

GUIDELINES ON EXCHANGE-TRADED FUNDS

SC-GL/ETF-2005 (R2-2018)

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Part A: General Requirements

Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Exchange-traded Funds (Guidelines)* is issued by the Securities Commission Malaysia (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 exchange-traded fund (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 These Guidelines shall supersede the *Exchange-traded Fund Guidelines* issued on 11 June 2009.
- 1.04 The securities laws and these Guidelines form the regulatory framework for ETFs in Malaysia, and must be read together.
- 1.05 To assist with the interpretation of the requirements under these Guidelines and their application, Guidance has been provided, where appropriate. Any action or conduct which departs from the Guidance will be taken into account by the SC in determining compliance with 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 CIS¹.

¹ The Standards can be found at 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 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;
Bursa Securities	means Bursa Malaysia Securities Berhad;
base currency	means the currency specified in the deed of the ETF as the currency in which the ETF is denominated;
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 schemes (CIS)	means any arrangement where— <ol style="list-style-type: none">(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 asset (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) 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 CIS management activities;

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

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;

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;

eligible issuer means a person who is allowed to issue structured products under the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*;

eligible market means a market that–

- (a) is regulated by a regulatory authority;
- (b) operates regularly;
- (c) is open to the public; and
- (d) has adequate liquidity for the purposes of the ETF in question;

exchange-traded fund (ETF) or fund means a listed fund structured as a unit trust scheme, whose principal aim is to–

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

the performance of an index or a benchmark using a passive investment strategy;

financial institution	<p>means-</p> <p>(a) if the institution is in Malaysia, any licensed bank, licensed investment bank, or licensed Islamic bank; or</p> <p>(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;</p>
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> <p>(a) the holder of a CMSL for the regulated activity of fund management in relation to portfolio management; or</p> <p>(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;</p>
fund's portfolio	<p>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;</p>
futures-based ETF	<p>means an ETF that invests primarily in futures contracts, whose principal aim is to-</p> <p>(a) track;</p> <p>(b) deliver multiples of; or</p> <p>(c) deliver opposite of,</p> <p>the performance of an index or a benchmark;</p>
group of companies	<p>means any company and its related corporations;</p>
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 independent. The following is a non-exhaustive list of persons that would not be considered as an "independent member":</p>

- (a) In relation to the board of directors of a management company of an ETF, an officer of the management company but excluding its non-executive director;
- (b) In relation to a Shariah adviser, an officer of the management company;
- (c) An officer of the trustee of the ETF;
- (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;
- (e) A person connected to an officer of the management company or trustee of the ETF;
- (f) A person representing or seen to be representing any body corporate or unincorporated body with a controlling interest in the management company; or
- (g) A person who, within six months prior to his appointment as 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 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;
investment grade	means a rating falling within the top four long-term credit ratings (including gradation and subcategories) provided by any domestic or global rating agency;
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;
ISSBNT	means Islamic Securities Selling and Buying – Negotiated Transaction;
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>Bursa Securities Main Market Listing Requirements</i> ;
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"> (a) A participating organisation of the stock exchange; (b) A financial institution licensed by Bank Negara; (c) A market maker registered with Bursa Securities; or (d) A trading participant of the derivative exchange;
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"> (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 Partnership Act 1963; and

	(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;
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"> (a) constituted or established in Malaysia, which has been approved by the SC for listing and quotation on Bursa Securities; and (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;
Qualifying CIS Operator	means a management company- <ul style="list-style-type: none"> (a) approved under the CMSA; and (b) complies with the Standards of Qualifying CIS;
related party	means– <ul style="list-style-type: none"> (a) the management company of the ETF; (b) the trustee of the ETF; (c) a major unit holder of the ETF; (d) a director, chief executive or major shareholder of the management company; or (e) a person connected with any of the above;
SAC	means Shariah Advisory Council of the SC;
SC	means the Securities Commission Malaysia established under the <i>Securities Commission Malaysia Act 1993</i> ;

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;
structured product	has the meaning assigned to it in the <i>Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework</i> ;
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	means- (a) equities and equity-related securities; and (b) debentures. Equity-related securities includes depository receipts, rights and warrant which are capable of being converted into new shares.

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 will 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.

Guidance to paragraph 3.02

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

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.

Guidance to paragraph 3.03

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.

Directors

- 3.04 The directors of a management company must 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 at all times.

- 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 company has notified its unit holders of such director's appointment in the other management company.

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' interest and its own interest, give priority to unit holders' interest;
 - (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) maintain an internal audit function to report on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls; and

- (j) 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 subparagraph 3.08(h), the designated person must be the holder of a Capital Market 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 paragraphs 3.10, 3.17, 3.18 and 3.19.
- 3.14 Where the fund management function is delegated to a fund manager, any person who carries out the oversight function must not be an officer of the fund manager.
- 3.15 Any person who carries out the oversight function must not be a member of the Shariah adviser of the same fund.
- 3.16 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

- 3.17 A management company in appointing a broker or dealer must–
- (a) 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); and
 - (b) prescribe a limit in terms of proportion of dealings, in percentage form to be executed with each broker or dealer.
- 3.18 In determining the limit under subparagraph 3.17(b), the management company must consider–
- (a) the capability and services of the broker or dealer concerned; and
 - (b) the desirability of keeping a good spread of brokers or dealers for the ETF.
- 3.19 Notwithstanding subparagraphs 3.17(b) and 3.18, the use of any broker or dealer for an ETF must not exceed 50% of the ETF's dealings in value in any one financial year of the ETF.

