

ANNEXURE A
AMENDED DIRECTIVE
in relation to the Best Practices in the Islamic Stockbroking Services

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| BEST PRACTICES IN THE ISLAMIC STOCKBROKING SERVICES UNDERTAKEN BY PARTICIPATING ORGANISATIONS | No. 7.16-001 |
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Relevant to : Rule 7.16
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POs' Circular No(s). : R/R 16 of 2007
Refer also to Directive No(s). : N/A

1. Rule 7.16

- (1) This Rule provides that a Participating Organisation must obtain the Exchange's prior approval before carrying out any trading activities based on Islamic Shariah principles.
- (2) A Participating Organisation approved to carry out trading activities based on Islamic Shariah principles should adopt the best practices set out below in providing Islamic stockbroking services.

1.1 Best practices

The best practices are set out in Appendix 1 below.

Appendix 1

BEST PRACTICES IN ISLAMIC STOCKBROKING SERVICES

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A. BACKGROUND

1. In pursuit of developing a comprehensive Islamic capital market, the Securities Commission Malaysia has established an effective Shariah regulatory framework to govern the Islamic capital market products and services. The framework is aimed amongst others to ensure uniformity and consistency of the Shariah-compliant industry practices undertaken by industry participants, in particular, Islamic Participating Organisations, which would allow them to operate on a common Shariah-compliant platform and will ultimately contribute and facilitate the orderly development of a strong and competitive environment of intermediation services.
2. An Islamic Participating Organisation is required to adhere to the same regulatory framework and requirements as that of a conventional Participating Organisation.
3. In this regard, Bursa Securities is issuing a set of industry best practices with the objective of providing guidance and assistance to the Islamic Participating Organisation in observing the desired practices when carrying out its stockbroking business in accordance with the Shariah principles whether on a full-fledged basis or 'window' basis ("Best Practices"). Islamic Participating Organisations should adopt these Best Practices in carrying out the Islamic stockbroking services.
4. When implementing these Best Practices, the Islamic Participating Organisations should implement them flexibly and sensibly to suit their respective needs and circumstances. Therefore the Best Practices enumerated should not be read as prescriptive nor construed in a rigid or literal manner. Nevertheless, the application of Shariah principles in the operations of the Islamic Participating Organisations must not be compromised in any circumstances. In this respect, the flexibility lies in the ingenuity of the respective Islamic Participating Organisations to apply the relevant Shariah principles and concepts in carrying out their business or services.

B. KEY OBJECTIVES

The key objectives of these Best Practices include among other things:

1. to provide guidance to the Islamic Participating Organisations in respect of practices recommended to be observed in the carrying out of Shariah compliant stockbroking services undertaken by the Islamic Participating Organisations whether on a full-fledged basis or 'window' basis; and
2. to further strengthen Malaysia's position as an international Islamic financial centre by strengthening the role of Islamic market intermediaries in the domestic intermediation process.

C. DEFINITION:

1. In these Best Practices:

"Bursa Securities" means Bursa Malaysia Securities Berhad.

"Clearing House" shall have the same meaning as in the Rules of Bursa Securities.

"CMSA" means the Capital Markets and Services Act 2007.

"contra losses" means all or any losses suffered by clients in the course of dealings in contra transactions and shall include all charges, costs and expenses.

"contra transaction" means a transaction where a Participating Organisation allows its client to settle outstanding purchase positions against outstanding sale positions of the same securities where the orders in respect of the purchase and sale transactions are transacted within the period stipulated by the FDSS.

"Dealer's Representatives" shall have the same meaning as in the Rules of Bursa Securities.

"FDSS" shall have the same meaning as in the Rules of Bursa Securities.

"Head of Compliance" shall have the same meaning as in the Rules of Bursa Securities.

“Head of Dealing” shall have the same meaning as in the Rules of Bursa Securities.

“Head of Operations” shall have the same meaning as in the Rules of Bursa Securities.

“*ibra*” means an act of releasing absolutely or conditionally one’s rights and claims on any obligation against another party which would result in the latter being discharged of his/ its obligations or liabilities towards the former. The release may be either partially or in full.

“Islamic Participating Organisation” means a Participating Organisation which conducts its stockbroking business in accordance with Shariah principles whether on a full-fledged basis or ‘window’ basis.

