatives Berhad;
- Bursa Malaysia Depository Sdn Bhd;
- Bursa Malaysia Securities Clearing Sdn Bhd; and
- Bursa Malaysia Derivatives Clearing Berhad.

BSZ means Bursa Secured Zone, which is the domain designated by Bursa, in accordance with such requirements as may be determined by Bursa from time to time, to be the domain where, without limitations, Bursa's Information Technology Infrastructure shall reside.

Client(s) means an entity, whether an individual or a body corporate, for whom relevant trading and/or securities account(s), have been opened in accordance with the requirements of the Rules.

Guidelines on Outsourcing means the "Guidelines on Outsourcing for Capital Market Intermediaries" issued by the Securities Commission including subsequent amendments, modifications, variations, supplements or substitutes and any directives or guidelines as may be issued under the Guidelines on Outsourcing.

Market Intermediary means the following:

- Participating Organisation;
- Trading Clearing Participant;
- Authorised Depository Agent;

**ANNEXURE 3**  
**Directives on Material Outsourcing Arrangements by**  
**Market Intermediaries**

- Trading Participant;
- General Clearing Participant; or
- Authorised Direct Member who is also a Market Intermediary as defined in the Guidelines on Outsourcing.

as defined in the Rules, whether collectively or individually, as the context requires, which wishes or has been approved to outsource its Back Office functions in its respective capacities.

ISZ	means Intermediary Secured Zone. The ISZ shall be the designated domain which falls within the purview of the Market Intermediary and where the Market Intermediary shall be responsible for the operations.
outsourced functions	means “outsourced functions” as defined in the Guidelines on Outsourcing.
Rules	means “rules” as defined in the Guidelines on Outsourcing.
Service Level Agreement	means “service level agreement” as defined in the Guidelines on Outsourcing.
Securities laws	means “securities laws” as defined in the Guidelines on Outsourcing.
Service Provider	means “service provider” as defined in the Guidelines on Outsourcing.

## **2. OBLIGATIONS OF THE MARKET INTERMEDIARY**

### **2.1 Responsibility of the Market Intermediary**

- 2.1.1 Without derogation to all other responsibilities stipulated in the Rules and the Guidelines on Outsourcing, the Market Intermediary shall continue to retain responsibilities in the following areas:
- a) the compliance and monitoring of the policies pertaining to information technology security;
  - b) With respect to disaster recovery, all operational aspects and the facilities, the Market Intermediary shall continue to retain ownership of the business continuity and contingency plans and make explicit arrangements for orderly transition upon expiration or early termination of the outsourcing arrangement with the Service Provider; and
  - c) the compliance with the Rules and all other relevant securities laws, regulations and guidelines.

**2.2 Exemption**

2.2.1 In relation to paragraph 3.02 of the Guidelines on Outsourcing, a Market Intermediary may outsource a Back Office function that involves decision making or interaction with Clients where the function relates to post trade, financing or custody services.

**2.3 Service Level Agreement**

2.3.1 Where there is more than one Service Provider for the outsourced functions, the Market Intermediary shall enter into separate Service Level Agreements with each of the Service Providers.

2.3.2 The Market Intermediary shall ensure that the salient contractual obligations and terms of the SLA in relation to the secrecy and confidentiality of the documents and information of clients imposed on the Service Provider in the course of carrying out the outsourced functions shall be applicable not only for the duration of the SLA but also survives the termination of the SLA.

**2.4 Confidentiality of Clients' Information**

2.4.1 The Market Intermediary shall comply with Sections 43 and 45 of the Securities Industry (Central Depositories) Act 1991.

**2.5 Interruption and Termination**

2.5.1 The Market Intermediary shall define the nature, sensitivity and materiality of any interruption in carrying out of the Back Office functions or termination thereof by the Service Provider including the impact thereof on the Market Intermediary.

2.5.2 The Market Intermediary shall formulate and test an effective contingency plan annually in preparation of any possible interruption in the carrying out of the Back Office functions and/or termination thereof by the Service Provider.

2.5.3 The Market Intermediary shall be liable for any non performance of the outsourced functions arising from any interruption in the carrying out of the outsourced functions and/or termination thereof by the Service Provider and in this respect the Market Intermediary shall not be exonerated from its responsibilities and obligations under the Rules, directives and/or guidelines issued by Bursa.

**2.6 Notification of Termination**

2.6.1 The Market Intermediary shall notify Bursa not later than ten (10) market days from the date of the termination or the effective date of termination, whichever is earlier, in the event the Service Provider is terminated from providing the outsourced functions.

**2.7 Review By Internal Audit**

2.7.1 The Market Intermediary and its internal audit department or an external auditor shall undertake regular review of the functions performed by the Service Provider and prepare the necessary report

on a periodic basis. The Market Intermediary shall ensure the report contains, inter alia, the following:-

- 2.7.1.1 quality of the performance of the outsourced function by the Service Provider;
- 2.7.1.2 adherence of the Service Provider to the quality standards agreed between the Market Intermediary and the Service Provider;
- 2.7.1.3 adherence of the Service Provider with the obligations stipulated under the Service Level Agreement;
- 2.7.1.4 potential conflict of interest especially where the Service Provider operates within the same industry;
- 2.7.1.5 adequacy of resources and ability of the Service Provider to efficiently undertake the functions especially where the Service Provider performs outsourcing services for multiple entities; and
- 2.7.1.6 identification of risks and strategies for managing such risks.

