

# **GUIDELINES ON EXCHANGE-TRADED FUNDS**

**SC-GL/ETF-2005 (R3-2022)**

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## **GUIDELINES ON EXCHANGE-TRADED FUNDS**

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## **Chapter 1**

### **INTRODUCTION**

- 1.01 The *Guidelines on Exchange-traded Funds* (Guidelines) is issued by the SC under section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines set out requirements for a proposal in relation to the listing and quotation of units of a conventional or an Islamic ETF on the Main Market of Bursa Securities, which may include the following:
- (a) Establishment of a conventional or an Islamic ETF in Malaysia; and
  - (b) Issue and offering of units of such ETF.
- 1.03 The securities laws and these Guidelines form the regulatory framework for ETFs in Malaysia, and must be read together.
- 1.04 Guidance on the application of the requirements of these Guidelines has been provided, where appropriate. Any departure from the Guidance will be taken into consideration in the SC's assessment on whether a breach of these Guidelines had occurred.
- 1.05 An applicant is encouraged to consult the SC on the application of these Guidelines.
- 1.06 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that–
- (a) such variation is not contrary to the intended purpose of the relevant requirement in these Guidelines; or
  - (b) there are mitigating factors which justify the said exemption or variation.
- Thereafter, an exemption or variation shall be referred to as “relief” in these Guidelines.
- 1.07 In addition to the requirements under these Guidelines, any person intending to offer an ETF in any jurisdiction of an ACMF Signatory must also observe and ensure compliance with the Standards of Qualifying CIS<sup>1</sup>.

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<sup>1</sup> The Standards of Qualifying CIS can be found at [www.theacmf.org](http://www.theacmf.org)

## Chapter 2

### DEFINITIONS

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

accounting records	includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which the financial statements are made up;
ACMF	means the ASEAN Capital Markets Forum;
ACMF Retail MoU	means the memorandum of understanding on streamlined authorisation framework for cross-border public offers of ASEAN collective investment schemes;
ACMF Signatory	means the securities regulator of the ASEAN jurisdiction which has signed the ACMF Retail MoU;
approved accounting standards	has the meaning assigned to it in the <i>Financial Reporting Act 1997</i> ;
ASEAN CIS	means a Qualifying CIS;
base currency	means the currency specified in the deed of the ETF as the currency in which the ETF is denominated;
Bursa Securities	means Bursa Malaysia Securities Berhad;
classes of units	means two or more classes of units representing similar interests in the ETF's assets;
CMSA	means the <i>Capital Markets and Services Act 2007</i> ;
CMSL	means Capital Markets Services Licence;
collective investment scheme (CIS)	means any arrangement where— (a) it is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, derivatives or any other property

(hereinafter referred to as fund's assets) or sums paid out of such profits or income;

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

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

commodity ETF	means an ETF that invests in physical commodities with the aim of providing investors with returns that tracks a benchmark which relates to a single commodity;
controlling shareholder	has the meaning assigned to it in the Main Market Listing Requirements;
daily	for purposes of a leveraged ETF and an inverse ETF, the term "daily" in relation to the leveraged or inverse performance, means the leveraged or inverse performance of an index or a benchmark (as the case may be) from the close of the relevant market on a given business day until close of the relevant market on the subsequent business day;
debt securities	means transferable securities referred to in paragraphs 6.13(b) and (c);
derivative	means a financial derivative instrument or transaction, the value of which depends upon the value of underlying indices or assets such as currencies, securities, commodities or other derivative instruments;
eligible market	means an exchange, government securities market or an over-the-counter (OTC) market–

	<ul style="list-style-type: none"> <li>(a) that is regulated by a regulatory authority of that jurisdiction;</li> <li>(b) that is open to the public or to a substantial number of market participants; and</li> <li>(c) on which financial instruments are regularly traded;</li> </ul>
exchange-traded fund (ETF) or fund	<p>means a listed fund structured as a unit trust scheme, whose principal aim is to-</p> <ul style="list-style-type: none"> <li>(a) track;</li> <li>(b) deliver multiples of; or</li> <li>(c) deliver opposite of,</li> </ul> <p>the performance of an index or a benchmark using a passive investment strategy;</p>
fair value	<p>means, the price that the fund would reasonably expect to receive upon the current sale of the investment;</p>
financial institution	<p>means-</p> <ul style="list-style-type: none"> <li>(a) if the institution is in Malaysia, any licensed bank, licensed investment bank, or licensed Islamic bank; or</li> <li>(b) if the institution is outside Malaysia, any institution that is licensed, registered, approved, or authorised by the relevant banking regulator to provide financial services;</li> </ul>
financial statements	<p>has the meaning as set out in the approved accounting standards issued or approved by the Malaysian Accounting Standards Board pursuant to <i>the Financial Reporting Act 1997</i>;</p>
fund manager	<p>means a person who undertakes the fund management function, or part thereof, for an ETF and who is either–</p> <ul style="list-style-type: none"> <li>(a) the holder of a CMSL for the regulated activity of fund management in relation to portfolio management; or</li> <li>(b) if the person is outside Malaysia, a person properly licensed or authorised by the relevant regulator in its home jurisdiction to carry out fund management activities;</li> </ul>



fund's portfolio	means the deposit of a portfolio of constituent underlying securities or assets together with, if applicable, a cash payment for the purposes of creation and redemption;
futures-based ETF	<p>means an ETF that invests primarily in futures contracts, whose principal aim is to-</p> <ul style="list-style-type: none"><li>(a) track;</li><li>(b) deliver multiples of; or</li><li>(c) deliver opposite of,</li></ul> <p>the performance of an index or a benchmark;</p>
group of companies	means any company and its related corporations;
independent member	<p>in relation to the board of directors of a management company or the Shariah adviser of the ETF, means a person who is free of any relationship with the management company or a controlling shareholder of the management company that would otherwise interfere with the member's exercise of independent judgment. In any case, a period of six months must elapse before a person who was previously connected to the management company or a controlling shareholder can be deemed to be independent. The following is a non-exhaustive list of persons that would not be considered as an "independent member":</p> <ul style="list-style-type: none"><li>(a) In relation to the board of directors of a management company of an ETF, an officer of the management company but excluding its independent director;</li><li>(b) In relation to a Shariah adviser, an officer of the management company;</li><li>(c) An officer of the trustee of the ETF;</li><li>(d) An officer of any body corporate or unincorporated body that has power to appoint or make recommendations towards the appointment of members of the board of directors of the management company or the Shariah adviser of the ETF;</li><li>(e) A person related to an officer of the management company or trustee of the ETF;</li></ul>

	(f) A person representing or seen to be representing the controller of the management company; or
	(g) A person who, within six months prior to his appointment as an independent member, has derived any remuneration or benefit, other than retirement benefit, from the management company or any body corporate or unincorporated body that has the power to appoint or make recommendations towards the appointment of members of the board of directors of the management company or the Shariah adviser of the ETF;
inverse ETF	means an ETF whose aim is to deliver the opposite of the daily performance of the index or benchmark being tracked;
IOPV	means the indicative optimised portfolio value which is an estimated net asset value of the fund's portfolio calculated by the management company according to a methodology which is clearly stipulated in the ETF's prospectus;
leveraged ETF	means an ETF whose aim is to deliver multiples of the daily performance of the index or benchmark;
licensed bank	has the meaning assigned to it in the <i>Financial Services Act 2013</i> ;
licensed investment bank	has the meaning assigned to it in the <i>Financial Services Act 2013</i> ;
licensed Islamic bank	has the meaning assigned to it in the <i>Islamic Financial Services Act 2013</i> ;
Main Market Listing Requirements	means the <i>Main Market Listing Requirements</i> of Bursa Securities;
major shareholder	has the meaning assigned to it in the Main Market Listing Requirements;
major unit holder	has the meaning assigned to it in the Main Market Listing Requirements;
net asset value (NAV)	means the value of all the ETF's assets less the value of all the ETF's liabilities at the valuation point;
offer for subscription	means an invitation by, or on behalf of, the fund to subscribe for units of the ETF not yet in issue or allotted;

ordinary resolution	means a resolution passed by a simple majority of votes validly cast at a meeting of unit holders;
participating dealer	means any of the following entities appointed by the management company of an ETF: <ul style="list-style-type: none"><li>(a) A participating organisation of the stock exchange;</li><li>(b) A financial institution licensed by Bank Negara Malaysia;</li><li>(c) A market maker registered with Bursa Securities; or</li><li>(d) A trading participant of the derivative exchange;</li></ul>
participating dealer agreement	means an agreement entered into between the participating dealer, the management company and the trustee setting out the terms and procedures by which the participating dealer may request for the creation and redemption of ETF units;
partner	in relation to a director, chief executive or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive or major shareholder of the management company, the management company or trustee, means such person who falls within any of the following categories: <ul style="list-style-type: none"><li>(a) A person with whom the director, chief executive or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive or major shareholder of the management company, the management company or trustee is in or proposes to enter into partnership with. "Partnership" for this purpose is given the meaning under section 3 of the <i>Partnership Act 1961</i>; and</li><li>(b) A person with whom the director, chief executive or major shareholder of the management company, the management company or trustee, or person connected with a director, chief executive or major shareholder of the management company, the management company or trustee has entered into or proposes to enter into a joint venture, whether incorporated or not;</li></ul>
person connected	has the meaning assigned to it in the Main Market Listing Requirements;

physical commodities	means gold, silver and other commodities as may be permitted by the SC;
Qualifying CIS	means an ETF– <ul style="list-style-type: none"> <li>(a) constituted or established in Malaysia, which has been approved by the SC for listing and quotation on Bursa Securities; and</li> <li>(b) has been assessed by the SC as suitable, pursuant to the Standards of Qualifying CIS, to apply to a host regulator for cross-border offering to the public in a host jurisdiction pursuant to the ACMF Retail MoU;</li> </ul>
Qualifying CIS Operator	means a management company– <ul style="list-style-type: none"> <li>(a) approved under the CMSA; and</li> <li>(b) complies with the Standards of Qualifying CIS;</li> </ul>
related party	means– <ul style="list-style-type: none"> <li>(a) the management company of the ETF;</li> <li>(b) the trustee of the ETF;</li> <li>(c) a major unit holder of the ETF;</li> <li>(d) a director, chief executive or major shareholder of the management company; or</li> <li>(e) a person connected with any of the above;</li> </ul>
repurchase transactions	means “sale and repurchase transactions” and “reverse repurchase transactions”, collectively;
reverse repurchase transactions	means transactions whereby a fund purchases securities from a counterparty of sale and repurchase transactions and agrees to sell such securities back at an agreed price in the future;
SAC	means Shariah Advisory Council of the SC;
sale and repurchase transactions	means transactions whereby a fund sells its securities to a counterparty of reverse repurchase transactions and agrees to

	buy such securities back at an agreed price with a financing cost in the future;
SC	means the Securities Commission Malaysia;
securities lending	means transactions whereby a fund lends its securities to a counterparty for an agreed rate;
special resolution	means a resolution that is passed by a majority of not less than 75% of the total voting rights of the unit holders who are entitled to vote on the resolution at the meeting.
	For the purpose of terminating an ETF, a special resolution is passed by a majority in number representing at least 75% of the voting rights of the unit holders voting at the meeting;
Standards of Qualifying CIS	means a set of rules and regulations, as agreed and may be amended from time to time amongst the ACMF Signatories, which applies only to the Qualifying CIS under the ACMF Retail MoU;
stock exchange	has the meaning assigned to it in the CMSA and includes for the purposes of investment by an ETF, stock exchanges in foreign jurisdictions;
synthetic ETF	means an ETF that adopts synthetic replication strategy by entering into OTC derivative contracts to replicate the index's performance without directly holding the underlying constituents of the index or benchmark;
trading participant	means a corporation that has been admitted as a trading participant in accordance with <i>Rules of Bursa Malaysia Derivatives Berhad</i> and has not ceased for any reason to be a trading participant;
transferable securities	has the same meaning assigned to it under paragraph 6.13.

## Calculation of time period

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

## Usage of the term "index"

- 2.03 References to “index” in these Guidelines will be taken to mean an index or a benchmark as the context requires.

## **Chapter 3**

### **THE MANAGEMENT COMPANY**

#### **General**

3.01 A management company is a company that–

- (a) establishes an ETF;
- (b) issues, offers for subscription, makes an invitation to subscribe for or purchase units of the ETF; and
- (c) operates and manages the ETF.

3.02 A management company must be the holder of a CMSL for the regulated activity of fund management in relation to portfolio management.

#### ***Additional requirements for Synthetic ETF and Futures-based ETF***

3.03 The management company must demonstrate its capabilities in managing futures-based ETF or synthetic ETF.

#### **Directors**

3.04 The directors of a management company must, in addition to their duties and responsibilities as directors, represent and safeguard the interests of unit holders of the ETF.

3.05 The board of directors of a management company must comprise at least two independent members, while maintaining a minimum ratio of at least one-third independent members ("board composition"). Should there be a change to the board composition resulting in a breach of this requirement, the management company must take necessary steps to rectify the breach as soon as practicable and in any case, no later than three months from the date of change.

3.06 A director of a management company must not hold office as director of more than one management company at any one time.

3.07 Paragraph 3.06 does not apply where the management company satisfies the following conditions:

- (a) The management companies concerned are related companies whereby–
  - (i) the management company is an ultimate holding company which wholly-owns the other management company;
  - (ii) the management company is a wholly-owned subsidiary of the other management company; or

- (iii) the management companies concerned are wholly-owned subsidiaries of the same ultimate holding company; and
- (b) The management companies have notified the respective unit holders of such director's appointment.

