FREQUENTLY-ASKED QUESTIONS
GUIDELINES ON COMPLIANCE FUNCTION FOR FUND MANAGEMENT COMPANIES
(Date of Revision: 5 July 2021)

1. What are the SC's expectations in relation to the 11 core principles?

Examples of the SC's expectations (non-exhaustive) are as follows:

Core Principles	Examples of SC's Expectations
1. Integrity	Conduct the fund management business with honesty and in an ethical manner e.g. treating its clients fairly and equitably.
2. Skill, care and diligence	Possess adequate controls in ensuring that the fund management functions and processes are carried out with due care, skill and diligence. Such obligation is also applicable in dealings with existing and potential clients.
3. Acting in clients' interests	Refrain from dealing for own account ahead of clients' orders.
4. Supervision and control	Ensure key duties and functions are properly segregated. Establish a system of follow-up and review for delegated authority and responsibility. Ensure proper assessment and management of risks, and provision of timely and adequate information to senior management.
5. Adequate resources	Ensure employees are suitably qualified for the positions in which they are employed, and there are sufficient resources to manage business activities and accommodate temporary absence of key personnel. In addition, risks assumed by the fund management company must commensurate with its level of capital.
6. Business conduct	Implement policies and procedures to detect and prevent fraud, market rigging, and other improper activities.
7. Client asset protection	Ensure clients' assets are credited into a trust account and the fund management company conducts timely reconciliation of trust account balances against third-party records.
8. Communication with investors	Must not deliberately mislead or attempt to mislead existing or potential clients.
9. Conflict of interest	Ensure proper policies and procedures are put in place to prevent the company or its employees from taking advantage of confidential price-sensitive information.

Core Principles	Examples of SC's Expectations
10. Compliance culture	Board of directors must establish clear compliance policies and procedures that extend to all operations of the company.
11. Dealing with the SC	Promptly report information that is of material significance to the SC, and provides the SC with documents and information, when requested, in a timely manner.

2. What constitutes a compliance programme as stipulated in paragraphs 4.04(g) and 13.03?

A compliance programme should comprise a comprehensive review plan that captures the following:

(i) Sufficiency of regulatory filings and relevant deadlines;

(ii) Periodic review of key risk areas to evaluate the effectiveness of internal controls and compliance to regulatory requirements;

(iii) Areas of concern resulting from detection of breaches or incidents affecting the industry that are relevant to the company; and

(iv) Specific area of focus for the year that would be targeted for review and enhancements much like an annual internal audit plan.

The compliance programme has to be reviewed at least annually by the compliance officer to ensure relevance and tabled to the board of directors or relevant committees for endorsement.

3. What are the examples of necessary information required of the client as stated in paragraph 4.04(l)(i)?

Before implementing an investment policy or recommending an investment product to a client, a compliance officer must confirm that all documentations for opening of account as required under relevant Guidelines e.g. Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries are in place and in addition proper documentation to support that the client has the–

(i) necessary experience and knowledge in order to understand the risk(s) involved in the transaction or in the management of his portfolio; and

(ii) financial capacity and risk appetite that commensurate with related investment risk(s).

4. What is considered as 'delegating' as stated in paragraph 5.16 of the guidelines?

'Delegating' is primarily associated with the core activities of a fund management company. Where the management of a portfolio i.e. investment decisions are delegated to another fund management company, the principal fund management company must continue to perform the role of marketing, soliciting, advising, reporting and interacting with the clients on performance of mandates.

In addition, it is incumbent for the principal fund management company to evaluate the conduct and performance of the delegate and ensure that such delegation is meeting the requirement of the clients.

Where a fund management company intends to engage individuals to market and solicit its services on its behalf, such an arrangement is not considered as 'delegating' and must be made in accordance to the *Guidelines for Marketing Representative*.

5. Does a fund management company need to obtain the SC's approval before delegating its fund management function to another fund management company?

No. However, a fund management company must provide a written notification to the SC, at least one month before the delegation arrangement takes place. Such notification would include the following details:

(i) Name and other corporate information of the external fund management company;

(ii) Assets under management that will be delegated;

(iii) Processes and mechanism in place to monitor the conduct and activities of the company where the function will be delegated to; and

(iv) Confirmation that the client is aware of and agreeable to the delegation arrangement, unless otherwise stated in the offering documents.

