



THE REGULATIONS GOVERNING
EXCHANGE
TRADED FUNDS (ETF)

[SENT FOR GAZETTE NOTIFICATION ON MARCH 07, 2012]

PREAMBLE

Whereas in order to provide investors a convenient way to gain market exposure viz. an index or a basket of securities that trades on the Karachi Stock Exchange (KSE) like a single stock, it is deemed expedient to frame Regulations for Exchange Traded Fund (“ETF”).

Now, therefore, the Karachi Stock Exchange (Guarantee) Limited in exercise of the powers conferred by Section 34 (1) of the Securities & Exchange Ordinance, 1969 (XVII of 1969) with the prior approval of the Securities and Exchange Commission of Pakistan hereby makes these Regulations.

1. SHORT TITLE & COMMENCEMENT

- a) These Regulations shall be called “The Regulations Governing Exchange Traded Funds (ETF)”.
- b) These Regulations shall apply to all ETFs and Asset Management Companies applying for listing of such ETFs and/or ETFs which are already listed.

2. DEFINITIONS

In these Regulations the following expressions shall, unless the context requires otherwise, have the meanings herein specified below:

- i) **“Asset Management Company” (“AMC”)** shall have the same meaning as ascribed thereto under the Non-Banking Finance Companies and Notified Entities Regulations, 2008;
- ii) **“Asset Management Services”** shall have the same meaning as ascribed thereto under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;
- iii) **“Assets”** shall have the same meaning as ascribed thereto under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;
- iv) **“Authorized Participant Agreement” (“APA”)** shall have the same meaning as ascribed thereto under the Circular issued by the Commission on ETFs;
- v) **“Authorized Participant” (“AP”)** means a market maker in terms of the Regulations governing Market Makers of the Karachi Stock Exchange, appointed by the AMC under the APA and obligations and responsibilities of whom are also specified in the Constitutive Documents;
- vi) **“Benchmark Index”** means an Index approved by the Commission in the Constitutive Documents against which the performance of the ETF shall be measured;
- vii) **“Cash Component”** means the difference between the applicable net asset value of a creation unit and the market value of the Portfolio Deposit. This difference will represent accrued dividend, accrued annual charges including management fees and residual cash in the scheme;
- viii) **“Cash Payment”** means the amount equivalent to the cash component multiplied by the number of creation or redemption units; if the cash payment is positive, it means the AP should pay the amount to the AMC when creating ETF units in-kind or the AMC should pay the amount to the AP when the AP redeems ETF units in-kind; if the cash payment is negative, it means the AMC should pay the amount to the AP when the AP creates ETF units in-kind or the AP pays the amount to AMC when it redeems ETF units in-kind;
- ix) **“Central Depository”** shall have the same meaning as ascribed thereto under the Securities and Exchange Ordinance, 1969 (XVII of 1969);
- x) **“Commission”** means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997);

- xi) **“Constitutive Documents”** shall have the same meaning as ascribed thereto under the Circular issued by the Commission on ETFs;
- xii) **“Creation Unit”** means the specified number of ETF units determined by the AMC and clearly disclosed in the ETF’s Constitutive Documents for issuance or redemption;
- xiii) **“ETF”** means an Exchange Traded Fund, which is a listed index-tracking open end fund structured as a collective investment scheme whose primary objective is to achieve the same return as a particular benchmark index by investing substantially all of its assets in the constituent securities of the benchmark index. ETF issues and redeems creation units in kind through APs only;
- xiv) **“ETF Unit”** is a security that tracks a benchmark index and is listed on the stock exchange and may be bought and sold like any other share on the stock exchange;
- xv) **“Exchange”** means the Karachi Stock Exchange (Guarantee) Limited;
- xvi) **“Fund”** for the purpose of these Regulations means an index tracking open end fund structured as a collective investment scheme;
- xvii) **“INAV”** means Intra Day Net Asset Value calculated on a real time basis after incorporating the price change of underlying securities throughout business day. INAV is indicative real time Net Asset Value of an ETF unit that facilitates trading of the ETF units in the secondary market. It is calculated and disseminated by AMC however; AMC may delegate this function to a third party;
- xviii) **“In-kind Creation”** means a portfolio of securities and the cash component being delivered by an AP for its own account or on behalf of its clients, that is required for one creation unit as specified in the Portfolio Deposit by the AMC, or its integer multiples, to the AMC in Exchange for ETF Units;
- xix) **“In-Kind Redemption”** means ETF units being delivered to the AMC by an AP for its own account or on behalf of its clients in exchange for a portfolio of securities and cash component that forms one creation unit or its integer multiples as specified in the Portfolio Deposit by the AMC;
- xx) **“KATS or Karachi Automated Trading System”** means the securities automated trading system introduced by the Karachi Stock Exchange (Guarantee) Limited;
- xxi) **“Portfolio Deposit”** means a pre-defined basket of securities that represents the benchmark index together with a cash payment (if applicable) for the purposes of issuance and redemption of creation units and will be announced by the AMC and can change from time to time;
- xxii) **“Regulations”** means the Regulations Governing the Exchange Traded Funds (ETF) of the Exchange for the time being in force;
- xxiii) **“Tracking Error”** means the difference between daily returns of an ETF and that of the underlying Benchmark Index for any given period;
- xxiv) **“Trust”** means a trust established by a deed under the provisions of the Trusts Act, 1882 (II of 1882);
- xxv) **“Trustee”** shall have the same meaning as ascribed thereto under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;

