

## **GUIDANCE**

This Guidance provides further clarification to the requirements of these Guidelines.

### **GUIDANCE TO CHAPTER 2: DEFINITION**

**Paragraph 2.01, “independent member”:** Will a person be considered as an independent director if that person does not fall under the list of persons outlined in paragraphs (a) to (g) of the definition of independent member?

If a person does not fall within any of the paragraphs (a) to (g) of the said definition, it does not mean that the person will automatically qualify to be an independent director. The person concerned as well as the board of directors of the management company shall still apply the test of whether the said person is able to exercise independent judgment and in addition to his duties and responsibilities as an independent director, represent and safeguard the interests of unit holders as required under these Guidelines.

[Issued: 21 Dec 2021]

### **GUIDANCE TO CHAPTER 3: THE MANAGEMENT COMPANY**

**Paragraph 3.07(k)(i):** What is expected from the ‘risk management and control systems’?

The risk management and control systems should –

- (a) commensurate with the nature and scale of the transactions and investment activities that are undertaken for the fund;
- (b) be able to deal with normal and exceptional circumstances including extreme conditions; and

- (c) be able to monitor, measure, and manage all relevant risks the fund is exposed to, including risks associated with derivative investment activities, where applicable.

[Issued: 21 Dec 2021]

**Paragraph 3.07(k)(ii): What does it mean by having an ‘effective liquidity risk management’ for its fund?**

A fund may be considered to have an effective liquidity risk management framework if the management company has implemented, among others, the good practices as provided in SC’s *Guidance Notes on Liquidity Risk Management for Fund Management and Unit Trust Management Companies* that are relevant to its fund.

Generally, a management company may utilise any liquidity management tool(s) for its fund. However, redemptions in kind and side pockets will not be permitted for unit trust funds due to the following:

- (a) Restriction on use of redemptions in kind: A management company must pay the unit holder the proceeds of the repurchase of units [in paragraph 8.18(a)].
- (b) Restriction on use of side pockets: The price of units must be calculated based on the fund’s NAV divided by the number of units. As defined in these Guidelines, NAV means the value of all the fund’s assets less the value of all the fund’s liabilities at the valuation point. The NAV or NAV per unit may only be adjusted for dilution fee or transaction cost as provided under paragraphs 8.48 to 8.50 (which also include the application of swing pricing).

[Issued: 21 Dec 2021]

**Paragraph 3.07(k): Is a standalone risk management policy and procedures documentation required for each and every fund?**

Whilst a management company is required to prepare a RMP documentation for each fund in a standalone document, the management company may choose to prepare one common RMP documentation for funds where the RMP do not vary significantly.

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**Paragraph 3.07(k): Is there any expectation as to what should be included in the RMP documentation for a fund?**

A management company should at least prepare the RMP documentation to include all relevant information that are clear and understandable. The primary components of a sound RMP are:

- (a) A comprehensive risk measurement approach;
- (b) A detailed structure of limits, guidelines and other parameters used to govern risk taking; and
- (c) A strong management information system for controlling, monitoring and reporting risks.

In the case where investment in derivatives is involved, the RMP documentation should include, at a minimum, details on contingency plans regarding credit events such as significant downgrading of credit rating and the collapse of the counterparty.

Further information on the content of the RMP documentation can be found in the *Forms in relation to unit trust fund (UTF)* (“UTF Application Form”) that is available on the SC’s website.

[Issued: 21 Dec 2021]

**Paragraph 3.07(m): What should a management company provide in its policies and procedures relating to a fund's valuation and pricing?**

To ensure that a management company is able to comply with paragraph 8.34 of the Guidelines, its policies and procedures should cover the following areas:

- (a) The unit pricing process that would include, but is not limited to, controls to monitor, detect and prevent possible inaccurate pricing of the fund's units;
- (b) Currency conversion process; and
- (c) Valuation of the fund's assets and liabilities.

[Issued: 21 Dec 2021]

**Paragraph 3.07(o): What would be considered as a change that may materially prejudice the interest of the unit holders?**

Management company should refer to the guidance to paragraph 9.70 for the examples of change that may materially prejudice unit holders' interest.

[Issued: 21 Dec 2021]

**Paragraph 3.11: If the oversight function can be carried out by persons within the management company, who would be eligible to carry out the function?**

The person would be eligible if the person is independent from the investment, sales and operational functions.

