



**CONSULTATION ON THE PROPOSED AMENDMENTS TO:**

- 1) **THE RULES AND DIRECTIVES OF BURSA MALAYSIA SECURITIES BERHAD (“BMS RULES AND DIRECTIVES”); AND**
- 2) **THE RULES AND DIRECTIVES OF BURSA MALAYSIA DERIVATIVES BERHAD (“BMD RULES AND DIRECTIVES”)**

**IN RELATION TO THE PROPOSED FRAMEWORK FOR DISCRETIONARY TRADING AND OTHER AMENDMENTS**

**I. BACKGROUND OF THE PROPOSED FRAMEWORK FOR DISCRETIONARY TRADING**

**Introduction**

1. The framework for discretionary trading by brokers has been implemented in other jurisdictions such as Japan, South Korea and Singapore<sup>1</sup>. It can be described as a service provided by a broker for its client where investment goals are set with the client, based on the specified investment policies (e.g. risk tolerance). This service includes the execution of buy and sell orders and administration of the client’s account. In other jurisdictions, discretionary trading is also known as managed accounts where the broker charges service fees and not transaction-based execution fees.
2. At present, the practice of discretionary trading is allowed under the Securities Commission’s (“**SC**”) Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives (“**SC Guidelines**”) and in the derivatives market in Malaysia, under the BMD Rules. However, neither the SC Guidelines, the BMS Rules and Directives nor the BMD Rules and Directives prescribe for fees related to discretionary trading.
3. In view of the above, Bursa Malaysia Securities Berhad (“**BMS**”) and Bursa Malaysia Derivatives Berhad (“**BMD**”) (collectively, the “**Exchanges**”) are proposing to allow for the Participating Organisations (“**PO**”) and the Trading Participants (“**TP**”) to apply different fee models for the service of operating a discretionary account on behalf of a client based on the following fee models:
  - (a) profit-sharing; or
  - (b) fee which is charged on the value of asset under management (“**AUM**”)<sup>2</sup>.
4. The principles of each proposed fee model are summarised below:

<b>Profit-sharing</b>	<b>Management fee based on AUM</b>
The profit sharing will be based on pre-agreed terms between the brokers and/or Dealer’s Representative/Registered Representative and the client.	Fees charged will be a percentage of the portfolio or margin value.

<sup>1</sup> Discretionary trading is available in other Asian jurisdictions under different terminology as summarized below:  
 (a) in Japan, it is referred to as wrap accounts. Wrap accounts were introduced to Japanese market in April 2004 to allow for securities brokers and other financial institutions to offer discretionary investment management services;  
 (b) discretionary trading is also referred to as wrap accounts in South Korea. These were introduced in March 2001 and gained traction with retail investors in South Korea during the Asian financial crisis; and  
 (c) in Singapore, Phillip Securities Pte Ltd provide discretionary trading under their “Managed Account Services” offering.

<sup>2</sup> In essence, fee-based brokerage is levied on the value of assets being managed by the service provider.

5. The Exchanges also propose to enhance and streamline the discretionary trading framework for the securities market and derivatives market by introducing the following requirements:
- (a) eligibility criteria for Dealer's Representative ("DR") or Registered Representative ("RR") carrying out discretionary trading; and
  - (b) requirements pertaining to trading in a discretionary account,
- (the proposals are collectively referred to as the "**Exchanges' Proposals**").

## II. RATIONALE OF THE PROPOSED FRAMEWORK FOR DISCRETIONARY TRADING

6. For the POs and TPs, the prescription of fees for the proposed framework in relation to discretionary trading targets to provide them with the following incentives:
- (a) allow POs and TPs to offer an attractive value proposition for investors who are constrained by the time or effort required to trade frequently and monitor investments in the market;
  - (b) provide an alternative revenue stream for POs, DR, TPs and RR as opposed to a transaction and execution-based fee model; and
  - (c) aligning the interests of brokers and their clients', to ensure that the clients' investment portfolio values grow over time.
7. The value proposition for investors when POs and TPs provide discretionary trading services are as follows:
- (a) the current brokerage structure encourages clients to trade more, which may not be in the best interest for all investors. The proposed fee models would align broker's interests with the clients' (investors') interests, as the broker will be incentivised to monitor the clients' investment portfolio values to ensure that it grows over time, as rewards will likely be tied to the performance of the clients' portfolios;
  - (b) by definition, a discretionary trading service provides each investor with personalised service according to investor's financial status and investment purpose. This has traditionally been the level of service only accorded to high net worth investors. The provision of discretionary trading by POs and TPs would democratise this service. As a result, it is highly likely that the service can be offered at a lower initial investment outlay;
  - (c) this service would attract investors who do not or infrequently trade due to busy schedules and inability to actively monitor their investment holdings. Allowing an experienced DR and RR to trade on their behalf in accordance to pre-determined parameters will allow the investors to focus on daily responsibilities whilst still able to actively invest in stock market; and
  - (d) cost of investing for investors will be reduced, as discretionary trading will encourage POs and TPs to diversify into fintech as fintech will potentially reduce cost of investing.
8. Based on feedback gathered from the stock broking community, discretionary trading will be beneficial for clients with the following profile:
- (a) professionals who are looking for retirement fund building;
  - (b) investors who are keen on stock investing but lack the time to monitor their investments or seek different approach to diversify risk;
  - (c) high net worth investors who lack trading expertise and/or time;

