

# **Capital Market Authority**

## **Closed-ended Investment Traded Funds Instructions**

Issued by the Board of the Capital Market Authority  
Pursuant to its Resolution Number 0-00-2018 Dated 00/0/1439H  
Corresponding to 00/0/2018G Based on the Capital Market Law  
Issued by Royal Decree No M/30 dated 2/6/1424H

## Table of Content

Part 1: Preamble.....	3
Part 2 :Definitions.....	3
Part 3: General Provisions .....	4
Part 4: Requirements of listing in the main market .....	9
Part 5: Investment Areas.....	10
Part 6: Investment Restrictions.....	10
Part 7:Net Asset Value of closed-ended traded invrstment funds .....	8
Part 8: Offer Requirements .....	11
Part 9: Approvals of the Authority and unitholders on fundamental changes .....	12
Part 10: Disclosure Requirements.....	12
Part 11: Trading Suspension and Cancelation of Listing .....	16
Part 12: Publication and Entry Into Force .....	16
Annex 1: Form of a Legal Advisor's Letter	
Annex 2: Form of a Fund Manager's Letter	

## Part 1: Preliminary

- A. These instructions aim to regulate the offering, registration, and approving the listing of the Closed-Ended Investment Traded Fund units, in addition to regulating their management, operation and supervision over all of its related activities in Saudi Arabia.
- B. These instructions shall have no prejudice to the provisions of the Capital Market Law and its Implementing Regulations.

## Part 2: Definitions

- A. Any reference to the “Capital Market Law” in these Instructions shall refer to the Capital Market Law issued by the Royal Decree No. M/30 dated 2/6/1424H.
- B. Expressions and terms in these Instructions have the meaning which they bear in the Capital Market Law, the Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority and the Investment Funds Regulations.
- C. For the purpose of implementing these Instructions, the following expressions and terms shall have the meaning they bear as follows unless the context suggests otherwise:

**Net assets of the Fund:** Cash value based on the total asset value of the Closed-Ended Investment Traded Fund taking off the liabilities.

**Closed-ended Investment Traded Fund:** a Closed-ended investment fund publicly offered and traded in the main market .

**Public Unitholders:** means, for the purpose of these instructions, any person owning a unit of a closed-ended investment traded fund, other than the following:

1. Any unitholder that owns more than (5%) of the fund's units;
2. The Fund manager and its subsidiaries; and
3. The Fund board of directors.

### **Part 3: General Provisions:**

- A. The offering, operations and management of the Closed-ended Investment Traded Funds units, in the Kingdom shall, be in accordance to these instructions and the Investment Funds Regulations, to the extent that doesn't contradict with the nature of Fund.
- B. The purchase by a unitholders of any units of Closed-ended Investment Traded Fund shall be deemed as an acknowledgment to having read and accepted the fund's terms and conditions.
- C. The units of Traded Closed-ended Investment Fund must be registered at the Depository Center.
- D. The fund capital increase may occur by accepting cash or in kind contributions or both, through the following mechanism:
  1. The fund manager shall obtain the approval of the Authority to offer additional units of the fund by accepting cash or in-kind contributions, or both.
  2. After obtaining the Authority's approval referred to in sub-paragraph (1) of paragraph (D) of this part, the fund manager shall obtain the approval of the unitholders – by a regular fund decision – to offer additional units of the fund by accepting cash or in-kind contributions, or both.
  3. If the capital increase by accepting cash contributions, or cash and in-kind contributions, the offer period for the new units shall be a minimum of (5) days within a period of (6) months as maximum from the date of the authority's approval.