### **Roles and Responsibilities**

3.08 In performing its duties as stipulated under the CMSA, a management company must–

- (a) exercise the degree of care and diligence that a reasonable person would exercise in the position of a management company;
- (b) act in the best interest of unit holders and, if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
- (c) observe high standards of integrity and fair dealing in managing the ETF to the best and exclusive interest of unit holders;
- (d) ensure that the assets of the ETF are–
  - (i) clearly identified as the ETF's assets; and
  - (ii) held separately from the assets of the management company and any other fund managed by the management company;
- (e) conduct all transactions for the ETF on arm's length basis;
- (f) appoint a full-time chief executive;
- (g) appoint a compliance officer who must report directly to the board of directors;
- (h) appoint an individual as a designated person responsible for the fund management function of the ETF, whether the function is undertaken internally within the management company or externally. Where the fund management function is undertaken by an external party, the management company must ensure that the fund manager appoints a designated person for the ETF;
- (i) establish, implement and maintain risk management policy and procedures of the ETF, which is to be documented in a standalone document, to effectively monitor, measure and manage risks of the investment positions of the ETF and their overall contributions to the risk profile of the ETF. The management company must at all times–
  - (i) ensure that suitable and effective risk management and control systems are in place to monitor, measure, and manage all relevant risks in relation to the ETF;
  - (ii) ensure that an effective liquidity risk management is being implemented and maintained; and
  - (iii) implement and maintain effective internal policy and procedures to assess the credit risk that the ETF is exposed to or will be exposed to. External



ratings shall only be one of the factors to consider in assessing the credit quality of a security or instrument. Mechanistic reliance on external ratings must be avoided;

- (j) ensure that the human resource, technology and systems employed are adequately and appropriately resourced, at all times, for the proper establishment, implementation and maintenance of the risk management policy and procedures under paragraph (i);
  - (k) establish, implement, maintain policies and procedures and ensure proper records are in place in relation to the ETF's valuation and pricing;
  - (l) maintain an internal audit function to report on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls; and
  - (m) take all necessary action to rectify any breach of these Guidelines as soon as practicable, and must not enter into any transaction that could increase the extent of the breach.
- 3.09 For the purpose of paragraph 3.08(h), the designated person must be the holder of a Capital Markets Services Representative's Licence to carry on the regulated activity of fund management. Where the designated person is a foreign fund manager, the designated person must be licensed, registered, approved or authorised to carry on the activity of fund management by the relevant regulator in his home jurisdiction.
- 3.10 A management company must—
- (a) select appropriate strategies to achieve the proper performance of the ETF in accordance with the fund management policies; and
  - (b) ensure that the strategies selected are properly and efficiently implemented.
- 3.11 A management company may appoint a market maker who is registered under the *Rules of Bursa Malaysia Securities Berhad*.
- 3.12 Where the index is constructed by an index provider which is a related corporation of the management company, the management company must have effective arrangements in place to manage potential conflicts of interest.

### **Oversight on the operation and management of the ETF**

- 3.13 A management company must have oversight arrangement to ensure that the ETF is managed in accordance with—
- (a) its deed;
  - (b) its prospectus;
  - (c) the internal investment restrictions and policies; and

- (d) the requirements under these Guidelines.
- 3.14 The arrangement for the oversight function must be appropriate and proportionate to the nature and complexity of funds being managed by the management company. A person who undertakes the oversight function must:
- (a) In the case of an individual, the individual must be independent from the functions where the oversight arrangements are on to enable the individual to undertake its role effectively; and
  - (b) In the case of a committee, the committee may comprise of some members who are not independent from the functions of the oversight arrangements, provided that the committee as a whole must be able to undertake its roles and responsibilities effectively.
- 3.15 The roles and responsibilities of the person undertaking the oversight function includes the following:
- (a) Ensure that the investment strategies selected are properly and efficiently implemented by the fund manager;
  - (b) Actively monitor, measure and evaluate the fund management performance of the fund manager; and
  - (c) Approve the appointment of a broker or dealer as prescribed under paragraph 3.18.
- 3.16 Any person, including any members of a committee, who carries out the oversight function must not be a member of the Shariah adviser appointed for the same fund.
- 3.17 Where a management company undertakes cross trades between the funds it manages, or between the fund it manages and its other clients' accounts,—
- (a) the person undertaking the oversight function must approve the policies and procedures governing cross trades; and
  - (b) the management company must provide details of any cross trades transacted to the person undertaking the oversight function.

#### **Use of broker or dealer**

- 3.18 A management company in appointing a broker or dealer must be satisfied that the dealings in the ETF's assets will be effected by the broker or dealer on terms which are the most favourable for the ETF (best execution basis).

## **Valuation**

- 3.19 A management company must take all reasonable steps and exercise due diligence to ensure that the ETF's assets are correctly valued in line with the provisions of Chapter 9 and Schedule E, the deed and the prospectus.
- 3.20 For the purpose of valuing the ETF's assets, a management company must not do or omit anything that would, or might confer on itself a benefit or advantage at the expense of unit holders or investors.

## **Maintenance of records**

- 3.21 A management company must maintain, or cause to be maintained for a period of at least seven years,–
- (a) the accounting records and other books to sufficiently explain the transactions and financial position of the ETF and enable true and fair financial statements to be prepared from time to time; and
  - (b) such accounting records and other books in such a manner as will enable them to be conveniently and properly audited.
- 3.22 A management company must ensure that the financial statements of the ETF give a true and fair view of the ETF's financial position as at end of the ETF's financial year.

## **Provision of information**

- 3.23 A management company must submit or make available any information relating to the ETF, its business and any other information as may be required by the trustee from time to time.
- 3.24 The SC may require additional information to be disclosed on a real-time or near real-time basis if deemed necessary.

## **Maintenance of a website**

- 3.25 A management company is required to maintain a website incorporating information relating to the management company and its ETFs.
- 3.26 The details of the information to be included on the website are as set out in Schedule A.

### **Holding of units by management company**

- 3.27 Where a management company or its related corporation holds units in an ETF that it manages, it must ensure that there are adequate policies, procedures and controls established to manage any potential conflict of interests.

### **Conflict of interest or related-party transactions**

- 3.28 A management company and a fund manager must avoid any conflict of interest. However, where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the investors and to ensure that the ETF is not disadvantaged by the transactions concerned.
- 3.29 Any related-party transaction, dealing, investment and appointment involving parties to an ETF must be made on terms which are the best available for the ETF and which are no less favourable to the ETF than an arm's length transaction between independent parties.
- 3.30 The appointment or renewal of appointment of a fund manager or service provider who is a related party must be approved by the independent directors of the management company.

### **Corporate governance**

- 3.31 A management company and the fund manager must implement good corporate governance practices and best industry standards for all activities conducted in relation to the ETF and any matter arising out of its listing or trading on a stock exchange.

## **Chapter 4**

### **DELEGATION OF FUND MANAGEMENT FUNCTION**

- 4.01 A management company may appoint a third party to undertake its fund management function.
- 4.02 For the purpose of these Guidelines, a third party appointed by a management company to undertake the fund management function for an ETF will be referred to as a “fund manager”.
- 4.03 The management company is responsible for proper conduct of the function undertaken by the fund manager and will be held equally responsible for the action and omission by the fund manager.
- 4.04 A management company must ensure that–
- (a) adequate procedures are in place to monitor the conduct of the fund manager and to ensure that the function undertaken is performed in a proper, diligent and efficient manner;
  - (b) the fund manager has controls in place to ensure compliance with the securities laws, these Guidelines, prospectus and deed; and
  - (c) in relation to an appointment of a foreign fund manager, a letter of undertaking is provided by the foreign fund manager to the SC that–
    - (i) it will maintain for a period of at least seven years, proper records that sufficiently explain the transactions entered into on behalf of the ETF and the financial position of the ETF in relation to such transactions; and
    - (ii) it will enable such records to be conveniently and properly audited or inspected.
- 4.05 In appointing a fund manager, a management company must also ensure that the person appointed is suitable to undertake the particular function, including that it–
- (a) is duly licensed or authorised by a relevant authority;
  - (b) has adequate financial resources;
  - (c) has an adequate track record in the performance of the function; and

- (d) has adequate and appropriate human resources, systems, procedures and processes, including compliance with applicable regulatory requirements as well as policies and procedures on internal controls, to carry out the function.
- 4.06 The service agreement governing the appointment of a fund manager must, among others, contain clear provisions on–
- (a) the services to be provided;
  - (b) the fees, remuneration and other charges;
  - (c) any restriction or prohibition regarding the performance of the function to be undertaken; and
  - (d) reporting requirements, including the line of reporting to the management company and the means of evaluating the performance of the fund manager.
- 4.07 An appointment of a fund manager by a management company requires prior notification to the SC in writing.
- 4.08 Where a management company appoints a foreign fund manager, the service agreement between the management company and the foreign fund manager must include, in addition to the requirements set out in paragraph 4.06, provisions on the following:
- (a) Adequate training arrangements between the foreign fund manager and the management company; and
  - (b) Powers of examination and inspection by the management company, the trustee and the SC to ensure that the foreign fund manager is in compliance with the securities laws, these Guidelines, prospectus and the deed.
- 4.09 An officer of the fund manager must not hold office as a member of –
- (a) the oversight function of any fund for which the fund manager is appointed to manage; or
  - (b) the Shariah adviser of any ETF for which the fund manager is appointed to manage.
- 4.10 Paragraph 4.09(a) does not apply where the fund manager and the management company satisfy the following conditions:

- (a) The fund manager and the management company are related companies whereby-
    - (i) the fund manager is an ultimate holding company which wholly-owns the management company;
    - (ii) the fund manager is a wholly-owned subsidiary of the management company; or
    - (iii) the fund manager and the management company concerned are wholly-owned subsidiaries of the same ultimate holding company; and
  - (b) The management company has notified the respective unit holders of such appointment.
- 4.11 The fund manager's remuneration must be paid by the management company and not be charged to the ETF.

## **Chapter 5**

### **CONSTITUTION OF THE EXCHANGE-TRADED FUND**

#### **Instrument constituting the ETF**

- 5.01 In addition to the requirements of the CMSA, the deed to be registered with the SC must contain the minimum requirements prescribed in Schedule F.
- 5.02 The contents of the deed must not–
- (a) be prejudicial to the interest of a unit holder or where applicable, a unit holder of any class of units; and
  - (b) contain any matter which is inconsistent with the securities laws or the relevant guidelines issued by the SC.
- 5.03 The management company and trustee are responsible for maintaining the deed and making necessary amendments to the deed in accordance with the securities laws and relevant guidelines issued by the SC.

#### **Name of the ETF**

- 5.04 The management company and trustee must ensure that the name of the ETF or any class of units of the ETF is appropriate and not misleading.
- 5.05 For the purpose of paragraph 5.04–
- (a) a futures-based ETF must include the term “futures” as part of the name of the ETF;
  - (b) a leveraged ETF must include the leverage factor and the term “leveraged” as part of the name of the ETF;
  - (c) an inverse ETF must include the inverse factor and the term “inverse” as part of the name of the ETF; and
  - (d) a synthetic ETF must include the term “synthetic” as part of the name of the ETF.



- 5.06 The SC may require the management company to change the name of the ETF or any class of units of the ETF if, in the opinion of the SC, the name is inappropriate or misleading.

**Investment objective of the ETF**

- 5.07 The investment objective of the ETF must be clear, specific and sufficiently stipulated in the deed.
- 5.08 Where the strategies to be adopted to meet the investment objective involve investment in a particular style, asset class, economic sector, market or geographical area, the management company must ensure that an appropriate portion of the ETF is invested in accordance with that intention.

## **Chapter 6**

### **INVESTMENTS OF THE EXCHANGE-TRADED FUND**

#### **General**

6.01 The ETF's assets must be relevant and consistent with the investment objective of the ETF, which is to—

- (a) track;
- (b) deliver multiples of; or
- (c) deliver opposite of,

the performance of an index or benchmark in the manner specified, with minimal tracking error.

6.02 The additional requirements applicable for specialised ETFs are as stipulated in Schedule B.

#### **Dealing in the ETF's assets**

6.03 Any dealings in an ETF's assets must be appropriate to the ETF and in compliance with the securities laws, these Guidelines, prospectus and deed.

6.04 The management company must—

- (a) inform the trustee in writing of any acquisition or disposal of the ETF's assets within one business day after which the acquisition or disposal was effected;
- (b) ensure that the ETF's assets have adequate proof of title or ownership to allow proper custodial arrangements to be made; and
- (c) cancel a transaction or make a corresponding acquisition or disposal at its own expense to secure restoration of the previous position where the trustee conveyed an opinion that a particular acquisition or disposal exceeds the powers conferred on it, or is otherwise contrary to the interests of the unit holders.

#### **Permissible Investments**

6.05 The ETF's assets may only consist, unless otherwise provided in these Guidelines, of the following:

- (a) Transferable securities;

- (b) Units or shares in CIS;
  - (c) Derivatives; and
  - (d) Deposits and money market instruments.
- 6.06 An ETF may not acquire any asset or engage in any transaction which involves the assumption of any liability which is unlimited.
- 6.07 Transferable securities and money market instruments held by the ETF must be traded or dealt in or under the rules of an eligible market.
- 6.08 The weightings of the constituents of the ETF's assets may be based on the following strategy:
- (a) Full replication by investing all or substantially all of its assets in the entire constituents of the index;
  - (b) Representative sampling of the constituents of the index; or
  - (c) Synthetic replication of the constituents of the index,
- which the ETF is tracking.
- 6.09 The ETF's assets need not consist of the exact composition and weighting of the constituents in the relevant index where deviation in the form of proxy stocks or synthetic replication is necessary for reasons of poor liquidity in trading in the constituents of the relevant index.

### ***Acceptable indices***

- 6.10 The index that is tracked by an ETF must–
- (a) have–
    - (i) a clearly defined objective; or
    - (ii) a clear market or sector it aims to represent;
  - (b) be objectively calculated and rules-based;
  - (c) be diversified such that the maximum weight per constituent does not exceed 20% of the index. Where an index is composed solely of constituents which are

non-shares, the maximum weightage of only one constituent may be increased to but not exceeding 35% of the index;

- (d) contain constituents that are sufficiently liquid;
- (e) be transparent and easily accessible by investors; and
- (f) be constructed, maintained and reviewed by a reputable third party index provider.

6.11 Paragraph 6.10(c) does not apply where the constituents are securities or instruments issued or guaranteed by–

- (a) the Malaysian Government or Bank Negara Malaysia; or
- (b) a foreign government, government agency, or supranational which the foreign government is a member of, provided that the ETF that is tracking the index complies with Schedule B – Appendix IV.

6.12 The requirements under paragraph 6.10 and paragraph 13.14 are not applicable to–

- (a) a commodity ETF; or
- (b) a futures-based ETF that tracks a benchmark or index relating to a single commodity.

### **Investments in transferable securities**

6.13 Transferable securities refer to–

- (a) shares or securities equivalent to shares;
- (b) bonds or other forms of securitised debt; and
- (c) sukuk,

but do not include money market instruments or any security where the title can be transferred only with the consent of a third party.

6.14 Transferable securities must meet the following criteria:

- (a) The maximum potential loss which the fund may incur as a result of the investment is limited to the amount paid for it;

- (b) The investment is liquid, and will not impair the fund's ability to satisfy its redemption and other payment commitments;
  - (c) The investment is subject to reliable and verifiable valuation on a daily basis; and
  - (d) There is appropriate information available to the market on the investment.
- 6.15 For avoidance of doubt, shares that are not listed and quoted on a stock exchange but have been approved by the relevant regulatory authority for such listing and quotation, and are offered directly to the fund by the issuer, will be deemed to be transferable securities traded or dealt in or under the rules of an eligible market.