“Islamic stockbroking services” means the business of trading in securities carried out by an Islamic Participating Organisation on the stock market of Bursa Securities whether on full-fledged basis or via an Islamic window services.

“Islamic window services” means Islamic stockbroking services provided by a Participating Organisation, other than on a full-fledged basis.

“Participating Organisation” shall have the same meaning as in the Rules of Bursa Securities.

“recognised stock exchange” means the stock exchanges listed as the recognised stock exchanges in Directive No. 7.09-001 (Directive on Recognised Stock Exchanges).

“*riba*” means an increase, which in a loan transaction or in exchange of a specified commodities (*ribawai* commodities/ *ammal ribawiyyah*), accrues to the owner (lender) or the other counter-party in exchange of specified commodity without giving or receiving an equivalent counter value or recompense in return to the other party. It covers interest both on commercial and consumer loans, and is

prohibited according to Shariah. For the purpose of these Best Practices, the term “*riba*” will be used together with the term “interest” for ease of reference.

“**Rules of Bursa Securities**” means the Rules of Bursa Malaysia Securities Bhd.

“**Shariah**” means Islamic law, originating from the *Qur`an* (the holy book of Islam), as well as practices and explanations rendered by the Prophet Muhammad (*pbuh*) and *ijtihad* of ulamak (personal effort by qualified Shariah scholars to determine the true ruling of the divine law in a subject matter on which the revelation is not explicit).

“**SAC**” means the Shariah Advisory Council of the Securities Commission Malaysia established under section 31ZI of Part IIIC of the Securities Commission Malaysia Act 1993.

“**SC**” means the Securities Commission Malaysia established under the Securities Commission Malaysia Act 1993.

“**Shariah Adviser**” means an individual, corporation or a foreign Shariah adviser who is registered with the SC under the Registration of Shariah Advisers Guidelines.

“**ta'widh**” means an amount of charges agreed upon by the contracting parties as compensation that can rightfully be claimed by the creditor arising from actual loss suffered when the debtor fails or is late in meeting his obligation to pay back the debt. For the purpose of these Best Practices, the term “*ta'widh*” will be used together with the term “compensation” for ease of reference.

“**Trading Clearing Participant**” for the purpose of these Best Practices means an Islamic Participating Organisation which has been admitted by the Clearing House as a Clearing Participant to participate in one or more of the services provided by the Clearing House.

“**uqud muawadhat**” means contracts of exchange.

D. INTERPRETATION

1. Unless the context otherwise requires-
 - (a) words denoting the singular shall also include the plural where applicable and vice versa;
 - (b) word importing the masculine gender shall include the feminine and neuter genders and vice versa.

E. BEST PRACTICES IN ISLAMIC STOCKBROKING SERVICES

1. **Qualification, Expertise and Experience of Human Resources to Manage and Administer the Provision of Islamic Stockbroking Services**
 - 1.1 An Islamic Participating Organisation should, at all times, have adequate human resources with the necessary qualification, expertise and experience to manage and administer its provision and affairs in respect of its Islamic stockbroking services.
 - 1.2 An Islamic Participating Organisation should provide adequate and proper training whether internal or otherwise for all of its employees, not only to equip and familiarise its employees with the necessary knowledge in conducting the Islamic stockbroking services, but also to enhance the technical knowledge of its employees in respect of all the applicable legal and regulatory requirements, as the case may be, in conducting Islamic stockbroking services, as well as the operational and the internal control and policies of the Participating Organisation in its conduct of Islamic stockbroking services. Training should also be conducted for its employees involved in its front office activities such as Dealer's Representatives in order to enhance their skills and professionalism, and apprise them of the developments of the Islamic capital market to enable them to give accurate, adequate and updated information and/or advice to the clients.
 - 1.3 Particular attention should be given to the training of the Head of Dealing, Head of Operations and Head of Compliance, who should be responsible to monitor

the activities carried out and services provided, in relation to the Islamic stockbroking services, to ensure that they are in compliance with Shariah principles. In this respect, the Islamic Participating Organisation is encouraged to ensure the Head of Dealing, Head of Operations and Head of Compliance have sufficient exposure to the required Shariah knowledge in connection with the Islamic stockbroking services.