For fund management companies with an existing delegation arrangement, the information as stated in (i) to (iv) would need to be disclosed in the upcoming regulatory semi-annual filing to the SC.

Subsequent material changes to the delegation arrangement that may have an impact to the clients' interests, for example termination of the delegation arrangement, have to be notified to the SC as soon as practicable.

6. Can there be a delegation of fund management function where a unit trust fund invests into a 'feeder fund'?

No. The management of portfolio of the feeder fund is not deemed as a delegation by the licensed fund management company.

7. If a fund management company has delegated its fund management function to another fund management company, who is held accountable to the clients?

The fund management company appointed by its client remains responsible for all obligations to its clients. It must continue to ensure compliance with requirements of these Guidelines.

8. Are spouse and children of directors, investment committee members and employees required to disclose their interests and securities holdings to the fund management company?

Yes, if they have an interest and are holding the securities on behalf/as nominees of the directors, investment committee members and employees. As a best practice, the compliance officer should obtain in writing declaration of their interests and securities holdings from the spouses and children of the directors, investment committee members and employees to ascertain whether they are holding as nominees and existence of conflicts of interest arising from such interests or holdings.

9. What must a director disclose to the fund management company as mentioned in paragraph 6.06?

The disclosure requirement in paragraph 6.06 covers any interests or holdings that the directors own locally and abroad. It also applies to all directors regardless of their designation and independent status.

10. What are the differences in the requirements of employees involved in fund management activities as specified in paragraph 6.12 vis a vis other employees of fund management companies in respect of their investments in securities and derivatives?

All employees of fund management companies are required to declare in writing their investments in any interests and holdings specified in paragraph 6.01, whether directly or indirectly, including through nominees or relatives, upon joining and at least once a year thereafter. The annual declaration by all employees should include all transactions conducted by the employees throughout the year.

In addition to the above, for employees involved in fund management activities as specified in paragraph 6.12 are also required to disclose in writing their interests or holding as and when there are changes to their interests or holdings. Employees involved in fund management activities are also required to obtain prior written approval of any director or compliance officer before he carries out investments specified in paragraph 6.11.

11. As it is the FMC's responsibility to identify employees who are directly involved in fund management activities, besides the criteria provided in para. 6.12(a) – (d), can the FMC determine any other criteria it deems fit?

Yes, the criteria set out in paragraph 6.12 are merely the minimum and FMCs can determine other criteria to ensure effective conflict management practice.

12. What are examples of the employees described under paragraph 6.12(a) – (d)?

(i) holds a senior management position within the FMC such as:
- Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Investment Officer, C-suites positions or may include Head/ Management level.

(ii) is involved in the management of funds such as:
- CMSRL holders or portfolio managers

(iii) is involved in the operation or transactions of the fund management activities such as:
- Back-office personnel or central dealers

(iv) has information pertaining to the management of funds such as:
- analysts, secretariat of Investment Committee or secretaries involved in minutes taking of fund management related meeting/discussion.

13. Can a fund management company use different valuation bases for different clients in performing the valuation of clients' portfolio as stated in paragraph 7.02?

Yes, provided that clients have agreed to the valuation basis and it is documented in the investment management agreement (IMA).

14. Can the statements, reports or information referred to in paragraphs 7.03, 7.04 and 13.07 be sent to clients using electronic mail?

Yes, provided the clients expressly agree to receiving in such format and that the statements, reports or information are sent as an attachment (with encryption where necessary) to the electronic mail.

15. What kind of process ought to be in place in determining the general and specific risks of any investment products as stated in paragraph 9.02(d)?

In determining the general and specific investment risks, a fund management company has to assess the risk in accordance to the different types of investment products.

The risk assessment has to be performed in an ongoing manner, and must be structured based on the nature of the product, structure of the underlying asset (if any) and how it fits with the client's mandate. Any changes identified following the risk assessment process, which may affect the client's capital and earning, should be reported to the client as stipulated in paragraph 7.04(b).