Guidance to paragraph 3.19

The 50% limit of the ETF's dealings in value should cover equities and fixed income transactions.

Valuation

- 3.20 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.
- 3.21 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

- 3.22 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.
- 3.23 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

- 3.24 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.
- 3.25 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

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

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 the Shariah adviser of any ETF for which the fund manager is appointed to manage.
- 4.10 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 the SC is of the opinion that the name is misleading or inappropriate

Guidance to paragraph 5.06

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.

Investment Objective of the ETF

- 5.07 The investment objective of the ETF must be clear, specific and 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 has 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 interest 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 collective investment schemes;
 - (c) Derivatives; and

- (d) Deposits and money market instruments.
- 6.06 Transferable securities and money market instruments held by the ETF must be traded in or under the rules of an eligible market.
- 6.07 For investments in a foreign market, a foreign market is an eligible market where it has satisfactory requirements relating to—
- (a) the regulation of the foreign market;
 - (b) the general carrying on of business in the market with due regard to the interests of the public;
 - (c) adequacy of market information;
 - (d) corporate governance;
 - (e) disciplining of participants for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of, or a failure to comply with the rules of the foreign market; and
 - (f) arrangements for the unimpeded transmission of income and capital from the foreign market.
- 6.08 Notwithstanding paragraph 6.07, investments in a foreign market are limited to markets where the regulatory authority is an ordinary or associate member of the International Organization of Securities Commissions (IOSCO).
- 6.09 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.
- 6.10 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

- 6.11 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-equities, 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

Guidance to paragraph 6.11(e)

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.

- (f) be constructed, maintained and reviewed by a reputable third party index provider.

6.12 Sub-paragraph 6.11(c) does not apply where the constituents are securities or instruments issued or guaranteed by the Malaysian Government or Bank Negara.

6.13 The requirements under paragraph 6.11 and paragraph 15.03 is 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 Derivatives

6.14 The ETF's assets may consist of derivatives that are traded–

- (a) on an exchange; or
- (b) over the counter (OTC).

6.15 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.

6.16 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.

- 6.17 The underlying instruments of a derivative may consist of permissible investments under paragraph 6.05 and may also include indices, interest rates, and foreign exchange rates.
- 6.18 The ETF's global exposure to derivatives, calculated based on the commitment approach must not exceed 100% of the ETF's NAV.

Commitment Approach

- 6.19 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.

Netting Arrangements

- 6.20 Netting arrangements may be taken into account to reduce an ETF's exposure to derivatives.
- 6.21 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/shares in other collective investment schemes.

Hedging Arrangements

- 6.22 Hedging arrangements may be taken into account to reduce an ETF's exposure to derivatives.
- 6.23 The marked-to-market value of transferable securities, money market instruments or units/shares in collective investment schemes involved in hedging arrangements may be taken into account to reduce the exposure of an ETF to derivatives.
- 6.24 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.

Counterparty Exposure

6.25 The exposure of an ETF to a single counterparty of OTC derivatives transactions must not exceed 10% of the ETF's NAV.

6.26 For the purpose of paragraph 6.14(b), a transaction in OTC derivatives may only be entered where—

- (a) the counterparty is a financial institution with an investment grade credit rating;

Guidance to subparagraph 6.26 (a)

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.

- (b) the management company has determined it is able to value the investment concerned to ensure that the pricing is reasonable;

- (c) the counterparty is able to provide a reliable and verifiable valuation on a regular basis (preferably every business day) or at any time as may be requested by the management company or the trustee; and

- (d) the counterparty must be ready to unwind, buy back or close out the transaction upon request of the management company at a fair value determined on methods or bases which have been verified by the auditor of the fund and approved by the trustee.

6.27 For the purpose of paragraph 6.26 (a), where the rating of the counterparty falls below the minimum required, or the counterparty ceases to be rated, the management company must, as soon as practicable within six months, 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.

6.28 The writing of call option derivatives is not permitted. Short position of futures contracts by an ETF is only permitted for hedging purposes.

6.29 Where an ETF invests in derivatives, the management company must have in place the necessary risk management measures which would enable it to monitor, measure and manage the risks of the ETF's position in derivatives on an ongoing basis and their contribution to the overall risk profile of the ETF.

Guidance to paragraph 6.29

The risk management measures should include detailed contingency plans regarding credit events such as significant downgrading of credit rating and the collapse of the counterparty.

6.30 The exposure to the counterparty of an OTC derivative must be measured based on the maximum potential loss that may be incurred by the ETF if the counterparty defaults and not on the basis of the notional value of the OTC derivative.

6.31 The total exposure to a single counterparty is calculated by summing the exposure arising from all OTC derivatives transactions entered into with the same counterparty.

Collateral

6.32 The exposure to a single counterparty as set out in paragraph 6.25 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 is marked-to-market daily;
- (b) It is liquid. Collateral must normally trade in a deep and liquid marketplace with transparent pricing;
- (c) It is free from all prior encumbrances;
- (d) It can only consist of cash, money market instruments, ordinary shares, bonds or sukuk that are-
 - (i) subject to the investment limits, on a portfolio basis prescribed under Schedule D;
 - (ii) in the case of money market instruments, bonds or sukuk, issued or guaranteed by, a government, government agency or supranational organisation, that has a minimum top three long-term rating (including sub-categories or gradations therein); and
 - (iii) in the case of ordinary shares, sufficiently liquid and tradeable in order that it can be sold quickly at a robust price that is close to pre-sale valuation;
- (e) It is not issued by the counterparty or any of its related corporation;
- (f) It must be held by the trustee in trust account for the ETF; and
- (g) It must be subject to prudent haircut policy.

