

PART 1

WHOLESALE FUND

Chapter 1

GENERAL

- 1.01 Section B, Part 1 of these Guidelines sets out the specific requirements that must be complied with in relation to a wholesale fund under the Lodge and Launch framework.

Establishment of a wholesale fund

Local wholesale fund

- 1.02 A local wholesale fund can only be established by a fund management company.

Foreign wholesale fund

- 1.03 A foreign wholesale fund can only be launched in Malaysia provided that it has been established by an operator in its home jurisdiction and complies with the requirements under the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*.
- 1.04 An operator must ensure that the investors are informed that the wholesale fund is established in a foreign jurisdiction and regulated by the regulator in that foreign jurisdiction.

Islamic wholesale fund

Local wholesale fund

- 1.05 In addition to complying with these Guidelines, any proposal in relation to an Islamic local wholesale fund must also comply with the *Guidelines on Islamic Capital Market Products and Services*.

1.06 [Deleted]

Foreign Wholesale Fund

1.07 A foreign wholesale fund may be launched as an Islamic fund in Malaysia provided that it complies with the requirements set out in the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*.

Chapter 2

STRUCTURE: ESTABLISHING A WHOLESALE FUND

Types of fund structures

- 2.01 A local wholesale fund can only be formed under the following structure:
- (a) Trust structure; or
 - (b) Custodial structure.
- 2.02 A foreign wholesale fund can only be formed under the following structure:
- (a) Trust structure;
 - (b) Custodial structure; or
 - (c) A structure that is equivalent to either a trust or a custodial structure.

Considerations in establishing a wholesale fund

- 2.03 The fund management company or the operator must ascertain the size of the wholesale fund, investment objectives, financial situation and particular needs of its investors before structuring a wholesale fund.
- 2.04 In structuring a wholesale fund, a fund management company or an operator must take into account its resources, expertise, experience and its overall capability to carry out its duties in accordance with the acceptable and efficacious business practices within the fund management industry.
- 2.05 The name given to the wholesale fund must not be inappropriate, misleading, or in conflict with the name of another collective investment scheme.

Guidance to paragraph 2.05

The SC will consider a wholesale fund's name to be inappropriate if it contains terms in relation to SRI (sustainable and responsible investment) or ESG (environmental, social and governance) but the wholesale fund is not a qualified fund under the *Guidelines on Sustainable and Responsible Investment Funds*.

Examples of SRI or ESG-related include, but not limited to, "sustainability", "carbon efficient", "environment", "climate".

- 2.06 In establishing a wholesale fund, the fund management company or the operator must—
- (a) determine the investment objective of the wholesale fund;
 - (b) define the investment strategy of the wholesale fund including the investment parameters and types of investments to be made by the wholesale fund; and
 - (c) ensure that the liabilities of investors are limited to their investments in the wholesale fund.
- 2.07 The fund management company or the operator is permitted to allocate capital into one or more collective investment schemes (referred to as "target fund"), provided that the selection of the target fund is consistent with the investment objective and chosen strategy of the wholesale fund.
- 2.08 Where a wholesale fund invests 85% or more of its NAV in a collective investment scheme, the fund manager of that collective investment scheme must be suitably authorised, regulated and supervised by a securities regulator which –
- (a) is a signatory to the IOSCO Multilateral Memorandum of Understanding as listed in its Appendix A; or

- (b) has a bilateral agreement or arrangement with the SC, in particular, with regard to co-operation on supervision, investigation, enforcement and information sharing.

2.08A Where a wholesale fund invests in exchange-traded funds with physical metal as the underlying asset, the exchange-traded fund (ETF) must meet the following criteria:

- (a) The metal is held in trust and is segregated from the assets of the manager, sponsor, trustee and/or custodian;
- (b) The ETF adopts a passive management strategy with the objective of tracking the price of the metal;
- (c) The maximum potential loss which may be incurred by the wholesale fund as a result of investment in the ETF is limited to the amount paid for it;
- (d) The shares or units of the ETF are liquid;
- (e) The shares or units of the ETF are subject to reliable and verifiable valuation on a daily basis;
- (f) There is appropriate information available to the market on the ETF; and
- (g) The shares or units of the ETF must be listed for quotation and traded on a stock exchange that is an eligible market.

