



**Suruhanjaya Sekuriti**  
Securities Commission  
Malaysia

# EXCHANGE-TRADED FUNDS GUIDELINES

# **EXCHANGE-TRADED FUNDS GUIDELINES**

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**PART A**

**GENERAL**

## Chapter 1

### INTRODUCTION

- 1.01 The *Exchange-traded Funds Guidelines* is issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA) and applies to index-tracking exchange-traded funds.
- 1.02 These guidelines have been formulated with the objective of providing a regulatory framework for exchange-traded funds in Malaysia that would protect the interest of investors and facilitate the orderly development of the funds.
- 1.03 An exchange-traded fund and all parties to the fund should comply with the requirements specified and adhere to the ongoing compliance and reporting requirements under these guidelines.
- 1.04 These guidelines and the securities laws form the regulatory framework for exchange-traded funds in Malaysia, and should be read together. All parties to an exchange-traded fund are expected to be guided by the letter and spirit of the regulatory requirements.
- 1.05 The SC may, where it deems appropriate or, upon application, grant exemptions or variations from compliance with any requirement in these guidelines.
- 1.06 The SC may take action against persons who fail to comply with, and/or observe any of the provisions in these guidelines, as is permitted under section 354 of the CMSA and/or other relevant provisions under the CMSA.
- 1.07 The SC may, from time to time, issue practice notes to provide greater clarity and guidance on any of the provisions in these guidelines. The practice notes must be complied with in the same manner as these guidelines.
- 1.08 These guidelines supersede the *Guidelines on Exchange-traded Funds* issued on 21 June 2005. Any person engaged in online transactions/activities relating to exchange-traded funds should observe and ensure compliance with relevant securities laws and the *Guidelines on Online Transactions and Activities in Relation to Unit Trusts*.
- 1.09 Under section 232(1) of the CMSA, a person should not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase, any securities unless a prospectus has been registered by the SC and the prospectus complies with the requirements or provisions of the CMSA. In addition, under section 235(1)(f) of the CMSA, the SC has issued the *Prospectus Guidelines for Collective Investment Schemes* which sets out the minimum information required by the SC in an exchange-traded fund's prospectus.

1.10 All enquiries regarding these guidelines should be addressed to:

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

(Attention: Trusts and Investment Management Department)

Telephone : 03-62048000  
Facsimile : 03-62015318



## Chapter 2

### DEFINITIONS

2.01 In these guidelines, the following words have the following meanings, unless the context otherwise requires:

accounting records	includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up.
adviser	means a Malaysian incorporated— <ul style="list-style-type: none"> <li>(a) investment bank/merchant bank;</li> <li>(b) universal broker; or</li> <li>(c) such other person who provides advice/information to the applicant where such advice/information is submitted to the SC in relation to or in connection with any proposal.</li> </ul>
auditor	has the same meaning as given under the CMSA.
assets of the fund	includes the assets of the fund and all amounts due to the fund.
Bursa Securities	means Bursa Malaysia Securities Bhd.
CMSA	means the <i>Capital Markets and Services Act 2007</i> .
collective investment schemes	means, for the purpose of these guidelines, any arrangement where— <ul style="list-style-type: none"> <li>(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, futures contracts or any other property (referred to as “scheme’s assets”) or sums paid out of such profits or income;</li> <li>(b) the persons who participate in the arrangements do not have day to day control over the management of the scheme’s assets; and</li> </ul>

- (c) the scheme's assets are managed by an entity who is responsible for the management of the scheme's assets and is approved/authorised/licensed by a relevant regulator to conduct fund management activities;

and includes among others, unit trust funds, real estate investment trusts, exchange-traded funds, restricted investment schemes and closed-end funds.

creation unit	means the specified number of units determined by the management company, upon consultation with the trustee and clearly disclosed in the fund's prospectus, for creation of exchange-traded fund units.
central depository	has the same meaning as given under the CMSA.
deed	has the same meaning as given under the CMSA.
derivative	means an instrument the value of which depends upon the value of the underlying indices or assets such as securities, currencies, commodities or other derivative instruments.
eligible market	means a market that– <ul style="list-style-type: none"><li>(a) is regulated by a regulatory authority;</li><li>(b) operates regularly;</li><li>(c) is open to the public; and</li><li>(d) has adequate liquidity for the purposes of the fund in question.</li></ul>
exchange-traded fund (ETF)	means a listed index-tracking fund structured as a unit trust scheme or any other approved structures whose primary objective is to achieve the returns that correspond to the performance of a particular index.
financial institution	<ul style="list-style-type: none"><li>(a) if the institution is in Malaysia–<ul style="list-style-type: none"><li>(i) licensed bank;</li><li>(ii) licensed merchant bank; or</li><li>(iii) Islamic bank.</li></ul></li><li>(b) if the institution is outside Malaysia, any institution that is licensed/registered/approved/</li></ul>

authorised to provide financial services by the relevant banking regulator.

financial statements	includes a profit and loss account (or an income and expenditure statement), a balance sheet (or statement of assets and liabilities), a statement showing either all changes in equity, or changes in equity other than those arising from capital transactions with owners and distribution to owners, a cash flow statement and accounting policies and explanatory notes.
fund	means an exchange-traded fund.
fund's property	means assets of the fund.
futures contract	has the same meaning as given under the CMSA.
group of companies	means any company and its related corporations.
independent member	<p>in relation to the board of directors of a management company, the investment committee of an exchange-traded fund, the Shariah adviser and the panel of advisers, refers to a person who is free of any relationship with the management company or the controlling or significant shareholder(s) 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 controlling/significant shareholder(s) can be deemed to be independent. The following is a non-exhaustive list of persons that would not be considered as an "independent member":</p> <ul style="list-style-type: none"> <li>(a) Officer of the management company;</li> <li>(b) Officer of the trustee of the fund;</li> <li>(c) Officer of any body corporate or unincorporate that has power to appoint or make recommendations towards the appointment of the board of directors of the management company, members of the investment committee, the Shariah adviser and the panel of advisers of the fund;</li> <li>(d) Person connected to an officer of the management company or trustee of the fund;</li> <li>(e) Person representing or seen to be representing</li> </ul>

any body corporate or unincorporate with a controlling interest in the management company; or

- (f) 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 unincorporate that has power to appoint or make recommendations towards the appointment of board of directors of the management company, members of the investment committee, the Shariah adviser and the panel of advisers of the fund.

IOPV means the indicative optimum portfolio value which is an estimated net asset value of the portfolio deposit calculated by the management company according to a methodology which is clearly stipulated in the fund's prospectus.

licensed institution means any institution licensed or deemed to be licensed under the *Banking and Financial Institutions Act 1989* and the *Islamic Banking Act 1983*.

major shareholder/ unit holder means a person who has an interest or interests in one or more, voting shares/units in a company/fund and the nominal amount of that share/unit, or the aggregate of the nominal amounts of those shares/units, is:

- (a) equal to or more than 10% of the aggregate of the nominal amounts of all voting shares/units in the company/fund; or
- (b) equal to or more than 5% of the aggregate of the nominal amounts of all voting shares/units in the company/fund where such person is the largest shareholder/unit holder of the company/fund.

management company has the same meaning as given under the CMSA.

net asset value (NAV) means the value of all the fund's assets less the value of all the fund's liabilities at the valuation point.

*For the purpose of computing the annual management fee and annual trustee fee, the NAV of the fund should be inclusive of the management fee and trustee fee for the relevant day.*

offer for sale	means an invitation by, or on behalf of, an existing holder to purchase units of the fund already in issue or allotted.
offer for subscription	means an invitation by, or on behalf of, the fund to subscribe for units of the fund not yet in issue or allotted.
officer	has the same meaning as given under the CMSA.
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 exchange-traded fund: <ul style="list-style-type: none"> <li>(a) A participating organisation of the stock exchange;</li> <li>(b) A financial institution licensed by Bank Negara Malaysia; or</li> <li>(c) A market maker registered with Bursa Securities.</li> </ul>
participating dealer agreement	means an agreement entered into between the participating dealer, the management company and the trustee setting out the terms and procedures by which the participating dealer may request the creation and redemption of exchange-traded fund units.
participating organisation	has the same meaning as given under the CMSA.
partner	in relation to a director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer or major shareholder of the management company, the management company or trustee, means such person who falls within any of the following categories: <ul style="list-style-type: none"> <li>(a) A person with whom the director, chief executive officer or major shareholder of the management company, the management company or trustee or person connected with a director, chief executive officer 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</li> </ul>

meaning under section 3 of the *Partnership Act 1963*; and

- (b) A person with whom the director, chief executive officer or major shareholder of the management company, the management company or trustee, or person connected with a director, chief executive officer 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 into or not.

person connected

in relation to a director, chief executive officer or major shareholder of the management company, the management company or trustee, means such person who falls under any of the following categories:

- (a) A family member of the director, chief executive officer or major shareholder of the management company;
- (b) A trustee of a trust (other than a trustee for an employee share scheme or pension scheme) under which the director, chief executive officer or major shareholder of the management company; management company or trustee; or a family member of the director, chief executive officer or major shareholder of the management company, is the sole beneficiary;
- (c) A partner of the director, chief executive officer or major shareholder of the management company; management company or trustee; or a partner of a person connected with that director, chief executive officer or major shareholder of the management company; management company or trustee;
- (d) A person who is accustomed or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the director, chief executive officer or major shareholder of the management company; management company or trustee;
- (e) A person in accordance with whose directions, instructions or wishes the director, chief executive officer or major shareholder of the management company; management company

or trustee; is accustomed or is under obligation, whether formal or informal, to act;

- (f) A body corporate or its directors which/who is/are accustomed or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the director, chief executive officer or major shareholder of the management company; management company or trustee;
- (g) A body corporate or its directors whose directions, instructions or wishes the director, chief executive officer or major shareholder of the management company; management company or trustee; is accustomed or under obligation, whether formal or informal, to act;
- (h) A body corporate in which the director, chief executive officer or major shareholder of the management company; management company or trustee; and/or persons connected to him are entitled to exercise or control the exercise of, not less than 15% of the votes attached to the voting shares in the body corporate; or
- (i) A body corporate which is a related corporation.

portfolio deposit

means the deposit of a portfolio of constituent underlying securities/property together with a cash payment (if applicable) for the purposes of creation and redemption.

prospectus

has the same meaning as given under the CMSA.

redemption unit

means the specified number of exchange-traded fund units determined by the management company, upon consultation with the trustee and clearly disclosed in the fund's prospectus, for redemption of the portfolio deposit.

related corporation

has the same meaning as given under the CMSA.

related party

means–

- (a) the management company of the fund;
- (b) the trustee of the fund;
- (c) a director, chief executive officer or major

	shareholder of the management company; or
	(d) a person connected with any director, chief executive officer or major shareholder of the management company; or a person connected with the management company or trustee.
SC	means the Securities Commission Malaysia.
SCA	means the <i>Securities Commission Act 1993</i> .
securities	has the same meaning as given under the CMSA.
securities laws	has the same meaning as given under the SCA.
SICDA	means the <i>Securities Industry (Central Depositories) Act 1991</i> .
special resolution	means a resolution passed by a majority of not less than 3/4 of unit holders voting at a meeting of unit holders.  <i>For the purpose of terminating or winding up a fund, a special resolution is passed by a majority in number representing at least 3/4 of the value of units held by unit holders voting at the meeting.</i>
stock exchange	has the same meaning as given under the CMSA.
structured products	has the same meaning as given under the <i>Guidelines on the Offering of Structured Products</i> .
unit	has the same meaning as given under the CMSA.
unit trust fund	has the same meaning as the expression “unit trust scheme” in the CMSA.

## Calculation of time period

2.02 References to “days” in the 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.



**PART B**

**EXCHANGE-TRADED FUNDS  
CONSTITUTED IN MALAYSIA**

## Chapter 3

### THE MANAGEMENT COMPANY

#### Appointment of management company

- 3.01 As prescribed under sections 288(2) and 289(1) of the CMSA, only a management company approved by the SC can act as a management company for an exchange-traded fund.
- 3.02 A management company is a company that–
- (a) establishes an exchange-traded fund;
  - (b) issues, offers for subscription, makes an invitation to subscribe for or purchase units of the exchange-traded fund; and
  - (c) operates and administers the exchange-traded fund.
- 3.03 Where a management company carries on any regulated activity specified in Schedule 2 of the CMSA, the management company should be a holder of a Capital Markets Services Licence to carry on the regulated activity, and should observe and comply with the relevant guidelines issued by the SC for licence holders.

#### Eligibility requirements

- 3.04 A management company must–
- (a) be an entity incorporated in Malaysia;
  - (b) have a minimum of 30% Bumiputera equity;
  - (c) have not more than 49% foreign equity; and
  - (d) have minimum shareholders' funds of RM10 million at all times;

#### Reconstruction, amalgamation and change in shareholding

- 3.05 Any scheme of reconstruction or amalgamation in which the management company is a party, or any change in the shareholding of the management company, requires the SC's prior approval *vis-à-vis* its continuing eligibility to be a management company of a fund.

## Directors

- 3.06 The board of directors of a management company should comprise at least two independent members, while maintaining a minimum ratio of at least one-third independent members at all times. The independent directors of the management company should, in addition to their duties and responsibilities as directors, represent and safeguard the interests of unit holders.
- 3.07 The persons appointed should–
- (a) be of good repute and character;
  - (b) observe high standards of integrity and fair dealing in carrying out their duties and responsibilities;
  - (c) act with due skill, care and diligence in carrying out their duties and functions in accordance with these guidelines; and
  - (d) possess the necessary qualifications, expertise and experience, particularly in the respective fields to perform their duties and responsibilities in a fit and proper manner.
- 3.08 The persons should not have been involved in any unethical/inappropriate practice. Among others, the persons could be subject to a disqualification in any of the following events:
- (a) A petition filed under bankruptcy laws or the persons are declared bankrupt;
  - (b) A criminal proceeding for the conviction for fraud, dishonesty or any other offences punishable with imprisonment of one year or more, anywhere in the world;
  - (c) Any inquiry/investigation carried out by any government/statutory authority or body, in which an adverse finding was found; or
  - (d) Any unethical practice and activity which would render the persons unfit to be a director of a management company.
- 3.09 It is the responsibility of the management company to assess the ability of the persons to carry out the duties and responsibilities required of them. In the case of a newly established management company, this responsibility lies with the holding company and/or promoter and its board of directors.
- 3.10 Where any person becomes subject to any disqualification or becomes otherwise unfit to hold office, the management company should ensure that the person vacates the position immediately. The management company should notify the SC immediately of any disqualification and when the position becomes vacant.

