



# **RULES OF THE CAPITAL MARKET COMPENSATION FUND CORPORATION**

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## **Definitions**

anniversary date	refers to the anniversary date of the Capital Markets Services Licence;
capital market products	has the same meaning assigned to it in the CMSA;
CMC	refers to the Capital Market Compensation Fund Corporation established under section 141 of the CMSA;
CMSA	refers to the Capital Markets and Services Act 2007 [ <i>Act 671</i> ];
Commission / SC	refers to the Securities Commission Malaysia;
derivatives exchange	means any body corporate which is approved under subsection 8(2) of the CMSA;
eligible claimant	refers to investors who meet the conditions for claim stated in paragraph 2.2;
event of default	has the same meaning assigned to it in the CMSA;
FMC	means a fund management company in relation to portfolio management;
Fund	refers to the Capital Market Compensation Fund established under section 158 of the CMSA;
fund management	has the same meaning as in Part 2 of Schedule 2 of the CMSA;
individual investors	means individuals and sole proprietor who are clients of a relevant person;

participating organisation	means any person who carries on the business of dealing in securities and is recognised as a participating organisation by the rules of the stock exchange;
private retirement scheme	has the same meaning under section 139A of the CMSA;
relevant person	<p>(a) a holder of a Capital Markets Services Licence who carries on the business of—</p> <ul style="list-style-type: none"> <li>i. dealing in securities, which is a participating organisation;</li> <li>ii. dealing in securities restricted to unit trusts, which is a UTMC;</li> <li>iii. dealing in derivatives and who is an affiliate of the derivatives exchange;</li> <li>iv. fund management including providers of private retirement schemes; or</li> </ul> <p>(b) any entity either licensed or registered with the SC and is a member or has been directed by the SC to be a member of SIDREC in relation to a claim that is eligible for payment from the Fund under these Rules;</p>
representative(s)	include the director, officer, employee, licensed representative, authorised representative, agent, commissioned persons, any persons acting on behalf of the company whether directly or indirectly;
SIDREC	refers to the Securities Industry Dispute Resolution Center approved under Regulation 3(1) of the Capital Markets and Services (Dispute Resolution) Regulations 2010;

specified act	means an act of fraud, defalcation or mis-selling by the relevant person or its representative(s);
stock exchange	means any body corporate which is approved under subsection 8(2) of the CMSA;
trading participant	means any person who carries on the business of dealing in derivatives and is recognised as a trading participant by the rules of the derivatives exchange;
UTMC	means a unit trust management company as approved under section 289 of the CMSA.

## **Chapter 1**

### **Introduction**

- 1.1 Part IV, Division 1 of the CMSA provides for the establishment of a comprehensive and integrated investor compensation framework for the capital market and for the establishment of the CMC. The compensation framework of the CMC provides for the settlement of claims made by individual investors, arising from an event of default of these relevant persons or a decision by SIDREC.
- 1.2 These Rules contain the rules and guidance for the payment of compensation by the CMC. These Rules specify persons eligible to receive compensation, circumstances in which compensation can be made and how much compensation can be paid to a claimant.
- 1.3 The establishment of the CMC is premised on the following principles:
  - (a) The Fund will operate a sustainable funding model to support the operation of the compensation scheme;
  - (b) The compensation arrangement provided by the Fund is intended to achieve a balance between providing protection to individual investors and the need to encourage individual investors to invest responsibly;
  - (c) The compensation framework is intended to encourage relevant persons to ascribe to high standards of conduct in carrying out their businesses and in dealing with individual investors.
- 1.4 The CMC will only pay compensation –
  - (a) when there is a declaration of an event of default by the CMC; or
  - (b) when there is decision by SIDREC.

1.5 These Rules are divided into the following three parts:

- (i) Part A – Claims arising from an event of default. This Part would clarify that claims may be made by eligible claimants of relevant persons that have been declared to be in default in accordance with circumstances specified under this Part.
- (ii) Part B – Claims arising from a decision by SIDREC in relation to a participating organisation or trading participant or any other entity eligible for the CMC claim as specified by the SC. This Part would clarify that claims may be made where the decision is made in favour of the investor, subject to the requirements under this Part.
- (iii) Part C – General matters applicable to Part A and B.

