

Chapter 2

DEFINITIONS

2.01 Unless otherwise defined, all words in these Guidelines shall have the same meaning as defined in the CMSA. In these Guidelines, unless the context otherwise requires:

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| accounting records | includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which financial statements are made up; |
| approved accounting standards | has the meaning assigned to it in the <i>Financial Reporting Act 1997</i> ; |
| ACMF | means the ASEAN Capital Markets Forum; |
| ACMF Retail MoU | means the memorandum of understanding on streamlined authorisation framework for cross-border public offers of ASEAN collective investment schemes; |

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| ACMF Signatory | means the securities regulator of the ASEAN jurisdiction which has signed the ACMF Retail MoU; |
| adviser | means a holder of a CMSL for advising on corporate finance or such other person as may be approved by the SC based on the person's qualification, expertise and experience; |
| ASEAN CIS | means a Qualifying CIS; |
| base currency | means the currency specified in the deed of the fund as the currency in which the fund is denominated; |
| classes of units | means two or more classes of units representing similar interests in the fund's assets; |
| close-ended fund | means a fund with limited number of units in issue and has a limited offer period; |
| CMSA | means the <i>Capital Markets and Services Act 2007</i> ; |
| collective investment scheme (CIS) | means any arrangement where— (a) it is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the |

acquisition, holding, management or disposal of securities, derivatives or any other property (hereinafter referred to as fund's assets) or sums paid out of such profits or income;

- (b) the persons who participate in the arrangements do not have day-to-day control over the management of the fund's assets;
- (c) the contributions from the persons who participate in the arrangements and the profits or income from which payments are made, are pooled; and
- (d) except for physically-backed metal exchange-traded fund (ETF), the fund's assets are managed by an entity who is responsible for the management of the fund's assets and is approved, authorised, or licensed by a securities regulator to conduct fund management activities;

For the purpose of these Guidelines, the definition of CIS does not include business trusts;

controlling
shareholder

means any person who is, or a group of persons who collectively are, entitled to exercise or control the exercise of more than 33% of the voting shares or voting rights in a corporation or who is or are in a position to control the composition of a majority of the board of directors of such corporation;

cooling-off
right

means the right of a unit holder to obtain a refund of the unit holder's investment in the fund, if the unit holder so requests within the cooling-off period;

debt securities

means transferable securities referred to in paragraphs 6.08(b) and (c);

derivative

means a financial derivative instrument or transaction, the value of which depends upon the value of underlying indices or assets such as currencies, securities, commodities or other derivative instruments;

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| eligible market | <p>means an exchange, government securities market or an over-the-counter (OTC) market–</p> <ul style="list-style-type: none">(a) that is regulated by a regulatory authority of that jurisdiction;(b) that is open to the public or to a substantial number of market participants; and(c) on which financial instruments are regularly traded; |
| fair value | <p>means, the price that the fund would reasonably expect to receive upon the current sale of the investment;</p> |
| financial institution | <p>means, if the institution is in Malaysia, licensed bank; licensed investment bank; or licensed Islamic bank; or if the institution is outside Malaysia, any institution that is licensed, registered, approved, or authorised by the relevant banking regulator to provide financial services;</p> |
| financial statements | <p>has the meaning as set out in the approved accounting standards issued or approved by the Malaysian Accounting Standards Board pursuant to the <i>Financial Reporting Act 1997</i>;</p> |
| forward price | <p>means the price of a unit that is the NAV per unit calculated at the next</p> |

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| | valuation point after an instruction or a request is received; |
| fund applicant | means a person who submits an application to subscribe for units in a unit trust fund; |
| fund manager | means a person who undertakes the fund management function, or part thereof, for a unit trust fund and who is either– (a) a holder of a Capital Markets Services Licence for the regulated activity of fund management; or (b) in the case of a company outside Malaysia, a person properly licensed or authorised by the relevant regulator in its home jurisdiction to carry out fund management activities; |
| fund reports | means the annual report and semi-annual report of the unit trust fund, collectively; |
| group of companies | means any company and its related corporations; |
| historical price | means the price of a unit that is the NAV per unit calculated at the |

valuation point before an instruction or request is received;

independent member

in relation to the board of directors of a management company, or the Shariah adviser, means a person who is free of any relationship with the management company, or a controlling shareholder of the management company that would otherwise interfere with the member's exercise of independent judgement. In any case, a period of six months must elapse before a person who was previously connected to the management company, or a controlling shareholder can be deemed to be independent. The following is a non-exhaustive list of persons that would not be considered as an 'independent member':

