

A Study On The Policies And Procedures On Discretionary Trading Of Islamic Securities

Muhammad Affan Bin Ahmad Nadzri

Aishath Muneeza

International Centre for Education in Islamic Finance
muneeza@inceif.org

Submitted : 08th February 2021

Accepted : 06th June 2021

Published : 30th June 2021

Abstract

Discretionary trading is an investment that a stockbroker executes using clients' account which is done without getting specific approval from the client on decision whether to buy or sell the stock holding in the portfolio. The investment is conducted based on the experience and strategies made by the person in charge of the investment. The objective of this research is to study the existing policies and procedures of discretionary trading in the market, determine the shariah compliance of current practice of market discretionary trading, and formulate suitable shariah parameters for discretionary trading of Islamic securities. This research employs qualitative methodology. The finding related for this topic is limited as the researcher is the main findings. From the researcher findings, it is found that the respondents shared almost similar experience, but it is expressed in different ways. Besides, the priority of shariah compliant discretionary trading is highly important to the Muslim investors as it can be alternatives for them to grow their capital and the practice of discretionary trading in each stockbroker is different from the others due to the flexibility of the current guideline. It is anticipated that the findings of research will assist future researcher to develop and formulate better variables for Islamic discretionary trading.

Keywords: *discretionary trading; Islamic investment; policies; regulation.*

1.0 Introduction

On 18 June 2018, one of Capital Markets and Services Representative's License (CMSRL) holder was penalized for breaching of two sections in Capital Markets and Services Act 2007 ("CMSA"). The sections are Sections 65(1)(g)(v) and (l) of the CMSA and Section 356(1)(a) of the CMSA read together with paragraph 7.0(a) of the Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives. His CMSRL license was revoked due to his action for conducting discretionary trading on the accounts of clients without obtaining prior approval from the senior management of his stockbroking company and trading excessively on several of his clients' accounts which generated substantial brokerage income for himself while causing the said client's losses over a four-year period (Securities Commission Malaysia, 2018). In paragraph 7.0(a) of the Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives (Securities Commission Malaysia, 2014), stockbroker can carry out discretionary trading on behalf of their client. However, there is only three rules that the stockbroker must follow which are the dealer's

representative needs to obtain prior approval from the senior management of his stockbroking company when conducting trade, the dealer's representative must maintain record for every transaction, and the dealer's representative must report to their clients on a quarterly basis. This has opened opportunities to the dealer's representative to take advantage of this loophole. Besides, there is no clear guideline on how discretionary trading should be conducted. This shows that there is a need for further improvement on the discretionary trading guideline as there are two issues that can be found from the loophole in the current guideline which are does the action of the CMSRL holder to do the excessive trade and cause losses to the clients is shariah compliance, and the type of stocks that dealer's representative buys and sells, does it shariah compliant stocks.

Discretionary means available to someone by choice, without having to get permission or authority (Cambridge English Dictionary, 2021). Discretionary trading is an investment that a stockbroker made using clients' account and the stockbroker can made the investment without getting approval from the clients on decision that will be made (Rote, 2016). In Malaysia, discretionary trading can be conducted by stockbroker under few conditions which are they must obtain prior approval from senior management of the stockbroker company, maintain a record of discretionary trades carried out on behalf of his customer and must report details of the discretionary transactions to their customers on a quarterly basis (TheStar, 2014). Based on these regulations, dealer's representative of a stockbroking has the power to conduct the trade for the client under paragraph 7.0(a) of the Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives (Securities Commission Malaysia, 2014). However, there rises issue on how the investment is conducted. Moreover, there is no clear guideline to make sure the investment using discretionary trading is shariah compliance. The investment can be either shariah compliance or not shariah compliance.

Besides, shariah parameters towards discretionary trading are yet to be matched for a possible compliant practical application in the current market. However, the guideline of Islamic fund management has been created and are now being used in the Islamic financial industry. The basic structure of the Islamic fund management guideline is the funds invest in shares or units of Shariah-compliant assets (Motani & Sah, 2017). Unlike discretionary trading, there are no standards that have been passed by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). This means that Shariah parameters have not been standardized for the discretionary trading.

The objectives of this research are to: study the existing policies and procedures of discretionary trading in the market; determine the shariah compliance of current practice of market discretionary trading; and formulate suitable shariah parameters for discretionary trading of Islamic securities.

2.0 Literature Review

This section briefly describes about investment in Shariah perspective, discretionary trading which includes definition and features of discretionary trading, stages in discretionary trading, and discussions of potential shariah parameters for discretionary trading.

2.1 Investment from Shariah Perspective

Investment is the increment in the value of assets that have been acquired with the hope that it can produce income to the buyer after period (Chen, 2021). According to Chen (2021), the objective of buying asset for investment is not to consume the good but it is for creating wealth. Investment can be done in many ways. Town (2020) stated that there are five ways individual can invest their money such as in stock market, investment bonds, mutual funds, saving accounts, and physical commodities. He also stated that investing is like shopping at a garage sale as people look for something that they can understand and sell it at a great price. In this research, the focus is on investment in stock market which involves with buying and selling stocks.