[Issued: 21 Dec 2021]

**Paragraph 3.20: Should the policies, procedures and controls to manage potential conflict of interest include a process that require the trustee's approval for transactions made by the management company or its related corporation?**

A management company where appropriate, may include a process to obtain the trustee's approval based on certain materiality thresholds.

[Issued: 21 Dec 2021]

**Paragraph 3.24: Is there any expectation as to what is 'adequately trained'?**

A management company should allocate at least 3% of its gross annual salary expense to train its officers, and the scope of the training should be relevant to the respective officer's roles.

[Issued: 21 Dec 2021]

## **GUIDANCE TO CHAPTER 5: CONSTITUTION OF THE FUND**

### **Paragraph 5.06: What are the factors SC would take into account when considering if a fund's name is inappropriate or misleading?**

The SC will take into account, among other matters, whether the name of the fund or any class of units of any fund—

- (a) implies that the fund or any class of units of any fund has merits which are not justified;
- (b) is inconsistent with the fund's investment objective or policy;
- (c) might mislead investors into thinking that a person other than the management company is responsible for the fund or part of the fund;
- (d) is substantially similar to the name of another fund in Malaysia or elsewhere; or
- (e) is in the opinion of the SC likely to offend the public.

[Issued: 21 Dec 2021]

## **GUIDANCE TO CHAPTER 6 AND SCHEDULE B: INVESTMENTS OF THE FUND**

### **Paragraph 6.03: What would not be considered as dealings appropriate to the fund?**

Dealings such as the disposal of assets with quick repurchase merely to realise capital gains, dealings for window-dressing or excessive dealing in the fund's assets, i.e. churning, are not considered appropriate to the fund.

[Issued: 21 Dec 2021]

**Paragraph 6.05(f): What is an ‘investment account’ and which types of investment account are permitted under these Guidelines?**

An investment account (“IA”) is a product offered by Islamic banks licensed by Bank Negara Malaysia that provides investors the opportunity to invest and share the profit from Shariah-compliant investment activities.

An IA may operate based on the following Shariah principles:

- (a) Mudharabah (profit sharing)
- (b) Musyarakah (profit and loss sharing)
- (c) Wakalah (agency)

There are two (2) main types of IAs i.e. restricted and unrestricted IAs. A restricted investment accounts (“RIA”) enables customers to specify the investment mandate and the underlying assets that their funds may be invested in. An unrestricted investment account (“UIA”), on the other hand, allows Islamic banks to determine the investment mandate and the structure of the investment account, which may include combining different UIAs into pools of funds that invest in diversified portfolios of underlying assets, in exchange for more flexible withdrawal conditions.

A fund is permitted to invest in both RIA and UIA. However, the limits that apply to it may differ from one IA to another.

Specifically, UIA is regarded as a money market instrument if it fulfils the following criteria:

- (a) The objective of the UIA is to provide stable returns through low to moderate risk investment; and
- (b) The tenure of the UIA placed with the Islamic Bank does not exceed 12 months from the placement date.

Examples of the abovementioned UIA are General Investment Account and Term Investment Account.

UIAs other than those described above and RIA are regarded as “other securities”. In this regard, a management company should ensure that the IAs identified for investment by a fund is consistent with the objective of the fund. Prior to undertaking the process to reflect such investments in a fund’s documentation, the management company should ensure that it has a risk management policy and procedures to monitor, measure and manage the risks associated (including credit risks and liquidity risks) with the said IAs. The management company should also ensure that they are able to verify the valuation methodology of the said IAs, independently. For avoidance of doubt, the 10% single issuer limit as prescribed under paragraph (3), Schedule B of these Guidelines applies to the underlying investment of the IA e.g. the underlying ventures or borrowers.

[Issued: 21 Dec 2021]

**Paragraph 6.05(f): Besides investment accounts, what are examples of other investment instruments that fall under ‘other securities’?**

Examples of ‘other securities’ include unlisted shares, investment notes, Islamic investment notes and digital assets. However, if these investment instruments meet the criteria of transferable securities and are traded or dealt in or under the rules of an eligible market, then they may be deemed as transferable securities.

[Issued: 21 Dec 2021]



**Paragraph 6.08(a): What are examples of ‘securities equivalent to shares’?**

‘Securities equivalent to shares’ include units or shares in business trusts, depositary receipts, participatory notes, rights, warrants and any other rights, options or interests that can be converted into new shares.

[Issued: 21 Dec 2021]

**Paragraphs 6.09(b) and 6.16(a): How does a management company determine if a financial instrument, i.e. a transferable security or a derivative, is “liquid”?**

A financial instrument is considered to be liquid if it can be readily converted into cash at a value close to its fair price under normal market condition.