16. What are defined as alternative products?

Alternative products are products that are–

(i) not listed on any stock exchanges;

(ii) not approved by the SC, Bank Negara Malaysia or any equivalent regulators;

(iii) non-conventional securities; or

(iv) associated with a SPV structure.

17. Can a fund management company invest in alternative products?

Any investments in alternative products should be guided by the requirements stipulated in the *Licensing Handbook*.

18. What should a fund management company do if it has invested in alternative products or products with SPV arrangement?

If a fund management company has invested into alternative products, the fund management company has to undertake an assessment on whether the client has been provided with sufficient information of the investment as required in paragraph 9.02(b) and risks involved as specified under 9.02(d). If the assessment reveals that the information given to the client does not conform to the requirement stated in 9.02(b) and (d), a fund management company has to immediately provide the client with the necessary information in writing.

If clients' investments are pooled under an SPV or similar structure, a fund management company has to regularise the arrangement in accordance to *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* as soon as practicable.

19. What is the expectation in respect of the requirement stipulated in paragraph 9.02(f)?

Prior to implementing the client's investment policy or recommendation, the fund management company is expected to have proper arrangements in place to ensure that there is continuous flow of investment information for monitoring purposes. The manner of arrangement is left to the discretion of the fund management company.

20. Is the fund management company required to change the existing IMA to reflect current requirements as stated in paragraph 9.11?

No. This requirement does not have a retrospective effect as long as the existing IMA does not have any provision that is contrary to the requirements of the guidelines, e.g. the IMA states that reporting to client is on bimonthly basis but monthly reporting to client is required by the guidelines.

21. Can a client withdraw from his portfolio voluntarily?

A client's withdrawal is subject to conditions stated in the IMA as prescribed in paragraph 9.11(j).

22. What are examples of client identification documents stipulated in paragraph 10.10(d)?

Examples of the documents include extract of IMA, letter or board resolution from the client for opening of account or any other documentation which substantiate authorisation from the client for opening of account with the fund management company.

23. What is the expectation in respect of requirement stipulated in paragraph 10.12(a)?

A custodian is expected to maintain records of all clients' assets on segregated basis, including assets which are held with a financial institution or authorised depository.

For example, a client has RM10 million in the trust account maintained with the custodian. The fund management company subsequently invest RM2 million into Zero-coupon Negotiable Instruments of Deposit (ZNID) issued by financial institution A.

The custodian is expected to maintain records of client's portfolio/assets totalling RM10 million, i.e. including the RM2 million ZNID with financial institution A.

24. Under what circumstances should a custodian provide a notification to the fund manager's clients as stated in paragraph 10.12(d)?

The custodian is required to notify the fund management company's clients, when there is an instruction from the fund management company to–

(i) withdraw cash from the clients' trust accounts;

(ii) perform asset transfer without any cash due to the trust account i.e. a 'free of payment' transaction; or

(iii) transfer clients' assets to the fund management company's account.

25. What is the naming convention requirement for trust accounts?

The naming convention should be in accordance to the manner stipulated in paragraph 10.14. For example:

(i) `ABC Custodian Sdn Bhd for DEF Asset Management Sdn Bhd for Mr XYZ'; or

(ii) `ABC Custodian Sdn Bhd for Mr XYZ'; or

(iii) `DEF Asset Management Sdn Bhd for Mr XYZ'.

For account maintained under an omnibus structure, the naming convention should be in accordance to the manner as stipulated in paragraph 10.17(b) and 13.09(b). For example:

(i) `ABC Custodian Sdn Bhd for DEF Asset Management Sdn Bhd clients' account/ clients' trust account'; or

(ii) `DEF Asset Management Sdn Bhd for clients' account/clients' trust account'.

26. Where a fund management company varies its licence to a digital investment management company, is the fund management company required to change its existing custodial arrangement for an omnibus structure as stated in paragraph 13.09?

No, the company is not required to change its custodial arrangement. Under such circumstance, the custodial arrangement that was made prior to the effective date of the

variation of licence will not be subject to the requirements under paragraph 13.09. Paragraph 13.09 is applicable for mandates subscribing to digital investment management services operated under an omnibus structure.

27. What is the expectation under paragraphs 11.13 and 11.29 if the fund management company does not retain rebates, have soft commission arrangement or undertake cross trades?