### **Investments in derivatives**

- 6.16 The ETF's assets may consist of derivatives that are either listed or quoted on a stock exchange, or dealt in the OTC market, provided that the ETF's global exposure from derivatives position does not exceed the ETF's NAV at all times. The global exposure may be calculated using the approach described in Part 1, Appendix I of this Chapter.
- 6.17 The use of derivatives must be consistent with the ETF's objective in minimising tracking error of the ETF and must not cause the ETF to diverge from its investment objective.
- 6.18 Where an ETF invests in derivatives, the exposure to the underlying constituents must not exceed the weighting for each particular asset, whether for a full replication or representative sampling strategy.
- 6.19 The underlying instruments of a derivative must only consist of permissible investments under paragraph 6.05 and may also include commodities, indices, interest rates and foreign exchange rates. Where the underlying instrument of a derivative is a commodity, such derivative must be settled in cash at all times and this must be set out in the deed and prospectus.
- 6.20 The derivative must meet the following criteria:
- (a) The derivative must be liquid and will not impair the ETF's ability to satisfy its redemption and other payment commitments;
  - (b) The derivative is subject to reliable and verifiable valuation on a daily basis;
  - (c) The derivative can be sold, liquidated or closed by an offsetting transaction at any time at its fair value; and

- (d) The derivative must not result in the delivery of investments other than those prescribed under paragraphs 6.05(a), (b) and (d).
- 6.21 In the case of OTC derivatives, reliable and verifiable valuation pursuant to paragraph 6.20(b) refers to the following:
- (a) A valuation made by the management company based on a current market value; or
  - (b) Where such value is not available, a fair value based on an appropriate valuation method which is checked at an appropriate frequency by an independent party.

***Embedded derivatives***

- 6.22 Where a transferable security or money market instrument embeds a derivative, the requirements in paragraphs 6.16 to 6.21 and 6.27 apply to the embedded derivative.
- 6.23 Where the counterparty risk of the embedded derivative is or may be transferred to the ETF, paragraphs 6.28 and 6.29 also apply to the embedded derivative.
- 6.24 A transferable security or money market instrument is considered to be embedding a derivative if it contains a component that fulfils the following criteria:
- (a) The component results in some or all of the cash flows that otherwise would be required by the transferable security or money market instrument which functions as a host contract to be modified according to a variable including but not limited to a specified interest rate, price of a financial instrument, foreign exchange rate, index of prices or rates, credit rating or credit index, and therefore vary in a way similar to a standalone derivative;
  - (b) The component's economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
  - (c) The component has a significant impact on the risk profile and pricing of the transferable security or money market instrument.
- 6.25 A transferable security or a money market instrument should not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or money market instrument. Such a component should be deemed to be a separate financial instrument.
- 6.26 Where an instrument is structured as an alternative to an OTC derivative or tailor-made to meet the specific needs of an ETF, the instrument must be deemed as embedding a derivative.

### ***Cover***

- 6.27 The management company must ensure the ETF is able to meet its payment and delivery obligations incurred under transactions in derivative, whether for hedging or for investment purposes, at all times.

### ***OTC derivatives***

- 6.28 The OTC derivative must meet the following:
- (a) The counterparty of an OTC derivative must be a financial institution with a minimum long-term credit rating of investment grade (including gradation and subcategories); and
  - (b) The maximum exposure of an ETF to the counterparty, calculated based on the method as described in Part 2, Appendix 1 of this Chapter, must not exceed 10% of the ETF's NAV.
- 6.29 For the purpose of paragraph 6.28(a), where the rating of the counterparty falls below the minimum required, or the counterparty ceases to be rated, the fund manager should, within six months or sooner, if the trustee considers it to be in the best interest of the unit holders, take the necessary action to ensure that the requirements are complied with.

### **Investments in CIS**

- 6.30 An ETF's assets may consist of units or shares in CIS.
- 6.31 The CIS must—
- (a) be regulated by a regulatory authority;
  - (b) if the CIS is constituted in Malaysia, be authorised or approved by the SC;
  - (c) if the CIS is constituted outside Malaysia—
    - (i) be registered, authorised or approved by the relevant regulatory authority in its home jurisdiction;
    - (ii) the laws and practices provide the level of investor protection that is at least equivalent to that offered in Malaysia; and

- (iii) save for real estate investment trust, the rules on investments, borrowing and lending are substantially similar to the requirements in these Guidelines.

- 6.32 Where the ETF invests in a CIS operated by the same management company or any of its related corporation, the management company must ensure that–
- (a) there is no cross-holding between the ETF and the CIS;
  - (b) all initial charges on the CIS are waived; and
  - (c) the management fee is charged once only, either at the ETF or the CIS.
- 6.33 The value of the ETF's investments in units or shares of any CIS must not exceed 20% of the ETF's NAV.
- 6.34 The single CIS limit in paragraph 6.33 is not applicable to–
- (a) investments in a single CIS ("feeder ETF"); or
  - (b) where the exception under paragraph 6.10(c) applies.

### **Investments in deposits and money market instruments**

- 6.35 The ETF's assets may consist of placement of deposits provided that it is with a financial institution.
- 6.36 The value of an ETF's placement in deposits with a single financial institution must not exceed 20% of the ETF's NAV.
- 6.37 The single financial institution limit in paragraph 6.36 does not apply to placements of deposits arising from:
- (a) Subscription monies received prior to the commencement of investment by the ETF;
  - (b) Liquidation of investments prior to the termination or maturity of the ETF, where the placement of deposits with various financial institutions would not be in the best interests of unit holders; or
  - (c) Monies held for the settlement of redemption or other payment obligations, where the placement of deposits with various financial institutions would not be in the best interest of unit holders.



- 6.38 Unless otherwise provided for under paragraph 6.10(c), the value of an ETF's investments in money market instruments issued by any single issuer must not exceed 15% of the ETF's NAV.
- 6.39 Unless otherwise provided for under paragraph 6.10(c), the value of an ETF's investments in money market instruments issued by any group of companies must not exceed 20% of the ETF's NAV.
- 6.40 Limits and restrictions in these Guidelines do not apply to securities or instruments issued by or guaranteed by the Malaysian government or Bank Negara.

### **Securities lending and repurchase transactions**

- 6.41 The ETF may undertake securities lending and repurchase transactions provided that these are for the sole purpose of efficient portfolio management. A transaction is deemed to be for the purpose of efficient portfolio management if it meets the following criteria:
- (a) Economically appropriate and realised in a cost-effective way;
  - (b) Entered into for one or more of the following specific aims:
    - (i) Reduction of risk;
    - (ii) Reduction of cost; or
    - (iii) Generation of additional capital or income for the ETF with a level of risk which is consistent with the risk profile of the ETF and the risk diversification requirements as prescribed in these Guidelines;
  - (c) The exposure is fully covered to meet any obligation to pay or deliver; and
  - (d) The risks are adequately captured by the risk management policy and procedures of the ETF.
- 6.42 The fund manager must ensure that it has appropriate policies and practices for the lending of securities and repurchase transactions by the ETF. The fund manager must ensure that the volume of securities lending or repurchase transactions is kept at an appropriate level.
- 6.43 For the purpose of securities lending, an ETF may lend its transferable securities either—
- (a) directly;

- (b) through a standardised lending system facilitated by a clearing house which performs a central counterparty role; or
  - (c) through securities lending agents, who are recognised as specialists in securities lending.
- 6.44 Securities lending and repurchase transactions must be effected in accordance with good market practice.
- 6.45 The fund manager must have at least 100% collateralisation in respect of the securities lending and repurchase transactions into which it enters and ensure there is no uncollateralised counterparty risk exposure arising from these transactions. The collateral must meet the requirements in Appendix II of this Chapter.
- 6.46 All the revenues arising from securities lending and repurchase transactions, net of direct and indirect expenses as reasonable and normal compensation for the services rendered in the context of the securities lending and repurchase transactions, must be returned to the ETF.
- 6.47 The securities lending and repurchase transactions must be permitted under the deed and disclosed in the prospectus.

### ***Counterparty***

- 6.48 The counterparty to the securities lending and repurchase transactions must be a financial institution that has a minimum top three long-term credit rating (including gradation and subcategories) provided by any Malaysian or global rating agency.
- 6.49 Where the counterparty to the securities lending and repurchase transactions is a party related to the management company or the fund manager, the management company or the fund manager, as the case may be, must have adequate arrangements in place to manage potential conflict of interests.
- 6.50 The agreement between the ETF and the counterparty, either directly or through its agent, must require the counterparty to provide additional collateral to the ETF or its agent no later than the close of the next business day if the current value of the eligible collateral tendered is insufficient.
- 6.51 Except otherwise provided under paragraph 6.41, the ETF's assets may not be lent. In addition, the ETF may not assume, guarantee, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any person.

## **Borrowings and Financing Facilities**

- 6.52 Except otherwise provided under paragraph 6.41, the ETF is prohibited from borrowing other assets (including the borrowing of securities within the meaning of the *Securities Borrowing and Lending Guidelines*) in connection with its activities.
- 6.53 Notwithstanding paragraph 6.52, the ETF may borrow or obtain cash for the purpose of meeting redemption requests and for short-term bridging requirements.
- 6.54 For the purpose of paragraph 6.53, the management company must ensure that—
- (a) the ETF's cash borrowing or financing is only on a temporary basis and that borrowings or financing are not persistent;
  - (b) the borrowing or financing period must not exceed one month;
  - (c) the aggregate borrowings or financing of an ETF must not exceed 10% of the ETF's NAV at the time the borrowing or financing is incurred; and
  - (d) the ETF only borrows or obtain financing from financial institutions.

## **Breach of investment limits and restrictions**

- 6.55 The management company must notify the SC, within seven business days, of any breach of investment limits and restrictions in this Chapter of these Guidelines with the steps taken to rectify and prevent such breach from recurring.
- 6.56 Notwithstanding paragraph 6.55, any breach as a result of any—
- (a) appreciation or depreciation in the value of the ETF's underlying investments;
  - (b) redemption of units or payments made from the ETF;
  - (c) change in capital of a corporation in which the ETF has invested in; or
  - (d) downgrade in or cessation of a credit rating,
- need not be reported to the SC but must be rectified as soon as practicable within three months from the date of the breach unless otherwise specified in these Guidelines.
- 6.57 Notwithstanding paragraph 6.56, the three-month period may be extended if it is in the best interest of unit holders and the trustee's consent is obtained. Such extension must be subject to at least a monthly review by the trustee.

## **Other Investments**

- 6.58 The fund manager should seek the SC's approval before investing in other types of investments not specified in this chapter. In granting approval, the SC will consider whether the investments would have an impact to the principal objective of the fund and whether the investment would be in the best interest of the unit holders.

## **Voting Rights**

- 6.59 The management company or the trustee is encouraged to exercise the voting rights for any shares held by the ETF at a shareholders' meeting of corporations whose shares are so held.

## **Chapter 6 – Appendix I**

### **EXPOSURE TO DERIVATIVES**

#### **PART 1: CALCULATION OF GLOBAL EXPOSURE TO DERIVATIVES AND EMBEDDED DERIVATIVES**

1. For the purpose of this Appendix, any reference to 'high quality' means the highest long-term credit rating of the issuer.

#### **Commitment approach**

2. The global exposure of an ETF is calculated as the sum of the—
  - (a) absolute value of the exposure of each individual derivative not involved in netting or hedging arrangements; and
  - (b) absolute value of the net exposure of each individual derivative after netting or hedging arrangements; and
  - (c) the values of cash collateral received pursuant to—
    - (i) the reduction of exposure to counterparties of OTC derivatives; and
    - (ii) efficient portfolio management techniques relating to securities lending and repurchase transactions.

#### ***Netting arrangements***

3. Netting arrangements may be taken into account to reduce an ETF's exposure to derivatives.
4. An ETF may net positions between—
  - (a) derivatives on the same underlying constituents, even if the maturity dates are different; or
  - (b) derivatives and the same corresponding underlying constituents, if those underlying constituents are transferable securities, money market instruments or units or shares in other CIS.

### ***Hedging arrangements***

5. Hedging arrangements may be taken into account to reduce an ETF's exposure to derivatives.
6. The marked-to-market value of transferable securities, money market instruments or units or shares in CIS involved in hedging arrangements may be taken into account to reduce the exposure of an ETF to derivatives.
7. The hedging arrangement must—
  - (a) not be aimed at generating a return;
  - (b) result in an overall verifiable reduction of the risk of the ETF;
  - (c) offset the general and specific risks linked to the underlying constituent being hedged;
  - (d) relate to the same asset class being hedged; and
  - (e) be able to meet its hedging objective in all market conditions.

### **PART 2: CALCULATION OF EXPOSURE TO COUNTERPARTY OF OTC DERIVATIVES**

8. The exposure to a counterparty of an OTC derivative must be measured based on the maximum potential loss that may be incurred by the fund if the counterparty defaults and not on the basis of the notional value of the OTC derivative.
9. The total exposure to a single counterparty is calculated by summing the exposure arising from all OTC derivative transactions entered into with the same counterparty.

### ***Collateral***

10. The exposure to a single counterparty as set out in paragraph 6.28(b) may be construed as being lower if the ETF receive collateral from such counterparty, provided that the collateral complies with the following requirements:
  - (a) It can only consist of cash, debt securities, or money market instruments, that are subject to the investment restrictions and limits, on a portfolio basis, as prescribed under Schedule D of these Guidelines;
  - (b) It is marked-to-market daily by using independent pricing source;

- (c) It must be sufficiently liquid and tradable in order that it can be sold quickly at a robust price that is close to pre-sale valuation. Collateral should normally trade in a deep and liquid marketplace with transparent pricing;
  - (d) It must be of high quality and must be replaced immediately as soon as the credit quality of the collateral or the issuer of the asset being used as collateral has deteriorated to such a degree that it undermines the effectiveness of the collateral;
  - (e) Its value must not have any significant correlation with the creditworthiness of the counterparty in such a way that would undermine the effectiveness of the collateral;
  - (f) It is not issued by the counterparty or any of its related corporation;
  - (g) It must be held by the trustee in a trust account for the ETF;
  - (h) It must be subject to prudent haircut policy;
  - (i) It must be readily accessible or enforceable by the trustee of the ETF without further recourse to the issuer of the derivatives;
  - (j) It is free from all prior encumbrances; and
  - (k) Bonds, sukuk and other forms of securitised debt, and money market instruments, with embedded derivatives are not eligible as collateral.
11. Additional collateral must be provided to the ETF no later than the close of the next business day if the current value of the collateral tendered is insufficient to satisfy the counterparty limit in paragraph 6.28(b).

### ***Reinvestment of Collateral***

12. Collateral obtained in the form of cash by the fund may only be reinvested in short-term deposits and high quality money market instruments, and subject to corresponding investment restrictions and limits applicable to such investments, on a portfolio basis, as prescribed under Schedule D of these Guidelines.
13. Non-cash collateral obtained by the ETF may not be sold, reinvested or pledged.

