

Capital Market Authority

Closed-ended Investment Traded Funds Instructions

Issued by the Board of the Capital Market Authority
Pursuant to its Resolution Number 2-66-2018 Dated 22/9/1439H
Corresponding to 6/6/2018G Based on the Capital Market Law
Issued by Royal Decree No M/30 dated 2/6/1424H

Arabic is the official language of the Capital Market Authority

Important Notice: The current version of these Regulations, as may be amended, can be found at the Authority website: www.cma.org.sa

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Part 1: Preliminary

- a. The purpose of these Instructions is to regulate the offering, registration and management of closed ended investment traded funds units and associated activities in the Kingdom.
- b. These Instructions shall be read in conjunction with and in addition to the Capital Market Law and its Implementing Regulations.

Part 2: Definitions

- a. Any reference to the “Capital Market Law” in these Instructions shall mean the Capital Market Law issued by 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, unless the contrary intention appears.
- c. For the purpose of implementing these Instructions, the following expressions and terms shall have the meaning they bear as follows unless the contrary intention appears:

The Fund's Net Assets: Cash value based on the total assets value of the Closed-Ended Investment Traded Fund minus its liabilities.

Closed-Ended Investment Traded Fund: a closed-ended investment fund that is publicly offered and in which its units are traded on the Main Market.

Public Unitholders : means in these Instructions, , any unitholder who a unit or units in the Closed-Ended Investment Traded Fund, other than the following:

- 1) any unitholder who owns (5%) or more of the fund's units;

- 2) the fund manager and its affiliates; or
- 3) the fund's board of directors.

Part 3: General Provisions

- a. The offering, operations and management of the Closed-Ended Traded Investment Fund in the Kingdom shall be in accordance with these Instructions and the Investment Funds Regulations, to the extent that they apply to the nature of the Close-Ended Investment Traded Funds.
- b. The unitholder of a Close-Ended Investment Traded Fund is deemed to have read and accepted the fund's terms and conditions upon purchasing a unit of a Closed-Ended Investment Traded Fund from the Exchange.
- c. The units of the Closed-Ended Investment Traded Funds must be registered with the Securities Depository Center.
- d. The fund's total assets value may increase by accepting cash contributions or in-kind contributions, or both, through the following mechanism:
 1. the fund manager must obtain the Authority's approval 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 must obtain the approval of the unitholders – by an ordinary fund resolution – to offer additional units of the fund by accepting cash contributions or in-kind contributions, or both.
 3. if the fund total assets value is to increase by accepting cash contributions, or cash and in-kind contributions, the new units offering period shall be a minimum of (5) days within a period not later than (6) months from the date of the Authority's approval.

4. where the minimum initial offer amount required is raised, the offered units shall be first allocated to the unitholders registered on the day of the unitholders' meeting ,then allocate the remaining units (if any) to the remaining subscribers, and the excess money must be refunded (if any) to the subscribers in cash, within a period not exceeding (15) days after the end of the offering period, which is set out in the terms and conditions of the fund. The ownership of the in-kind contributions that is to be acquired must be transferred for the interest of the fund, and the new units shall be listed on the Exchange within a period not exceeding (60) days from the end of the offering period. It is not permissible to dispose the units that have been allocated to subscribers owing (5%) or more of the fund through in-kind contributions in accordance with paragraph (d) of this part within the first year of their trading commencement.
5. where the fund's total assets value increase is made through accepting in-kind contributions, the additional units shall be allocated to the subscribers by in-kind contributions immediately after obtaining the unitholders' approval referred to in sub-paragraph (2) of paragraph (d) of this part, provided that the ownership of the in-kind contribution to be acquired is transferred for the interest of the fund, and the new units are listed on the Exchange within a period not exceeding (60) days from the date of the unitholders' approval. It is not permissible to dispose the units allocated to subscribers by in-kind contributions of (5%) or more through the process of increasing the fund's total assets value in accordance with paragraph (d) of this part within the first year of their trading commencement.
6. without prejudice to sub-paragraph (3) of paragraph (d) of this Part, and where the minimum amount required to be raised and which is set out in the terms and conditions of the fund was not fulfilled, the fund manager must cancel the offer and return the subscribers' money with no deduction within a period not exceeding (5) days of the end of the offering period.