4. Where the minimum initial offer amount required was raised, the offered units shall be allocated to the unitholders subscribing on the unitholders meeting at first, then allocate the remaining units (if any) to the public, and the excess money shall be refunded to the subscribers in cash, within a period not exceeding 15 days after the offer period has elapsed, which is set out in the terms and conditions of the fund. The ownership of the in-kind contributions to be possessed must be transferred in favor of the fund, and the new units shall be listed in the market in a period not exceeding 60 days prior to the unitholders' approval. Moreover, units allocated in-kind to subscribers may not be disposed of within the first year of their trading commencement.
  5. Where the capital increase is made through accepting in kind contributions, the additional units are allocated to the subscribers immediately in kind after obtaining the unitholders approval referenced in sub-paragraph (2) of paragraph (D) of this Part, provided that the ownership of the in-kind contribution to be possessed is transferred in favor of the fund, and the new units are listed in the market within a period not exceeding 60 days prior to the unitholders' approval. Moreover, those units may not be disposed of within the first year of their trading commencement.
  6. With regards to the provisions of sub-paragraph (3) of paragraph (D) of this Part, and where the minimum initial offer amount required to be raised by the public was not obtained which is set out in the terms and conditions of the fund, the fund manager shall cancel the offer and refund the subscribers' money with no deduction within 5 days of the offer period elapsing.
- E. In kind contributions, referred to in paragraph (D) of this Part, shall be evaluated by valuers independent from the fund manager. This is after ensuring such valuers have obtained all licenses and authorizations from related government entities to practice their business.

- F. The unitholder may exercise all rights in relation to the units including, but not limited to, the right to vote at meetings of unitholders.
- G. Direct listing of the closed-ended investment fund may be made if it meets the requirements of these instructions, provided that a request of such is submitted to the Authority, and its approval is obtained.
- H. The fund manager must publish all information required be disclosed under Part (10) of these Instructions on its's website and the Exchange's website. the disclosed information must be complete, clear, accurate and not misleading.
- I. In case of a violation of any of the restrictions referred to in these Instructions or in the fund's terms and conditions due to a change of circumstance that is beyond the control of the fund manager and such violation is not rectified within one month, the fund manager must notify the Authority of such event in writing. The fund manager shall be indicating the action and period of time required to rectify the matter and the Authority may at its absolute discretion change the period for rectification.
- J. The Authority may waive a provision of these Instructions in whole or in part as it applies to a person, either based on an application from such person or on the Authority's own initiative.
- K. As an exception from the provisions of paragraph (f) of Article (71) of the Investment Funds Regulations, the fund manager isn't required to provide each unitholder with information related to the net value of the units the unitholder owns and the record of its transactions in the fund's units.
- L. The fund manager shall disclose all expenses of establishing and offering of the Closed-ended Investment Traded Funds .
- M. No person, group of persons, company or group of companies having their names listed in the terms and conditions of the fund that they, upon establishment, have units in the Fund (through in-kind contributions), may

dispose of the units to which they were subscribed during the first year of commencement of the trading of the units of the Fund in question.

N. To achieve the Independence of a member of the Board of Directors, the following must be complied with:

1. An Independent Director shall be able to perform his/her duties, express his/her opinions and vote on decisions objectively with no bias in order to help the Board make correct decisions that contribute to achieving the interests of the fund.
2. The Board shall conduct annual assessment to the extent of the member's independence and ensure that there are no relationships or circumstances that affect or may affect his/her independence.
3. With consideration to the definition of "Independent Member" in the Invest Funds Regulations and the Glossary of defined terms used in the Regulations and Rules of the Capital Market Authority, cases negate the independence requirement for an Independent Director in the Board of a closed-ended investment traded fund, include but are not limited to, the following:
  - a) if he/she holds five percent or more of the fund's units or units of another fund under the management of the same fund manager; or is a first degree relative of someone who owns such percentage.
  - b) if he/she is a representative of a legal person that holds five percent or more of the fund's units or units of another fund under the management of the same fund manager;
  - c) if he/she is a representative of a legal person that holds five percent or more of the shares of the fund manager, an affiliate of the fund manager, the custodian or an affiliate of the custodian;
  - d) if he/she is a first degree relative of any member of the Board of the fund or any other fund under the management of the same fund manager;
  - e) If he/she is a first degree relative of any employees of related parties in the fund.

- f) If he/she has worked or has been employed by the Fund Manager or any party related to the Fund during the past two years, or has been a holder of a controlling shares in any of these parties during the past two years.
- g) If he/she has received money from the Fund in addition to the remuneration of the Board of Directors.