### ***Management of operational and legal risks***

14. The management company or the fund manager must have appropriate systems, operational capabilities and legal expertise for proper collateral management.

## **Chapter 6 – Appendix II**

### **SECURITIES LENDING AND REPURCHASE TRANSACTIONS**

1. For the purpose of this Appendix, any reference to 'high quality' means the top three long-term credit rating of the issuer (including gradation and subcategories).

#### **Collateral: General**

2. The collateral provided to the ETF for securities lending and repurchase transactions must comply with the following:
  - (a) It can only consist of cash, debt securities, or money market instruments, that are subject to the investment restrictions and limits, on a portfolio basis, as prescribed under Schedule D of these Guidelines;
  - (b) It is marked-to-market daily by using independent pricing source;
  - (c) It must be sufficiently liquid and tradable in order that it can be sold quickly at a robust price that is close to pre-sale valuation. Collateral should normally trade in a deep and liquid marketplace with transparent pricing;
  - (d) It must be of high quality and must be replaced immediately as soon as the credit quality of the collateral or the issuer of the asset being used as collateral has deteriorated to such a degree that it undermine the effectiveness of the collateral;
  - (e) Its value must not have any significant correlation with the creditworthiness of the counterparty in such a way that would undermine the effectiveness of the collateral;
  - (f) It is not issued by the counterparty or any of its related corporation;
  - (g) It must be—
    - (i) held by the trustee or an agent; and
    - (ii) legally secured from the consequences of the failure of the trustee, counterparty or agent;
  - (h) It must be subject to prudent haircut policy;
  - (i) It must be readily accessible or enforceable by the trustee of the ETF without further recourse to the counterparty of the securities lending and repurchase transactions;
  - (j) It is free from all prior encumbrances; and
  - (k) Bonds, sukuk and other forms of securitised debt, and money market instruments, with embedded derivatives are not eligible as collateral.



***Collateral: Securities lending through a standardised lending system***

3. For securities lending through a standardised lending system, the collateral may, in addition to instruments specified in paragraph (2)(a), consist of equity securities as approved or prescribed by the clearing house, provided that the equity securities—
  - (a) comply with the requirements specified in paragraphs (2)(b), (c), (e), (f), (g), (h), (i) and (j); and
  - (b) equity securities with embedded derivatives are not eligible as collateral.

***Re-investment of collateral***

4. Collateral obtained in the form of cash by the ETF may only be reinvested in short-term deposits and high quality money market instruments, and subject to corresponding investment restrictions and limits applicable to such investments, on a portfolio basis, as prescribed under Chapter 6 of these Guidelines.
5. Non-cash collateral received may not be sold, reinvested or pledged.

***Management of operational and legal risks***

6. The management company or the fund manager must have appropriate systems, operational capabilities and legal expertise for proper collateral management.

## **Chapter 7**

### **PARTICIPATING DEALERS**

#### **General**

- 7.01 A participating dealer is appointed by a management company to undertake the creation (either in-kind or in cash or a combination of both) and redemption (either in kind or in cash or a combination of both) of ETF units.
- 7.02 A participating dealer agreement must be executed with the management company and trustee.
- 7.03 Where a participating dealer is a market maker–
- (a) it must be registered as a market maker under the rules of Bursa Securities; and
  - (b) its obligation as a market maker must be stated in the participating dealer's agreement.
- 7.04 The SC may impose such other additional conditions on participating dealers from time to time as it deems fit.
- 7.05 A participating dealer must also adhere to such other conditions imposed by the relevant stock exchange in which the ETF is listed.

#### **Roles and Responsibilities of a Participating Dealer**

- 7.06 Creation and redemption undertaken on behalf of clients must be properly segregated from propriety trades.
- 7.07 All requests for creation and redemption must be done through the participating dealers who will apply to the management company for the creation and redemption of ETF units.
- 7.08 A participating dealer must observe high standards of integrity when dealing in the ETF's units.

## **Chapter 8**

### **FEES AND EXPENSES**

#### **Management fee and trustee fee**

- 8.01 A management company and trustee may only be remunerated by way of an annual fee charged to the ETF.
- 8.02 The fees may only be charged to the ETF if permitted by the deed and are clearly disclosed in the prospectus.
- 8.03 The fees must be accrued daily and calculated based on the NAV of the ETF. The number of days in a year must be used in calculating the accrued fees.
- 8.04 The fees must not exceed the amount or rate disclosed in the prospectus unless–
- (a) in the case of the management fee, the management company has notified the trustee in writing of the new higher amount or rate, and the trustee agrees after considering matters stated in paragraph 8.05 and the effective date of the fee;
  - (b) in the case of the trustee fee, the trustee has notified the management company in writing of the new higher amount or rate, and the management company agrees after considering the matters stated in paragraph 8.07;
  - (c) a supplementary or replacement prospectus stating the higher fee rate and its effective date, has been registered, lodged and issued; and
  - (d) the management company has announced to Bursa Securities, the higher amount or rate and its effective date, and 30 days have elapsed since the date of announcement.

#### **Remuneration of a management company**

- 8.05 A management company must demonstrate, and the trustee must agree, that the management fee is reasonable, considering–
- (a) the roles, duties and responsibilities of the management company;
  - (b) the interests of unit holders;
  - (c) the nature, quality and extent of the services provided by the management company;
  - (d) the size and composition of the ETF's assets;

- (e) the success of the management company in meeting the ETF's investment objective;
- (f) the need to maximise returns to unit holders; and
- (g) the maximum rate stipulated in the deed.

8.06 If at any time the trustee is of the opinion that the management fee charged to the ETF is unreasonable, the trustee must take such necessary action, which may include convening a unit holders' meeting, to ensure that the fee charged commensurate with the services provided by the management company.

### **Remuneration of trustee**

8.07 The trustee fee must be reasonable, and takes into consideration–

- (a) the roles, duties and responsibilities of the trustee;
- (b) the interests of unit holders;
- (c) the maximum rate stipulated in the deed; and
- (d) the size and composition of the ETF's assets.

### **Expenses of the ETF**

8.08 Only expenses, or part thereof, directly related to and necessary in operating and administering an ETF may be paid out of the ETF.

8.09 General overheads and costs for services expected to be provided by the management company must not be charged to the ETF.

8.10 A trustee must ensure that all expenses charged to the ETF are legitimate. In addition, a trustee must ensure that the quantum of expenses charged to the ETF is not excessive or beyond the standard commercial rates. Where uncertainties arise, a trustee must exercise its discretion carefully and appropriately in determining whether or not to allow the expense, or the quantum of the expense to be charged to the ETF.

8.11 A trustee may be reimbursed by the ETF for any expense appropriately incurred in the performance of its duties and responsibilities as a trustee.

## **Chapter 9**

### **VALUATION AND DEALING**

#### **Valuation**

- 9.01 A management company must calculate the IOPV per unit and end-of-day NAV per unit based on a formula and process which is consistently applied and which leads to valuations that are objective and independently verifiable.
- 9.02 The valuation points for an ETF must be at least once every business day.
- 9.03 The determination of the IOPV per unit must be carried out by a management company on a regular basis within a day and the management company must ensure that this information is disseminated through the stock exchange or other platforms as may be allowed by the SC on a real-time, near real time or on a frequency agreed with the SC.
- 9.04 NAV per unit is computed based on the NAV of the ETF divided by the number of units in circulation, at the valuation point. To determine the ETF's NAV, a fair and accurate valuation of all assets and liabilities of the ETF must be conducted.
- 9.05 Where multiple classes of units are issued, NAV per unit is computed based on the NAV of the ETF attributable to a class of units divided by the number of units in circulation for that class of units, at the valuation point.
- 9.06 Upon completion of a valuation, the trustee must be immediately notified of the NAV per unit of the ETF.

#### **Primary Market Creation and Cancellation**

##### ***Creation and Cancellation of Units***

- 9.07 A management company must instruct the trustee in writing to create or cancel units of the ETF.
- 9.08 A trustee must create and cancel units on receipt of, and in accordance with, the instructions given by the management company subject to the trustee complying with the procedures specified in the rules of Bursa Malaysia Depository Sdn. Bhd.
- 9.09 The trustee must create or cancel units in return for in-kind consideration, cash consideration, or a combination of both, and in creation or cancellation unit sizes or multiples thereof.

***Trustee May Refuse to Create or Cancel Units***

9.10 Notwithstanding any other requirement under these Guidelines, a trustee may, by notice to the management company, refuse to—

- (a) create units;
- (b) cancel units; or
- (c) create or cancel units in the number instructed by the management company,

where the trustee considers the creation or cancellation is not in the best interests of unit holders or it would result in a breach of the securities laws, these Guidelines or deed.

***Suspension of Dealing in Units***

9.11 A management company may, in consultation with the trustee and having considered the interests of unit holders, suspend dealing in units of a ETF due to exceptional circumstances, where there is good and sufficient reason to do so, considering the interests of unit holders.

9.12 Where a suspension of dealing in units of an ETF under paragraph 9.11 is triggered, the management company must ensure that all unit holders of the ETF are informed in a timely and appropriate manner of the decision to suspend dealing in units of the ETF.

9.13 A management company should cease the suspension as soon as practicable after the circumstances in paragraph 9.11 have ceased, and in any event, within 21 days of the commencement of suspension. The period of suspension may be extended if the management company satisfies the trustee that it is in the best interest of unit holders for the dealing in units to remain suspended. Such extension must be subject to weekly review by the trustee.

9.14 A trustee may suspend the dealing of units in an ETF if the trustee, on its own accord, considers an event under paragraph 9.11 has been triggered. In such a case, the trustee must immediately call for a unit holders' meeting to decide on the next course of action.

9.15 A suspension of dealing in units under paragraph 9.11 can apply to one or more classes of units without being applied to other classes provided always that such suspension does not prejudice the interests of unit holders.

9.16 A trustee must not create or cancel units when a suspension of dealing in units of an ETF is triggered.

- 9.17 A management company must immediately notify the SC in writing if dealing in units is suspended, including any extension of suspension, stating the reasons for the suspension or extended suspension, as the case may be.
- 9.18 Before resuming dealing in units after any suspension, the management company must notify the SC in writing of the proposed resumption and the date of the proposed resumption.
- 9.19 A management company may deal in units at a price calculated by reference to the first valuation point after restart of dealing in units.

## **Chapter 10**

### **PUBLIC OFFERINGS AND LISTINGS**

#### **Methods of Offering of Units**

##### *General*

10.01 An ETF may offer units by any of the following methods:

- (a) An offer for subscription;
- (b) A placement; or
- (c) Such other methods as may be acceptable by the SC.

10.02 For the purpose of paragraph 10.01, any offering of units of a leveraged or an inverse ETF can only be made to the categories of investors set out in Part I, Schedule 6 and 7 of the CMSA.

10.03 The SC has the discretion not to allow any particular method of offering chosen by the ETF if it is of the view that the method in question is not in the interest of the public.

#### **Issue Price of a Unit**

10.04 The issue price of ETF units offered for subscription or sale, for which listing is sought must be calculated by the management company and be based on a multiplier of the index, and must be at least RM0.50 each.

10.05 Where units are offered to related parties in conjunction with the initial public offering, the price of the units offered must be set at least at the issue price to the public.

10.06 Upon listing and quotation of the ETF on a stock exchange, the price of the unit must be –

- (a) in the case of primary market creation or redemption, the NAV per unit of the ETF; and
- (b) in the case of secondary market trading, the price quoted on the stock exchange.

10.07 For classes of units denominated in different currencies, the price of a unit must be quoted in the currency in which those classes are denominated.



## **Chapter 11**

### **OPERATIONAL MATTERS**

#### **Distribution of income**

- 11.01 Any distribution of income can only be made, after taking into consideration the investment objective and distribution policy of the ETF.
- 11.02 For classes of units denominated in different currencies, distributions, if any, must be in the currencies in which those classes of units are denominated.

#### **Rebates and soft commissions**

- 11.03 A management company, fund manager, trustee or its delegate must not retain any rebate from, or otherwise share in any commission with, any broker or dealer in consideration for directing dealings in an ETF's assets. Accordingly, any rebate or shared commission must be directed to the account of the ETF concerned.
- 11.04 A management company or fund manager may retain goods and services (soft commissions) provided by any broker or dealer if the following conditions are met:
- (a) The soft commissions bring direct benefit or advantage to the management of the ETF and may include research and advisory related services;
  - (b) Any dealing with the broker or dealer is executed on terms which are the most favourable for the ETF; and
  - (c) The availability of soft commissions is not the sole or primary purpose to perform or arrange transactions with such broker or dealer, and the management company or fund manager must not enter into unnecessary trades in order to achieve a sufficient volume of transactions to qualify for soft commissions.
- 11.05 Where paragraph 11.04 applies, the compliance officer must verify and inform the management company's board of directors or persons undertaking the oversight function, that the goods or services received by the management company or the fund manager complies with the requirements of these Guidelines.

#### **Documents for inspection by unit holders**

- 11.06 A management company and a trustee must make available at their principal place of business the following documents for inspection by investors and unit holders at all times, without charge, during the ordinary business hours of the management company and the trustee:

- (a) The deed and the supplementary deed(s) of the ETF, if any;
- (b) The current prospectus and the supplementary prospectus of the ETF, if any;
- (c) The latest annual report of the ETF;
- (d) Each material contract or document referred to in the prospectus;
- (e) All reports, letters or other documents, valuations and statements by any expert, any part of which is extracted or referred to in the prospectus;
- (f) Where applicable, the audited financial statements of the management company and the fund for the current financial year, and for the last three financial years or if less than three years, from the date of incorporation or commencement; and
- (g) Any consent given by experts or persons named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based.

### **Terminating an ETF**

11.07 The ETF must be terminated in the following events:

- (a) The SC's approval is withdrawn;
- (b) A special resolution is passed at a unit holders' meeting to terminate the ETF; and
- (c) All market makers for a leveraged ETF or an inverse ETF, as the case may be, have resigned.

11.08 Notwithstanding paragraph 11.07(c), the leveraged ETF or inverse ETF need not be terminated if the management company is able to appoint another market maker within three months from the resignation of the last market maker.

11.09 Notwithstanding paragraph 11.07, an ETF may also be terminated without a special resolution being passed at a unit holders' meeting, provided that–

- (a) such circumstance of termination is in the best interest of unit holders; and
- (b) the event of an occurrence of specific termination circumstance without a special resolution being passed is permitted by the deed and disclosed in the prospectus.

11.10 Upon the occurrence of any of the events under paragraphs 11.07 and 11.09–

- (a) Chapter 6 (Investments of the Exchange-traded Fund) will cease to apply to the ETF;
- (b) dealing in, and creation and cancellation of units must cease;
- (c) the trustee must–
  - (i) realise all the ETF's assets remaining in its hands;
  - (ii) after paying or retaining adequate amount for all liabilities payable and cost of termination, distribute to unit holders the net cash proceeds available for the purpose of such distribution in proportion to the number of units held by unit holders respectively; and
  - (iii) in relation to any monies held by the trustee that remains unclaimed after 12 months, transfer of such monies to the *Registrar of Unclaimed Moneys*, in accordance with the requirements of the *Unclaimed Moneys Act 1965*.