- e. In-kind contributions, referred to in paragraph (d) of this part, must be evaluated by two valuers independent from the fund manager after ensuring that such valuers have obtained all the required licenses and authorizations from the related government entities to practice their profession.
- f. The unitholder shall be entitled to exercise all rights in relation to the units including, but not limited to, the right to vote at the meetings of unitholders.
- g. The fund manager must publish all the required information to be disclosed as per part (10) of these Instructions on its website and the Exchange's website and such information must be complete, clear, accurate and not misleading.
- h. If any of the limitations set forth in these Instructions or in the fund's terms and conditions due to a change of circumstances that is beyond the control of the fund manager or the sub-Manager and the breach has not been rectified within (5) days from the date of the occurrence of such breach, the fund manager must immediately notify the Authority of such event in writing, indicating the action taken and the period of time required to rectify the matter. The Authority may at its absolute discretion vary the time limit for rectifying such breach .
- i. the fund's terms and conditions shall allocate a percentage of the total offer amount for institutional investors.
- j. Without prejudice to the provisions of paragraph (c) of article (56) of the Investment Funds Regulations, the fund manager must disclose the details of fundamental changes on the fund's terms and conditions on its website and the Exchange's website (10) days before the date in which the changes become effective.

- k. 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.
- l. With exception to the provisions of paragraph (f) of Article (71) of the Investment Funds Regulations, the fund manager is not required to provide each unitholder with information related to the net assets value of the units the unitholder owns and the record of its transactions in the fund's units.
- m. No person or group of persons having their names listed in the terms and conditions of the fund that they, upon establishment, indicating their ownership of (5%) or more of the fund units (through in-kind contributions), may dispose any of the units in which they subscribed, during the first year of trading commencement of the relevant fund's units.
- n. To achieve the independence of a member of the board of directors, the following must be complied:
 - 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 an annual assessment of the member's independence and ensure that there are no relationships or circumstances that affect or may affect his/her independence.
 - 3. With regards to the definition of "Independent Member" in the Investment Funds Regulations and the Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority, cases that 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 (5%) or more of the fund's units or the 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 (5%) or more of the fund's units or the 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 (5%) 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 any related party of the fund.
- f. if he/she is an employee or used to be an employee during the preceding two years, of the fund manager or any party related to the fund, or if he/she, during the preceding two years, held a controlling interest in any of these parties.
- g. if he/she receives financial consideration from the fund in addition to the remuneration for his/her membership of the board.

Part 4: The Conditions for Offering Closed-Ended Investment Funds

The following must be must be satisfied when applying:

- 1) **The fund type:** the investment traded fund must be a closed-ended fund.
- 2) **The minimum requirement for establishment:** the fund's total assets value must be 300 million Saudi Riyals at least, at establishment.
- 3) **The nominal value per unit:** the nominal value per unit must be 10 Saudi Riyals.
- 4) **Subscription consideration:** public unitholders may only subscribe by way of cash contributions.
- 5) **Subscription limit:** the minimum subscription must not exceed 1000 units per unitholder.

Part 5: Scopes of Investment

Without prejudice to the provisions of Article (40) of the Investment Funds Regulations, any Closed-ended Investment Traded Fund must comply with the following conditions:

- 1) With an exception to paragraph (b) of Article (40) of the Investment Funds Regulations, the fund manager may not invest money and assets in real-estate investments.
- 2) With an exception to paragraph (g) of Article (40) of the Investment Funds Regulations, the Closed-Ended Investment Traded Fund may invest money and assets of the fund in private funds, provided that such investments do not exceed (25%) of the fund's net assets value. Also, the closed-ended investment traded feeder fund or fund of funds may not invest in private funds.

- 3) With an exception to paragraph (h) of Article (40) of the Investment Funds Regulations, the borrowing of the fund may not exceed (30%) of its net assets value.

Part 6: Investment Restrictions

Without prejudice to the relevant provisions of article (41) of the Investment Funds Regulations, the following provisions shall apply to the Closed-Ended Investment Traded Fund:

- 1) With an exception to paragraph (i) of Article (41) of the Investment Funds Regulations, a percentage of more than (10%) of the fund's net assets may be invested in illiquid assets.
- 2) With an exception to paragraph (1) of this part, the Fund Manager may not invest more than (25%) of the Fund's net asset value in a single illiquid asset.
- 3) With an exception to paragraph (2) of this part and the provisions of subparagraph (1) of paragraph (g) of Article (41) of the Investment Funds Regulations, a percentage of more than (35%) of the fund's net assets value may be invested in debt instruments issued by the government of the Kingdom or any sovereign entity.