[Issued: 21 Dec 2021]

**Paragraph 6.11(b)(i): What would SC consider as having the level of investor protection that is at least equivalent to that offered in Malaysia?**

In determining if the laws and practices provide the level of investor protection that is at least equivalent to that offered in Malaysia, a management company should consider the following factors:

- (a) There are rules governing the management of a CIS to ensure that there is high standards of integrity and fair dealing, and the CIS is managed in the best and exclusive interest of the unit holders;
- (b) The existence of an independent party with similar duties and responsibilities to a trustee in relation to both safekeeping and

supervision. Examples of this would be a trustee, fund supervisor or independent depository. Where an independent depository is not a requirement of local law, robust governance structures may provide a suitable alternative;

- (c) Availability of pricing information and reporting requirements;
- (d) Redemption facilities and frequency;
- (e) Restrictions in relation to dealings by related parties; and
- (f) The extent of asset segregation where such assets can be clearly identified as the CIS' assets and are held separately from other assets held by the CIS' operator or fund manager and trustee or custodian.

[Issued: 21 Dec 2021]

**Paragraph 6.11(b)(ii): For the purpose of these Guidelines, what does the SC mean by (a) “substantially similar”, and (b) “a hedge fund”?**

- (a) A CIS that –
  - (i) is subjected to regulations on diversification of permissible investments;
  - (ii) does not use leverage for investments; and
  - (iii) undertakes securities lending and repurchase transactions for efficient portfolio management purposes only,

would be considered as substantially similar to a fund authorised under these Guidelines.

- (b) A hedge fund can be a CIS that aims to achieve a high return through the use of advanced or alternative investment strategies, such as use of long/short exposures, leverage, or hedging and arbitrage techniques or such other CIS labelled, or categorised by the securities regulator regulating the fund, as a hedge fund.

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**Paragraph 6.11(d): What are the examples of CIS that fall under this category of CIS?**

Examples of CIS that fall under this category include leveraged ETFs, inverse ETFs and ETFs that invest in digital asset.

[Issued: 21 Dec 2021]

**Paragraph 6.17: Can a management company use the valuation provided by the OTC derivative counterparty?**

Yes. However, the valuation by the management company should not be based solely on a valuation provided by the counterparty to the transaction.

[Issued: 21 Dec 2021]

**Paragraph 6.17(b): Who would be considered an “independent party” for the purposes of checking on the appropriateness of the valuation method?**

The “independent party” should be independent of the management company and the counterparty for the OTC derivative, and should have the relevant skill sets and qualifications to ensure that the valuation

method adopted by the management company is appropriate. Examples would include the valuation agent or auditor of the fund.

[Issued: 21 Dec 2021]

**Paragraph 6.24(a): The Guidelines requires the counterparty of an OTC derivative to have a credit rating of at least investment grade. However, if the counterparty is a financial institution that is not rated by any credit rating agency, can the fund still deal with the financial institution?**

Where the financial institution is not rated, the requirement may be met if the financial institution has the benefit of a guarantee by an entity which has an investment grade credit rating (including gradation and subcategories).

[Issued: 21 Dec 2021]

**Paragraph 6.33: Paragraph (2)(g), Appendix II of Chapter 6 requires the collateral, held by the trustee or an agent, be legally secured from the consequences of the failure of the trustee, counterparty of agent. In this regard, (a) Who is “the agent”?; and (b) what is envisaged as “legally secured from the consequences of failure”?**

- (a) An agent refers to a person appointed for the fund for the purpose of securities lending or repurchase transaction activities.
- (b) It is envisaged that the methods for collateral to be legally secured from the consequences of failure of the trustee, counterparty or agent, includes-
  - (i) when the collateral is held in trust for the fund by the trustee or the agent; or
  - (ii) when the collateral is recorded as the fund’s asset.

[Issued: 21 Dec 2021]

**Paragraph 6.38: What is the expectation with regard to rectification of insufficient collateral?**

A marked-to-market shortfall on day T should be rectified by the receipt of additional collateral by T+1 business day. For the purpose of this guidance, business day should be based on those of the counterparty's.

[Issued: 21 Dec 2021]

**Schedule B, Paragraph (13)(a): What does SC mean by “prior to the commencement of investment”?**

The point of time where the exception applies are as follows:

- (a) During the initial offer period and prior to commencement of investment by a newly established fund; or
- (b) The day in which an existing fund receives substantial subscription monies in the fund's operating account.