6.33 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 6.25.

6.34 For the purposes of collateral management, the management company must ensure that there are appropriate systems, capabilities and expertise to manage operational and legal risk.

Reinvestment of Collateral

6.35 Collateral obtained in the form of cash by the ETF may be reinvested subject to the following requirements:

- (a) It is invested in the financial instruments set out under paragraph 6.32(d);

- (b) The investments are held by the trustee in trust account for the ETF;
 - (c) The investments, on a portfolio basis, comply with the investment limits permitted under Schedule D; and
 - (d) The management company is reasonably satisfied that any investment of cash collateral will enable the ETF to meet its redemption obligations and other payment commitments.
- 6.36 For the purpose of paragraph 6.35, the cash collateral must not be invested in financial instruments issued by, or deposited with, the same counterparty or any of its related corporation.
- 6.37 Non-cash collateral obtained by the ETF may not be reinvested.

Investments in Collective Investment Schemes

- 6.38 An ETF's assets may consist of units or shares in other collective investment schemes (referred to as the target funds).
- 6.39 The target fund must–
- (a) be regulated by a regulatory authority;
 - (b) if the target fund is constituted in Malaysia, be authorised or approved by the SC;
 - (c) if the target fund is constituted outside Malaysia, be registered, authorized or approved by the relevant regulatory authority in its home jurisdiction; and
 - (d) where the target fund is a fund other than a real estate investment trust or property fund, operate on the principle of prudent spread of risk and its investments do not diverge from the general investment principles of these Guidelines.
- 6.40 Where the ETF invests in a target fund 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 target fund;
 - (b) all initial charges on the target fund are waived; and
 - (c) the management fee is charged once only, either at the ETF or at the target fund.
- 6.41 The value of the ETF's investments in units/ shares of any collective investment scheme must not exceed 20% of the ETF's NAV.
- 6.42 Paragraph 6.41 is not applicable to –
- (a) investments in a target fund; or
 - (b) where the exception under paragraph 6.11(c) applies.

Investments in Structured Products

- 6.43 Notwithstanding paragraph 6.05, the ETF's assets may consist of structured products.
- 6.44 The management company must ensure that—
- (a) for structured products issued in Malaysia, the counterparty is an eligible issuer or for structured products issued outside of Malaysia, an issuer regulated by the relevant regulatory authority in its home jurisdiction;
 - (b) the counterparty has a minimum rating of investment grade by any domestic or global rating agency for timely payment of financial obligations; and
 - (c) subparagraphs 6.26 (b), (c) and (d) are complied with for OTC transactions.
- 6.45 For the purpose of paragraph 6.44(b), where the rating of the counterparty falls below the minimum required, or the counterparty ceases to be rated, the management company must, as soon as practicable within six months, 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.
- 6.46 The value of the ETF's investments in structured products issued by a single counterparty must not exceed 15% of the ETF's NAV.

Investments in Deposits and Money Market Instruments

- 6.47 The ETF's assets may consist of placement of deposits provided that it is with a financial institution.
- 6.48 The value of an ETF's placement in deposits with a single institution must not exceed 20% of the ETF's NAV.
- 6.49 Unless otherwise provided for under paragraph 6.11(c), the value of an ETF's investments in money market instruments issued by a single issuer must not exceed 15% of the ETF's NAV.
- 6.50 Unless otherwise provided for under paragraph 6.11(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.
- 6.51 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

- 6.52 The ETF may not—
- (a) lend its assets except otherwise provided under paragraph 6.53; and
 - (b) assume, guarantee, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any person.

6.53 The ETF may participate in the lending of securities within the meaning of the *Securities Borrowing and Lending Guidelines* when the management company finds it appropriate to do so with a view of generating additional income for the ETF with an acceptable degree of risk.

6.54 The lending of securities must–

- (a) be permitted under the deed and disclosed in the prospectus;
- (b) comply with the *Securities Borrowing and Lending Guidelines*; and
- (c) comply with relevant rules and directives issued by Bursa Securities, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd.

6.55 The management company must ensure the following in relation to lending of securities:

- (a) It has appropriate policies and practices for the lending of securities by the ETF; and
- (b) The risk management procedures in place address the potential risks involved before the ETF participates in securities lending.

Guidance to paragraph 6.55(b)

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

Borrowings and Financing Facilities

6.56 The ETF must not borrow cash or other assets (including the borrowing of securities within the meaning of the *Securities Borrowing and Lending Guidelines*) in connection with its activities.

6.57 Notwithstanding paragraph 6.56, the ETF may borrow or obtain cash for the purpose of meeting redemption requests and for short-term bridging requirements.

6.58 For the purpose of paragraph 6.57, 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

6.59 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.

6.60 Notwithstanding paragraph 6.59, 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 company 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 3 months from the date of the breach unless otherwise specified in these Guidelines.

6.61 Notwithstanding paragraph 6.60, the trustee may decide to extend the period if it is in the best interest of unit holders and such extension must be subject to at least a monthly review by the trustee.