- (d) investors who need the discretionary trading service as they may not be able to gain access to licensed fund managers' services;
  - (e) unit trust investors who need to diversify into other investment strategies; and
  - (f) fixed deposit holders who are looking for higher returns.
9. Both Exchanges propose to amend their respective rules to introduce the new fee model and at the same time enhance and streamline the discretionary trading framework for the securities market and derivatives market in accordance with the Exchanges' Proposals as set out below.
10. This consultation paper seeks to consult the industry on the proposed rule amendments in relation to the proposed framework for discretionary trading and other amendments.

### **III. KEY PROPOSED AMENDMENTS TO THE BMS RULES AND DIRECTIVES**

11. The details of the key proposed amendments to the BMS Rules and Directives are set out below.

#### **(A) Introducing new provisions in relation to discretionary trading**

12. Pursuant to the Exchanges' Proposals above, BMS is proposing to insert the following provisions in the BMS Rules:
- (a) a new definition of "Discretionary Account" to clarify that a discretionary account is an account for trades executed by a PO on behalf of a client pursuant to an arrangement where the client authorises the PO to trade on the client's behalf on a discretionary basis; and
  - (b) a new rule on discretionary account to allow for the prescription of the proposed framework for discretionary trading and to set out the requirements to be fulfilled by the POs and DRs in BMS Directives.

#### **(B) Clarifying the PO's readiness audit obligation**

13. BMS is proposing to clarify the PO's readiness audit obligation in view of the prescription of the framework for discretionary trading and to streamline the requirements on undertaking readiness audit for both BMS Rules and Directives and BMD Rules and Directives.

#### **(C) Enhancing and clarifying the compliance obligations of a PO and Head of Compliance ("HOC")**

14. In view of the proposed framework for discretionary trading, BMS is proposing to enhance the compliance obligations of a PO and HOC in operating a discretionary account and to remove certain compliance obligations which are redundant. The review is also aimed at streamlining the requirements and compliance obligations in both the BMS Rules and Directives and BMD Rules and Directives in relation to discretionary trading, where appropriate.

#### **(D) Clarifying existing provision on sharing of profits in relation to discretionary trading**

15. BMS is also proposing to insert a carve out in the provision against profit-sharing to clarify that a PO, Head of Dealing ("HOD") and DR are allowed to have an arrangement with clients for the share of profits in relation to discretionary trading.

#### **(E) Introducing new requirements for the POs and DRs to comply with in operating a discretionary account**

16. To cater for the prescription of the framework for discretionary trading, BMS proposes to introduce new requirements to be complied with by the POs and the DRs in operating a discretionary account which include:

- (a) eligibility criteria for the DRs;
  - (b) requirements pertaining to trading in a discretionary account; and
  - (c) the fee models applicable for trades executed under a discretionary account either on a profit-sharing or fee arrangement.
17. POs may continue to charge a commission for trades executed in a discretionary account, in addition to any fees or profit-sharing arrangement with a client.
18. BMS is also proposing not to regulate the quantum nor to impose any cap on the profit-sharing arrangement between the POs and their clients or the management fees charged by the POs. This is on the basis that the fee models are a commercial term and hence, POs and their clients should be given the flexibility to agree on the appropriate fee for the service.

**(F) Other amendments**

19. BMS is also proposing to delete the definitions of Fund Management and Fund Manager's Representative in the BMS Rules on the basis that they are redundant and no longer referred to in the rules.
20. The proposed amendments to the BMS Rules and Directives are set out in detail in **Annexure 1**.

**IV. KEY PROPOSED AMENDMENTS TO THE BMD RULES AND DIRECTIVES**

21. The details of the key proposed amendments to the BMD Rules and Directives are set out below.

**(A) Introducing a new definition of "discretionary account"**

22. Pursuant to the Exchanges' Proposals above, BMD is proposing to insert a new definition of "Discretionary Account" to clarify that a discretionary account is an account for trades executed by a TP on behalf of a client pursuant to an arrangement where the client authorises the TP to trade on the client's behalf on a discretionary basis.