In Islam, investment is permissible. Most of investment is allowed but the investment activities must follow and comply with shariah. Investment is prohibited when there are elements such as interest (riba), uncertainty (gharar), and gambling (maysir). In addition, shariah also prevent Muslims from engaging in activities such as alcohol, tobacco, pornography, gambling, and weapon (Principal Islamic Asset Management, n.d.).

Besides, the objective of doing investment can be found in one of the verses in the Holy Quran:

“It is He who made the earth tame for you – so walk among its slopes and eat of His provision – and to Him is the resurrection.” (Al-Mulk:15)

From this verse, it can be concluded that Muslims should strive to seek for income as it is from Allah. The involvement of Muslims in investment is one of the ways to seek for earning awarded by Allah. However, it cannot be the reason for Muslims to deviate from Allah. Choudhury (2016) states that the emergence of Islamic investment as alternative to conventional investment arose from the Islamic investors. He also mentions that the objective of investment for conventional investors is only a way for generating more materialistic profit while Islamic investors perceive investment as an act of worship. Usmani (2007) also suggests that Islamic investing is one of ways to employ the surplus money to earn halal profits with the guidance of Islamic Shariah.

2.2 Discretionary Trading

There are two ways of investment in stock market which are by discretionary trading or system trading. According to Milton (2021), he states that discretionary trading is decision-based trading while system trading is rule-based trading. This means that discretionary trading is an investment that trader made based on current market conditions while system trading is an investment that are made without considering the current market conditions. Besides, discretionary trading also defines as one of trading styles that use technical or fundamental analysis to make decision on whether to enter a position or wait for better conditions (StockTradingTeacher.com, 2016). In Australia, the practice is called Managed Discretionary Trading (MDA). Three main features of MDA are the client will make contributions, the clients' portfolio will be managed by MDA provider at the MDA

provider's discretion which subject to contract, and MDA provider will use the clients' portfolio to generate return (Walker Capital, n.d.).

According to GWM Adviser Services Limited (2021), there are seven key features that need for MDA which are:

1. There must be a person in charge of account. He must assist the investor to manage and review their portfolio on an ongoing basis.
2. Investments and assets must be held in an approved Regulated Platform.
3. The client must establish their investment program by referring to clients' advisor as a consultant. The investment program will be based on clients' income requirements, investment guidelines, and risk strategies. After it is agreed, the clients will rely on their advisor to only make investment decisions within the guidelines set earlier. Any buy and sell transaction can be done without prior discussion or approval from clients.
4. All actions within the investment portfolio must be reported to the clients by sending quarterly consolidated reports and investment valuations.
5. The adviser will provide a review of the appropriateness of entering a new MDA contract at the interval set out in the client's agreement or prior to entering a new MDA contract. The review will consider the clients' needs, goals, and objectives.
6. The MDA service is for the investment transaction approval process on the platform only. It does not relate to contributions or withdrawals from clients' portfolio, and other scenarios which it requires personal advice from the adviser.
7. The client will retain beneficial ownership of the assets.

It is almost the same practice in Malaysia. Bursa Malaysia (2013) states that prior written authorisation from the client and written approval from the authorised person in charge is also needed, every transaction perform under discretionary account must be documented and maintained, and every transaction must be free from conflict of interests. This shows that the practice of discretionary trading is based on the prior agreement and the stockbroker's power to manage the account is only within the agreement.

The concept of discretionary trading is almost the same as portfolio management in the fund management company. The basic stages in the discretionary trading can be found in the portfolio management of fund management company. According to Jeffery and Leviveld (2004), there are four stages that in portfolio management which are ad hoc stage, defined stage, managed stage and synchronized stage. The ad hoc stage is a stage that the company make decisions about the investment that will be made. The defined stage is a stage where the company will identify and document the key components of their portfolio. The managed stage is a stage where the company will distinguish themselves from the components at the defined stage by standardised the investment process to make sure the objective can be met. The synchronized stage is the stage where the company will make sure their current ability able to align investment portfolio with their business strategy. This shows that stages in the portfolio management can be adapted into discretionary trading.

In this research, the stages will be divided into four stages which are account opening stage, execution stage, distribution stage, and reporting stage.

A) Account Opening Stage

Account opening for discretionary trading is almost the same as fund management company. The clients need to sign a contract at the account opening stage. In fund management, the contract is called as Investment Policy Statement (IPS). Ooi (2009) states that IPS will define the purpose of investment with respect to policies, objectives, restrictions, and limitations. He also states that in IPS, the clients' responsibilities as well as the responsibilities of the investment advisor will be listed and this will help them to understand their responsibilities, Saga Select Asset Management Ltd.(n.d.) states that the first stage of the company is definition of objectives which includes the process of understanding the client's specific goals and vision, and to assess clients' risk profile. Therefore, this shows that the agreement or contract in this stage will shape the whole process of discretionary trading.