### **3. COMPLIANCE AND ENFORCEMENT**

- 3.1 The Market Intermediary shall ensure that the Service Provider complies with the Rules, guidelines, rulings and directives issued, or as may be issued, from time to time, by Bursa.
- 3.2 In the event there is any breach or non compliance by the Service Provider in relation to the Rules, guidelines, rulings and directives issued, or as may be issued, from time to time, by Bursa, whether the breach is discovered during the tenure of the Service Level Agreement or otherwise, Bursa shall deem such breach to be a breach committed by the Market Intermediary and all provisions in the Rules in relation thereof shall apply.

### **4 COMMUNICATIONS**

- 4.1 All Rules, guidelines, rulings, directives, and all other types of communications, whether written or otherwise, in relation to the outsourced functions shall be issued to the Market Intermediary.
- 4.2 The Market Intermediary shall be responsible to ensure that the Service Provider is informed of all Rules, guidelines, rulings, directives and all other types of communications, whether written or otherwise, directed to the Market Intermediary in relation to the outsourced functions and Bursa shall deem that the same is communicated and within the knowledge of the Service Provider.

### **5. CONNECTIVITY**

- 5.1 Where Back Office functions are concerned, all physical and logical connections with the BSZ shall be solely performed by Bursa or its appointed agents/vendors/representatives in accordance with the Rules, guidelines, rulings and directives enforced at the time or issued, from time to time.

5.2 The Market Intermediary shall clearly define and document the operation of the ISZ in accordance with the, Rules, guidelines, rulings and directives issued by Bursa.

5.3 The Market Intermediary shall clearly define and document all physical and logical connections between the ISZ and the BSZ in respect of all the requirements stated in the Guidelines on Outsourcing.

## **6. APPLICATION TO BURSA**

6.1 The Market Intermediary shall submit an application in writing to Bursa at least 30 market days prior to the intended commencement of the carrying out of the outsourced functions by the Service Provider. Such applications shall be addressed to:-

Intermediary Supervision Division  
Bursa Malaysia Berhad  
12 Floor, Exchange Square  
Bukit Kewangan  
50200 Kuala Lumpur.

6.2 The Market Intermediary shall ensure each application is accompanied by the following (where applicable):-

- i) the objectives of the Market Intermediary for outsourcing the functions;
- ii) details on selection criteria of the Service Provider and the manner in which the Market Intermediary shall monitor the performance of the functions by the Service Provider;
- iii) details on the evaluation of risks;
- iv) A copy of the Service Level Agreement;
- v) Letters of Undertaking and Confirmation as follows :
  - a) in respect of the existing clients of the Market Intermediary as at the date of this application, a confirmation that the Market Intermediary has complied with the requirements stipulated under item no. 2.4; and/or
  - b) in respect of future clients of the Market Intermediary, an undertaking that the Market Intermediary shall comply with the requirements stipulated under item no.2.4.
- vi) A full set of the specifications of the functions that is/are outsourced. For subsequent changes, a list of changes, indexed against the previous list should be submitted;
- vii) The location and specifications in respect of connectivity to the BSZ in respect of the Back Office functions;
- viii) User acceptance certification on the function(s) that is/are outsourced in respect of the Back Office functions;
- ix) A copy of the readiness report prepared in respect of the outsourcing of Back Office functions to ascertain the readiness of the Service Provider

to assume such Back Office functions under the Service Level Agreement in terms of infrastructure and sufficiency of resources. Such readiness audits shall be carried out by independent bodies such as the internal audit department in order to preserve integrity and independence of such exercises. In the absence of Internal Audit function, the Market Intermediary may appoint an external auditor to carry out the independent review and report the same to the Bursa.

- 6.3 Bursa may, upon approval given to the Market Intermediary to outsource the functions, impose, add or vary any terms or conditions, as it deems fit in relation to the approval given herein.

**7. REVOCATION OF APPROVAL AND INDEMNITY**

- 7.1 Bursa and the Securities Commission shall have the right to revoke any approval given to an Market Intermediary to outsource its functions and/or to direct the Market Intermediary to discontinue the outsourcing of the functions to the Service Provider immediately, partly or wholly, for any reason whatsoever, including but not limited to, where there is a breach by the Market Intermediary of the requirements of the Rules and/or these Directives.

- 7.2 The Market Intermediary shall also keep Bursa indemnified and shall not hold Bursa liable to any claims made by any party howsoever arising from or in connection with the approval granted by Bursa to the Market Intermediary for the outsourcing of the functions to the Service Provider.

- 7.3 Bursa shall not be held liable either by the Market Intermediary and/or the Service Provider for any claims arising from revocation of approvals granted in respect of the outsourcing of the functions. Consequent to the revocation, the Market Intermediary shall carry out the relevant functions by itself, until and unless a new Service Provider has been appointed and approved by Bursa in accordance with the Rules and/or these Directives.

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**REGULATION**