## **PART A – CLAIMS ARISING FROM AN EVENT OF DEFAULT**

### **Chapter 2**

#### **The Qualifying Circumstances for Paying Compensation**

- 2.1 Individual investors of relevant persons are eligible to claim for compensation arising from the following regulated activities–
- (a) dealing in securities, which includes the offering of units in a unit trust scheme;
  - (b) dealing in derivatives;
  - (c) fund management, which includes providing and offering private retirement schemes.
- 2.2 The CMC may pay compensation to an eligible claimant, if it is satisfied that –
- (a) the claimant is an individual investor of a relevant person that has been declared to be in default by the CMC; and
  - (b) the claimant is eligible to claim from the Fund and the CMC must be satisfied that none of the grounds stated in paragraph 2.3 apply to the claimant.
- 2.3 An individual investor will not be eligible to claim from the Fund if –
- (a) the person had aided, abetted or did any act in furtherance of the commission of any breach that had contributed to the event of default; or
  - (b) the person’s claim arises from transactions, which the SC has reasons to believe to be connected to money laundering and terrorist financing activities.



2.4 The CMC may pay compensation to a person who makes a claim on behalf of an eligible claimant if the said person is entitled to do so pursuant to production of a valid legal instrument.

## **Chapter 3**

### **Determination of an event of default**

- 3.1 The CMC will declare an event of default when, due to the commission of a specified act, the relevant person is considered to be unable to satisfy claims made against it, or likely to be unable to satisfy claims that may be made against it by eligible claimants.

## **Chapter 4**

### **Process for Claims Arising from an Event of Default**

#### **Notice inviting claims**

- 4.1 Where the CMC has determined that a relevant person has triggered an event of default pursuant to paragraph 3.1, the CMC will publish a notice announcing the event of default ("the Notice").
- 4.2 The Notice will also specify a date of not less than three (3) months after the publication of the Notice or such other longer period as may be specified in the Notice, by which date an application for compensation must be made ("Cut-Off Date").
- 4.3 The Notice shall invite individual investors of the relevant person named in the Notice to claim for compensation relating to the specified act which triggered an event of default.
- 4.4 The Notice shall be published in at least one English language newspaper and one Malay language newspaper published daily and circulated generally in Malaysia. The CMC shall also publish the Notice on its website in the English and Malay language.

#### **Making a claim for compensation**

- 4.5 A claim shall be lodged with the CMC on or before the Cut-Off Date specified in the Notice.
- 4.6 A claim which is not lodged before the Cut-Off Date is barred, unless the CMC determines otherwise.

## **Submission of claims**

- 4.7 An eligible claimant shall file a completed and signed application form (**Form 1**), accompanied with the relevant documents or information, in duplicate, to the CMC.
- 4.8 The CMC may request for any document or information from an eligible claimant or relevant person as the CMC may require–
- (a) in connection with a claim for compensation made under paragraph 4.7; or
  - (b) for the purpose of assisting the CMC in the exercise of its rights of subrogation under section 168 of the CMSA.
- 4.9 Any person receiving a request for document or information under paragraph 4.8 shall provide such document or information to the CMC as soon as practicable but in any event, no later than two (2) weeks after such request is made.
- 4.10 The CMC may, whether on its own initiative or on an application made by any person, call and seek assistance from any person whom it considers to be relevant in its inquiry process into a claim under this Part.
- 4.11 Upon application by the eligible claimant or the relevant person, the CMC may consider allowing the presence of legal representation during its inquiry.

## **Determination by the CMC**

- 4.12 The CMC shall, in relation to a claim for compensation, determine –
- (a) whether the eligible claimant is entitled to compensation by the CMC pursuant to paragraph 2.2; and
  - (b) the amount of compensation to be paid.

4.13 The CMC shall make such determination within three (3) months upon complete submission of the necessary documents or information, or within a further three (3) months as the CMC, in consultation with the SC, deems necessary.

**Notice of determination**

4.14 Upon making a determination under paragraph 4.13, the CMC shall notify the eligible claimant, and where relevant, the relevant person, and the SC, in writing by registered post as soon as a determination is made.

4.15 The notice of determination shall include the following information –

- (a) the name of the relevant person found to be in default;
- (b) the date of the event of default;
- (c) details of the event of default;
- (d) the amount of compensation determined by the CMC;
- (e) date of payment of the compensation; and
- (f) any other relevant details.