2.08B For the purpose of paragraph 2.08A, "metal" refers to physical gold, silver, platinum, palladium or such other metals as may be specified by the SC.

2.09 Where the fund management company or the operator intends to use derivatives, the fund management company or the operator must possess the necessary expertise and experience on the use of derivative instruments including the following:

- (a) Understanding the different implications of derivatives positions on the overall investment strategy; and

- (b) Ensuring that derivatives positions are fairly priced on a consistent basis while bearing in mind the market liquidity of such positions.
- 2.10 Where the financing of the wholesale fund involves extension of credit and other forms of lending or utilises leverage, the fund management company or the operator must–
- (a) determine the borrowing parameters for the wholesale fund (including the maximum amount of leverage, duration, and whether secured or unsecured), the basis of leverage and risks involved;
 - (b) have the necessary expertise and experience in managing a wholesale fund which employs any leverage strategy; and
 - (c) understand the impact of such leverage on the overall risk of a portfolio and having the ability to monitor the use of such leverage.

Trustee or custodian of a wholesale fund

Local wholesale fund

- 2.11 In relation to a local wholesale fund which is formed under a trust structure, the fund management company must–
- (a) appoint a trustee registered with the SC; and
 - (b) ensure a deed is in force at all times.
- 2.12 In relation to a local wholesale fund which is formed under a custodial structure, the fund management company must–
- (a) appoint a custodian registered with the SC; and
 - (b) ensure a custodial agreement is in force at all times.

Foreign wholesale fund

- 2.13 In relation to a foreign wholesale fund either formed under a trust structure, custodial structure or any structure equivalent to a trust or custodial structure, the operator–
- (a) may appoint a trustee or a custodian registered with the SC; and
 - (b) must ensure that a constitutive document, such as a custodial agreement or a deed, is in force at all times.
- 2.14 In relation to paragraph 2.13 above, the operator must inform its investors if the operator has appointed a trustee or a custodian, or any person appointed to carry out the equivalent function, who is not registered with the SC.

Distribution of income

- 2.15 Distribution of income must only be made –
- (a) from realised gains or realised income; or
 - (b) out of capital of the fund provided that –
 - (i) the distribution out of capital is permitted under the deed and disclosed in its disclosure document, information memorandum or product highlights sheet, as the case may be; and
 - (ii) the composition of distribution payments sourced from income and capital are disclosed in the quarterly report and annual report, both in terms of value and percentage.

Guidance to paragraph 2.15

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

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

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

Fees and charges

- 2.16 The management fee and performance fee levied, if any, should commensurate with the degree of investment strategies and techniques employed by the fund management company or the operator to achieve the stated investment objective.
- 2.17 The fund management company or the operator must ensure that the calculation methodology of its fees and charges are clearly documented.

Investments of a wholesale fund

- 2.18 The fund management company or the operator must exercise due care and diligence when assessing, selecting and monitoring the investments of the wholesale fund.
- 2.19 The fund management company or the operator must identify and manage any risks that a particular investment strategy imposes.
- 2.20 The fund management company or the operator must observe the following requirements when establishing a wholesale fund:
- (a) The investments of the wholesale fund must not be detrimental to the interest of the investors or contrary to public interests; and
 - (b) Where there is pooling of clients' monies and investment through an SPV in assets other than-
 - (i) securities;
 - (ii) derivatives;
 - (iii) money market instruments;
 - (iv) deposits in conventional and Islamic deposit accounts; and/or
 - (v) real estate located outside Malaysia;

have in place a risk management policy and procedures of the fund, which is to be documented in a standalone document, that will enable the fund

management company or operator to effectively monitor, measure and manage risks of the investment positions of the fund and their contributions to the risk profile of the fund including all relevant risks associated with investments in the underlying assets.

