



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES ON WHOLESALE FUNDS

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1.0 APPLICATION OF GUIDELINES

- 1.01 The *Guidelines on Wholesale Funds* is issued by the Securities Commission (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA). These guidelines set out the requirements to be complied with by any person intending to establish a wholesale fund in Malaysia and issue, offer or invite any person to subscribe or purchase units in the wholesale fund.
- 1.02 These guidelines replace and supersede the *Guidelines on Restricted Investment Schemes* issued on 7 April 2006 and the requirements for wholesale funds contained in the *Guidelines on Unit Trust Funds* issued on 3 March 2008.
- 1.03 The SC may vary the application of these guidelines with respect to particular proposals or issues of wholesale funds, having regard to such circumstances and state of affairs as the SC considers relevant, and where it considers appropriate, impose additional requirements or allow waivers from or modification to the requirements under these guidelines.
- 1.04 In addition, fund managers must also comply with other relevant guidelines issued by the SC that would apply to fund managers in the exercise of their functions, and such other conditions as may be imposed by the SC from time to time.

2.0 DEFINITIONS

- 2.01 In these guidelines, unless the context otherwise requires—

CMSA means *Capital Markets and Services Act 2007*.

collective investment schemes for the purpose of these guidelines, 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, futures contracts or any other property (referred to as "fund's assets") or sums paid out of such profits or income;
- (b) the persons who participate in the arrangement do not have day-to-day control over the management of the fund's assets; and
- (c) the fund's assets are managed by an entity who is approved, authorised or licensed by a competent regulator to conduct fund management activities;

and includes, among others, unit trust funds, real estate investment trusts, exchange-traded funds, wholesale funds and closed-end funds.

CUTA

means corporate unit trust adviser, which is an institution, a corporation or an organisation that is—

- (a) licensed by the SC for the regulated activities of financial planning and dealing in securities; and

(b) registered with the FMUTM in accordance with the FMUTM's *Guidelines for Registration of Corporate Unit Trust Advisers for the Marketing and Distribution of Unit Trusts*.

FMUTM means the Federation of Malaysian Unit Trust Managers.

fund manager refers to a holder of a Capital Markets Services Licence carrying on the business of fund management as defined in Part 2 of Schedule 2 of the CMSA.

information memorandum refers to the document issued by a fund manager describing the details of the wholesale fund and which is deemed to be a prospectus in so far as it relates to the liability of the fund manager for any statement or information that is false or misleading or from which there is material omission.

IUTA means institutional unit trust adviser, which is an institution, a corporation or an organisation that is—

(a) licensed by the SC or a registered person, for the regulated activity of dealing in securities; and

(b) registered with the FMUTM in accordance with the FMUTM's *Guidelines for Registration of Institutional Unit Trust Advisers for the*

Marketing and Distribution of Unit Trusts.

NAV in relation to a wholesale fund, means the net asset value of the fund, that is the value of all the fund's assets less the value of all the fund's liabilities, at the point of valuation.

For the purpose of computing the annual management fee (if any) and annual trustee fee (if any), the NAV of the wholesale fund should be inclusive of the management fee and trustee fee for the relevant day.

prospectus has the same meaning as defined under section 226 of the CMSA.

qualified investor refers to—

- (a) an individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies;
- (b) a corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts;
- (c) a unit trust scheme or prescribed investment scheme;
- (d) a company registered as a trust company under the *Trust Companies Act 1949* which has discretion in the investment of trust assets of a trust

with total net assets exceeding RM10 million or its equivalent in foreign currencies;

- (e) a corporation that is a public company under the *Companies Act 1965* or under the laws of any other country, which has been allowed by the SC to be a trustee for the purposes of the CMSA and has discretion in the investment of trust assets of a trust with total net assets exceeding RM10 million or its equivalent in foreign currencies;
- (f) a pension fund approved by the Director General of Inland Revenue under section 150 of the *Income Tax Act 1967*;
- (g) a holder of a Capital Markets Services Licence carrying on the business of dealing in securities;
- (h) any other fund manager;
- (i) a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than RM250,000 or its equivalent in foreign currencies for each acquisition;
- (j) a licensed institution;

