



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDANCE NOTE ON CO-OPERATION AND SELF-REPORTING

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INTRODUCTION

- 1.1 Securities laws empowers the Securities Commission Malaysia (SC) to take a range of administrative, civil and criminal enforcement actions against securities laws breaches. The SC, in determining the type of enforcement action it will initiate, is guided by among others:
 - a. Factual and evidential circumstances of the case;
 - b. Desired outcome of the enforcement action; and
 - c. The need to achieve credible deterrence.
- 1.2 The complexity of securities laws and the involvement of multiple parties in securities laws breaches contribute to a long-gestation period, before an investigation is concluded. This in turn can affect the timely resolution of securities laws breaches.
- 1.3 As part of the *Capital Market Masterplan 3* work programme, a framework to promote early resolution of enforcement action and to instil greater self-discipline among regulatees will be put into place. Under this framework, credit may be given to regulatees that provide co-operation during the SC's investigations and also voluntarily self-report to the SC on a breach of securities laws.
- 1.4 Co-operation from those who are aware of the breach or who are involved in the breach can aid in the early resolution of the breach. At the same time, co-operation with the SC will also assist in containing the impact of potential losses to investors and promote the efficient use of SC's enforcement, investigation and supervisory resources.
- 1.5 Co-operation and the early resolution of securities laws breach benefits all, as it engenders confidence and trust in the capital market and its players, which is critical for the growth of the capital market.
- 1.6 The SC will take into account the level of co-operation extended by a person when determining how the SC will respond to the breach in question. Co-operation with the SC may be taken into consideration when the SC considers the application of its enforcement tools, or in the amount of financial penalty imposed by the SC.

FORMS OF CO-OPERATION

- 2.1 Co-operation with the SC can take various forms. These include but are not limited to-
 - a. promptly reporting the breach to the SC (self-reporting);
 - b. providing evidence in a form that can be used in court;
 - c. providing useful intelligence to the SC;

- d. accepting liability and willingness to take responsibility for breach;
- e. taking proactive steps to assist the SC in its investigation at the earliest opportunity; or
- f. taking appropriate rectification measures, for example:
 - (i) taking early and active steps to contain the breach or failing;
 - (ii) making full and prompt compensation to the affected investors for their losses;
 - (iii) instituting enhancements to internal controls and processes.

2.2 However, it should be noted that mere compliance with a statutory or regulatory requirement may not, by itself, amount to co-operation. This includes, for example, complying with sections 127, 128 or 134 of the *Securities Commission Malaysia Act 1993* (SCMA).

SELF-REPORTING OF BREACH

3.1 Prompt reporting of a breach by the regulatee that has committed the breach to the SC is recognised as a form of valuable co-operation as it can result in the early resolution of the breach reported. In this regard, this Guidance Note seeks to provide clarity on when the self-reporting of securities laws breaches to the SC will be taken into account in considering the type of enforcement action that will be taken by the SC against the affected regulatee.

3.2 For the purposes of this Guidance, the self-reporting of the breach:

a. *Must be prompt.* The reporting of breach to the SC must occur reasonably promptly upon the person being aware of the breach and before the SC by itself becomes aware of the breach reported. The SC is taken to be aware of the breach if for example:

- (i) the SC by itself discovers the breach in performing its supervisory or investigation functions;
- (ii) a whistle-blower has reported the breach to the SC; or
- (iii) a complaint has been filed with the SC.

b. *Must be reliable.* The reporting of breach to the SC, must be as accurate and as complete as reasonably possible, to the best knowledge of the regulatee reporting. The reporting should disclose the details of the breach such as, when did the breach occur, when and how it was detected and parties involved in the breach.

3.3 The reporting of the breach to the SC may be made through any manner including but not limited to, by e-mail. For this purpose, you may report the breach to the department that you have been liaising with.

3.4 It should be noted that the SC may require the person who self-reports the breach to furnish it with any additional information and documents as may be required.