- 2.20A Where a fund management company or operator invests in real estate outside Malaysia, the fund management company or operator must ensure that the real estate outside Malaysia is managed by a manager that is licensed, registered, approved or authorised to manage the foreign real estate in its home jurisdiction.
- 2.21 Where a fund management company or operator invests in a fund managed by the fund management company or the operator, the fund management company or operator must inform its investors of such investment.
- 2.22 Where a local wholesale fund invests in digital assets, the fund management company must-
- (a) ensure that any digital currency trading platform outside Malaysia or other counterparty it relies on –
 - (i) is registered with, or is regulated by one or more laws of a foreign country giving effect to the Financial Action Task Force recommendations relating to customer due diligence and record-keeping; and
 - (ii) has a risk-based Anti-Money Laundering/Combating the Financing of Terrorism systems and controls that are supervised or monitored by a body empowered by law to supervise and enforce the customer due diligence and record-keeping obligations; and
 - (b) have in place a risk management policy and procedures of the fund, which is to be documented in a standalone document, that will enable the fund management company to effectively monitor, measure and manage risks of the investment positions of the fund and their contributions to the risk profile

of the fund including all relevant risks associated with investments in digital assets; and

- (c) ensure that any investment in digital token is limited to those which has been hosted for offering through an electronic platform by an IEO operator and such other digital token as may be permitted by SC from time to time.

2.23 For any investment in digital currency, such investment is not limited to those that have obtained SC's concurrence to be traded on an electronic platform which facilitates the trading of a digital currency.

2.24 Where a wholesale fund invests in restricted investment account (RIA) or unrestricted investment account (UIA) which is not regarded as money market instrument, the fund management company or operator must-

- (a) ensure that the investment account identified for investment by a fund must be consistent with the objective of the wholesale fund;
- (b) have in place a risk management policy and procedures of the fund, which is to be documented in a standalone document, that will enable the fund management company or operator to effectively monitor, measure and manage risks of the investment positions of the fund and their overall contributions to the risk profile of the fund including all relevant risks associated with investments in the underlying assets including credit risks and liquidity risks; and
- (c) be able to verify the valuation methodology of the said investment account independently.

Guidance to paragraph 2.24

There are two (2) main types of investment accounts i.e., RIA and UIA. An RIA enables customers to specify the investment mandate and the underlying assets that their funds may be invested in. A UIA, on the other hand, allows Islamic banks to determine the

investment mandate and the structure of the investment account, which may include combining different UIAs into pools of funds that invest in diversified portfolios of underlying assets, in exchange for more flexible withdrawal conditions.

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

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

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

Chapter 3

LODGEMENT

Local wholesale fund

3.01 In relation to a local wholesale fund, lodgement under these Guidelines must be made by the fund management company.

3.01A Where a wholesale fund intends to invest in digital assets, the fund management company must submit the risk management policy and procedures under paragraph 2.22 to the SC, eight weeks prior to the lodgement of the wholesale fund under these Guidelines.

Foreign wholesale fund

3.02 In relation to a foreign wholesale fund, lodgement under these Guidelines must be made by the following persons:

- (a) An adviser for the initial lodgement; and
- (b) A representative for any submission of information or documents subsequent to the initial lodgement.

Lodgement requirements

3.03 The Lodgement Party must lodge all information and documents as set out in the Lodgement Kit.

3.04 A wholesale fund must be launched within 60 business days from the date of lodgement.

Chapter 4

CONTINUOUS OBLIGATIONS

Valuation and pricing

- 4.01 Except for investments in real estate outside Malaysia, the fund management company or the operator must ensure that the investments of the wholesale fund are fairly valued on a regular basis and in any event, at least once a month.
- 4.01A Where a wholesale fund invests in real estate located outside Malaysia, the fund management company or the operator must conduct valuation on the real estate located outside Malaysia at least once every three years.
- 4.01B Notwithstanding paragraph 4.01A, the fund management company or the operator must monitor the value of the real estate located outside Malaysia and ensure valuation is carried out when the change in value of any of the underlying real estate exceed a reasonable pre-determined threshold.
- 4.01C Notwithstanding paragraph 4.01, a wholesale fund may value its investments based on amortised cost accounting, subject to the following:
- (a) 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
 - (b) The fund management company must have in place adequate measures and safeguards to properly address relevant risks associated with the use of amortised cost accounting.
- 4.02 The fund management company or the operator must take all reasonable steps to ensure that the wholesale fund and the units in the wholesale fund are correctly valued and priced.