	(k) an Islamic bank; and
	(l) an insurance company licensed under the <i>Insurance Act 1996</i> .
registered person	means a person registered by the SC under section 76(1)(a) of the CMSA.
SC	means the Securities Commission.
Shariah Adviser	has the same meaning as defined under paragraph 2.0 of the <i>Guidelines on Islamic Fund Management</i> .
unit trust fund	has the same meaning given to the expression "unit trust scheme" in sub-section 2(1) of the CMSA.
wholesale fund	means a unit trust fund, the units of which are issued, offered for subscription or purchase, or for which invitations to subscribe for or purchase the units have been made, exclusively to qualified investors.

3.0 ROLE AND DUTIES OF THE FUND MANAGER

- 3.01 Wholesale funds can only be issued by fund managers licensed under the CMSA.
- 3.02 The issue, offer or invitation to subscribe or purchase units in the wholesale fund must be made exclusively to qualified investors.

- 3.03 The fund manager must manage and administer the wholesale fund in a proper, diligent and efficient manner, in accordance with the securities laws, the *Guidelines on Compliance Function for Fund Managers*, any other relevant guidelines issued by the SC and the information memorandum of the wholesale fund.
- 3.04 The fund manager must have in place appropriate systems, procedures and controls, which commensurate with the size of the wholesale fund being managed and the wholesale fund's risk profile, including–
- (a) organising its internal affairs in a responsible manner, ensuring it has appropriate internal controls and risk management systems, procedures and controls designed to mitigate and manage such risk;
 - (b) observing high standards of integrity and fair dealing in managing the wholesale fund to the best interest of its investors; and
 - (c) ensuring that the fund manager's representatives have the requisite level of knowledge and experience for the tasks that they undertake, are competent for the work they undertake and are appropriately supervised.
- 3.05 Where the functions of the fund manager are being delegated, the fund manager must be satisfied as to the competence of the relevant delegate and ensure the following:
- (a) There is a process in place to monitor and review work performed;
 - (b) Its delegate is duly licensed or authorised by a relevant authority (where applicable) and has an adequate track record in fund management; and
 - (c) The responsibility for the actions and omissions of any delegate, in respect of the delegated functions, rests with the fund manager as though they were its own actions and omissions.

The fund manager must notify the SC in writing if it delegates its functions to another fund manager licensed by the SC. The fund manager must obtain prior approval of the SC if the delegation is to another fund manager licensed or authorised in another jurisdiction.

3.06 If the fund manager intends to outsource its back office or other functions to external parties, the fund manager must comply with the *Guiding Principles for Outsourcing of Back Office Functions for Capital Market Intermediaries* and *Guidelines on Performance of Supervisory Functions at Group Level for Capital Market Intermediaries* issued by the SC.

3.07 Every fund manager must keep a register of investors to the wholesale fund and enter into the register the following:

- (a) Where the investor is an individual, the name, address, and the number of the identity card issued under the *National Registration Act 1959* or passport number (for foreigners);
- (b) Where the investor is a corporation, the name, registered address and registration number of the corporation, if applicable;
- (c) Where the investor is a trust, the name, registered address and registration number of the trustee company; or
- (d) Where the investor is a unit trust scheme, pension fund or prescribed investment scheme, the name and registered address of such scheme.

3.08 In addition, the fund manager must enter into such register–

- (a) the number of units held by each investor;
- (b) the date on which the name of each investor was entered in the register;

(c) the date on which any person ceased to be an investor in the wholesale fund; and

(d) any other relevant information or particulars of the investor,

and such information is to be kept in the register for a minimum of seven years.

3.09 The register of investors to the wholesale fund will be prima facie evidence of any details inserted therein in accordance with these guidelines.

4.0 ROLE AND DUTIES OF THE TRUSTEE OR CUSTODIAN

4.01 Where the wholesale fund is formed under a trust structure, the fund manager must appoint a trustee registered with the SC and is independent of the wholesale fund.

