

BURSA'S RESPONSES TO THE ISSUES AND SUGGESTIONS RAISED BY INDUSTRY ASSOCIATIONS AT DIALOGUE WITH MARKET PARTICIPANTS COMMITTEE ("MPC") OF BURSA MALAYSIA BHD HELD ON MONDAY, 6 NOVEMBER 2017

No.	Issues / Suggestions	Responses by Bursa
1.	• <u>Composition of MPC Members</u> a) Possible conflict of interest if MPC member is from another Participating Organisation ("PO"). b) Concern of possible access into privilege business information from MPC case discussions. • <u>Setup of the MPC</u> The MPC should be an independent body with members assigned by regulators which should also consist of elected committee members of associations such as ASCM and also professionals who are highly knowledgeable on the securities market. • <u>Fair Hearing</u> Defendants should be given a fair hearing and attendees from Bursa should be limited unlike the current practice, in which Bursa will brief the MPC prior to allowing the defendant to present his/her arguments.	<u>Composition/Setup of MPC & Conflict of Interest (COI)</u> The MPC comprised members independent from Bursa's management as their compositions were made up of independent directors and experienced external individuals with significant capital market expertise, individuals with legal qualifications or regulatory experience with sound credentials that were carefully selected by the nomination committee. The brokers did not represent the majority of the MPC members, so there was no particular group that dominated the MPC, which in that sense would address the potential COI. Specifically, if there was a particular matter where a member was conflicted, there were clear processes in place where the particular member would have to declare COI and had to abstain from voting. The requirement was very strict as the member would not be in the meeting and had to leave the room. The deliberation during the meeting would be by the non-interested members. The inclusion of MPC members/representatives from the industry was to provide their capital market knowledge/expertise. In this regard, by having independent external parties 'with diversified experience' sit as the members and having the decision arrived at through the majority vote together with the COI framework that Bursa had in place, it ensured: - a fair as well as robust discussion of the issues from all key stakeholders and experts of capital market including from broker's perspective; - that no particular group/person could dominate and unfairly influence the decision which could give rise to potential COI; and - that the decision making process was in compliance with the administrative law principal of natural justice of right to be heard and rules against biasness as well as reasonableness of the decision. As for the <u>issue of possible COI</u>, Bursa had in place adequate COI framework to address potential and actual COI. In regard to MPC proceedings, where a Committee member had personal or professional interest in a matter to be tabled to the MPC, the interested Committee member must declare the interest and would abstain from the hearing/deliberation and leave the proceedings.

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		In respect of concern of <u>possible access to privilege business information</u> from MPC case discussions, typically, matters tabled to the MPC (e.g. enforcement cases and application for registration of participants) did not entail in/involve disclosing PO's privilege business information to the MPC. In addition, for breaches relating to supervisory breaches, information pertaining to PO could include the PO's internal processes/procedures towards ensuring compliance with the rules (which were not regarded as business information). In any event, whilst there could be possibility of privilege information that could be revealed by the PO in responding to the enforcement matter, the MPC members were bound by the confidentiality clause for the matters deliberated by the MPC which prohibited any utilisation/disclosure of the information to/for unauthorised persons/use. <u>Setup of the MPC</u> With regard to the composition of MPC, the secretaries of the MPC further explained that the terms of reference of the MPC were published on the website and the members comprised of mixed and diversified skills. Currently the tenure of all the members was 2 years and maximum of not more than 9 years, and was subject to the Board's effectiveness evaluation which would be carried out on a yearly basis. The appointment and selection process of the MPC members was robust where Bursa would from time to time, extend invitation to the associations including MIBA and ASCM for recommendations on potential candidates for the Nomination and Remuneration Committee's considerations. However, there was no guarantee that the proposed nominees would be appointed as MPC member as they would be subject to the fit and proper test. Engagement session would be arranged for suitable candidates for the MPC. <u>Fair Hearing</u> On the issue of fair hearing, under the Rules, Bursa could determine the procedures applicable to any disciplinary proceedings and such procedures might vary to adapt to the circumstances of a case. In this regard, Bursa adhered strictly to the rules of natural justice as its decision could be challenged in court via judicial review if there was a breach of natural justice. One of the main tenets of natural justice was the right to be heard/to a fair hearing. In this regard, where there was an oral hearing before the MPC, "the briefing by the Management" was essentially presentation by Management in the presence of the errant party as to the alleged breaches to the MPC. In this regard, as the Management acted like the "prosecutor" and had the