[Issued: 21 Dec 2021]

**Schedule B – Appendix II, Paragraph (9)(a): Which foreign governments, government agencies and supranational are considered as acceptable by the SC?**

The SC may consider a foreign government, government agency (foreign and Malaysian) and supranational as acceptable for a country-specific government bond or fixed income fund if it is one of the following:

- (a) Government of ASEAN member countries;
- (b) Government of G20 member countries;
- (c) Government of OECD member countries;

- (d) Government of the European Union (EU) member states;
- (e) The European Union; or
- (f) Islamic Corporation for the Development of the Private Sector.

Notwithstanding the above, a management company should consult the SC prior to making a submission to the SC for the establishment of a country-specific government bond or fixed income fund.

[Issued: 21 Dec 2021]

**Schedule B – Appendix II, Paragraph (9)(b): When would debt securities or money market instruments be regarded as being of a different issue?**

Debt securities or money market instruments will be regarded as being of a different issue if, even though they are issued by the same person, they are issued on different terms whether as to repayment dates, interest rates, the identity of the guarantor, or otherwise.

[Issued: 21 Dec 2021]

**Schedule B – Appendix V, Paragraph (5)(e): When would an index be considered as being transparent?**

The index would generally be regarded as transparent if the following information is made available:

- (a) The index composition; and
- (b) The methodologies used to construct the index, select the constituents, collect the price data of constituents and rebalance the index.

[Issued: 21 Dec 2021]

### **General - Rating of an investment instrument, issuer, guarantor, counterparty or financial institution**

Where a minimum rating requirement is prescribed in these Guidelines, such rating refers to one of the following, unless otherwise specified in these Guidelines:

<b>Requirement</b>	<b>Rating by Malaysian Rating Agency</b>	<b>Rating by Global Rating Agency</b>
Highest long-term rating	<ul style="list-style-type: none"> <li>• AAA by RAM<sup>2</sup></li> <li>• AAA by MARC<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>• AAA by S&amp;P<sup>4</sup></li> <li>• Aaa by Moody's</li> <li>• AAA by Fitch</li> </ul>
Top two credit rating (including gradation and subcategories)	At least the following: <ul style="list-style-type: none"> <li>• AA<sub>3</sub> by RAM</li> <li>• AA- by MARC</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• AA- by S&amp;P</li> <li>• Aa3 by Moody's</li> <li>• AA- by Fitch</li> </ul>
<ul style="list-style-type: none"> <li>• High quality long-term rating</li> <li>• Top three credit rating (including gradation and subcategories)</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• A<sub>3</sub> by RAM</li> <li>• A- by MARC</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• A- by S&amp;P</li> <li>• A3 by Moody's</li> <li>• A- by Fitch</li> </ul>
<ul style="list-style-type: none"> <li>• Investment grade</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• BBB<sub>3</sub> by RAM</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• BBB- by S&amp;P</li> </ul>

<sup>2</sup> "RAM" refers to RAM Rating Services Berhad.

<sup>3</sup> "MARC" refers to Malaysian Rating Corporation Berhad.

<sup>4</sup> "S&P" refers to Standard and Poor's.

Requirement	Rating by Malaysian Rating Agency	Rating by Global Rating Agency
<ul style="list-style-type: none"> <li>• Top four credit rating (including gradation and subcategories)</li> </ul>	<ul style="list-style-type: none"> <li>• BBB- by MARC</li> </ul>	<ul style="list-style-type: none"> <li>• Baa3 by Moody's</li> <li>• BBB- by Fitch</li> </ul>
Top two short-term rating	At least the following: <ul style="list-style-type: none"> <li>• P2 by RAM</li> <li>• MARC-2 by MARC</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• A-2 by S&amp;P</li> <li>• P-2 by Moody's</li> <li>• F2 by Fitch</li> </ul>

Where an investment instrument, issuer, guarantor, counterparty, or financial institution is rated by more than 1 rating agencies, the stricter rating is to be adopted.

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### **GUIDANCE TO CHAPTER 7: CHARGES, FEES AND EXPENSES**

#### **Paragraph 7.10: What are the acceptable methods of computation for performance fee?**

The following methods of computation for performance fee are acceptable:

- (a) Fulcrum fee model;
- (b) High-water mark; or
- (c) High-on-high.

The management company should consult the SC for any other methods of computation for performance fees.

