

GUIDELINES ON SALES PRACTICES OF UNLISTED CAPITAL MARKET PRODUCTS

SC-GL/SPG-2012 (R3-2019)

1 st Issued : 28 December 2012 Revised : 19 July 2019

GUIDELINES ON SALES PRACTICES OF UNLISTED CAPITAL MARKET PRODUCTS

Effective Date upon 1 st Issuance:	29 March 2013
---	---------------

List of Revisions

Revision Series	Revision Date	Effective Date of Revision	Series Number
1st Revision	18.7.2016	15.8.2016	SC-GL/SPG-2012 (R1-2016)
2nd Revision	19.09.2018	11.10.2018	SC-GL/SPG-2012 (R2-2018)
3rd Revision	19.07.2019	19.07.2019	SC-GL/SPG-2012 (R3-2019)

CONTENTS

	Pages
Part 1	Introduction
	1
Part 2	Treating Investors Fairly
	6
Part 3	Product Highlights Sheet
	9
Part 4	Suitability Assessment
	16
Appendix A	Responsibility Statement and Statement of Disclaimer
	21
Appendix B	Guide on Product Highlights Sheet
	22
Appendix C	Guide on Suitability Assessment Form
	26
Schedule 1	Qualifying Criteria of Sophisticated Investors
	30

PART 1

INTRODUCTION

- 1.01 These Guidelines are issued pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA). These Guidelines shall be referred to as the *Guidelines on Sales Practices of Unlisted Capital Market Products*.
- 1.02 These Guidelines apply to all unlisted capital market products, except the following:
- (a) Shares;
 - (b) Debentures other than corporate bonds, asset-backed securities and structured products; and
 - (c) Over-the-counter (OTC) derivatives contracts entered for hedging purposes.
- 1.03 In relation to the OTC derivatives contract entered for hedging purposes in paragraph 1.02(c) above, such transaction is considered entered for the purposes of hedging where it satisfied the following:
- (a) The product issuer or the product distributor, as the case may be, must be reasonably satisfied that–
 - (i) the basis for hedging is reasonable and effective for the client at the point the transaction is entered into; and
 - (ii) the client understands the risk associated with hedging transaction; and
 - (b) The hedging transaction is conducted within the following parameters:

Motivation	To minimise risk that arises due to an identified underlying exposure. The nature of exposure can either be firmly committed, reasonably behaviourised or anticipatory.
Transaction size	The hedge transaction should be appropriately sized to offset or net off the amount of exposure that the client wishes to hedge without creating a material opposite position.
Transaction tenure	The hedge tenure should not exceed the tenure or timing of the exposure.

- 1.04 The table below provides areas which will be covered by these Guidelines and the outcomes sought to be achieved:

Area	Outcome
Treating Investors Fairly	Fair treatment of investors must be an integral part of the corporate culture of product issuers and product distributors.
Product Highlights Sheet	Clear, concise and effective disclosures must be made to investors to facilitate product comparison and responsible decision-making by investors.
Suitability Assessment	Internal policies and processes must be in place to enable the distributor to have reasonable basis when making a recommendation to an investor to invest in an unlisted capital market product.

- 1.05 While the principles of Treating Investors Fairly will apply in any development and distribution of an unlisted capital market product across all segments of investors, the level of regulation imposed in relation to product highlights sheet and suitability assessment will vary according to the categories of investors.

- 1.06 The table below sets out the applicability of product highlights sheet and suitability assessment requirements on the following categories of investors as set out in **Schedule 1** of these Guidelines:

Category of Investors	Product Highlights Sheet	Suitability Assessment
For corporate bonds and sukuk other than seasoned bonds		
Accredited Investor	✗	✗
High-Net-Worth Entity	✗	✓ (unless opt out)
High-Net-Worth Individual	✗	✓
Retail Investor	✓	✓
For Seasoned Bonds		
Accredited Investor	✗	✗
High-Net-Worth Entity	✗	✓ (unless opt out)

Category of Investors	Product Highlights Sheet	Suitability Assessment
High-Net-Worth Individual	✗	✓
Retail Investor	✗	✓
For all other unlisted capital market products under these Guidelines		
Accredited Investor	✗	✗
High-Net-Worth Entity	✓ (unless opt out)	✓ (unless opt out)
High-Net-Worth Individual	✓	✓
Retail Investor	✓	✓

- 1.07 These Guidelines are in addition to and not in derogation of any other guidelines issued by the Securities Commission Malaysia (SC) or any requirements as provided for under the securities laws.
- 1.08 The Board of Directors (Board) of a product issuer or product distributor is responsible for ensuring that the product issuer or product distributor, as well as its employees and agents comply with these Guidelines.
- 1.09 Any breach or non-compliance with these Guidelines can result in the SC taking any appropriate action under the securities laws. Additionally, if it is in the interest of investors, the SC may also direct the product issuer or product distributor to–
- (a) recall the unlisted capital market product;
 - (b) cease the issuance of the unlisted capital market product; or
 - (c) take any corrective action;
- when there is a breach or non-compliance with these Guidelines.
- 1.10 Further, failure on the part of a licensed person and a registered person to observe these Guidelines will also be taken into account in the fit and proper assessment of a licensed person or a registered person.