B) Execution Stage

This stage is where the dealer representatives will execute their trades based on the strategy that has been disclose at the account opening stage. According to Kenton (2020), portfolio managers that handle discretionary trading can enter through a single buy or sell order for multiple clients. He continued, it will benefit investor as it can help the investors to receive better prices for executed trades, they can act on available information quickly and efficiently, and sell the position out of all their accounts in a single transaction which is cost-effective. Besides, the frequency of trade will be based on the dealer representatives' judgement and analysis. The analysis of stocks can be by using fundamental analysis or technical analysis or combination of both analyses. Fundamental analysis is an evaluation used by analyst to measure the financial health of companies while technical analysis is an evaluation that focus on pattern of stock price and statistical parameters (Twin, 2021). Besides, investment analysis is the method that helps investor to make decision on the investment whether it is worth or not (Jha, 2021).

C) Distribution Stage

A stage where the return will be distributed to the clients. In the first stage, the profit-sharing policy is defined. The stockbroker will pay the return based on the agreement. According to Zubair (2008), Islam advises Muslims to be moderate in their way of making profit. He also mentions that Muslims must behave in the right way, only take what is permissible only and practice honesty in transactions. Besides, there is no specific proportion imposed by shariah, but it must be mutual consent (Islami Tijara Magazine, n.d.).

D) Reporting Stage

Reporting is a must for discretionary trading. This can be shown as Securities Commission Malaysia has stated that all transaction must be reported to the client as one of the requirements for discretionary trading, and it must be on quarterly basis (The Star Online, 2019). According to Bursa Malaysia (2013), a Participating Organisation which is a stockbroker requires to provide and implement written procedures for the review of clients and relevant supervisor or authorised person. Besides, this stage also can be called as feedback stage for discretionary trading. Saga Select Asset Management Ltd. (n.d.) divide the stage into two parts which are daily basis monitoring and monthly monitoring. Daily basis monitoring is to make sure appropriate risk is under control while for monthly monitoring is focussing on deciding of optimal asset allocation in the portfolio.

2.2 Potential Shariah Parameters for Discretionary Trading

Based on previous section, it is identified that there are three possible shariah parameters for discretionary trading which are contract, stock selection, and profit sharing.

A) Contract

Contract is a promise or a set of promises that are enforceable at law (Securities Industry Development Corporation, 2016). In Islamic finance, a contract must have three main features which are form of contract, subject matter of contract, and contracting parties (Blossom, n.d.). In discretionary trading, the type of contract practice is *mudarabah*. This is because one of the party acts as a *rab al mal* which provides the capital to another party who act as a *mudharib*. (Yong, Sequerah, Lynn, & Jian-Jie, 2019). Besides, *mudarabah* contract usually classified as Investment Account in Malaysia as it is based on the Investment Account guidelines issued by Bank Negara Malaysia (BNM) in 2014 (Islamic Bankers Resource Centre, 2018).

B) Stocks Selection

Besides, Hua (2018) also mentions that the role of stockbroker is to select stocks for a client to maximise the return on their portfolio while the role of fund manager to pick and choose stocks to make sure the value of fund increases, and it follows the fund's strategy. This shows that the role of stockbroker and fund manager is almost the same. However, the difference is on the consent of how it is conducted. Stockbroker needs to get clients' consent to trade while fund manager does not need the clients' consent to do the trade transactions (Hua, L, 2018). Hua also states that some stockbrokers can do the trade without the clients' consent if it is conducted under Managed Discretionary Account (MDA).

C) Profit Sharing Concept

The prohibition of interest-bearing deposit account has introduced profit-sharing and loss-bearing investment accounts which is based on the concept of *mudarabah*. (Archer & Abdel Karim, 2009). In Islamic finance, when there are two parties enter into a contract,

no party can take benefit from the transaction more than the other party. In addition, the profit is expected when a person invests his capital as a part of the investment contract (UpCounsel, n.d.). Based on the pre-agreed ratio in the contract, both parties will share any profit from the investment, however when there is loss from the investment only the party that provides the capital will incur loss while the other party only loss in his time and energy (Yong, Sequerah, Lynn, & Jian-Jie, 2019).

Discretionary trading status on whether it is shariah compliant or not is not discuss among the shariah practitioners. However, based on the literature review presented in this chapter, it shows that it can be shariah compliant. In the next chapter, the researcher proves the theory with the answers obtained from the interviews.

3.0 Methodology

This research adopts a qualitative approach which explores discretionary trading. The data for the research is collected from primary sources, such as direct interview with dealers from five different stockbrokers that involved directly or indirectly with discretionary trading and two respondents with shariah practitioner's background. The secondary sources for this research will be product disclosure sheets, news, articles, books, and guidelines from Securities Commission Malaysia. The data collected is analysed and reviewed to formulate suitable parameters for discretionary trading to be shariah compliance.

