

CIRCULAR

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To:	UTMC, IUTA, CUTA, PRS Provider, IPRA and CPRA (“Distributors”)		
Attn:	Chief Executive Officer / Compliance Officers		

DEAR CEO LETTER: SHARING OF THE FEDERATION OF INVESTMENT MANAGERS MALAYSIA (FIMM) SUPERVISORY OBSERVATIONS

This *Dear CEO letter* is part of FIMM’s industry education initiative to share observations noted from supervisory and surveillance activities conducted in the year 2020. The sharing is intended for all Distributors to assess on whether its present compliance framework and controls are sufficient, as well as aligned with the relevant rules and regulations issued by FIMM and the Securities Commission Malaysia (“SC”) on marketing and distribution of Unit Trust Scheme (“UTS”) and Private Retirement Scheme (“PRS”) (collectively referred to as “Schemes”).

As shared during FIMM’s Industry Briefing on Regulatory Activities and Initiatives held virtually on 28 September 2020, please find below our re-iteration on the supervisory observations noted in the year 2020:

(1) Observations on Auto-Renewal of Consultants

2020 marked the first year where FIMM implemented auto-renewal on registration for UTS and PRS Consultants (collectively referred to as “Consultants”). While this has streamlined the annual renewal processes, there were **gaps noted on the timeliness** in providing the following submissions to FIMM:

- (a) Delay in updating FIMM Integrated System (“FIS”) on terminated Consultants before 10 January 2020 (by 12pm); and
- (b) Delay and incorrect updates on Continuing Professional Development (“CPD”) log/ register for Consultants before 3 January 2020.

Consequently, there were instances where Consultants who did not meet the required CPD points were renewed during the yearly registration renewal process. It is essential for all Distributors to ensure that their Consultants meet the pre-requisite CPD point as part of fulfilling the continuous fit and proper criteria prior to their renewal.

(2) Observations from Thematic Examination and Engagement Activities

The Examination and Engagements conducted (collectively referred to as “Supervisory Reviews”) pursuant to Rule 2.2.2 of FIMM’s Consolidated Rules (“FCR”) focuses on Distributors’ oversight and governance on the agency structure and Consultants’ sales practices in marketing and distribution of Schemes as well as related submissions made to FIMM.

The following observations were made based on our thematic Supervisory Reviews conducted in the year 2020:

A. Recruitment of Agent by the lowest tier within an agency structure

The amendments to Appendix 2-A of the FCR by way of FIMM’s circular dated 4 March 2019 clearly articulates the prohibition for the lowest tier within an agency structure to recruit an Agent. However, it is noted that there were instances where Consultants of “Agent” ranking (which is the lowest tier within an agency structure), were recruiting new Agents for their agency.

Such practices should be ceased immediately, in accordance with the prohibitions stipulated in Appendix 2-A and Appendix 2-B of the FCR in respect of Agency Units.

B. Notification to FIMM on Consultant’s misconduct and maintenance of records

Rule 4.6.2 of the FCR requires Distributors to notify FIMM immediately upon discovering any misconduct that render the Consultants no longer meeting the fit and proper requirements. We observed that there were instances where Distributors failed to notify FIMM of the occurrence of the misconduct.

Therefore, Distributors are reminded to ensure adherence to the requirement stipulated under paragraph 5.2 of FIMM's Code of Ethics (Third Edition) ("COE") that upon discovery of a misconduct by the Consultant, the Distributors must:

- (a) establish a prima facie case of such misconduct; and
- (b) submit a comprehensive investigation report of the misconduct as soon as practicable to FIMM upon completion of such report.

Additionally, it is paramount for Distributors to maintain proper records on the investigation conducted including supporting documentation, which were relied upon as evidence in taking any disciplinary action against Consultants.

C. Notification to FIMM on resignation / termination of Consultants

Under Rule 3.4.4 (a) (x) of the FCR, Distributors must notify FIMM within one (1) business day from the date of resignation, termination, or variation of Consultants' registration. Nonetheless, there had been occurrences of delay by the Distributors in notifying FIMM on the resignation/ termination of their Consultants.

Distributors are reminded to comply with FIMM's submission timeline and factor the specific requirements in their compliance programme.

D. Completion of Suitability Assessment ("SA") form and determination of risk profile of investors

Paragraph 4.01 of the SC's Guidelines on Sales Practices of Unlisted Capital Market Products highlighted the need for Distributors to undertake a SA before recommending a Scheme to the investors, SA forms contain the assessment of investors' risk profile, which serve as a guide to Consultants in recommending suitable Schemes to the investors accordingly. Our review on these SA forms revealed the following:

- (i) Incomplete SA forms;
- (ii) Lack of clarity in determining the investors' risk profile arising from the ambiguity on the criteria stipulated in the SA forms. For example, the criteria had a scoring methodology but lack clarity in explaining the outcome of the score. Also, the conclusions on risk profile were too subjective, i.e. based on the Consultants' judgement with no clear distinction on how the conclusions were derived;

- (iii) The recommended Schemes were not in accordance with the investors' risk profile and any deviation was not supported with the necessary documentation; and
- (iv) The SA of the investors were not refreshed to factor in change(s) in the investors' risk appetite, particularly when the investments have shifted and geared towards a higher risk Scheme.