Other Investments

6.62 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

6.63 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 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, which includes 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 the ETF's assets by independent valuers for the benefit of the ETF;
- (f) Costs incurred for the modification of the deed other than those for the benefit of the management company or trustee;
- (g) Costs incurred for any meeting of unit holders other than those convened by, or for the benefit of, the management company or trustee; and
- (h) Listing expenses in relation to listing on the stock exchange.

- 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 per unit, 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 trustee must suspend dealing in units of an ETF due to exceptional circumstances, where there is a good and sufficient reason to do so, considering the interests of unit holders.
- 9.12 A suspension of dealing in units under paragraph 9.11 must cease as soon as practicable after the exceptional circumstances have ceased, and in any event, within 21 days of the commencement of the suspension.
- 9.13 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.
- 9.14 A trustee must not create or cancel units when dealing in unit is suspended.
- 9.15 A trustee must immediately notify the SC in writing if dealing in units is suspended stating the reasons for the suspension.
- 9.16 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.

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.

Conflict of interest or related-party transactions

- 11.03 A management company and a fund manager must avoid any conflicts of interest. Where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the investors and ensure that the ETF is not disadvantaged by the transaction concerned.
- 11.04 Any related-party transaction, dealing, investment and appointments 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.
- 11.05 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.

Rebates and soft commissions

- 11.06 A management company, fund manager or a 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.
- 11.07 Notwithstanding paragraph 11.06, a management company or a fund manager may retain goods and services (soft commissions) provided by any broker or dealer if–
- (a) the management company or the fund manager does not utilise the soft commission for the purpose of defraying costs relating to the establishment or maintenance of its infrastructure, framework or systems;
 - (b) the management company or the fund manager ensures that the goods and services are in the form of research and advisory services that assist in the decision making process relating to the ETF's investments; and
 - (c) the practice of the management company or the fund manager in relation to soft commissions is adequately disclosed in the prospectus and annual report, including a description of the goods and services received by the management company or the fund manager.

11.08 Where paragraph 11.07 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

11.09 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

11.10 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.

Guidance to subparagraph 11.10(c)

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

- 11.11 Notwithstanding subparagraph 11.10(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.
- 11.12 Upon the occurrence of any of the events under paragraph 11.10–
- (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 ETFs 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*.
- 11.13 The management company or trustee must as soon as practicable after the termination of the ETF, undertake the following:
- (a) In circumstances where unit holders' resolution for the termination is not required, inform unit holders of such termination; and
 - (b) Publish a notice on the termination of the ETF in one national Bahasa Malaysia newspaper and one national English newspaper.
- 11.14 The management company and trustee must notify the SC in writing–
- (a) upon the passing of a resolution to terminate the ETF, or upon the court confirming the unit holders' resolution to terminate the ETF; and
 - (b) upon the completion of the termination of the ETF.
- 11.15 While an ETF is being terminated–
- (a) the financial period continues to run; and
 - (b) the annual report continues to be required, unless after consulting the auditor and the SC, the management company has taken reasonable care to determine that timely production of an annual report is not required in the interests of unit holders. The management company must ensure that, in addition to the requirements in Schedule C, the annual report must contain information on the progress of the termination.
- 11.16 The trustee must also arrange for the auditor of the ETF to conduct a final audit of the ETF's financial statement upon completion of the termination of the ETF.

Terminating a class of units

- 11.17 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.
- 11.18 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.
- 11.19 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.
- 11.20 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.

Meeting of unit holders

- 11.21 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.

Guidance to paragraph 11.21

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.

- 11.22 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.

Guidance to paragraph 11.22

Examples of changes that may materially prejudice the interests of unit holders include—

- (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.

Notice of meetings

- 11.23 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;
 - (b) specify in the notice the place, time and terms of the resolutions to be proposed; and
 - (c) publish an advertisement giving the relevant notice of the unit holders' meeting in at least one nationally circulated Bahasa Malaysia or English daily newspaper.
- 11.24 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.
- 11.25 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;
 - (b) specify in the notice the place, time and the terms of the resolutions to be proposed; and
 - (c) publish an advertisement giving the relevant notice of the general meeting in Bahasa Malaysia and English daily newspapers circulating in Malaysia.
- 11.26 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

- 11.27 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.
- 11.28 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.

11.29 Notice of an adjourned meeting must be given to unit holders, stating that while five unit holders present in person or by proxy, and holding the minimum aggregate number of units, as the case may be, are required to constitute a quorum at the adjourned meeting, 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

11.30 Except where a special resolution is specifically required or permitted, any resolution is passed by a simple majority.

11.31 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.

11.32 A copy of the resolution must be provided to the SC and trustee.

Voting rights

11.33 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.

11.34 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.

11.35 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

11.36 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.

11.37 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.

11.38 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

11.39 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.

11.40 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

11.41 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.

11.42 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.

Corporate governance

11.43 A management company and the fund manager must adopt 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 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 obtain—
- (a) written confirmation from the ETF's auditor that the change would not result in any significant distortion of the financial position of the ETF; and
 - (b) the SC's prior consent before implementing the change.
- 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 subparagraphs 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.

PART B:
ADDITIONAL REQUIREMENTS FOR ISLAMIC EXCHANGE-TRADED FUNDS

Chapter 13

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 subparagraph 13.02(a) must be independent from the management company.