11.11 The management company and trustee must notify the SC in writing whereupon the passing of a resolution to terminate the ETF, or upon the court confirming the unit holders' resolution to terminate the ETF.

11.12 Where an ETF is being terminated, the trustee must also arrange for the auditor of the ETF to conduct a final review and audit of the ETF's accounts.

11.13 The management company or trustee must as soon as practicable after the completion of the termination of the ETF, inform unit holders of such termination.

11.14 The trustee must upon the completion of the termination of the ETF, notify the SC confirming the following:

- (a) The assets of the ETF have been realised and distributed to unit holders; and
- (b) The management company has managed the ETF as prescribed by the deed and relevant laws.

***Accounting and reports during termination***

11.15 While an ETF is being terminated—

- (a) the financial period continues to run; and
- (b) the annual report continues to be required.

11.16 Where for any financial period, the management company, after consulting the auditor and the trustee, has taken reasonable care to determine that timely production of an annual report is not required in the interests of unit holders, the immediate production of the report may be dispensed with.

11.17 The financial period in paragraph 11.16 must be reported together with the following period in the next report prepared for the purpose of paragraph 11.18. In such instance, the management company must notify the SC of the change to the timing of issuance of the annual report, and the expected date of issuance of such report.

11.18 At the date of completion of the fund termination, the financial period then running is regarded as the final financial period for the ETF. Within two months after the end of the financial period, the final report of the ETF must be published and sent to each unit holder and the SC.

**Terminating a class of units**

11.19 A class of units may be terminated if a special resolution is passed at a meeting of unit holders of that class of units to terminate the class provided always that such termination does not prejudice the interests of any other class of units.

11.20 The management company or trustee must as soon as practicable after the termination of a class of units inform all unit holders of the ETF of the termination of the class of units.

11.21 The management company and trustee must notify the SC in writing—

- (a) upon the passing of a resolution to terminate a class of units; and
- (b) upon the completion of the termination of a class of units.

11.22 Where a class of units is being terminated, the trustee must also arrange for the auditor of the ETF to conduct a final review and audit of the ETF's accounts in relation to that class of units.

- 11.23 For avoidance of doubt, where appropriate, the requirement in paragraphs 11.09 to 11.18 apply to the termination of a class of units.

### **Meeting of unit holders**

- 11.24 A management company or a trustee may convene a unit holders' meeting at any time, other than for the required circumstances provided in the CMSA.

- 11.25 For the purpose of section 295(4) of the CMSA, the management company or trustee must convene a unit holders' meeting to obtain unit holders' approval where the interests of the unit holders may be materially prejudiced by any changes to the deed.

### **Notice of meetings**

- 11.26 Except where specifically provided for in the CMSA, when a management company or trustee convenes a unit holders' meeting, it must–

- (a) give at least 14 days written notice to unit holders; and
- (b) specify in the notice the place, time and terms of the resolutions to be proposed.

- 11.27 Where a meeting is requested by unit holders under section 305(1) of the CMSA, the management company must–

- (a) call the meeting within 21 days after receiving the request from unit holders;
- (b) give notice to the unit holders in accordance with section 305(3) of the CMSA; and
- (c) specify in the notice the place, time and the terms of the resolutions to be proposed.

- 11.28 For a general meeting for the passing of a special resolution, the management company must–

- (a) give at least 21 days written notice to unit holders; and
- (b) specify in the notice the place, time and the terms of the resolutions to be proposed.

- 11.29 A copy of the notice of any unit holders' meeting, including those convened under section 305 of the CMSA, must be provided to the SC and the trustee.

## **Quorum**

- 11.30 The quorum required for a meeting is five unit holders, whether present in person or by proxy, provided always that the quorum for a meeting which requires a special resolution is five unit holders holding in aggregate at least 25% of the units in issue at the time of the meeting.
- 11.31 In the case of an ETF or class of units having five or less unit holders, the quorum required for a meeting is two unit holders, whether present in person or by proxy, provided always that the quorum for a meeting which requires a special resolution is two unit holders holding in aggregate at least 25% of the units in issue at the time of the meeting.
- 11.32 In the case of an ETF or class of units with one remaining unit holder, such unit holder, whether present in person or by proxy, at the meeting shall constitute as quorum.
- 11.33 Unless otherwise provided in the deed, if within half an hour from the time appointed for the meeting, a quorum is not present, the meeting—
- (a) if convened on the request of the unit holders, must be dissolved; and
  - (b) in any other case, must stand adjourned to—
    - (i) a day and time which is seven or more days after the day and time of the meeting; and
    - (ii) a place appointed by the chairman.
- 11.34 Notice of an adjourned meeting must be given to unit holders, stating that notwithstanding the requirement in paragraphs 11.30 and 11.31, whatever the number of unit holders or number of units held, as the case may be, present in person or by proxy at the adjourned meeting will form a quorum after a reasonable time has passed from the convening of the meeting.

## **Resolutions**

- 11.35 Except where a special resolution is specifically required or permitted, any resolution is passed by a simple majority.
- 11.36 A resolution passed at a meeting of unit holders binds all unit holders, whether or not they were present at the meeting. No objection may be made as to any vote cast unless such objection is made at the meeting.
- 11.37 A copy of the resolution must be provided to the SC and trustee.

## **Voting rights**

- 11.38 A management company must not exercise the voting rights for the units it holds or its nominees hold in any unit holders' meeting, regardless of the party who requested for the meeting and the matter or matters that are laid before the meeting.
- 11.39 Related parties who have interest in the outcome of the transaction tabled for approval and that interest is different from the interests of other unit holders, must not vote or be counted in the quorum at a meeting.
- 11.40 In the case of an equality of votes the chairman of a meeting of unit holders shall have a casting vote in addition to his votes, if any, as a unit holder.

## **Proxies**

- 11.41 A unit holder shall be entitled to attend and vote at any meeting of unit holders, and shall be entitled to appoint another person (whether a unit holder or not) as his proxy to attend and vote. Where the unit holder is an authorised nominee as defined under the Securities Industry (Central Depositories) Act 1991, it may appoint at least 1 proxy in respect of each securities account it holds with units standing to the credit of the said securities account. Where a unit holder appoints 2 proxies in accordance with this provision the appointment shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy. Such proxy shall have the same rights as the member to vote, to speak and to be reckoned in a quorum.
- 11.42 Every notice calling for a unit holders' meeting must contain a statement that a unit holder is entitled to attend and vote, or may appoint a proxy.
- 11.43 The document appointing a proxy must be deposited at the office of the management company not less than 24 hours before the meeting or adjourned meeting.

## **Adjournment and minutes**

- 11.44 The chairman—
- (a) may, with the consent of any meeting of unit holders at which a quorum is present; and
  - (b) must, if so directed by the meeting,
- adjourn the meeting.

11.45 A management company must ensure that–

- (a) minutes of all resolutions and proceedings at every unit holders' meeting are made and kept; and
- (b) minutes made in subparagraph (a) is signed by the chairman of the unit holders' meeting.

**Notification on index**

11.46 A management company must notify the SC of events that may affect the acceptability of the index which the ETF is tracking. These may include, but are not limited to–

- (a) a change in the composition of the index due to, for example, the inclusion or deletion of any constituent; or
- (b) a change in the weightings of the index constituents due to, for example, corporate activities (such as mergers and acquisitions) or significant market movements.

11.47 In the event that the index is no longer considered acceptable, the management company may, subject to the approval from the SC, substitute the index with another which fulfils the objective of the ETF.



## **Chapter 12**

### **ANNUAL REPORT AND AUDIT**

#### **Annual Report**

- 12.01 A management company must prepare an annual report for the ETF to provide all necessary information to enable unit holders to evaluate the performance of the ETF.
- 12.02 If a management company intends to change an ETF's financial year end, the management company must notify the SC and the unit holders of the change, the reasons for the change and any other matters that need to be brought to the attention of unit holders.
- 12.03 An annual report of an ETF must include the following:
- (a) Audited financial statements;
  - (b) Auditor's report;
  - (c) Management company's report;
  - (d) Trustee's report; and
  - (e) For an Islamic ETF, Shariah adviser's report.
- 12.04 The minimum content of the documents required under paragraphs 12.03 (a), (c), (d) and (e) are set out in Schedule C.
- 12.05 The audited financial statements must be –
- (a) approved by the board of directors of the management company; and
  - (b) accompanied by a statement from the management company in accordance with the resolution of the board of directors whether in its opinion the financial statements of the ETF is drawn up, in accordance with the applicable accounting standards, to give a true and fair view of the financial position and performance of the ETF.

#### **Audit**

- 12.06 A management company and trustee must ensure that the financial statements of the ETF are audited annually.

- 12.07 Where the SC is of the opinion that the auditor appointed by the trustee is not suitable, or where an auditor has not been appointed, the SC may direct the trustee to replace or appoint an auditor to the ETF.
- 12.08 A trustee may, from time to time, if it deems appropriate, remove the auditor of the ETF and appoint another in its place. In addition, unit holders may by way of an ordinary resolution request the trustee to replace the auditor.

### **Co-operation with Auditors**

- 12.09 A management company must take reasonable steps to ensure that its employees—
- (a) provide such assistance as the auditor reasonably requires to discharge its duties;
  - (b) give the auditor right of access at all reasonable times to relevant records and information;
  - (c) do not interfere with the auditor's ability to discharge its duties;
  - (d) do not provide false or misleading information to the auditor; and
  - (e) report to the auditor any matter which may significantly affect the financial position of the ETF.
- 12.10 A management company must, in writing, require a fund manager to co-operate with the ETF's auditor in accordance with the requirements specified in paragraph 12.09.

## **Chapter 13**

### **ADDITIONAL REQUIREMENTS FOR AN ISLAMIC ETF**

#### **PART 1: APPOINTMENT OF SHARIAH ADVISER**

##### **General**

- 13.01 A Shariah adviser must be appointed by the management company to advise on all Shariah matters in relation to an Islamic ETF.
- 13.02 A Shariah adviser must either be—
- (a) an individual or a corporation, registered with the SC;
  - (b) a licensed Islamic bank; or
  - (c) a licensed bank or licensed investment bank approved to carry on Islamic banking business.
- 13.03 Where individuals are appointed as Shariah adviser, they must comprise at least three individuals to form a Shariah committee.
- 13.04 The Shariah adviser appointed under paragraph 13.02(a) must be independent from the management company, and must not hold office as a member of the oversight arrangement of the same fund or any other funds managed and administered by the management company.

##### **Roles and Responsibilities of Shariah Adviser**

- 13.05 The Shariah adviser appointed must carry out the following roles and responsibilities:
- (a) Providing Shariah expertise and advice on Shariah matters in relation to an Islamic ETF including matters relating to documentation (which includes the deed and prospectus), structure, feature, investment instruments and ensuring that all aspects of the Islamic ETF are in accordance with Shariah requirements as set out in the relevant securities laws and guidelines issued by the SC;
  - (b) Ensuring that an Islamic ETF complies with the applicable Shariah rulings, principles and concepts endorsed by the SAC;
  - (c) Review the Islamic ETF's compliance report and investment transaction report to ensure that the Islamic ETF's investment are in line with Shariah;
  - (d) Preparing a report to be included in the annual report of an Islamic ETF stating its opinion whether the Islamic ETF has been managed in compliance with

Shariah, including Shariah rulings, principles and concepts endorsed by the SAC;  
and

- (e) Apply *ijtihad* (intellectual reasoning) to ensure all aspects relating to the Islamic ETF are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the SAC.

13.06 In carrying out the roles and responsibilities above, a Shariah adviser must act with due care, skill and diligence.

13.07 Where there is any ambiguity or uncertainty relating to any Shariah matters, the Shariah adviser must consult the SC.

***Specific Roles and Responsibilities of Shariah Adviser for Islamic ETF based on Gold and Silver***

13.08 The Shariah adviser appointed must conduct at least an annual audit including a site visit to the place where the gold and silver bullion or bars are kept to confirm on the following:

- (a) The gold and silver bullion or bars are in existence;
- (b) The quantity and other details of the gold and silver bullion or bars including the record of its movement; and
- (c) The gold and silver bullion or bars are kept in a segregated and allocated manner.

13.09 The Shariah adviser must prepare a report on any audit carried out under paragraph 13.08.

**PART 2: ADDITIONAL DUTIES OF THE MANAGEMENT COMPANY**

13.10 A management company must take reasonable steps to ensure that its employees provide such assistance as the Shariah adviser reasonably requires to discharge its duties.

13.11 In relation to paragraph 3.08(g), a management company must ensure that the compliance officer appointed has basic knowledge of Shariah laws and principles.

## **PART 3: INVESTMENTS OF ISLAMIC EXCHANGE-TRADED FUND**

### **Permissible investments for Islamic ETF**

- 13.12 An Islamic ETF's assets may only consist of assets that comply with Shariah principles.
- 13.13 An Islamic ETF may only use derivatives for hedging purposes. Such derivatives must be Islamic derivatives. However, if Islamic derivatives are not available or are not commercially viable, the Islamic ETF may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

### **Acceptable indices**

- 13.14 Where the ETF is expressed to be managed and administered in accordance with Shariah principles, the index must be a Shariah index consisting of Shariah-compliant securities.

### **Islamic Securities Selling and Buying Negotiated Transaction**

- 13.15 An Islamic ETF may not lend its assets, but it can undertake the following activities for the sole purpose of efficient portfolio management:
- (a) Shariah-compliant securities lending subject to approval from the Shariah adviser;
  - (b) Islamic Securities Selling and Buying – Negotiated Transaction (ISSBNT) subject to the rules and directives issued by Bursa Securities, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd on ISSBNT; or
  - (c) Shariah-compliant repurchase transaction subject to approval from the Shariah adviser.

## **PART 4: SPECIFIC REQUIREMENTS FOR ISLAMIC COMMODITY EXCHANGE-TRADED FUNDS BASED ON GOLD OR SILVER**

### **Creation of Islamic gold or silver ETF units**

- 13.16 The creation of the Islamic ETF gold or silver units must be backed by physical gold and silver bullion or bars with specified quantity and quality.
- 13.17 Upon the creation of the Islamic gold or silver ETF units, the management company and the Shariah adviser must verify that–
- (a) the gold and silver bullion or bars, with the correct quantity and quality as per the specification, are in existence; and

- (b) the gold and silver bullion or bars are kept in a segregated and allocated manner.

***Trading of the Islamic ETF Units***

- 13.18 The trading of the Islamic ETF units between the buyer and the seller must be carried out in cash and on spot basis.

