

## Do you need a licence from the SC to provide investment advice?

The Securities Commission Malaysia (SC) has recently issued a Guidance Note on Provision of Investment Advice<sup>1</sup>. Given the increasing number of self-proclaimed investment advisors, the Guidance Note clarifies situations where a person needs to be licensed by the SC to provide investment advice.

### Licence from the SC is required

A person needs to be licensed by the SC to carry on a business in providing recommendations/ opinions that are likely to induce a person to take any action or position regarding a particular class, sector, or instrument in relation to securities or derivatives.

The SC is likely to consider the activity of providing recommendations/ opinions as carrying on a business if it is undertaken in a structured manner with regularity. That said, in this age of technology, the SC makes no exception if the said activity is carried out in the following manners:

- (1) pay-for-advice arrangements;
- (2) offering a fee-based subscription to a channel or group, including on social media, which offers investment advice; or
- (3) expectation of benefits or gratification, direct or indirectly, from the provision of investment advice.

Under the Guidance Note, even if the person is merely discussing specific stocks on blogs, forums or other social media, the SC is likely to consider that person as carrying on a business in providing investment advice if:

- (1) his advice may induce his reader/ audience to take an action regarding the specific stock; and
- (2) it is a pay-for-advice arrangement;
- (3) it is a fee-based subscription; or
- (4) he is expecting benefits or gratification, direct or indirectly, from so doing.

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## **Licence from the SC is not required**

Under the Guidance Note, conducting trainings/ seminars on stock trading would not likely require a licence from the SC. This is provided that:

- (1) the training/ seminar does not include any material/ content; or
- (2) any of the trainers/ speakers does not make a statement,

that amounts to a recommendation/ inducement to take action/ position regarding a particular class, sector, or instrument in relation to securities or derivatives.

Nevertheless, the Guidance Note reminds the unlicensed person that the following acts amount to offences punishable with imprisonment for maximum 10 years and to a minimum fine of RM1 million:

- (1) engaging in any transaction which has or likely to have the effect of raising, lowering, or maintaining the price of securities or derivatives, for the purpose which may include inducing others to buy or sell the securities or derivatives;
- (2) making false or misleading statements that is likely to induce another person to buy or sell the securities or derivatives or is likely to have the effects of raising, lowering or maintaining the price of securities or derivatives;
- (3) recklessly making any statement, promise or forecast that is misleading, false or deceptive to induce or attempt to induce another person to deal in securities or derivatives.

The Guidance Note also reminds the licensed advisors that they should not make any false or misleading representation that is likely to induce a person to invest in securities or derivatives, including stating that an investment is capital guaranteed when it is not, or promising an investment that will give high return with minimum risk of loss to the investor. The failure to adhere to these standards will affect the licensed person's overall fitness and propriety as a licensed person and result in sanction being imposed against him.



The licensed advisors should also be reminded that they owe duties (both common law and contractual) to their clients. Thus, they ought to exercise reasonable professional care when advising their clients. In the event that they breach their duties or contractual obligations, they are exposed to civil suits for negligence and breach of contract.

For a list of unauthorised websites, investment products, companies and individuals:

<https://www.sc.com.my/regulation/enforcement/investor-alerts/sc-investor-alerts/investor-alert-list>

To check on persons licensed or registered by the SC:

- (1) Public Register of License Holders: [www.sc.com.my/licensed-registered-persons](http://www.sc.com.my/licensed-registered-persons)
- (2) List of Registered Recognised Market Operators: [www.sc.com.my/rmo](http://www.sc.com.my/rmo)

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