4.02 The fund manager must ensure that the trustee's duties and functions, in safeguarding the rights and interests of the investors, are to ensure that–

(a) proper accounting records are kept in relation to the wholesale fund;

(b) all transactions with or for the wholesale fund are conducted at arm's length;

(c) custody and control of all assets of the wholesale fund are held in trust in accordance with the provisions of the deed; and

(d) the fund manager does not take improper advantage of its position in managing the wholesale fund whether directly or indirectly, or cause detriment to the interest of any investor.

4.03 Where the wholesale fund is not formed under a trust structure, the fund manager must appoint a custodian as defined under section 121 of the CMSA.

- 4.04 The fund manager must exercise reasonable care to ensure that the custodian performs its duties and has the capacity or ability to continue doing the same.
- 4.05 The fund manager must ensure that the custodian takes appropriate measures to ensure the safekeeping of the assets of the wholesale fund held by it on behalf of the fund manager. The measures to be taken by the custodian include but are not limited to the following:
- (a) Holding assets on behalf of the wholesale fund under safekeeping conditions no less favourable than those that apply to other clients of the custodian;
 - (b) Maintaining records to enable identification of the assets of the clients of the custodian, and keeping its own assets segregated from its clients' assets;
 - (c) Conducting reconciliation of the wholesale fund's account on a daily basis; and
 - (d) Having in place proper processes to ensure verification of all investment and payment instructions received from the fund manager in relation to the wholesale fund.
- 4.06 For fund's assets capable of being maintained outside Malaysia, the fund manager may appoint a foreign custodian to hold such assets on behalf of the wholesale fund and perform custodian duties described in these guidelines. In accordance with paragraph (g) in the definition of "custodian" in section 121 of the CMSA, the specified foreign custodians are foreign financial institutions or other institutions outside Malaysia, which customarily provide custodial services and are regulated by a foreign financial regulatory authority.

5.0 INTERNAL MONITORING REQUIREMENTS

5.01 The fund manager must implement risk management measures and procedures for the regular monitoring of all the risks identified. The frequency and scope of monitoring must be determined by the fund manager but in any event, such risk assessment must be conducted at least once every quarter. Procedures must also be in place to ensure that weaknesses identified are promptly addressed.

6.0 SIZE OF THE WHOLESALE FUND

6.01 The initial size of the wholesale fund and any issuance of new units in the fund exceeding the approved fund size, require prior approval of the SC.

6.02 A wholesale fund is not subjected to any prescribed fund size. In determining the size of the wholesale fund, regard must be given to the following:

- (a) The resources, expertise, experience and overall capacity of the fund manager to carry out its duties in accordance with the acceptable and efficacious business practices within the fund management industry; and
- (b) The investment objectives, financial situation and particular needs of its target group of investors.

7.0 INVESTMENTS OF THE WHOLESALE FUND

7.01 The information memorandum must define the investment limits and restrictions of the wholesale fund, including the investment parameters and the types of investments to be made by the wholesale fund.

- 7.02 The fund manager must identify the limitations and the main risks that a particular investment strategy imposes and once identified, must manage such risks.
- 7.03 The fund manager must disclose significant and material changes to the investment strategy and any changes to the material information contained in the information memorandum to all its qualified investors, and deposit the information memorandum with the SC as soon as is practicable.
- 7.04 Where the fund manager intends to use derivatives, details of their use must be contained in the information memorandum of the wholesale fund. The fund manager must possess the necessary expertise and experience on the use of derivative instruments, including the following:
- (a) Understanding the different implications of derivatives positions on the overall investment strategy; and
 - (b) Ensuring that derivatives positions are fairly priced on a consistent basis while bearing in mind the market liquidity of such positions.
- 7.05 Where the investments of the wholesale fund include investments in foreign markets, the fund manager must notify the SC in writing of such investments.
- 7.06 The fund manager must ensure that participation of the wholesale fund in futures contracts traded overseas complies with the relevant requirements under the *Rules of Bursa Malaysia Derivatives Berhad* and other requirements imposed by the SC or Bursa Malaysia.
- 7.07 Where the financing of the wholesale fund involves extension of credit and other forms of lending or utilises leverage, the information memorandum must clearly disclose–
- (a) the borrowing parameters for the wholesale fund (including the maximum amount of leverage, duration, and whether secured or unsecured), the basis of leverage and risks involved; and

- (b) that the liability of investors are limited to their investments in the wholesale fund.

