

# CIRCULAR

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To:	UTMC AND IUTA		
Attn:	Authorised Representative/Chief Executive Officer		

## **Responsibilities of Unit Trust Management Companies (“UTMC”) and Institutional Unit Trust Advisers (“IUTA”) to Ultimate Beneficiary Owners (“UBO”) Under the Nominee System**

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### **1.0 Introduction**

- 1.1 This circular applies to UTMC and IUTA under the nominee system.
- 1.2 This circular is issued pursuant to the FIMM’s *Code of Ethics*, which outlines the obligations of the UTMC and IUTA under the nominee system<sup>1</sup>.
- 1.3 In this regard, this circular sets out the responsibilities of the UTMC and IUTA to UBO by enhancing the disclosures of UBO’s rights and the distribution of the notice of unit holders’ meeting (“UHM”) in a timely manner in order to provide an appropriate level of protection to the UBO.

### **2.0 Background and Issues Noted**

- 2.1 An investor may invest in unit trust schemes (“UTS”) from multiple channels. When an investor invests in UTS through an IUTA, the transaction will be processed under the nominee system. Under the nominee system, the name stated in the register of unitholders is the IUTA’s name as the IUTA holds the investment as the legal owner/ registered unit holder on behalf of the UBO. In this regard, the rights of the UBO will be exercised by the IUTA.

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<sup>1</sup> Para. 3.14 of FIMM’s *Code of Ethics* states that a distributor who holds investments as a legal owner or beneficial owner shall ensure that any distributorship arrangement entered into with another distributor does not in any way undermine an investor’s right in the schemes.

### 3. Rights of the UBO

- 3.1 Unlike the registered unit holders, the UBO under the nominee system is not entitled to call, attend and vote in any UHM called by the UTMC even though the UBO may hold more units than other registered unit holders.
- 3.2 Moreover, the UBO may not be informed of his/her relatively limited rights under the nominee system due to the absence of such disclosures during account opening and point-of-sale transaction.

### 4.0 Requirements on UHM

- 4.1 The requirements pertaining to UHM are specified by the Securities Commission Malaysia in the *Capital Markets and Services Act 2007* (“CMSA”) and the *Guidelines on Unit Trust Funds* (“GUTF”) as follows:

No.	SC’s requirements on UTMC/ Trustee	UHM called by			
		Unit holders	Manager	Trustee	Manager/ Trustee
1	To hold UHM	<u>s.305(2) of the CMSA</u> Within 21 days <sup>[1]</sup> after receiving instruction	<u>s.305(4) of the CMSA</u> <sup>[2]</sup> Not later than 2 months after giving notice	<u>s.306(1) of the CMSA</u> <sup>[3]</sup>	<u>Para. 9.45 of the GUTF</u> No specific restriction
2	To publish UHM notice in newspaper	<u>s.305(3)(b) of the CMSA</u> At least 14 days <sup>[1]</sup> before UHM	<u>N/A</u>	<u>s.301(1)(b) of the CMSA</u> <sup>[4]</sup> At least 21 days <sup>[1]</sup> before UHM	<u>N/A</u>
3	To post UHM notice to unit holders	<u>s.305(3)(a) of the CMSA</u> At least 7 days <sup>[1]</sup> before UHM	<u>N/A</u>	<u>s.301(1)(a) of the CMSA</u> <sup>[4]</sup> At least 21 days <sup>[1]</sup> before UHM	<u>Para. 9.46 of the GUTF</u> <sup>[5]</sup> At least 14 days <sup>[1]</sup> before UHM

Notes:

<sup>[1]</sup> All references to “days” shall mean “calendar days”

<sup>[2]</sup> Include UHM called for the purpose of termination of a scheme or other situations in accordance with a provision or covenant contained in the deed

<sup>[3]</sup> Where the UTMC fails to remedy any breach of the deed or contravention of securities law or regulations when required by the trustee

<sup>[4]</sup> Where the UTMC is in liquidation or where, in the opinion of the trustee, the UTMC has ceased to carry on business or the UTMC has, to the prejudice of the unit holders, failed to comply with the deed or contravened the CMSA

<sup>[5]</sup> At any time other than for the required circumstances provided for in the CMSA

4.2 It is imperative that the IUTA has sufficient time to issue the UHM notice to UBO within the prescribed timeframe to ensure compliance with the CMSA and GUTF requirements.