Roles and Responsibilities of Shariah Adviser

- 13.05 The Shariah adviser appointed must carry out the following roles and responsibilities:
- (a) Advising on all aspects of the ETF's compliance with Shariah;
 - (b) Providing Shariah expertise and guidance on all matters in relation to an Islamic ETF, particularly on the deed and prospectus, structure, investment instruments and ensuring compliance with relevant securities laws and guidelines issued by the SC;
 - (c) Ensuring that an Islamic ETF complies with the applicable Shariah principles, concepts and rulings endorsed by the SAC; and
 - (d) Preparing a report to be included in the annual report of an Islamic ETF confirming that the Islamic ETF has been managed in compliance with Shariah, including Shariah principles, concepts and rulings endorsed by the SAC.
- 13.06 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

- 13.07 The Shariah adviser appointed must conduct at least an annual audit including a site visit to the place where the gold and silver bullions/bars are kept to confirm on the following:
- (a) The gold and silver bullions/bars are in existence;

(b) The quantity and other details of the gold and silver bullions/bars including the record of its movement; and

(c) The gold and silver bullions/bars are kept in a segregated and allocated manner.

13.08 The Shariah adviser must prepare a report on any audit carried out under paragraph 13.07.

Chapter 14

ADDITIONAL DUTIES OF THE MANAGEMENT COMPANY

Management Company

- 14.01 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.
- 14.02 In relation to subparagraph 3.08(g), a management company must ensure that the compliance officer appointed has basic knowledge of Shariah laws and principles.

Chapter 15

INVESTMENTS OF ISLAMIC EXCHANGE-TRADED FUND

Permissible investments for Islamic ETF

- 15.01 An Islamic ETF's assets may only consist of assets that comply with Shariah principles.
- 15.02 An Islamic ETF must use Islamic derivatives for hedging purposes. 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

- 15.03 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

- 15.04 Notwithstanding subparagraph 6.52(a), the Islamic ETF may not lend its assets.
- 15.05 An Islamic ETF may only participate in the ISSBNT framework when the management company finds it appropriate to do so with a view of generating additional income for the Islamic ETF with an acceptable degree of risk.
- 15.06 The management company may sell and buy securities under ISSBNT framework provided that—
- (a) it is permitted under the deed and disclosed in the prospectus;
 - (b) it complies with relevant rules and directives issued by Bursa Securities, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd;
 - (c) it ensures that it has appropriate policies and practices to carry out ISSBNT activities by the ETF; and
 - (d) it ensures that the risk management procedures in place address the potential risks involved before the Islamic ETF participates in such activities.

Guidance to paragraph 15.06

The risk management procedures must include the measures taken to mitigate counterparty risk including imposing an appropriate limit on ISSBNT activities of the total assets, an appropriate exposure limit to the counterparty and collateral management requirements.

Chapter 16

SPECIFIC REQUIREMENTS FOR ISLAMIC COMMODITY EXCHANGE-TRADED FUNDS BASED ON GOLD AND SILVER

Creation of Islamic gold or silver ETF units

- 16.01 The creation of the Islamic ETF gold or silver units must be backed by physical gold and silver bullions/bars with specified quantity and quality.
- 16.02 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 bullions/bars, with the correct quantity and quality as per the specification, are in existence; and
 - (b) the gold and silver bullions/bars are kept in a segregated and allocated manner.

Guidance to paragraph 16.02

The Islamic ETF units represent an equivalent amount of physical gold and silver bullions/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 bullions/bars on a pro-rata basis.

Trading of the Islamic ETF Units

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

Guidance to paragraph 16.03

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

Redemption of the Islamic ETF Units

- 16.04 The unitholders may redeem the Islamic ETF units by taking physical delivery of gold and silver bullions/bars or its equivalent value in cash.

PART C:
SUBMISSION, IMPLEMENTATION AND REPORTING

Chapter 17

APPLICATION AND SUBMISSION

Application for Approval and Lodgement

- 17.01 Submissions to the SC for the following must be accompanied by the relevant information and documents as specified in Schedule G:
- (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; and
 - (e) Any other proposal involving an ETF under these Guidelines.
- 17.02 The SC may return applications which are deemed unsatisfactory or which do not comply with the requirements of the SC.

Application to be a Qualifying CIS

- 17.03 An ETF seeking to be assessed as suitable to be a Qualifying CIS must submit an application to the SC.

Further Information and Documents Required by the SC

- 17.04 The SC may, at its discretion, request for additional information and documents other than those specified in these Guidelines.
- 17.05 The SC must be immediately informed of–
- (a) any material change in circumstances that may impact the application; and
 - (b) any material change or development in circumstances relating to a proposal occurring subsequent to the SC giving its approval.

Submission of Applications

- 17.06 Unless otherwise specified in these Guidelines, applications under this Chapter must be submitted as follows:
- (a) All submission documents must be in hard copies and one electronic copy. The electronic copy must be in text-searchable format (PDF-text);

- (b) The electronic copy of the submission documents must be submitted via e-mail, up to 10MB in size per e-mail, to MISSubmissions@seccom.com.my; and
- (c) Submission of hard copies of applications must be addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

(Attention: Managed Investment Schemes, Corporate Finance and Investments)

Fees and Charges

- 17.07 Each application must be accompanied by the relevant fees prescribed by the SC and the fee checklist provided on the SC's website at www.sc.com.my. An application is deemed incomplete if the requisite fee is not submitted.