- (a) In relation to the board of directors of a management company, an officer of the management company but excluding its independent director;
- (b) In relation to a Shariah adviser, an officer of the management company;

- (c) An officer of the trustee of the fund;
- (d) An officer of any body corporate or unincorporated body that has the power to appoint or make recommendations towards the appointment of members of the board of directors of the management company, or the Shariah adviser of the fund;
- (e) A person related to an officer of the management company or trustee of the fund;
- (f) A person representing or seen to be representing the controller of the management company; or
- (g) A person who, within six months prior to his appointment as an independent member, has derived any remuneration or benefit, other than retirement benefit, from the management company or any body corporate or unincorporated body that has the power to appoint or make recommendations towards the appointment of members of the board of directors of the

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| | management company, or the Shariah adviser of the fund; |
| inverse ETF | means an ETF whose aim is to deliver the opposite of the daily performance of the index or benchmark being tracked; |
| investment account | has the meaning assigned to it in the <i>Islamic Financial Services Act 2013</i> ; |
| leveraged ETF | means an ETF whose aim is to deliver multiples of the daily performance of the index or benchmark; |
| licensed bank | has the meaning assigned to it in the <i>Financial Services Act 2013</i> ; |
| licensed investment bank | has the meaning assigned to it in the <i>Financial Services Act 2013</i> ; |
| licensed Islamic bank | has the meaning assigned to it in the <i>Islamic Financial Services Act 2013</i> ; |
| liabilities of the fund | include all amounts payable by the fund, accrued expenses and taxes, and any appropriate provisions for contingencies; |
| major shareholder | means a person who has an interest or interests in one or more voting shares in a company and the nominal amount of that share, or the |

aggregate of the nominal amounts of those shares, is–

- (a) equal to or more than 10% of the aggregate of the nominal amounts of all the voting shares in the company; or
- (b) equal to or more than 5% of the aggregate of the nominal amounts of all the voting shares in the company where such person is the largest shareholder of the company.

For the purpose of this definition, 'interest or interests in one or more voting shares' has the meaning assigned to 'interest in share' in section 8 of the *Companies Act 2016*;

net asset value
(NAV)

means the value of all the fund's assets less the value of all the fund's liabilities at the valuation point;

ordinary
resolution

means a resolution passed by a simple majority of votes validly cast at a meeting of unit holders;

partner

in relation to a director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a

director, chief executive officer or major shareholder of the management company, the management company or trustee, means such person who falls within any of the following categories:

- (a) A person with whom the director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer or major shareholder of the management company, the management company or trustee is in or proposes to enter into partnership with. 'Partnership' for this purpose is given the meaning under section 3 of the *Partnership Act 1961*; and
- (b) A person with whom the director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer or major shareholder of the management company, the

management company or trustee has entered into or proposes to enter into a joint venture, whether incorporated into or not;

person
connected

in relation to a director, chief executive officer or major shareholder of the management company, the management company or trustee, means such person who falls under any of the following categories:

- (a) A family member of the director, chief executive officer or major shareholder of the management company;
- (b) A trustee of a trust, other than a trustee for an employee share scheme or pension scheme, under which the director, chief executive officer or major shareholder of the management company; management company or trustee; or a family member of the director, chief executive officer or major shareholder of the management company, is the sole beneficiary;