- 4.03 For the purpose of determining the wholesale fund's NAV, the valuation of the assets and liabilities must be—
- (a) based on a process which is consistently applied; and
 - (b) objective and capable of being verified by investors.
- 4.04 Any deviation from the valuation process, if any, must be for the purpose of ensuring the investment is fairly valued. Such deviation, in relation to a wholesale fund that is formed under a trust structure, requires prior approval from the trustee.
- 4.05 The fund management company or the operator must ensure that a valuation policy for illiquid assets or holdings, such as unlisted securities, provides for a consistent and transparent valuation of such illiquid assets. The valuation methodology must be clearly documented.
- 4.06 Notwithstanding paragraph 4.02 above, the fund management company or the operator must take immediate remedial actions to rectify any incorrect valuation or pricing of the wholesale fund or the units in the wholesale fund.
- 4.07 Where there is incorrect valuation or pricing of the units that is at or above the threshold of 0.5% of the NAV per unit, rectification must extend to the reimbursement of money—
- (a) by the fund management company or the operator to any one or more of the following:
 - (i) The wholesale fund;
 - (ii) Investors of the wholesale fund; or
 - (iii) Former investors of the wholesale fund; or
 - (b) by the wholesale fund to the fund management company or the operator.
- 4.08 In relation to rectification referred in paragraph 4.07 above, the rectification need not extend to reimbursements to the investors or former investors where it appears

to the fund management company or the operator or trustee that the incorrect pricing is of minimal significance. The fund management company or the operator must determine at the point of establishment of the wholesale fund what constitutes minimal significance.

4.08A The fund management company or the operator must not pay or caused to be paid from the wholesale fund any expenses incurred as a result of correction operations of a valuation error.

4.08B The fund management company or the operator may decide the manner to reimburse investors, either by way of cash or additional units of the wholesale fund. In any case, the reimbursement to former investors must only be made by way of cash.

4.09 The fund management company or the operator must actively manage the liquidity of individual positions and the overall portfolio to ensure that the wholesale fund can meet its liquidity requirements, including where investors are permitted to withdraw from the wholesale fund.

Liquidity and dealing

4.10 The fund management company or the operator must determine the frequency of and any limitation on subscriptions and redemptions having regard to the investment objectives, financial situation and particular needs of investors.

Register

4.11 The fund management company or the representative must keep a register of investors and enter into the register the following:

- (a) Where the investor is an individual, the name, address, and the number of the identity card issued under the *National Registration Act 1959* or passport number (for foreigners);

- (b) Where the investor is a corporation, the name, registered address and registration number of the corporation;
 - (c) Where the investor is a trust, the name, registered address and registration number of the trustee company; or
 - (d) Where the investor is a unit trust scheme, pension fund or prescribed investment scheme, the name and registered address of such scheme.
- 4.12 In addition, the fund management company or the representative must enter into such register–
- (a) the number of units held by each investor;
 - (b) the date on which the name of each investor was entered in the register;
 - (c) the date on which any person ceased to be an investor in the wholesale fund; and
 - (d) any other relevant information or particulars of the investor.
- 4.13 All information entered into the register must be kept for a minimum of seven years.
- 4.14 The register of investors to the wholesale fund will be prima facie evidence of any details inserted therein in accordance with these Guidelines.

Reporting requirements

- 4.15 The fund management company or the representative must inform its investors of significant and material changes to the investment objective, investment strategy as well as any changes to the material information previously provided to the investors.

- 4.16 The fund management company or the representative must ensure that prices, fees and charges be made available to investors periodically.
- 4.17 The fund management company or the representative must submit the following documents to the SC and the investors of a wholesale fund, as the case may be, in accordance with Table 1 below:

Table 1
Reporting requirements

No.	Document	Recipient		Due Date
		Investors	SC	
1.	Monthly statement of accounts	✓		–
2.	Monthly statistical returns of the wholesale fund		✓	Within seven business days following the end of every month
3.	Monthly investment returns of the wholesale fund		✓	Within 14 business days following the end of every month
4.	Quarterly report of the wholesale fund	✓		Within two months from the end of the period the report covers
5.	Annual report of the wholesale fund	✓	✓	Within two months from the end of the period the report covers

- 4.18 In relation to the statistical returns and investment returns (collectively referred to as "Returns") in Table 1 above:
- (a) The Returns must be submitted via a system as may be specified by the SC;
 - (b) The reporting period must cover a period starting from the first day of a month until the last day of that month. For information required at a certain cut-off, it must be as at the last day of the month;

- (c) For a newly launched fund, the Returns must commence from the month in which the wholesale fund's offer period ends.

