Securities Lending and Borrowing:
[1] General Procedures
[2] SLB Rules

Version 1.0

28 January 2014
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1. Document History

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Version: 1.0
28 January 2014
2. Introduction

2.1. It is recommended that readers go through the process flows in Appendix 1 before reading this paper and the SLB Rules.

2.2. The objective of this document is to provide readers an overview of how the new SLB business will function taking into consideration local regulatory requirements.

2.3. The SLB model allows Lenders and Borrowers to agree on loans bilaterally, either on the basis of offshore/offshore, offshore/onshore or onshore/onshore.

2.4. In order to move loaned securities, Lenders and Borrowers must instruct Lending Agents [for lenders] and Borrowing Agents [for borrowers] who in turn will instruct DFM CSD to move loaned securities on a free-of-payment basis from Lender to Borrower.

2.5. The features and mechanics of the DFM SLB Model are explained in greater details in the next sections.

2.6. Copy of the English-translated SLB regulation issued by the securities regulator, the Securities and Commodities Authority of the United Arab Emirates is attached as Appendix 2.

3. Definitions

The following is a list of common terminologies and/or abbreviations and their definition used in this document.

3.1. Lending Agent or Borrowing Agent means:

3.1.1. the onshore representatives of foreign Lenders[or foreign Agent Lenders where applicable] or foreign Borrowers, or the onshore representatives of the Lender or foreign Borrower’s global custodians. Entities which may apply for approval by the regulator for this role is defined under Article 3(II) of the SLB regulations; or

3.1.2. an approved local intermediary engaging in the business of either lending securities for a lender or borrowing securities.

3.2. Agent Lender means a foreign intermediary who lends securities on behalf its clients offshore.
3.3. Borrower means an investor whose name appears on DFM’s Investor Number [NIN] records and who borrows securities from a Lender.

3.4. Broker means a trading member of the Exchange.

3.5. Exchange means DFM or whatever name the stock market operator may be named.

3.6. Intermediary means any entity, local or foreign, involved in the business of lending and borrowing of securities for its clients.

3.7. Lender means any investor holding a DFM investor NIN lending securities to a Borrower.

3.8. Local Custodian means local sub-custodian members of DFM.

3.9. Loan instruction means an instruction, in a manner prescribed in the DFM procedures from time to time, by the Lending/Borrowing Agent for:
   
   3.9.1. loan creation;
   
   3.9.2. loan recall;
   
   3.9.3. loan return.

3.10. Loan Transaction means:

   3.10.1. for lending, a loan transaction created by DFM in its SLB System showing details of securities loaned to a Borrower;

   3.10.2. for borrowing, a loan transaction created by DFM in its SLB System showing details of securities borrowed from a Lender.

3.11. Loan creation means creation of a Loan Transaction and where loaned securities move from the Lender’s depository account to the Borrower’s depository account at a date agreed between the Lender and Borrower for delivery of loaned securities.

3.12. Loan recall means a request by the Lender to the Borrower to return loaned securities before the loan expiry date.

3.13. Loan return means the Borrower returning loaned securities to the Lender on the loan expiry date or a return of loaned securities initiated by the Borrower before the loan expiry date.
3.14. Loan expiry date is the date set by DFM in its SLB System. Where a Loan Transaction has an indefinite tenure, DFM will create an indefinite loan expiry date.

3.15. Local broker means the local broker-dealer members of DFM.

3.16. NIN means the DFM Investor Number which all investors in the DFM Market must have before a depository account is assigned to the investor to hold DFM listed securities.

3.17. Offshore means outside the UAE including in the UAE free zones.

3.18. Onshore intermediary means business entities approved by SCA in accordance with Article 3(II) of the SCA Regulations, for example, a Local Custodian.

3.19. SCA means the Securities and Commodities Authority of the UAE.

3.20. Securities means DFM listed securities approved for SLB unless stated otherwise.

3.21. SLB means Securities Lending & Borrowing

3.22. SLB activity means the business of arranging and managing lending or borrowing of securities excluding reporting of offshore SLB transactions.

3.23. SLB Regulations means the SCA Board Decision No. 47 Of 2012 Concerning The Regulations As To Lending And Borrowing Securities issued by the SCA.

3.24. SLB System means DFM’s proprietary depository system which records Loan Transactions and move loaned securities from Lender to Borrower or from Borrower to Lender.

3.25. UAE: United Arab Emirates

4. Features of the DFM SLB Business Model

4.1. Lenders

4.1.1. Any investor having a DFM Investor Number (“NIN”), either directly with DFM or indirectly via a Local Custodian, will be eligible to become a Lender. This includes lenders who are individuals.
4.1.2. Where a Lender uses a Local Custodian, the name of the investor associated with the Local Custodian NIN will be considered by DFM as the Lender.

4.1.3. When a Lender lends securities, the Lender must ensure that instructions are given to the Lending Agent so that the Lending Agent can instruct DFM CSD to move loaned securities via the SLB System on the date agreed by the Lender and Borrower for the loaned securities to be moved from the Lender to the Borrower. DFM will inform the relevant cut-off times later.