Five dealer representatives from five different stockbroker and two respondents which are Shariah practitioners were interviewed about their opinion on discretionary trading practice in Malaysia. Of these interviewees, none of them have less than three-year experience as dealer while for Shariah practitioner their experiences are more than three-years' experience in industry. All respondents are males, they are all Bumiputra and currently active CMSRL license holder. For Shariah practitioner, both are not CMSRL license holder. Among seven respondents, three of them have experienced in handling case of discretionary trading and for other four, they have knowledge on how it was conducted in their respective stockbroker and area of practice. Besides, both Shariah practitioner are graduates from Securities Industry Development Corporation (SIDC) programme on Islamic Capital Market Graduates Training Scheme (ICMGTS). The ICMGTS is a programme that was jointly developed between Securities Commission Malaysia and SIDC in 2009 which trains participants in strong fundamental knowledge and skills in Islamic capital market by experts in the market. (SIDC, 2021).

4.0 Findings and Discussion

4.1 Basic of Discretionary Trading

This section describes the basic understanding of respondents based on their experience in the industry. It is essential to understand the view of each respective respondents even the results might show similar. This is because it might express in different ways as different stockbroker have different approach on how it operates the discretionary trading. Besides, the views from shariah practitioners' respondents also important as the research needs both

sides of opinion. The following responses shows their basic understanding about discretionary trading:

It is a trading made by third party which is stockbroker with the consent of the account holder. (Respondent No. 2)

Discretionary trading is giving power to a dealer's representative of a stockbroking company to carry out trading on behalf of his customers. (Respondent No. 4)

In my view, discretionary trading is a trading of mutual agreement between two parties which trade decision is based on availability of market information at the time. Trader can decide which trades to make based on current market condition not by using robot. Besides, the trader still follow plan with clearly defined trading rules. (Respondent No. 3)

I think it is an investment decision made by dealer representatives upon agreement made with the investor (Respondent No.8)

One of the respondents also mention that the current market conditions need for discretionary trading as it helps investors to growth their portfolio. Besides, it also can give another alternative to investors to invest their money as they give the power to trade to experts.

Discretionary trading can help investor to growth their portfolio by making return based on the current market condition. (Respondent No. 5)

The person handling the discretionary trading need to follow trading plan with clearly defined trading rules, but they will use their discretion in taking the trade and how it is managed. The investor will give their full authority on their portfolio to the person in charge as per stated in the contract at the inception of the discretionary trading. (Respondent No. 1)

It is an arrangement of contract where investor places their fund to be invested by the expert in industry for the purpose of gaining the profit at the best effort basis and the profit to be distributed based on certain agreed ratio. (Respondent No. 7)

4.2 Structure of Discretionary Trading

This section explains the stages of discretionary trading that have been implemented in respondents' stockbrokers. Most of stages in stockbrokers almost the same. Some has four stages, and some has five stages. All of them begin the discretionary trading with account opening stage first. The procedure for each of them is almost the same. The only difference is some might have different terms in the contract. For Respondent No.6 and No.7, they are not involved directly with the discretionary trading, so they do not have enough knowledge on this matter. However, they understand the process of the discretionary trading.

It is hard for me to comment on this matter as I do not involve directly with discretionary trading (Respondent No. 6)

It is okay for me to give my opinion based on my knowledge for this question as I lack practical experience (Respondent No.7)

Based on two respondents, their company structure has four stage of discretionary trading while the other two respondents have five stage of discretionary trading. Another respondent does not have fixed stage:

My company has four stage of discretionary trading which are definition of the objective stage, asset allocation stage, portfolio construction and balancing stage, and distribution and reporting stage (Respondent No. 4)

In our practice, there is four basic stages which are opening stage, execution stage, distribution stage and reporting stage (Respondent No. 2)

Our company starts the discretionary trading with account opening which the clients will need to sign the contract. Then, it follows with the execution of trade by dealers, portfolio balancing, reporting and profit distribution (Respondent No. 3)

We are practicing the basic stages of portfolio management by referring to fund management company as model for our stages which includes account opening, selection of stock, trading process, reporting and distribution of return (Respondent No. 1)

Our company do not have fixed stage as the discretionary trading is done based on clients' request (Respondent No.5)

One of the respondents also shared his experience on discretionary trading. He explains on the process of discretionary trading at his company.

The process begins when the client signs contract with the stockbroker. Then, it follows with the transfer of fund from the clients to stockbroker. Our company has fixed that the minimum amount for discretionary trading is RM 100,00. After the client deposit their capital, the stockbroker will made stock selection based on the strategy stated in the contract. The selection of stock is based on technical analysis and fundamental analysis which is done by our discretionary trading team. After getting the list of stocks, the dealer representative will execute the order. Every transaction will be recorded and reported to the clients on monthly basis. The return from the investment will be distributed to client using ratio agree in the initial contract. (Respondent No.1)

4.3 Views on Current Practice and Policy of Discretionary Trading

Based on the respondents' responses, it is found that the current practice and policy of discretionary trading is depends on the stockbroker. The stockbroker is flexible to develop

their own style of discretionary trading. All of stockbrokers offer Islamic discretionary trading. The following responses describes how they are implementing the Islamic discretionary trading:

If the clients request for Islamic discretionary trading, we will design suitable strategies to cope with their preferences (Respondent No. 2).

Our company already divide the products into Islamic discretionary trading and conventional discretionary trading. However, the choice is up to the clients which one they want to choose (Respondent No.3).

