

GUIDELINES ON MARKETING AND DISTRIBUTION OF UNIT TRUST FUNDS

SC-GL/GMD-2008 (R2-2019)

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OF UNIT TRUST FUNDS**

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1.0 INTRODUCTION

- 1.01 The *Guidelines on Marketing and Distribution of Unit Trust Funds* is issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA). These Guidelines set out the requirements to be complied with by any person who carries on the regulated activity of dealing in units of unlisted unit trust funds (including marketing) in Malaysia.
- 1.02 These Guidelines aim to provide a regulatory environment that protects the interests of the investing public. The unit trust industry is premised on the concepts of trust and faith and it is imperative that industry players operate with a high degree of ethics and professionalism.
- 1.03 The SC may take action against persons who fail to comply with or observe any of the provisions in these Guidelines, as are permitted under section 354 of the CMSA and/or other relevant provisions under the CMSA.
- 1.04 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that–
- (a) such variation, if granted is not contrary to the intended purpose of the relevant provision in these Guidelines; or
 - (b) there are mitigating factors which justify the said exemption or variation.
- 1.05 [Deleted]
- 1.06 [Deleted]

2.0 AN AUTHORISED PERSON TO DEAL IN UNITS OF UNIT TRUST FUNDS

- 2.01 Under section 58(1) of the CMSA, any person carrying on the activity of dealing in securities (including dealing in units of unit trust funds) must, whether as principal or agent, be a holder of a Capital Market Services Licence or a registered person, to carry on the said activity.

2.02 The *Licensing Handbook* further provides that when the dealing in securities involve units of a unit trust fund, licensed persons and registered persons, whether as principal or agent (referred to as “authorised person”), are required to be a member of a body approved by the SC or a recognised self-regulatory organisation.

3.0 DUTIES AND RESPONSIBILITIES OF AN AUTHORISED PERSON

3.01 An authorised person should possess a sense of responsibility, integrity and professionalism in dealing in units of unit trust funds.

3.02 An authorised person should, at all times–

- (a) act with honesty, dignity and integrity. An authorised person who is an individual, must conduct and encourage others to deal in units of unit trust funds in a professional and ethical manner that will reflect credit on themselves, fellow registered persons and the industry;
- (b) deal in a fair and equitable manner, and avoid aggressive and offensive sale practices;
- (c) deal in good faith and with best of intentions; and
- (d) treat investors with respect and disclose fully all information pertinent for investors to make informed investment decisions.

3.03 An authorised person should not misrepresent or recklessly represent–

- (a) (for individuals) his qualifications or that of the principal he represents;
- (b) the products and/or its characteristics offered by the principal; and
- (c) the past performances of the fund he is marketing.

3.04 Conduct which is dishonest includes any omission of a material fact. A material fact is defined as one which causes investors to perceive the fund to be different from what is actually represented to them.

- 3.05 An authorised person who is an individual should, on introduction to a prospective investor, disclose that he is authorised to deal in unit trust funds and produce his authorisation card to identify himself. Only cards issued by a body approved by the SC or a recognised self-regulatory organisation are recognised for dealing in units of unit trust funds.
- 3.06 As prescribed under section 232 of the CMSA, an authorised person should not–
- (a) deal in units of unit trust funds unless the prospectus of the fund has been registered with the SC; and
 - (b) issue, circulate or distribute any application forms unless the form is accompanied by a copy of the prospectus.
- 3.07 An authorised person should conduct all dealings with every care, skill and diligence. In this regard, an authorised person should–
- (a) ensure as far as possible that the unit trust fund is suitable for the needs of the prospective investor and is not beyond the investor’s resources;
 - (b) take all reasonable steps to give information in a comprehensible, full and fair manner to assist the prospective investor make a balanced and informed decision;
 - (c) provide information only on those matters in which he is competent to deal with and seek or recommend other specialist advice to the prospective investor where appropriate;
 - (d) when conveying information to a prospective investor, bear in mind the overall context in which the statements are made. Different investors may require different levels of detail and explanation. Efforts should be made to improve the amount and clarity of information given. Brief or overly technical explanations tend to create confusion and misunderstanding;
 - (e) in making comparisons with other funds, make clear the different characteristics of each fund; and

- (f) not omit a material fact, nor make exaggerated, unwarranted, misleading statements or claims, or forecasts of future events.

3.08 An authorised person should adequately explain to a prospective investor the nature and characteristics of the fund that is being marketed. Towards this end, an authorised person should–

- (a) make clear all essential attributes of the fund, including–
 - (i) the investment objectives of the fund;
 - (ii) the investment strategy to achieve the stated objectives;
 - (iii) the risks of investing in that fund and unit trusts generally;
 - (iv) the distribution policy of the fund;
 - (v) the fees, charges and expenses involved; and
 - (vi) the tax implications (if any);
- (b) ensure as far as possible that the prospective investor understands what he is committing himself to; and
- (c) draw attention to any unique feature and/or restriction applicable to the fund, such as–
 - (i) (if loan financing is to be used) the risks of purchasing units via loan facilities; and
 - (ii) the long-term nature of the fund and the risks of early withdrawal from the fund.