Words and expressions used but not defined in these Regulations shall have the same meaning as assigned to them in the Securities and Exchange Ordinance, 1969 (XVII of 1969), Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003,

Non-Banking Finance Companies and Notified Entities Regulations, 2008 and the Circular issued by the Commission on ETFs.

3. LISTING PROCEDURE

- (1) An application for listing of a Fund as an ETF by the AMC shall be accompanied with the documents as required by the Exchange under Schedule-I to these Regulations.
- (2) The Exchange shall grant permission for listing of an ETF upon fulfillment of the requirements set forth in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, Non-Banking Finance Companies and Notified Entities Regulations, 2008, Circular issued by the Commission on ETFs and Listing Regulations of the Exchange.
- (3) An AMC pertaining to an ETF shall carry out timely disclosure of all relevant information concerning itself, such ETF and the Trustee.
- (4) The Exchange shall ensure that:
 - (i) No false statements are made in the application submitted for listing of an ETF, documents attached thereto, and offering document submitted to the Exchange;
 - (ii) The units of the Fund for which the listing application is being made as an ETF are handled in the book-entry transfer operation by a designated Central Depository or are expected to be handled in such operation by the time of its listing as an ETF;
 - (iii) The listing is not deemed inappropriate from the viewpoint of the public interest or the protection of investors.

4. TRADING AND CLEARING & SETTLEMENT OF ETF UNITS

- (1) Trading in ETF units shall be conducted under these Regulations in addition to the Regulations Governing Risk Management and all other relevant Regulations of the Exchange as amended from time to time.
- (2) The ETF units listed under these regulations shall be traded in the Ready Market through KATS and buyers and sellers may trade in ETF units in allowable lot size in the manner prescribed for listed securities through brokers of the Exchange.
- (3) Circuit breakers, netting, exposure, mark-to-market losses and other margin requirements on ETF units shall be applicable as provided for under the Regulations Governing Risk Management of the Exchange.
- (4) The settlement mechanism of ETF units shall be the same as applicable for other securities traded in Ready Market.

5. DISCLOSURE OF INFORMATION

- (1) An AMC pertaining to an ETF shall disclose the matters relating to such ETF as specified herein below, prior to opening of Exchange on a business day:
 - i) Complete details regarding the Portfolio Deposit;
 - ii) The number of ETF units, total net asset value and net asset value per unit;
 - iii) The Tracking Error.
- (2) An AMC pertaining to an ETF shall disclose the following details thereof immediately on its website and to the Exchange:
 - i) Revision of a Trust Deed or any similar written document, or cancellation of an investment trust agreement or trust agreement;
 - ii) Application pertaining to delisting of ETF;

- iii) Merger of such AMC;
- iv) Petition for commencement of bankruptcy proceedings of such AMC;
- v) Dissolution of such AMC;
- vi) Discontinuation of any business of such AMC;
- vii) De-merger of such AMC;
- viii) Transfer of the whole business of such AMC to any other entity;
- ix) Change in statutory auditors;
- x) Temporary suspension of any additional Trusts managed by the AMC, creation, redemption, sale or purchase of ETF units;
- xi) The decision to discontinue handling of ETF units in book-entry form in a Central Depository;
- xii) When the license, permit or registration necessary for the AMC to conduct business expires, or is cancelled/changed by the Commission and AMC accordingly decides not to carry out any business.
- xiii) When the license agreement from the index provider is terminated or the index is discontinued.
- xiv) Any material facts relating to the ETF or the operation, business, or Assets of the AMC which may have a significant effect on the investment decisions of investors.

6. OBLIGATIONS OF AP

- (1) The AP shall fully comply with the requirements of the APA and the Market Making Agreement with the Exchange, and shall provide an undertaking to the Exchange and the AMC of such compliance.
- (2) The Exchange shall ensure that the AP observes high standards of integrity in its dealings in ETF at the Exchange.