4.1.4. Without providing instructions to the Lending Agent, loaned securities cannot be moved from the Lender to the Borrower.

4.2. Agent Lenders

4.2.1. Agent Lenders means offshore intermediaries lending securities for clients who are Lenders.

4.2.2. Role of offshore Agent Lenders: the lending of securities can be managed or arranged offshore by offshore Agent Lenders for Lenders as is the current OTC practice. However, to move loaned securities, the Lender must instruct the Lender’s Lending Agent and the Borrower must instruct the Borrowing Agent to request DFM to move loaned securities using DFM’s SLB System on the Lender and Borrower’s agreed date for movement of loaned securities.

4.2.3. For onshore intermediaries such as local custodians or local brokers intending to manage or arrange securities lending activities in the UAE, including the activity of accepting instructions to move loaned securities, the SCA Regulations on approval of Lending Agents must be complied with.

4.3. Borrowers

4.3.1. Any investor having a DFM NIN, either directly with DFM or indirectly via a Local Custodian, is eligible to become a Borrower.

4.3.2. Where a Borrower uses a Local Custodian, the name of the investor associated with the NIN will be considered as the Borrower by DFM.
4.3.3. For onshore intermediaries intending to manage or arrange securities borrowing activities in the UAE for clients, the SCA Regulations on approval of Borrowing Agent must be complied with.

4.3.4. Where the Borrower borrows securities, the Borrower must ensure that instructions are given to the Borrowing Agent so that the Borrowing Agent can instruct DFM CSD to move loaned securities on the date agreed by the Lender and Borrower for the loaned securities to be moved from the Lender to the Borrower. DFM will inform the relevant cut-off times later.

4.3.5. There is a purpose test for borrowing securities. The purpose for borrowing securities shall be prescribed by SCA from time to time and is limited to the following activities until further notice:

4.3.5.1. Market making activities;

4.3.5.2. Failure to deliver securities pursuant to a trade settlement.

4.4. Designated SLB Account

4.4.1. DFM may prescribe the use of a Designated SLB Account for holding borrowed securities.

4.4.2. The proposed Designated SLB Account is not applicable to Lenders and also where the loan is to settle a failed securities delivery arising from a DVP sell trade rejection.

4.4.3. This designated SLB Account will be part of the Borrower’s single NIN.

4.4.4. A designated SLB Account will be linked to the designated short selling or market making trading account for securities settlement of a short sell or market making sell trade.

4.4.5. Securities settlement of any approved short selling activities including market making activities will be carried out from the designated SLB Account if a designated SLB account is implemented.

4.4.6. Transfers of borrowed securities outwards from the designated SLB Account will therefore be restricted to specific approved reasons to be determined from time to time by DFM. These reasons currently are
market making sell trade settlement and settlement of a default in delivery of securities by a selling broker.

4.5. SLB Agreement

4.5.1. Lenders and Borrowers must have a valid SLB Agreement in place.

4.5.2. Lenders and Borrowers are free to execute their own SLB Agreement. There is no requirement for the SLB Agreement to be registered or approved by DFM.

4.5.3. A copy of the SLB Agreement must be lodged with DFM by the Borrower.

4.5.4. Onshore intermediaries intending to manage or arrange SLB activities must ensure that there is a valid SLB Agreement in a format complying with SCA Regulations in place at all times. This means that if one party to a loan is onshore, the SLB Agreement must comply with the SCA Regulations on the minimum requirements for SLB Agreement.

4.6. Lending/Borrowing Agents

4.6.1. Local brokers and local sub-custodians must apply for approval from SCA before they can be appointed by DFM as Lending/Borrowing Agents.

4.6.2. The main role of the Lending/Borrowing Agent is to interface with DFM on behalf of Lenders and Borrowers to move loaned securities either from Lender to Borrower or from Borrower to Lender for recall or return of loaned securities.

4.6.3. In addition, the Lending/Borrowing Agents will be the main contact point of Lenders/Borrowers for DFM to collect any applicable DFM fees and charges from Lender/Borrower.

4.6.4. A list of appointed Lending Agent/Borrowing Agent will be published by DFM on its website.
4.7. Securities Eligible for SLB

4.7.1. Only securities listed on DFM will be eligible for SLB.

4.7.2. The criteria or restrictions as to the type and name of securities eligible for SLB may be imposed by DFM from time to time and published via its circulars.

4.8. Loan Tenure

4.8.1. Both fixed-term loans and open tenure loans are accepted.

4.8.2. There is a minimum loan tenure of one[1] business day whereby once a loan is created in the SLB System, the outstanding loan can only be recalled or returned after a minimum of 1 business day.

4.8.3. Lenders and Borrowers can agree on a specific termination date for a loan transaction.

4.8.4. For fixed-term loans, it is the responsibility of the Borrower to ensure that the equivalent quantity of loaned securities are available in the Borrower’s depository account for redelivery to the Lender on the termination date of the loan.