- 3.11 A director of a management company should not–
- (a) hold office as director of more than one management company at any one time; and
  - (b) hold office as member of the investment committee of funds operated by another management company.

## **Key personnel**

### ***Chief executive officer***

- 3.12 A management company should appoint a chief executive officer who is a full-time officer.

### ***Designated person responsible for the fund management function of the fund***

- 3.13 A management company should appoint an individual as a designated person responsible for the fund management function of the fund, whether the function is undertaken internally within the management company or externally. Where the function is delegated to an external party, the management company should ensure that the delegate appoints a designated person for the fund.
- 3.14 For the purpose of clause 3.13, the designated person must be a holder of a Capital Markets Services Representative's Licence to carry out the regulated activity of fund management. Where the designated person is in a foreign fund management company, the designated person must be licensed/registered/approved/authorised to carry on the activity of fund management by the relevant regulator in his home jurisdiction.

### ***Compliance person***

- 3.15 A management company should appoint a person responsible for ensuring compliance with the deed, prospectus, these guidelines and securities laws.
- 3.16 The compliance person should report to the board of directors.
- 3.17 Where a management company manages a fund expressed to be managed and administered in accordance with Shariah principles, the compliance person must have basic knowledge of Shariah laws/principles.

## **Internal audit**

- 3.18 A management company should maintain an internal audit function to report on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls.

- 3.19 The internal audit must, among others–
- (a) follow clearly defined terms of the internal audit framework which sets out the scope, objectives, approach and reporting requirements;
  - (b) adequately plan, control and record all audit work performed, and record the findings, conclusions and recommendations; and
  - (c) highlight matters in the audit report, which should be resolved satisfactorily in a timely manner.

### **Roles and responsibilities of management company**

- 3.20 In addition to the duties stipulated under the CMSA, a management company should observe, act and carry out its duties in accordance with the prescribed roles and responsibilities set out in this chapter.

#### **General**

- 3.21 A management company should operate the fund and exercise its responsibilities according to the deed and prospectus, these guidelines, securities laws and acceptable and efficacious business practices within the exchange-traded fund industry.
- 3.22 A management company should–
- (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 interests of unit holders and, if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
  - (c) observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interest of unit holders;
  - (d) not improperly make use of information acquired through being the management company to–
    - (i) gain an advantage for itself or other person; or
    - (ii) cause detriment to unit holders in the fund;
  - (e) ensure that the fund's property is–
    - (i) clearly identified as the fund's property; and
    - (ii) held separately from the property of the management company and any other fund managed by the management company; and

- (f) comply with any other duty, not inconsistent with the CMSA and these guidelines, that is conferred on the management company by the deed.
- 3.23 A management company should, among others–
- (a) establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor risks in relation to the fund it operates and manages;
  - (b) have adequate human resource with the necessary qualification, expertise and experience to carry on business as a management company; and
  - (c) have adequate and appropriate systems, procedures and processes to undertake the business in a proper and efficient manner.
- 3.24 A management company should account to the trustee for any loss suffered by the fund as a result of the management company's failure to exercise the degree of care and diligence required in operating and managing the fund.
- 3.25 A management company should ensure that its officers and delegates–
- (a) do not make improper use of information acquired through being such an officer or delegate of the management company to–
    - (i) gain an advantage for himself or another person; or
    - (ii) cause detriment to unit holders in the fund;
  - (b) do not make improper use of their position as such officers or delegates to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to unit holders in the fund; and
  - (c) comply with any other duty or obligation as may be prescribed under the securities laws, trust laws or these guidelines.
- 3.26 A management company may appoint a market maker, and the market maker appointed must be registered under the rules of Bursa Securities.

### **Valuation**

- 3.27 A management company should take all reasonable steps, and exercise due diligence, to ensure that the fund's property is correctly valued in line with the provisions of Chapter 11 and Schedule C of these guidelines, the deed and the prospectus.
- 3.28 For the purpose of valuing the fund's property, a management company should not do or omit anything that would, or might confer on itself a benefit or advantage at the expense of unit holders or potential unit holders.

## **Transactions**

- 3.29 A management company should conduct all transactions for a fund at arm's length.
- 3.30 A management company should not act or conduct transactions in any manner that would result in unnecessary cost or risk to the fund.

## **Maintenance of records**

- 3.31 A management company should maintain proper accounting records and other records as are necessary–
- (a) to enable a complete and accurate view of the fund to be formed; and
  - (b) to comply with the deed, these guidelines, securities laws and any other relevant law.
- 3.32 A management company should ensure that the financial statements of the fund give a true and fair view of the fund's financial position as at the end of the fund's financial period.
- 3.33 A management company should prepare and present, or cause to be prepared and presented, its financial statements in accordance with approved accounting standards, the deed, these guidelines and securities laws.

## Chapter 4

### THE TRUSTEE

#### Appointment of trustee

4.01 As prescribed under sections 288(1)(a) and 289(1) the CMSA, a trustee must be appointed for a fund and the appointment must be approved by the SC.

#### Eligibility requirements

4.02 A trustee must–

- (a) be a trust company registered under the *Trust Companies Act 1949* or incorporated under the *Public Trust Corporation Act 1995*;
- (b) be registered with the SC; and
- (c) have a minimum issued and paid up capital of not less than RM500,000.

#### Roles and responsibilities of trustee

4.03 In addition to duties stipulated under the CMSA, a trustee should observe, act and carry out its duties in accordance with the prescribed roles and responsibilities set out in this chapter.

#### General

4.04 A trustee should–

- (a) act honestly and in accordance with the deed and prospectus, these guidelines, trust laws and securities laws;
- (b) exercise the degree of care and diligence that a reasonable person would exercise in the position of a trustee;
- (c) act in the best interests of unit holders, and if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
- (d) not improperly make use of information acquired through being the trustee to–
  - (i) gain an advantage for itself or another person; or
  - (ii) cause detriment to unit holders in the fund; and



- (e) comply with any other duty, not inconsistent with the CMSA and these guidelines, that is conferred on the trustee by the deed.

4.05 A trustee should, among others–

- (a) have adequate human resources with the necessary qualification, expertise and experience to carry on business as a trustee to exchange-traded funds; and
- (b) have adequate and appropriate systems, procedures and processes, to carry out its duties and responsibilities in a proper and efficient manner.

4.06 A trustee should ensure that its officers and delegates–

- (a) do not make improper use of information acquired through being such an officer or delegate of the trustee to–
  - (i) gain an advantage for himself or another person; or
  - (ii) cause detriment to unit holders in the fund.
- (b) do not make improper use of their position as such officers or delegates to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to unit holders in the fund; and
- (c) comply with any other duty or obligation as may be prescribed under the securities laws, trust laws or these guidelines.

### ***Holding of the fund's property***

4.07 As prescribed under section 300(1) of the CMSA, a trustee should take custody and control of the fund's property and hold it in trust for the unit holders in accordance with the deed, these guidelines and securities laws.

4.08 A trustee should ensure that a fund's property is–

- (a) clearly identified as the fund's property;
- (b) held separately from any other assets held by or entrusted to the trustee; and
- (c) registered in the name of, or to the order of, the fund.

### ***Trustee's obligations on oversight functions***

4.09 A trustee should actively monitor the operation and management of the fund by the management company, and take any other necessary measures to safeguard the interests of unit holders.

- 4.10 The trustee should, at all times, through proper and adequate supervision, ensure that the fund is operated and managed by the management company, in accordance with—
- (a) the deed;
  - (b) the prospectus;
  - (c) these guidelines and securities laws; and
  - (d) acceptable and efficacious business practices within the exchange-traded fund industry.

### **Guidance**

To safeguard the interests of unit holders, the trustee should conduct independent reviews and not only depend on the information submitted by the management company.

- 4.11 Where a fund is expressed to be managed in accordance with specific principles, the trustee should ensure that the fund is managed in accordance with those principles.
- 4.12 A trustee should ensure that it is fully informed of the investment policies of the fund set by the management company, and of changes made. If the trustee is of the opinion that the policies are not in the interests of unit holders, it should, after considering any representation made by the management company, instruct the management company to take appropriate action as the trustee deems fit and/or summon a unit holders' meeting to give such instructions to the trustee as the meeting thinks proper.
- 4.13 A trustee should exercise reasonable diligence in monitoring the management company's functions and do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed, disclosures in prospectus, requirements of these guidelines and provisions of the CMSA, unless the trustee is satisfied that the breach will not materially prejudice unit holders' interests.

### ***Trustee's reporting and disclosure obligations***

- 4.14 A trustee should notify the SC as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of securities laws or any inconsistency between the disclosures in the prospectus and the provisions or covenants of the deed, which in the trustee's opinion, may indicate that the interests of unit holders are not being served.

- 4.15 Where a fund is to be managed in accordance with specific principles, a trustee should provide a transaction report(s) of the fund to the Shariah adviser/panel of advisers, whichever is applicable. If the transaction report is prepared by the management company, the trustee should approve the transaction report prior to it being submitted to the relevant adviser.

### ***Dealings in fund's property***

- 4.16 A trustee should take all steps to effect any instruction properly given by the management company, or its fund management delegate, relating to acquisitions or disposals of, or the exercise of the rights attaching to, a fund's property.

### ***Creation, redemption and dealing in units of the fund***

- 4.17 A trustee should take all steps to effect any instruction properly given by the management company under Chapter 11 of these guidelines.
- 4.18 A trustee should ensure that the systems, procedures and processes employed by the management company are adequate to ensure that the fund's property is correctly valued in line with provisions of Chapter 11 and Schedule C of these guidelines, the deed and prospectus.

### ***Provision of information***

- 4.19 A trustee must submit or make available any statement, document, book, record and other information relating to the fund and the business of the trustee, as may be required by the SC from time to time.

### ***Maintenance of records***

- 4.20 A trustee should maintain and ensure that the management company maintains proper accounting records and other records as are necessary–
- (a) to enable a complete and accurate view of the fund to be formed; and
  - (b) to ensure that the fund is operated and managed in compliance with the deed of the fund, prospectus, these guidelines and securities laws.

### ***Holding of units by trustee***

- 4.21 A trustee should not hold units or other interests in the fund.

## Chapter 5

### DELEGATION AND OUTSOURCING

#### General

- 5.01 A management company or trustee may delegate and outsource its functions to third parties.
- 5.02 Delegating and outsourcing to third parties do not relieve a management company or trustee from the responsibility for proper conduct of the delegated and outsourced activities. A management company or trustee remains responsible for the actions and omissions of its delegate or service provider as though they were its own actions and omissions.
- 5.03 A management company or a trustee should ensure that–
- (a) adequate procedures are in place to monitor the conduct of its delegate or service provider and to ensure that the function delegated or outsourced is performed in a proper and efficient manner; and
  - (b) there are controls in place to ensure compliance with the deed, prospectus, these guidelines and securities laws.
- 5.04 A management company or trustee should also ensure that its delegate or service provider is suitable to undertake the particular functions, including that it–
- (a) is duly licensed or authorised by a relevant authority (where applicable);
  - (b) has adequate financial resources;
  - (c) has an adequate track record in the performance of the functions; and
  - (d) has adequate and appropriate human resources, systems, procedures and processes to carry out the functions (including on compliance with applicable requirements and policies and procedures on internal controls).
- 5.05 The service agreement between the management company or trustee and its delegate or service provider should, among others, contain clear provisions on–
- (a) the services to be provided;
  - (b) the fees, remuneration and other charges of the delegate;
  - (c) any restriction or prohibition regarding the performance of the function to be delegated; and

- (d) reporting requirements, including the line of reporting between the delegate and the management company or trustee and the means of evaluating the performance of the delegate.

### **Delegation of function by the management company**

- 5.06 Any delegation of a management company's function requires the SC's prior approval.
- 5.07 Clause 5.06 does not apply to delegation of function to a holder of a Capital Markets Services Licence.
- 5.08 Where a management company appoints a foreign delegate, the agreement between the management company and its foreign delegate should include, in addition to the requirements set out in clause 5.05, the following provisions:
  - (a) Adequate training arrangements between the foreign delegate and the management company; and
  - (b) Powers of examination and/or inspection by the management company and/or the trustee and/or the SC to ensure that the foreign delegate is in compliance with the applicable requirements of the deed, prospectus, these guidelines and securities laws.
- 5.09 An officer of the delegate (whether foreign or otherwise) should not hold office as member of–
  - (a) the investment committee of any fund for which the fund manager or investment adviser is appointed to manage;
  - (b) the Shariah adviser of any fund for which the delegate is appointed to manage; and
  - (c) the panel of advisers of any fund for which the delegate is appointed to manage.
- 5.10 The delegate's remuneration must be paid by the management company and not be charged to the fund.

### **Delegation of function by the trustee**

- 5.11 A trustee may delegate the custodial function for the fund's property.
- 5.12 Where the function is delegated, the trustee should ensure that–
  - (a) it retains control of the fund's property at all times; and
  - (b) there are adequate arrangements to prevent the delegate from releasing the custody or control of the fund's property without its prior consent.

## Outsourcing of functions

- 5.13 A management company may outsource its back office functions to external parties.
- 5.14 For the purpose of clause 5.13, a management company should observe and ensure compliance with the requirements in the *Guiding Principles for Outsourcing of Back Office Functions for Capital Market Intermediaries* and *Guidelines on Performance of Supervision Functions at Group Level for Capital Market Intermediaries* issued by the SC.

## Chapter 6

### OVERSIGHT ARRANGEMENT

- 6.01 In addition to the appointment of a trustee, a management company should establish and maintain additional arrangements to provide oversight on the operation and management of the fund.
- 6.02 A management company should implement and maintain the following arrangements:
- (a) Appointment of an investment committee for a fund; and
  - (b) Appointment of (where applicable)–
    - (i) Shariah adviser for a Shariah-compliant fund; or
    - (ii) Panel of advisers for a fund that is expressed to be managed in accordance with specific principles.