2. Compliance with Shariah Principles, Concepts and Rulings issued by the SAC

- 2.1 An Islamic Participating Organisation should ensure that its Islamic stockbroking services are carried out in such way that it adheres to and complies with the Shariah principles, concepts and rulings issued by the SAC, as may be amended from time to time.
- 2.2 Dealings in securities traded on the Bursa Securities by an Islamic Participating Organisation should be limited to the Shariah-compliant securities, as determined and endorsed as such by the SAC. The list of the Shariah-compliant securities is made available on SC's website.
- 2.3 The Islamic Participating Organisation is allowed to facilitate the disposal of Shariah non-compliant securities either upon their reclassification from Shariah-compliant to Shariah non-compliant following the review by the SAC or they are securities currently classified as Shariah non-compliant securities which the investor holds and wishes to dispose of for the purpose of purification.
- 2.4 Dealings in securities traded on the stock exchanges other than Bursa Securities should be allowed to be undertaken by the Islamic Participating Organisation only in respect of securities traded on any of the recognised stock exchanges, which are endorsed to be Shariah-compliant securities by the recognised stock exchange or by a Shariah standard setting body or a Shariah scholar, either in Malaysia or elsewhere.
- 2.5 An Islamic Participating Organisation should, in respect of dealings under paragraph 2.4 above, maintain or retain all records relating to the dealings,

including the relevant advice or confirmation or publication given or made by the recognised stock exchange or the Shariah standard setting bodies, Shariah scholar or Shariah Adviser, either in Malaysia or elsewhere that the securities are Shariah-compliant securities.

3. Shariah Adviser

3.1 Appointment

3.1.1 It is recommended that the Islamic Participating Organisation appoints a Shariah Adviser either from within the Islamic Participating Organisation or its group of companies or from outside the group for the purpose of advising the Islamic Participating Organisation in ensuring compliance with the Shariah principles and Shariah requirements as set out in paragraph 2 above.

3.2 Conflict of Interest

3.2.1 The Participating Organisation should take reasonable steps to ensure that the Shariah Adviser is independent and not subject to any conflict of interest with the Participating Organisation's business or operations , whether in respect of the Islamic stockbroking services or otherwise.

3.3 Roles and Responsibilities of a Shariah Adviser

3.3.1 The role of a Shariah Adviser is to advise the Islamic Participating Organisation on adherence to Shariah principles and requirements in relation to the Islamic stockbroking services offered by the Islamic Participating Organisation.

3.3.2 The Shariah Adviser is expected to provide an effective oversight on the compliance of the Islamic Participating Organisation with Shariah rules and principles including, but not limited to, endorsing and approving the relevant policies, systems, operational procedures and internal controls

in relation to the Islamic Participating Organisation's day to day business operations in respect of the Islamic stockbroking services.

- 3.3.3 The Shariah Adviser should also provide interpretation and clarification, as and when requested by the Islamic Participating Organisation, in relation to Shariah principles, concepts and rulings issued by the SAC from time to time or any other Shariah standard setting bodies or Shariah scholars, either in Malaysia or elsewhere.
- 3.3.4 In this respect, the Shariah Adviser is encouraged to be consistent and objective in performing its duties, especially in the areas involving interpretation or clarification of the Shariah principles, concepts and rulings issued by the SAC from time to time.
- 3.3.5 In the event that there is ambiguity or uncertainty as to the Shariah principles applicable in relation to the Islamic stockbroking services, the Islamic Participating Organisation is advised to refer the matter to and consult the Shariah Adviser for advice and resolution. The Shariah Adviser may also refer any ambiguity or uncertainty in relation to any matters pertaining to the Islamic stockbroking services to the SAC for consultation.
- 3.3.6 In order to ensure that the Shariah Adviser of the Islamic Participating Organisation discharges its duties or functions effectively, the Islamic Participating Organisation is encouraged to take the following steps:
- (a) provide assistance to the Shariah Adviser as it reasonably requires;
 - (b) give right of access to the Shariah Adviser in respect of all relevant documents and information, as may be requested by the Shariah Adviser from time to time;
 - (c) ensure that it does not interfere with the Shariah Adviser in its ability to discharge or in the course of discharging its duties; and

(d) ensure that the information provided to the Shariah Adviser at all times is accurate and not misleading.