[Issued: 21 Dec 2021]



**Paragraph 7.18: What are examples of expenses that may be paid out of the fund?**

Examples of expenses that may be paid out of the fund include the following:

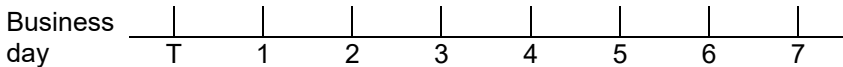
- (a) Commissions or fees paid to brokers or dealers in effecting dealings in the fund's assets, shown on the contract notes or confirmation notes or difference accounts;
- (b) Remuneration relating to the custodial function for the fund's assets outside Malaysia that is delegated to sub-custodians;
- (c) Tax and other duties charged on the fund by the government and other authorities;
- (d) Fees and other expenses properly incurred by the auditor appointed for the fund;
- (e) Fees for the valuation of fund's assets;
- (f) Fees in relation to fund accounting;
- (g) Costs incurred for the modification of the deed other than those for the benefit of the management company or trustee; and
- (h) Costs incurred for any meeting of unit holders other than those convened by, or for the benefit of, the management company or trustee.

[Issued: 21 Dec 2021]

## **GUIDANCE TO CHAPTER 8: DEALING, VALUATION AND PRICING**

### **Paragraph 8.18(a): How should a management company calculate the '7 business days' timeframe?**

'7 business days' is referring to T+7 business days with T-business day referring to the day the repurchase request is received by the management company. The '7 business days' timeframe is illustrated below:



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### **Paragraph 8.21: Would the requirement in this paragraph apply to payments made by investors via credit or charge card?**

No, the requirement does not apply to payments for units via credit or charge card.

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### **Paragraph 8.23: What would be considered as exceptional circumstances where a management company may suspend dealing in units of a fund?**

Exceptional circumstances can be considered where the market value or fair value of a material portion of the fund's assets cannot be determined. For avoidance of doubt, difficulties in realising the fund's assets or temporary shortfalls in liquidity may not, on their own, be sufficient justification for suspension.

[Issued: 21 Dec 2021]

**Paragraph 8.34: Where the fund has foreign investments, what would be the valuation point to enable the fund to ensure the valuation is fair and accurate?**

Investment instruments can be traded and quoted on more than one eligible market and each market may be operating in different time zones. As such, the fund's valuation point on a dealing day should be the closing time of the eligible market on that same dealing day of the fund.

Example: For 1 March 200X, the valuation will start on 7:00am the following day i.e. 2 March 200X (Kuala Lumpur time), valuation is carried out and the following prices should be used:

- a) (Kuala Lumpur): Last done prices as at 5:00 pm, 1 March, at the close of Bursa Malaysia;
- b) (New York): Last done prices as at 4:00pm, 1 March, (equivalent to 5:00 am, 2 March, Kuala Lumpur time) at the close of the exchanges on which the equities are traded;
- c) (London): Last done prices as at 4:00 pm, 1 March, (equivalent to 12:00 at night, 2 March Kuala Lumpur time) at the close of the exchanges on which the equities are traded;
- d) (Japan): Last done prices as at 3:00 pm, 1 March (equivalent to 2:00 pm, 1 March Kuala Lumpur time) at the close of exchanges on which the equities are traded; and
- e) (Bangkok): Last done prices as at 5:00 pm, 1 March (equivalent to 6:00 pm, 1 March Kuala Lumpur time) at the close of exchanges on which the equities are traded.

The timing used for the above example is strictly for illustration purposes only.

This guidance intends to standardise the valuation methodology for funds with foreign investments and should be consistently applied for these funds. Management companies should adopt forward pricing for the

purpose of valuing the fund's foreign investments NAV to minimize the risk of any arbitraging opportunities arising from the timing differences as the price of the unit would be unknown to the investors at the time of placing the request.

[Issued: 21 Dec 2021]

**Paragraph 8.34: The fund's assets and liabilities may be denominated in different currencies. Also, a fund may offer units in different currencies or in a currency different from the fund's base currency. In this case, what is the expectation pertaining to determining the exchange rate?**

Where the prices of an asset or a liability of a fund is denominated in a foreign currency, the exchange rate to be used in converting the valuation to the base currency, for example Ringgit Malaysia should be bid foreign exchange rate quoted by either –

- (a) Reuters; or
- (b) Bloomberg,

at U.K time 4:00 pm the same day.