Chapter 18

IMPLEMENTATION

- 18.01 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.
- 18.02 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

- 18.03 An extension of time for the completion of an approved proposal may be granted only in exceptional cases.
- 18.04 The application for extension of time must be fully justified and made no later than 30 days before the approval expires.
- 18.05 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.
- 18.06 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

- 18.07 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 19

NOTIFICATIONS AND SUBMISSION OF DOCUMENTS TO THE SECURITIES COMMISSION MALAYSIA

Notifications and Documents to be Submitted to the SC

19.01 A management company must notify the SC of the following, in accordance with the requirements stipulated under Schedule G, unless otherwise specified:

- (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 Notifications and Documents to the SC

19.02 All submissions must be accompanied by–

- (a) a cover letter providing details of the notification or documents submitted to the SC; and
- (b) the relevant notification form provided on the SC's website at www.sc.com.my.

19.03 Submissions must be addressed to–

Head of Department
Managed Investment Schemes
Corporate Finance and Investments
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

Chapter 20

REPORTING TO THE SECURITIES COMMISSION MALAYSIA

General

- 20.01 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.
- 20.02 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.
- 20.03 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.
- 20.04 A management company must take all necessary precautions to ensure that the information provided in the ETF Returns is true, complete and accurate.
- 20.05 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.
- 20.06 The ETF Returns must be submitted to the SC within seven business days of the quarter following the end of the period of reporting.
- 20.07 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.
- 20.08 The SC considers the ETF Returns submitted via the system as final.
- 20.09 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

- 20.10 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'S OR 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 designated person 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”.

Guidance to subparagraph (1)(c)

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.

2. Notwithstanding paragraph 6.17, for investment purposes, the underlying of the OTC derivatives must not consist of interest rates or foreign exchange rates.
3. Notwithstanding paragraph 6.26(a), the counterparty for the OTC derivative transaction must be a financial institution with a minimum top three long-term rating (including sub-categories or gradations therein) provided by a reputable domestic or global credit rating agency.

Guidance to subparagraph (3)

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).

4. For the avoidance of doubt, invested assets of the synthetic ETF must be treated as collateral and subject to the requirements in paragraphs 6.32 to 6.34
5. The requirements under paragraph 6.16 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 6.16 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 6.28, an inverse ETF may enter into short position of futures contracts for investment purposes.
7. Notwithstanding paragraph 6.18, the global exposure of a leveraged ETF from a derivative position calculated based on the commitment approach as set out in Chapter 6, must not exceed 200% of its NAV—
 - (a) at the time of daily rebalancing of the ETF; and
 - (b) between each daily rebalancing.

8. Notwithstanding paragraph 6.18, the global exposure of an inverse ETF from the derivative position, calculated based on the commitment approach as set out in Chapter 6, must not exceed -100% of its NAV–
 - (a) at the time of daily rebalancing of the ETF; and
 - (b) between each daily rebalancing.
9. For the purposes of subparagraphs (7) and (8), 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.
10. 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.
11. For leveraged and inverse index, the constituent asset of the underlying index must comply with paragraph 6.11.

Performance Simulator

12. 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.
13. 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.
14. 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.
15. 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.

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 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
 - (c) A statement whether any soft commission has or has not been received by the management company and/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) Identification of the goods or services received; and
 - (ii) Manner in which the goods or services received were utilised.

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.

Shariah Adviser's Report

9. The Shariah adviser must prepare a report stating its opinion that the Islamic ETF has been operated and managed in accordance with the specific principles set out for the Islamic ETF.

The report by the Shariah adviser must also include:

- (a) An opinion whether the Islamic ETF has been managed in accordance with applicable guidelines pertaining to Shariah matters, and principles, concepts and rulings endorsed by the SAC;
- (b) Statement to the effect that the investment portfolio of the Islamic ETF comprises instruments classified as Shariah compliant by the SAC of the SC or the Shariah Advisory Council of Bank Negara. For instruments not classified as Shariah-compliant by the SAC or the Shariah Advisory Council of Bank Negara, a statement stating that the status of the instruments has been determined in accordance with the ruling issued by the Shariah adviser; and
- (c) The report on annual audit conducted in relation to paragraph 13.07 of these Guidelines.

Audited Financial Statements

10. 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 Shariah funds);
 - (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;
 - (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 significant income items;

- (j) 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

- (k) Basis for the fees and charges paid to the management company and trustee;

- (l) Movements in the number of units created or cancelled during the period, highlighting the number of units created as additional distribution, if any;

- (m) 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;
 - (iii) Parties related to the management company and fund manager must be clearly highlighted; and
 - (iv) Statement on whether dealings with related parties have been transacted at an arm's length basis;
- (n) The number of units and value held by the management company and related parties and whether the units are held legally or beneficially;
- (o) 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.
- (p) 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;
- (q) Management expense ratio (MER)

For the purpose of subparagraph (10)(q), MER 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;

(r) Portfolio turnover ratio (PTR)

For the purpose of subparagraph (10)(r), 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.

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

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

(t) Sources of distribution made to unit holders must be disclosed (the prescribed format is as follows):

Distribution to Unit Holders is from the following Sources:

	20X7 RM'000	20X8 RM'000
Dividend income	XXX	XXX
Interest income	XX	XX
Realised gains [less losses] on sale of investments	XXX	XXX
Other income	XXX	XXX
	<hr/>	<hr/>
	XXXX	XXXX
Less:		
Expenses	XX	XX
Taxation	XX	XX
Realised Income for the year	<hr/>	<hr/>
	XXX	XXX
Previous year's undistributed realised income	XXX	XXX
Total realised income available for distribution	XX	XX
Less:		
Proposed/declared income distribution	XX	XX
	<hr/>	<hr/>
Balance undistributed realised income	<hr/>	<hr/>
	XXX	XXX
Distribution per unit (sen)	<hr/>	<hr/>
	X	X

- (u) 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

- (v) 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.