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		burden to prove the alleged breaches, the presentation was to establish the finding of breach as well as the sanctions proposed and the basis of the same. The errant party would then present his/her representations (in response to the Management's presentations). This was similar to court proceedings where the prosecutor would present the prosecutor's case before the defence was called.
2.	• <u>Enforcement Actions by Bursa Malaysia & Securities Commission</u> a) Uncertainty on activation of license and renewal, after reprimand and suspension from trading. b) Possible rejection from SC to reactivate dealing, on concern of fit & properness c) Other regulators may demand for more, after one has completed suspension and reprimand from Bursa. • Licensed personnel who are serving enforcement actions such as fines and suspension which includes additional CPE hours during period of suspension are often left in a quandary without knowing whether their licence will be reinstated by SC upon fulfilment of suspension period. This conundrum is particularly felt by those who are sole bread-winners and who dutifully satisfy the additional CPE requirements, only to be rejected later or verbally discouraged from reinstatement of licence. In the spirit of humanity, the offender should be allowed to move on with his life after serving his penalty instead of being held in limbo without knowing his eventual success in seeking to continue as a CMSRL. BNM & SC also gave Bursa the perception that such actions should be followed by additional punitive actions such as prolonged suspension or even a sacking.	If a DR was suspended, it was clearly communicated as to when the suspension would commence. Hence, license could be activated once suspension was completed unless the PO and DR were notified by the SC of further action by the SC. On the issue of <u>uncertainty of SC's actions after Bursa has taken action and possibility of licence reinstatement</u>, Bursa will highlight the same to the SC. A suggestion would be to expedite such confirmation/determination, the affected licensed person may engage with the SC on the same. On the issues of <u>possible rejection from SC to reactivate dealing</u>, the actions by Bursa were for breaches of Bursa's Rules e.g. market offences cases whereas SC's actions were based on the fit and properness of the DR to continue to be licensed in light of the actions taken by Bursa which had separate and distinct considerations from the enforcement actions by Bursa. <u>Bursa does not have visibility on the "further demand" by other regulators.</u> For the bank backed POs that were being subject to BNM's supervision of their business activities, BNM does have power under BNM regulatory regime/ requirements for it to take action against any non-compliance and this was outside the purview of Bursa's regulatory framework on its POs. On the recommendation for Bursa to take charge if licence needed to be revoked, licensing was within the SC's purview. SC would have its internal criteria/guidelines for granting or not granting license based on SC's "fit and properness" criteria and its assessment of the said criteria. Bursa can share this concern with the SC.
3.	<u>Bursa Fines & Private Reprimands</u> (a) Bank backed POs may be subject to more stringent compliance standards. (b) Bank's policy may view any type of regulatory fine and reprimand very seriously. (c) Possible dismissal and termination, due to serious regulatory breaches.	Where there were possible serious implications arising from Bursa's sanctions on the POs or its principal officers, these might be raised as a factor for Bursa's consideration in determining and ensuring reasonableness of the sanctions imposed (vis a vis severity of the conduct and impact of breach). However, this factor would be considered and weighed against the facts and circumstances of the breach including the extent, severity and impact of the breach.

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		In past cases where principal officers of POs have raised the possible implications of Bursa's actions on their registration in other jurisdictions, the sanction imposed was a private reprimand, which was the lowest sanction imposable under the Rules.
4.	<u>Disciplinary Records of Dealer's Representatives To Be Available For Checking</u> (a) Not possible for PO to independently verify staff/agent's declarations on previous licensing conduct. (b) PDPA had made it difficult for new employer/PO on verifications. (c) Cases of licensed persons not aware of subsequent actions by Bursa, after they had resigned and left industry.	For (a), the PO was not imposed with any obligation to independently verify the staff/agent's declaration on previous licensing conduct as the person who applied to be a registered person would be required to make a truthful requisite declaration and to disclose past action taken against him/her. Any false declaration would be a breach by the said person and could be subject to enforcement action. There has always been a mechanism for PO to check with Bursa on any enforcement action that has been taken against an applicant to be registered as a DR which was already used by POs. For PSD, each broker is assigned to specific team and Officer in Charge ("OIC") so that any queries can be directed to the specific team/OIC. The list can be found in the Supervision of Brokers portion in our web-site, the link of which is as follows: http://www.bursamalaysia.com/market/regulation/supervision-of-brokers/ PO therefore can contact PSD to check whether the name of the applicant is in Bursa's database, and if yes, whether there were any adverse report on the person i.e. whether there has been any investigation or enforcement action taken against him or her. For (b), on verification by new employer/PO (in particular for the case of application for transfer of dealer from one PO to another), Bursa would notify the PO receiving the transfer application on adverse comments, if any. For (c), all RNs/Notice of Determinations ("NODs") were issued to the licensed person's last known address in Bursa's record as per the rules. Hence, if the licensed person was concerned about possible actions by Bursa after he/she has left the industry, he/she should update Bursa of any changes in address. In addition, a copy of the notification letter would be sent to the former PO/company where the breach occurred/was committed by this defaulting registered person.
5.	<u>Future Consideration - Regional Benchmarking</u> (a) Increasing trends on regional mobility of licensed persons required more synchronized enforcement actions. (b) Fines and reprimands should have some regional, Asean, benchmark.	The sanctions imposed by Bursa and types of breaches for which enforcement actions were undertaken were benchmarked against comparable jurisdictions from time to time including SGX/MAS and Hong Kong. However, each case would turn on its facts and the sanctions imposed would depend on the facts and circumstances, extent, severity and impact of the breach