***Redemption of the Islamic ETF Units***

- 13.19 Unit holders may redeem the Islamic ETF units by taking physical delivery of gold and silver bullion or bars or its equivalent value in cash.

## **Chapter 14**

### **APPLICATION, SUBMISSION AND NOTIFICATION TO THE SECURITIES COMMISSION MALAYSIA**

#### **Application for Approval and Lodgement**

14.01 The following are submissions that must be submitted to the SC:

- (a) Application for establishment, listing and quotation of units of an ETF on the Main Market of Bursa Securities under section 212 of the CMSA;
- (b) Where applicable, application for the approval of a management company under section 289(1) of the CMSA;
- (c) Application for registration of an ETF's deed and supplementary deed under sections 293(1) and 295(1) of the CMSA;
- (d) Lodgement of an ETF's deed under section 296 of the CMSA;
- (e) Application seeking to be assessed as suitable to be a Qualifying CIS; and
- (f) Any other proposal involving an ETF under these Guidelines.

14.02 All submissions to the SC, unless otherwise specified in these Guidelines, must be made in accordance with, and accompanied by documents, as specified on the SC's website.

14.03 Submission of applications which do not comply with the requirements or which are unsatisfactory will be returned.

14.04 The SC must be immediately informed of –

- (a) any material change in circumstances that would affect the SC's consideration of the application; or
- (b) any material change or development in circumstances relating to the application, occurring subsequent to the SC's approval.

#### **Notifications and Documents to be Submitted to the SC**

14.05 A management company must notify the SC of the following:

- (a) Appointment or resignation of the Shariah adviser;
- (b) Appointment of a fund manager to perform the fund management function for the management company;

- (c) A resolution passed to terminate an ETF and where applicable, a court order confirming the same; and
- (d) Commencement and completion of the termination of an ETF.

**Submission of Applications, Notifications or Documents to the SC**

14.06 All submissions to the SC, unless otherwise specified in these Guidelines, must be made in accordance with, and accompanied by documents, as specified on the SC's website.



## **Chapter 15**

### **IMPLEMENTATION**

- 15.01 Proposals must be completed within six months from the date of approval. Failure to complete a proposal within the specified period would render the SC's approval to lapse.
- 15.02 Where an applicant has submitted an application for a review of the SC's decision, the time period for implementation commences from the date on which the decision on the review is conveyed to the applicant.

#### **Extension of Time**

- 15.03 An extension of time for the completion of an approved proposal may be granted only in exceptional cases.
- 15.04 The application for extension of time must be fully justified and made no later than 30 days before the approval expires.
- 15.05 The application for extension of time must be accompanied by a confirmation letter by the directors of the applicant that, save as disclosed, there has been no material change or development in the circumstances and information relating to the proposals.
- 15.06 Where the approval of the SC is subject to certain conditions which must be fulfilled within a specified period of time, any application for extension of time to fulfil the conditions must be fully justified and be made no later than 30 days before the expiry of the said specified period.

#### **Post-implementation Obligations**

- 15.07 The applicant must submit to the SC the following:
- (a) Date of completion for an approved proposal; and
  - (b) A written confirmation of the compliance with terms and conditions of the SC's approval once the proposal has been completed.

## **Chapter 16**

### **REPORTING TO THE SECURITIES COMMISSION MALAYSIA**

#### **General**

- 16.01 For the purpose of reporting to the SC, a management company is required to submit a Statistical Return and Investment Return (collectively referred to as "ETF Returns") of the ETF. The ETF Returns must be submitted on a quarterly basis via a system as may be specified by the SC.
- 16.02 The reporting period must cover a period starting from the first day until the last day of the respective quarter. For information required at a certain cut-off, it must be as at the last day of the quarter.
- 16.03 For a newly-listed ETF, the ETF Returns must commence from the quarter in which the ETF is listed. For example, if an ETF was listed on 18 May, the first ETF Returns must be submitted for the first quarter ending June.
- 16.04 A management company must take all necessary precautions to ensure that the information provided in the ETF Returns is true, complete and accurate.
- 16.05 The chief executive is ultimately responsible for all information submitted to the SC. The chief executive must ensure that the necessary policies and procedures are in place and the information submitted to the SC is true, complete and accurate.
- 16.06 The ETF Returns must be submitted to the SC within seven business days of the quarter following the end of the period of reporting.
- 16.07 The Investment Return must be submitted to the trustee for verification that it is true, complete and accurate to the best of the trustee's knowledge and belief prior to submitting it to the SC.
- 16.08 The SC considers the ETF Returns submitted via the system as final.
- 16.09 Should there be errors or omissions discovered after the submission has been made, the management company must immediately make the rectification and submit the amended ETF Returns to the SC

#### **Submission of ETF Returns during Termination**

- 16.10 While an ETF is being terminated, a management company must continue to submit ETF Returns until the termination is complete.

**SCHEDULE A**  
**INFORMATION REQUIRED TO BE INCLUDED IN THE MANAGEMENT**  
**COMPANY OR THE EXCHANGE-TRADED FUND'S WEBSITE**

1. IOPV per unit on a real time, near real time or on a frequency agreed with the SC;
2. ETF's portfolio on daily (end of day) basis;
3. Annual rate of management fee;
4. Annual rate of trustee fee;
5. Any other transaction charges;
6. Information on key personnel such as the chief executive and designated person responsible for compliance matters. Information must include academic and/or professional qualifications and relevant work experience;
7. Summary of the management company's financial position for the past three years, where applicable, in tabular form, disclosing—
  - (a) paid-up share capital;
  - (b) shareholders' funds;
  - (c) revenue;
  - (d) profit or loss before tax; and
  - (e) profit or loss after tax;
8. Total number of funds as well total value of funds operated by the management company;
9. Where the fund management function is undertaken by an external fund manager, a brief corporate information of the external fund manager and total value of funds under the fund manager's management;
10. If the management company outsources any function to an external party, a brief corporate information of the service provider or sub-contractor and the roles and duties of the service provider or sub-contractor; and
11. Where a Shariah adviser is appointed, the following information must be disclosed:
  - (a) Names, relevant qualifications and experience of each of the Shariah adviser;

- (b) Where the Shariah adviser is a corporation—
  - (i) the corporate information of the corporation;
  - (ii) number of funds in which it acts as adviser; and
  - (iii) the name, relevant qualifications and experience of the Shariah officer responsible for Shariah matters of the ETF;
- (c) Roles and primary functions of the Shariah adviser; and
- (d) Frequency of review on the ETF's investments by the Shariah adviser to ensure compliance with Shariah principles or any other relevant principle at all times.

## **SCHEDULE B**

### **SPECIALISED EXCHANGE-TRADED FUNDS**

#### **General**

These requirements must be read together with the general requirements and prohibitions set out in Chapter 6 of these Guidelines.

#### **Appendix I**

##### **SYNTHETIC ETF**

1. A synthetic ETF must–
  - (a) use a passive management strategy;
  - (b) track widely-accepted non-leveraged indices; and
  - (c) take the form of an “unfunded structure”.
2. Notwithstanding paragraph 6.19, for investment purposes, the underlying of the OTC derivatives must not consist of interest rates or foreign exchange rates.
3. Notwithstanding paragraph 6.28(a), the counterparty for the OTC derivative transaction must be a financial institution with a minimum top three credit rating (including gradation and subcategories therein) provided by a reputable domestic or global credit rating agency.
4. For the avoidance of doubt, invested assets of the synthetic ETF must be treated as collateral and subject to the requirements in paragraphs 10, 11 and 14, Chapter 6 – Appendix I of these Guidelines.
5. The requirements under paragraph 6.18 is not applicable to synthetic ETFs.

## **Appendix II**

### **FUTURES-BASED ETF (INCLUDING LEVERAGED ETF OR INVERSE ETF)**

#### **General**

1. The following investment parameters apply to futures-based ETFs, which includes unleveraged ETF, leveraged ETF and inverse ETF, the principle objective of which is to invest primarily in futures contracts.
2. The underlying futures contracts must meet the following requirements:
  - (a) Be sufficiently liquid;
  - (b) Transacted on an exchange where the clearing house performs a central counterparty role;
  - (c) Have trades which are characterised by a daily marked-to-market valuation of the futures contract position and subject to at least daily margining; and
  - (d) Able to be cash settled.
3. For investment purposes, a futures-based ETF must not invest in interest rate or foreign exchange rates derivatives.
4. The requirements under paragraph 6.18 is not applicable to futures-based ETF.

#### **Leveraged ETF or Inverse ETF**

5. The limits on the factor are as follows:
  - (a) A leveraged ETF shall be subject to a maximum factor of two times (2x); and
  - (b) An inverse ETF shall be subject to a maximum factor of one time (-1x).

For avoidance of doubt, where a leveraged or inverse index is used, the limit on the factors will apply to the underlying index.

6. Notwithstanding paragraph 6.16, the global exposure of a leveraged ETF from a derivative position must not exceed 200% of its NAV—
  - (a) at the time of daily rebalancing of the ETF; and
  - (b) between each daily rebalancing.

7. Notwithstanding paragraph 6.16, the global exposure of an inverse ETF from the derivative position must not exceed -100% of its NAV–
  - (a) at the time of daily rebalancing of the ETF; and
  - (b) between each daily rebalancing.
8. For the purposes of paragraphs 6 and 7, an allowance in excess of the above limit by 20% for a leveraged ETF and -10% for an inverse ETF due to market movements is permitted. In such an event, the management company must take all necessary action to rectify the derivative position as soon as practicable.
9. The management company of a leveraged ETF or an inverse ETF must ensure that there is at least one market maker appointed at the commencement of trading and on an ongoing basis.
10. For leveraged and inverse index, the constituent asset of the underlying index must comply with paragraph 6.10.

### **Performance Simulator**

11. The management company of a leveraged ETF or an inverse ETF must make available a “performance simulator”, which allows investors to simulate the performance of the leveraged ETF or inverse ETF under any selected time period based on available historical data.
12. The performance simulator must have the following:
  - (a) Historical data covering the period since the listing of the leveraged ETF or inverse ETF; and
  - (b) A user-friendly interface designed for easy navigation and understanding, using diagrams and tables where appropriate.
13. The website of the leveraged ETF or inverse ETF must–
  - (a) include narratives to help investors understand the results of the performance simulator; and
  - (b) set out the key assumptions and parameters used in the performance simulator.
14. The management company must make available the performance simulator within three months from the listing of the leveraged ETF or inverse ETF on Bursa Securities.

## **Appendix III COMMODITY ETF**

### **General**

1. A commodity ETF–
  - (a) aims to track the performance of a physical commodity by tracking the benchmark which is based on traded spot or cash market price of the physical commodity; and
  - (b) invests primarily in physical commodity which is–
    - (i) well-recognised and representative of the relevant market or sector;
    - (ii) traded on a market which is open to the public or a substantial number of participants; and
    - (iii) adequately liquid for the ETF in question.

### **Exposure Limits**

2. The value of the investment in physical commodities must be at least 95% of the commodity ETF's NAV.
3. The remaining NAV must be maintained for liquidity purposes.



## **Appendix IV**

### **COUNTRY-SPECIFIC GOVERNMENT BOND OR FIXED INCOME ETF**

1. A country-specific government bond or fixed income ETF aims to track the performance of an index which relates to a specific country's government debt securities or money market instruments.
2. The debt securities or money market instruments must be issued, or guaranteed by, a foreign government, government agency, or supranational that has a minimum long-term credit rating ("Sovereign Rating") as follows:
  - (a) Top two credit rating (including gradation and subcategories) provided by a rating agency; or
  - (b) Within top three and top four credit rating (including gradation and subcategories) provided by a rating agency, subject to compliance with paragraph 3.
3. Where the Sovereign Rating of the issuer or guarantor falls within the range specified in paragraph 2(b), the country-specific government bond or fixed income ETF must ensure the following are being met:
  - (a) The foreign government, government agency, or supranational must be listed on the list of acceptable issuers or guarantors, which may be amended from time to time; and
  - (b) The ETF must invest in at least six different issues, with investment in any one issue not exceeding 30% of the fund's NAV.
4. A management company must ensure that any marketing communications must contain a prominent statement drawing attention to the foreign country, foreign government, government agency or supranational, the debt securities or money market instruments of which, the ETF intends to invest in.
5. In the event of any downgrade in the Sovereign Rating, a management company must notify the SC of such event, as soon as practicable.

## **SCHEDULE C**

### **CONTENTS OF AN ETF'S ANNUAL REPORT**

1. The information required by the SC under this Schedule is the minimum that must be included in an ETF's annual report.
2. An ETF's annual report need not adopt the terms used under this Schedule. Where possible, the report must avoid unnecessary jargon and use terms which are easily understood by unit holders.
3. In selecting a format for the presentation of the annual report, consideration must be given, not only to its completeness and accuracy, but also to the clarity of the overall presentation.
4. For an ETF with multiple classes of units, that fund's report must contain information with respect to each class of units in issue.

#### **Manager's Report**

5. The manager's report must include the following details:
  - (a) The description and explanation of significant changes in the state of affairs of the ETF during the period and up to the date of the manager's report, not otherwise disclosed in the financial statements;
  - (b) A statement on whether the fund has undertaken any securities lending or repurchase transactions (collectively referred to as "**securities financing transactions**");
  - (c) A statement on whether cross trade transactions have been carried out during the reported period and that the persons undertaking the oversight functions has reviewed that such transactions are in the best interest of the ETF and transacted on an arm's length and fair value basis; and
  - (d) A statement whether any soft commission has or has not been received by the management company or its fund manager for the period under review from any broker or dealer by virtue of transactions conducted for the ETF. If soft commission is received, the following must be disclosed:
    - (i) Description of the goods or services received; and
    - (ii) Manner in which the goods or services received were utilised;
  - (e) Where soft commission has been received, a statement to the effect that the broker or dealer had also executed trades for other funds or investments managed by the management company or fund manager, and disclose the

arrangements in such a way that unit holders of the ETF are able to assess the scope of the arrangements and how the soft commissions will benefit other clients' accounts; and

- (f) A confirmation that the soft commissions received were for the benefit of the ETF and there was no churning of trades.

### **Trustee's Report**

- 6. A trustee must prepare a report stating in its opinion whether the management company has operated and managed the ETF in accordance with the following:
  - (a) Limitations imposed on the investment powers of the management company under securities laws and these Guidelines and the deed;
  - (b) Valuation and pricing is carried out in accordance with the deed and any regulatory requirement; and
  - (c) Creation and redemption of units are carried out in accordance with the deed and any regulatory requirement.
- 7. If the trustee is of the opinion that the management company has not done so, the trustee must disclose the shortcomings which may have an impact on the decision of existing unit holders or investors to remain invested or to invest in the ETF. The trustee must highlight steps taken to address the shortcoming and to prevent the recurrence of the shortcoming.
- 8. The report prepared by a trustee under paragraph 6 must include a further statement stating its opinion whether the distribution of income by the ETF is relevant and reflects the investment objective of the ETF.
- 9. The report by the trustee must be prepared in the form provided in Appendix I of this Schedule.