Islamic discretionary trading is made specifically for Muslim investor usually done by special request. If no request by the clients, we will proceed with normal discretionary trading (Respondent No.5).

For Muslim investor, we will only buy shariah compliant stocks in their portfolio (Respondent No. 4).

It is still very loose. Besides, the guideline is simple and many grey areas (Respondent No.1).

Shariah practitioners' views on current practice and policy of discretionary trading is also obtain. One of them is not sure about the current practice as he does not have knowledge about it. However, he gives his opinion on the current policy imposed by the Securities Commission Malaysia:

I have no knowledge on current practice as there are not enough information about it. However, if I may comment on the current policy done by Securities Commission, it is found that there still room for improvement. This can be done by enhancing the way of the contract between clients and stockbroker. The current policy is too flexible (Respondent No. 6).

The other Shariah practitioner agrees with the current practice and policies for discretionary trading. However, he suggests for improvements:

I agree with the current practice and policies for discretionary trading. However, Securities Commission Malaysia needs to improve the current practice and policy as many new products is created in the market. Therefore, it needs for enhancement on the guideline for discretionary trading.(Respondent No.7).

The researcher also asks respondents' opinion on shariah compliance for current practice and policy for discretionary trading. One of them comment on the issue of no presence of gharar in the contract. Majority of them confidence that they have practiced discretionary trading according to shariah. Below quotations from the respondents:

We are only buying and selling shariah compliance stocks. Therefore, it is shariah compliant (Respondent No. 4).

There is no element of gharar in the contract that we made with clients. Every detail about the procedure for discretionary trading is stated in the contract. Thus, we are sure that our practice is shariah compliant (Respondent No. 1).

Even though, we are only offering Islamic discretionary trading to clients that requested for it, we are confidence that it follows according to the shariah (Respondent No. 5).

The current practice which we divide the Islamic and conventional discretionary trading shows that we are concerned and prepared measures to make sure it is shariah compliant. Besides, for Muslim investor being shariah compliant is obviously important (Respondent No. 3).

I think there should be no issue of non shariah compliance on our current practice for discretionary trading, especially on our contract. There is no hidden clause in our contract. Every detail about the discretionary trading is presented in the contract (Respondent No. 2)

Shariah practitioners agree that it is shariah compliance, but it needs to consider certain aspect in more details:

There are two shariah concepts that can be identified in discretionary trading which are Mudharabah Mutlaqah and Ujrah bil khadamat. Mudharabah Mutlaqah is at the beginning and throughout the contractual term while Ujrah bil khadamat occurs when using dealer representatives' service to buy and sell the securities. These two concepts need to be explored more to make sure the stockbroker is practicing discretionary trading according to shariah (Respondent No. 6).

In my opinion, discretionary trading can become shariah compliant if there is a proper guideline. The existing guideline is too flexible. As we can see, most of stockbrokers have design their own style of discretionary trading which made it different in the way of handling of discretionary trading for each stockbroker. This can cause a confusion to Muslim investors on how discretionary trading should works. Therefore, the current guideline needs some upgrades (Respondent No.7).

4.4 *Potential Shariah Parameters for Discretionary Trading*

This section identifies potential shariah parameters for discretionary trading to be shariah compliant. It is found that most of the respondents agree the need of shariah parameters for discretionary trading to be shariah compliant and some of them suggest that

the contract between investors and stockbroker as one of the parameters. Below are quotations obtain form the respondents:

It is true by having shariah parameters for discretionary trading will make it easier to produce good guideline. Besides, I also suggest that we can layout essential features of the contract between investors and stockbroker. For example, by designing basic features in Islamic contract such as how it will be conducted, what are the fee charged, and how the profit is distributed. This can help the stockbroker to know their limitation and benchmark that need to be meet in producing Islamic discretionary trading (Respondent No. 4).

In my opinion, the initial contract is important as it is the foundation of the discretionary trading. Therefore, it must be following the shariah (Respondent No. 3).

Agreement between the dealer and clients itself must be made very specific to avoid any uncertainties in the agreement (Respondent No. 2).

The other parameter for discretionary trading is on the aspect of profit sharing. One of the respondents agree on this concept to be Shariah parameters and another respondent also said that it must be fair. In addition, profit sharing usually related to mudarabah concept. The other respondent also discussed that the concept of mudarabah is very important and need to be focussed more details for discretionary trading. Below are their views on this parameter:

The way of how company distribute the profit signifies the strength of the company in managing the discretionary trading. However, it must comply with shariah this to prevent the presence of elements that can made the contract void (Respondent No. 5).

Profit sharing also play important role to make the contract fair. This is to make sure both parties can get into win-win situation (Respondent No. 4).

Discretionary trading can use the concept of mudarabah for profit sharing. However, it depends on the underlying shariah contract for investment. If the stockbroker uses restricted mudarabah, the mandate is restricted on certain instrument or portfolio. So, discretionary trading is not allowable. If the stockbroker wants to proceed the investment, they must get approval from investor. If the stockbroker does not want to give approval, the stockbroker needs to return the investment amount. Therefore, the type of mudarabah that the stockbroker wants to implement need to research first whether it fits with the objectives (Respondent No. 7).

