



**Suruhanjaya Sekuriti**  
Securities Commission

**Consultation Paper on the Exercise of Voting Rights by Unit Trust Management Companies to Appoint Directors onto the Board of Investee Companies**

**June 2002**

# Contents

## Part One

1. Background

## Part Two

2. Proposed safeguards over the exercise of voting rights by a unit trust management company and/or trustee.

## Part Three

3. Proposed best practices to be developed by unit trust management companies.

The Securities Commission (SC) welcomes responses on this consultation paper. Comments are requested by **1 July 2002**. You can send your response in writing or by e-mail to:

The Senior Manager  
Trusts and Investment Management Department  
Securities Commission  
3, Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur  
Tel: 03-6204 8000  
Fax: 03-6201 5318  
E-mail: cp1@seccom.com.my

Note:

**Whilst this Consultation Paper briefly summarises some of the regulatory and administrative provisions governing unit trust schemes, these summaries are not an examination, exhaustive or otherwise, of the relevant provisions and should not be regarded or relied upon as an authoritative legal opinion as to their content and effect.**

## Part One

### 1 Background

- 1.1 The purpose of this consultation paper is to set out SC's proposed policy in relation to the exercise of voting rights by a unit trust management company and/or trustee on behalf of the scheme managed for the appointment of directors onto the board of an investee company. The proposed guideline is intended to revise the requirement under the Guidelines on Unit Trust Funds to obtain prior approval of the unit holders of a unit trust scheme for the appointment of directors onto the board of a company in which the scheme has invested. The proposed guideline will also provide certain safeguards to ensure protection of unit holders' interest against potential abuses of powers arising from the exercise of such voting rights by unit trust management companies and/or trustees.
- 1.2 Under the present Guidelines, Clause 13.1.3 and paragraph 3(c) of Practice Note 11 stipulates that a management company or trustee shall not exercise the right to vote in respect of shares forming part of the investment of the unit trust scheme which is held by the trustee at any election for the appointment of any director of a corporation whose shares are so held, unless the exercise of the voting right at the next general meeting of the corporation is authorized by the unit holders of the scheme by way of a resolution of the majority of all unit holders voting at the unit holders' meeting summoned for that purpose.
- 1.3 In the interest of enhancing corporate governance and shareholders activism as brought about by Recommendation 112 of the Capital Market Masterplan, the SC is looking into the proposed revision of the requirement for unit holders' prior approval for the exercise of voting right for the appointment of directors. Recommendation 112 encourages greater institutional investor participation in corporate governance and the promotion of shareholder value. The move is cognizant of the increased development of the unit trust industry whereby at present, unit trust schemes invest substantially in securities of listed companies, with a view to maximizing the possible returns for the benefit of the unit holders. It is therefore proposed that, in order to encourage the move towards enhancing the standards of corporate

governance in Malaysia and promoting institutional investor activism in the companies which the schemes have invested, the SC believes that the regulatory framework should, where possible, be facilitative and flexible. Certain safeguards and controls are also being proposed to be put in place by the unit trust management company exercising the right to ensure that the interests of unit holders are not compromised against the interests of the unit trust management company as a result of the exercise of the voting right.

- 1.4 The proposed guideline will also require the trustee of the scheme to play an additional role in assessing and reviewing the proposed appointment of a nominee director onto the board of directors of the company which the scheme has invested in. This is so as to ensure that any proposed nominations are made in the best interests of unit holders, and not to further any specific interests of the unit trust management company.
- 1.5 In addition to the Guideline, certain best practices are proposed to be developed by unit trust management companies in exercising the schemes' shareholder voting rights.
- 1.6 Part 2 of this consultation paper highlights specific issues on which the SC would welcome comments. More generally, the SC welcomes constructive comments on the proposed safeguards and best practices by **1 July 2002**. The SC will take into consideration the results of this consultation before publishing the Guideline in its final form.

## Part Two

# 2 Proposed Safeguards over the Exercise of Voting Rights by a Unit Trust Management Company and/or Trustee

The following have been identified as safeguards in relation to the exercise of voting rights by a unit trust management company and/or trustee for the appointment of a nominee director onto the board of an investee company. The safeguards are proposed to ensure that the protection of unit holders' interests are always paramount in the exercise of the voting right on behalf of the scheme's unit holders.