A fund management company must ensure that its policies and procedures explicitly state that it does not retain rebates, have soft commission arrangement or undertake cross trades.

28. What are the examples of soft commissions referred to in paragraph 11.15 that a fund management company cannot receive?

Examples of expenses that are **not** considered as part of soft commission include:

(i) travelling cost;

(ii) accommodation and entertainment costs;

(iii) membership/examination fees to associations

(iv) systems or services relating to its middle and back office functions;

(v) systems or services relating to performance measurement of portfolios;

(vi) subscription fees for fund's benchmark indices;

(vii) order and execution management systems;

(viii) office administrative software e.g. word processing or accounting programmes;

(ix) connectivity services e.g. electronic/data networks;

(x) purchase or rental of standard office equipment or ancillary facilities; and

(xi) employees' salaries.

The list set out above is not exhaustive and may be changed from time to time.

Additionally, the practice of accepting reimbursement on the soft commission paid in advance by the fund management company is construed as receiving rebates and would require the fund management company to direct the amount to the clients' accounts accordingly.

29. What is the expectation in respect of the requirement stipulated in paragraph 11.15(b)?

The research and advisory services must be capable of adding value to the investment decisions by providing additional insights and meaningful conclusions based on data analysis that assist the fund management company in making investment decisions for its clients' portfolios.

30. What is deemed as 'best execution' as stipulated in paragraph 11.24?

Best execution is when the transactions are done on the best available terms with consideration of the order size as well as relevant market conditions at the time of transactions.

31. In paragraph 11.26, is the 50% limit of total dealings based on fund management company's level or mandate level and does it cover only equities?

The 50% limit of total dealings in value in any one financial year is based at the fund management company's level and should cover equities and fixed income transactions.

32. What is the expectation of the disclosure stipulated in paragraph 11.30?

(i) For a unit trust fund

For a unit trust fund, details of the fund management company's policy in undertaking cross trades must be detailed out in the offering document and the policy must be approved by the fund's Investment Committee (IC) members. For funds where evergreen prospectuses have been issued, the policy disclosure can be made on the unit trust management company's website and reflected in the next issuance of replacement prospectus, if such policy has yet to be disclosed in the prospectus.

Post trade, a fund management company is expected to table details of paragraph 11.30 to the IC members for post review. The (post) disclosure will carry a statement whether cross trade transactions have been carried out during the reported period and that the IC of the fund has reviewed that such transactions are in the best interest of the fund and transacted on an arm's length and fair value basis; and this is to be disclosed in the fund's report.

For clarity, the disclosure in the fund's report will be applicable to cross trades that are transacted after one month from the issuance of the guidelines.

(ii) For clients other than a unit trust fund

The cross trade transaction must be disclosed and is identified in both clients' statement of accounts.

33. What is the expectation on the fund management company in operationalising the requirements of paragraph 11.30(a) and (b)?

A fund management company must ensure that there are checks and balances for paragraph 11.30(a) and (b), in that, there must be an approving authority in place prior to carrying out the cross trade transactions.

34. What are some examples of third parties mentioned in paragraph 12.02 with which a fund management company has to reconcile its records?

Examples of third parties include depositories, banks, custodians, counter-parties or dealers.

35. What is deemed as "comprehensive records of its clients' accounts and transactions" as stated in paragraph 12.03(b)?

The funds received from a client, investments and all the credits to the account of the client must be properly accounted for by the fund management company and details thereof must be reflected in the client's account.

36. In paragraph 13.09, where the trust account is maintained under an omnibus structure, is the custodian required to maintain information of each client of the digital investment management company?

No. Where the trust account is maintained under an omnibus structure, the custodian will not be required to–

(i) maintain information of;

(ii) deliver statements directly to; or

(iii) in respect of any instructions to transfer assets from the trust account, verify with, and notify to,

the clients of the digital investment management company.

37. What is required of a fund management company if it is unable to fulfil the requirements in the guidelines?

A fund management company is required to write to the SC on the following:

(i) Identifying the areas in which they are unable to comply;

(ii) Stating reasons for non-compliances; and

(iii) Time frame required in enabling compliance with the requirements stipulated in the revised guidelines.