One of the respondents also share his company strategies on the profit sharing practiced and the other respondents share his challenges in profit sharing that have been faced:

If there is return from the investment, first 10% profit goes to client. The other balance of profit is shared amount clients and stockbroker on ratio of 70 to 30. If trades are losing trades, only client will lose. Stockbroker will still gain commission regardless. So, in shariah point of view, I am not sure the case of only one side will benefit and the other will take all the monetary risk will make it non-shariah compliant or not (Respondent No. 1).

Sometimes, it is hard to achieve mutual agreement with the client on the profit sharing (Respondent No. 2).

In addition, one of the respondents share his view on the application of concept *mudarabah* in discretionary trading.

There is a possible argument whether dealer representative can entitle to both profit sharing based on certain ratio and fixed fee as the profit under *mudarabah* should not be fixed at the first place. My view, both transactions occur separately and independent from one to another. Under *mudarabah*, specific skills are required to make a good decision in trading. Theoretically, *mudarib* still bears trading fee regardless which dealer representative appointed to conduct the trading. If both parties are agreed, they can appoint the same person to be as *mudarib* as well as dealer representative. However, as the transactions may involve dispute between *mudarib* and capital provider, which is the investor, there should be a strict regulation and supervision by regular to protect interest of the investor (Respondent No. 6).

Another parameter discuss is the stock selection for the discretionary trading. All of respondents agree that it should only selected among the shariah compliance stocks listed by Securities Commission Malaysia. Below are their responses:

The stocks must be shariah compliant first, then it will automatically follow shariah (Respondent No. 6).

Normally, I will look at the status of the stocks whether it is shariah compliance or not before going for fundamental analysis and technical analysis (Respondent No.5).

I will look at their financial reports, again compare with other company in the same industry, how do they compete with their competitors [...]. I will look at their balance sheet, look at their assets, look at their liabilities and so on. But the most important aspect is it must be shariah compliance stocks. (Respondant No.2).

I always prioritise shariah compliance stocks for discretionary trading. However, if an investor is not a Muslim, I may buy non-shariah compliance stocks when it meets the strategy (Respondent No.3).

The easier way to comply with shariah is by buying shariah compliance stocks only in their portfolio (Respondent No.4).

In summary, the result from this study shows evidence that the respondents shared almost similar experience, but it is expressed in different ways. Besides, the priority of shariah compliant for discretionary trading is highly important to the Muslim investors as it can be alternatives for them to grow their capital. Some of them might need help from stockbroker to handle their portfolio due to lack of knowledge in handling their own portfolio. Therefore, discretionary trading might be one of solution to their problem. Based on the interviews it can be concluded that the practice of discretionary trading in each stockbroker is different from the others. This is due to the flexibility of the current guideline. Some stockbrokers face difficulties in practicing it according to shariah due to no proper guideline. Majority of the interviewees mention that the guideline needs to be upgraded. The respondents also suggest on three potential parameters to improve the guideline which are the conditions of the initial contract between investor and stockbroker, the structure of profit sharing between investor and stockbroker, and the selection of stocks in the investors' portfolio. However, the listed potential parameters are not yet tested as there are no prior research about this topic. Therefore, there is a need for continuation of research about this topic in the future to validate these parameters.

5.0 Conclusion

Discretionary trading can be shariah compliant in Malaysia. Even, there is flaw in the current guideline for this practice, based on the results in the previous chapter, it is possible for shariah practice to be implemented. A continuation research must be done to formulate and test suitable parameters for discretionary trading.

According to the first objective, the existing policies and procedures of discretionary trading is varying from each stockbroker. Some of them has different stages for discretionary trading. Even it might differ, it is still following the current practice imposed by the Securities Commission Malaysia which are a need for prior written authorisation from the client and written approval from the authorised person in charge, documentation for every transaction perform under discretionary and free from conflict of interests. Besides, the core for discretionary trading is on its contract. This can be proved as every stages of discretionary trading are depending on the contracts between investors and stockbroker.

For the second objective, by analysing the answer given from each respondent, it has been found that the current practice of discretionary trading in the market can be shariah or non-shariah compliance. This is because it depends on the contract between

investors and stockbroker, and how the process of discretionary trading is conducted. This shows that there are many areas can be observed in the future.

Moreover, for the third objective, after analysing the significant aspect in the discretionary trading, it has been concluded that there are three potential shariah parameters that can be used to determine whether discretionary trading is shariah compliant or not. The parameters are the contract between investor and stockbroker, structure of profit sharing, and stock selection for the portfolio.

The results of this study especially suggested shariah parameters may help the stockbrokers as for, they can design their discretionary trading products to be shariah compliant. And as for the government they can invent better shariah guideline or promote more on discretionary trading to increase the investors' confidence on investing in discretionary trading products in Malaysia in the future. The result can also be used in the future to perform research on discretionary trading.