### **Shariah Adviser's Report**

- 10. The Shariah adviser must prepare a report stating its opinion whether the ETF has been operated and managed in accordance with the Shariah principles and requirements set out for the ETF. If it has not been operated and managed according to the principles and requirements, then the steps taken to address the situation and to prevent the recurrence of the situation must be highlighted.
- 11. The report by the Shariah adviser must also include the report on annual audit conducted in relation to paragraph 13.08 of these Guidelines.

12. The report by the Shariah adviser must be prepared in the form provided in Appendix II of this Schedule.

### **Audited Financial Statements**

13. The financial statements must include the following additional items:
- (a) NAV of the ETF (before and after distribution);
  - (b) NAV per unit (before and after distribution);
  - (c) Fees and charges paid to the management company, with each type of fee and charge shown separately;
  - (d) Fees paid to trustee and any reimbursement of trustee's expenses;
  - (e) Payment made to charitable bodies (for Islamic ETFs);
  - (f) Total amount available for distribution and distribution per unit (interim and final);
  - (g) Investment (including cash and cash equivalents) must not be classified as current or non-current, but must be presented in an order that reflects each category's relative liquidity;
  - (h) The carrying amount of investments, where applicable, to be categorised as follows:
    - (i) Fixed income and other debt securities;
    - (ii) Quoted and unquoted equity securities;
    - (iii) Derivatives (e.g. futures, options);
    - (iv) Other collective investment schemes;
    - (v) All foreign investments;
    - (vi) Any other investment, with significant items to be disclosed separately;
    - (vii) Cash and cash equivalents; and
    - (viii) Significant items included in other assets, disclosed separately.
  - (i) Income, by category:
    - (i) Interest income;
    - (ii) Dividend income;

- (iii) Net realised gains or losses on sale of investments including derivatives;
- (iv) Net realised gain on sale of Shariah non-compliant securities (for Islamic ETFs);
- (v) Dividend income from Shariah non-compliant securities (for Islamic ETFs);  
and
- (vi) Other material income items, such as income from securities financing transactions;
- (j) Other material expenses items, such as expenses relating to securities financing transactions;
- (k) Movement in the NAV of the ETF during the period, separately categorising those changes arising from investment and those arising from transactions with unit holders. The following, where applicable, must be shown separately under the appropriate categories:
  - (i) NAV at the beginning and end of the period;
  - (ii) Net income for the period;
  - (iii) Amounts received from units created;
  - (iv) Amounts paid for units cancelled;
  - (v) Distributions to unit holders; and
  - (vi) Changes in unrealised reserves;
- (l) Basis for the fees and charges paid to the management company and trustee;
- (m) Movements in the number of units created or cancelled during the period, highlighting the number of units created as additional distribution, if any;
- (n) Information on transactions with brokers or dealers must include the following:
  - (i) Top 10 brokers or dealers by value of trade;
  - (ii) The aggregate amount of brokerage fees or commissions paid by the ETF as well as the amount of fees or commissions paid to each broker or dealer, highlighting brokers or dealers relating to management company or fund manager, expressed in both value and percentage; and
  - (iii) Parties related to the management company and fund manager must be clearly highlighted;

- (o) The number of units and value held by the management company and related parties and whether the units are held legally or beneficially;
- (p) The composition of the investment portfolio of the ETF as at the date of the financial report must be disclosed. It must be grouped appropriately, based on categories (e.g. sector, market) that would facilitate a meaningful analysis. For each category, the following must be stated:
  - (i) Quantity held;
  - (ii) Cost of the investment;
  - (iii) Fair value of the investment; and
  - (iv) Fair value of each holding as a percentage of NAV;
- (q) A list of suspended counters must be separately identified. Actions taken or to be taken on these suspended counters must be disclosed. For an Islamic ETF, the securities that have been reclassified as Shariah non-compliant must be separately identified;
- (r) Details in respect of derivatives:
  - (i) The market value of derivatives and as a percentage of the fund's NAV as at the end of the period under review;
  - (ii) The net gains or losses on derivatives realised during the period under review; and
  - (iii) The net gains or losses on outstanding derivatives marked to market as at the end of the period under review;
- (s) Total expense ratio (TER)

For the purpose of paragraph 13(s), TER means the ratio of the sum of fees and the recovered expenses of the ETF to the average value of the ETF calculated on a daily basis, i.e.

$$\frac{\text{Fees of the ETF} + \text{Recovered expenses of the ETF}}{\text{Average value of the ETF calculated on a daily basis}} \times 100$$

Where:

Fees = all ongoing fees deducted or deductible directly from the ETF in respect of the period covered by the MER, expressed as a fixed amount, calculated on a daily basis. This would include

the annual management fee, the annual trustee fee and any other fees deducted or deductible directly from the ETF;

Recovered expenses = all expenses recovered from, or expenses charged to, the ETF, as a result of the expenses incurred by the operation of the ETF, expressed as a fixed amount. This must not include expenses that would otherwise be incurred by an individual investor (e.g. brokerage, taxes and levies); and

Average value of the unit = the net asset value of the ETF, including net income value of the ETF, less expenses on an accrued basis, in respect of the period covered by the MER, calculated on a daily basis;

(t) Portfolio turnover ratio (PTR)

For the purpose of paragraph (13)(t), PTR means the ratio of the average sum of acquisitions and disposals of the ETF for the year to the average value of the ETF for the year calculated on a daily basis, i.e.

$$\frac{[\text{Total acquisitions of the ETF for the year} + \text{Total disposals of the ETF for the year}] / 2}{\text{Average value of the ETF for the year calculated on a daily basis}}$$

(u) Auditor's verification on total expense ratio and portfolio turnover ratio;

(v) Additional statements on distributions are required when—

(i) there are unrealised losses (arising during the year or period or brought forward from previous year or period) within the ETF; and/or

(ii) distributions are made from previous year's realised gains; and

(w) The financial statement must give a true and fair view of the ETF, and must be prepared in accordance with applicable approved accounting standards, applicable statutory requirements, the deed and any regulatory requirements. The disclosure requirements set out for financial statements in this schedule must be complied with unless superseded by approved accounting standards.

**Additional contents of an ETF's annual report**

14. If applicable, the annual report must also contain information pertaining to the following:

(a) Derivative investments;

(b) Securities financing transactions; and

- (c) Collateral held by the ETF as a result of (a) and (b).

For avoidance of doubt, the information in paragraphs 15 and 16 does not need to be provided if, during the year or period under review, the ETF had only utilised derivatives for the sole the purpose of hedging.

***Information on derivative investments***

- 15. Details in respect of derivative investments:
  - (a) The underlying assets of derivatives; and
  - (b) The name of the issuers/counterparties of the derivatives.
- 16. Details on global exposure arising from derivatives for the period.

***Information on securities financing transactions***

- 17. Details in respect of securities financing transactions:
  - (a) Details of the securities involved in each type of securities financing transactions;
  - (b) The amount of securities on loan as a proportion of the ETF's total lendable assets and of the ETF's NAV;
  - (c) The respective absolute amounts of each type of securities financing transactions and as a proportion of the ETF's NAV;
  - (d) The top 10 largest collateral issuers across all securities financing transactions with details on the amounts of collateral received by the ETF;
  - (e) The top 10 counterparties of each type of securities financing transactions, including name of counterparty and gross amounts of outstanding transactions;
  - (f) The aggregate transaction data for each type of securities financing transactions:
    - (i) The amount (including the currency denomination);
    - (ii) Maturity tenor, including open transactions;
    - (iii) Identity and country of the counterparties;
    - (iv) Settlement and clearing means (e.g. tri-party, central counterparty, bilateral); and
    - (v) Collateral received by the fund to limit counterparty exposure with details required under paragraphs 18(a) and (e);



- (g) Details on re-investment of cash collateral as required under paragraph 18(f); and
- (h) Details on custody or safe-keeping arrangement of collateral as required under paragraph 18(g).

***Information on collateral***

18. Description of holdings of collateral, including:

- (a) Nature of the collateral, including asset types and currency denomination;
- (b) Identity of counterparty providing the collateral;
- (c) Value of the fund (by percentage) secured or covered by collateral, with breakdown by asset class or nature and credit rating (if applicable);
- (d) Credit rating of the collateral (if applicable);
- (e) Maturity tenor of the collateral, including open transactions;
- (f) Data on re-investment of cash collateral:
  - (i) Share of cash collateral received that is re-invested, compared to the maximum amount specified in the prospectus; and
  - (ii) Returns from re-investment of cash collateral; and
- (g) Custody or safe-keeping arrangement, including the following:
  - (i) Number and names of custodians and the amount of collateral received/held by each of the custodian for the fund; and
  - (ii) The proportion of collateral posted by the fund that are held in segregated accounts, pooled accounts, or in any other account.

## **Schedule C – Appendix I**

### **TRUSTEE'S REPORT**

To the unit holders of [NAME OF ETF] ("Fund"),

We have acted as Trustee of the Fund for the financial year ended XX XX 20XX and we hereby confirm to the best of our knowledge, after having made all reasonable enquiries, [name of management company] has operated and managed the Fund during the year covered by these financial statements in accordance with the following:

1. Limitations imposed on the investment powers of the management company under the deed, securities laws and the *Guidelines on Exchange-traded Funds*;
2. Valuation and pricing is carried out in accordance with the deed; and
3. Any creation and cancellation of units are carried out in accordance with the deed and any regulatory requirement<sup>^1</sup>

We are of the opinion that the distribution of income by the Fund [is/is not]\* appropriate and [does not reflect/reflects]\* the investment objective of the Fund.<sup>^2</sup>

For [name of trustee]

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[Name of signatory]  
[Designation of signatory]  
Date: [Date of report]

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#### Notes:

<sup>^1</sup> If the Fund has not been operated or managed according to (1), (2) or (3), to amend the confirmation to disclose the shortcoming(s) which may have an impact on the decision of existing or potential unit holders to remain invested or to invest in the Fund. The report must also state the steps taken to address the shortcoming and to prevent the recurrence of the shortcoming.

<sup>^2</sup> To exclude this paragraph if there was no distribution during the period covered by these financial statements.

## Schedule C – Appendix II SHARIAH ADVISER'S REPORT

To the unit holders of [NAME OF ETF] ("Fund"),

We hereby confirm the following:

1. To the best of our knowledge, after having made all reasonable enquiries, [name of management company] has operated and managed the Fund during the period covered by these financial statements in accordance with the Shariah principles and requirements and complied with the applicable guidelines, rulings or decisions issued by the Securities Commission Malaysia pertaining to Shariah matters<sup>^1</sup>.
2. The assets of the Fund comprise instruments that have been classified as Shariah compliant<sup>^2</sup>.
3. We have conducted [audit/site visit]\* at [place where the gold and silver bullion/bars are kept] on [date of audit/visit] and we hereby confirm on the following<sup>^3</sup>:
  - (a) The gold and silver bullion/bars are in existence;
  - (b) The quantity and other details of the gold and silver bullion/bars are correct as per the specification and record maintained by the custodian including the record of its movement; and
  - (c) The gold and silver bullion/bars are kept in a segregated and allocated manner.

For [name of Shariah adviser]

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[Name of signatory]  
[Designation of signatory]  
Date: [Date of report]

---

Notes:

<sup>^1</sup> If the Fund has not been operated and managed according to the Shariah principles and requirements, to amend the statement in item 1 accordingly, and to also state the steps taken to address the situation and to prevent the recurrence of the situation.

<sup>^2</sup> If there was any reclassification of Shariah-compliant status of the instruments, to insert the following:

*"except for [name of instrument(s)] which has/have\* been reclassified as Shariah non-compliant by [name of the authority]. This/These\* reclassified Shariah non-compliant instrument(s) shall be disposed/has(ve) been disposed on [state the date]\* in accordance with the Fund's Shariah investment guidelines as provided in the Fund's deed and disclosed in the Fund's prospectus.*

<sup>^3</sup> This confirmation is only applicable for Islamic ETF based on gold and silver.

\* To delete word that is not applicable.

## **SCHEDULE D HOLDING OF COLLATERAL**

### **Investment Restrictions and Limits**

#### **Exposure Limit**

1. The value of an ETF's investments in transferable securities that are not traded or dealt in or under the rules of an eligible market must not exceed 10% of the ETF's NAV.

#### **Investment Spread Limits**

2. The value of an ETF's investments in ordinary shares issued by any single issuer must not exceed 10% of the ETF's NAV.
3. The value of an ETF's investments in money market instruments, equity securities, debt securities issued by any single issuer must not exceed 15% of the ETF's NAV.
4. The value of an ETF's placement in deposits with any single financial institution must not exceed 20% of the ETF's NAV.
5. The aggregate value of an ETF's investments in money market instruments, deposits, equity securities, debt securities, issued by or placed with, as the case may be, any single issuer or financial institution must not exceed 25% of the ETF's NAV.
6. The value of an ETF's investments in money market instruments, deposits, equity securities, debt securities by any group of companies must not exceed 20% of the ETF's NAV.

#### **Investment Concentration Limits**

7. An ETF's investments in ordinary shares must not exceed 10% of the securities issued by any single issuer.
8. An ETF's investments in debt securities must not exceed 20% of the debt securities issued by any single issuer.

An ETF's investments in money market instruments must not exceed 10% of the instruments issued by any single issuer. This limit does not apply to money market instruments that do not have a pre-determined issue size.

## **SCHEDULE E VALUATION**

- (1) The management company must value investment instruments using the valuation basis as set out in the table below:

<b>Investment instruments</b>	<b>Valuation basis</b>
Investment instruments that are listed and quoted on an exchange	<p>The official closing price or last known transacted price on the eligible market on which the investment is quoted.</p> <p>However, if the price is not representative or not available to the market, the investments must be valued at fair value.</p>
Investment instruments not listed or quoted on an exchange	<p>(a) Fair value;</p> <p>(b) Amortised cost accounting may be used subject to the following:</p> <p>(i) Only permitted to be used to value money market instruments with remaining term to maturity of not more than 90 calendar days at the time of acquisition; and</p> <p>(ii) The management company must have in place adequate measures and safeguards to properly address relevant risks associated with the use of amortised cost accounting.</p>

- (2) The management company must ensure that–

- (a) the fair value is determined with due care and in good faith; and
- (b) the basis for determining the fair value of the investment is approved by the trustee (after appropriate technical consultation) and is documented.