Fund managers must have the necessary expertise and experience in managing wholesale funds employing leverage strategies, including understanding the impact of leverage on the overall risk of a portfolio and having the ability to monitor the use of leverage.

8.0 STRUCTURE OF THE WHOLESALE FUND

- 8.01 The fund manager must take all practical steps to ascertain the investment objectives, financial situation and particular needs of its investors before structuring a wholesale fund.
- 8.02 Fund managers are permitted to allocate capital into one or more collective investment schemes (referred to as "target fund"), provided that the selection of the target fund is consistent with the investment objective and chosen strategy of the wholesale fund. Where the fund manager manages both the wholesale fund and the target fund, the fund manager must clearly disclose in the information memorandum the fees and charges to be incurred, specifically mentioning whether any fees and charges will be incurred at the target fund level.
- 8.03 Sub-funds, collective investment schemes or special purpose vehicles that are wholly owned by the wholesale fund or trustees of the wholesale fund (where applicable) will be treated as if they were separate unit trust schemes and will not be permitted to be established without the prior approval of the SC.
- 8.04 The rights and liabilities of investors to the wholesale fund must be clearly stated in the information memorandum of the wholesale fund.
- 8.05 The name given to the wholesale fund must not be inappropriate, misleading, or in conflict with the name of another collective investment scheme.

8.06 Distribution of income should only be made from realised gains or realised income.

8.07 Where the wholesale fund as stated in the information memorandum is to be managed and administered in accordance with Shariah principles, the fund manager must comply with the relevant provisions of the *Guidelines on Islamic Fund Management* and the relevant resolutions of the Shariah Advisory Council of the SC.

9.0 FEES AND CHARGES

9.01 The professional or performance fee levied should commensurate with the degree of investment strategies and techniques employed by the fund manager to achieve the stated objective.

9.02 The calculation methodology of the fees and charges must be clearly disclosed in the information memorandum of the wholesale fund.

10.0 VALUATION AND PRICING

10.01 The investments of the wholesale fund must be fairly valued on a regular basis, and in any event, at least once a month.

10.02 The fund manager must take all reasonable steps to ensure that the wholesale fund and the units in the wholesale fund are correctly valued and priced in accordance with the information memorandum.

10.03 Sufficient disclosure must be made in the information memorandum to allow investors to have a clear understanding of how the portfolio is valued and units are priced.

- 10.04 The valuation of the assets and liabilities for the purpose of determining the wholesale fund's NAV must be based on a process which is consistently applied, and must be objective and able to be verified by investors. Any deviation from the valuation process must be for the purpose of ensuring the investment is fairly valued and be approved by the trustee (if any).
- 10.05 The fund manager must ensure that a valuation policy for illiquid assets or holdings, such as unlisted securities, provides for the consistent and transparent valuation of such assets. The valuation methodology must be clearly documented and disclosed in the information memorandum.
- 10.06 Full particulars of the valuation frequency and the identity of the auditors appointed must be disclosed in the information memorandum of the wholesale fund.
- 10.07 Notwithstanding paragraph 10.02, the fund manager must take immediate remedial actions to rectify any incorrect valuation or pricing of the wholesale fund or the units in the wholesale fund. Where there is incorrect pricing of the units, rectification must extend to the reimbursement of money—
- (a) by the fund manager to any one or more of the following—
 - (i) the wholesale fund;
 - (ii) investors of the wholesale fund; or
 - (iii) former investors of the wholesale fund;
 - or
 - (b) by the wholesale fund to the fund manager.

The rectification need not extend to reimbursements to the investors or former investors where it appears to the fund manager or trustee (where applicable) that the incorrect pricing is of minimal significance.

11.0 LIQUIDITY AND DEALING

11.01 The liquidity of individual positions and the overall portfolio must be actively managed to ensure that the wholesale fund can meet its liquidity requirements, including allowing investors to withdraw in accordance with the agreed terms in the information memorandum.