### **2.1 Criteria for nomination and appointment of nominee directors onto the board of an investee company**

2.1.1 For nomination and appointment of nominee directors onto the board of an investee company, the following criteria are proposed:-

- (i) The nominee must be a person who is free and independent of the unit trust management company and/or trustee.
  - In order to avoid any undue influence by the unit trust management company and/or trustee that could tamper with the independent judgment and decision-making authority of the nominee director at the board of the investee company, the nominee director should be a person who is free and independent of the unit trust management company and/or trustee. For the purpose of clarity, being free and independent of the unit trust management company and/or trustee means that the nominee director must not have any relationship with the unit trust management company, trustee and/or significant or controlling shareholders of the unit trust management company/trustee that could otherwise interfere with the exercise of independent judgment and decision-making authority on the part of the nominee director.
- (ii) The nominee must be appointed in the capacity of a non-executive independent member of the board of the investee company.

- In order to provide for an effective control mechanism, the presence of non-executive independent members at the investee company board level is vital given the role and empowerment to act in the best interest of the company and by extension, the shareholders. In addition, as a non-executive independent member of the board of the investee company, the nominee director is expected to bring in the element of independent judgement to board deliberations and provide some form of check and balance in board decisions, particularly those affecting the company and shareholders. In light of the above, it is proposed that the nominee director be appointed in the capacity as a non-executive independent director of the investee company.

## **2.2 Review and Assessment by the Trustee of the Scheme**

- 2.2.1 A new requirement is proposed in relation to the additional role of the trustee to conduct a review of the proposed nomination. The review and assessment shall be conducted by the trustee, in its capacity as the trustee of the scheme and legal owner of the funds' assets, to ascertain the criteria, eligibility and suitability of the nominee director to be appointed as a director of the investee company. The areas of review and assessment should also cover, amongst others, the state of independence of the nominee director in representing the interests of the schemes' unit holders as opposed to the interests of the unit trust management company.

## **2.3 Disclosure Requirements**

- 2.3.1 Disclosures must be made in the prospectus and annual reports of the schemes in relation to the voting policy and practices of the unit trust management company exercising the scheme's voting rights for the appointment of directors onto the board of an investee company. The unit trust management company, in executing the nomination and appointment of nominee directors onto the board of the investee company, shall be required to make transparent, its policy and procedures for the nomination and appointment of the nominee directors to the scheme's unit holders. The disclosure requirement also serves to push greater sense of

accountability on the part of the directors for the decisions made at the board of the investee company level. Details to be disclosed would, amongst others, include:-

- Details on the background of the proposed nominee directors;
- The party responsible for the nomination and appointment of the nominee director;
- The measures taken to ensure protection of unit holders' interests in the voting decision; and
- The procedures and policies for the exercise of voting rights in conflict of interest situations.

## Part Three

# 3 Proposed Best Practices to be Developed by Unit Trust Management Companies

### 3.1 Best practices

3.1.1 Apart from the safeguards, unit trust management companies are also encouraged to develop best practices in relation to the schemes under management. These best practices include, but are not limited to, the following:-

- (i) The development of a set of guidelines or written policies about how the schemes' shares should be voted in important issues such as conflicts of interest, minority shareholders rights and interests, corporate governance issues etc.
- (ii) The establishment and maintenance of an effective communication policy between the unit trust management companies and the investee company via an annual general meeting (AGM) of the investee company and/or a dialogue session. The AGM is viewed as a crucial mechanism in shareholders communication. It is the best forum available for all shareholders including the unit trust management company and/or trustee, on behalf of the schemes, to be provided with direct access to the board of the investee company and to initiate constructive communication with senior management of the company, particularly in matters affecting the investments of the schemes.
- (iii) The establishment and maintenance of an effective communication policy at the unit trust management company's level is also very much encouraged. This is viewed necessary as unit holders should also be allowed direct access to the management of the unit trust management company. The effective communication may be effectively implemented through frequent reporting procedures, amongst others, reports or meetings/dialogue sessions of unit holders of the schemes. With frequent reporting, unit holders will be kept posted, amongst others, of the latest developments of the scheme's holdings including the nomination and appointment of nominee director(s), if any,

and the exercise of the scheme shareholder's rights at the investee company board level.

3.1.2 The above are some of the best practices which should be developed by unit trust management companies in relation to the exercise of shareholders' rights on behalf of the schemes that it manages. Whilst these best practices may not specifically relate to the exercise of voting rights by unit trust management companies to nominate and appoint directors onto the boards of investee companies, they should nonetheless be developed by unit trust management companies going forward, to represent to unit holders of the schemes a clear view of the manner in which their holdings are voted on by the persons placed to undertake this function. These best practices would ensure that corporate governance is achieved not only at the level of the investee companies that the schemes have invested in, but also at the level of these unit trust management companies in relation to the schemes managed and the ultimate accountability of these unit trust management companies to the schemes' unit holders.