It is recommended for Distributors to re-assess practices adopted on SA forms and strengthen current risk profile evaluation (where applicable) to avoid future disputes with the investors.

Below are specific observations made relating to **Corporate UTS Adviser and Corporate Private Retirement Adviser** ("CUTA/CPRA").

E. Adoption of a multiple-tiered agency structure

Through amendments made to Appendix 2-A of the FCR by way of FIMM's circular dated 4 March 2019, CUTA/CPRA have been allowed to form multiple-tiered agency structure provided that:

- (i) It has adequate documented internal systems, policies and procedures to support implementation of the multiple-tiered agency structure;
- (ii) It must notify FIMM seven (7) business days prior to commencement of multiple-tiered agency structure; and
- (iii) It must ensure that only a holder of the *Capital Markets and Services Representative Licence* for Financial Planning may recruit and mentor an apprentice under the FIMM's Apprenticeship Programme.

While 44% of CUTA/CPRA declared in the Annual Compliance Review ("ACR") that they have adopted multiple-tiered agency structure, we noted instances where some of them did not have the pre-requisite system, policies and procedures in implementing and monitoring such structure.

For the remaining 56% of CUTA/CPRA that declared in the ACR that they do not adopt multiple-tiered agency structure, we identified instances where such declarations were false.

As a company registered with FIMM, we would like to caution CUTA and CPRA to ensure adherence to the FIMM requirements relating to multiple-tiered agency structure. FIMM will not hesitate to take action for any non-compliances to FIMM Rules.

F. Marketing and distribution of Schemes by persons not registered with FIMM

Rule 3.1.1 of the FCR stipulates the requirement for any person who wishes to market or distribute a Scheme to be registered with FIMM. However, we have seen instances where CUTA/CPRA had signed agreements with and made commission payments to unregistered persons for their marketing and distribution activities on behalf of the CUTA/CPRA.

We do not condone such practice. Thus, we expect for CUTA/CPRA to assess on the presence of such practice in their company, and to cease immediately (if such practice exists) as this is not aligned with Rule 3.1.1 of the FCR.

G. Consultants representing more than one (1) Principal at any one time

It is incumbent on Distributors to ensure that a Consultant only represents one (1) Principal at any given time, as prescribed under Rule 3.1.4 of the FCR and Paragraph 3.22 of the COE. Nonetheless, we noted that a CUTA/CPRA engaged Consultants from other Distributors to market and distribute Schemes available under the said CUTA/CPRA.

This is an outright breach of the stated FCR and COE's requirements and we urge any CUTA/CPRA with similar practice to terminate such arrangement immediately. As a company registered with FIMM, CUTA/CPRA are reminded to always ensure compliance with FIMM's Rules.

In summary, all Distributors are required to critically assess their day-to-day operations, resources and governance arrangements against all relevant rules and guidance issued by FIMM and the SC, as well as consider the findings raised under the Supervisory Reviews. In addressing any gap, Distributors are required to address the underlying cause of the identified findings, instead of merely resolving the symptoms.

(3) Observations from Annual Compliance Review (“ACR”)

The yearly ACR submission to FIMM is based on Distributors’ self-assessment and declaration on the state of compliance to the applicable rules and guidelines. In verifying the submitted ACR, we noted that there were questions which were either incorrectly declared or answered without the relevant supporting documents. Examples include:

- Instance where certain procedures were declared as “in place” in the ACR but was subsequently found to be otherwise.
- Occurrence of manuals not being updated or even approved by the senior management.

In general, there are two (2) common lapses identified across different types of Distributors reported under the submitted ACRs which have been recurring for the last three (3) years:

- (i) Lack of training on anti-money laundering and anti-terrorism financing; and
- (ii) Absence of periodic review of policies and procedures to incorporate the latest regulatory requirements.

There are also other specific observations reported in ACR submitted by:

A. Unit Trust Management Company (“UTMC”) and Private Retirement Scheme Provider (“PRP”)

- (i) Registration and renewal matter of Consultants particularly on compliance with CPD requirements; and
- (ii) Delay in dissemination of annual and interim fund reports.

B. Institutional UTS Adviser (“IUTA”) and Institutional PRS Adviser (“IPRA”)

- (i) Non-compliance with FIMM’s requirement of having at least two (2) Consultants to be stationed at each distribution point;
- (ii) Delay in redemption payment processing; and
- (iii) Delay in dissemination of annual and interim fund reports.

C. CUTA/CPRA

The submitted ACR identified issue on failure to notify FIMM on the commencement of multiple-tiered agency structure.

In managing the recurrence of the common observations above, it is crucial for Distributors to take timely corrective measures that will strengthen present compliance standards in the organisation. Furthermore, the Distributors are required to provide FIMM with the remedial action to be taken and the proposed timeline to its completion.