4.9. Loan Quantity

4.9.1. There is no minimum or maximum loan quantity.

4.10. Movement of Loaned Securities

4.10.1. Lenders and Borrowers will communicate with their respective Lending Agent/Borrowing Agents with regards to movement of loaned securities since all eligible SLB securities are immobilized onshore in the UAE with DFM.

4.10.2. It is the responsibility of Lenders and Borrowers to agree with their respective Lending Agent/Borrowing Agents on the mode of communication.
4.10.3. Lending Agent/Borrowing Agents communicate with DFM for movements of loaned securities according to procedures which will be issued in due course.

4.11. SLB System

4.11.1. DFM will maintain loan details via the SLB System. The main objectives of this requirement are:

- 4.11.1.1. Maintain loan information;
- 4.11.1.2. Facilitate movements of loaned securities between Lender and Borrower.

4.11.2. A loan is created in the SLB System when DFM matches a request from Lending Agent to move loaned securities and a request from the Borrowing Agent to receive loaned securities.

4.11.3. DFM will maintain details of loans such as name of Lender, name of Borrower, loan creation date, loan termination date, loan quantity and name of security.

4.11.4. For clarification, the SLB System will not calculate any loan margins or collateral requirements. Such requirements are handled directly between the Lender [or Agent Lender] and the Borrower.

4.12. Manufactured Payments and Interest on Collateral

4.12.1. Manufactured payments and interest on collateral shall be handled directly between Lender and Borrower in accordance with the SLB Agreement.

4.12.2. There is no requirement for manufactured payments and interest on collateral to be channeled or reported onshore.

4.13. Lender’s Lending Fees

4.13.1. There will be no tax implications under UAE tax laws if lending fees are paid by the Borrower to the Lender offshore.
4.13.2. Where the Borrower pays lending fees to the Lender which is a non-resident onshore, the payment will not be subjected to any Withholding Tax.

**4.14. Collateral**

4.14.1. All collateral requirements between Lender and Borrower which consists of non DFM-listed securities will be handled outside of the SLB System and will be settled between Lender and Borrower directly.

4.14.2. There are no collateral requirements imposed on Lenders and Borrowers by DFM.

4.14.3. However, if onshore intermediaries conduct SLB activities either as a principal or as agents for its clients, the onshore intermediaries must ensure that all SLB exposures comply with the prescribed SCA regulations at all times.

4.14.4. There is no requirement for foreign collateral to pass-through an onshore entity.

4.14.5. Return of any foreign collateral between Borrower and Lender will also be handled outside of DFM systems and can be settled either onshore or offshore.

4.14.6. Where the collateral is DFM listed securities, DFM will facilitate movement of collateral on a free-of-payment basis based on instructions from either the Lending Agent or the Borrowing Agent.

4.14.7. The Borrower shall instruct its Borrowing Agent to request DFM to move collateral securities from the Borrower’s depository account to the depository account of the Lender[or the Agent Lender or tri-party agent] to lodge DFM listed securities collateral with the Lender.

4.14.8. For return of DFM securities collateral by the Lender, the Lender will instruct its Lending Agent to move DFM listed securities collateral from the Lender’s depository account to the Borrower’s depository account.

4.14.9. DFM will prescribe a fee for movement of collateral and the fee will be paid by either the Lender or the Borrower. Details of the fee will be announced later.
4.14.10. During the lifespan of the loan, movement of any DFM listed securities collateral between Lender and Borrower via Lending Agents and Borrowing Agents for collateral replacement will be permitted.

4.15. Return/Recall of Loans

4.15.1. Partial return/recall of loans will be permitted subject to availability of the quantity of loaned securities in Borrower’s account. This means that the quantity of securities to be moved back from the Borrower to the Lender depends on the quantity of securities in the Borrower’s account.

4.15.2. DFM will act on return/recall instructions on the date of receipt of instructions from the Lending or Borrowing Agent within the prescribed cut-off timings to be notified in due course.

4.16. Sell of Loaned Securities by Lender

4.16.1. Lenders will be able to sell loaned securities without having to recall the loan first and ensure re-delivery of loaned securities into the Lender’s depository account.

4.16.2. The quantity of loaned securities will be eligible for sell order pre-validation but NOT eligible for settlement of the sell trade.

4.16.3. A Lender must ensure that there are sufficient Owned balances to settle a sell trade notwithstanding that the sell order had been successfully pre-validated.

4.16.4. Where a Lender is recalling a loan to settle a trade, the Lender must be aware of the DFM cut-off times as may be issued in the DFM procedures from time to time. Further details will be provided later.

4.17. Foreign Ownership Limit [“FOL”]

4.17.1. All listed securities have an FOL of a maximum of 49% but the FOL can be less than 49% depending on each DFM listed company.
4.17.2. Foreign Lenders will retain FOL entitlements for quantity of loaned securities provided the SLB Agreement contains a specific clause for the foreign Lender to recall the loan.