## 5.0 Responsibilities of UTMC and IUTA to UBO under the Nominee System

### UTMC's responsibilities

5.1 An UTMC must give the notice of UHM to an IUTA that operates a nominee system by post within a prescribed timeline to enable the IUTA to distribute the notice of UHM to their respective UBO in a timely manner. As such, FIMM is prescribing the timeline in paragraph 5.2 below to ensure compliance with the CMSA and GUTF.

5.2 The following table sets out the prescribed timeline that UTMCs are required to observe according to the applicable UHM:

Requirement on UTMC	UHM called by		
	Unit holder under s.305(2) of the CMSA	Manager under s.305(4) of the CMSA	Manager/Trustee under Para. 9.46 of the GUTF
Issue notice to IUTA by post	At least 17 days <sup>[1]</sup> before UHM	At least 1 month before UHM	At least 17 days <sup>[1]</sup> before UHM

Note:

1. All references to "days" shall mean "calendar days"

### IUTA's responsibilities

5.3 In making UBO aware of their limited rights, an IUTA is required to disclose as part of the terms and conditions in the account opening form and other relevant documents that the IUTA holds the investment as a legal owner/registered unit

holder and thus the UBO is not recognised by the UTMC as a registered unit holder under the deed and is not entitled to certain rights.

An example of such disclosure is set out as below:

“Please be advised that you are investing in UTS under the nominee system where you are not recognised by the UTMC as a registered unit holder under the deed. Consequently, you do **not** have all the rights ordinarily exercisable by a unit holder, including the following:

- (i) The right to have your particulars recorded in the register of unit holders of the UTS; and
- (ii) The right to call, attend and vote in any unit holders’ meeting.”

5.4 The IUTA must obtain the UBO’s written acknowledgement that he or she has read and understood the rights as required to be disclosed by the IUTA in paragraph 5.3 above.

5.5 In addition, an IUTA is required to, in the notice of meeting:

- (a) provide a summary of its policy for exercising its voting rights as a registered unit holder, including the prescribed time for the UBO to respond and the mechanism for exercising of the voting right (e.g. the IUTA will vote in accordance with the vote indicated by a majority of their UBO);
- (b) disclose any events that could change the purpose, cost or risk profile of the investment. Such disclosure enables the UBO to make informed decisions and where necessary, exercise their voting rights via proxy; and
- (c) include a summary of the subject matter of the notice of the UHM together with an explanation of the consequences of a vote for or against the proposal. This summary must be read together with the notice of the UHM.

5.6 The IUTA must distribute the documents or notices relating to the UHM not later than 14 calendar days prior to the date of the UHM for all types of UHM specified in the CMSA and GUTF to the UBO.

5.7 The IUTA must submit the total number of UBOs that have responded and the UBO's voting results to the UTMC or its appointed representative not later than 4 calendar days prior to the date of the UHM.

## 6.0 General Obligation

6.1 The UTMC and IUTA must maintain all pertinent records and ensure that such records are available for examination and investigation in an easily accessible form and place for a period of at least seven (7) years.

## 7.0 Effective Date

7.1 This circular takes effect on 2 December 2022.

7.2 The UTMC and IUTA are given up to six (6) months from the effective date of this circular to adhere to the requirements as stated in this circular. However, early adoption of the circular by UTMC and IUTA is encouraged.

If you require further information or clarification, please do not hesitate to contact the undersigned, Ms. Joyce Wee (joyce@fimm.com.my) or Cik Elyna Kamaruzzaman (elyna@fimm.com.my).

Thank you.

Yours faithfully,

**FEDERATION OF INVESTMENT MANAGERS MALAYSIA**



**DENNIS LOONG**

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