



Effective Date: 1 October 2022

GUIDELINE NO. CMU/G-2/2022/11

GUIDELINES ON SELLING OR OFFERING OF COMPLEX SECURITIES
TO ACCREDITED AND EXPERT INVESTORS



1. INTRODUCTION AND APPLICABILITY

- 1.1 This Guideline is issued pursuant to section 32 of the Brunei Darussalam Central Bank Order, 2010.
- 1.2 The objective of this Guideline is to provide guidance to –
 - (a) CMSL holders who are licensed to conduct the regulated activity of dealing in investments and any exempt persons that sell or offer, or intend to sell or offer, Complex Securities; and
 - (b) CMSL holders that provide market access to foreign markets which offers Complex Securities,to accredited or expert investors.
- 1.3 The guidance provided in this Guideline is applicable to both exempt persons and CMSL holders that provide market access to foreign markets to the same extent as any other CMSL holder.
- 1.4 Regulation 43(1), SMO states that a holder of a CMSL should use due diligence in **regard to the opening and maintenance of its client’s accounts; and know and retain** the essential acts concerning every client and concerning the authority of each person acting on behalf of such client. Furthermore, regulation 44(1), SMR requires a holder of a CMSL to have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the client, based on the facts known by the holder of the CMSL or disclosed by the client in response to reasonable efforts by the holder of the CMSL to obtain information **concerning the client’s information in regulation 43(2), SMR**. This Guideline sets out the manner for persons in paragraph 1.2 to have in place the relevant processes and procedures to conduct additional due diligence of its clients in terms of knowledge and/or experience in relation to Complex Securities to ensure suitability of the securities that they intend to sell or offer.
- 1.5 This Guideline is not exhaustive and is subject to revision from time to time as deemed necessary by the Authority.
- 1.6 This Guideline is to be read together with the SMO and any regulations, notices, directives and guidelines made thereunder.
- 1.7 This Guideline takes effect on 1st October 2022.



2. DEFINITION OF THE TERMS

2.1. In this Guideline, the following terms shall have the following meanings, except where the context otherwise requires –

Term	Definition
“Authority”	means Brunei Darussalam Central Bank;
“CIS”	means collective investment schemes;
“certain ILIC”	means investment linked insurance contracts that invest directly or indirectly in certain CIS;
“certain CIS”	means any of the following – (i) CIS the investment focus and approach of which is to invest into derivatives with a sole purpose for investment returns and not only for hedging and efficient portfolio management; or (ii) CIS that is deemed or labelled as a Complex Security (or equivalent) in its home jurisdiction;
“CMSL”	means capital markets services licence;
“Complex Securities”	means securities whose terms, features and/or risks are not reasonably likely to be understood by a retail customer and may also be difficult to value because of their complex structure. This may includes derivatives, certain ILICs and certain CIS;
“derivative”	means contracts for differences, futures, options and/or instruments creating entitlements to shares or securities;
“exempt person”	means any persons who are exempted from holding a CMSL to conduct the regulated activity of dealing in investments;
“foreign market”	has the meaning assigned to it in the Notice on Providing Market Access to a Foreign Market (Notice No. CMA/N-2/2019/14);
“hedging”	means the use of a combination of trades on securities and/or money market instruments which are concluded with the sole purpose of offsetting risks linked to positions taken through other securities and/or money market instruments;



“ILIC”	means Investment Linked Insurance Contract;
“market access”	has the meaning assigned to it in the Notice on Providing Market Access to a Foreign Market (Notice NO. CMA/N-2/2019/14);
“Ordinary Securities”	means any securities other than Complex Securities;
“SMO”	means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder.

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

3. SELLING OR OFFERING COMPLEX SECURITIES

3.1 CMSL holders that intend to sell or offer Complex Securities to accredited or expert investors shall conduct an investor review as required under paragraph 4.2 of the Notice on Selling or Offering of Complex Securities [Notice No. CMA/N-2/2022/17].