3.3.7 The Shariah Adviser should be able to decide on the administrative, operational and policy matters of the Islamic Participating Organisation within a framework of Shariah governance to ensure Shariah compliance at all times.

3.4 Records of Advice Given or Issued by the Shariah Adviser to the Islamic Participating Organisation

3.4.1 Records of all advice given by the Shariah Adviser, whether adopted or implemented by the Islamic Participating Organisation or not, should be maintained or caused to be maintained by the Islamic Participating Organisation.

3.4.2 Such records stipulated under paragraph 3.4.1 should be maintained or caused to be maintained in such a form that is readily accessible and convertible to writing.

3.4.3 There should be regular meetings with the Shariah Adviser to resolve any in-house Shariah matter arising from day-to-day operations.

3.4.4 The Shariah Adviser should periodically and at least annually endorse and approve the operations of the Islamic Participating Organisation to be Shariah-compliant.

4. Supervision of Islamic Participating Organisation at pre-approval and post-approval stage

4.1 Pre-approval Stage

Prior to approval, an Islamic Participating Organisation should ensure that the activities to be carried out by the Islamic Participating Organisation upon approval will be Shariah-compliant.

4.2 Post-approval Stage

The activities of the Islamic Participating Organisations and their Dealer's Representatives, which include, among others, dealing and operational activities, compliance-related functions, and on-site and off-site supervision, should be supervised by the Shariah Adviser as set out in paragraph 3.3.2.

5. Compliance in relation to Operations, Systems and Procedures

5.1 An Islamic Participating Organisation should establish and implement adequate policies, systems, operational procedures and internal controls in relation to its day to day business operations in respect of the Islamic stockbroking services to ensure that it complies with Shariah principles. This is also to ensure that the Shariah risks associated with such affairs relating to the Islamic stockbroking services are properly managed.

5.2 In respect of a Participating Organisation which operates an Islamic window services, systems and controls should be in place to ensure the Islamic stockbroking services are properly identified to differentiate them from the conventional stockbroking services and other conventional business of the Participating Organisation.

5.3 An Islamic Participating Organisation should, at all times, adhere to Shariah principles in carrying out its Islamic stockbroking services, including the following principles:

5.3.1 No *riba*

- (a) **Riba on accounts opened, operated or maintained by the Islamic Participating Organisation:** Under no circumstances, unless otherwise expressly allowed by the SAC , should any accounts opened, operated or maintained by the Islamic Participating Organisation, either for its clients or for the Islamic Participating Organisation itself, accrue or be attributed with interest. The accounts maintained by the Islamic Participating Organisation pursuant to section 111 of the CMSA should be Shariah-compliant accounts.
- (b) **Financing:** All financing undertaken for the Islamic Participating Organisation itself or offered by the Islamic Participating Organisation to its clients e.g. margin financing and discretionary financing, in connection with the Islamic stockbroking services provided by the Islamic Participating Organisation, should be confined to Shariah-compliant financing only.
- (c) **No interest on settlement of trade:** Interest or any other charges which operates as an interest or penalty in relation to any amount outstanding pursuant to settlement of trade is prohibited. For settlement of trade on contra transactions, in the event that there are losses arising from such contra transactions i.e. contra losses, no interest should be charged against the client for the amount due to the Islamic Participating Organisation pursuant to the contra losses. The Islamic Participating Organisation is only entitled to recover the principal amount in connection to the contra trade and *ta'widh*, if applicable.

5.3.2 **Segregation of funds:**

- (a) All funds maintained by the Participating Organisation providing Islamic window services, whether for itself or its clients in respect of the Islamic stockbroking services should be segregated from

those funds maintained in respect of its conventional stockbroking services.

- (b) For Islamic window services, the Islamic Participating Organisation should ensure that the trading account of the clients within the Islamic window services is clearly tagged and used as trading account for the purpose of Islamic window services only.
- (c) For Islamic window services, the Islamic Participating Organisation should put in place sufficient controls to ensure the Islamic trading account can only deal with Shariah-compliant securities.

5.3.3 **Ta'widh or compensation on late and default payment:** For clients who defaulted in its payment or delay in making payment to the Islamic Participating Organisation in respect of trades executed by the Islamic Participating Organisation, the Islamic Participating Organisation may impose a *ta'widh* on the late payment. *Ta'widh* or compensation can be imposed in the case of delay in payment by the investor to settle the unpaid contra losses for the normal trading and the payment of the principal or profit for Islamic margin financing at the rate and in the manner prescribed by the SAC. The rate cannot be compounded.