(4) Observations on Complaints Trends and Management

Based on the submissions for the year 2020, there is an increase in the number of complaints received by Distributors and FIMM compared to 2019 by 38% and 36%, respectively.

Below are the top five (5) nature of complaints received by Distributors or FIMM:

Complaints submitted by Distributors to FIMM in the year 2020	Complaints received by FIMM in the year 2020
(i) Poor after sales services	(i) Unauthorised transactions
(ii) Unauthorised investment and withdrawal	(ii) Unsatisfactory services
(iii) Misrepresentation and mis-selling	(iii) Misrepresentation
(iv) Performance issue	(iv) Pre-sign/ pre-thumb print on investment forms
(v) Operational issues	(v) Fit and proper
(vi) Others	

We have also identified submission of fake academic certificates and inaccurate declaration in Statutory Declaration by Consultants during registration as an emerging trend on complaints received in 2020.

Specific to Financial Institutions, the following emerging trends were observed:

- (i) The practice of coaxing elderly investors to switch their Fixed Deposits into investing in Schemes, which are not within their risk appetite; and
- (ii) The features of the Schemes were not clearly explained resulting in investors claiming ignorant of the sales charge incurred, oblivious to the cooling-off period (for first time investors) as well as mismanagement of investors’ expectation on returns of their investments.

In managing these complaints, it is incumbent for all Distributors to put in place control measures to prevent such incidence from happening/ recurring. Stricter actions should be taken on Consultants to indicate non-tolerance to material misconducts. It is also noted that some of these incidences took place because of investors' ignorance or convenient. Hence, Distributors need to step-up efforts in investors' education to prevent them from partaking in the Consultants' misconduct, for example, the practice of pre-signing or providing cash for investment purposes.

Additionally, the following control gaps at Distributors were observed by FIMM:

A. Complaint submissions to FIMM

All Distributors are required to provide a quarterly submission to FIMM on complaints received directly by Distributors. Nonetheless, FIMM noted the following:

- (i) The complaints were not properly classified to the correct category of complaint; and
- (ii) Unresolved complaints that were reported in previous quarter(s) were not continuously reported until resolved.

On a related note, there have been instances of delay by Distributors in providing information, which were requested by FIMM arising from complaints that were lodged with FIMM directly.

Accordingly, we require all Distributors to ensure that submissions to FIMM are timely and made in accordance with the prescribed requirements.

B. Complaint management

Paragraph 3.17 and 3.18 of the COE stipulate the need for Distributors to have proper system, policies and procedures as well as information management on complaints handling. We note instances where:

- (i) Not all complaints received were recorded in the complaint register. There were practices by Distributors where they did not register resolved complaints received from investors, which resulted in incomplete recording of complaint cases in the said register; and

- (ii) There are practices of maintaining an enquiry log by some Distributors. However, we observed that some of the items recorded in the enquiry log had elements of complaints, which were not subsequently recorded in the complaint register.

A complete recording in the complaint register is essential to enable Distributors to assess and take appropriate actions on complaints, particularly those that are systemic or recurring in nature. Hence, all Distributors are to ensure record keeping is maintained accurately and on a timely manner.

(5) Observations from Social Media Surveillance

FIMM's Social Media Surveillance ("SOCMED") was introduced in January 2020 as a new surveillance tool to monitor Consultants' activities on various social media platforms in relation to marketing and distribution of Schemes.

For the period from January 2020 to June 2020, the following observations were made:

- (i) Instances where unregistered persons were found to market and distribute Schemes on social media platforms;
- (ii) Usage of designation, title, or qualification without proper authorisation/ licence from the regulatory authorities; and
- (iii) Persons found to be promoting unlicensed Schemes.

In the era of digitalisation and present pandemic which limits physical interaction with investors, social media platform has become a preferred medium by Consultants in carry out their marketing activities. It is timely for Distributors to evaluate present monitoring framework to be in tandem with the shift in the mode of marketing from physical to online marketing activities.

In Conclusion

All Distributors are reminded to regularly review the adequacy and effectiveness of their system and processes in monitoring marketing and distribution activities of their respective Consultants.

As part of good governance, we recommend that the contents of this letter as well as any gap identified therefrom to be reported to their Board of Directors or relevant Committee(s).

We will continue to employ a broad range of supervisory and enforcement actions on Distributors and Consultants to ensure effective implementation of regulatory requirements imposed by FIMM and the SC. In the event of non-compliance by any Distributor or Consultant with any regulatory requirements, FIMM may exercise its supervisory and/or enforcement actions for such non-compliance matters particularly to the matters raised in this *Dear CEO letter*.

Lastly, we acknowledge and commend the efforts taken by Distributors who introduced investors' call-back measures, conducted own Mystery Shopping or carried out online surveillance on their Consultants as part of their enhanced monitoring mechanism. Together we will be able to raise the quality of marketing and distribution activities conducted by the Consultants as well as continue to strengthen the good reputation of the investment management industry.

Yours Sincerely,



Puan Sahlawati Binti Mustafa
General Manager, Regulatory Services Division