Definitions

1.11 Unless otherwise defined, all words used in these Guidelines shall have the same meaning as defined in the CMSA:

disclosure document	means any document that is issued by a product issuer or a product distributor inviting investment in or promoting investment in an unlisted capital market product;
Eligible Issuer	refers to persons who are eligible to issue structured products as specified under the <i>Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework</i> ;
operator	has the same meaning as assigned to it under the <i>Guidelines for the Offering, Marketing and Distributions of Foreign Funds</i> ;
product distributor	means any person who markets and sells an unlisted capital market product, who may or may not be a product issuer;
product issuer	means any person who makes available or issues an unlisted capital market product and includes an Eligible Issuer or an operator;
registered person	means any person specified in the Third Column of Part I Schedule 4 of the CMSA or any person registered with a recognised self-regulatory organisation;
retail investor	means any person who is not a high net-worth individual, a high net-worth entity or an accredited investor as set out in Schedule 1 of these Guidelines;
seasoned bonds	means corporate bonds or sukuk issued under the <i>Guidelines on Seasoned Corporate Bonds and Sukuk</i> ;
sophisticated investor	means any person who falls within any category of investors set out in Schedule 1 of these Guidelines;
suitability assessment	means an assessment carried out by a product distributor in accordance with Part 4 of these Guidelines;

unit trust fund	has the same meaning assigned to the expression “unit trust scheme” under the CMSA and includes a sub-fund of an umbrella fund; and
unlisted capital market product	means a capital market product, whether manufactured or issued in or outside Malaysia that is not listed and traded on the stock exchange, or traded on the derivatives exchange in Malaysia.

Part 2

TREATING INVESTORS FAIRLY

Introduction

- 2.01 Fair treatment of investors must be made an integral component of the business conduct of product issuers and product distributors. A product issuer and a product distributor is expected to give due regard to the interests of investors in the development, marketing and sale of unlisted capital market products.

Product issuer's Board responsibilities

- 2.02 The Board of a product issuer must be responsible in ensuring that the product issuer has in place policies and processes that give due regard to the interests of investors in the development and distribution of unlisted capital market products.
- 2.03 A product issuer's policies and processes must ensure, among others, that–
- (a) an explicit consideration of investor-related issues and implications are incorporated within its product development stage;
 - (b) the product is suitable for the group of investors that it has been developed;
 - (c) fees and charges imposed on the investors are fair;
 - (d) investors are fully informed of the salient features of the unlisted capital market product. Information disclosed to investors must facilitate investors in making an informed investment decision;
 - (e) investors are kept informed of any changes to the salient features of the unlisted capital market product;
 - (f) advertisements and any promotional materials pertaining to unlisted capital market products should not have any information that is false, misleading or contain any material omission;
 - (g) complaints by investors are dealt with in a fair and efficient manner, and investors are informed of their rights to refer their disputes related to capital market products to the Securities Industry Dispute Resolution Center (SIDREC); and
 - (h) where the purchase of an unlisted capital market product is done through a non-face-to-face transaction–
 - (i) investors must be informed that they are investing in the product without a recommendation being made;

- (ii) investors must be provided with an adequate warning that the product is only suitable for investors who have met the product issuer's minimum qualifying criteria; and
- (iii) investors must be provided with relevant product information either through electronic or non-electronic means to enable them to make an informed investment decision.

- 2.04 A product issuer who is also a product distributor must also extend its policies and processes to matters set out in paragraph 2.09 below.
- 2.05 A product issuer who elects to engage a third party to distribute its unlisted capital market product must, at the time of selecting the product distributor, ensure that the product distributor has in place policies and processes as set out in paragraph 2.09 below.
- 2.06 The Board of a product issuer must ensure that the product issuer continuously review its policies and processes to ensure their continued effectiveness.
- 2.07 Paragraphs 2.02, 2.03, 2.04, 2.05 and 2.06 do not apply in relation to seasoned bonds.

Product distributor's Board responsibilities

- 2.08 The Board of a product distributor must be responsible in ensuring that the product distributor has in place policies and processes that give due regard to the interests of investors in the promotion, marketing and sale of unlisted capital market products.
- 2.09 A product distributor's policies and processes must ensure, among others, that—
- (a) sales employees and agents who are involved in the promotion, marketing and sales of an unlisted capital market product act honestly, fairly and professionally at all times including marketing and distribution of an unlisted capital market product to the suitable group of investors that the product has been developed for;

Guidance for sub-paragraph 2.09(a)

These policies and processes must among others, ensure that sales employees and agents who are involved in the promotion, marketing and sale of an unlisted capital market product—

- (a) do not make false or misleading statements to investors; and*
- (b) act in the best interest of investors at all times. Hence, where a product distributor's interest conflicts with the interest of an investor, the investor's interest must prevail.*

- (b) proper record-keeping of suitability assessment and distribution of product highlights sheet to investors are maintained for the purposes of the SC's examination;

- (c) remuneration, fees and commission paid to sales employees and agents do not result in sales employees and agents recommending unsuitable unlisted capital market products to investors;
- (d) investor's information is adequately safeguarded;
- (e) sales employees and agents are continuously trained and knowledgeable in areas relating to the unlisted capital market products being distributed such as the salient features and risk-reward characteristics in order to ensure that investors are being advised properly;
- (f) investors are fully informed of the salient features of the unlisted capital market product. Information disclosed to investors must facilitate investors in making an informed investment decision;
- (g) investors are kept informed of any changes to the salient features of the unlisted capital market product;
- (h) advertisements and any promotional materials pertaining to unlisted capital market products should not have any information that is false, misleading or contain any material omission;
- (i) complaints by investors are dealt with in a fair and efficient manner, and investors are informed of their right to refer their disputes in relation to a capital market product to SIDREC; and
- (j) where the purchase of an unlisted capital market product is done through a non-face-to-face transaction–
 - (i) investors must be informed that they are investing in the product without a recommendation being made;
 - (ii) investors must be provided with an adequate warning that the product is only suitable for investors who have met the product issuer's minimum qualifying criteria; and
 - (iii) investors must be provided with relevant product information either through electronic or non-electronic means to enable them to make an informed investment decision.