3.2 In addition to the essential facts to be obtained from an investor as per regulation 43(2) of the SMR, an investor review process should take into consideration **information on an investor’s educational qualifications, investment experience and/or work experience** [paragraph 1 of Appendix 1]. Where an investor does not provide information on his/her educational qualifications, investment experience or work experience, a CMSL holder should regard the investor as not possessing any knowledge or experience in Complex Securities.

3.3 A CMSL holder should highlight to investors in writing that any inaccurate or incomplete information provided by the investor may affect the outcome of the investor review.

3.4 Regardless of the outcome of the investor review, the CMSL holder should disclose to investors in writing that an investor can, at any time, request for advice concerning Complex Securities.

3.5 In relation to paragraph 3 of the Notice on Market Conduct [Notice No. FCI/N2/2021/1), a CMSL holder should prepare for the investor a key information document in relation to the Complex Securities or group of Complex Securities being sold or offered which may include the nature of securities, its objectives, the risks, potential gains and losses, costs associated and a warning statement.

3.6 A CMSL holder should perform a review on the Investor –



- (a) at least every five (5) years; or
 - (b) prior to buying or selling new Complex Securities after three (3) years have lapsed since the last time the client bought or sold Complex Securities, regarding his/her –
 - i. updated academic, work experience or investment experience [paragraph 2 of Appendix 1]; and
 - ii. current investments in Complex Securities with that CMSL holder.
- 3.7 Where a CMSL holder has conducted an investor review or otherwise assesses an existing investor and that investor is found not to possess adequate knowledge or experience, that investor should not be allowed to transact in any Complex Securities. Notwithstanding this, where that investor nevertheless intends to proceed with investing in Complex Securities, the CMSL holder should –
- (a) inform the investor in writing the outcome of the investor review;
 - (b) educate the investor on Complex Securities;
 - (c) **obtain the investor's written confirmation that he/she still intends to proceed with investing in Complex Securities despite not being in possession of adequate knowledge or experience; and**
 - (d) **inform the investor in writing that it is the investor's responsibility to ensure that he/she understands that he intends to transact; and understands the general features and risks associated in transacting in Complex Securities.**
- 3.8 Pursuant to paragraph 3.7, where an existing investor of a CMSL holder is found not to possess adequate knowledge or experience and decides not to proceed with investing in Complex Securities, that CMSL holder should ensure that those existing investors are limited to the following –
- (a) allowed to continue holding on to his/her existing position in Complex Securities; and
 - (b) given time to redeem his/her existing position in Complex Securities,
- so as to not put the client at a disadvantage.



- 3.9 For the avoidance of doubt, a CMSL holder should not regard transactions contemplated in paragraph 3.8 as “investment experience” for the purposes of conducting the investor review on the existing investor concerned.

4. DOCUMENT AND RECORD KEEPING

- 4.1. A CMSL holder shall update the investor profile of its clients as required under paragraph 4.4 of the Notice on Selling or Offering of Complex Securities [Notice No. CMA/N-2/2022/17]. The investor profile should contain the review conducted as per paragraph 3.6 and the review should be updated together with the investor profile.
- 4.2. A CMSL holder should document the information provided by each of its investors. This should include the following –
- (a) information necessary under the ‘Know Your Client’ requirements pursuant to regulation 43(2) of the SMR;
 - (b) information collected from an investor on his educational qualifications, work experience and/or investment experience;
 - (c) an assessment of the investor’s knowledge and experience in any Complex Securities;
 - (d) the outcome of the investor review; and
 - (e) the review conducted as per paragraph 3.6.
- 4.3. Where a CMSL holder transacts in any Complex Securities on behalf on an investor [referred to in this paragraph as a “relevant transaction”], that CMSL holder should maintain records of all communication between itself and the investor in respect of the relevant transaction, including a record in the form of a file note or a recording of the telephone conversation. Such recording should be disclosed to the investor.

MANAGING DIRECTOR
BRUNEI DARUSSALAM CENTRAL BANK

Issue Date: 29 Safar 1444H / 26 September 2022M