## **Chapter 5**

### **Rejection of Application or Withdrawal of Offer of Compensation**

5.1 Without limiting the generality of paragraph 4.12, the CMC may:

- (a) reject an application for compensation or withdraw an offer of compensation if the CMC finds that the application, document or information submitted contains any false or misleading information or from which there is material omission; or
- (b) withdraw any offer of compensation made to an eligible claimant if the offer is not accepted or the compensation is not collected within 90 days of the date on which the offer is made.

## **Chapter 6**

### **Stay of Payment Pending Appeal to the SC**

6.1 No payment out of the Fund shall be made to an eligible claimant until:

- (a) the expiry of the 30 days during which an appeal to the SC can be made in accordance with subsection 166(1) of the CMSA; or
- (b) where an appeal is made by the eligible claimant pursuant to subsection 166(1) of the CMSA, the determination of the appeal has been made by the SC under subsection 166(2) of the CMSA.

## **Chapter 7**

### **Winding up of a Relevant Person**

#### **Power to petition for the winding up of a relevant person**

- 7.1 The CMC shall have the power to petition for the winding up of a relevant person as provided under section 143 of the CMSA.
- 7.2 The CMC may petition for the winding up of a relevant person in order to realize assets and make distribution to the eligible claimants and the CMC, in the event of subrogation of rights.



## **PART B – CLAIMS FROM A DECISION BY SIDREC**

### **Chapter 8**

#### **The Qualifying Circumstances for Paying Compensation**

- 8.1 The CMC will also make compensation payment to an individual investor who is a client of a participating organisation or trading participant or any other entity eligible for the CMC claim as specified by the SC ("Eligible Entity"), from a decision by SIDREC.
- 8.2 The compensation payment referred to in paragraph 8.1 is only applicable to where such individual investor has suffered a loss due to fraud or defalcation, subject to the compensation limits as stated in paragraph 9.5.
- 8.3 Compensation will be made by the CMC to such individual investor who has suffered loss under the following circumstances –
- (a) where SIDREC finds in favour of the investor and the Eligible Entity is found not to be culpable in the loss suffered by the investor;
  - (b) where the Eligible Entity has failed to comply with SIDREC's award to compensate the investor within the time stipulated by SIDREC.

## PART C – GENERAL MATTERS APPLICABLE TO PART A AND B

### Chapter 9

#### Payment of Compensation

#### Limits on the amount of compensation payable under Part A

9.1 The limits on the compensation payable by the CMC for successful claims under Part A are set out in the table below, according to the categories of the relevant person:

**Table 1: Compensation Limits**

	Relevant Person	Compensation Limits
(a)	Participating organisation	RM100,000 per eligible claimant
(b)	Trading participant	RM100,000 per eligible claimant
(c)	PRS provider	RM100,000 per eligible claimant
(d)	<ul style="list-style-type: none"><li>FMC and UTMC</li><li>Other category of licence holders for Dealing in Securities restricted to unit trust</li></ul>	RM150,000 per entity
(e)	Trading participant or FMC trading on a Specified Exchange	RM100,000 per entity
(f)	Any other holder of a Capital Markets Services Licence or a registered person, who is directed by the Commission to be a member of a body corporate that is approved by the Commission for the settlement of dispute or claim	RM100,000 per eligible claimant

9.2 The compensation limits as set out in (a) to (c) of Table 1 applies to an eligible claimant for claims made against an entity irrespective of the number of accounts held in that entity.

9.3 The compensation limits as set out in (d) and (e) of Table 1 applies to all eligible claims made against an entity irrespective of the amount made by each claimant.

9.4 Where there is insufficient funds to pay the full amount of all successful claims, then the amount available in the Fund shall be apportioned between the claimants in such manner as the CMC deems fit.

### **Limits on the amount of compensation payable under Part B**

9.5 The limits on the compensation payable by the CMC for successful claims under Part B are set out in the table below, according to the categories of the relevant person:

**Table 2: Compensation Limits**

	Relevant Person	Compensation Limits
(a)	Participating organisation	RM100,000 per eligible claimant
(b)	Trading participant	RM100,000 per eligible claimant
(c)	Any other holder of a Capital Markets Services Licence or a registered person, who is directed by the Commission to be a member of a body corporate that is approved by the Commission for the settlement of dispute or claim	RM100,000 per eligible claimant