

CAPITAL MARKETS AND SERVICES ACT 2007 (Act 671)

An Act to consolidate the Securities Industry Act 1983 [Act 280] and Futures Industry Act 1993 [Act 499], to regulate and to provide for matters relating to the activities, markets and intermediaries in the capital markets, and for matters consequential and incidental thereto.

Section 91 & 92 of the CMSA

Division 3

Conduct of business

Subdivision 1 – General

Disclosure of certain interests in securities

91.

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

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

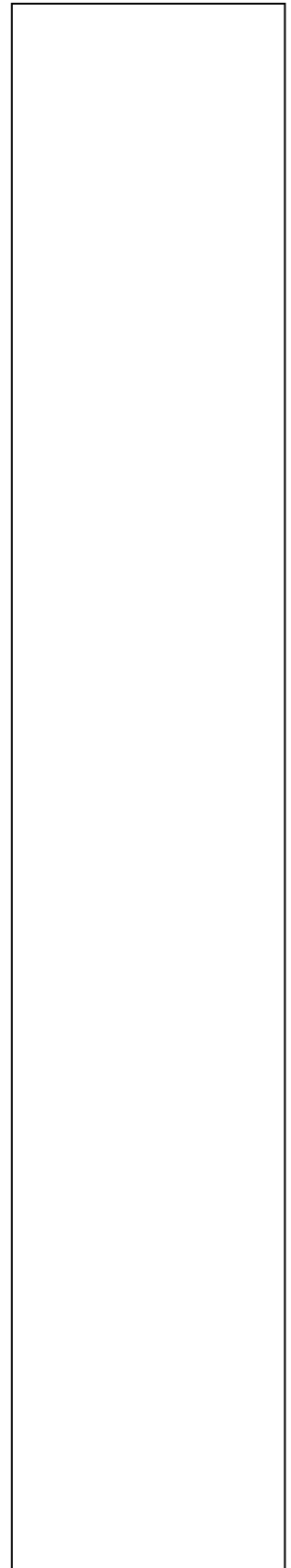
- (a) he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
- (b) the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class, as the case may be.

(3) For the purposes of subsections (1) and (2)—

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding the provisions of section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where—

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them for purchase; and
 - (b) the person offers any of those securities for purchase,
- the person shall not make a recommendation, whether orally or in writing and whether



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expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where—

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

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

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

(a) where the licensed person is a natural person, is signed by the licensed person;
(b) where the licensed person is a natural person who carries on business in partnership, is signed by a partner in the partnership in his own name or in the name of the partnership;
(c) where the licensed person is a natural person who carries on business in a corporation, is signed by a director, an executive officer or the secretary of the corporation; or
(d) where the licensed person is a corporation, is signed by a director, an executive officer or the secretary of the corporation.

(8) Where a licensed person sends to a person a circular or other communication or a written offer or recommendation to which subsection (1), (4) or (5) applies, the licensed person shall preserve a copy of the circular or other communication, or of a written offer or recommendation, duly signed by the person concerned, for a period of seven years.

(9) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(10) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall—

(a) where it is signed by a person in partnership, be deemed to have been sent by each of the partners in the partnership; or
(b) where it is signed by a director, an executive officer or the secretary of a corporation, be deemed to have been sent by the corporation.

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(11) The Commission may, with the approval of the Minister if it is not detrimental to the interest of investors, exempt in writing any securities or persons or class of securities or persons from this section.

(12) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Recommendations by licensed person

92.

(1) A licensed person shall not make a recommendation with respect to any securities or derivatives to a person who may reasonably be expected to rely on the recommendation without having a reasonable basis for making the recommendation to the person.

(2) For the purposes of subsection (1), a licensed person does not have a reasonable basis for making a recommendation to a person unless—

(a) the licensed person has, for the purposes of ascertaining that the recommendation is appropriate, taken all practicable measures to ascertain that the information possessed and relied upon by the licensed person concerning the investment objectives, financial situation and particular needs of the person is accurate and complete;

(b) the licensed person has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as may be reasonable in all the circumstances; and

(c) the recommendation is based on such consideration and investigation.

(3) A licensed person who contravenes subsection (1) does not commit an offence.

(4) Where the licensed person contravenes subsection (1) or section 91 by making a recommendation to a person and—

(a) the person, in reliance on the recommendation, does a particular act or refrains from doing a particular act;

(b) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the person to do that act or to refrain from doing that act, as the case may be, in reliance on the recommendation; and

(c) the person suffers loss or damage as a result of doing that act or refraining from doing that act, the licensed person shall be liable to pay damages to the person in respect of that loss or damage.

(5) A licensed person shall not be liable under subsection (4) if it is proved that a reasonable person in the circumstances would have done or omitted to do that act in reliance on the recommendation even if a licensed person had complied with that subsection in relation to the recommendation.

(6) In the case of a contravention of subsection (1), a licensed person shall not be liable if it is proved that the recommendation was, in all circumstances, appropriate having regard to the information that the licensed person had about the client's investment objectives, financial situation and particular needs when the licensed person makes the recommendation.

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(7) In this section, a reference to the making of a recommendation is a reference to the making of a recommendation whether expressly or by implication.

Information to be given to a person who invests in capital market product
92A.

(1) The Commission may specify the nature and extent of information to be given to a person who invests in any capital market product and such specification may include—

- (a) information that explains the key characteristics of the capital market product;
- (b) information that explains the nature of the obligations assumed by the parties dealing in the capital market product;
- (c) information that sets out the risks associated with the capital market product; and
- (d) details of the essential terms of the capital market product.

(2) Any person who—

- (a) issues or provides false or misleading information;
- (b) makes any false or misleading statement; or
- (c) wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect, to a person who invests in a capital market product, commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) Nothing in this section shall affect any right of action under any other law that is conferred on the person who invests in a capital market product.

(4) It shall be a defence to a prosecution or any proceeding for a contravention of this section by any person if he proves that—

- (a) he had made all enquiries as were reasonable in the circumstances; and
- (b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that—
 - (i) the statement or information was true and not misleading; or
 - (ii) there was no material omission.