2.10 The Board of a product distributor must ensure that the product distributor continuously review its policies and processes to ensure their continued effectiveness.

Part 3

PRODUCT HIGHLIGHTS SHEET

Introduction

- 3.01 Clear, concise and effective disclosure to investors is integral to the investor making an informed investment decision and being responsible for his investment decision.
- 3.02 A product highlights sheet (PHS) is a document that contains clear and concise information of the salient features of the unlisted capital market product. The PHS therefore seeks to facilitate an investor's understanding of the product and also promote competition by enabling product comparisons to be undertaken by an investor.
- 3.03 A PHS must be issued in addition to any other disclosure documents that are required to be issued to investors under the securities laws or any other guidelines issued by the SC.
- 3.04 This Part of the Guidelines sets out the following:
- (a) Content of a PHS;
 - (b) Guidance on preparing a PHS; and
 - (c) Requirements and responsibilities pertaining to the preparation, lodgement and distribution of a PHS.

Content of a PHS

- 3.05 Information contained in a PHS must be clear, concise and effective to make the PHS a reliable source of information to investors. Further, the information must not be false, misleading or contain any material omission.
- 3.06 The PHS should incorporate all the relevant information that investors need to decide on whether to invest in an unlisted capital market product. The PHS must include the following information:
- (a) Date of the issuance of a PHS that must appear on the first page of the PHS;
 - (b) Information on the preparer of the PHS;
 - (c) Brief description of the unlisted capital market product, and for sukuk, a diagram describing the transaction, accompanied by explanatory notes on that diagram;
 - (d) Key features of the unlisted capital market product (e.g. any significant unusual feature of the product, any Shariah principle applicable, issue size, rating, mode of issue, events of default and illustration of best case scenario and worst case scenario, where permitted and applicable);
 - (e) Key risks associated with the unlisted capital market product (e.g. risks that commonly occur or may cause significant losses);
 - (f) All relevant fees, charges and commission including management fees, distribution fees, redemption fees, switching fees and any other substantial fees payable by the investors, and whether they are payable once-off or on a recurring basis;

- (g) Valuations and relevant matters relating to exit from investment. Examples:
 - (i) How often and where valuations will be published;
 - (ii) Duration of cancellation period;
 - (iii) How investors can exit investment within the cancellation period;
 - (iv) Related costs, charges or penalty for early exit or early redemption and the basis for such costs, charges or penalty;
 - (v) Basis or purpose of any costs, charges or penalty deductible or payable in relation to early exit or early redemption; and
 - (vi) In relation to structured products, to disclose how the early redemption amount is determined (including the basis or key factors or parameters taken into consideration in arriving at the amount);
- (h) Contact information to facilitate enquiry or complaints from investors;
- (i) In relation to sukuk issued by a qualified issuer as defined in the *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors*:
 - (i) A diagram describing the transaction, accompanied by explanatory notes on that diagram; and
 - (ii) A summary or extract of the Shariah pronouncement, together with a link to the website where investors may have free access to a copy of the full Shariah pronouncement;
- (j) In relation to a sustainable and responsible investment (SRI) sukuk:
 - (i) Details of the eligible SRI project and, to the extent possible, impact objectives from the eligible SRI project;
 - (ii) A statement that the issuer has complied with the relevant environmental, social and governance standards or recognised best practices relation to the eligible SRI project; and
 - (iii) A summary of the independent expert report required under the *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors*, together with a link to the website where investors may have free access to a copy of the full report;
- (k) In relation to a unit trust fund, information on fund performance which consists of the following:
 - (i) Average total returns of the unit trust fund over–
 - (A) the most recent financial year or since establishment if it is less than one financial year;
 - (B) recent three financial years;
 - (C) recent five financial years; and
 - (D) recent 10 financial years;

- (ii) Annual total return of the unit trust fund for each of the last 10 financial years (or since establishment if it is less than 10 years);
 - (iii) For the purpose of (i) and (ii) above, the basis of calculation and any assumption made in calculating the returns;
 - (iv) For the purpose of (i) and (ii) above, the use of graphs to illustrate the performance of the unit trust fund and comparison with the selected benchmark is highly recommended. There should also be a brief write-up on the fund's performance *vis-à-vis* the stated benchmark. If there has been a change in the benchmark at any point in the last one, three, five and 10 financial years (or since establishment if it is shorter to state the fact and explain the reason for the change;
 - (v) Portfolio turnover ratio and a brief explanation of any significant change on such information for three most recent financial years (or since establishment if it is shorter); and
 - (vi) The unit trust fund's gross and net of tax distribution per unit for the past three financial years, specifying the form by which distributions were made (e.g. cash or units);
- (l) In the case of a structured product, a risk warning statement that appears on the first and last page of a PHS in accordance with the format specified below:

WARNING

THE RETURNS ON YOUR STRUCTURED PRODUCT INVESTMENT WILL BE AFFECTED BY THE PERFORMANCE OF THE UNDERLYING ASSET/ REFERENCE, AND THE RECOVERY OF YOUR PRINCIPAL INVESTMENT MAY BE JEOPARDISED IF YOU MAKE AN EARLY REDEMPTION.

- (m) In the case of a structured product, where the PHS includes past performance information of an underlying reference, a warning statement must provide that the past performance of such underlying reference should not be relied on as indicative of future performance;
- (n) In the case of a unit trust fund, a warning statement reflected in accordance with the format specified below:

YOU SHOULD NOT MAKE PAYMENT IN CASH TO A UNIT TRUST CONSULTANT OR ISSUE A CHEQUE IN THE NAME OF A UNIT TRUST CONSULTANT

- (o) In the case of a unit trust fund, where past performance information of the product is included in the PHS, such information must be accompanied with a warning statement that is reflected in bold in the following manner:

PAST PERFORMANCE OF THE FUND IS NOT AN INDICATION OF ITS FUTURE PERFORMANCE.