Bibliography

- Ahmad, N.W., Ripain, N., Noor, N.H.N.M. 2014. Investment in Stock Market: A Review on Islamic Perspectives, E-proceedings of the Conference on Management and Muamalah (CoMM 2014), 26-27 May, Kolej Universiti Islam Antarabangsa Selangor (KUIS), Kajang, Malaysia
- Alam, M.M., Akbar, C.S., Shahriar, S.M., and Elahi, M.M. 2017. The Islamic Shariah Principles for Investment in Stock Market, *Qualitative Research in Financial Markets*, 9(2): 132-146. <http://www.emeraldinsight.com/doi/full/10.1108/QRFM-09-2016-0029>
- Archer, S., & Abdel Karim, R. (2009, September 9). Profit-sharing investment accounts in Islamic banks: Regulatory problems and possible solutions. Retrieved March, 2021, from <https://link.springer.com/article/10.1057/jbr.2009.9#Sec1>
- Blossom. (n.d.). Key Elements of An Islamic Contract. Retrieved March, 2021, from <https://blossomfinance.com/posts/key-elements-of-an-islamic-contract>
- Bursa Malaysia. (2013, April 30). PARTICIPATING ORGANISATIONS' CIRCULAR. Retrieved from https://www.bursamalaysia.com/sites/5bb54be15f36ca0af339077a/assets/5bb55aaf5f36ca0c3028d8b5/Revamp_of_the_Rules_of_Bursa_Malaysia_Securities_Bhd.pdf
- Cambridge English Dictionary. (2021). DISCRETIONARY: Meaning in the Cambridge English Dictionary. Retrieved from <https://dictionary.cambridge.org/dictionary/english/discretionary>
- Capital Markets and Services Act 2007 - Acts. (n.d.). Retrieved from <https://www.sc.com.my/regulation/acts/capital-markets-and-services-act-2007>
- Chen, J. (2021, March 10). Investment Definition. Retrieved March 13, 2021, from <https://www.investopedia.com/terms/i/investment.asp#:~:text=An investment is an asset or item that is purchased,what was originally put in.>
- Corporate Finance Institute. (n.d.). Discretionary Account - Overview, Advantages, and Disadvantages. Retrieved from <https://corporatefinanceinstitute.com/resources/knowledge/trading-investing/discretionary-account/>
- Choudhury, M. A. (2016). *God-conscious Organization and the Islamic Social Economy*: Routledge
- FXCM Team. (2016, March 2). Discretionary Trading. Retrieved January, 2021, from <https://www.fxcm.com/markets/insights/discretionary-trading/>
- Guidelines On Market Conduct And Business Practices For Stockbroking Companies And Licensed Representatives. (2014, November 20). Retrieved from

<https://www.sc.com.my/api/documentms/download.ashx?id=bd9bf31e-004c-475b-a50c-c010a97cb12d>

GWM Adviser Services Limited. (2021, January 21). Investment Concepts - Managed Discretionary Accounts. Retrieved February, 2021, from <https://www.mlc.com.au/content/dam/mlc/documents/pdf/advice/Managed-Discretionary-Accounts-MDA.pdf>

Hasan, Zubair. (2008). Theory of profit from Islamic perspective. University Library of Munich, Germany, MPRA Paper.

Hickman, D. (2017). Discretionary versus Non-Discretionary Investment Accounts. Retrieved from <https://frankowskifirm.com/discretionary-non-discretionary-accounts/>

Hua, L. (2018, July 9). The Differences Between a Fund Manager and a Stock Broker ... Retrieved February, 2021, from <https://fairmontequities.com/difference-between-a-fund-manager-and-a-stock-broker/>

Islami Tijara Magazine. (n.d.). Mudarabah And Musharakh. Retrieved March, 2021, from <http://www.islमितijara.com/finance-in-islam/fiqu-ul-mauamlat/mudarabah-and-musharakh.aspx>

Islamic Bankers Resource Centre. (2018, April 14). Deposits : Mudarabah. Retrieved March, 2021, from <https://islamicbankers.me/islamic-banking-islamic-contracts/deposits-term-deposits/>

Jeffery, M. A., & Leliveld, I. (2004, April 15). Best Practices in IT Portfolio Management. Retrieved from <https://sloanreview.mit.edu/article/best-practices-in-it-portfolio-management/>

Jha, M. (2021, February 20). Investment Analysis - Definition, Examples, Top 4 Types. Retrieved March, 2021, from <https://www.wallstreetmojo.com/investment-analysis/>

Kenton, W. (2020, September 16). Discretionary Investment Management. Retrieved March, 2021, from <https://www.investopedia.com/terms/d/discretionary-investment-management.asp>

Malacca Securities Sdn Bhd. (n.d.). Discretionary Trading Services [Brochure]. Author.