### Investment committee

#### *General*

- 6.03 An investment committee of a fund should comprise–
- (a) at least three individual members; and
  - (b) at least two independent members, while maintaining a minimum ratio of at least one-third independent members at all times.
- 6.04 A member of the investment committee should not hold office as–
- (a) member of an investment committee of funds managed and administered by another management company;
  - (b) director of another management company;
  - (c) Shariah adviser for the same fund;
  - (d) member of the panel of advisers (if any) of the same fund; or
  - (e) an officer of the delegate that carry on the fund management function of the fund.
- 6.05 The investment committee for a Shariah-compliant fund should comprise at least two Muslim members. A quorum is not present for the purpose of holding an investment committee meeting unless one Muslim member is present at the meeting.

## **Roles and responsibilities**

- 6.06 An investment committee should ensure that the fund is managed in accordance with–
- (a) the fund’s investment objective;
  - (b) the deed;
  - (c) the prospectus;
  - (d) these guidelines and securities laws;
  - (e) the internal investment restrictions and policies; and
  - (f) acceptable and efficacious practices within the exchange-traded fund industry.
- 6.07 An investment committee’s roles and responsibilities include the following:
- (a) Select appropriate strategies to achieve the proper performance of the fund in accordance with the fund management policies;
  - (b) Ensure that the strategies selected are properly and efficiently implemented by the management company or its fund management delegate; and
  - (c) Actively monitor, measure and evaluate the fund management performance of the management company or its fund management delegate.

## **Shariah adviser**

### **General**

- 6.08 A Shariah adviser should–
- (a) be independent of the management company;
  - (b) be registered with the SC;
  - (c) (where individuals are appointed) comprise at least three individuals; and/or
  - (d) (where a corporation is appointed) engage at least one Shariah expert who meets the fit and proper criteria in clauses 6.18 and 6.19.
- 6.09 Clauses 6.08(a) and (b) do not apply to an Islamic bank or a licensed institution approved by Bank Negara Malaysia to carry on an Islamic banking business.
- 6.10 Individuals appointed under clause 6.08(c) and (d) should not hold office as a member of the investment committee of funds managed and administered by the same management company.



### ***Roles and responsibilities***

- 6.11 The roles of a Shariah adviser include the following:
- (a) To advise on all aspects of exchange-traded fund business in accordance with Shariah principles;
  - (b) To provide Shariah expertise and guidance in all matters, particularly on the fund's deed and prospectus, fund structure, investments and other operational matters;
  - (c) To ensure that the fund is managed and operated in accordance with Shariah principles, relevant SC regulations and/or standards, including resolutions issued by the SC's Shariah Advisory Council;
  - (d) To review the fund's compliance report and investment transaction report to ensure that the fund's investments are in line with Shariah principles; and
  - (e) To prepare a report to be included in the fund's annual report stating its opinion whether the fund has been operated and managed in accordance with the Shariah principles for the financial period concerned.
- 6.12 Where there is ambiguity or uncertainty as to an investment, instrument, system, procedure and/or process, the Shariah adviser should consult the SC.

### **Panel of advisers**

#### ***General***

- 6.13 A panel of advisers should—
- (a) comprise at least three individual members; and
  - (b) be independent of the management company.
- 6.14 A member of the panel of advisers should not hold office as member of the investment committee of the same fund or any other fund managed and administered by the same management company.

### ***Roles and responsibilities***

- 6.15 A panel of advisers must ensure that the fund is operated and managed in accordance with the specific principles set out for the fund.
- 6.16 A panel of advisers should review the fund's compliance report and investment transaction report to ensure that the fund's investments are in line with the specific principles set out for the fund.

- 6.17 A panel of advisers should prepare a report to be included in the fund's annual report stating its opinion whether the fund has been managed and administered in accordance with the specific principles set out for the fund for the financial period concerned.

### **Fit and proper criteria**

- 6.18 The persons appointed should–
- (a) be of good repute and character;
  - (b) observe high standards of integrity and fair dealing in carrying out their duties and responsibilities;
  - (c) act with due skill, care and diligence in carrying out their duties and responsibilities;
  - (d) take reasonable care to ensure that they carry out their duties and functions in accordance with these guidelines; and
  - (e) possess the necessary qualifications, expertise and experience, particularly in the respective fields to perform their duties and responsibilities in a fit and proper manner.
- 6.19 The persons should not have been involved in any unethical and/or inappropriate practice. Among others, the persons could be subject to a disqualification in any of the following events:
- (a) A petition filed under bankruptcy laws or the persons have been declared bankrupt;
  - (b) A criminal proceeding for the conviction for fraud, dishonesty or any other offence punishable with imprisonment of one year or more, anywhere in the world;
  - (c) Any inquiry/investigation carried out by any government/statutory authority or body, in which an adverse finding was found; and
  - (d) Any unethical practice and activity which would render the persons unfit to perform an oversight function.
- 6.20 It is the responsibility of the management company to assess the ability of the persons to carry out the duties and responsibilities required of them. In the case of the establishment of a new management company, this responsibility lies with the holding company and/or promoter and its board of directors.
- 6.21 Where any person is subject to any disqualification or is otherwise unfit to hold office, the management company must ensure that the person vacates the position immediately. The management company must notify the SC immediately of any disqualification and when the position is vacant.

- 6.22 Where an individual is appointed as a member for more than one committee of funds managed and administered by the same management company, he should act separately and independently for each of the fund he is appointed for.

## Chapter 7

### CONSTITUTION OF THE EXCHANGE-TRADED FUND

#### Instrument constituting the fund

- 7.01 As prescribed under section 288(1)(b) of the CMSA, a management company should ensure there is a deed in force for a fund. The deed should contain the minimum requirements prescribed in Schedule A of these guidelines and those specified under securities laws.
- 7.02 A management company and trustee should ensure that the requirements of clause 7.01 are met at all times.
- 7.03 A management company and trustee are responsible for maintaining the deed and for making necessary amendments to the deed in accordance with applicable guidelines and securities laws.

#### Name of fund

- 7.04 A management company and trustee should ensure that the name of the fund is not inappropriate, misleading or conflicts with the name of another fund.
- 7.05 The SC may direct the management company to change the name of the fund if the name of the fund is considered inappropriate, misleading or conflicts with the name of another fund.
- 7.06 When deciding whether to make a direction under clause 7.05, the SC will take into account, among other matters, whether the name of the fund–
- (a) implies that the fund has merits which are not justified;
  - (b) is inconsistent with the fund's investment objective or policy;
  - (c) might mislead investors into thinking that a person other than the management company is responsible for the fund or part of the fund;
  - (d) is substantially similar to the name of another fund in Malaysia or elsewhere; or
  - (e) is likely to offend the public.

#### Investment objective of the fund

- 7.07 The investment objective of a fund must be clear, specific and sufficiently stipulated in the deed.

- 7.08 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, it is the management company's duty to ensure that an appropriate portion of the fund is invested in accordance with that intention.

### **Modifications to the deed**

- 7.09 Any modification to a fund's deed must be made in accordance with the provisions of the deed and section 295 of the CMSA.
- 7.10 Unless otherwise provided by the law, any modification to the deed, including any material change to the investment objective set out for the fund, must be approved by unit holders of the fund by way of a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held in accordance with the deed.

## Chapter 8

### INVESTMENTS OF THE EXCHANGE-TRADED FUND

#### General

- 8.01 The provisions in this chapter apply to all exchange-traded funds constituted in Malaysia.
- 8.02 A fund's property should be relevant and consistent with the investment objective of the fund, which is to track the benchmark index with minimal tracking error.
- 8.03 Taking into account the investment objective and policy of the fund, reasonable steps should be taken to ensure that the fund's property provides a prudent spread of risk.
- 8.04 For the purpose of this chapter, "fund manager" means any person responsible for the fund management function of an exchange-traded fund and includes the management company (if internally managed) or its fund management delegate.

#### Dealings in the fund's property

- 8.05 All dealings in the fund's property should be appropriate to the fund and consistent with—
- (a) the deed;
  - (b) the prospectus;
  - (c) these guidelines and securities laws; and
  - (d) acceptable and efficacious practices within the exchange-traded fund industry.
- 8.06 The fund manager should—
- (a) notify the trustee in writing of any acquisition or disposal of the fund's property within one business day after which the acquisition or disposal was effected;
  - (b) ensure that the fund's property 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 interests of the unit holders.

## Investment powers: General

- 8.07 The fund's property may, unless otherwise provided in these guidelines, consist of the following:
- (a) Transferable securities;
  - (b) Collective investment schemes;
  - (c) Derivatives; and
  - (d) Cash, to the extent necessary to ensure efficacious management of the fund.
- 8.08 For the purpose of these guidelines, "transferable securities" are equities, debentures and warrants.
- 8.09 Transferable securities held by the fund must be traded in or under the rules of an eligible market.
- 8.10 For investments in a foreign market, a foreign market is an eligible market where it has satisfactory provisions 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 market; and
  - (f) arrangements for the unimpeded transmission of income and capital from the foreign market.
- 8.11 Notwithstanding clause 8.10, investments in a foreign market are limited to markets where the regulatory authority is a member of the International Organization of Securities Commissions (IOSCO).
- 8.12 The weightings of the component asset in the index basket may be based either on the entire component asset (full replication), or a representative sample of component asset (sampling), of the index, which the exchange-traded fund is tracking.
- 8.13 The fund's property need not consist of the exact composition and weighting of the underlying 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 an underlying investment.

### **Benchmark index**

- 8.14 The benchmark index that is tracked by an exchange-traded fund should–
- (a) have a clearly defined objective;
  - (b) appropriately reflect the characteristics of the market or sector;
  - (c) be able to reflect price movements of its component securities, and change the composition and weightings of the component securities;
  - (d) be broadly based and the composition must be sufficiently diversified;
  - (e) be sufficiently liquid; and
  - (f) be transparent and conveniently accessible by investors.
- 8.15 In addition to the above, where the fund is expressed to be managed and administered in accordance with Shariah principles, the benchmark index should be a Shariah index consisting of Shariah-compliant securities.

### **Investments in derivatives**

- 8.16 The fund's property may consist of derivatives that are–
- (a) traded on an exchange; or
  - (b) traded over-the-counter (OTC).
- 8.17 The use of derivatives must be consistent with the fund's objective in minimising tracking error of the fund and must not cause the fund to diverge from its investment objective.
- 8.18 The underlying instruments of a derivative may consist of permissible investments under clause 8.07 and may also include indices, interest rates and foreign exchange rates.
- 8.19 The fund's exposure from the derivatives position must not exceed the fund's NAV at all times.
- 8.20 The value of the fund's holding in OTC derivatives issued by a single counter-party must not exceed 10% of the fund's NAV, based on the most up-to-date value of the fund's property.
- 8.21 When the fund invests in derivatives, the exposure to the underlying assets must not exceed the weighting for each particular asset, whether for a full replication or sampling strategy.



- 8.22 For the purpose of clause 8.16(b), a transaction in OTC derivatives may only be entered where–
- (a) the counter-party is a financial institution with a minimum long-term rating provided by any domestic or global rating agency that indicates strong capacity for timely payment of financial obligations;
  - (b) the fund manager has determined it is able to value the investment concerned to ensure that the pricing is reasonable;
  - (c) the counter-party 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 fund manager or the trustee; and
  - (d) the counter-party must be ready to unwind, buy back or close out the transaction upon request of the fund manager at a fair value determined on methods or bases which have been verified by the auditor of the fund and approved by the trustee.
- 8.23 For the purpose of clause 8.22(a), where the rating of the counter-party falls below the minimum required, or the counter-party ceases to be rated, the fund manager should, within six months or sooner (if the trustee considers it to be in the best interest of the unit holders), take the necessary action to ensure that the requirements are complied with.
- 8.24 The writing of option derivatives and short position of futures contracts by the fund are strictly prohibited. Notwithstanding, short position of futures contract for hedging purposes is allowed.
- 8.25 The fund manager must have in place the necessary risk management measures which would enable it to monitor, measure and manage the risks of the fund's position in derivatives and their contribution to the overall risk profile of the fund.

### **Investments in collective investment schemes**

- 8.26 The fund's property may consist of units/shares in other collective investment schemes (referred to as the target funds).
- 8.27 The target fund must–
- (a) be regulated by a regulatory authority;
  - (b) (if the target fund is constituted in Malaysia) be approved by the SC;
  - (c) (if the target fund is constituted outside Malaysia) be registered/authorised/ approved by the relevant regulatory authority in its home jurisdiction; and

- (d) operate on the principle of prudent spread of risk and its investments do not diverge from the general investment principles of these guidelines.
- 8.28 Where the fund invests in a target fund operated by the same management company or its related corporation, the fund manager must ensure that–
- (a) there is no cross-holding between the fund and the target fund;
  - (b) all initial charges on the target fund are waived; and
  - (c) the management fee must only be charged once, either at the fund or the target fund.
- 8.29 Except for a feeder exchange-traded fund, the value of the fund’s investments in units/shares of any collective investment scheme must not exceed 20% of the fund’s NAV, based on the most up-to-date value of the fund’s property.

### **Investments in structured products**

- 8.30 Notwithstanding clause 8.07, the fund’s property may consist of structured products.
- 8.31 The fund manager must ensure that–
- (a) the counter-party is an eligible issuer (for structured products issued in Malaysia) or an issuer regulated by the relevant regulatory authority (for structured products issued outside Malaysia);
  - (b) (unless otherwise stated in these guidelines) the counter-party has a minimum long-term rating by any domestic or global rating agency that indicates adequate capacity for timely payment of financial obligations; and
  - (c) clauses 8.22(b), (c) and (d) are complied with for OTC transactions.
- 8.32 For the purpose of clause 8.31(b), where the rating of the counter-party falls below the minimum required, or the counter-party ceases to be rated, the fund manager should, within six months or sooner (if the trustee considers it to be in the best interest of the unit holders), take the necessary action to ensure that the requirements are complied with.
- 8.33 The value of the fund’s investments in structured products issued by a single counter-party must not exceed 15% of the fund’s NAV, based on the most up-to-date value of the fund’s property.

### **Securities lending**

- 8.34 The fund may participate in the lending of securities within the meaning of the *Guidelines on Securities Borrowing and Lending* when the fund manager finds it appropriate to

do so with a view of generating additional income for the fund with an acceptable degree of risk.