SCHEDULE D

HOLDING OF COLLATERAL

Investment Restrictions and Limits

Exposure Limit

1. The value of an ETF's investments in unlisted securities 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, ordinary shares, bond or sukuk 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 institution must not exceed 20% of the ETF's NAV.
5. The aggregate value of an ETF's investments in money market instruments, deposits, ordinary shares, bond or sukuk, issued by or placed with, as the case may be, any single issuer/institution must not exceed 25% of the ETF's NAV.
6. The value of an ETF's investments in money market instruments, deposits, ordinary shares, bond or sukuk issued 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 bond or sukuk must not exceed 20% of the bond or sukuk issued by any single issuer.
9. An ETF's investments in money market instruments must not exceed 10% of the instruments issued by any single issuer.
10. The limit in paragraph (9) does not apply to money market instruments that do not have a pre-determined issue size.

SCHEDULE E

VALUATION

Investment Instruments	Valuation Basis
Securities listed on any exchange	<p>Market price</p> <p>However, if-</p> <p>(a) a valuation based on the market price does not represent the fair value of the securities, for example during abnormal market conditions; or</p> <p>(b) no market price is available, including in the event of a suspension in the quotation of the securities for a period exceeding 14 days, or such shorter period as agreed by the trustee,</p> <p>then the securities must be valued at fair value, as determined in good faith by the management company or the fund manager, based on the methods or bases approved by the trustee after appropriate technical consultation.</p>
Unlisted bonds or sukuk denominated in ringgit Malaysia	<p>Price quoted by a bond pricing agency (BPA) registered with the SC.</p> <p>Where a management company is of the view that the price quoted by BPA for a specific bond or sukuk differs from the “market price” by more than 20 basis points, the management company or fund manager may use the “market price” provided that the management company or fund manager–</p> <p>(a) records its basis for using a non-BPA price;</p> <p>(b) obtains necessary internal approvals to use the non-BPA price; and</p> <p>(c) keeps an audit trail of all decisions and basis for adopting the “market yield”.</p>
Other unlisted bonds or sukuk	Fair value by reference to the average indicative yield quoted by three independent and reputable institutions.
Unlisted collective investment schemes	Last published repurchase price.
Any other investments	Fair value as determined in good faith by the management company or fund manager, on methods or bases which have been verified by the auditor of the fund and approved by the trustee, and adequately disclosed in the prospectus of the fund.

SCHEDULE F

DEED OF AN EXCHANGE-TRADED FUND

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. Distribution policy of the ETF;
4. Financial period of the ETF;
5. 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);

Guidance to subparagraph (5)

The nature, operation and effect of the new class of units should be capable of being explained clearly to prospective investors

6. 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 and these Guidelines;
7. The appointment of a trustee and the management company of the ETF;
8. 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;

9. 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;
10. 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;
11. Auditor

Circumstances, procedures and processes for the appointment, retirement, removal and replacement of the auditor of the ETF;
12. 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;
13. Valuation
 - (a) Basis for the valuation and pricing policy for the ETF;
14. 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.

15. 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;
16. Termination of the ETF
 - (a) Circumstances under which the ETF can be terminated; and
 - (b) Procedures and processes for termination of the ETF;
17. 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.

SCHEDULE G

SUBMISSION OF APPLICATIONS

Appendix I

APPLICATION FOR ESTABLISHMENT, LISTING AND QUOTATION

This Appendix sets out the minimum information and documents required by the SC for applications for establishment, listing and quotation of units of an ETF on the Main Market of Bursa Securities.

1. Cover Letter

An application submitted to the SC must comprise a cover letter, signed by at least one of the directors of the management company, which contains the following:

- (a) Particulars of the ETF application;
- (b) The following to be sought:
 - (i) Approval for the ETF application under section 212 of the CMSA;
 - (ii) Approval-in-principle for the registration of the prospectus under section 233 of the CMSA; and
 - (iii) Clearance for the registration of the deed;
- (c) If applicable, particulars of other required approvals obtained or pending in relation to the proposal;
- (d) Details of any departure from these Guidelines, together with relevant justifications and relief sought for such departure. Where relief has been obtained, to provide details of such relief;
- (e) Declaration of conflict of interest, if any, by advisers of and experts for the application. If a conflict of interest exists, to provide full disclosure of the nature of conflict and steps to address the conflict;
- (f) Declaration that the Management Company could demonstrate its capabilities and have adequate and appropriate systems, procedures and processes in managing a leveraged ETF or an inverse ETFs as well as for synthetic ETFs; and
- (g) Matters as required under Part V of the *Prospectus Guidelines for Collective Investment Schemes*. A separate cover letter would not be necessary for compliance with the requirements under Part V of *Prospectus Guidelines for Collective Investment Schemes*.

2. Additional Documents for Synthetic ETF and Futures-based ETF

- (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) Details of the systems, procedures and processes in place in managing such ETFs; and
- (c) Where group experience is relied upon, the group's relevant experience in derivatives as well as details of oversight, monitoring and supervision systems on the management company.

3. Risk management process

Where the ETF invests in derivatives or participates in securities lending activities, the details of the risk management framework, including the measures in place to monitor, measure and manage the risks, and detailed contingency plans.