5.3.4 **Ibra':** In the case of early settlement elected by the investor in relation to financing obtained from an Islamic Participating Organisation based on *'uqud mu'awadhat* (exchange contracts), the Islamic Participating Organisation should grant a rebate (*ibra'*). The requirements provided in the Guidelines on *Ibra'* for Sale-Based Financing issued by Bank Negara Malaysia should be observed by the Islamic Participating Organisation.

5.3.5 **Other compensation:** Any anomaly from a normal trade that requires alternative arrangement, the affected Islamic Participating Organisation and/or investor should be compensated for actual loss and should not benefit or obtain any material gain.

- 5.3.6 **Investments:** The proprietary investments, either short-term or long-term investments of an Islamic Participating Organisation should be confined only to Shariah-compliant investments, as endorsed by the SAC or the securities endorsed to be Shariah-compliant securities by a recognised stock exchange, a competent Shariah standard setting body, a Shariah Adviser or a Shariah scholar, either in Malaysia or elsewhere.
- 5.3.7 **System:** The system that is being applied and operated by the Islamic Participating Organisation should, where possible, facilitate and support the conduct of the activities and operations of the Islamic Participating Organisation in a Shariah-compliant manner. For example, the trading system applied and operated by the Islamic Participating Organisation should be able to identify/tag Shariah compliant securities from the available list of tradeable securities on Bursa Securities. The finance module applied and operated in the back-office system, should facilitate the keeping of the Islamic Participating Organisation's financial matters in accordance with Shariah principles.
- 5.3.8 **Permissible collaterals or contributions:** In the event that the Trading Clearing Participant needs to provide collaterals or contributions to the Clearing House, the Trading Clearing Participant should ensure that such collaterals or contributions are Shariah-compliant in nature.
- 5.3.9 **Settlement via Islamic financial institution:** For the process of clearing and settlement of the trades for the clients, the Trading Clearing Participant should clear and settle the trades via Islamic financial institutions. Trading Clearing Participants therefore should open Islamic bank account(s) with any Islamic banks from the list approved by the Bank Negara Malaysia, for such purposes.
- 5.3.10 **Contract note:** The transfer of securities ownership is confirmed via issuance of contract note by Participating Organisation to its clients. In this instance, the Islamic Participating Organisation must issue Contract

Notes to the clients and the Contract Notes must comply with the regulations issued under the CMSA on Contract Notes.

5.3.11 **Zakat obligation:** *Zakat* is a means prescribed in Islam for spreading and distributing wealth to the needy throughout the community. The payment of *zakat*, as such, would invite blessings from Allah to one's wealth. An Islamic Participating Organisation may seek guidance from its Shariah Adviser and/ or the appropriate authority such as Pusat Pungutan Zakat, Majlis Agama Islam Wilayah Persekutuan ("PPZ-MAIWP"), Lembaga Zakat Selangor, Majlis Agama Islam Selangor ("LZS-MAIS"), and Jabatan Wakaf, Zakat dan Haji, Jabatan Perdana Menteri ("JAWHAR") on *zakat* matters.

6. Audit

- 6.1 The department that carries out the internal audit functions for the Islamic Participating Organisation should conduct audit in relation to the Islamic stockbroking services of the Islamic Participating Organisation for the purposes of examining, reporting and evaluating on the adequacy and efficiency of the Islamic Participating Organisation's management, operations and internal controls to ensure the quality and integrity of the Islamic stockbroking services provided to its clients and its adherence to these Best Practices, and the Shariah principles, concepts and rulings issued by the SAC, as amended from time to time.
- 6.2 For the purpose stipulated in paragraph 6.1, the Islamic Participating Organisation should ensure that there are adequate audit policies, procedures and resources for the carrying out of the functions stipulated in paragraph 6.1.
- 6.3 The internal audit personnel are encouraged to equip themselves with the required knowledge in connection with the activities pertaining to the Islamic stockbroking services, these Best Practices, and the Shariah principles, concept and rulings issued by the SAC, as amended from time to time, in order to perform their duty effectively.