8.35 The lending of securities must–

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

8.36 The fund manager must ensure that it has appropriate policies and practices for the lending of securities by the fund.

8.37 Except otherwise provided under clause 8.34, the fund's property may not be lent. In addition, the fund may not assume, guarantee, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any person.

## **Borrowings**

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

## **Breach of investment limits**

8.39 A 5% allowance in excess of any limit or restriction imposed under these guidelines is permitted where the limit or restriction is breached through an appreciation or depreciation of the fund's NAV (whether as a result of an appreciation or depreciation in value of the fund's property, or as a result of redemption of units or payment made out of the fund).

8.40 The fund manager should not make any further acquisition to which the relevant limit is breached, and the fund manager should, within reasonable period of not more than three months from the date of the breach, take all necessary steps and actions to rectify the breach.

## **Other investments**

8.41 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 interest of the unit holders.

## **Voting rights**

- 8.42 The fund manager or the trustee is encouraged to exercise the voting rights for any shares held by the fund at a shareholders' meeting of corporations whose shares are so held.
- 8.43 Notwithstanding clause 8.42, the fund manager or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution.

## Chapter 9

### PARTICIPATING DEALERS

#### Eligibility of participating dealers

- 9.01 A participating dealer is appointed by a management company and is responsible for the in-kind creation and redemption of exchange-traded fund units.
- 9.02 A participating dealer agreement must be executed with the management company and trustee.
- 9.03 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.
- 9.04 The SC may impose such other additional conditions on participating dealers from time to time as it deems fit.
- 9.05 A participating dealer should also adhere to such other conditions imposed by the relevant stock exchange in which the fund is listed.

#### Roles and duties of a participating dealer

- 9.06 A participating dealer undertakes in-kind creation and redemption in the market for the fund either as principal or on behalf of clients.
- 9.07 Creation and redemption undertaken on behalf of clients must be properly segregated from principal trades.
- 9.08 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 exchange-traded fund units.
- 9.09 A participating dealer should observe high standards of integrity when dealing in the primary market and also in the secondary market when dealing on behalf of clients.

## Chapter 10

### FEES AND EXPENSES

#### Management fee and trustee fee

- 10.01 A management company and trustee may only be remunerated by way of an annual fee charged to the fund.
- 10.02 The fees may only be charged to the fund if permitted by the deed and are clearly disclosed in the prospectus.
- 10.03 The fees should be accrued daily and calculated based on the NAV of the fund. The number of days in a year should be used in calculating the accrued fees.
- 10.04 The fees should not be higher than that disclosed in the prospectus unless–
- (a) (for management fee) the management company has notified the trustee in writing of the new higher rate, and the trustee agrees after considering the matters stated under clause 10.06;
  - (b) (for trustee fee) the trustee has notified the management company in writing of the new higher rate and the management company agrees after considering the matters stated in clause 10.08;
  - (c) the management company has announced to Bursa Securities of the higher fee rate and its effective date; and
  - (d) 90 days have elapsed since the date of announcement in sub-clause (c).
- 10.05 Any increase in the maximum rate stipulated in the deed may only be made by way of a supplementary deed and in accordance with the requirements of the CMSA.

#### Remuneration of management company

- 10.06 A management company should demonstrate, and the trustee must agree, that the annual 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 fund's property;

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

10.07 Notwithstanding clause 10.06, if at any time the trustee forms the opinion that the management fee charged to the fund is unreasonable, the trustee should take such necessary action, which may include convening a unit holders' meeting, to ensure that the fee charged is commensurate with the services provided by the management company.

### **Remuneration of trustee**

10.08 The trustee fee should be reasonable, considering–

- (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 fund's property.

### **Expenses of the fund**

10.09 Only expenses (or part thereof) directly related and necessary in operating and administering a fund may be paid out of the fund. These include the following:

- (a) Commissions/fees paid to brokers in effecting dealings in the investments of the fund, shown on the contract notes or confirmation notes or difference accounts;
- (b) (Where the custodial function is delegated by the trustee) charges/fees paid to sub-custodians;
- (c) Taxes and other duties charged on the fund by the government and other authorities;
- (d) Fees and other expenses properly incurred by the auditor appointed for the fund;
- (e) Fees for valuation of the fund's property by independent valuers for the benefit of the fund;
- (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 for the benefit of the management company or trustee; and
- (h) Listing expenses in relation to listing on the stock exchange.

**Guidance**

The above list is meant to give some guidance on expenses that are directly related and necessary to the operation of the fund and is not meant to be exhaustive.

- 10.10 General overheads and costs for services expected to be provided by the management company, should not be charged to the fund.
- 10.11 A trustee should ensure that all expenses charged to the fund are legitimate. In addition, a trustee should ensure that the quantum of expenses charged to the fund is not excessive or beyond the standard commercial rates. Where uncertainties arise, a trustee should 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 fund.
- 10.12 A trustee may be reimbursed by the fund for any expenses appropriately incurred in the performance of its duties and responsibilities as a trustee.



## Chapter 11

### VALUATION, PRICING AND DEALING

#### Valuation

- 11.01 A management company is obligated to calculate the indicative optimum portfolio value (IOPV) per unit and end-of-day NAV per unit based on a formula and process which is consistently applied by the management company, and which leads to valuations that are objective and independently verifiable.
- 11.02 The determination of the IOPV per unit must be carried out by a management company on a regular basis within a day as a management company considers necessary and this information must be disseminated by the relevant stock exchange on a real-time or on a frequency agreed with the SC.

#### Issue price of a unit

- 11.03 The issue price of units offered for subscription or sale, for which listing is sought should be calculated by the management company and be based on a multiplier of the index, and must be at least RM0.50 each.
- 11.04 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.
- 11.05 Upon listing and quotation of the fund on a stock exchange, the price of the unit should be the price quoted on the exchange.

#### Dealing in units

##### *General*

- 11.06 Any dealing in units should comply with relevant securities laws, guidelines and rules.

##### *Suspension of dealing in units*

- 11.07 Suspension of dealing in units should comply with relevant securities laws, guidelines and rules.
- 11.08 Notwithstanding clause 11.07, a trustee should suspend dealing in units of a fund due to exceptional circumstances, where there is a good and sufficient reason to do so, considering the interests of unit holders or potential investors.

- 11.09 The suspension under clause 11.08 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.
- 11.10 A trustee should immediately notify the SC in writing:
- (a) of the suspension of dealing in units, stating the reasons for suspension; and
  - (b) of the proposed resumption of dealing in units and the date of the proposed resumption.

### **Creation and redemption of units**

- 11.11 A management company should instruct the trustee in writing to create or redeem units of the fund.
- 11.12 A trustee should create and redeem 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.
- 11.13 Subject to clause 11.14, the trustee must create or redeem units in return for in-kind consideration only, and in creation/redemption unit sizes or multiples thereof.
- 11.14 In exceptional circumstances, a trustee can create and redeem exchange-traded fund units in return for cash considerations provided–
- (a) it is not detrimental to the unit holders;
  - (b) the management company notifies the SC; and
  - (c) it is disclosed in the prospectus and permitted by the deed.

### **Trustee may refuse to create or redeem units**

- 11.15 Notwithstanding any other provision under these guidelines, a trustee may by notice to the management company refuse to–
- (a) create units;
  - (b) redeem units; or
  - (c) create or redeem units in the number instructed by the management company,
- where the trustee considers the creation or redemption is not in the best interests of unit holders or it would result in a breach of the deed, these guidelines or securities laws.

## Chapter 12

### PUBLIC OFFERINGS AND LISTINGS

12.01 This chapter sets out the requirements for the public offering and primary listing of an exchange-traded fund on Bursa Securities.

#### Methods of offering of units

##### *General*

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

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

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

12.04 Expenses incurred relating to an offer for sale or restricted offer for sale of units must be borne by the offeror.

#### Placement of units

12.05 The principal adviser must act as the placement agent for any placement of units.

12.06 Units may not be placed with persons connected to the placement agent, except where such persons connected to the placement agent are—

- (a) statutory institutions managing funds belonging to contributors or investors who are members of the public; or
- (b) entities established as collective investment schemes which are considered to represent public investors.

12.07 The aggregate number of units placed with persons connected to the placement agent under clause 12.06 must not be more than 25% of the total number of units made available for placement by the placement agent.

12.08 Placement of units may not be made to–

- (a) existing unit holders of the fund or persons connected to them, whether in their own names or through nominees, except under restricted offers stated in clause 12.10; and
- (b) nominee companies unless the names of the ultimate beneficiaries are disclosed.

12.09 The SC reserves the discretion to require submission of further information on the placement exercise and the placees as it may consider necessary for the purpose of establishing the propriety of the exercise or the independence of the placees.

***Restricted offers***

12.10 Restricted offers for sale and restricted offers for subscription which are undertaken as part of the listing scheme may only be made to the following group of persons:

- (a) Directors and employees of the management company;
- (b) Directors and employees of the subsidiary/holding company of the management company; and
- (c) Shareholders of the holding company of the management company, if the holding company is listed.

12.11 The aggregate amount of units which may be offered to the groups of persons under clauses 12.10 (a) and (b) should not be more than 10% of the approved fund size upon listing or 25% of the units offered, whichever is lower.

## Chapter 13

### OPERATIONAL MATTERS

#### Distribution of income

- 13.01 Distribution of income should only be made from realised gains or realised income.
- 13.02 Distribution of income should be made after the management company has taken into consideration the following:
- (a) Total returns for the period;
  - (b) Income for the period;
  - (c) Cash flow for distribution;
  - (d) Stability and sustainability of distribution of income; and
  - (e) The investment objective and distribution policy of the fund.
- 13.03 Where distribution is made, the management company should send to every unit holder a statement detailing relevant information on the income distribution. The statement should also include the following information:
- (a) Total returns of the fund; and
  - (b) NAV per unit prior to, and subsequent to, the distribution.
- 13.04 For interim distribution, a management company may, instead of sending a statement required under clause 13.03, choose to publish the same information in an advertisement in at least one national Bahasa Malaysia and one national English newspaper.

#### Conflict of interest

- 13.05 A management company, a trustee and any delegate or service provider should avoid conflicts of interest arising, or if conflicts arise, should ensure that the fund is not disadvantaged by the transaction concerned.
- 13.06 Any related-party transaction, dealing, investment and appointments involving parties to a fund must be made on terms which are the best available for the fund and which are no less favourable to the fund than an arm's length transaction between independent parties.
- 13.07 The appointment or renewal of appointment of any delegate or service provider who is a related party must be approved by the independent directors of the management company.

## Use of brokers/dealers

- 13.08 Every broker/dealer used for dealings in the fund's property, either directly by the management company or fund management delegate, should be approved by the investment committee of the fund.
- 13.09 In approving a broker/dealer, the investment committee–
- (a) should be satisfied that the dealings in the fund's property will be effected by the broker/dealer on terms which are the best available for the fund ("best execution" basis); and
  - (b) should prescribe a limit in terms of proportion of dealings (in percentage) executed with each broker/dealer.
- 13.10 In determining the limit under clause 13.09(b), the investment committee should consider–
- (a) the capability and services of the broker/dealer concerned; and
  - (b) the desirability of keeping a good spread of brokers/dealers for the fund.

## Rebates and soft commissions

- 13.11 A management company, a trustee or its delegate should not retain any rebate from, or otherwise share in any commission with, any broker/dealer in consideration for directing dealings in a fund's property. Accordingly, any rebate or shared commission should be directed to the account of the fund concerned.
- 13.12 Notwithstanding clause 13.11, a management company or its delegate may retain goods and services (soft commissions) provided by any broker/dealer if they are of demonstrable benefit to unit holders and–
- (a) dealings with the broker/dealer are executed on terms which are the best available for the fund; and
  - (b) the management company's or delegate's soft commission practices are adequately disclosed in the prospectus and fund reports (including a description of the goods and services received by the management company or delegate).

### Guidance

Soft commissions which are not allowed include, among others, entertainment allowance, travel, accommodation and membership fee.

- 13.13 Where clause 13.12 applies, the compliance officer should verify and inform the management company's board of directors (or audit and compliance committee, if any) that any goods or services received by the management company or its delegate, comply with the guidelines' requirements.

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

- 13.14 A management company and a trustee should make available (without charge) at their principal place of business the following documents:

- (a) The deed and the supplementary deed of the fund (if any);
- (b) The current prospectus and the supplementary/replacement prospectus of the fund (if any);
- (c) The latest annual report of the fund;
- (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) The audited accounts of the management company and the fund for the last three financial years or from the date of incorporation/commencement (if less than three years);
- (g) Latest audited accounts of the management company and the fund for the current financial year (where applicable); and
- (h) 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,

for inspection by investors and unit holders at all times during the ordinary business hours.

### **Terminating/winding-up a fund**

- 13.15 A fund may be terminated or wound up upon the occurrence of any of the following events:

- (a) The SC's approval is revoked under section 212(7)(A) of the CMSA;
- (b) A special resolution is passed at a unit holders' meeting to terminate or wind up the fund, provided that the court has confirmed the resolution, as required under section 301(2) of the CMSA; and
- (c) A special resolution is passed at a unit holders' meeting to terminate or wind up the fund.

- 13.16 Upon the occurrence of any of the events under clause 13.15–
- (a) Chapter 11 (Valuation, Pricing and Dealing) and Chapter 8 (Investments of the Exchange-traded Fund) cease to apply to the fund;
  - (b) the trustee should cease to create and redeem units;
  - (c) dealing in units should cease; and
  - (d) the trustee should proceed to wind up the fund in accordance with clause 13.17.
- 13.17 If an event under clause 13.15 occurs, the trustee should–
- (a) sell all the fund's property remaining in its hands;
  - (b) after paying or retaining adequate amount for all liabilities payable and cost of winding up, 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
  - (c) pay any unclaimed net proceeds or other cash held by the trustee that remains unclaimed after 12 months from the date on which it became payable, to the Registrar of Unclaimed Monies, in accordance with the provisions of the *Unclaimed Monies Act 1965*.
- 13.18 The management company or trustee should as soon as practicable after the termination or winding up of the fund–
- (a) (where unit holders' resolution for the termination/winding up is not obtained) inform unit holders of the termination or winding up of the fund; and
  - (b) publish a notice on the termination or winding up of the fund in one national Bahasa Malaysia newspaper and one national English newspaper.
- 13.19 The management company and trustee should notify the SC in writing–
- (a) upon the passing of a resolution to terminate or wind up the fund, or upon the court confirming the unit holders' resolution to terminate or wind up the fund; and
  - (b) upon the completion of the termination and winding up of the fund.
- 13.20 Where a fund is being terminated or wound up, the trustee must also arrange for the auditor of the fund to conduct a final review and audit of the fund's accounts.