4. Additional Documents for an Islamic ETF

Shariah pronouncement by Shariah adviser, including detailed reasoning or justification supporting the proposed listing and quotation of units of an Islamic ETF. For an Islamic ETF based on gold and silver, the Shariah pronouncement by Shariah adviser must also include the following:

- (a) Structure, creation and redemption of the Islamic ETF units; and
- (b) Trading of the Islamic ETF units in the secondary market.

5. Other Documents

- (a) Draft deed;
- (b) Registrable prospectus which is complete and fully complies with the disclosure and documentary requirements in *Prospectus Guidelines for Collective Investment Schemes*;
- (c) A checklist of compliance with the relevant chapters of these Guidelines, including commentary on whether the requirements are met, not met or not applicable, and to provide explanation and justification thereof, with reference to the Guidance, where appropriate; and
- (d) Application form and relevant checklists as specified on the SC's website at www.sc.com.my.

Appendix II:

APPLICATION TO ACT AS A MANAGEMENT COMPANY

1. Information on the Management Company

- (a) Name;
- (b) Date of incorporation;
- (c) Date of commencement of operations;
- (d) Company number;
- (e) Date of issue of the CMSL;
- (f) Name and status, whether independent or non-independent and executive or non-executive, of the board of directors;
- (g) Where a fund manager is appointed, details as follows:
 - (i) Name;
 - (ii) Date of incorporation;
 - (iii) Date of commencement of operations;
 - (iv) Company number;
 - (v) Date of issue of the CMSL; and
 - (vi) Details of the representative responsible for managing the ETF as follows:
 - I. Name; and
 - II. Date of issue of the CMSRL;
- (h) Where any other third party is appointed by the management company, details of such party as follows:
 - (i) Name; and
 - (ii) Functions of the third party
- (i) Where the management company has in the past three years prior to the date of application been the subject of any action by any statutory or regulatory authority, or body carrying out self-regulatory functions in Malaysia, all relevant particulars including the nature of transgression, name of authority or self-regulatory body, date and type of action taken;
- (j) Details of all current material litigation or arbitration, if any, including those pending or threatened, and any facts likely to give rise to any proceedings which might materially affect the business or financial position of the management company or any of its third-parties appointed;
- (k) Any other relevant information to support such application; and

- (l) List of exemptions or variations, if any, that has been accorded to the management company by the SC.

2. Other Documents

- (a) Statutory declaration from the applicant stating that is independent of the trustee; and
- (b) Relevant checklists as specified by the SC on its website at www.sc.com.my

Appendix III:

APPLICATION FOR REGISTRATION AND LODGEMENT OF A DEED

A deed of an ETF must be submitted for registration and lodgement according to the requirements under this Appendix.

Registration of Deed

1. An application to register a deed of an ETF proposing to list and quote its units on the Main Market of Bursa Securities can only be submitted upon the SC confirming in writing that it has no further comments on the draft deed.
2. An application to register a deed must comprise the following:
 - (a) Cover letter, signed by at least one of the directors of the management company, specifying the following:
 - (i) Application to register a deed;
 - (ii) A confirmation that the accompanying documents are complete, signed and dated; and
 - (iii) A declaration stating that the deed complies with the requirements of the CMSA and Schedule F.
 - (b) Two copies of the executed and stamped deed;
 - (c) For a supplementary deed–
 - (i) a unit holders' resolution sanctioning the modification to the deed, or a statement from the trustee and management company as prescribed under section 295(4)(b) of the CMSA; and
 - (ii) a list highlighting the original provisions from the principal deed and the amended provision, and the rationale for such amendments; and
 - (d) Relevant checklists as specified on the SC's website at www.sc.com.my.

Lodgement of Deed

3. Lodgement of a deed must comprise the following:
 - (a) Cover letter, signed by at least one of the directors of the management company, containing the following:
 - (i) A declaration that the copy of the deed lodged with the SC is identical to the deed registered by the SC; and
 - (ii) A declaration that the electronic copy of the deed as required in item (c) below is identical to the printed deed;
 - (b) Two copies of the deed;
 - (c) Electronic copy of the deed in text searchable format (PDF-text); and
 - (d) Relevant checklists as specified on the SC's website at www.sc.com.my

Appendix IV:

APPLICATION TO BE A QUALIFYING CIS

1. Cover letter

An application submitted to the SC must comprise a cover letter, signed by at least one of the directors of the management company, which contains particulars of the application.

2. Information of the management company

- (a) Number of years the management company has been responsible for the operation of CIS;
- (b) Total assets under management (AUM) of the management company as at the latest practicable date;
- (c) The shareholders' equity of the management company as at the latest practicable date;
- (d) Where the management company has AUM of more than USD 500 million, the amount of additional capital equivalent to 0.1% of the AUM in excess of USD 500 million; and
- (e) A checklist of compliance of the following requirements under Part 1, Section 1 of the Standards of Qualifying CIS:
 - (i) Qualifications of personnel of a Qualifying CIS Operator; and
 - (ii) Delegation or outsourcing.

3. Information of the Trustee

The shareholders' equity of the trustee as at the latest practicable date.

4. Other documents

- (a) Declaration by the management company and trustee that they have fulfilled the requirements as prescribed under the Standards of Qualifying CIS to be a Qualifying Operator and trustee, respectively; and
- (b) Undertaking from the management company and trustee that they will ensure continuous compliance with the requirements of the Standards of Qualifying CIS.