4.17.3. The quantity of loaned securities will be included for calculation of FOL because the Lender retains beneficial ownership to the loaned securities. This is also necessary to ensure that a return of loaned securities to the foreign Lender is possible if the FOL is full.

4.18. Corporate Actions [CAs]

4.18.1. DFM will adjust the outstanding loan quantity for mandatory securities-type of CA like splits, consolidation and bonus issues.

4.18.2. DFM will facilitate free-of-payment transfers of non-mandatory securities type of CA between Lender and Borrower.

4.18.3. Cash-type of CA/rights issue will be handled directly between Lender and Borrower either onshore or offshore.

4.19. Impact of a Suspension in Market Trading on Loan Requests

4.19.1. A suspension in trading of a security will not impact loan requests.

4.19.2. SLB activities will also not be suspended.

4.20. Delisting, Compulsory Takeover and Exchange of Securities

4.20.1. DFM will initiate a mandatory recall of the loan before the effective date of the delisting, compulsory takeover or exchange of securities event. Notice to this effect will be given to the respective Lending and Borrowing Agents at least 2 settlement cycles in advance for the Borrower to make the necessary return arrangements.

4.20.2. Where this is not possible if Borrower has no securities, DFM will maintain the loan until the Lender and Borrower settle the loan transaction.
4.21. Cancellation of Loan

4.21.1. Loans may be cancelled without the return of the loaned securities to the Lender under limited circumstances subject to approval by DFM based on the following criteria:

4.21.1.1. Evidence that Borrower is bankrupt or insolvent and Lender has exercised a set-off for the loan;

4.21.1.2. Lender has exercised a cash compensation for a valid reason such as Borrower unable to return securities due to securities being illiquid or Lender unable to accept return due to regulatory limitations.

4.21.2. DFM may also cancel a loan transaction and compel the Borrower to return loaned securities to the Lender upon receipt of a regulatory directive or a written law.

4.22. Suspension of Lender or Borrower from New Loan Transactions

4.22.1. DFM reserves the right to suspend the Lender or Borrower from SLB for breach of SLB regulations or upon receipt of a regulatory directive.

4.22.2. This means that DFM will not approve new loan transactions from the Lending/Borrowing Agents.

4.22.3. Only requests to wind-down existing outstanding loan transactions will be accepted.

5. Restricted Transfers of Borrowed Securities

5.1. Transfers of borrowed securities are restricted as follows:

5.1.1. An outward transfer of borrowed securities is prohibited except for the following reasons:

5.1.1.1. Transfers to a Trustee of an ETF for the creation/redemption of ETFs;
5.1.2. An inward transfer of securities is permitted for the return of borrowed securities.

6. Settlement of Short Sell Trades

6.1. The designated SLB account [if implemented] will be tagged to the designated trading account to be used for market making short sells.

6.2. Clearing members settling a market making trade must ensure that borrowed securities are available by T+2 10.15am in the designated SLB Account for settlement of any market making short sell trades.

6.3. If borrowed securities are available, the short sell market making trades will settle like normal sell trades. Where borrowed securities are unavailable, the short sell market making trades will fail to settle.

6.4. Failed trades will have to be resolved by T+4 failing which a mandatory buy-in by DFM will commence. More details on when and how a failed trade can be resolved will be issued later.

*** END ***
APPENDIX 1 – SLB Process Flow Explanation
1. Parties to SLB

The following diagram shows the main parties in the DFM SLB model:

- Lender [NIN Investor]
- Lending Agent [Local Custodian/Local Broker]
- CSD
- Borrowing Agent [Local Custodian/Local Broker]
- Borrower [NIN Investor] Eg. Prime Broker, Market Maker
- Agent Lender [International Custodians or 3rd party agent lenders]

DFM CSD related activities

- Lender and Borrower must be DFM investors having DFM Investor Numbers [NINs].
- Lending Agent [LA] and Borrowing Agent [BA] are DFM custodian and/or DFM broker members.
1. Parties in the DFM SLB Model

2. Role of the CSD:
   a. CSD is the central securities depository of DFM or DFM CSD. DFM CSD match and settle SLB transactions by moving loaned securities between Lender and Borrower on a free-of-payment (FOP) basis.
   b. Record all SLB transactions.
   c. Adjust quantity of outstanding loans for mandatory securities type of corporate actions.
   d. Transfer collateral which are DFM-listed securities on an FOP basis.
   e. In this model, the CSD is not a counterparty to SLB transactions.