Milton, A. (2021). Are You a Discretionary Trader or a System Trader? Retrieved from <https://www.thebalance.com/discretionary-or-system-trader-1031038>

Motani, H., & Sah, M. (2017, November 10). Islamic Funds: Shariah Structuring And Compliance - Finance and Banking - Malaysia. Retrieved from <https://www.mondaq.com/islamic-finance/645142/islamic-funds-shariah-structuring-and-compliance>

- Murphy, J. J. (1999). *Technical analysis of the financial markets: A comprehensive guide to trading methods and applications*. Paramus, NJ: New York Institute of Finance.
- Nieto, M. (2018). Disclosure requirements for discretionary accounts. Retrieved from <https://www.lexology.com/library/detail.aspx?g=e1320b7b-9fa3-4cea-adcf-71013d273e52>
- Ooi, H. K. (2019, November 30). Why we need an investment policy statement. Retrieved from <https://www.thestar.com.my/business/business-news/2009/10/07/why-we-need-an-investment-policy-statement>
- Principal Islamic Asset Management. (n.d.). Understanding Islamic Investment. Retrieved from <https://www.principalislamic.com/en/understanding-islamic-investment>
- Qu, S. Q. and Dumay, J. (2011) The qualitative research interview, *Qualitative Research in Accounting and Management*, 8, 3, pp. 238-264
- RHBIInvest. (n.d.). Discretionary Financing. Retrieved March, 2021, from <http://www.rhbinvest.com/page/site/public/english/discretionary-financing.html>
- Rosenberg, S. (n.d.). Mechanical trading VS discretionary trading. Retrieved from https://www.streetdirectory.com/travel_guide/144710/trading/mechanical_trading_vs_discretionary_trading.html
- Rote, M. (2016, March 30). Discretionary Trading-What it Means and How to Protect Yourself. Retrieved from <https://www.finra.org/investors/insights/discretionary-trading-what-it-means-and-how-protect-yourself>
- Saga Select Asset Management Ltd. (n.d.). The Investment Management Process. Retrieved March, 2021, from <http://www.sagaselect-am.com/?categoryId=109953&itemId=237421>
- Schmidt, C. (2004) The analysis of semi-structured interviews, in Flick, U., von Kardorff, E. and Steinke (eds.) *A companion to qualitative research*. London: SAGE Publications Ltd, pp. 253-258.
- Securities Commission Malaysia. (2014). Amendment To The Guidelines On Market Conduct And Business Practices For Stockbroking Companies And Licensed Representatives Which Were Issued On 20 November 2014 - Stockbroking. Retrieved from <https://www.sc.com.my/regulation/guidelines/stockbroking/amendment-to-the-guidelines-on-market-conduct-and-business-practices-for-stockbroking-companies-and-licensed-representatives-which-were-issued-on-20-november-2014>
- Securities Commission Malaysia. (2018). Administrative Actions in 2018 - Administrative Actions. Retrieved from <https://www.sc.com.my/regulation/enforcement/actions/administrative-actions/administrative-actions-in-2018>

- Securities Industry Development Corporation. (n.d.). Islamic Capital Market Graduate Training Scheme (ICMGTS) - SIDC - Delivering Professional Excellence. Retrieved February, 2021, from <https://www.sidc.com.my/assess/islamic-capital-market-graduate-training-scheme-icmgt/#our-profile1561113440462>
- StockTradingTeacher.com. (2016, June 14). System Based Trading Gives You Advantages over Discretionary Trading. Retrieved February, 2021, from <https://stocktradingteacher.com/system-based-trading-gives-advantages-discretionary-trading/>
- Thapar, N. (2017). Types of Trading In Stock Market: Algo vs Discretionary. Retrieved from <https://blog.quantinsti.com/algorithmic-trading-vs-discretionary-trading/>
- The Star Online. (2019). SC revises discretionary trades guidelines. Retrieved from <https://www.thestar.com.my/business/business-news/2014/11/21/sc-revises-guidelines/>
- Town, P. (2020). How to Invest Money: A Guide to Grow Your Wealth in 2021: Rule #1... Retrieved from <https://www.ruleoneinvesting.com/blog/how-to-invest/how-to-invest-money/>
- Tracy, P. (2020, August 5). Aggressive Investment Strategy. Retrieved from <https://investinganswers.com/dictionary/a/aggressive-investment-strategy>
- Twin, A. (2021, March 04). Investment Analysis: The Key to Sound Portfolio Management Strategy. Retrieved March, 2021, from <https://www.investopedia.com/terms/i/investment-analysis.asp>
- UpCounsel. (n.d.). Investment Contracts: Everything You Need to Know. Retrieved March, 2021, from <https://www.upcounsel.com/investment-contracts>
- Usmani, M. T. (2007). Principles of Shariah governing Islamic investment funds. Islamic Mutual Funds as Faith-Based Funds in a Socially Responsible Context.
- Walker Capital. (n.d.). The key benefits of a Managed Discretionary Account: Walker Capital. Retrieved February, 2021, from https://www.walkercapital.com.au/managed-discretionary-accounts#_ftn1
- Yong, C. J., Sequerah, F., Lynn, N. C., & Jian-Jie, P. (2019, October 01). Islamic finance contracting concepts in Malaysia. Retrieved March, 2021, from <https://www.lexology.com/library/detail.aspx?g=49c230ba-50c0-4938-bdc1-ba6ed4c0db19Axford>