## Part 4: Requirements of listing a Closed-ended Investment Traded Funds in the main market

A. The following must be satisfied when submitting an application to the Authority to list units of the Closed-ended Traded Investment Fund:

1. Fund Type: The traded investment fund must be a closed-ended fund.
2. Minimum to establish the fund: the minimum value of the total asset of the fund must be at least SAR 500 million at establishment.
3. The nominal value per unit: the nominal value per unit must be SAR 10.

B. For units' registration and approval of listing, it's required that such units have sufficient liquidity as per the following:

1. The number of unitholders from the public shall be no less than 200 unitholders;
2. The ownership percentage of unitholders from the public shall be no less than (30%) of the total fund's units.
3. The requirements set forth in sub-paragraphs (1) and (2) of paragraph (B) of this Part shall constitute continuing obligations on the fund manager.
4. If the fund manager, following having such units listed, becomes aware of the decrease in the percentage of fund units owned by the public, or becomes aware of the decrease in the number of fund units' owners, as per the requirements of the sub-paragraph (1) and (2) of paragraph (B) of this Part, the fund manager must take the necessary corrective actions to ensure that the relevant requirements are met.

## **Part 5: Investment Areas**

With no prejudice to the provisions of article (40) of the Investment Funds Regulations, the Closed-ended Investment Traded Funds shall be with regards to the following provisions:

1. As an exception from the provisions of paragraph (g) of Article (40) of the Investment Funds Regulation, the closed-ended investment trade fund may invest money and assets of the fund in private funds, provided that such investment does not exceed 25% of net assets value. Moreover, specialized public funds may not invest in private funds.
2. As an exception from the provisions of paragraph (b) of Article (40) of the Investment Funds Regulation, the fund manager may not invest the money and assets of the fund in the field of real-estates investments.
3. As an exception from the provisions of paragraph (H) of Article (40) of the Investment Funds Regulation, the borrowing of the fund may not exceed (30%) of its total asset value.

## **Part 6: Investment Restrictions:**

With regards to the relevant provisions of article (41) of the Investment Funds Regulations, the following provisions shall apply to the Traded Closed-ended Investment Fund:

1. As an exception from the provisions of paragraph (i) of Article (41) of the Investment Funds Regulation, a percentage of more than (10%) of the fund's net assets may be invested in illiquid assets.

2. As an exception from the provisions of paragraph (1) of this Part, the fund manager may not invest more than (25%) of the fund's net asset value in a single asset.
3. As an exception from the provisions of paragraph (2) of this Part and the provisions of sub-paragraph (1) of paragraph (g) of Article (41) of the Investment Funds Regulations, a percentage of more than (35%) of the fund's net asset value may be invested in debt instruments issued by the government of the kingdom or any sovereign entity.

### **Part 7: Net asset value of a Closed-ended Investment Traded Funds s**

With regards to the provisions of Articles (66) and (67) of the Investment Funds Regulations, the fund manager must publish the net asset value of each unit during a period consistent with the nature of the fund's assets, provided that such period doesn't exceed a maximum of six months.

### **Part 8: Offering requirements:**

- A. The fund manager seeking to offer and list units of a traded closed-ended investment funds in the Exchange shall submit an application to the Authority.
- B. In addition to the requirements set forth in article (54) of the Investment Funds Regulations, the terms and conditions of the fund shall include all information necessary to enable potential unitholders to make an informed decision based on sufficient information regarding the investment being offered to them, in addition to the following information:
  1. Key dates and initial subscription procedures: this section must include the following information:
    - a) timetable showing the expected dates of the initial offering
    - b) description of the initial subscription procedures.

- c) The mechanism of the fund manager to allocate units among subscribers.
  2. The mechanism of increasing the fund's capital, though accepting cash or in kind contributions, or both.
  3. A letter by the legal advisor, who is licensed to practice Law in Saudi Arabia, regarding the legal due diligence report in the form set out in Annex 3 of these Instructions.
  4. A letter by the Fund manager regarding the due diligence report in the form set out in Annex 4 of these Instructions.
- C. When submitting an offer application , the fund manager must provide the Authority with any contracts related to the fund or the fund's assets management.
- D. When submitting an application for offering, the fund manager shall provide the Authority with the name of, at least, two receiving agents, one of which is a commercial bank.