3. Role of Lending Agent[LA] / Borrowing Agent[BA]
   a. Both roles are limited to local sub-custodians, local brokers or any companies as may be approved by the local regulator, SCA.
   b. The LA/BA instruct the CSD to move loaned securities and any applicable collateral which are DFM-listed securities based on instructions from Lender and Borrower.
Overview of the DFM SLB Model

1. **SLB Setup (Non CSD-related processes)**
   i. Lender directly (or via Agent Lender) and Borrower agree on SLB Master Agreement, terms & conditions.
   ii. Once SLB Master Agreement in place, Lender/Agent Lender and Borrower will create loan transactions using proprietary systems.
   iii. Borrower lodge collateral with Lender/Agent Lender directly. [unless collateral is DFM-listed securities]
   iv. Payment of lending fees and corp. actions handled directly between Agent Lender and Borrower except for mandatory securities type of CA which DFM CSD will adjust loan quantity.

2. **Movement of Loaned Securities & DFM-listed securities collateral (CSD-related processes)**
   1. Lender/Agent Lender and Borrower must use Lending Agent [LA]/Borrowing Agent [BA] for any movement of loaned securities and collateral which are DFM-listed securities.
   2. Borrower will approach BA to submit loan request & request to move any collateral which are DFM-listed securities.
   3. Lender [either directly or indirectly through Agent Lender] will approach LA to submit loan request to DFM.
   4. DFM CSD to match and settle the loan request from LA/BA of Lender and Borrower. Loaned securities will be transferred from Lender to Borrower [for loan creation] or from Borrower to Lender [for loan recall / loan return] on the date the requests are submitted to DFM.

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Securities Lending and Borrowing

3 SLB Agreement

Lend Side

LENDER [Beneficial Owner]

AGENT LENDER

Eg. Global Custodian/3rd party agent lenders

International SLB Agreement

- GMSLA/OSLA – international agreements
- USMSLA – US agreement

Borrow Side

BORROWER

Eg. Prime Brokers, Market Makers

a. This is a once-off process; can happen between lenders and borrowers either offshore to offshore [ie. outside UAE], offshore to onshore, onshore to offshore or onshore to onshore.

b. Standard international agreements - OSLA / GMSLA / USMSLA are acceptable where all parties are offshore. If any party is onshore, part[d] applies.

c. Borrower to lodge a copy of SLB Agreement with the CSD.

d. All onshore SLB activities must be arranged by LAs/BAs and the SLB Agreement must comply with the local regulations on SLB agreement.
Locate Confirmation Process

- **Lend Side**
  - LENDER [500,000 Emaar shares]
  - Processes not under control of CSD

- **Borrow Side**
  - BORROWER [eg. Prime Brokers [500,000 Emaar shares]]

- **Loan Confirmation**
  - eg. SLHK Bloomberg Message

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a) The Locate Confirmation process is not a loan transaction; it is merely a process where the Borrower locates availability of securities to borrow.

b) Borrowers are permitted to conduct any regulated short selling based on Locate Confirmations. Information on regulated short selling will be issued separately.

c) DFM CSD is not involved in the loan confirmation process of SLB.
1. SLB loan txns requests may be submitted by LAs/IBs for the following:
   
   i. **Loan creation** – creation of lend and borrow transaction between Lender directly or via Agent Lender and Borrower.
   
   ii. **Loan recall** - Lender/Agent Lender asking for return of loaned securities back from the Borrower before end of loan tenor.
   
   iii. **Loan return** – a return of loaned securities by the Borrower before or at the end of the loan tenor.

2. Loan settlement – collateral (for non-DFM listed securities)
   
   i. Movement is offshore.
   
   ii. If collateral is DFM-listed securities, movement may be requested by LAs/IBs for Borrower and Lender/Agent Lender via FOP transfer.

3. Loan settlement – securities
   
   FOP movement of loaned securities either from Lender to Borrower or from Borrower to Lender depending on the type of loan transaction.
Securities Lending and Borrowing

[1] General Procedures

[2] SLB Rules

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1. Borrower and Lender agree loan transaction on loan Trade Date. Quantity, type of loaned security, duration and loan settlement date agreed.

2. On or before loan Settlement Date, Borrower posts collateral to Lender; this event happens outside UAE for non-DFM-listed securities collateral. For UAE cash, collateral is moved through the UAE financial system.

3. For collateral which is DFM-listed securities, Borrower will instruct its BA to transfer collateral securities from the Borrower’s account with the BA to the Lender/Agent. Lender/Agent’s account with its LA. DFM CSD will process collateral movement as FOP transfer.

4. Lender will instruct LA to move loaned securities upon receipt of collateral.

5. LA for Lender moves loaned securities, and if collateral is DFM-listed securities, against collateral receipt. BA to instruct DFM CSD borrow loan to receive loaned securities. Loaned securities is moved by DFM CSD to the Borrower’s account.
   i. Loaned securities will be debited from Lender’s account but kept as “Available” so that Lender can sell loaned securities balances.
   ii. Foreign lender will have Foreign Ownership entitlement of loaned securities quantity protected.

6. BA for Borrower confirms to Borrower receipt of loaned securities and delivery of collateral, if applicable. Loan creation transaction is completed.

7. LA confirms to Lender securities loaned [and receipt of collateral, if applicable].
Securities Lending and Borrowing

[1] General Procedures
[2] SLB Rules

1. Lender can recall a loan at any time (according to Market cut-off deadlines) unless loan is a term loan. Borrower may return loaned securities any time.