11.02 The frequency of and any limitation on, subscriptions and redemptions must be detailed in the information memorandum and must be determined by the fund manager having regard to the investment objectives, financial situation and particular needs of investors.

11.03 Publication of prices, fees and charges must be made periodically and in line with the information contained in the information memorandum.

12.0 RISK DISCLOSURE STATEMENTS

12.01 Where applicable, the information memorandum must include the following warnings:

- (a) In the event some of the underlying investments of the wholesale fund are not actively traded, potential investors are warned that under such circumstances, they may face difficulties in redeeming their investments;
- (b) In the event that the investment strategy employs leverage, potential investors are warned that the use of leverage can magnify the impact of investment risks in the wholesale fund; and
- (c) Investors are advised to read the information memorandum and obtain professional advice before subscribing to the wholesale fund.

13.0 REPORTING REQUIREMENTS AND DISCLOSURE

- 13.01 The fund manager must provide each investor with a monthly statement of accounts.
- 13.02 The fund manager must submit statistical returns as set out in the *Wholesale Fund Returns* to the SC every month.
- 13.03 The fund manager must publish (whether in printed copy or otherwise) and send to every investor quarterly reports and annual reports of the wholesale fund. The fund manager must also submit two copies of the annual reports to the SC.
- 13.04 The quarterly and annual reports must be sent to investors and the SC (annual reports only) within two months of the end of the period they cover.
- 13.05 The quarterly and annual reports must provide investors with a regular snapshot of the key risk factors faced by the wholesale fund and the wholesale fund's investment outlook for that reporting period. They are to contain, *inter alia*, the wholesale fund's financial performance, credit risk (including the periodic assessment of the risk implication of borrowings), the level of borrowing (extension of credit and other forms of lending), market outlook, changes in key investment team (including any delegates), illiquid holdings, details on portfolio exposure and information on fund performance and volatility.
- 13.06 The financial statements in the annual report of the wholesale fund must be audited by an external auditor.

14.0 MARKETING AND PROMOTIONAL ACTIVITIES

- 14.01 The fund manager must provide investors with the information memorandum of the wholesale fund when conducting marketing and promotional activities.

- 14.02 The fund manager must conform to best business practices in “knowing your client”, in order to establish the eligibility of the investor as a qualified investor, as well as any other requirements that apply to fund managers in the exercise of their functions.
- 14.03 Fund managers may use a range of documents to market and promote their schemes. The fund manager must ensure that these marketing materials are appropriately prepared and targeted to the type of investors that it seeks to attract, which in this case is limited to qualified investors.
- 14.04 Any representation or communication in the marketing materials must comply with the requirements of the *Guidelines on Unit Trust Advertisements and Promotional Materials*.
- 14.05 All marketing materials must be reviewed by the compliance officer, before submission to the SC for purposes of post-vetting.
- 14.06 In any arrangement or agreement with a IUTA or CUTA to market and promote the wholesale fund, the fund manager must ensure that the requirements under these guidelines, the *Guidelines on Marketing and Distribution of Unit Trust Funds*, and any other relevant laws and guidelines are complied with, including obtaining confirmation from the relevant IUTA or CUTA of compliance with the best business practices in “knowing your client” and the requirement that marketing material is only communicated to qualified investors.

15.0 RESPONSIBILITY STATEMENTS AND STATEMENTS OF DISCLAIMER

- 15.01 The following responsibility statements and statements of disclaimer are required to be displayed in the inside cover/first page of the information memorandum:

"This information memorandum has been seen and approved by the directors of the fund management company and they collectively and individually accept full responsibility for the accuracy of all information contained herein and confirm, having made all enquiries which are reasonable in the circumstances, that to the best of their knowledge and belief, there are no other facts omitted which would make any statement herein misleading".

"The Securities Commission has approved the issue, offer or invitation in respect of the wholesale fund, the subject of this information memorandum, and that the approval shall not be taken to indicate that the Securities Commission recommends the investment".