7. Compliance Functions

- 7.1 The Head of Compliance of the Islamic Participating Organisation should monitor compliance of the Islamic Participating Organisation with these Best Practices, and the Shariah principles, concepts and rulings issued by the SAC, as amended from time to time, and should report the non-compliance of the Islamic Participating Organisation with these Best Practices, and the Shariah principles, concepts and rulings issued by the SAC (“compliance findings”) directly to its board of directors after consulting the Shariah Adviser.
- 7.2 The reporting of the compliance findings as stated in paragraph 7.1 need not be reflected in the monthly compliance report required to be submitted by a Participating Organisation under the Rules of Bursa Securities.

8. Shariah Confirmation

- 8.1 A Shariah confirmation should be obtained by the Islamic Participating Organisation from the Shariah Adviser on an annual basis stating that it is providing Islamic stockbroking services and that it complies with these Best Practices, and the Shariah principles, concepts and rulings issued by the SAC, as amended from time to time. The Shariah confirmation should adopt the format as provided in **Appendix 1**.
- 8.2 In the absence of the annual Shariah confirmation under paragraph 8.1 above, an Islamic Participating Organisation should not describe itself as an Islamic Participating Organisation or advertise the Shariah-compliant stockbroking services.

9. Board of Directors

- 9.1 The responsibility for ensuring that the Islamic Participating Organisation complies with the Shariah principles, concepts and rulings issued by the SAC in the provision of the Islamic stockbroking services should ultimately rest with the board of directors of the Islamic Participating Organisation.

10. Transparency

- 10.1 An Islamic Participating Organisation should in relation to its Islamic stockbroking services indicate very clearly to all its clients whether it is offering a full-fledged Islamic stockbroking services or Islamic window services.

11. Memorandum & Articles of Association

- 11.1 The Memorandum and Articles of Association of an Islamic Participating Organisation which provides Islamic stockbroking services on a full-fledged basis or 'window' basis should stipulate amongst others that it is providing the Islamic stockbroking services and that its corporate mission is amongst others to achieve its commercial objectives within the confines of Shariah principles.

12. Advertisement

- 12.1 An Islamic Participating Organisation may advertise its Islamic stockbroking services provided that it complies at all times with the requirements prescribed by Bursa Securities pertaining to advertisement and it should ensure that such advertisement has no element contradicting Shariah principles.

13. *Takaful*/Insurance

- 13.1 An Islamic Participating Organisation should endeavor to use *takaful* under all situations. Any exceptions should be tabled to the Shariah Adviser for concurrence.

14. Others

- 14.1 Any other issues or transactions which are not stated above, the Islamic Participating Organisation should consult its Shariah Adviser for resolution.

APPENDIX 1:

ANNUAL SHARIAH CONFIRMATION STATEMENT

ANNUAL SHARIAH CONFIRMATION

In the name of Allah, the Most Beneficent, the Most Merciful

In compliance with the Best Practices in Islamic Stockbroking Services Undertaken by Participating Organisation, we submit the following confirmation:

We have reviewed the principles and the contracts relating to the transactions and applications introduced by *[name of Islamic Participating Organisation]* during the financial period ended *[date month year]*. We have also conducted our review to form an opinion as to whether *[name of Islamic Participating Organisation]* has complied with Shariah principles and Shariah resolutions issued by the Shariah Advisory Council of Securities Commission Malaysia, as well as Shariah advice made by us.

The management of *[name of Islamic Participating Organisation]* is responsible for ensuring that the organisation conducts its Islamic stockbroking services in accordance with Shariah principles. It is our responsibility to form an independent opinion, based on our review of the operations of *[name of Islamic Participating Organisation]*, and to report to you.

We have assessed the work carried out by the internal auditor and compliance officer which included examining, on a test basis, each type of transaction, the relevant documentations and procedures adopted by *[name of Islamic Participating Organisation]*.

We planned and performed our review so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that *[name of Islamic Participating Organisation]* has not violated any Shariah principles.

In relation to the above, we, the Shariah Advisers of *[name of Islamic Participating Organisation]*, do hereby confirm that the Islamic stockbroking services and operations of *[name of Islamic Participating Organisation]* for the financial year ended *[date month year]* have been conducted in conformity with the Shariah principles and our advice, as well as has no Shariah non-compliant income derived throughout the year.

Shariah Adviser:
(Name:)