## **Part 9: Approval of the Authority and consent of unitholders on fundamental changes**

With regards to the provisions of article (56) of the Investment Funds Regulations, any change to the fund's capital shall constitute a fundamental change.

## **Part 10: Disclosure requirements**

### **A. Disclosure of Material Developments**

- A. The fund manager shall promptly disclose to the Authority and the unitholders any material developments in the scope of the fund's activities, which are not public information and may affect the assets and liabilities, its financial position or the general course of its business, and which:
- a) may cause a change in the price of the listed units; or

b) significantly affect the fund's ability to meet its obligations related to the debt instruments.

B. To determine whether a development falls within the scope of this paragraph, the fund manager must assess the situation of whether any careful unitholder would be likely to take into consideration such development when making its investment decisions.

### **B. Disclosure of Certain Events**

The fund manager shall promptly disclose to the Authority and the unitholders any of the following developments (whether it was material development as per paragraph (A) of this Part or not):

1. any transaction to buy, sell, lease or mortgage an asset at a price equal to or greater than (10%) of the net asset value of the fund's assets according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
2. any losses equal to or greater than (10%) of the net asset value of the fund's assets; according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
3. any changes in the composition of the fund's board of directors.
4. any dispute, including any litigation, arbitration or mediation where the value involved in dispute or claim is equal to or greater than (5%) of the net asset value of the fund's assets; according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
5. the increase or decrease in the net assets of the fund equal to or greater than 10% according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
6. the increase or decrease in the gross profit of the fund equal to or greater than 10% according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.

7. any transaction between the fund and a related party or any arrangement through which the fund and a related party invest in any project or asset or provide financing therefor, if such transaction or arrangement is equal to or greater than (1%) of the gross profits of the fund according to the latest audited annual financial statements.
  8. any interruption in the principal activities of the fund's assets, the impact size of which equal to or greater than (5%) of the gross profits according to the latest audited annual financial statements.
  9. any change in its auditors.
  10. the passing of any judgment, decision, declaration or court or jurisdiction entity order, whether at first instance stage or appeal stage, which may adversely affect the fund's utilisation of any portion of its assets which its total value equals to or exceeds (5%) of the net assets of the fund, according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
  11. any suggested change to the fund's capital.
- C. If the fund manager deems the disclosure of any matter required to be disclosed under these instructions would be unduly detrimental to the fund, and the omission of such is not likely to mislead unitholders with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question, the fund manager may apply to waive the relevant requirement or postpone it. The fund manager must in that case provide the Authority on a strictly confidential basis with a statement of the relevant information and the reasons justifying that such information should not be disclosed at that time. The Authority may approve the request for postponing or waiving the relevant requirement or reject it. If the Authority approves the application, it may, at any time, obligate the fund manager to announce any information related to such waiver or postponement.

- D. All information and material developments set forth in this Part shall be deemed confidential information until they are announced. Before the announcement, the fund manager shall not disclose such information to any party not bound by a confidentiality obligation and protection of such information. The fund manager must also take all necessary steps to ensure no information or material developments are leaked before announcing it as per these instructions.
- E. The fund manager must determine the level of necessity to publish an announcement to the public to counter rumors related to any material developments, the Authority may also obligate the fund manager to make such announcement as it deems appropriate.
- F. The fund manager must comply with the provisions of the Instructions for the Investment Funds Announcements.

## **Part 11: Trading Suspension and Cancellation of Listing**

- A. The Authority may at any time suspend the trading of a Closed-ended Investment Traded Funds 's units or cancel its listing as it deems appropriate, in any of the following circumstances:
1. the Authority considers such action is necessary for the protection of investors or the maintenance of an orderly market.
  2. If the Fund Manager or the custodian fails, in a manner which the Authority considers material, to comply with the Capital Market Law and its implementing regulations.
  3. If the liquidity requirements set out in sub-paragraphs (1) and (2) of paragraph (B) of Part (4) of these Instructions are not satisfied.
  4. If the Authority considers that the fund or its assets do not have a sufficient level of operations to justify continuing the trading of its units on the Exchange.
  5. elapsing of the fund's period.
  6. The issuance of decision to Terminate the fund in the unitholders meeting
  7. any other circumstances that the authority may deem necessary to suspend trading or cancel the listing of the fund.
- B. The fund manager may request the Authority in writing to temporary suspend the trading or cancel the listing the Closed-ended Investment Traded Funds 's units. The request shall include specific reasons for the suspension or cancellation, and the Authority may accept, reject or conditionally accept the request as it deems appropriate.