[Issued: 21 Dec 2021]

**Paragraph 8.39: A fund is permitted to use either forward pricing or historical pricing. Is there any expectation on when a fund may adopt one pricing policy over the other?**

While these Guidelines permit either pricing policy, a fund should adopt forward pricing. This is to mitigate the risk of any arbitraging opportunities arising from the timing differences as the price of the unit would be unknown to the investors at the time of placing the request. However, the adoption of historical pricing may be considered in the case of certain money market funds.

[Issued: 21 Dec 2021]

**Paragraph 8.42(b): What information should be submitted in the notification to the SC when an incorrect valuation or pricing occurs?**

The management company should at least provide a report covering the following information in the notification:

- (a) The name of the fund and class(es) of units affected by the incorrect valuation or pricing (“error”);
- (b) Descriptions of the nature of the error e.g. overvalued or undervalued and the magnitude of error as a percentage of the fund’s NAV;
- (c) A computation of the error;
- (d) When and how the error was discovered;
- (e) Details on the reasons for the error;
- (f) Name of the entity responsible for the error;
- (g) The time period over which the error occurred; and
- (h) In the event where reimbursement is required:
  - (i) The number of affected unit holders who –
    - (A) subscribed; and
    - (B) redeemed,during the time period over which the error occurred, if any;
  - (ii) The amount of reimbursement to be paid, if any, to –

- (A) unit holders; and
- (B) the fund;
- (iii) The entity that pays for the reimbursement;
- (iv) A computation of the total reimbursement to be made; and
- (v) The measures taken, or to be taken, to improve internal controls and prevent the occurrence of similar incidents.

[Issued: 21 Dec 2021]

**Paragraph 8.43: If there is more than one error occurring on a single day, must the management company determine whether the threshold is breached at each occurrences?**

Where there are more than one error occurring on a single day, it is the net effect of all errors that should be considered at the end of that day. If a single error is protracted over successive days, the 0.5% of the NAV per unit threshold is applicable for each day separately.

[Issued: 21 Dec 2021]

**Paragraph 8.43(a): What are examples of scenarios where the management company should reimburse the fund as a result of a valuation or pricing error?**

Where a fund incurs a loss as a result of a valuation or pricing error where the investors received more units than they would have if no error had occurred.

[Issued: 21 Dec 2021]

**Paragraphs 8.48 to 8.53: The Guidelines allows a management company to adjust the price of a unit of a fund to take into account dilution or transaction cost (involved in acquiring and disposing a fund's asset). Does this mean that the use of swing pricing is permitted?**

Swing pricing refers to a process for adjusting a fund's NAV to effectively pass on transaction costs stemming from net capital activity (i.e. flows into or out of the fund) to the investors associated with that activity during the life of the fund, excluding the initial offer period or fund termination.

A management company is permitted to apply swing pricing, and when doing so, the management company should ensure the following:

- (a) For the purpose of paragraph (8), Schedule E, the fund's performance is to be calculated based on swung prices;
- (b) For the purpose of paragraphs 7.06 and 7.09(a), the fees and charges of the fund, including any performance fees and fees based on NAV, should be based on unswung NAV; and
- (c) If the fund's deed and prospectus provide the management company with the discretion to, under certain pre-defined circumstances, apply a swing factor that is beyond the maximum swing factor disclosed in the prospectus, the decision to exceed the current maximum swing factor is to be duly justified and is made in the best interest of all unit holders i.e. both existing and new unit holders.

A management company that wishes to apply swing pricing to a fund should establish a swing pricing policy defining the parameters including whether it will be a full swing, or if a partial swing is used, the swing threshold, swing factor, as well as the applicability, which may differ from one fund to another fund. The swing pricing policy should be clearly defined prior to implementation and communicated to those administering the swing pricing policy, accordingly. Swing pricing policy should be applied consistently and systematically.

[Issued: 21 Dec 2021]

## **GUIDANCE TO CHAPTER 9: OPERATIONAL MATTERS**

### **Paragraph 9.10: What is considered as distribution out of capital?**

Any distribution paid out of unrealised income or unrealised gains is considered as capital distribution.

The following may be used as reference when determining “distributable income”:

- (a) The net investment income (i.e. dividend, coupon, interest income net of fees and expenses) and may include net realised gains (if any) based on unaudited accounts.
- (b) “Distributable income” which is not declared and paid as distribution in a period of a financial year can be carried forward as distributable income for the next period(s) within the same financial year. “Distributable income” that has been accrued as at the end of a financial year and is declared and paid as distribution at the next distribution date immediately after that financial year end could be treated as “distributable income” in respect of that financial year. **However, “distributable income” which has been accrued as at the end of a financial year but is not declared and paid as distribution at the next distribution date immediately after that financial year end should be included as “capital” for the next financial year.**
- (c) Where the fund pays distribution out of gross income while charging or paying all or part of the fund’s fees and expenses to or out of capital, respectively, the amount of fees and expenses that has been paid out of capital has to be deducted from the gross investment income in order to come up with the “distributable income”.

