

GUIDELINE ON PROVIDING MARKET ACCESS TO A FOREIGN MARKET



GUIDELINE NO. CMU/G-2/2019/7

GUIDELINE ON PROVIDING MARKET ACCESS TO A FOREIGN MARKET

## 1. INTRODUCTION AND APPLICABILITY

- 1.1 This Guideline is issued pursuant to section 32 of the Autoriti Monetari Brunei Darussalam Order, 2010.
- 1.2 The objective of this Guideline is to:
- (a) provide guidance and clarity to Investment Dealers on the requirements for providing Market Access to a Foreign Market provided in Notice No. CMA/N-2/2019/14 Notice on Providing Market Access to a Foreign Market; and
  - (b) ensure that Investment Dealers conduct due diligence, ongoing monitoring and have proper controls in place to address any negative consequences that may arise due to the Market Access which may affect the investor's interest.
- 1.3 This Guideline is not legally binding, exhaustive and subject to revision from time to time as deemed necessary by the Authority.
- 1.4 This Guideline is to be read together with the SMO and any regulations, directions, notices and guidelines made thereunder.
- 1.5 This Guideline shall take effect on 4 November 2019.

## 2. DEFINITION OF THE TERMS

- 2.1 For the purpose of this Guideline, the following terms shall have the following meanings, except where the context otherwise requires:

<b>Term</b>	<b>Definition</b>
“Authority”	means Autoriti Monetari Brunei Darussalam;
“CMSL”	means capital markets services licence;
“Counterparty Broker”	means the person who is licensed, registered, approved or authorised by a Foreign Regulator to perform, including but not limited to, the regulated activity of dealing in

investments (or its equivalent) as regulated by the Foreign Regulator in the Foreign Jurisdiction;

“Foreign Jurisdiction” means the jurisdiction in which the Counterparty Broker is licensed, registered, approved or authorised;

“Foreign Regulator” means the regulatory authority responsible for the licensing, registration, approval or authorisation and supervision of the Counterparty Broker in that Foreign Jurisdiction;

“Foreign Market” means a market that is provided by a securities exchange that is licensed, registered, approved or authorised by the Foreign Regulator in the Foreign Jurisdiction;

“Investment Dealer” means a CMSL holder who is licensed to conduct the regulated activity of dealing in investments under the SMO;

“Market Access” means access to a Foreign Market through a Counterparty Broker;

“SMO” means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder; and

“SMR” means the Securities Markets Regulations, 2015.

2.2 Any expression used in this Guideline shall, except where expressly defined in this Guideline or where the context requires otherwise, have the same meaning as in the SMO.

### **3. DUE DILIGENCE ON SELECTION PROCESS**

3.1 An Investment Dealer should ensure the Counterparty Broker is licensed, registered, approved or authorised to conduct the activity in the Foreign Jurisdiction by the Foreign

Regulator at all times during the period of which the Counterparty Broker arrangement remains valid.

- 3.2 An Investment Dealer should, prior to entering into an arrangement with a Counterparty Broker, consider the Counterparty Broker's –
- (a) Adequacy of resources and the ability to efficiently conduct the agreed services;
  - (b) Adequacy of security and control environment;
  - (c) Policies and procedures in preventing breach of clients' confidentiality and abuse of clients' confidential information;
  - (d) Business continuity plan;
  - (e) Ability to identify and effectively manage any risk and conflict of interest; and
  - (f) Present any ongoing or potential litigation proceedings, which may have potential impact on the performance of agreed services.

#### **4. CONTINUOUS OBLIGATION**

- 4.1 An Investment Dealer should have policies and procedures in place to effectively monitor the service delivery, performance reliability and processing capacity of the Counterparty Broker which should, among others, include the following –
- (a) Periodically assess and update annually the Counterparty Broker arrangement, if necessary; and
  - (b) Hold annual meetings with the Counterparty Broker to discuss on the performance of the Counterparty Broker and regulatory matters.
- 4.2 In assessing the Counterparty Broker arrangement, an Investment Dealer should consider –
- (a) Its financial, reputational and operational impact in the event of a default or demonstrable deterioration in the ability of the Counterparty Broker to perform the contracted service;
  - (b) The potential impact of the Counterparty Broker arrangement on the Investment Dealer's services or support rendered to its clients;

