



Effective date: 1 October 2022

NOTICE UNDER THE SECURITIES MARKETS ORDER, 2013  
NOTICE NO. CMA/N-2/2022/17

NOTICE ON SELLING OR OFFERING OF COMPLEX SECURITIES



## 1. INTRODUCTION

- 1.1 This Notice is issued pursuant to section 239(1) of the SMO and applies to any 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. This Notice shall also apply to CMSL holders that provide market access to foreign markets which offer Complex Securities.
- 1.2 This Notice shall take effect on 1<sup>st</sup> October 2022.

## 2. DEFINITIONS

- 2.1 For the purposes of this Notice –

“Authority” means Brunei Darussalam Central Bank;

“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;

“certain ILIC” means investment linked insurance contracts that invest directly or indirectly in certain CIS;

“CIS” means collective investment schemes;

“CMSL” means capital markets services licence;

“CMSRL” means capital markets services representative’s 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 include derivatives, certain ILICs and certain CIS.

“derivative” means contract for differences, futures, options and/or instruments creating entitlement 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 Notice shall, except where expressly defined in this Notice or where the context requires, have the same meaning as in the SMO.

### 3. PURPOSE

- 3.1 The purpose of this Notice is to impose additional requirements on all persons specified in paragraph 1.1 in relation to the offering and/or selling of Complex Securities.

### 4. REQUIREMENTS ON SELLING OR OFFERING COMPLEX SECURITIES

- 4.1 The offering of Complex Securities shall only be made to the specific clauses of investors as described in section 20 of the SMO.
- 4.2 CMSL holders that intend to sell or offer Complex Securities shall conduct an investor review to assess an investor’s knowledge and/or experience in Complex Securities prior to making the sale or offer of the Complex Securities.
- 4.3 Notwithstanding paragraph 4.2 above, CMSL holders are not required to conduct an investor review for institutional investors if –
- (a) the institutional investor affirmatively indicates that it is willing to forego the investor review requirement and that it understands what it is willing to forego;
  - and



- (b) the CMSL holder has a reasonable basis to believe that the institutional investor is capable of –
  - (i) evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; and
  - (ii) exercising independent judgment in evaluating the recommendations of the CMSL holder.

4.4 CMSL holders shall establish an investor profile for each of its clients that are accredited investors and/or expert investors who have bought or sold Complex Securities. This investor profile shall be updated –

- (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,

whichever comes first.

4.5 CMSL holders shall implement a system/process to identify and determine the classification of securities either as Ordinary Securities or as Complex Securities. Any changes to the system/process shall be notified to the Authority within a reasonable time.

4.6 Notwithstanding paragraph 4.5, where a CMSL holder does not implement the system/process, any securities it sells or offers shall be deemed as Complex Securities.

4.7 Where a CMSL holder has classified a security as an Ordinary Security, it shall ensure the classification of the security concerned remains accurate and current at all times.

4.8 Where the clients of a CMSL holder (those clients that do not fall within any of the specific classes of investors specified in section 20 of the SMO) have already invested in Complex Securities prior to the effective date of this Notice, that CMSL holder must ensure that its clients 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 in Complex Securities,

so as to not put the client at a disadvantage.



- 4.9 A one (1) year transitional period will take effect following the effective date of this Notice. Upon the expiry of the transitional period, CMSL holders shall comply with the provisions of this Notice.
- 4.10 Notwithstanding paragraph 4.9, CMSL holders shall submit to the Authority no later than six (6) months following the effective date of this Notice –
- (a) the system/process referred to in paragraph 4.5 above, if any; and
  - (b) a list of securities or group of securities that are currently being sold and offered in the market with its classifications as Ordinary Securities or Complex Securities.
- 4.11 Any exempt persons that offer or sell Complex Securities and any CMSL holders that provide market access to foreign markets shall comply with the provisions of this Notice to the same extent as CMSL holders.

MANAGING DIRECTOR  
BRUNEI DARUSSALAM CENTRAL BANK

Issue Date: 29 Safar 1444H / 26 September 2022