- 3.07 While paragraph 3.06 above sets out the minimum information that is expected in a PHS, the PHS should include any other necessary information that will assist investors in making an informed investment decision.
- 3.08 The first page of every PHS must contain the following:
- (a) **Responsibility Statement** – this statement states that the PHS has been reviewed by the Board, authorised committee or persons authorised by the Board of the preparer of PHS; and
 - (b) **Statement of Disclaimer** – this statement states that the SC shall not be held responsible for the issuance of the product or the PHS although a copy of the PHS has been lodged with the SC.
- 3.09 The PHS should also prominently display the following statement:
- “This Product Highlights Sheet only highlights the key features and risks of this unlisted capital market product. Investors are advised to request, read and understand the disclosure documents before deciding to invest.”**
- 3.10 The PHS for all unlisted capital market products other than Islamic capital market products must not exceed **eight** A4 pages. In relation to a PHS for an unlisted Islamic capital market product, it must not exceed **12** A4 pages. Font type and size of not less than Arial 8 must be used.
- 3.11 **Appendix A** to these Guidelines provides guidance as to the information that should be contained in a PHS.

Guidance in preparing a PHS

- 3.12 In preparing a PHS, the preparer of the PHS should take into account:
- (a) **Usage of clear and simple language.** Where the usage of technical terms is unavoidable, the PHS should include a glossary that explains the technical terms;
 - (b) **Presentation of information in a PHS.** Presentation of information in the PHS can influence investors’ reliance on the PHS. In this regard, attention should be given to provide—
 - (i) equal prominence to benefits and risks related to the unlisted capital market product; and
 - (ii) relevant warnings for particular items of information that have been disclosed in a PHS, for example, where a PHS includes past performance information of the product that information must be accompanied with a warning that such information should not be relied on as indicative of future performance.

- 3.13 The use of graphs, charts, tables or numerical explanations are encouraged to promote investors' understanding of the product. Navigational aids, such as table of contents and clear signposting should also be utilised to help investors find information in a PHS more effectively.
- 3.14 Size of the typeface, the layout, the use of colour and graphics, the order in which information is presented as well as the location, should also be considered as all these factors can influence investors' reliance on the PHS.

Incorporation by Reference

- 3.15 To assist in the preparation of a PHS as set out above, a PHS can also include information incorporated by reference.
- 3.16 Information incorporated by reference allows the preparer of the PHS to only provide in the PHS a reference to a source of or link to the information in another document instead of including such information in full in the PHS itself. Information incorporated by reference is only permitted for information that frequently changes or found in publicly available sources.
- 3.17 Where information is incorporated by reference, the PHS must provide sufficient details about the information to enable investors to–
- (a) locate the information;
 - (b) identify the document or part of the document that contains the information; and
 - (c) decide whether or not to read, or obtain a copy of, the information.
- 3.18 Any information that is incorporated by reference in a PHS must be clear, concise and effective and must not be misleading or deceptive.
- 3.19 Product issuers are encouraged to include links to online copies of disclosure documents, educational resources or explanatory material.
- 3.20 All information in paragraph 3.06 above should be clearly disclosed in a PHS and this information must not be made by reference to information in other sources, like websites. However, the following information may be incorporated by reference:
- (a) Ratings; and
 - (b) In relation to the fund performance of a unit trust fund, the basis of calculation and any assumption made in calculating the returns.

Preparation and Lodgement of PHS

- 3.21 A product issuer is required to prepare a PHS. The Board of product issuer shall be responsible for the accuracy of the content of the PHS for the offering, marketing and distribution of an unlisted capital market product.
- 3.22 A PHS must be prepared in either Bahasa Malaysia or English language and a copy thereof should be lodged together with any other product disclosure document or any other document that is required to be submitted to the SC.
- 3.23 Where a PHS is prepared in a language other than Bahasa Malaysia or English, the preparer of the PHS should ensure that—
- (a) the PHS is prepared according to the standards set out in this Part of the Guidelines; and
 - (b) there must be a PHS prepared in either Bahasa Malaysia or English language for lodgement with the SC.
- 3.24 Only upon lodgement of the PHS with the SC, an unlisted capital market product can be promoted, marketed or sold to investors.
- 3.25 The preparer of a PHS must regularly review the PHS to ensure that investors are provided with information that is reliable and up-to-date. In this regard—
- (a) where there is a material change to the content of the PHS in relation to the key features, terms, conditions or risk associated with the product, the PHS must be revised and updated to reflect such material changes;
 - (b) in relation to a unit trust fund, the information on fund performance must be updated to reflect the information of the most recent financial year; and
 - (c) the revised and updated PHS must be lodged with the SC.

Distribution of a PHS

- 3.26 Subject to the applicability of the product highlights sheet requirement in paragraph 1.06—
- (a) a product distributor must inform an investor of his right to receive a PHS;
 - (b) whenever an investor requests for a copy of a PHS, a product distributor must provide such an investor with a PHS; and
 - (c) a PHS, either a hardcopy version or an electronic version, must be provided to the investor before he makes an investment decision. However, a hardcopy version of the PHS must be given to an investor upon a request from such an investor.
- 3.27 The investor must be given reasonable time to read and understand the PHS.

- 3.28 Advertisements and promotional materials regarding an unlisted capital market product, whether prepared by a product issuer or product distributor must, where applicable, inform investors that –
- (a) a PHS is available and that investors have the right to request for a PHS; and
 - (b) the PHS and any other product disclosure document should be read and understood before making any investment decision.
- 3.29 Where an issuer or a distributor of an unlisted capital market product is required by Bank Negara Malaysia pursuant to its laws to prepare and distribute a product disclosure sheet (PDS), the issuer and product distributor must make available the PDS to the SC upon request for purposes of the SC's examination.