**(B) Moving the requirements relating to discretionary account to BMD Directives**

23. BMD proposes to amend the existing provisions on discretionary account in Rule 4.17 (including provisions on obtaining client's authorisation for discretionary trading and maintaining records of discretionary transactions) and to set out the obligations with respect to discretionary account in the BMD Directives instead. This is to promote a more principle-based approach in the BMD Rules.

**(C) Introducing and clarifying the compliance obligations of a TP and Compliance Officer ("CO")**

24. In view of the proposed framework for discretionary trading, BMD is proposing to insert the compliance obligations of a TP and CO in operating a discretionary account and to remove certain compliance obligations which are redundant. The review is also aimed at streamlining the requirements and compliance obligations in both the BMD Rules and Directives and BMS Rules and Directives in relation to discretionary trading, where appropriate.

**(D) Clarifying existing provision on sharing of profits in relation to discretionary trading**

25. BMD is also proposing to insert a carve out in the provision against profit-sharing to clarify that a TP, HOD and RR are allowed to have an arrangement with clients for the share of profits in relation to discretionary trading.

**(E) Introducing new requirements for the TPs and RRs to comply with in operating a discretionary account**

26. To cater for the prescription of the framework for discretionary trading, BMD proposes to introduce new requirements to be complied with by the TPs and the RRs in operating a discretionary account which includes:
- (a) eligibility criteria for the RRs;
  - (b) requirements pertaining to trading in a discretionary account; and
  - (c) the fee models applicable for trades executed under a discretionary account either on a profit-sharing or fee arrangement.
27. BMD is also proposing not to regulate the quantum nor to impose any cap on the profit-sharing arrangement between the TPs and their clients or the management fees charged by the TPs. This is on the basis that the fee models are a commercial term and hence, TPs and their clients should be given the flexibility to agree on the appropriate fee for the service.
28. The proposed amendments to the BMD Rules and Directives are set out in detail in **Annexure 2**.

**V. FEEDBACK SOUGHT**

29. The Exchange invites comments on the proposed amendments as may be relevant to the recipients of this consultation paper by completion of **Annexure 3** and return of the same to the Exchange by **26 October 2020** via:

Electronic mail : [rpa@bursamalaysia.com](mailto:rpa@bursamalaysia.com)  
Facsimile : 03 – 2732 0065

30. Should you need further clarification, please contact the following persons in relation to the proposed amendments:

Name	Contact Details
Regulatory Policy & Advisory	03 – 2034 7184 <a href="mailto:rpa@bursamalaysia.com">rpa@bursamalaysia.com</a>

31. In any enquiry, please cite the consultation paper and the provision of the BMS Rules and Directives or BMD Rules and Directives.
32. Please note that as the proposed amendments are open to comments and feedback, the final proposed amendments may be different from those stated in this consultation paper. Further, the proposed amendments have NOT been approved by the SC and as such are not the final rule amendments. Bursa Malaysia will submit the proposed amendments to the SC for approval after receipt of comments pursuant to this consultation paper and making the relevant changes, where appropriate, to the proposed amendments.

**VI. CONFIDENTIALITY**

33. Your response may be made public by the Exchange. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only if you request that the information remain confidential.

## VII. BURSA MALAYSIA BERHAD'S PERSONAL DATA NOTICE

34. In relation to the Personal Data Protection Act 2010 and in connection with your personal data provided to us in the course of this consultation, please be informed that Bursa Malaysia's personal data notice ("**Notice**") is available at [www.bursamalaysia.com](http://www.bursamalaysia.com). Kindly ensure that you read and are aware of the Notice. If you are submitting personal data of an individual other than yourself ("data subject"), please ensure that prior to such submission, you have provided the data subject with written notice of the Notice unless section 41 of the Personal Data Protection Act 2010 ("**PDPA**") applies or Bursa Malaysia otherwise specifies in connection with the PDPA.

*Berhubung Akta Perlindungan Data Peribadi 2010 dan berkenaan semua data peribadi anda yang diberikan di dalam proses konsultasi ini, sila ambil maklum bahawa notis Bursa Malaysia mengenai data peribadi ("**Notis tersebut**") boleh didapati di [www.bursamalaysia.com](http://www.bursamalaysia.com). Sila pastikan yang anda membaca dan memahami Notis tersebut.*

*Jika anda mengemukakan data peribadi individu pihak ketiga ("**Subjek Data**"), anda mesti memastikan bahawa Subjek Data telah diberi notis bertulis mengenai Notis tersebut terlebih dahulu kecuali seksyen 41 Akta Perlindungan Data Peribadi 2010 ("**APDP**") terpakai atau Bursa Malaysia sebaliknya menyatakan berkenaan dengan APDP.*

[End of Consultation Paper]