Part 7: Net Assets of a Closed-ended Investment Traded Funds

Without prejudice to the provisions of Articles (66) and (67) of the Investment Funds Regulations, the fund manager must publish the net assets value of each unit during a period consistent with the nature of the fund's assets, provided that such period does not exceed (6) months at most.

Part 8: Offering Requirements:

- a. A fund manager seeking to offer a Closed-Ended Investment Traded fund units on the Exchange must 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 must include all necessary information to enable the potential unitholders to make an informed judgement based on sufficient information regarding the investment 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 total assets value, through accepting cash or in-kind contributions, or both.
 - 3) A letter by the fund manager's legal advisor, whom is licensed to practice the profession in the Kingdom, regarding the legal due diligence report in the form set out in Annex 1 of these Instructions.
 - 4) A letter by the fund manager regarding the due diligence report in the form set out in Annex 2 of these Instructions.
- c. When submitting an application for offering, 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 must provide the Authority with the names of two receiving agents, at least.

- e. The fund manager seeking to register and offer the Closed-Ended Investment Traded fund units must submit an application to the Authority which contains the information required under Instructions, and submit to the Exchange, at the same time, an application for listing of such units in accordance with the provisions of the Listing Rules.
- f. The fund manager may not offer units to the public without making prior arrangements for listing those units on the Exchange in accordance with the Listing Rules.
- g. The approval of the application for offering will only be given by the Authority if:-
 - 1. the Authority has received a notification from the Exchange of the Exchange's conditional approval of the corresponding application for listing pursuant to the Listing Rules;
 - 2. the conditional approval mentioned under sub-paragraph (1) of paragraph (g) of this part has not been withdrawn by the Exchange; and
 - 3. the Authority is satisfied that the information contained in the terms and conditions is complete and fulfills the requirements of the Capital Market Law and its Implementing Regulations.

Part 9: Approval of the Authority and Consent of Unitholders on Fundamental Changes

Without prejudice to the provisions of article (56) of the Investment Funds Regulations, any change to the fund's total assets value shall be considered a fundamental change.

Part 10 : Disclosure Requirements

a. Disclosure of material developments

- 1) The fund manager must disclose to the Authority and the unitholders without delay any material developments in its sphere of activity which are not public knowledge and which may affect the fund's assets and liabilities, its financial position or the general course of its business, and which may:
 - a. which leads to movements in the price of the fund's listed units; or
 - b. significantly affect the fund's ability to meet its commitments in respect to the debt instruments.
- 2) In determining whether a development falls within the scope of this paragraph, the fund manager must assess whether a prudent investor would be likely to consider information about the development in making his investment decisions.

b. Disclosure of specific events

The fund manager must disclose without any delay to the Authority and the unitholders any of the following developments (whether a material development as per paragraph (a) of this part or not):

1. any transaction to buy, sell, mortgage or lease an asset at a price equal to or greater than (10%) of the fund's net assets value 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 fund's net 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 is equal to or greater than (5%) of the fund's net assets according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later;
5. the increase or decrease in the fund's net assets 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 of the fund's gross profit equal to or greater than (10%) according to the latest audited annual financial statements;
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 thereof if such transaction or arrangement is equal to or greater than (1%) of the fund's gross revenues according to the latest audited annual financial statements;
8. any interruption in the principal activities of the fund equal to or greater than (5%) of the fund's gross revenues according to the latest audited annual financial statements;
9. any change in its external auditors;
10. the issuance of any judgement, decision, order or declaration by a court or judicial body, whether at first instance or on appeal, which may adversely affect the Fund's utilisation of any portion of its assets which is equal to or exceeds (5%) of the fund's net assets according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later; or
11. any proposed change to the fund's total assets value.

c. Disclosure relating to substantial unitholders dealings:

1. Any person must notify the Exchange if such person becomes the owner of, or is interested in, (5%) or more of the fund's units at the end of the third trading day the execution of the transaction or the occurrence of the event which results such ownership or interest; the person notification shall also include a list of persons, in which those persons, have an interest in the units that they own or control.
2. The person referred to in sub-paragraph (1) of this paragraph must notify the Exchange the event of any change to the list of persons referred to in sub-paragraph (1) of this paragraph including any event which requires the inclusion of a person to that list or the exclusion of any person who has been previously included in that list. Such notification must be made at the end of the third trading day following the occurrence of the relevant event.
3. For the purposes of this paragraph, in calculating the total number of the fund's units in which a person is interested, that person will be deemed to be interested in any units owned or controlled by any of the following persons:
 - a. a relative of that person;
 - b. a company controlled by that person; or
 - c. any other persons with which that person has agreed to act in concert to acquire an interest in the fund units.
4. the notification referred to in sub-paragraph (1) of this paragraph must contain at least the following information:
 - a. the names of the persons who own the units or who have the right to dispose of the subject units;
 - b. details of the ownership process; and
 - c. details of any loans or financial support for the ownership process that the person has received from any other persons.

- d. Where, in the opinion of the fund manager, disclosure of any matter required by these instructions would be unduly detrimental to the fund and the omission is not likely to mislead unitholders with regard to facts and circumstances, knowledge of which is essential for the assessment of the fund units in question, the fund manager may apply to postpone the relevant requirement or waive it. The fund manager must in that case provide the Authority on a strictly confidential basis with a statement of the request together with the reasons why the fund manager believes that the information should not be disclosed at that time. The Authority may approve the application for postponing or waiving the relevant requirement or reject it. If the Authority approves the application, the Authority may at any time require the fund manager to disclose any information on the waiver or postponement of the disclosure.
- e. All information and material developments set forth in this part shall be deemed confidential until they are disclosed. Before disclosing such information, the fund manager shall be prohibited from communicating such information to parties not bound by a confidentiality obligation and an obligation to protect such information. A fund manager must also take all necessary steps to prevent the leakage of any information or material developments before disclosing it as per these Instructions.
- f. The fund manager must determine the need to publish a disclosure to the public in response to rumors related to any material developments, and the Authority may require such publication to be made by the fund manager as it sees appropriate .
- g. The fund manager must comply with the provisions of the Investment Funds Announcements Instructions.

Part 11: Publication and entry into force

These Instructions shall be effective in accordance to its approval resolution.

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 on the Saudi Stock Exchange (Tadawul) (details of the Closed-Ended Investment Traded Fund), we further refer to the terms and conditions prepared in relation to 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 Fund units and listing them on the Saudi Stock Exchange (Tadawul), and in accordance with the requirements of the Capital Market Law, the Investment Funds Regulations and the Closed-Ended Investment Traded Funds Instructions, we particularly advised the fund manager of the requirements that must be included in the legal sections of the terms and conditions, and regarding the fulfillment of the assets to all regulatory requirements and the soundness of the acquired assets. In this respect, we have carried out such further review and enquiries as we consider appropriate in the circumstances, and we conducted an official study of the legal due diligence in this respect.

In this advisory capacity, we confirm that we are not aware of any material matter which constitutes a violation by the fund manager of its compliance with the requirements of the Capital Market Law or any conditions required under the Investment Funds Regulations and the Closed-Ended Investment Traded Funds Instructions in relation to the offering and listing of the Closed-Ended Investment Traded Fund units, 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 under the name (name of the fund), and registering and listing its units on 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 requires for the purpose of verifying whether (name of the fund manager) and the fund have complied with the Capital Market Law, the Closed-Ended Investment Traded Funds Instructions, the Investment Funds Regulations.

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

- It has provided all the relevant services required in the Closed-Ended Investment Traded Funds Instructions and the Investment Funds Regulations, with due care and skill.
- It has taken reasonable steps to ensure that the members of 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 enquiries and professional experience, that:

- The fund has satisfied all relevant requirements in the Closed-Ended Investment Traded Funds Instructions and 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-utilisation or operation of buildings, or that may in turn cause costly repairs and major changes. In addition to that the main activities of the assets are sound and able to fulfil their obligations to the fund.
- All matters known to (name of the fund manager) which must be taken into account by the Authority when considering the application for registration and listing have been disclosed to the Authority.