- (c) A partner of the director, chief executive officer or major shareholder of the management company; management company or trustee; or a partner of a person connected with that director, chief executive officer or major shareholder of the management company; management company or trustee;
- (d) A person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the direction, instruction or wish of the trustee, management company, or a director, the chief executive officer or a major shareholder of the management company;
- (e) A person in accordance with whose direction, instruction or wish the trustee, management company, or a director, the chief executive officer or a major shareholder of the management company; management company or trustee; is accustomed or is under an obligation, whether formal or informal, to act;

- (f) A body corporate or its directors that is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the trustee, management company, or a director, chief executive officer or a major shareholder of the management company;
- (g) A body corporate or its directors upon whose direction, instruction or wish the trustee, management company, or a director, chief executive officer or a major shareholder of the management company is accustomed or under an obligation, whether formal or informal, to act;
- (h) A body corporate in which the director, chief executive officer or major shareholder of the management company; management company or trustee; or persons connected to him are entitled to exercise or control the exercise of, not less than 15% of the votes attached to the voting shares in the body corporate; or

- (i) A body corporate which is a related corporation;

physically-
backed metal
ETF

means an ETF where the underlying asset comprises of–

- (a) gold bars;
- (b) silver bars;
- (c) platinum plates or ingots;
- (d) palladium plates or ingots; or
- (e) such other metals as may be specified by the SC;

Qualifying CIS

means a unit trust fund–

- (a) constituted or established in Malaysia, which has been authorised by the SC for offer to the public in Malaysia; and
- (b) has been assessed by the SC as suitable, pursuant to the Standards of Qualifying CIS, to apply to a host regulator for cross-border offering to the public in a host jurisdiction pursuant to the ACMF Retail MoU;

Qualifying CIS
Operator

means a management company–

- (a) approved under the CMSA; and
- (b) complies with the Standards of Qualifying CIS;

related party

means:

- (a) The management company of the fund;
- (b) The trustee of the fund;
- (c) A director, chief executive officer or major shareholder of the management company; or
- (d) A person connected with any director, chief executive officer or major shareholder of the management company; or a person connected with the management company or trustee;

repurchase transactions

means 'sale and repurchase transactions' and 'reverse repurchase transactions', collectively.

reverse repurchase transactions

means transactions whereby a fund purchases securities from a counterparty of sale and repurchase transactions and agrees to sell such

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| | securities back at an agreed price in the future; |
| sale and repurchase transactions | means transactions whereby a fund sells its securities to a counterparty of reverse repurchase transactions and agrees to buy such securities back at an agreed price with a financing cost in the future; |
| securities lending | means transactions whereby a fund lends its securities to a counterparty for an agreed rate; |
| SC | means the Securities Commission Malaysia; |
| Shariah adviser | has the meaning assigned to it in the <i>Guidelines on Islamic Capital Market Products and Services</i> ; |
| short-term deposit | means a deposit with a tenure of not more than 12 months; |
| special resolution | means a resolution passed by a majority of not less than $\frac{3}{4}$ of unit holders voting at a meeting of unit holders. |

For the purpose of terminating a fund, a special resolution is passed by a majority in number representing at

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| | least $\frac{3}{4}$ of the value of the units held by unit holders voting at the meeting; |
| Standards of Qualifying CIS | means a set of rules and regulations, as agreed and may be amended from time to time amongst the ACMF Signatories, which applies only to the Qualifying CIS under the ACMF Retail MoU; |
| stock exchange | has the meaning assigned to it in the CMSA, and includes stock exchanges in foreign jurisdictions; |
| total return of the fund | means the sum of the income generated by the fund which is reflected as distribution and the capital gains or loss of the fund which is reflected in the movement in the price of a unit; |
| transferable securities | has the same meaning assigned to it under paragraph 6.08; |
| units in circulation | means units created and fully paid; |
| unit split | refers to where a unit is split into more than one unit subsequently; |
| unit trust fund or fund | has the meaning assigned to 'unit trust scheme' in the CMSA, and |

includes a sub-fund of an umbrella fund;

Calculation of time period

2.02 References to 'days' in these Guidelines will be taken to mean calendar days unless otherwise stated. Furthermore, any time period stated in these Guidelines where no specific method for determining the time period is set out, the period shall start on the day after the day of the event.