Part 4

SUITABILITY ASSESSMENT

Introduction

- 4.01 As part of a product distributor's duty to act honestly, fairly and professionally, a product distributor must undertake a suitability assessment before recommending an unlisted capital market product to an investor.
- 4.02 A suitability assessment refers to an exercise carried out by a product distributor. This exercise would entail the product distributor gathering necessary information from the investor in order to form a reasonable basis for his recommendation.
- 4.03 A product distributor is considered to have a reasonable basis in making a recommendation when a product distributor has–
- (a) taken all practicable measures to ascertain that the information possessed and relied upon concerning investor's investment objectives, financial situation and particular needs are accurate and complete; and
 - (b) given consideration and conducted a thorough review of the subject matter of the recommendation as may be reasonable in the circumstances.
- 4.04 This Part of the Guidelines sets out the processes, procedures and record-keeping requirements that must be complied with by a product distributor when making a recommendation to an investor in respect of an unlisted capital market product.

When to conduct suitability assessment

- 4.05 A product distributor must conduct a suitability assessment on an investor who wishes to invest in a new unlisted capital market product.
- 4.06 A suitability assessment need not be conducted where–
- (a) the investor is a high net-worth entity that has opted out from being subjected to a suitability assessment;
 - (b) it is an execution-only transaction when no recommendation is made;
 - (c) an investor tops-up his investment in an existing unlisted capital market product with the same product distributor who has previously conducted a suitability assessment on the investor; or
 - (d) a product distributor has conducted a suitability assessment on an investor and recommended to the investor a range of products that takes into account the investor's risk profile and the investor then seeks to invest in a product which is within the range of products that has been recommended.

4.07 Where paragraph 4.06(c) or (d) applies, the product distributor must have in place a process which would enable the investor to acknowledge that there has been no material change in the information obtained from the previous suitability assessment.

Private Retirement Schemes

4.08 In the case of a private retirement scheme, in addition to paragraphs 4.06 to 4.07 above, a suitability assessment need not be conducted on–

- (a) an investor who does not select a fund within a scheme and therefore a fund is chosen for the investor by way of default;
- (b) an investor who switches to a fund within the default option based on his age category;
- (c) an employer which channels contributions for the employees; or
- (d) an investor who transfers accrued benefits from a private retirement scheme provider to an existing private retirement scheme account of another private retirement scheme provider.

Suitability assessment processes

4.09 A suitability assessment exercise comprises the following stages:

Stage 1	Gathering information pertaining to an investor
Stage 2	Analysing information gathered
Stage 3	Matching a suitable product to meet an investor's risk profile and needs
Stage 4	Making a recommendation

Stage 1: Information to be gathered for suitability assessment

4.10 Central to the suitability assessment conducted by a product distributor is the gathering of necessary information pertaining to an investor.

4.11 Prior to gathering the investor's information, the product distributor must inform the investor that any misleading, inaccurate or incomplete information provided by the investor will affect the outcome of the recommendation made. In such a case, the product distributor may not be held liable for such recommendation.

4.12 Information gathered from an investor can be categorised into the following three categories:

Category of Information	Outcomes
(a) Know-Your-Investor	<p>The product distributor must gather sufficient information which would enable the product distributor to have sufficient background information on the investor.</p> <p>This information may include, among other things, the investor's age, annual income and number of dependents.</p>
(b) Investor's Risk Profile and Needs	<p>The product distributor must gather sufficient information on the investor's investment objectives, financial situation, risk profile and current portfolio.</p> <p>By gathering this information, a product distributor should be able to determine the investor's risk profile and needs.</p>
(c) Investor's Investment Knowledge	<p>The product distributor must gather sufficient information on the investor's educational qualification, training, work experience and investment experience.</p> <p>The investor's knowledge and experience should demonstrate that he has sufficient understanding of the features and risk associated with the product recommended.</p> <p>A product distributor should be comfortable with an investor's level of knowledge.</p> <p>The required level of knowledge or experience possessed by the investor should correspond to the complexity of the product.</p>

Guidance for paragraph 4.12(c)

Investor's investment knowledge

1. *In the case of complex investment products such as structured products, asset-backed securities, investment-linked to derivatives, etc., an investor should possess a diploma or higher qualification in the relevant field, for example, finance, economics, actuarial sciences, etc., or having work or investment experience to demonstrate that he has a sufficient understanding of the features and risk associated with investing in such products.*
2. *In the case of a low-risk unlisted capital market product such as generic unit trust funds, it is not expected that an investor should possess similar qualification or experience as required in a complex investment product. However, a product distributor has to be satisfied that the investor appreciates the features and risks associated with investing in such products.*

Stage 2: Analysing Information Gathered

- 4.13 Upon gathering the information specified in paragraph 4.12 above, a product distributor should analyse the information to determine whether the investor understands the risks associated with the investment and has the capability to withstand such risks.

Stages 3 and 4: Matching and Making a Recommendation

- 4.14 Upon assessing the information gathered, the product distributor must make a recommendation to the investor.
- 4.15 The product distributor's recommendation in relation to an unlisted capital market product can be either as follows–
- (a) that the product is suitable for the investor as it matches the risk profile and needs of the investor; or
 - (b) that the product is not suitable for the investor as it does not match the risk profile and needs of the investor.
- 4.16 In the event a product distributor is unable to identify a suitable product for the investor, the product distributor must inform the investor immediately.