"The Securities Commission will not be liable for any non-disclosure on the part of the fund management company and takes no responsibility for the contents of the information memorandum, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from, or in reliance upon the whole or any part of the content of this information memorandum".

16.0 SUBMISSION TO THE SC

16.01 A fund manager must submit the following documents to the SC for approval under section 212 of the CMSA, before any proposed issue, offer or invitation in respect of a wholesale fund is made to qualified investors:

- (a) Cover letter specifying the approval sought, including particulars of the proposal;
- (b) Declaration letter as set out in Appendix 1;
- (c) A completed *Application for Establishment of a Wholesale Fund* form;

- (d) Information memorandum of the wholesale fund that complies with the minimum content as set out in Appendix 2;
- (e) Where the wholesale fund is formed under a trust structure, the following documents:
 - (i) Copy of the deed which complies with the minimum contents as set out in Appendix 3; and
 - (ii) A statutory declaration from the fund manager declaring that it is independent from the trustee unless otherwise permitted by the SC;
- (f) Where the wholesale fund is formed under a custodian structure, the copy of the signed custodian agreement; and
- (g) Payment of the fees as set out in the *Securities Commission (Fees) (Amendment) Regulations 2004*.

16.02 The SC would inform the fund manager of its decision within 21 days (excluding public holidays) after receiving a complete submission.

16.03 The wholesale fund is exempted from the requirement to issue prospectus pursuant to the exception provided for under section 231 of the CMSA. However, the information memorandum of the wholesale fund must be deposited with the SC within seven days after it is issued.

16.04 Where—

- (a) a wholesale fund's units in circulation have exceeded 50% of the approved fund size; and
- (b) the proposed increase in the fund size is not more than 50% of the current approved fund size (in units),

an application made to the SC for an increase in its fund size is deemed approved. The new size of the wholesale fund will be effective upon the SC receiving a complete submission of an application. If the criteria in (a) and (b) are not met, prior approval of the SC is required for an increase in the size of the wholesale fund, and the application for increase will be considered by the SC based on its merits.

16.05 In addition, the following proposals are required to be submitted for the SC's approval:

- (a) Appointment of any fund manager that is not licensed by the SC;
- (b) Increase in the size of the wholesale fund, as set out in the *Application to Increase the Approved Size of the Wholesale Fund* form and where applicable, confirmation of compliance with the criteria in sub-paragraph 16.04(a) and (b) by the fund manager and trustee (if any).

16.06 The fund manager must notify the SC at the earliest practicable date of, among others, the following:

- (a) Appointment of any fund manager licensed by the SC;
- (b) Investments in foreign markets, as set out in the *Notification of Investments: Foreign Markets* form;
- (c) Appointment and resignation of the Shariah Adviser, as set out in the *Notification of Appointment or Resignation of Shariah Adviser* form and the declaration by the fund manager that the Shariah Adviser is independent from the wholesale fund and registered with the SC;
- (d) Commencement and completion of the winding up of the wholesale fund, as set out in the *Notification of Commencement or Completion: Winding Up of a Wholesale Fund* form.

Declaration Letter for the Purpose of Submission of the Proposal to the SC

The Chairman
Securities Commission

Dear Sir

Declaration Pursuant to Paragraph 16.01(b) of the Guidelines on Wholesale Funds

We, ...(name of fund manager)..., are proposing to undertake ...(brief description of the proposal)... (hereinafter referred to as "the Proposal").

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information which is provided to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.
3. We confirm that:
 - (a) Compliance and internal control systems are in place and are adequate to ensure compliance with these guidelines, securities laws and deed (where applicable);
 - (b) There are adequate human resources with the necessary qualification and experience to manage and administer the fund; and
 - (c) There are adequate and appropriate systems, procedures and processes to manage and administer the wholesale fund and ...(the sub-advisers, custodians, trustees, index contractors and any other person who fulfill a material role in the proper and efficient management of the wholesale fund [where applicable]).
4. We declare that we are satisfied after having made all reasonable inquiries that the Proposal is in full compliance with the following:
 - (a) The *Guidelines on Wholesale Funds*;^{*} and
 - (b) Other requirements under the *Capital Markets and Services Act 2007* as may be applicable.
5. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC on the Proposal.
6. We undertake to provide to the SC all information that the SC may require on the Proposal.