## **Part 12: Publication and entry into force**

These instructions shall be effective upon their publication.

## **Annex 1**

### **FORM OF A LEGAL ADVISOR'S LETTER**

**[To be provided on the legal advisor's letterhead]**

To: The Capital Market Authority

We, acting as legal advisor to (-----) [name of the fund manager] "Fund Manager" in respect of the fund manager's request to offer Closed-ended Investment Traded Funds units and list them in the market (details of the REIT), confirm our independency from the Fund Manager.

We further refer to the terms and conditions prepared in relation with the fund [details of the offer], and more specifically, in connection with the application submitted to the Capital Market Authority (the "Authority") for the offer of Closed-ended Investment Traded Funds units and listing them in the market, and in line with the requirements of the Capital Market Law, the Investment Funds Regulation and the Instructions for the Closed-ended Investment Traded Funds, we particularly advised the fund manager of the requirements that should be included in the legal chapters of the terms and conditions, the fulfillment of the assets to all regulatory requirements and the soundness of the title deeds of such assets in possession. In this respect, we have carried out such further review and enquiries as we consider appropriate in the circumstances.

In this advisory capacity, we confirm that we are not aware of any material matter consisting a violation by the fund manager toward its compliance with the requirements of the Capital Market Law or any conditions required under Investment Funds Regulation and Instructions for Closed-ended Investment Traded Funds, including the requirements of the content of the terms and conditions as is at the date of this letter.

## ANNEX 2

### FORM OF A FUND MANAGER'S LETTER

**[To be provided on the fund manager's letterhead]**

To: The Capital Market Authority

In our capacity acting as the fund manager of (-----name of the fund-----) in respect of offering a Closed-ended Investment Traded Funds units under the name (-----name of the fund-----), and registering and listing its units in the Saudi Stock Exchange (Tadawul), we, (-----name of the fund manager-----) confirm, to the best of our knowledge, and through conducting due diligence and making enquiries of the fund, that the fund has satisfied all conditions required for registration, offer and listing of its units and has satisfied all other matters required by the Capital Market Authority (the "Authority") as of the date of this letter. (-----name of the fund manager-----) further confirms that it has, to the best of its knowledge and within its capacity as fund manager, provided to the Authority any information or clarifications in such form and within such time limit as the Authority required for the purpose of verifying whether (-----name of the fund manager-----) and the fund have complied with the Capital Market Law, the Instructions on Closed-ended Investment Traded Funds, the Investment Funds Regulations and the Offer of Securities regulations.

In particular, (-----name of the fund manager-----) confirms that:

- It has provided all the relevant services required by the Instructions on Closed-ended Investment Traded Funds and the Investment Funds Regulations, with due care and skill.
- It has taken reasonable steps to ensure that the directors of the fund understand the nature and extent of their responsibilities under the Capital Market Law and its Implementing Regulations.
- It has come to a reasonable opinion, based on due enquiry and professional experience, that:

- The fund has satisfied all relevant requirements the Instructions on Closed-ended Investment Traded Funds, the Investment Funds Regulations (including provisions regarding the Terms and Conditions.)
- All nominated members of the Fund's Board of Directors satisfy the eligibility requirements set out in the Authority's Rules and Regulations, and that the independent members of the Board satisfy the definition of the Fund Independent Board Member as provided in Glossary Of Defined Terms Used In The Regulations And Rules Of The Capital Market Authority.
- Assets are free of any regulatory violations that prevent or may result in the non-utilization or operation of buildings, and that the assets are technically intact and free of any major engineering faults or defects that may prevent or may result in the non-utilization or operation of buildings. or that may in turn cause costly repairs and major changes.
- that all matters known to (-----name of the fund manager-----) which should be taken into account by the Authority when considering the application for registration and listing have been disclosed to the Authority.