2. Borrower may instruct its BA to place a loan return request to the CSD SLB System & recall local securities collateral of Lender may recall loan.

3. DFM CSD will move loaned securities from the Borrower’s account with the BA to the Lender’s account with its LA on the day the return instruction is received from the Borrower’s BA or recall instruction received from Lender’s LA.

4. LA for Lender will instruct CSD to move DFM-listed securities collateral from the Lender’s account with its LA back to the account of the Borrower with the BA.

5. LA for Lender will confirm to Lender receipt of the loaned securities against release of any DFM listed securities collateral if applicable.

6. For non-DFM listed securities collateral, Lender moves collateral securities back to the Borrower against receipt of loaned securities.

7. BA confirms to Borrower receipt of collateral securities for delivery of securities for loan recall/return.

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APPENDIX 2 – SLB Rules

SECURITIES LENDING AND BORROWING RULES
APPENDIX 2 – SCA Board Decision No. 47 of 2012 Concerning The Regulations As To Lending And Borrowing Securities

The Chairman of the Board of Directors of the Securities and Commodities Authority, having perused

The Federal Law No. (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, as amended;

The Federal Decree No. (18) of 2009 concerning the Formation of the Council of Ministers of the United Arab Emirates;

The Council of Ministers’ Resolution No. (108/7 and 5) of 2010 concerning the Restructuring of the Board of Directors of the Securities and Commodities Authority;

The SCA Board Decision No. (1) of 2000 concerning the Regulations as to Brokers, as amended;

The SCA Board Decision No. (2) of 2001 concerning the Regulations as to Trading, Clearing, Settlement, Transfer Of Ownership And Custody Of Securities, as amended;

The SCA Board Decision No. (3) of 2001 concerning the Regulations as to the Market Functioning, as amended;

The SCA Board Decision No. (29 / r) of 2009 concerning the Regulation as to Safe Custody of Securities;

The SCA Board Decision No. (17) of 2011 concerning the Regulations as to the Settlement System on the Basis of Delivery Versus Payment (DVP), as amended;

The SCA Board Decision No. (46) of 2012 concerning the Regulation as to Market Maker;
Based on the approval of the Board of Directors at its 13th meeting of the Fourth Term held on 02/08/2012, and

After consultation and coordination with the Markets, and as required for the public interest,

Has decided as follows:

**Article (1)**

**Definitions**

The following words and expressions shall have the meanings ascribed thereto below unless the context indicates otherwise:

**State/ UAE:** United Arab Emirates.

**Authority/SCA:** The Securities and Commodities Authority.

**Board:** The Board of Directors of the Securities and Commodities Authority.

**Market:** The Securities and Commodities Market licensed in the State by the Authority.

**Clearing Entity:** The entity conducting settlement operations and issuing orders for the payment of funds due to clients in the Market.

**Securities:** Shares, bonds and notes issued by joint stock companies, bonds and notes issued by the Federal Government or local governments, public authorities and public institutions in the State, as well as any other local or non-local financial instruments accepted by the Authority.

**Market Making:** The activity which mainly depends on providing continuous prices for the purchase and sale of certain securities to increase the liquidity of such securities in accordance with the market maker regulations.

**Market Maker:** The corporate person licensed to practice the activity of market making or the foreign market maker registered with the Market.
Securities Lending and Borrowing: A contract under which the ownership of securities is temporarily transferred from one party (the lender) to another (the borrower). The borrower is committed to return them at the request of the lender at any time during the agreed period or at the end of that period unless agreed otherwise.

Lending and Borrowing Agent: A corporate person authorized by the Authority to conduct securities lending and borrowing transactions for himself or on behalf of others.

Lending Agent: A lending and borrowing agent authorized to conduct securities lending transactions on behalf of others.

Borrowing Agent: A lending and borrowing agent authorized to conduct securities borrowing transactions on behalf of others.

Article (2)

Obtaining SCA Approval

Other than a “Clearing” entity, no person may act as an agent for securities lending and borrowing transactions prior to obtaining SCA approval which shall be subject to annual renewal.

Article (3)

Conditions for the Lending and Borrowing Agent

(I) The “Clearing entity” may carry out the functions of the lending and borrowing agent in accordance with the provisions of these Regulations.

(II) It is permissible for the following corporate persons to practice the agency of lending and borrowing after the approval of SCA in accordance with the conditions set forth in item (III) of this Article:

1. A custodian licensed by SCA.

2. Local banks, branches of foreign banks and investment companies licensed by the UAE Central Bank.

3. Companies operating in the field of securities in accordance with the controls preventing conflict in the activities as set by SCA.
(III) In order to obtain SCA approval to conduct lending and borrowing activity, a lending and borrowing agency must submit the following documents to the Authority:

1. Proof demonstrating the availability of qualified staff including technical and organizational resources needed for the activity as well as risk management procedures.