### ***Accounting and reports during termination/winding up***

- 13.21 While a fund is being terminated/wound up–



- (a) the accounting period continues to run; and
- (b) 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.

### **Meeting of unit holders**

- 13.22 A management company or a trustee may convene a meeting of unit holders at any time.
- 13.23 Section 305(1) of the CMSA further provides that a management company must call for a meeting of unit holders upon the written request of not less than 50 unit holders or 1/10 of all unit holders; the request is given at the management company's registered office; and for specific purposes stipulated under the same section of the CMSA.

### **Notice of meetings**

- 13.24 Where a management company or trustee decides to convene a unit holders' meeting, it must–
- (a) give at least 14 days written notice to unit holders; and
  - (b) specify in the notice the place, time and terms of the resolutions to be proposed.
- 13.25 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.
- 13.26 A copy of the notice referred to in clauses 13.24(a) and 13.25(b) must be delivered to the SC and the trustee.

### **Chairman**

- 13.27 A unit holders' meeting should be chaired by–
- (a) (if the meeting is requested by the unit holders or trustee), a person appointed

on their behalf by unit holders who are present at the meeting or (where no such appointment is made), by a nominee of the trustee; or

- (b) (if the meeting is called by the management company), a person appointed by the management company.

### **Quorum**

- 13.28 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, whether present in person or by proxy, who must hold in aggregate at least 25% of the units in issue at the time of the meeting.
- 13.29 If after a reasonable time from the start of 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.
- 13.30 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**

- 13.31 Except where a special resolution is specifically required or permitted, any resolution is passed by a simple majority.
- 13.32 Resolutions passed at a meeting of unit holders bind 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.
- 13.33 A copy of the resolution must be delivered to the SC and trustee.

### ***Voting rights***

- 13.34 On a show of hands, every unit holder who is present in person or by proxy has one vote.
- 13.35 A poll may be demanded on any resolution. On a poll–
- (a) votes may be given either personally or by proxy; and
  - (b) every unit holder has one vote for every unit held by him.
- 13.36 In the case of joint unit holders, any one of such joint unit holders may vote either personally or by proxy, but if the joint unit holders are present at the meeting either personally or by proxy, only the vote of the first named in the register of unit holders can be taken.
- 13.37 A management company must not exercise the voting rights for the units it 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.
- 13.38 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, should not vote or be counted in the quorum at a meeting.

### ***Right to demand poll***

- 13.39 A resolution put to the vote at a unit holder's meeting should be determined by a show of hands unless a poll is demanded (before or immediately after any question is put to the show of hands) by–
- (a) the chairman;
  - (b) the trustee;
  - (c) the management company; or
  - (d) unit holders present (or represented by proxy) who hold between them not less than one-tenth of the total number of units then in issue.
- 13.40 Unless a poll is demanded, a declaration by the chairman as to the result of the resolution is conclusive evidence of the fact.

### ***Proxies***

- 13.41 A unit holder may appoint another person to attend a unit holders' meeting and vote in the unit holder's place.

- 13.42 Every notice calling a unit holders' meeting should contain a statement that a unit holder is entitled to attend and vote, or may appoint a proxy.
- 13.43 The document appointing a proxy should be deposited at the office of the management company not less than 48 hours before the meeting or adjourned meeting.

### **Adjournment and minutes**

- 13.44 The chairman–
- (a) may, with the consent of any meeting of unit holders at which a quorum is present; and
  - (b) should, if so directed by the meeting;
- adjourn the meeting from time to time and from place to place.
- 13.45 A management company should ensure that–
- (a) minutes of all resolutions and proceedings at every unit holders' meeting are made and kept; and
  - (b) any minute made in (a) is signed by the chairman of the unit holders' meeting.

### **Publication of fund materials**

- 13.46 An exchange-traded fund should ensure that the following documents are made readily available to Malaysian investors through the fund's own website or such other channels as the SC considers appropriate:
- (a) Prospectus;
  - (b) Key features of the fund;
  - (c) Latest annual report of the fund; and
  - (d) All notices and public announcements issued by the fund.

### **Provision of information**

- 13.47 A management company must submit or make available any information relating to the fund, its business and any other information as may be required by the SC and the trustee from time to time.
- 13.48 A management company should provide the following information to the public based on the stipulated time as provided below via the fund's own website:

- (a) IOPV per unit on a real time or on a frequency agreed with the SC;
  - (b) Portfolio deposit and NAV per unit on daily (end of day) basis;
  - (c) Number of units in circulation on a monthly basis;
  - (d) Annual rate of management fee;
  - (e) Annual rate of trustee fee; and
  - (f) Any other transaction charges.
- 13.49 A management company is also encouraged to provide the information as stated in clauses 13.48(a)–(c) through either one or more of the following communication channels:
- (a) A hyperlink from the fund’s own website to the website of the stock exchange;
  - (b) Information pages of information vendors which disseminate trading information of the fund’s units in their ordinary course of business and are accessible by retail investors;
  - (c) Electronic medium for information dissemination as provided by the stock exchange from time to time; or
  - (d) Any other channel considered acceptable by the SC.
- 13.50 The SC may require additional information to be disclosed on a real-time or near real-time basis if deemed necessary.

**Guidance**

The online dissemination of any information may fall within the ambit of online activities under the *Guidelines on Online Transactions and Activities in Relation to Unit Trusts* and the necessary approval must be obtained.

**Notification on benchmark index**

- 13.51 A management company should notify the SC following events that may affect the acceptability of the index which the fund 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 security; 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.

13.52 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 fund.

### **Corporate governance**

- 13.53 A management company of a fund should adhere to good corporate governance principles and best industry standards for all activities conducted in relation to the fund and any matter arising out of its listing or trading on any stock exchange.
- 13.54 The trustee and any other delegate or service provider of the fund should observe the best of corporate governance standards.

## Chapter 14

### REPORTING AND AUDIT

#### Reporting requirements

- 14.01 A management company should prepare an annual report of the fund to provide all necessary information to enable unit holders evaluate the performance of the fund.
- 14.02 If a management company intends to change the fund's accounting period, the management company must obtain–
- (a) written confirmation from the fund's auditor that the change would not result in any significant distortion of the financial position of the fund; and
  - (b) the SC's prior consent before implementing the change.

#### *Contents of fund report*

- 14.03 An annual report of a fund should contain the following:
- (a) Fund information;
  - (b) Report on fund performance;
  - (c) Manager's report;
  - (d) Trustee's report;
  - (e) Shariah adviser's/panel of advisers' report (where applicable);
  - (f) Audited financial statements for the accounting period; and
  - (g) Auditor's report.
- 14.04 The minimum and detailed information to be included in the fund's report are stipulated in Schedule B of these guidelines.

#### *Publication of reports*

- 14.05 A management company must–
- (a) prepare and publish the annual report of the fund;
  - (b) send the annual report without charge to unit holders; and

- (c) lodge the annual report with the SC;

within two months after the end of the financial period the report covers.

## **Audit**

- 14.06 A management company and trustee should ensure that the financial statements of the fund are audited annually by an auditor appointed under clause 14.07.
- 14.07 A trustee must appoint an auditor for the fund that is independent of the management company and the trustee.
- 14.08 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 fund in accordance with the requirements of this chapter.
- 14.09 A trustee may, from time to time, if it deems appropriate, remove the auditor of the fund 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**

- 14.10 A management company should 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 fund.
- 14.11 A management company should, in writing, require any person to whom the management company has delegated or outsourced any function to co-operate with the fund’s auditor in accordance with the provisions specified in clause 14.10.



## Chapter 15

### APPLICATIONS, NOTIFICATIONS AND REPORTING TO THE SC

#### Application for the SC's approval

15.01 The CMSA requires that the SC's approval be obtained for the following proposals:

- (a) Issuance or offer of units of an exchange-traded fund;
- (b) Listing or quotation of units on a stock market of a stock exchange;
- (c) A company to act as management company for a fund; and
- (d) A company to act as trustee for a fund.

15.02 The SC may–

- (a) approve proposals subject to certain terms and conditions as it deems fit;
- (b) approve proposals with revisions and subject to certain terms and conditions as it deems fit; or
- (c) reject proposals.

15.03 In addition to clause 15.01, the following applications are required to be submitted for the SC's approval:

- (a) Exemption or variation from provisions in these guidelines;
- (b) Extension of time to comply with the requirements of these guidelines and terms and conditions of approval;
- (c) Appointment of a delegate that is not a holder of a Capital Markets Services Licence;
- (d) Appointment of a trustee under section 290(1) of the CMSA; and
- (e) Notices to be issued or published before the registration of a prospectus, under section 241(4) of the CMSA.

#### Application for the SC's registration

15.04 The following proposals are required to be submitted for the SC's registration:

- (a) Registration of a trustee for an exchange-traded fund; and
- (b) Renewal of a trustee's registration.

## Application to register and lodge documents with the SC

- 15.05 Under sections 232(1), 238(2), 293(1) and 295(1) of the CMSA, the following documents must be registered with the SC:
- (a) Deed and supplementary deed of the fund; and
  - (b) Prospectus and supplementary/replacement prospectus of the fund.
- 15.06 The documents referred to in clause 15.05 must, subsequent to registration, be lodged with the SC as required under sections 234, 238(3) and 296 of the CMSA.

## Submission of applications to the SC

- 15.07 Applications must be submitted in accordance with the requirements stipulated under Schedule D of these guidelines.
- 15.08 Submission of applications should be addressed to:

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

(Attention: Trusts and Investment Management Department)

## Notifications to the SC

- 15.09 A management company must notify the SC of, among others, the following:
- (a) Appointment and resignation of directors;<sup>1</sup>
  - (b) Appointment and resignation of chief executive officer;
  - (c) Appointment and resignation of an investment committee member;
  - (d) Appointment and resignation of the Shariah adviser;
  - (e) Appointment and resignation of a member of the panel of advisers;
  - (f) Appointment of a delegate that is a holder of a Capital Markets Services Licence;

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<sup>1</sup> For any new appointment, notification should be accompanied with a declaration as per the specimen in Schedule D, Appendix II(c).

- (g) Foreign markets in which the fund invests in;
- (h) A resolution passed (and court confirming where applicable) to terminate/wind up a fund; and
- (i) Completion of the termination/winding up of a fund.

### **Documents required to be lodged/delivered/deposited to the SC**

15.10 Under sections 298(1) and 229(4) of the CMSA, a management company must–

- (a) lodge the annual report of the fund and the management company;
- (b) deliver notices/circulars issued to unit holders; and
- (c) deposit an information memorandum for excluded offers.

### **Submission of notifications/documents to the SC**

15.11 Notifications and documents referred to in clauses 15.09 and 15.10 must be submitted in accordance with the requirements stipulated under Schedule D of these guidelines (where applicable).

15.12 Submission of notifications and documents should be addressed to–

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

(Attention: Trusts and Investment Management Department)

**PART C**

**SECONDARY LISTING OF FOREIGN  
EXCHANGE-TRADED FUNDS IN MALAYSIA**

## Chapter 16

# OFFERING OF FOREIGN EXCHANGE-TRADED FUNDS ON BURSA SECURITIES

### General

- 16.01 Foreign listed exchange-traded funds seeking a secondary listing in Malaysia must meet the following criteria:
- (a) The fund is constituted in a recognised jurisdiction listed in the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*; and
  - (b) The fund is primarily listed on a foreign stock exchange which is a member of the World Federation of Exchanges.
- 16.02 In addition to clause 16.01, foreign operators of the fund must be licensed, registered, authorised or approved by the relevant regulator in the recognised jurisdiction listed in the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*.
- 16.03 Foreign operators which are seeking a secondary listing of exchange-traded funds in Malaysia must comply with the requirements under Part C of these guidelines.
- 16.04 For the purpose of these guidelines, “foreign operator” means a foreign-incorporated entity responsible for the management of assets held for or within a fund, and/or who otherwise operates a fund.
- 16.05 The approval to allow foreign operators to list funds in Malaysia would not preclude the SC from imposing such other requirements as it deems reasonable.
- 16.06 Foreign exchange-traded funds approved by the SC that are listed on a Malaysian stock exchange must provide local trading information on their trading on the Malaysian stock exchange, including the IOPV, last closing NAV, notices for suspension and resumption of trading and composition of constituent securities (where applicable).

### Offering document

- 16.07 The offering document should be a prospectus and must comply with–
- (a) Clause 4.0 of the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds* (where applicable); and
  - (b) Chapter 21 of Part II of the *Prospectus Guidelines for Collective Investment Schemes*.

### **Guidance**

For the purpose of clause 16.07, the prospectus may include a wrapper to accommodate the disclosure requirements for the offering of a foreign fund in Malaysia.

## **Requirements of a representative**

### **General**

- 16.08 A foreign operator of the fund is required to appoint a representative in Malaysia if it is not locally incorporated and does not have a place of business in Malaysia.
- 16.09 The representative must be–
- (a) a legal firm registered with the Malaysian Bar Council; or
  - (b) an audit firm registered with the Malaysian Institute of Accountants; or
  - (c) a company incorporated under *Companies Act, 1965*.
- 16.10 The representative's office need not be related to the management company. If it is undertaking a regulated activity, it must obtain the necessary licence for that regulated activity.
- 16.11 The fund must maintain the representative throughout the period the fund is approved and listed in Malaysia.

### **Functions of a representative**

- 16.12 The functions of a representative include the following:
- (a) Represent the fund and the foreign operator for all matters relating to the fund;
  - (b) Accept any notice/correspondence, including service of process, which unit holders may wish to serve on the fund, trustee or the foreign operator;
  - (c) Maintain a branch register as a record of unit holders in Malaysia;
  - (d) Provide unit holders with information on the fund including the fund's reports if this function has been delegated by the foreign operator to the representative office;
  - (e) Make available for public inspection in Malaysia, free of charge the prospectus and constitution documents;

- (f) Notify the SC and the relevant exchange in Malaysia if sale of units is suspended; and
  - (g) Notify the SC of material changes in the fund including the completion of the termination/winding up of a fund.
- 16.13 The representative must ensure that the prospectus and reports of the fund, and all information meant for Malaysian investors are in either Bahasa Malaysia or English Language.
- 16.14 The representative must also ensure that the unit price and NAV per unit of the fund is readily and publicly available daily. Daily publication of the unit price and NAV per unit in at least one national Bahasa Malaysia newspaper and one national English newspaper is encouraged.