## **SCHEDULE F**

### **DEED OF AN ETF**

In addition to the requirements under these Guidelines and the securities laws, the constitution of a deed for an ETF must include provisions in relation to the creation of the ETF or declaration of trust and contain at least the following:

1. Name of the ETF;
2. Investment objective of the ETF;
3. If the fund is a country-specific government bond or fixed income ETF referred to in Appendix IV, Schedule B of these Guidelines, the name of the foreign country, foreign government, government agency or supranational issuing or guaranteeing the debt securities or money market instruments;
4. Distribution policy of the ETF;
5. Financial period of the ETF;
6. If classes of units are issued:
  - (a) A provision specifying the classes, differences between the classes and rights attached to each class;
  - (b) If any class of units may be mandatorily or otherwise converted to another class of units, a provision specifying the conditions or circumstances in which such conversion may occur; and
  - (c) A statement on the base currency of the ETF (if classes of units are denominated in different currencies);
7. Unit holders' rights and the extent of their liability, including their ability to take any action against the management company and trustee for any breach of their duties as set out in the CMSA, these Guidelines and the *Guidelines on the Registration and Conduct of Capital Market Services Providers*;
8. The appointment of a trustee and the management company of the ETF;
9. A statement that the deed—
  - (a) is binding on each unit holder as if it had been a party to it and that it is bound by its provisions;
  - (b) authorises and requires the management company and the trustee to execute any action or undertake any activities permitted by terms of the deed; and

(c) is made and governed under the laws of Malaysia;

10. Management company

- (a) Duties of the management company which are prescribed under the CMSA and these Guidelines;
- (b) Duty of the management company to list and maintain the listing of the ETF on Bursa Securities and to comply with the Main Market Listing Requirements;
- (c) Circumstances, procedures and processes for retirement, removal and replacement of the management company; and
- (d) The extent of the indemnity provided by the management company;

11. Trustee

- (a) Duties of the trustee which are prescribed under the CMSA and these Guidelines;
- (b) Duty of the trustee to maintain the listing of the ETF on Bursa Securities and to comply with the Main Market Listing Requirements; and
- (c) Circumstances, procedures and processes for retirement, removal and replacement of the trustee;

12. Auditor

Circumstances, procedures and processes for the appointment, retirement, removal and replacement of the auditor of the ETF;

13. Investments of the ETF

- (a) Permitted investment of the ETF;
- (b) Limits and restrictions, including limits on borrowings or financing facilities of the ETF; and
- (c) Full particulars on circumstances in which, and methods by which, all or any of the investments may be varied;

14. Valuation

Basis for the valuation and pricing policy for the ETF;

15. Fees and expenses

- (a) Particulars of the remuneration of the management company and trustee;
- (b) Other expenses payable out of the ETF; and



- (c) Any increase in the maximum rate stated in the deed may only be made by way of a supplementary deed and in accordance with the requirements of the CMSA.
16. Meeting of unit holders
- (a) Circumstances under which the meetings are to be held; and
  - (b) Provisions on the manner in which meetings are conducted, including the manner in which votes may be given at a meeting of unit holders;
17. Termination of the ETF
- (a) Circumstances under which the ETF can be terminated; and
  - (b) Procedures and processes for termination of the ETF;
18. Other provisions
- (a) Provision in relation to the creation of the ETF or declaration of trust, which also sets out full particulars of the trust, including precise information as to the circumstances in which the money, securities, investments and assets subjected to the ETF are or will be vested in that trustee, and the duties and obligations of the trustee;
  - (b) Provisions in relation to the creation and redemption of units of an ETF;
  - (c) Provisions in relation to circumstances under which the dealing in units can be deferred or suspended;
  - (d) Provision for the full particulars on the conditions governing the transfer of any unit to which the deed relates;
  - (e) Provisions governing the modifications of the deed;
  - (f) Where the deed requires, or confers a right on, unit holders to enter into an agreement in connection with the ETF, a provision incorporating the terms and conditions of that agreement;
  - (g) A statement to the effect that the provisions in the deed shall in no way be construed as derogating from or limiting any of the requirements of the CMSA, these Guidelines and relevant laws; and
  - (h) A statement to the effect that the requirements of the CMSA, these Guidelines and relevant laws shall prevail in the event of any conflict or inconsistency between the provisions in the deed and the requirements of the CMSA, these Guidelines and relevant laws.

## **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: 1 September 2022]

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

**Paragraph 3.02: Would a holder of the CMSL for the regulated activity of fund management in relation to all categories of portfolio management be eligible to act as management company for an ETF?**

For avoidance of doubt, the CMSL for portfolio management excludes digital investment management and boutique portfolio management company.

[Issued: Prior to 1 September 2022]

**Paragraph 3.03: How would the SC determines if the management company is eligible to manage synthetic ETF or futures-based ETF?**

In determining the acceptability of the management company, the SC may consider-

- (a) the qualifications and relevant experience in derivatives of the key persons employed by the management company, its delegate or any other persons contracted by the management company;
- (b) the adequacy and appropriateness of the systems, procedures and processes in place in managing such ETFs; and
- (c) where group experience is relied upon, the ability of the management company to demonstrate, on a group-wide basis, that it possesses the relevant experience in derivatives as well as appropriate oversight, monitoring and supervision systems.

[Issued: Prior to 1 September 2022]

**Paragraph 3.08(i): Is a standalone risk management policy and procedures (“RMP”) documentation required for each and every ETF?**

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

[Issued: 1 September 2022]

**Paragraph 3.08(i): Is there any expectation as to what should be included in the RMP documentation for an ETF?**

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 exchange-traded funds (ETF Forms)* (“ETF Application Form”) that is available on the SC’s website which may be amended from time to time.

[Issued: Prior to 1 September 2022; Updated: 1 September 2022]

**Paragraph 3.08(i)(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 ETF;
- (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 ETF is exposed to, including risks associated with derivative investment activities, where applicable.

[Issued: 1 September 2022]

**Paragraph 3.08(i)(ii): What does it mean by having an 'effective liquidity risk management' for its ETF?**

An ETF 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 ETF.

Generally, a management company may utilise any liquidity management tool(s) for its ETF. However, side pockets will not be permitted for ETFs due to the NAV per unit must be calculated based on the ETF's NAV divided by the number of units. As defined in these Guidelines, NAV means the value of all the ETF's assets less the value of all the ETF's liabilities at the valuation point. The NAV or NAV per unit may only be adjusted for transaction charges, including swing pricing.

[Issued: 1 September 2022]

**Paragraph 3.08(k): 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 9.04 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 ETF's units;
- (b) Currency conversion process; and
- (c) Valuation of the ETF's assets and liabilities.

[Issued: 1 September 2022]

**Paragraph 3.27: 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: 1 September 2022]

## **GUIDANCE TO CHAPTER 5: THE MANAGEMENT COMPANY**

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

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

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

[Issued: Prior to 1 September 2022]

## **GUIDANCE TO CHAPTER 6: INVESTMENTS OF THE EXCHANGE-TRADED FUND**

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

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

[Issued: 1 September 2022]

### **Paragraph 6.10(e): How would an index be regarded as "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: Prior to 1 September 2022]

**Paragraph 6.10(e): What are the methods which a management company may adopt to make the information on the index accessible to investors?**

The management company may make available such information to investors via hyperlink to the relevant website.

[Issued: 1 September 2022]

**Paragraph 6.10(f): Can the management company develop the index with the third party index provider for the ETF it manages or proposes to manage?**

Yes, provided that the management company is not involved in the construction, maintenance or review of such index.

[Issued: 1 September 2022]

**Paragraph 6.13(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. It is not intended to include convertible bonds, which will fall under bonds or other forms of securitised debt in paragraph 6.13(b).

However, when the convertible bonds are converted into shares, then it will fall under shares or securities equivalent to shares in paragraph 6.13(a).

[Issued: 1 September 2022]

**Paragraphs 6.14(b) and 6.20(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: 1 September 2022]

**Paragraph 6.21: 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: 1 September 2022]

**Paragraph 6.21(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 ETF.

[Issued: 1 September 2022]

**Paragraph 6.28(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 ETF 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: Prior to 1 September 2022; Updated: 1 September 2022]

**Paragraph 6.31(c)(ii): What would the 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 depositary. Where an independent depositary 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: 1 September 2022]

**Paragraph 6.31(c)(iii): For the purpose of these Guidelines, what does the SC mean by "substantially similar"?**

A CIS that –

- (a) is subjected to regulations on diversification of permissible investments;
- (b) does not use leverage for investments; and
- (c) undertakes securities lending and repurchase transactions for efficient portfolio management purposes only,

would be considered as substantially similar to an ETF approved under these Guidelines.

[Issued: 1 September 2022]

**Paragraph 6.37(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 ETF; or
- (b) The day in which an existing ETF receives substantial subscription monies in the ETF's operating account.

[Issued: 1 September 2022]

**Paragraph 6.42: For the purpose of paragraph 3.08(i)(i), what should be included in the RMP with respect to securities lending and repurchase transactions?**

The RMP documentation must include the measures taken to mitigate counterparty risk including imposing an appropriate limit on securities lending (including ISSBNT) activities of the total assets, an appropriate exposure limit to a securities lending counterparty and collateral management requirements.

[Issued: Prior to 1 September 2022]



**Paragraph 6.45: 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 ETF 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 ETF’s asset.

[Issued: 1 September 2022]

**Paragraph 6.50: 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: 1 September 2022]

## **GUIDANCE TO CHAPTER 8: FEES AND EXPENSES**

**Paragraph 8.08: What are examples of expenses that may be paid out of an ETF?**

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

- (a) Commissions or fees paid to brokers in effecting dealings in the ETF’s assets, shown on the contract notes or confirmation notes or difference accounts;
- (b) In relation to foreign assets, where the custodial function is delegated by the trustee, charges or fees paid to sub-custodians;
- (c) Taxes and other duties charged on the ETF by the government and other authorities;
- (d) Fees and other expenses properly incurred by the auditor appointed for the ETF;
- (e) Fees for the valuation of ETF’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;
- (h) Costs incurred for any meeting of unit holders other than those convened by, or for the benefit of, the management company or trustee; and
- (i) Listing expenses in relation to listing on the stock exchange.

[Issued: 1 September 2022]

## **GUIDANCE TO CHAPTER 9: VALUATION AND DEALING**

### **Paragraph 9.11: What would be considered as exceptional circumstances where a management company may suspend dealing in units of an ETF?**

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

[Issued: 1 September 2022]

## **GUIDANCE TO CHAPTER 11: OPERATIONAL MATTERS**

### **Paragraph 11.07(c): Does a market maker need to provide notice prior to resignation?**

The market maker should provide ample notice period on the resignation for an orderly termination of the ETF.

[Issued: Prior to 1 September 2022]

### **Paragraphs 11.16 and 11.18: What does it mean by 'immediate production of the report may be dispensed with' in paragraph 11.16 and 'financial period then running' in paragraph 11.18 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 an ETF 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 ETF's report.

The following illustrates the abovementioned scenario:

- The financial year end of XYZ ETF is 30 June

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

Based on paragraph 11.16, UTM ABC may dispense with the production of XYZ ETF's annual report, provided that after consulting the auditor and the trustee of XYZ ETF, UTM ABC has taken reasonable care to determine that timely production of an annual report is not required in the interests of unit holders.

Based on paragraph 11.18, UTM ABC can produce the final fund report for XYZ ETF which covers a period from 1 January 202X to 20 September 202X (being the completion date of ETF's termination). UTM ABC is required to send the final report to the SC and to the 10 unit holders whose name are in the register of XYZ ETF 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 July 202W to 20 September 202X.

[Issued: 1 September 2022]

**Paragraph 11.24 and all requirements pertaining to meeting of unit holders: Would the requirements also apply to meetings called for a particular class of a ETF?**

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

[Issued: Prior to 1 September 2022]

**Paragraph 11.25: 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 ETF;
- (b) Changes to the risk profile of the ETF;
- (c) Change in distribution policy;
- (d) Introduction of a new category of fees or charges; or
- (e) Increase in fees or charges.

[Issued: Prior to 1 September 2022]

### **GUIDANCE TO CHAPTER 13: ADDITIONAL REQUIREMENTS FOR AN ISLAMIC ETF**

#### **Paragraph 13.15: Can a management company undertake securities lending involving foreign securities and repurchase transaction on behalf of its Islamic ETF?**

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

[Issued: 1 September 2022]

#### **Paragraph 13.17: What does a unit of an Islamic ETF represent?**

The Islamic ETF units represent an equivalent amount of physical gold and silver bullion or bars held by the custodian on behalf of the Islamic ETF. Hence, the Islamic ETF units represent the unit holders' ownership of the gold and silver bullion or bars on a pro-rata basis.

[Issued: Prior to 1 September 2022]

#### **Paragraph 13.18: How would the units of an Islamic ETF be traded?**

The Islamic ETF units can only be traded through cash accounts or margin facility.

[Issued: Prior to 1 September 2022]

### **GUIDANCE TO SCHEDULE B: SPECIALISED ETFS**

#### **Appendix I – Paragraph 1(c): What does the SC mean by an 'unfunded structure'?**

The unfunded structure refers to a structure where an ETF that enters into OTC derivative transaction with one or more derivative counterparties to obtain the performance of an index.

The ETF will invest the proceeds from the creation of units and these investments will be held by the trustee as collateral. The returns generated by the collateral will then be exchanged with the derivative counterparty(ies) in return for the performance of the index the ETF is tracking.

[Issued: Prior to 1 September 2022]

**Appendix I – Paragraph 3: If the counterparty is a financial institution that is not rated by any credit rating agency, can the ETF still deal with the financial institution?**

Where the financial institution is not rated, the minimum rating requirement may be met if the financial institution has the benefit of a guarantee by an entity which has a minimum top three long-term rating (including sub-categories or gradations therein).

[Issued: Prior to 1 September 2022]

**Appendix IV – Paragraph 3(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 ETF 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 ETF.

[Issued: 1 September 2022]

**Appendix IV – Paragraph 3(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: 1 September 2022]

## **GUIDANCE TO SCHEDULE C: CONTENTS OF AN ETF'S ANNUAL REPORT**

### **Paragraph 5(e): 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. exchange-traded funds (besides the ETF), unit trust funds, private retirement scheme funds or wholesale funds.

[Issued: 1 September 2022]

## **GUIDANCE TO SCHEDULE E: VALUATION**

### **Paragraph (1), 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: 1 September 2022]

## **GUIDANCE TO SCHEDULE F: DEED OF AN ETF**

### **Paragraph 6(a): 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: 1 September 2022]

## 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:

Requirement	Rating by Malaysian Rating Agency	Rating by Global Rating Agency
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> <li>• Top four credit rating (including gradation and subcategories)</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• BBB<sub>3</sub> by RAM</li> <li>• BBB- by MARC</li> </ul>	At least the following: <ul style="list-style-type: none"> <li>• BBB- by S&amp;P</li> <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.

[Issued: 1 September 2022]

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

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

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