3.09 An authorised person should endeavour to provide prompt, efficient and continuous service to investors. In particular, he should be ready to answer any query about the funds.

3.10 An authorised person should take every precaution to protect and preserve the confidentiality of investors' information and must not in any way use such information for his personal or another person's gain.

3.11 An authorised person should—

- (a) maintain knowledge of, and comply with, all applicable laws and rules governing the unit trust industry. Where required, he must deal with the regulatory authorities in an open and co-operative manner, and disclose such information as is reasonable and appropriate; and
- (b) act with proficiency and strive to maintain and improve his competency and that of fellow registered persons.

4.0 ADVERTISEMENT AND PROMOTIONAL MATERIALS

4.01 An authorised person should ensure that only advertisements and promotional materials which comply with the requirements of the *Guidelines on Unit Trust Advertisements and Promotional Materials* are used.

5.0 DEALING IN UNITS

5.01 An authorised person should—

- (a) only deal in units at the unit price quoted by a management company and which are publicly available;
- (b) clearly inform prospective investors of the unit price and charges imposed; and
- (c) explain clearly how unit prices and charges are calculated.

5.02 An authorised person is prohibited from providing discounts and rebates in any form. Prospective investors should be clearly informed of the sales charge imposed on their investments.

5.03 An authorised person should also refrain from providing gifts to entice investors to invest in unit trust funds.

5.03A While the use of incentives such as gifts is not prohibited, an authorised person must ensure that the use of incentives does not distract investors from making informed investment decisions.

Loan Financing in the Sale of Units

5.04 An authorised person should not, directly or indirectly, encourage the sale of units via loan financing.

5.05 In communicating information on loan financing for units, an authorised person should fully disclose important information to the prospective investor, omitting no material fact. In this regard, he should release only factual information and subsequently explain clearly the risks of leveraging to the prospective investor.

5.06 An authorised person should, to the best of his ability, ensure that the prospective investor understands the risks of loan financing before investing.

6.0 MARKETING AND DISTRIBUTION OF UNIT TRUST FUNDS OUTSIDE MALAYSIA

6.01 A management company must ensure that only distributors which comply with the following criteria are appointed to market and distribute its funds outside Malaysia:

- (a) A corporation registered, approved, licensed or authorised, as the case may be, to deal in unit trust funds by the respective home regulatory authorities;
- (b) Have adequate human resources, expertise and experience to market and distribute unit trust funds in a proper and fit manner; and
- (c) Have in place, adequate policies and procedures for its business practices to meet all relevant legislations and regulations imposed by the home regulatory authorities.

6.02 A management company should comply with all relevant laws and rules of the foreign jurisdiction on the distribution of its unit trust funds.

6.03 A management company is required to—

- (a) notify the SC, the name of the appointed distributor, the country in which the fund is being distributed, and the name of the regulatory authority in that country; and
- (b) submit a declaration, signed by the chief executive officer, on compliance with clauses 6.01 and 6.02 above.

ELIGIBILITY REQUIREMENTS FOR AN AUTHORISED PERSON WHO IS AN INDIVIDUAL

1. An individual must–
 - (a) be of the minimum age of 21;
 - (b) obtain credits in any three subjects in SPM or its equivalent; and
 - (c) fulfil all the requirements in the Rules as set out by the self-regulatory organization.
2. The individual should be honest, of good character, and good repute. Further, he must also be efficient, reliable, and possess a high level of integrity. He must not have been–
 - (a) found by a court or other competent authority to have acted fraudulently or dishonestly;
 - (b) convicted of a criminal offence; or
 - (c) censured or reprimanded by, or denied/disqualified from membership of, a professional or trade body; or a regulatory licence, registration or similar approval has been refused or revoked.
3. The individual should not be an undischarged bankrupt, neither should he be subjected to any bankruptcy proceeding. Similarly, he will not qualify if he has failed to meet any judgment debt.
4. The individual must sign a statutory declaration attesting to the requirements set out in (2) and (3) above (the statutory declaration should be filed with the management company concerned). Any non-disclosure or inaccurate disclosure in the statutory declaration is an offence under Malaysian law and, among other consequences, will result in the deregistration of the individual concerned.
5. The individual must first pass a qualifying examination conducted by a body approved by the SC or a recognised self-regulatory organisation.

Appendix 2

The requirements on agency structure and size of an agency unit for the Management Company are included under the FIMM's Consolidated Rules