Documentation and Record-Keeping

- 4.17 A product distributor must record all the information gathered during the suitability assessment exercise and any updates to such information.
- 4.18 Any recommendation made should be recorded and a copy of the recommendation should be provided to the investor.
- 4.19 The recommendation made must set out the reasons for the recommendation.
- 4.20 The recommendation provided by a product distributor must be signed by the product distributor and investor.
- 4.21 A product distributor must obtain a written acknowledgement from the investor that–
 - (a) all information disclosed by the investor is true, complete and accurate;
 - (b) the investor has understood the features and risks of the product having obtained the explanation from the product distributor; and
 - (c) the investor has received a copy of the PHS.
- 4.22 As the case may be, a product distributor must also obtain from the investor a written acknowledgement where the investor–
 - (a) declines to provide information requested by the product distributor; or
 - (b) decides to purchase another unlisted capital market product that is not recommended by the product distributor.
- 4.23 Such information must be retained by the product distributor in an easily accessible form and place for a period of at least seven years.

Suitability assessment form

- 4.24 **Appendix B** of these Guidelines provides guidance in respect of the form that may be used for the purposes of carrying out a suitability assessment.

APPENDIX A – RESPONSIBILITY STATEMENT AND STATEMENT OF DISCLAIMER

Date of Issuance:

RESPONSIBILITY STATEMENT

This Product Highlights Sheet has been reviewed and approved by the directors and/or authorised committee and/or persons approved by the Board of (name of Product Issuer) and they have collectively and individually accept full responsibility for the accuracy of the information. Having made all reasonable inquiries, they confirm to the best of their knowledge and belief, that there are no false or misleading statements or omissions of other facts which would make any statement in the Product Highlights Sheet false or misleading.

STATEMENT OF DISCLAIMER

***Choose the Sample that is relevant to your Unlisted Capital Market Product**

Sample 1 – For products that require Authorisation/Recognition of the Securities Commission Malaysia*

The Securities Commission Malaysia has authorised/recognised the issuance of (name of unlisted capital market product) and a copy of this Product Highlights Sheet has been lodged with the Securities Commission Malaysia.

The authorisation of the (name of unlisted capital market product) and lodgement of this Product Highlights Sheet, should not be taken to indicate that the Securities Commission of Malaysia recommends the (name of unlisted capital market product) or assumes responsibility for the correctness of any statement made or opinion or report expressed in this Product Highlights Sheet

The Securities Commission Malaysia is not liable for any non-disclosure on the part of the (name of Product Issuer) responsible for the (name of unlisted capital market product) and takes no responsibility for the contents of this Product Highlights Sheet. The Securities Commission Malaysia makes no representation on the accuracy or completeness of this Product Highlights Sheet, and expressly disclaims any liability whatsoever arising from, or in reliance upon, the whole or any part of its contents.

Sample 2 – For products under the Lodge and Launch Framework*

The relevant information and document in relation to the (name of unlisted capital market product), including a copy of this Product Highlights Sheet has been lodged with the Securities Commission Malaysia under the Lodge and Launch Framework.

The lodgement of the relevant information and document in relation to the (name of unlisted capital market product), including this Product Highlights Sheet, should not be taken to indicate that the Securities Commission Malaysia recommends the (name of unlisted capital market product) or assumes responsibility for the correctness of any statement made or opinion or report expressed in this Product Highlights Sheet.

The Securities Commission Malaysia is not liable for any non-disclosure on the part of the (name of Product Issuer) responsible for the (name of unlisted capital market product) and takes no responsibility for the contents of this Product Highlights Sheet. The Securities Commission Malaysia makes no representation on the accuracy or completeness of this Product Highlights Sheet, and expressly disclaims any liability whatsoever arising from, or in reliance upon, the whole or any part of its contents.

APPENDIX B – GUIDE ON PRODUCT HIGHLIGHTS SHEET

NOTE: This template serves only as a **GUIDE**. The presentation, style, contents and type of information below should be amended according to the types of unlisted capital market products offered. Notwithstanding that, the information required on paragraph 3.06 must be included in the PHS according to the types of unlisted capital market products offered.

This Product Highlights Sheet only highlights the key features and risks of this unlisted capital market product. Investors are advised to request, read and understand the disclosure documents before deciding to invest.

PRODUCT HIGHLIGHTS SHEET

PRODUCT NAME

BRIEF INFORMATION OF THE PRODUCT

1. What is this product about?

[Brief description of the product could include the following information:

- *Type of product*
- *Name of issuer*
- *Callable by issuer (Yes/No)*
- *Capital protected or guaranteed (Yes/No)*

PRODUCT SUITABILITY

2. Who is this product suitable for?

[Briefly state the types of investors this product is suitable for. Information provided could include:

- *Return objectives e.g. income/capital growth/capital preservation*
- *Whether their principal investment will be at risk*
- *How long they are prepared to hold their investment for*
- *Any other key information peculiar to the product which would help investors to determine if the product is suitable for them*

KEY PRODUCT FEATURES

3. What am I investing in?

- | | |
|--|--|
| <ul style="list-style-type: none">• <i>Issuance date</i>• <i>Issuance price</i>• <i>Issue size</i>• <i>Maturity date</i>• <i>Tenor of issue</i>• <i>Issuance at par/premium/discount</i>• <i>Profit/coupon/rental rate</i>• <i>Rating and rating agency]</i>• <i>Buyback frequency</i>• <i>Maximum loss/gain (in % terms)</i>• <i>Representations and warranties</i> | <ul style="list-style-type: none">• <i>Selling restriction/tradability</i>• <i>Details of proceeds utilization</i>• <i>Underlying assets</i>• <i>Investment strategy and policy to achieve the investment objective, e.g. investment focus (types of asset, allocation, country, market/sector/industry), techniques/approach used in managing the portfolio</i>• <i>Whether product will employ derivatives strategy or investment in structured products</i> |
|--|--|