2. Evidence of Capital Adequacy.

3. A proficient technical system and platform to process information and evidence of the existence of electronic linking between the company and the market for follow-up and control.

4. A record and book keeping system containing the names of clients and transactions performed, contracts signed, commissions and fees collected.

5. Internal control and financial auditing systems and controls including a certificate from the company auditor confirming that the accounting system ensures compliance with the requirements of operations to be practiced.

Article (4)

Approval Procedures to Practice as a Lending and Borrowing Agent

1. An application shall be submitted to SCA for prior approval to practice securities lending and borrowing using the form prepared for this purpose and enclosing the documents, data and information that support the application. SCA may request any other clarifications, information and documents if necessary.

2. The applicant shall pay the fees prescribed by SCA.

3. SCA shall decide on the application within thirty days from the date of submission of the complete application.

4. A register shall be kept by the Authority in which SCA approved lending and borrowing agents shall be recorded.

5. The Approval shall be valid for a period of one year ending at the end of December each year. The period of the first approval shall be from the date of granting the approval.
until the end of December of the same year. The fee due on such first approval shall be collected proportionally for approval period to the year, with any part of a month calculated as a full month.

6. Renewing the approval shall be by an application submitted before the end of November of each year against the renewal fee prescribed by SCA. The renewal application shall be considered by SCA based on the performance of the lending and borrowing agent and its compliance with the provisions of applicable laws, regulations and rules.

**Article (5)**

**Methods of Lending and Borrowing Securities**

(I) Lending and borrowing of securities shall be made in one of the following methods:

1. The clearing house is the second party to the lending and borrowing operations.
2. Through lending and borrowing agents for both the lender and the borrower.

(II) The Market shall set the terms, procedures and controls to regulate each method, and may use one or both methods.

**Article (6)**

**Scope of Lending and Borrowing Securities**

(I) Any investor may lend securities owned by him.

(II) The borrowing of securities may be made in the following cases:

1. A market maker to practice market making.
2. Failure to deliver sold securities in the settlement date.
3. Any other cases approved by the Authority.
Article (7)

Securities Subject of Lending and Borrowing

1. The market shall determine the securities that are allowed for lending and borrowing.

2. Subject to clause (1) herein, it is not permissible to lend securities under mortgage in accordance with the market procedures or those subject to lien in accordance with the laws and regulations in force in the State; or securities purchased by margin trading and any other cases as determined by the market.

Article (8)

Lending and Borrowing Agreement

(I) Subject to the provision of clause (I. 1) of Article (5) of these Regulations, an agreement to lend securities shall be signed between the lender and the borrower and shall at least include the following:

- The name of the lender and his agent, if any.
- The name of the borrower and his agent, if any.
- The name and code of the securities to be lent.
- The value of the security/securities to be lent.
- Securities lending period, and the right of the lender to redeem the securities during that period and to decide the method thereof.
- Determining the type and amount of guaranty in accordance with the provisions of these Regulations.
- Determining the fees and commissions payable to the agents of the lender and the borrower.
- The acceptable limits for the reduction in the guaranty amount that do not to exceed (5%).
- The necessary procedures to replace or increase the guaranty and clearly indicate the rights of the involved parties.

- The necessary procedures to redeem the securities if the required securities cannot be delivered.

- Identifying cases of non-fulfillment of the obligations, rights and liabilities of the other party.

- The necessary procedures to deliver or cash the guaranty and keeping the margin when the daily re-assessment shows substantial change in the value.

- How to distribute dividends and other material rights related to borrowed securities and guaranties.

(II) Exceptional to the provision of clause (I) herein, a general agreement between the lender and the borrower may be signed to govern securities lending transactions between them without including the detailed data of such transactions, provided that each transaction is separately executed under orders including the detailed data.

Article (9)

Guaranty Provisions

(I) The guaranty provided to borrow securities shall be in any of the following methods:

1. Cash guaranty of no less than (105%) of the value of the borrowed securities.

2. Unconditional bank guaranty issued by a bank and payable on demand of at least (105%) of the value of the borrowed securities. If the lender is a natural person and resident in the State, the bank guaranty must be issued by one of the banks operating in the State.

3. Securities owned by the borrower with a market value not less than (110%) of the value of the borrowed securities. If the lender is a natural person and resident in the State, the securities must be listed on the Market.

(II) A cash guaranty shall be retained by the lender agent. The securities provided as collateral shall be kept with the clearing house.
(III) The lender’s agent shall re-calculate the value of the security on daily basis as per the market value of securities (closing price).

(IV) The lender’s agent shall request an increase of the guaranty from the borrower’s agent to if it falls below the percentage specified in the agreement. The guaranty shall be increased no later than two business days from the date of the request.

(V) The lender agent or clearing house, as the case may be, shall liquidate the guaranty if the borrower’s agent failed to provide the additional guaranty in a timely manner, provided that the liquidation shall be made on the next day after the expiry of the specified period in item (IV) herein.