- (c) The impact of the Counterparty Broker arrangement on the Investment Dealer's ability and capacity to comply with regulatory requirements which includes effectively managing risk and any conflicts of interest and the handling, safeguarding and safekeeping of client's money and assets;
  - (d) The degree of difficulty and time required to select an alternative Counterparty Broker should the Counterparty Broker be unable to perform the agreed services; and
  - (e) Any risk arising from the Counterparty Broker arrangement and strategies for managing such risk.
- 4.3 The assessment in paragraph 4.1(a) should be performed by the Investment Dealer and a report should be submitted to the Authority, as and when requested.
- 4.4 The assessment in paragraph 4.1(a) should be performed by the Investment Dealer in the following manner:-
- (a) If the assessment outcome indicates high risk, the following assessment should be conducted on an annual basis; or
  - (b) If the assessment outcome indicates a low risk, the following assessment should be conducted once every 3 years.
- 4.5 The Investment Dealer should submit a report of the assessment referred to under paragraph 4.1(a) to its board of directors and senior management.
- 4.6 In adherence to paragraph 4.1(a), a Counterparty Broker agreement should, among others, include the following:-
- (a) Roles, responsibilities and obligations of the Counterparty Broker;
  - (b) Scope of the Counterparty Broker agreement;
  - (c) Terms and conditions governing the relationship;
  - (d) Provisions for proper reporting and monitoring mechanisms between the Counterparty Broker and the Investment Dealer;
  - (e) The rights of the Investment Dealer to conduct a review on any matters related to the Counterparty Broker agreement where necessary;

- (f) 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 Investment Dealer;
- (g) Protection of confidentiality and security of the Investment Dealer and its clients' information and requirement for immediate notification (if there is a breach);
- (h) Risk and liability of the Counterparty Broker for unsatisfactory performance or other breach of agreement of the agreed services;
- (i) Duty and responsibility of the Counterparty Broker to report any adverse development to the Investment Dealer in a timely manner;
- (j) Mechanism to resolve disputes which may arise under the Counterparty Broker agreement;
- (k) Co-operation with the Authority as well as auditors of the Investment Dealers; and
- (l) Duties and responsibilities of the Investment Dealer in ensuring compliance with the SMO and any regulations made thereunder.

4.7 An Investment Dealer reserves the right to terminate the Counterparty Broker agreement in the event of a default or under circumstances that include a breach of security or confidentiality and demonstrable deterioration in the ability of the Counterparty Broker to perform the contracted service.

## **5. RESPONSIBILITY FOR OVERSIGHT**

5.1 An Investment Dealer is responsible in ensuring compliance and adherence to requirements under all applicable laws, regulations, rules, directions, notices and guidelines in Brunei Darussalam. The responsibility and oversight over any Counterparty Broker arrangement lies with the Investment Dealer, its board of directors and its senior management who should at all times –

- (a) be responsible and accountable for any agreed services carried out by a Counterparty Broker;
- (b) ensure that any Counterparty Broker arrangement does not in any way interfere with the ability of the Investment Dealer to fulfil its legal and regulatory obligations;

- (c) ensure that any Counterparty Broker arrangement does not impede the Authority from carrying out their regulatory oversight functions over the Investment Dealer; and
- (d) ensure that policies and procedures are in place to maintain the 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 Counterparty Broker, as the case may be.

## **6. SUBMISSION OF APPLICATION OR NOTIFICATION**

6.1 All submissions of application or notification should be submitted and addressed to –

**Managing Director,  
Autoriti Monetari Brunei Darussalam,  
Level 14, Ministry of Finance and Economy Building,  
Commonwealth Drive,  
Bandar Seri Begawan BB3910,  
Brunei Darussalam.**

**(Attention: Head of Capital Market)  
or email at [capmarket@ambd.gov.bn](mailto:capmarket@ambd.gov.bn)**

**MANAGING DIRECTOR  
AUTORITI MONETARI BRUNEI DARUSSALAM**

Issue Date: 7 Rabiulawal 1441 / 4 November 2019