### ***Retirement or replacement of the representative***

- 16.15 If a representative retires or is dismissed, it must be replaced within 30 days by another representative.

#### **Guidance**

A foreign operator which fails to meet the requirement of clause 16.15 may request for an extension of time to rectify the situation.

### ***Agreement***

- 16.16 A representative must supply to the SC details of all contracts between the representative and the scheme and foreign operator. The SC must be notified of subsequent amendments to these contracts.

### ***Written undertaking***

- 16.17 In making an application under clause 17.01, a representative must also provide a written undertaking to the SC that it will perform the duties required of a representative under these guidelines.

### ***Jurisdiction***

- 16.18 Nothing in the constitution documents may exclude the jurisdiction of the courts of Malaysia to entertain any action concerning the fund.

## Provision of information

- 16.19 A foreign operator or its Malaysian representative must submit or make available any information relating to the fund, its business and any other information as may be required by the SC from time to time.
- 16.20 A foreign operator should provide the following information to the public, based on the stipulated time as provided below via the fund's website:
- (a) IOPV per unit on a real time or near-real time basis;
  - (b) Portfolio deposit and NAV per unit on a daily (end of day) basis;
  - (c) Number of units in circulation;
  - (d) Annual rate of management fee;
  - (e) Annual rate of trustee fee (if applicable);
  - (f) Any other transaction charges;
  - (g) Notices for suspension and resumption of trading; and
  - (h) Composition of constituent securities.
- 16.21 A foreign operator is also encouraged to provide the information as stated in clauses 16.20(a)–(d) through either one or more of the following communication channels:
- (a) A hyperlink from the fund's website to the website of the stock exchange;
  - (b) Information pages of information vendors which disseminate trading information of the fund units in their ordinary course of business and are accessible by retail investors;
  - (c) Electronic medium for information dissemination as provided by the stock exchange from time to time; or
  - (d) Any other channel considered acceptable by the SC.
- 16.22 The SC may require additional information to be disclosed on a real-time or near real-time basis if deemed necessary.

### Guidance

The online dissemination of any information may fall within the ambit of online activities under the *Guidelines on Online Transactions and Activities in Relation to Unit Trusts* and the necessary approval should be obtained.



## Publication of fund materials in Malaysia

- 16.23 The foreign operator or its Malaysian representative must ensure the following documents are made readily available to Malaysian investors through the fund's website or such other channels as the SC considers appropriate:
- (a) The fund's offering document;
  - (b) Key features of the fund;
  - (c) Latest annual report, and any periodic report(s) of the fund; and
  - (d) All notices and public announcements issued by the fund.
- 16.24 Bursa Securities should also be notified of all notices and public announcements issued by the fund under clause 16.23(d).

## Report to unit holders

- 16.25 The foreign operator or its Malaysian representative must ensure that the annual report of the fund is sent to the unit holders in a timely and efficient manner.

## Reporting to the SC

- 16.26 For the purpose of reporting to the SC, the representative must submit ETF Statistical Returns<sup>2</sup> of the fund.
- 16.27 The ETF Statistical Returns should be submitted to the SC on a quarterly basis, unless otherwise specified in the returns forms.
- 16.28 The ETF Statistical Returns should be submitted to the SC by the seventh business day (by 5.00 pm on a weekday) after the end of the quarter.

## Notification to the SC

- 16.29 The representative must immediately notify the SC of the following:
- (a) Change to the index, which may include but is not limited to—
    - (i) a change in the composition of the index due to, for example, the inclusion or deletion of any security; or

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<sup>2</sup> The ETF Statistical Returns forms are available at [www.sc.com.my](http://www.sc.com.my)

- (ii) a change in the weightings of the index constituents due to, for example, corporate activities (such as mergers and acquisitions) or significant market movements;
- (b) Any material change to the fund; or
- (c) Developments relating to the fund and parties responsible for the fund.

## Chapter 17

### APPLICATION PROCEDURES FOR OFFERING OF FOREIGN EXCHANGE-TRADED FUNDS ON BURSA SECURITIES

#### General

- 17.01 The CMSA requires that the SC's approval be obtained for the following proposals:
- (a) Issuance or offer of units of an exchange-traded fund in Malaysia; and
  - (b) Listing or quotation of units on Bursa Securities.
- 17.02 The offering document must be registered and lodged with the SC.
- 17.03 The fund's report must be delivered to the SC within seven days after the report is issued in Malaysia.

#### Submitting party

- 17.04 Applications to the SC must be submitted by an adviser.
- 17.05 The adviser has a duty to ensure that all requirements of the SC pertaining to submission of an application are met and is responsible for dealing with the SC on all matters relating to the application.
- 17.06 Submissions that do not comply with the requirements of the SC or which are unsatisfactory may be returned.
- 17.07 The adviser and any other persons accepting responsibility for all or part of the information and documents submitted to the SC should exercise due diligence for all or any part of the information submitted relating to the application.
- 17.08 The adviser and any other persons accepting responsibility for all or part of the statement or information submitted should not submit or cause to be submitted any statement or information that is false or misleading, or from which there is material omission.
- 17.09 The SC reserves the right to request for additional information from the submitting party to support the application.

#### Submission of applications

- 17.10 An application should comprise—
- (a) a cover letter, specifying the approval/registration sought;

- (b) the fund's deed or constitution, certified by a notary public (two copies);
- (c) the fund's offering document (two copies); and
- (d) a written undertaking from the representative that it will perform the duties required of a representative under these guidelines.

17.11 Submission of an application should be addressed to–

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

(Attention: Trusts and Investment Management Department)

### **Application fees**

- 17.12 Applications should be accompanied with the appropriate fee (where applicable). An application is deemed incomplete if the fee is not submitted.
- 17.13 The details on fees payable to the SC for various types of applications are set out in the *Securities Commission (Fees) (Amendment) Regulations 2004*.
- 17.14 Payment should be made in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti" or "Securities Commission".

## **PART D**

### **SCHEDULES**

(Part D applies to exchange-traded  
funds constituted in Malaysia)

## Schedule A

### DEED OF AN EXCHANGE-TRADED FUND

- (1) Under section 294 of the CMSA, a deed must contain such provisions, covenants, requirements, information and particulars as specified by the SC.
- (2) The requirements stipulated in this schedule are in addition to requirements imposed on a management company and trustee under the law. The contents of this schedule are in addition to and not in derogation of any other duty imposed by any other law.
- (3) A management company, or its adviser, should submit an application to register and lodge the deed in accordance with the requirements and procedures set out in Appendix III of Schedule D.

### Minimum contents for a deed

#### *Covenants of the management company*

- (4) A deed of an exchange-traded fund should contain duties of a management company that is prescribed under the CMSA and also include, but not be limited to, the following covenants:
  - (a) It should ensure that the fund has, at all times, an appointed trustee;
  - (b) It should pay to the trustee, within 10 days after receipt by the management company, any money that, under the deed, is payable to the trustee;
  - (c) It should make available, or ensure that there is made available to the trustee, such information as the trustee requires on all matters relating to the fund to which the deed relates;
  - (d) It should not exercise the voting rights for the units it holds in any unit holders' meeting, regardless of the party who requested for and called the meeting and the matter or matters that are laid before unit holders;
  - (e) It should attach the trustee's report together with the annual report required under section 298(3) of the CMSA to be sent to unit holders;
  - (f) It should ensure that it carries on and conducts its business in a proper, diligent and efficient manner in accordance with the deed, guidelines and securities laws, and efficacious business practices within the industry;
  - (g) It should act with due care, skills and diligence in managing the fund and effectively employ the resources and procedures necessary for the proper performance of the fund;

- (h) It should observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interest of the unit holders;
- (i) It should take all necessary steps to ensure that assets of the fund are adequately protected and properly segregated;
- (j) It should keep proper accounting records and other records relevant to the fund;
- (k) It should take all reasonable steps and exercise due diligence to ensure that the fund's property is correctly valued in accordance with the deed, relevant guidelines and securities laws; and
- (l) It should notify the trustee in writing of any acquisition or disposal of the fund's property within one day after the acquisition or disposal was effected.

### ***Covenants of the trustee***

- (5) A deed of an exchange-traded fund should contain duties of a trustee that is prescribed under the CMSA and also include, but not be limited to, the following covenants:
  - (a) It should ensure that the fund has, at all times, an appointed management company;
  - (b) It should exercise all due diligence and vigilance in carrying out its functions and duties and in safeguarding the rights and interests of unit holders to which the deed relates;
  - (c) It should ensure that the management company does not use its position improperly in managing the fund to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such fund;
  - (d) It should keep or cause to be kept proper books of account for all investments and properties of the fund;
  - (e) It should ensure that proper records are kept of all transactions, dividends, interests and income received and distributed for the fund to which the deed relates;
  - (f) It should cause the accounts referred to in (5)(d) to be audited at the end of each financial year by an auditor appointed by the trustee;
  - (g) It should act as the custodian of the assets of the fund and actively monitor the administration of the fund by the management company to ensure that the interest of unit holders are upheld at all times;
  - (h) It should retain control of the assets of the fund at all times in the event the function of custody of the investment of the fund is being delegated to any person (if applicable);

- (i) It should immediately notify the SC of any irregularity, breach of the deed, the guidelines or securities laws and any other matter properly regarded by the trustee as not being in the interests of unit holders;
- (j) It should at all times, through proper and adequate supervision, ensure that the fund is managed and administered by the management company in accordance with the investment objective of the fund, deed, guidelines and relevant laws and requirements, and acceptable and efficacious business practices within the industry; and
- (k) It should take all reasonable steps to ensure that the fund's assets are correctly valued in accordance with the deed, relevant guidelines or securities laws.

***Joint covenants of the management company and trustee***

- (6) A deed of an exchange-traded fund should contain covenants of the management company and trustee including, but not be limited to, the following:
  - (a) The management company and the trustee should safeguard the interests of unit holders;
  - (b) The management company and the trustee should ensure that for the duration of the fund, there is a registered deed in force at all times;
  - (c) The management company or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution;
  - (d) The management company and the trustee should at all times use its best endeavours to list and maintain the listing of the fund on Bursa Securities and to comply with the listing requirements;
  - (e) The management company, the trustee and any delegate thereof should avoid a conflict of interest and ensure that the fund is not disadvantaged by the transaction concerned; and
  - (f) It should ensure that creation and redemption of units of the fund is accordance with the deed, the guidelines and securities laws.

***Other provisions***

- (7) A deed of an exchange-traded fund should also contain provisions for the following:
  - (a) Creation of the fund 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 properties subjected to the fund are or will be vested in that trustee, and the duties and obligations of the trustee;



- (b) That the deed–
  - (i) is binding on each unit holder as if it had been a party to it and that it is bound by its provisions;
  - (ii) authorises and requires the management company and the trustee to do the things required or permitted of them by the terms of the deed; and
  - (iii) is made and governed under the laws of Malaysia;
- (c) Appointment of a trustee to the fund;
- (d) Full particulars of the fund including, but are not limited to–
  - (i) name of the fund;
  - (ii) investment objective of the fund;
  - (iii) permitted investments, limits and restrictions;
  - (iv) basis for the valuation of the assets of the fund;
  - (v) if the fund has a limited duration, a statement to that effect;
  - (vi) the fund's distribution policy;
  - (vii) accounting period of the fund; and
  - (viii) if classes of units are issued, a provision specifying the classes, differences between the classes and rights attached to each class;
- (e) Full particulars on circumstances in which, and methods by which, all or any of the investments may be varied;
- (f) Full particulars on the provision to be made for investments in property that depreciates in value. Where there is replacement to be made, the source and cost of replacement must be stated. If no provision is made, a statement to that fact must be clearly stated;
- (g) Full particulars on the conditions governing the transfer of any unit to which the deed relates;
- (h) Full particulars on the remuneration of the management company and trustee respectively, including dealing charges (if any) and expenses that are allowed to be paid out of the fund;
- (i) Where the deed requires, or confers a right on, unit holders to enter into an agreement in connection with the fund, a provision incorporating the terms and conditions of that agreement;

- (j) Circumstances under which the dealing in units can be deferred or suspended;
- (k) Circumstances, procedures and processes for termination or winding up of the fund;
- (l) Circumstances, procedures and processes for convening of meetings of unit holders, including the manner in which votes may be given at a meeting of unit holders;
- (m) Circumstances, procedures and processes for retirement, removal and replacement of the management company and the trustee;
- (n) Circumstances, procedures and processes for the appointment, retirement, removal and replacement of the auditor for the fund;
- (o) Specific provisions whereby the management company or its delegate (where applicable) undertakes to keep and maintain an up-to-date register of unit holders and to make that register available for inspection, free of charge, to any unit holder at any time during ordinary business hours of the management company;
- (p) The extent of the indemnity provided by the management company;
- (q) Full particulars relating to unit holders' rights and the extent of their liability; and
- (r) Provisions governing the modification of the deed.

## Schedule B

### CONTENTS OF A FUND'S REPORT

- (1) The purpose of a fund's report is to provide information to enable unit holders evaluate the performance of the fund.
- (2) The information required by the SC under this schedule is the minimum that must be included in a fund's report.
- (3) A fund's report need not adopt the terms used under this schedule. Where possible, the report should avoid unnecessary jargon and use terms which are easily understood by unit holders.