(VI) The lender’s agent shall notify the clearing house upon liquidation of the guaranty.

**Article (10)**

**Obligations of the Lending and Borrowing Agents**

The lending and borrowing agent shall comply with the following:

1. Prior to executing a transaction, to have an authorization from the client allowing him to perform the securities lending and borrowing transactions.

2. To record the borrowing and lending operations of its customers and their instructions, as well as the volume of transactions made, guaranties provided, and all commissions and fees.

3. To issue a written or electronic confirmation to the customer to notify him of the transactions that have been executed on the same day.

4. To send regular reports to customers, and upon request of a customer, to explain the lending and borrowing transactions that have been executed, and information regarding follow-up of the guaranty value.

5. To retain the records related to lending and borrowing transactions for a minimum period of (10) years, and keep backup copies of such records for the same period.

6. To provide the Authority or the Market with any reports they request within two working days from the date of the request.
7. To inform its clients on the risks of securities lending and borrowing and obtain their signatures to that effect.

8. To exert due diligence in performing his tasks.

Article (11)

General Provisions

1. The lender shall have all the material rights relating to the securities to be lent, unless otherwise agreed with the borrower.

2. The lender may sell the securities he has lent before redeeming them. The Market shall set the internal rules and technical regulations.

3. The safe custodian of both parties must be notified (if they are not parties to the transaction) of any securities lending and borrowing agreement in order to carry out their duties accordingly.

4. The Market shall ensure that the process of lending and borrowing will not result in exceeding the percentage of foreign ownership.

5. The transfer of ownership of securities related to lending and borrowing transactions shall be made in clearing house exceptional to the provision of Article (3) of SCA Board Decision No. (2) of 2001 concerning the Regulations as to Trading, Clearing, Settlement, Transfer of Ownership and Safe -Custody of Securities.

Article (12)

Market Bylaws

Subject to SCA approval, the Market shall set internal bylaws that include the procedures and controls for organizing the lending and borrowing transactions.
Article (13)
Fees and Commissions

The Market shall develop a proposal of the fees and commissions on securities lending and borrowing transactions and how to collect them on favor of the Authority, Market and clearing house, provided that it is approved by SCA.

Article (14)
Oversight over the Lending and Borrowing Agents

1. The Authority shall have the right to conduct periodical oversight and inspection, without prior notice, on parties practicing securities lending and borrowing in order to ensure their compliance with SCA laws and regulations and the Market bylaws.

2. The Market shall ensure compliance by the lending or borrowing agent with the provisions of these Regulations and notify SCA of any irregularities occurring in this regard.

3. The Market may impose sanctions on the violations contained in its internal bylaws. The concerned parties may appeal with the Authority against any decision issued by the Market within (30) days from the date of notification thereof.

Article (15)
Arrangements Consistent with the Islamic Law

These Regulations shall apply to any agreement or arrangement that is consistent with the provisions of Islamic law and permits the temporary transfer of ownership of securities from one person to another.

Article (16)
Violations and Penalties

1. SCA may, at its own discretion or upon request from the concerned Market, initiate an investigation with the lending or borrowing agent in any of the following circumstances:
a. Breaching the provisions of the Law, or the regulations, decisions or instructions issued in implementation thereof.

b. Departing from the standards of professional conduct.

c. Abusing the borrowing of securities in contravention to the purposes of these Regulations with a view to circumvent the applicable laws and regulations.

2. If the lending or borrowing agent is proved to have committed the violation attributed to him, the Authority may impose one of the following sanctions:

a. Give a warning to the lending or borrowing agent and compel him to correct the violation within the period specified by SCA.

b. Impose a fine of no more than the maximum limit provided for in the Law and the regulations issued pursuant thereto.

Article (17)
Suspension and Cancellation of Approval

1. SCA may suspend the lending or borrowing agent from practicing the lending and borrowing agency or may cancel the approval in any of the following cases:

a. Losing any of the conditions of the approval set forth in these Regulations.

b. Serious breach of any of the duties or obligations contained in the Law, regulations, decisions or instructions issued in implementation thereof.

c. Failure to pay the renewal fee of the approval or to pay the imposed fines.

d. The passing of a final court judgment declaring the licensed company bankrupt.

e. Wind-up or liquidation of the company.

2. In the event of suspension or cancellation of an approval, the existing lending and borrowing operations and legal positions shall be addressed in accordance with the controls set by SCA.

3. The decision of cancelling the approval shall be published in two daily newspapers issued in the State with at least one in the Arabic language at the company expense.
The company shall be written off from the register of lending and borrowing agents prepared by the Authority for this purpose.

4. The lending or borrowing agent may appeal the decision to suspend or cancel the license issued by the Authority before the competent court within thirty (30) days from the date of notification thereof.

Article (18)

This Decision shall be published in the Official Gazette and shall come into effect from the next day to the date of its publication.

Engineer Sultan Bin Saeed Al Mansouri

Chairman of the Board of Directors

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