[Issued: 21 Dec 2021]



**Paragraph 9.16: What does it mean by ‘sustainable appreciation’ of NAV?**

‘Sustainable appreciation’ can be illustrated through the following example:

- (1) Average NAV per unit between 16/5-15/6/202X
- (2) Average NAV per unit between 16/6-15/7/202X
- (3) Average NAV per unit between 16/7-15/8/202X
- (4) Average NAV per unit between 16/8-15/9/202X
- (5) Average NAV per unit between 16/9-15/10/202X
- (6) Average NAV per unit between 16/10-15/11/202X

The monthly average NAV per unit of the fund would have been on an increasing trend during the abovementioned period before it can undertake the unit split exercise in October 202X.

For the avoidance of doubt, the monthly average NAV per unit need not be calculated on a calendar month.

[Issued: 21 Dec 2021]

**Paragraphs 9.33 and 9.35: What does it mean by ‘immediate production of the report may be dispensed with’ in paragraph 9.33 and ‘financial period then running’ in paragraph 9.35 and how should the requirements in these paragraphs be read?**

The intention of these requirements is to reduce the cost of preparation of fund report of a fund that is to be terminated. The reference to “immediate production of the report may be dispensed with” refers to the flexibility to extend the period of coverage for the final fund report.

The following illustrates the abovementioned scenario:

- The financial year end of Fund XYZ is 31 December

- UTMC ABC (being the management company of Fund XYZ) announced on 15 June 202X, that it is terminating Fund XYZ and the termination process will commence on 1 July 202X
- On 1 July 202X, there are 10 unit holders that remained in Fund XYZ
- The process of terminating Fund XYZ completed on 20 September 202X

Based on paragraph 9.33, UTMC ABC may dispense with the production of Fund XYZ's semi-annual report<sup>5</sup>, provided that after consulting the auditor and the trustee of Fund XYZ, UTMC ABC has taken reasonable care to determine that timely production of a fund report is not required in the interests of unit holders.

Based on paragraph 9.35, UTMC ABC can produce the final fund report for Fund XYZ which covers a period from 1 January 202X to 20 September 202X (being the completion date of fund termination). UTMC ABC is required to send the final fund report to the SC and to the 10 unit holders whose name are in the register of Fund XYZ on 1 July 202X latest by 20 November 202X.

Using the above illustration as reference, the financial period then running refers to the period from 1 January 202X to 20 September 202X.

[Issued: 21 Dec 2021]

**Paragraph 9.45 and all requirements pertaining to meeting of unit holders: Would the requirements also apply to meetings called for a particular class of a fund?**

All references to a meeting of unit holders shall include a meeting of unit holders of a class of units and all requirements in these Guidelines

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<sup>5</sup> If Fund XYZ is not being terminated, the semi-annual report is to cover a period from 1 January 202X to 30 June 202X.

applicable to a meeting of unit holders shall be equally applicable to a meeting of unit holders of a class of units.

[Issued: 21 Dec 2021]

**Paragraph 9.70: What are the examples of changes that may materially prejudice the interests of unit holders?**

Examples of changes that may materially prejudice the interests of unit holders would include the following:

- (a) Changes to the nature or objective of the fund;
- (b) Changes to the risk profile of the fund;
- (c) Change in distribution policy;
- (d) Introduction of a new category of fees or charges; or
- (e) Increase in fees or charges.

[Issued: 21 Dec 2021]

**Paragraph 9.71(a): What are the examples of significant change which may affect a unit holder's decision to stay invested in a fund?**

Examples of a significant change which may affect a unit holder's decision to stay invested in the fund include –

- (a) change in investment strategy of the fund;
- (b) change in distribution policy of the fund; or
- (c) change in minimum balance.

Editorial changes such as amending grammatical errors, or correcting pagination, paragraphing and numbering in the prospectus are changes that will not require any notification to unit holders.

[Issued: 21 Dec 2021]

**GUIDANCE TO CHAPTER 11: APPLICATIONS, NOTIFICATIONS  
AND REPORTING TO THE SECURITIES COMMISSION MALAYSIA**

**Paragraph 11.02(c)(i): When would an investment in derivatives be considered as for hedging purposes?**

A fund's investment in derivatives is considered as for hedging purposes if it meets the following:

- **Motivation**

To mitigate risk that arises due to an identified underlying exposure.