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		including any mitigating or aggravating factors. Hence, whilst Bursa did benchmark against comparable jurisdictions, it would not follow the sanctions imposed in these jurisdictions mechanically.
6.	<u>Long Outstanding Cases</u> Investigation duration in some cases taken extensive time to complete e.g. up to 4 years. We suggested that long aging cases (e.g. exceeding 3 years) ought to be accelerated and concluded so that POs are not unduly concerned with the outstanding cases which have pending outcomes. The main concerns were cases where heavy sanctions or penalties might be imposed by the MPC.	Bursa noted the comments and informed that it continuously took step/measures to improve the turnaround time of the cases including usage of analytical tool (software) in analysing the complex trading data and enhance its processes. The length of time taken for some of the cases might be longer due to priority given to high impact cases. Top priority for completion would be given to high profile cases which had significant market impact, hence the timeline for other cases would be adjusted accordingly. In addition, the length of time taken was also dependent on numerous factors such as the complexity of the case, the length of the review period, the extensiveness of the manipulative trading activities, number of days such activities carried out, number of DRs involved and the types of manipulative activities. Furthermore, interviews and inquiries were carried out to verify and validate the findings to ensure the rules breaches by person would be fairly assessed and an appropriate enforcement action being taken. Generally, Bursa's turnaround time was comparable with if not shorter to that of benchmarked jurisdictions (Hong Kong SFC, Singapore SGX/MAS and US FINRA). Pursuant to the market feedback, Bursa would immediately notify the PO of the concern when investigation is initiated (as indicated in the ICON-ST) and hence, PO would be expected to take pro-active action to procure and secure the relevant documentary evidence for the case. This would help to mitigate the recurrence of breach and aid the brokers in managing their concerned DR's trading conduct whilst investigation and enforcement process are being undertaken at Bursa's end.
7.	<u>Penalties imposed were inconsistent.</u> There were times when similar cases involving different DRs would see different types of penalties imposed. We suggested that regulators should make transparent matrix of fines and	Fines imposed were not based solely on profit/brokerage generated but would be one of the factors considered in determining the fines. In ensuring proportionality/reasonableness, consistency and deterrence effect of its sanctions, Bursa would be guided by/would consider:

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	punishment. It should not be based on the profit or brokerage generated by the DR but should be based on the severity or nature of the case.	- Facts and circumstances of the case particularly the nature, extent and severity of the breach and in that regards, the consideration of "profiting" from the said breach would be considered - Precedent cases of similar breach - Mitigating/aggravating factors Part I of the ICON-DP sets out the matters considered by Bursa in determining the sanctions. As each case turned on its own facts, no 2 cases could be identical. Hence, even though the cases might appear similar, the sanctions might differ depending on the above considerations.
8.	<u>Client amendment for facilitation purpose to meet institutional clients' needs</u> Existing Bursa Rules on client amendment with no change of Beneficiary Owner (which is catered more for retail clients' scenario) does not address the facilitation needs of institutional clients, especially for small quantity/odd lots. We suggested that the SC, Bursa and MPC revise Bursa Rules to allow client amendment for facilitation purpose to meet institutional clients' needs and in line with international practices. If revision of Bursa Rules is not possible, ASCM requested MPC and Bursa to view this as a 'technical breach' as long as facilitation policy and key controls are put in place to avoid any possibility of abuse such as brokers to document the client's request, facilitation's approval, approving authority's approval etc.	Bursa has submitted this as part of the review of BMS rules for SC's approval. However, the SC has indicated that this proposal would be put on hold pending further deliberation by them. Bursa took note of the suggestion on technical breach approach.