For example, if a wholesale fund was launched on 28 June and the offer period ends on 18 July, the first Returns should be submitted for the month of July. In this instance, the Returns will consist of data for more than one month, i.e. from 28 June to 31 July;

- (d) Should there be any errors or omissions discovered after the submission of Returns, the fund management company or the representative, as the case maybe, must immediately rectify and submit the amended Returns to the SC; and
- (e) While a wholesale fund is being wound up, the fund management company or the representative, as the case maybe, should continue to submit the Returns until the winding up is complete.

4.19 In relation to the quarterly and annual reports referred to in Table 1 above, no reports are required where—

- (a) there is no issuance of units; or
- (b) the issuance of units is only made to the fund management company or the operator.

4.20 In relation to the quarterly and annual reports referred to in Table 1 above, the fund management company or the representative must provide all necessary information to enable investors of a wholesale fund to evaluate the performance of the fund. The quarterly and annual reports must contain at least the following:

- (a) Fund information;
- (b) Report on fund performance;
- (c) Financial statements for the accounting period;

- (d) Auditor's report (applicable for annual report only); and
 - (e) Shariah adviser's report that complies with the requirements in the *Guidelines on Islamic Capital Market Products and Services* (applicable for Islamic wholesale fund only).
- 4.20A In relation to the annual report, the financial statements must be audited by an external auditor. In the case of a local wholesale fund, the external auditor must be registered by the SC's Audit Oversight Board.

Winding up

- 4.21 The fund management company or the representative must notify the SC at the earliest practicable date of the commencement and completion of the winding up of the wholesale fund.

Marketing and promotional materials

- 4.22 Any representation or communication in the marketing and promotional materials must comply with the requirements of the *Guidelines on Advertising for Capital Market Products and Related Services*.

Chapter 5

REVISION

- 5.01 In relation to a wholesale fund, any amendment made to the initial lodgement whether prior or subsequent to the launch of a wholesale fund is considered as a revision.
- 5.02 Any revision can be made at any time, whether prior to or subsequent to the launch of a wholesale fund.

Local wholesale fund

- 5.03 Any revision to the lodgement of a wholesale fund under these Guidelines must be made by the fund management company.

Foreign wholesale fund

- 5.04 Any revision to the lodgement of a foreign wholesale fund under these Guidelines must be made by the representative.

Chapter 6

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Chapter 7

REQUIREMENTS RELATING TO OFFERING DOCUMENT

7.01 A fund management company or operator must provide investors of a wholesale fund with an offering document containing all necessary information that will enable investors to make an informed assessment of the offer.

7.02 The offering document must also include the following information:

- (a) The date of issuance of the offering document;
- (b) Information concerning the legal constitution of the fund;
- (c) Information on the fund management company or, in the case of a foreign wholesale fund, the operator and the representative in Malaysia;
- (d) Information on trustee or custodian, and the custodial arrangements;
- (e) The investment objective, policy(ies) and strategy of the fund;
- (f) Information on the risks associated with the investment portfolio of the fund, or where the investments are held via a SPV, the underlying assets of the SPV;
- (g) Information on the designated fund manager of the fund, or where the fund management function is undertaken by an external fund manager, the information on the external fund manager;
- (h) The rights and liabilities of unit holders in the fund;
- (i) Information relating to asset valuation, including the determination of the fund's NAV and NAV per unit;
- (j) Procedures for subscription and redemption of units; and
- (k) Fees and charges in relation to the fund, in a way that enables investors to understand their nature, structure and impact on the fund's performance.

- 7.03 The offering document must contain the following statement on either the front or inside cover of the offering document which must be highlighted in bold:

“The Securities Commission Malaysia has not authorised or recognised the fund and a copy of this offering document has not been registered with the Securities Commission Malaysia.

The lodgement of this offering document should not be taken to indicate that the Securities Commission Malaysia recommends the said fund or assumes responsibility for the correctness of any statement made, opinion expressed or report contained in this offering document.

The Securities Commission Malaysia is not liable for any non-disclosure on the part of the [fund management company or operator] responsible for the said fund and takes no responsibility for the contents in this offering document. The Securities Commission Malaysia makes no representation on the accuracy or completeness of this offering document, and expressly disclaims any liability whatsoever arising from, or in reliance upon, the whole or any part of its contents.”

- 7.04 An offering document must be lodged with the SC before it is provided to investors of a wholesale fund.