- **Transaction size**

The transaction size must be appropriate to offset any risks associated with the underlying being hedged.

- **Transaction tenure**

The hedge tenure should commensurate with the tenure and timing of the exposure.

[Issued: 21 Dec 2021]

**Paragraph 11.02(d): At the point of submission of application for SC's authorisation, the fund is not seeking to be assessed as a Qualifying CIS or has any intention to apply for the Qualifying CIS status. However, the registrable deed or prospectus submitted as part of the application for SC's authorisation contains reference to the Standards of Qualifying CIS. In this case, can the application for SC's authorisation be submitted under the expedited authorisation process if the fund is a fund that is other than those listed in paragraphs 11.02(a) to (c)?**

If the management company has no intention for the fund (that is seeking SC's authorisation) to be a Qualifying CIS, then the registrable deed and prospectus ("**fund's documentation**") of the fund should not contain any reference to the Standards of Qualifying CIS, ACMF or cross-border offering of the fund.

The reference to the Standards of Qualifying CIS is permitted in a fund's documentation if the management company has plans for the said fund to be a Qualifying CIS in the future. However, the fund will **not be eligible** to be considered under the expedited authorisation process. This is also applicable to a new fund established under a new deed that will be a master deed for other funds to be established by the management company. In this regard, such applications will be considered under the standard authorisation process.

[Issued: 21 Dec 2021]

**Paragraph 11.04: Are there any other funds that will not be eligible under the expedited authorisation process?**

Where the fund has novel (new) features, the management company should consult the SC on whether such fund would be eligible under the expedited authorisation process. Novel features refer to features which are not characteristic of unit trust schemes authorised or approved by the SC that may reasonably be expected to have a material impact on

investors. An example would be where a fund proposes a performance fee with features that have not been previously considered by the SC.

Further, a fund that utilises liquidity risk management tools, such as use of redemption gate or deferred redemption payment, will not be eligible for the expedited authorisation process.

[Issued: 21 Dec 2021]

### **GUIDANCE TO CHAPTER 12: ADDITIONAL REQUIREMENTS FOR ISLAMIC UNIT TRUST FUND**

**Paragraph 12.11: Can a management company undertake securities lending involving foreign securities and repurchase transaction on behalf of its Islamic fund?**

Yes, but subject to the Shariah adviser's prior approval.

[Issued: 21 Dec 2021]

### **GUIDANCE TO SCHEDULE C: VALUATION**

**Item (b)(ii) of Investment instruments not listed or quoted on an exchange: What are some of the measures and safeguards that can be put in place to address the relevant risks associated with the use of amortised cost accounting?**

Measures and safeguards include monitoring the difference between the amortised cost of a money market instrument and its value on an ongoing basis, and ensuring appropriate actions are taken promptly where such difference exceeds threshold determined by the management company for the fund.

[Issued: 21 Dec 2021]

## **GUIDANCE TO SCHEDULE D: DEED OF A UNIT TRUST FUND**

**Paragraph (10): For a multi-class fund, what should the management company consider when determining the differences between the classes and the rights of each class?**

The management company should consider the following:

- (a) A class of units should not provide any advantage for that class if that would result in prejudice to unit holders of any other class;
- (b) The nature, operation and effect of the new class of units should be capable of being explained clearly to prospective investors; and
- (c) The effect of the new class of units should not be contrary to the requirements of the CMSA or the purpose of any part of these Guidelines.

[Issued: 21 Dec 2021]

**Paragraph (16)(b): What are examples of circumstances in which the pricing method can change?**

An example would be swing pricing as described in the guidance to paragraphs 8.48 to 8.53.

[Issued: 21 Dec 2021]

**Paragraph (16)(b): Can a management company provide for circumstances where it has a discretion to apply a swing factor that exceed the maximum swing factor as disclosed in the prospectus?**

Yes, provided that pre-defined circumstances that is made in the best interested of all investors (including both existing and new investors) is disclosed.

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**GUIDANCE TO SCHEDULE E: CONTENTS OF A FUND'S REPORT**

**Paragraph (15)(n): Which “other clients’ accounts” are being referred to in the requirement?**

“other clients’ accounts” includes any other investment portfolios or funds managed by the management company or fund manager .e.g. unit trust funds (besides the fund), exchange-traded funds, private retirement scheme funds or wholesale funds.

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