This declaration has been signed by me as(*designation of director*)..... of (*the fund manager*).... pursuant to authority granted to me by a resolution of the Board of Directors on(*date of resolution*)....

Yours faithfully

.....

Signature

Name:

Name of the fund management company:

Date:

Note

* Applicable only to proposals falling under the *Guidelines on Wholesale Funds*. Where an application for exemption is being sought, to insert the words "except paragraph(s)...(*refer to paragraph where exemption is being sought*)...where exemption(s) is/are being sought as part of the submission to the SC for the reasons set out in paragraph ...(*list paragraph number*)... of this declaration."

APPENDIX 2

Minimum Content of the Information Memorandum

The minimum content requirement of the information memorandum includes the following:

- (a) **Purpose and Objective of the Wholesale Fund** – the investment policy and objectives of the wholesale fund, including distinctive features of the wholesale fund and the types of investments to be made by the wholesale fund. In describing the investment policy and principal investment strategies, the wholesale fund must disclose the investment focus of the fund (e.g. equity, debenture, money market, collective investment schemes, etc.), the characteristics of the securities or instruments to be invested in and the asset allocation strategy;
- (b) **Investment Style and Strategy** – the investment style and strategy it plans to implement, i.e. whether seeking to invest in growth stocks, value stocks, etc. Where appropriate, the investment focus should also include the countries/markets (e.g. global, regional or country specific, developed or emerging markets, etc.) and target sector/industry;
- (c) **Investment Restriction** – the investment strategy must be clearly defined and the document must explain the extent of diversification or concentration of investments or strategies intended to be undertaken by the fund manager;
- (d) **Types of Financial Instruments** – (equity, fixed income, money market), whether exchange-traded or over-the-counter (OTC), and the availability of the investment instruments that will be employed to achieve the investment objectives of the wholesale fund. Where the wholesale fund invests in derivatives and structured products, the information memorandum must clearly disclose the following:
 - (i) The types and characteristics of derivatives and structured products the wholesale fund invests in;
 - (ii) The use of the derivatives (either for hedging or investment);
 - (ii) Where applicable, the likelihood of high volatility of the NAV per unit of the wholesale fund; and
 - (iv) The specific risk management adopted in such investments which include measures to be taken in the event of a downgrade in the rating of the issuer in the case of OTC options.
- (e) **Risks** – to describe the general risks of investing in the wholesale fund and specific risks that accompany the investment portfolio and strategy of the wholesale fund;
- (f) **Managers or Sponsors** – the key personnel and the role of the fund management team must also be detailed in full, including the persons who comprise the team and the frequency of meetings held;

- (g) **Pricing Policies** – to arrive at the NAV per nominal unit, the account’s pricing policies must be detailed and must be made available by a certain time and upon request by the investor;
- (h) **Income Distribution Policy** – the wholesale fund’s policy on distribution of investment returns and the sources of such returns;
- (i) **Periodic Reporting to Investors** – the form, content and frequency of the reports to the investors must be clearly explained and consistently applied (at a minimum on a quarterly basis for the report and monthly for the statement of account to investors);
- (j) **Frequency of Redemption and Creation of Units** – conditions under which dealings/transactions will be executed and frequency of subsequent entries and redemptions from the wholesale fund. All withdrawals and injections must revert back to the investor’s segregated personal or corporate banking account;
- (k) **Management and Other Fees** – the basis or formula for calculation of the fees to be charged by the fund manager to investors, whether based on the NAV or performance-based fees, i.e. a fee based on a portion of the profits as opposed to a fixed percentage of assets;
- (l) **Benchmarks** – explicit benchmarks (where available). Benchmarks reflect passive strategies and are means of measuring the fund manager’s value add;
- (m) **Trustees** – where trustees are appointed to the wholesale fund, the name and detail of the trustee arrangement;
- (n) **Custodian** – where no trustees are appointed, third-party custodians appointed to perform safekeeping functions as set out in paragraph 4.03 and 4.06 of these guidelines (where applicable);
- (o) **Rights and Liabilities** – the rights and liabilities of the investors under the wholesale fund;
- (p) **Power to Call for a Meeting** – the circumstances under which the investors may call for a meeting of investors to the wholesale fund;
- (q) **Transferability** – details as to the conditions or restrictions (if any) relating to the transfer of any units between qualified investors;
- (r) **Leverage** – where credit, lending or leverage is used, to disclose the calculation, the maximum amount of intended borrowings, extension of credit or other forms of lending and assessment of the impact of such leverage on the overall risk of the wholesale fund;
- (s) **Winding up of the Wholesale Fund** – to detail the circumstances under which the wholesale fund may be terminated or wound up; and