### Fund information

- (4) This section should disclose the following information:
  - (a) Name, type and category of fund;
  - (b) The fund's investment objective;
  - (c) Duration of the fund and its termination date, if applicable;
  - (d) The fund's benchmark index;
  - (e) The fund's distribution policy; and
  - (f) Breakdown of unit holding as follows:

No. of holders	Unit holdings	Total holdings	%
	less than 100		
	100 to 1,000		
	1,001 to 10,000		
	10,001 to 100,000		
	100,001 to less than 5% of approved fund size		
	5% and above the approved fund size		

- (5) The following information should also be disclosed:
- (a) Name, address, telephone and facsimile numbers of the registered office of the management company and trustee;
  - (b) Name, address, telephone and facsimile numbers of each office at which a register of unit holders is kept;
  - (c) Particulars of each director of the management company including the following information:
    - (i) Name, age, nationality, qualification and whether the position is an executive or non-executive one and whether such director is an independent director;
    - (ii) Working experience and occupation;
    - (iii) Date he was first appointed to the board;
    - (iv) Details of any board committee to which he belongs;
    - (v) Directorship of other public companies;
    - (vi) Family relationship with any director;
    - (vii) Conflict of interest that he has with the fund, if any;
    - (viii) List of convictions for offences within the past 10 years other than traffic offences, if any; and
    - (ix) Number of board meetings attended in the financial year;
  - (d) Particulars of the chief executive officer and where the chief executive officer is not a director, the following particulars:
    - (i) Name, age, nationality and qualification;
    - (ii) Working experience;
    - (iii) Date he was first appointed by the management company;
    - (iv) Details of any interest in the fund;
    - (v) Directorship of other public companies;
    - (vi) Family relationship with any director;
    - (vii) Conflict of interest that he has with the fund, if any; and

- (viii) List of convictions for offences within the past 10 years other than traffic offences, if any;
- (e) Particulars of each investment committee member of the fund including the following information:
  - (i) Name, age, nationality, qualification and whether he is an independent member;
  - (ii) Working experience and occupation;
  - (iii) Date he was first appointed to the committee;
  - (iv) Conflict of interest that he has with the fund, if any;
  - (v) List of convictions for offences within the past 10 years other than traffic offences, if any; and
  - (vi) Number of committee meetings attended in the financial year.
- (f) Particulars of the Shariah adviser/panel of advisers of the fund (where applicable) including the following information:

If Individuals are appointed

- (i) Name, age, nationality and qualification;
- (ii) Working experience and occupation;
- (iii) Date he was first appointed;
- (iv) List of convictions for offences within the past 10 years other than traffic offences, if any; and
- (v) Number of meetings attended in the financial year.

If a company is appointed

- (i) Name, address, telephone and facsimile numbers of the registered office of the adviser;
- (ii) Corporate information of the company;
- (iii) Experience relevant to its appointment as adviser; and
- (iv) The name, qualifications and experience of the designated person responsible for matters of the fund.

- (g) Name and address of any delegates, including the functions delegated to them.
- (h) Name and address of the company secretary of the management company;
- (i) Total number of board meetings held during the financial year by the management company;
- (j) Particulars of all sanctions and/or penalties imposed on the fund, directors of the management company or the management company by the relevant regulatory bodies during the financial year;
- (k) Amount of non-audit fees incurred for services rendered to the fund for the financial year by the fund's auditors, or a firm or company affiliated to the auditors' firm;
- (l) A statement (indicating the date of such statement) that sets out–
  - (i) the names of the major unit holders (excluding bare trustees) and their direct and deemed interests, stating the number and percentage of units in which they have an interest;
  - (ii) the number of holders of each class of units and the voting rights attaching to each class (if applicable); and
  - (iii) the names of the 30 unit holders having the largest number of units according to the Record of Depositors (without aggregating the securities from different securities accounts belonging to the same person) and the number and percentage of units held. In the case of securities account holders which are authorised nominees as defined under the *Securities Industry (Central Depositories) Act 1991*, information in the account qualifier field of the securities account must also be stated.

## Fund performance

- (6) The following information should be disclosed in this section:
  - (a) A comparative table covering the last three financial years, or since inception if shorter, showing for the end of each financial year–
    - (i) the total asset value of the fund;
    - (ii) the NAV of the fund;
    - (iii) the NAV per unit of the fund;
    - (iv) the highest and lowest NAV per unit;

(The figures referred to in (ii) to (iv) should be adjusted to ex-distribution).

- (v) the highest and lowest market price per unit;
  - (vi) the number of units listed;
  - (vii) the distribution per unit (interim and final) and the date for each distribution. The effects of the income distribution on the NAV per unit before and after distribution should be clearly disclosed;
  - (viii) the distribution yield of the fund based on the closing price at year end; and
  - (ix) the management expense ratio (MER) of the fund. If applicable, provide an explanation if the difference in MER is more than 10% during the financial year;
- (b) Average total return of the fund measured over the following periods to the date of the report:
- (i) One year, or since inception if shorter;
  - (ii) Three years; and
  - (iii) Five years.
- (c) Annual total return of the fund for each of the last five financial years, or since inception if shorter.
- (7) A fund report may include other performance data aside from those mentioned in (6) above. However, all performance data presented must comply with the following requirements:
- (a) The bases of calculation and any assumptions made should be consistently applied, adequately disclosed and independently verified; or
  - (b) The data used must be obtained from independent sources.
- (8) It must be clearly stated that past performance is not necessarily indicative of future performance and that unit prices and investment returns may fluctuate.

### **Manager's report**

- (9) A management company must prepare a report containing an operational review of the fund, the result of those operations and details of significant changes in the state of affairs of the fund during the financial period.

- (10) In selecting a format for the presentation of the manager's report, consideration should be given, not only to its completeness and accuracy, but also to the clarity of the overall presentation.
- (11) The manager's report should include, but not be limited to, the following:
  - (a) Explanation on whether the fund has achieved its investment objective. The explanation should be stated upfront and clearly.
  - (b) Comparison between the fund's performance and the benchmark index stated in the prospectus. This should cover the last five financial years, or since inception if shorter, and should be illustrated in graphical form;
  - (c) Description of the strategies and policies employed during the period under review. To state any change in strategy adopted which was not in line with the strategy disclosed in prospectus;
  - (d) Description and explanation of significant changes in the state of affairs of the fund during the period and up to the date of the manager's report, not otherwise disclosed in the financial statements;
  - (e) (If applicable) An explanation on any differences in portfolio composition between the period under review and previous year;
  - (f) An analysis of the fund's performance based on changes in total NAV and NAV per unit since the last review period or since commencement (for newly established funds);
  - (g) An analysis of the fund's performance based on changes in prices since the last review period or since commencement (for newly established funds);
  - (h) Review of the market(s) relating to the benchmark index (including foreign markets) in which the fund invests in during the period;
  - (i) General assessment of the future prospects of the market(s) relating to the benchmark index the fund invests in;
  - (j) Any circumstances which materially affect any interests of the unit holders;
  - (k) Changes in material litigation (including status of any pending material litigation) since the last annual balance sheet date which should be made up to a date not earlier than seven days from the date of the report;
  - (l) A statement whether any soft commission has or has not been received by the management company and/or its delegate during the period under review from its brokers/dealers by virtue of transactions conducted for the fund. If soft commission (i.e. goods and services) is received, the following should be disclosed:



- (i) Identification of the goods/services received; and
- (ii) Manner in which the goods/services received were utilised; and
- (m) Statement explaining the management company's responsibility for preparing the annual audited accounts.

### **Trustee's report**

- (12) A trustee should prepare a report stating in its opinion whether the management company has managed the fund in accordance with the following:
  - (a) Limitations imposed on the investment powers of the management company and the trustee under the deed, these guidelines, the CMSA and other applicable laws;
  - (b) Valuation/pricing is carried out in accordance with the deed and any regulatory requirements; and
  - (c) Creation and redemption of units are carried out in accordance with the deed and any regulatory requirements.
- (13) If the trustee is of the opinion that the management company has not done so, the trustee should disclose the shortcoming(s) that may have an impact on the decision of the existing or the potential unit holders to remain invested or to invest in the fund. The trustee should highlight steps taken to address the shortcoming(s) and/or to prevent the recurrence of the shortcoming(s).
- (14) The report prepared by the trustee under (12) should include a further statement stating its opinion whether the distribution of returns by the fund is relevant and reflects the investment objective(s) of the fund.

### **Shariah adviser/panel of advisers' report**

- (15) The Shariah adviser/panel of advisers should prepare a report stating its opinion whether the fund has been operated and managed in accordance with the specific principles set out for the fund. If it has not been operated and managed accordingly, then the steps taken to address the situation and/or to prevent the recurrence of the situation should be highlighted.
- (16) For a Shariah-compliant fund, the report by the Shariah adviser must also include—
  - (a) its opinion whether the fund has been managed in accordance with applicable guidelines, ruling or decision issued by the SC pertaining to Shariah matters; and

- (b) a statement to the effect that the investment portfolio of the fund comprises securities which has been classified as Shariah compliant by the Shariah Advisory Council (SAC) of the SC. For securities not certified by the SAC, a statement stating that the status of the securities has been determined in accordance with the ruling issued by the Shariah adviser.

### **Auditor's report**

- (17) An annual report should be accompanied by an auditor's report.
- (18) An auditor's report should state an opinion on the accounts of the fund. Where the auditor's report is qualified, details of the qualification should be noted in the comment section.

### **Financial statements**

- (19) The financial statement should give a true and fair view of the financial position, financial performance and cash flows of a fund. The financial statements should be prepared in accordance with applicable approved accounting standards and applicable statutory and regulatory requirements.
- (20) There should be additional information disclosed in the financial statements as follows:

#### ***Balance sheet***

- (a) NAV of the fund;
- (b) Number of units listed;
- (c) NAV per unit (ex-distribution, where applicable);
- (d) Net assets/liabilities attributable to unit holders; and
- (e) NAV backing at book value of each unit as at balance sheet date of the accounts.

#### Note

The carrying amounts of investments (where applicable) should be categorised as follows:

- (i) Fixed income and other debt securities;
- (ii) Listed securities;

- (iii) Derivatives (e.g. futures, options);
- (iv) Other collective investment schemes;
- (v) Cash and cash equivalents; and
- (vi) Any other investments, with significant items to be disclosed separately.

***Income statement***

- (f) Fees and charges paid to the management company, with each type of fee and charge shown separately;
- (g) Payment made to charitable bodies (for Shariah funds);
- (h) Total amount available for distribution and distribution per unit (interim and final); and
- (i) The net income after tax to also be shown separately between realised and unrealised portions.

***Notes to the financial statements***

- (j) Income recognition basis in the income statement;
- (k) Basis for the fees and charges paid to the management company and trustee;
- (l) Movements in the number of units with the following items shown separately:
  - (i) Maximum issuable under the provisions of the deed and any subsequent increase as approved by the SC; and
  - (ii) Units created/redeemed during the period, highlighting the number of units created as additional distribution, if any;
- (m) Information on transactions with brokers/dealers should include the following:
  - (i) Top 10 brokers/dealers by value of trade;
  - (ii) The aggregate amount of brokerage fees/commissions paid by the fund as well as the amount of fees/commissions paid to each broker/dealer (highlighting brokers/dealers relating to management company or its delegate) expressed in both value and percentage;
  - (iii) Parties related to the management company and/or its delegate; 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) A breakdown of tax charge and an explanation of the variance between the effective and statutory rate for the current reporting period and financial year-to-date;
- (p) Auditor’s verification of management expense ratio;
- (q) Sources of distribution made to unit holders (the prescribed format is as follows):

Distribution to unit holders is from the following sources:

	<b>20X7</b> <b>RM’000</b>	<b>20X8</b> <b>RM’000</b>
Dividend income	XXX	XXX
Interest income	XX	XX
Realised gains [less losses] on sale of investments	XXX	XXX
Previous year/period’s realised gains	XX	XX
Other income	XXX	XXX
	<hr/>	<hr/>
	XXXX	XXXX
Less:		
Expenses	XX	XX
Taxation	XX	XX
	<hr/>	<hr/>
	XXX	XXX
	<hr/> <hr/>	<hr/> <hr/>
Distribution per unit (sen)	X	X

- (r) Additional statements on distributions are required when–
  - (i) there are unrealised losses (arising during the year/period or brought forward from previous year/ period) within the fund; and/or
  - (ii) distributions are made from previous year’s realised gains.

## Schedule C

## 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 should be valued at fair value, as determined in good faith by the management company, based on the methods or bases approved by the trustee after appropriate technical consultation.</p>
Unlisted bonds 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 differs from the “market price” by more than 20 basis points, the management company or its fund management delegate may use the “market price”, provided that the management company or its fund management delegate–</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>

<b>Investment Instruments</b>	<b>Valuation Basis</b>
Other unlisted bonds	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 its fund management delegate, 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 D

# SUBMISSION OF APPLICATIONS, NOTIFICATIONS AND DOCUMENTS

### General

- (1) Applications may only be submitted to the SC by the following:
  - (a) Adviser, for–
    - (i) proposals involving the establishment, listing and quotation of a fund on Bursa Securities; and
    - (ii) any other proposals involving capital raising and issue of securities by a fund;
  - (b) Adviser or a management company, for proposals involving a management company and operational matters of a fund; or
  - (c) A trustee, for–
    - (i) proposals involving appointment of a company to act as a trustee of a fund; and
    - (ii) proposals to register or renew registration of a trustee.
- (2) Applications should be submitted in accordance with the requirements set out under this schedule, unless otherwise specified. Submission of applications which do not comply with the requirements or which are unsatisfactory will be returned.
- (3) The submitting party has a duty of care to ensure that all the SC's requirements pertaining to submission of applications/proposals are met and is responsible for dealing with the SC on all matters in connection with the applications.
- (4) The applicant (including directors and/or promoters), advisers, experts and any other person accepting responsibility for all or part of the information and documents submitted to the SC should exercise due diligence for all or any part of the information submitted relating to, or in connection with the proposal. The parties to the submission of a proposal should comply with the relevant guidelines issued by the SC in this regard.
- (5) The information provided in the submission should be correct as at the latest practicable date.<sup>3</sup>
- (6) The SC may, at its discretion, request for additional information and documents not specified in this schedule.

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<sup>3</sup> "Latest practicable date" is a date whereby the information disclosed should remain relevant and current as at the date of issue of the prospectus.