***To describe these features with relevant tables, diagrams or illustrations where applicable**

4. Who am I investing with?

- *[State the names of all relevant parties involved in the structure of the product, e.g. issuer, originator, servicer, counterparty, guarantor, trustee, custodian, underwriter, principal advisor, Shariah advisor, reporting accountant etc.]*
- *State any conflict of interest, if applicable]*

5. What are the possible outcomes of my investment?

[To describe possible gains/losses in best and worst case scenario and any other possible scenarios]

KEY RISKS

6. What are the key risks associated with this product?

- *[State key risks that would commonly occur, or which may cause significant losses if they occur, or both. Risks peculiar to the product should also be stated. Give appropriate formatting emphasis where investors might lose all of their initial investment]*
- *For unit trust fund, a unit trust consultant (UTC) may represent a company that distributes unit trust fund that uses a nominee system and the rights as a unit holder may be limited if an investor invest in unit trust funds through it. If the company that distributes unit trust fund uses a nominee system, to state if rights as a unit holder will be limited in any way.*

FEES AND CHARGES

7. What are the fees and charges involved?

- *All relevant fees and charges payable (i.e. management fees, distribution fees, redemption fees and switching fees and any other substantial fees of more than 0.08% of NAV or subscription value)*
- *Indicate if fees payable once-off or per-annum basis*
- *If fees may be increased later, please state so.*
- *To state if charges are negotiable.*
- *For unit trust fund or private retirement scheme, if an investor redeems units in a unit trust fund and then purchase units in another, the investor will probably have to pay a sales charge. However, if an investor switches from one fund to another managed by the same unit trust management company or private retirement scheme provider, it is likely that such investor may not have to pay any sales charge. To clearly state the policy on switching and redemption, and relevant fees, if any.*

8. How often are valuations available?

- *How often and where valuations are published (i.e. web address/ newspapers where valuations are published)*

9. How can I exit from this investment and what are the risks and costs involved?

- *Explain how investor can exit investment within initial offer period*
- *If investor cancels investment after initial offer period has lapsed, describe how investor can exit investment*

CONTACT INFORMATION

10. Who should I contact for further information or to lodge a complaint?

- *Contact details of issuers/distributors investors may contact if they have enquiries.*
- *Website address and email address*

1. For internal dispute resolution, you may contact:

(Contact details for the product distributor's internal dispute resolution)

2. If you are dissatisfied with the outcome of the internal dispute resolution process, please refer your dispute to the Securities Industry Dispute Resolution Center (SIDREC):

- (a) via phone to : 03-2282 2280*
(b) via fax to : 03-2282-3855
(c) via e-mail to : info@sidrec.com.my

*(d) via letter to : Securities Industry Dispute Resolution Center (SIDREC)
Unit A-9-1, Level 9, Tower A
Menara UOA Bangsar
No. 5, Jalan Bangsar Utama 1
59000 Kuala Lumpur*

3. You can also direct your complaint to the SC even if you have initiated a dispute resolution process with SIDREC. To make a complaint, please contact the SC's Consumer & Investor Office:

- (a) via phone to the Aduan Hotline at : 03 – 6204 8999*
(b) via fax to : 03 – 6204 8991
(c) via e-mail to : aduan@seccom.com.my

(d) via online complaint form available at www.sc.com.my

*(e) via letter to : Consumer & Investor Office
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur*

4. Federation of Investment Managers Malaysia (FIMM)'s Complaints Bureau:

- (a) via phone to : 03 – 20923800*
(b) via fax to : 03 – 20932700
(c) via e-mail to : complaints@fimm.com.my
(d) via online complaint form available at : www.fimm.com.my
*(e) via letter to : Legal, Secretarial & Regulatory Affairs
Federation of Investment Managers Malaysia
19-06-1, 6th Floor Wisma Tune
No. 19 Lorong Dungun
Damansara Heights
50490 Kuala Lumpur*

APPENDIX: GLOSSARY

- *Explain terms used in Product Highlights Sheet which the investors may not understand*
- *May include special terms (i.e. legal jargon/ finance jargon)*
- *Product issuers are encouraged to use simple terms and then explain them in the glossary*

APPENDIX C – GUIDE ON SUITABILITY ASSESSMENT FORM

NOTE: This Suitability Assessment Form serves as a GUIDE. This form merely illustrates the type of information that could be gathered from the investors during a suitability assessment. The presentation, style, contents and type of information below should be amended according to the types of unlisted capital market products offered.

This Investor Suitability Assessment Form will guide you in choosing the unlisted capital market products that suit your investment objectives, risk tolerance, financial profile and investment experience. The information you provide will form the basis of our recommendation. It is important to provide accurate and complete information to ensure that suitable unlisted capital market products are recommended according to your investment needs and objectives.

INVESTOR SUITABILITY ASSESSMENT FORM

FILE SPECIFIC INFORMATION

Date Undertaken	
Adviser's Name	
Product Issuer	
Branch	
Name of Product	
Category of Product	
Review Date	

A. *KNOW-YOUR-INVESTOR* PROCESS

Investor's Details

Joint/Single Holder	
Name	
Age at the time of Recommendation	(E.g. exact age or a specified range of age)
Nationality	
NRIC/ID No/Passport No	
Residential Address	
Marital Status	
No. of Dependents	(E.g. exact no. of dependents or a specific range)
Contact No.	
Email Address	
Remarks	

WARNING

THE RECOMMENDATION IS MADE BASED ON INFORMATION OBTAINED FROM THE SUITABILITY ASSESSMENT. INVESTORS ARE ADVISED TO EXERCISE JUDGEMENT IN MAKING AN INFORMED INVESTMENT DECISION IN RELATION TO THE UNLISTED CAPITAL MARKET PRODUCTS.