- (t) **Shariah-compliant fund** – where the wholesale fund is Shariah compliant, to disclose that the wholesale fund has been certified as being Shariah compliant by the appointed Shariah adviser.

Minimum Content of the Deed

1. The minimum content requirement of the deed must include, but is not limited to the following:
 - (a) The fund manager must carry on and conduct its business in a proper, diligent and efficient manner, and ensure that any wholesale fund to which the deed relates is carried on and conducted in a proper, diligent and efficient manner and in accordance with acceptable and efficacious business practices in the fund management industry;
 - (b) The fund manager must ensure that the wholesale fund has, at all times, an appointed trustee;
 - (c) The fund manager must not sell any unit of the wholesale fund to which the deed relates, other than at a price calculated in accordance with the deed;
 - (d) The fund manager must, at the request of the investor, purchase from the investor units held in the wholesale fund at the purchase price calculated in accordance with the deed;
 - (e) The fund manager must make available or ensure that all records are made available to the trustee or any approved company auditor appointed by the trustee for inspection on all matters relating to the wholesale fund, including the financial and other records of the wholesale fund (wherever kept);
 - (f) The fund manager must not make improper use of its position in managing the wholesale fund to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of the investors in the wholesale fund;
 - (g) The fund manager must attach with the annual report, a report from the trustee stating whether in the trustee's opinion, the fund manager has managed the wholesale fund in that period in accordance with the limitations imposed on the investment powers of the fund manager under the information memorandum and in accordance with the provisions of the deed, *Capital Markets and Services Act 2007* and securities laws; and
 - (h) The fund manager and trustee must safeguard the interest of the investors of the wholesale fund and ensure that there is a registered deed in force at all times.
2. The covenants of the trustee must include but not be limited to the duties and functions as set out in paragraph 4.02 of these guidelines.
3. The deed must also contain provisions dealing with the following:

- (a) Sufficient particulars to disclose the nature of the wholesale fund, including the nature of the unit to which the deed relates and sufficient particulars on the types of investments that are permitted to be made by the wholesale fund;
- (b) Appointment of a trust company as the trustee of the wholesale fund to which the deed relates and provisions for retirement, removal and replacement of the trustee;
- (c) Termination or winding up of the wholesale fund;
- (d) The duties and obligations of the trustee towards the investors regarding properties that are subjected to the trust;
- (e) The full particulars regarding the circumstances in which the fund manager may be required to purchase from the investors of the wholesale fund any unit of the wholesale fund and the method of calculation of the purchase price of the unit;
- (f) Method of calculation of the price at which a unit may be issued by the fund manager to investors;
- (g) Full particulars regarding the conditions governing the transfer of any units to other qualified investors and the distribution of returns to the investors;
- (h) Specific provisions relating to the convening of meetings of investors of the wholesale fund, including the manner in which votes may be given at a meeting of investors;
- (i) Whether the deed is capable of modification and provisions governing modification of the deed;
- (j) Extent of indemnity provided by the fund manager (if any) and the extent of liability of the investors of the wholesale fund;
- (k) Full particulars on circumstances in which, and the methods by which, all or any of the investments may be varied;
- (l) Specific provisions relating to utilisation of leverage by the fund manager (if any) and the assessment of the impact of such leverage on the overall risk of the wholesale fund; and
- (m) Full particulars relating to investors' rights and the extent of their liabilities.