- (7) The SC should be immediately informed of–
  - (a) any material change in circumstances that would affect the SC’s consideration of the proposal; and/or
  - (b) any material change/development in circumstances relating to the proposal, occurring subsequent to the SC’s approval.
- (8) If certain circumstances are made known to the SC after the proposal has been considered, and the circumstances would have affected the decision made had the SC known about them, the SC may review its decision.
- (9) Any person who is aggrieved by the SC’s decision may, within 30 days after the aggrieved person is notified of such decision, make an application to the SC for a review of its decision, which will then be final.
- (10) An application for a revision to the terms and conditions of an SC approval is not subjected to any time limit. The principles adopted by the SC for such applications are as follows:
  - (a) Such applications should be supported by evidence of justifiable grounds or developments beyond the control of the relevant parties; and
  - (b) Such applications which do not comply with (a) above may be considered by the SC at its discretion based on exceptional reasons.

### **Application for the establishment of an exchange-traded fund**

- (11) Submission to the SC for the establishment of a fund proposed to be listed on Bursa Securities should comprise the following:
  - (a) Application to issue or offer units of the fund, and subsequent listing of and quotation for the units on Bursa Securities;
  - (b) Application for a company to act as management company for the fund;
  - (c) Application for a company to act as trustee for the fund; and/or
  - (d) Any other relevant application.

### **Application for an increase in approved fund size**

- (12) Where–
  - (a) a fund’s units in circulation has exceeded 50% of the approved fund size; and



- (b) the proposed increase in fund size is not more than 50% of the current approved fund size (in units),

an application made to the SC for an increase in fund size is “deemed approved”.

- (13) The new fund size will be effective upon the SC receiving a complete submission of an application.
- (14) Where the criteria in (12) are not met, an application will be considered by the SC based on a merit assessment.

### **Application for an extension of time/renewal of trustee’s registration**

- (15) An application for an extension of time and renewal of trustee’s registration must be submitted to the SC at least 30 days before the stipulated expiry date.
- (16) Where an application is submitted less than 30 days before the expiry date, the SC will not be responsible for any delay in considering the application.

### **Fees**

- (17) All applications should include the appropriate fee (where applicable). An application is deemed incomplete if the appropriate fee is not submitted.
- (18) The details of fees payable to the SC for the various types of applications are set out in the *Securities Commission (Fees) (Amendment) Regulation 2004*.
- (19) Payment should be made in the form of a crossed cheque/draft order made in favour of “Suruhanjaya Sekuriti” or “Securities Commission”.

## Schedule D – Appendix I(a)

### SUBMISSION OF APPLICATIONS FOR APPROVAL/REGISTRATION

#### Applications for the SC's approval

- (1) An application submitted for the SC's approval should comprise the following:
  - (a) Cover letter, specifying–
    - (i) the approval sought, including particulars of the proposal(s);
    - (ii) particulars of the offering;
    - (iii) particulars of other required approvals obtained/pending (if applicable);
    - (iv) details of any departure from these guidelines, together with relevant justifications and waiver/exemption sought for such departure. Where waiver/exemption has been obtained, to provide details of such waiver/exemption; and
    - (v) declaration of conflict of interest, if any, by advisers/experts of the application. If a conflict of interest exists, to provide full disclosure of the nature of conflict and steps to address the conflict;

#### **Guidance**

For an application to establish a new fund, one cover letter will be accepted for multiple proposals in a single application.

- (b) Declaration letter from the applicant and principal adviser, as per specimen provided in Appendix II of this schedule;

#### **Guidance**

For multiple applications, a declaration must be submitted by the relevant applicant/adviser responsible for all or any part of the information submitted in respect of the application to which it is seeking an approval.

- (c) Supporting documents required for each type of application as follows (application forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my)):

**Application to establish a new exchange-traded fund**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/ETF - NEW</i>	Application for the establishment of a new exchange-traded fund.
ii		Draft deed.
iii		Draft prospectus.
iv		Any other document to support the application.

**Application to act as management company of a new exchange-traded fund**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/MC</i>	Application for the appointment of a company to act as a management company for an exchange-traded fund.
ii		Statutory declaration from the applicant stating that it is independent of the trustee.  Note: This does not apply if the applicant is related to the trustee.
iii		Declaration letter from the directors of the applicant, as per specimen provided in Appendix II(c) of this schedule.

**Application to act as trustee of a new exchange-traded fund**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/TRUSTEE</i>	Application for the appointment of a company to act as a trustee to an exchange-traded fund.
ii		Statutory declaration from the applicant stating that it is independent of the management company.  Note: This does not apply if the applicant is related to the management company.

**Application to appoint a delegate not licensed by the SC**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/MC -DELEGATE</i>	Application for the appointment of a delegate not licensed by the SC.
ii		An undertaking by the applicant that the applicant will take responsibility for the actions and omissions of the delegate as though they were its own actions and omissions.
iii		<p>A declaration by the applicant that it–</p> <ul style="list-style-type: none"> <li>• has adequate procedures to monitor the conduct of the delegate to ensure that the delegated function is performed in a proper and efficient manner.</li> <li>• has conducted a review of the operations of the delegate, and is satisfied that the delegate has the capabilities, capacity and suitability to undertake the delegated function.</li> <li>• is satisfied that the delegate will be able to fulfil its duties and responsibilities for the delegated function in a proper and efficient manner.</li> </ul>

**Application to register with the SC**

- (2) An application submitted to the SC should comprise the following:
- (a) Cover letter, specifying–
    - (i) the registration/renewal sought; and
    - (ii) particulars of other required approvals obtained/pending (if applicable); and
  - (b) Supporting documents, as follows (application forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my)):

**Application to register/renew registration for a trustee**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/TRUSTEE – REGISTRATION</i>	Application for the registration/renewal of registration for trustee to an exchange-traded fund.
ii		An undertaking by the applicant that the it will comply with the trustee requirements under these guidelines before commencing exchange-traded fund-related business.

**Application to register and lodge documents with the SC**

***Deed***

- (3) An application to register and lodge a fund’s deed must be made in accordance with the requirements set out in Appendix III of this schedule.

***Prospectus***

- (4) An application to register and lodge a fund’s prospectus must be made in accordance with the requirements set out in the *Prospectus Guidelines for Collective Investment Schemes*.

## **Schedule D – Appendix I(b)**

### **NOTIFICATION AND SUBMISSION OF DOCUMENTS**

#### **Notification to the SC**

- (1) A notification to the SC should comprise the following:
  - (i) Notification letter (with details of notification); and
  - (ii) Notification forms (where applicable).
- (2) The notification forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my).

#### **Lodgement of documents with the SC**

- (3) Under section 298(1)(a)(i) of the CMSA, the annual report of a fund must be lodged with the SC.
- (4) The submission should comprise a cover letter specifying the documents lodged, three printed copies of the annual report, and minimum content checklist<sup>4</sup> and a CD-ROM containing the annual report in “pdf” format.

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<sup>4</sup> The checklist is available at [www.sc.com.my](http://www.sc.com.my).

## Schedule D – Appendix II(a)

### DECLARATION BY THE APPLICANT

Chairman  
Securities Commission

Dear Sir

**FUND** (name of fund)

**APPLICANT** (name of management company/trustee)

#### Declaration

We, .... (name of applicant)...., are proposing to undertake the following proposals:

- a. ....
- b. ....
- c. ....

(hereafter referred to as “the Proposal”).

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the advisers or to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.

3. We declare that we are satisfied after having made all reasonable inquiries that the Proposal is in full compliance with the following:

- (i) The *Exchange-Traded Funds Guidelines*;<sup>\*</sup> and
- (ii) Other requirements under the *Capital Markets and Services Act 2007*, as may be applicable.

4. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC on the Proposal.

5. We undertake to provide to the SC all information as required on the Proposal.

This declaration has been signed by me as .... (designation of director) .... of ... (name of the applicant).... pursuant to authority granted to me by a resolution of the Board of Directors on ....(date of resolution)....

Yours faithfully

.....(signature).....

Name of signatory:

Name of applicant:

Date:

Note

- \* Where exemptions are being sought, to insert the words “except clause(s) .... (refer to clause where exemption is being sought).... where exemption(s) is/are being sought as part of the submission to the SC.”



## Schedule D – Appendix II(b)

### DECLARATION BY THE PRINCIPAL ADVISER

Chairman  
Securities Commission

Dear Sir

**FUND** (name of fund)

**APPLICANT** (name of management company/trustee)

#### Declaration

....(Name of applicant).... is proposing to undertake the following proposals:

- (a) .....
- (b) .....
- (c) .....

(hereafter referred to as “the Proposal”).

We, ....(name of principal adviser)....., are advising ....(name of applicant).... on the Proposal.

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information which is provided to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.

3. We declare that we are satisfied after having made all reasonable inquiries that the Proposal is in full compliance with the following:

- (i) The *Exchange-Traded Funds Guidelines* ;\* and
- (ii) Other requirements under the *Capital Markets and Services Act 2007*, as may be applicable.

4. We undertake to immediately inform the SC if we come to know that .....(name of applicant).... has breached or failed to comply with such requirements, after submission of this declaration on the Proposal until the implementation of the Proposal.

5. We undertake to provide to the SC all information as required on the Proposal.

Yours faithfully

.....(signature).....

Name of signatory:

Name of Principal Adviser:

Date:

Note

- \* Where exemptions are being sought, to insert the words “except clause(s) .....(refer to clause where exemption is being sought).... ..where exemption(s) is/are being sought as part of the submission to the SC”.

## Schedule D – Appendix II(c)

### DECLARATION BY A DIRECTOR OF THE APPLICANT

Chairman  
Securities Commission

Dear Sir

**APPLICANT** (name of management company)

#### Declaration

..... (Name of applicant).... is proposing to appoint me as a director.

2. I declare that, save as otherwise disclosed in the attachment accompanying this declaration–

(a) I am not an undischarged bankrupt nor am I presently subjected to any proceeding under the bankruptcy laws;

(b) I have never been charged with, convicted for or compounded for any offence under the securities laws, corporation laws or any other law involving fraud or dishonesty in a court of law;

(c) no action has ever been taken against me for any breach of the listing requirements or rules issued by the stock exchange for the past five years prior to the submission of the Proposal to the SC\*;

(d) to the best of my knowledge, I have not been subjected to any inquiry of investigation by any government or regulatory authority or body for the past five years prior to the submission of the Proposal to the SC.

3. I make this declaration as part of the notification by .....(name of management company).....to the SC for my appointment.

Yours faithfully

.....(signature).....

Name of director:

NRIC No:

Name of Applicant:

Date:

\* To delete if not applicable.

## Schedule D – Appendix III

### REGISTRATION AND LODGEMENT OF A DEED

#### General

- (1) A deed of an exchange-traded fund must be submitted for registration and lodgement according to the requirements under this appendix.
- (2) The SC will not register a deed unless the submission is complete and accompanied by all required materials/documents. The SC reserves the right to refuse registration and return the application if the contents of the deed are inadequate and unsuitable, or if the submission is incomplete, as the case may be.
- (3) As prescribed under section 293(1) of the CMSA, a fund's deed should not have effect unless it is registered with the SC.
- (4) An application to register a deed of an exchange-traded fund proposed to be established should be submitted upon receipt of "no comments letter" from the SC on the draft deed.
- (5) An application to register a supplementary deed should be submitted immediately upon the execution of the deed.
- (6) As prescribed under section 296 of the CMSA, a fund's deed should be lodged with the SC within seven days after the deed has been registered by the SC.

#### Submission of application

##### *Registration of deed*

- (7) An application to register a deed should comprise the following:
  - (a) Cover letter, signed by the head of corporate finance of the principal adviser, 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 the Minimum Contents Requirement for Deed stipulated under these guidelines.

- (b) Executed and stamped copy of the deed (two copies);
- (c) (For supplementary deed) A unit holders' resolution sanctioning the modification to the deed, or a statement from the trustee and the management company, as prescribed under section 295(4)(b) of the CMSA;
- (d) (For supplementary deed) A list highlighting the original provisions from the principal deed and the amended provisions;
- (e) Checklist for Minimum Contents for Deeds of Exchange-traded Funds;
- (f) Registration checklist;<sup>5</sup> and
- (g) Registration fee and fee checklist.<sup>5a</sup>

### ***Lodgement of deed***

- (8) An application to lodge a deed should comprise the following:
  - (a) Cover letter, signed by at least one of the directors of the management company and head of corporate finance of the principal adviser, specifying the following:
    - (i) Application to lodge the deed;
    - (ii) A declaration that the copy of the deed lodged with the SC is identical to the deed registered by the SC; and
    - (iii) A declaration that the copy of the deed in CD-ROM is identical to the printed deed.
  - (b) Printed copies of the deed (two copies);
  - (c) A CD-ROM containing the deed in "pdf" format. The CD-ROM should be labelled with a description of the content and the date of lodgement;
  - (d) Lodgement checklist;<sup>6</sup> and
  - (e) Lodgement fee and fee checklist.<sup>6a</sup>

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<sup>5, 5a, 6, 6a</sup> The checklists are available at [www.sc.com.my](http://www.sc.com.my).

## Schedule E

### REPORTING TO THE SC

#### General

- (1) For the purpose of reporting to the SC, a management company must submit a Statistical and Compliance Returns (collectively referred to as "ETF Returns") of the fund.
- (2) The ETF Returns should be submitted to the SC on a quarterly basis, unless otherwise specified in the returns forms.
- (3) The reporting period should cover the 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.
- (4) For a newly-established fund, the ETF Returns should commence from the quarter in which the fund is listed.
- (5) A management company must take all necessary precautions to ensure that the information provided in the ETF Returns is accurate.
- (6) The chief executive officer is ultimately responsible for all information submitted to the SC. The chief executive officer is expected to ensure that the necessary policies and procedures are in place and the information submitted to the SC is true and accurate.
- (7) For the Compliance Return, it should be submitted to the trustee for verification that it is complete, true and accurate to the best of the trustee's knowledge and belief prior to submitting it to the SC.

#### Submission of ETF Returns

- (8) The ETF Returns should be submitted to the SC within seven business days (by 5.00 pm on a weekday) of the quarter following the end of the period of reporting.
- (9) In submitting the ETF Returns, the management company is required to deliver to the SC one set of the following:
  - (a) Cover letter, specifying—
    - (i) the documents delivered to the SC; and
    - (ii) details of the contact person with whom the SC can contact to clarify any matters pertaining to the ETF Returns.

- (b) A declaration by the designated person responsible for all compliance matters that the ETF Returns are complete, true and accurate to the best of his/her knowledge and belief. The next officer-in-line in the compliance unit can make the declaration only in the absence of the designated person; and
- (c) The ETF Returns.