Investor's Employment Status

Current Employment Status/Profession	(May also provide for a relevant industry sector)
If conducting business, nature of investor's business	
Annual Income	(E.g. exact income or a range of annual income)
Expected/actual retirement age	
Is capital or principal security or protection important to investor? (where applicable)	
Whether capital/principal investment is protected	
Category of Investor	
Remarks	

B. INVESTOR'S NEEDS ANALYSIS**Investor's Investment Objectives**

Duration period, the investor wishes to invest in the product	
Rationale for choosing the product	
General expectation of outcome of the product	

Purpose of Investment	Please circle			Remarks
Savings for specific purpose				
Supplementing income in retirement				
General lump investment for growth				
General lump sum investment for income				
Others: State in comment box				
Investor refuses to provide sufficient information				

Remarks:

Investor's Financial Situation

Investor's assets, liabilities, cash flow and income	
Proportion of investment out of investor's net assets (not including investor's residential property)	
Investor's regular financial commitment	

Investor's Risk Tolerance/ Risk Profile

The risk of loss of capital that investor is willing to bear: _____

Investors' Current Portfolio:

Existing investment portfolio the investor currently holds:	
Performance of current investment portfolio	

C. INVESTOR'S INVESTMENT KNOWLEDGE ASSESSMENT**Investor's Relevant Knowledge**

Whether prospective investor has dealt in securities and/or derivatives	
Relevant knowledge or experience to understand risks associated with the product	
Ability to understand risks involved	
Investment experience	

Investor's Relevant Knowledge to understand the Features of the Products Offered

Appreciate any special feature of the product	
Whether investor understands the nature of the product	
Whether investor understands the terms of the product specification	

Product Details

- * To include all important information relating to unlisted capital market products.
- * To include all the relevant questions which are crucial in relation to unlisted capital market products to the investor.

D. RECOMMENDATIONS SECTION (to be completed by the product distributor):

Whether the product is recommended by the product distributor:

Yes	
No	

If **product is recommended** by the product distributor, **the basis of recommendation**.

Basis of recommendation:

If the **product is not recommended** by the product distributor, the **reasons for non-recommendation**.

Remarks: _____

Date of recommendation: _____

Acknowledgement:

Reasons product is not recommended: _____

Remarks	Investor's Signature
The product distributor has explained and I have understood the features and risks of the product.	
All information disclosed is true, complete and accurate	
I decline to provide certain information required for product suitability assessment and that this may adversely affect my suitability assessment	
I acknowledge receipt of a copy of PHS and the relevant disclosure document which have been given to me	
I have decided to purchase another unlisted capital market product that is not recommended by the product distributor	
Investor's Signature Name: _____ Date: _____	Product Distributor Representative's Signature Name: _____ Date: _____

WARNING

THE RECOMMENDATION IS MADE BASED ON INFORMATION OBTAINED FROM THE SUITABILITY ASSESSMENT. INVESTORS ARE ADVISED TO EXERCISE JUDGEMENT IN MAKING AN INFORMED INVESTMENT DECISION IN RELATION TO THE UNLISTED CAPITAL MARKET PRODUCTS.

SCHEDULE 1-QUALIFYING CRITERIA OF SOPHISTICATED INVESTORS

(Paragraph 1.06)

Category of Investors	Qualifying Criteria
High-Net-Worth Individual	<ul style="list-style-type: none"> • An individual whose total net personal assets, or total net joint assets with his or her spouse, exceeds RM3 million or its equivalent in foreign currencies, excluding the value of the individual's primary residence. • An individual who has a gross annual income exceeding RM300,000 or its equivalent in foreign currencies per annum in the preceding 12 months. • An individual who, jointly with his or her spouse, has a gross annual income exceeding RM400,000 or its equivalent in foreign currencies per annum in the preceding 12 months.
High-Net-Worth Entity	<ul style="list-style-type: none"> • A corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts. • A partnership with total net assets exceeding RM10 million or its equivalent in foreign currencies. • A company that is registered as a trust company under the <i>Trust Companies Act 1949</i> which has assets under management exceeding RM10 million or its equivalent in foreign currencies. • A corporation that is a public company under the <i>Companies Act 2016</i> which is approved by the SC to be a trustee under the CMSA and has assets under management exceeding RM10 million or its equivalent in foreign currencies. • A pension fund approved by the Director General of Inland Revenue under the <i>Income Tax Act 1967</i>. • A statutory body established by an Act of Parliament or an enactment of any State.

Category of Investors	Qualifying Criteria
Accredited Investor	<ul style="list-style-type: none"> • Central Bank of Malaysia established under the <i>Central Bank of Malaysia Act 2009</i>. • A holder of a Capital Markets Services Licence. • An executive director or chief executive officer of a holder of a Capital Markets Services Licence. • A unit trust scheme or a prescribed investment scheme. • A closed-end fund approved by the SC. • A licensed bank as defined in the <i>Financial Services Act 2013</i> or a licensed Islamic bank as defined in the <i>Islamic Financial Services Act 2013</i>. • A Labuan bank as defined in the <i>Labuan Financial Services and Securities Act 2010</i>. • A licensed insurer as defined in the <i>Financial Services Act 2013</i>. • An insurance licensee as defined in the <i>Labuan Financial Services and Securities Act 2010</i>. • A takaful licensee as defined in the <i>Labuan Islamic Financial Services and Securities Act 2010</i>. • A licensed takaful operator as defined in the <i>Islamic Financial Services Act 2013</i>. • A private retirement scheme as defined in the CMSA.