7. APPLICABILITY OF LISTING REGULATIONS AND OTHER ALLIED MATTERS

All provisions of the Listing Regulations of the Exchange presently in force or as amended from time to time shall be applicable **on** the AMC pertaining to an ETF unless otherwise provided in these Regulations.

8. LISTING AND ANNUAL FEE

An AMC that makes an application for the listing of a Fund as an ETF shall pay to the Exchange a listing fee, at the rate of one twentieth of one percent of the total size of the ETF subject to a maximum of rupees five hundred thousand.

An AMC pertaining to an ETF shall pay to the Exchange, in respect of each financial year of the Exchange commencing from 1st July and ending on 30th June next, an annual listing fee, which shall be payable by or before the 30th September in each calendar year, as per following schedule:

Size of Fund	Rate of fee per annum
Up to Rs. 150 million	Rs.30,000
Above Rs.150 million & up to Rs.500 million	Rs.40,000
Above Rs. 500 million	Rs.50,000

Provided further that the Board may revise the above fees or any of the slabs or add new slabs with approval of the Commission.

Provided further that an AMC applying for listing of a Fund as an ETF shall pay annual listing fee for the entire financial year of the Exchange along with the listing application irrespective of the date of its listing during the financial year.

An AMC applying for enlistment of a Fund as an ETF on the Exchange shall, in addition to other fees, pay to the Exchange a sum of Rs.25,000 as non-refundable Service Charges.

**DOCUMENTS TO BE SUBMITTED WITH LISTING APPLICATION OF AN EXCHANGE
TRADED FUND (ETF)**

The following documents and particulars duly attested by the AMC shall be submitted to the Exchange at the time of application for listing of its Fund as an ETF:-

1. Listing application under Securities & Exchange Ordinance, 1969 as per Form-I. (Annexure-A);
2. Form for submission of undertaking and payment of fees as per Form-II. (Annexure-B); (Withholding tax payment challans duly deposited shall also be submitted)
3. An unconditional undertaking on non-judicial stamp paper of Rs. 20/- as per Form-III. (Annexure-C);
4. Certified true copy of the Certificate of Incorporation of AMC of the ETF;
5. Certified true copy of the Certificate of Commencement of Business of the AMC of the ETF;
6. Certified true copy of the license to carry on Asset Management Services;
7. A copy of the Board Resolution of the AMC for listing of the Fund as an ETF;
8. Copy of Trust Deed approved by the Securities & Exchange Commission of Pakistan;
9. Brief description of the Investment Scheme and its main features;
10. Names of Directors of AMC along with their directorship of other companies listed on the Exchange (on AMC's letterhead);
11. List of Controlling Directors of the AMC;
12. Name and address of the directors and persons holding 10% or more of any class of equity security in AMC as on the date of application together with the number of shares held by each;
13. Copy of letter from Legal Advisor consenting to act in their respective capacity;
14. Copy of letter from Consultant to the issue, (if any) consenting to act in their respective capacity;
15. Copies of individual consent of all Directors, Chief Executive and Secretary of the AMC for publishing their names as Directors, Chief Executive and Secretary in the Offering Document of the Fund/ ETF;
16. 5 copies of Memorandum & Articles of Association of AMC;
17. 50 copies of printed Offering Document of the Fund and 5 copies of the draft Offering Document;
18. Copies of the prospectus/offering document issued by the AMC in respect of any security already listed on the Stock Exchange;
19. 5 copies each of the audited financial statements for the last 5 years or for a shorter number of years if the AMC is in operation only for such period. The last audited accounts incorporated in the offering document shall not be older than 6 months from the date of publication of the Offering Document;
20. Copy of application submitted with the Central Depository Company of Pakistan Limited for declaration of the ETF units as CDC eligible securities;

21. Report of State Bank of Pakistan that the names of promoters / sponsors / controlling directors of the AMC are not in the Defaulter's List of State Bank of Pakistan either in their individual capacity or in the capacity of Directors of other companies. (This will not apply to nominee Directors of the Government and Financial Institutions).
22. Report of State Bank of Pakistan that the name of the AMC as well as the names of other companies in which directors of the AMC are holding directorship are not in the defaulter's list of State Bank of Pakistan.
23. A statement containing particulars, dates of and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents except those entered into in the normal course of the business or intended business together with a brief description of the terms of such agreements;
24. A statement showing:-
 - (a) Dividends and cash bonuses paid during the last 10 years or such shorter period as the AMC/ETF may have been in existence;
 - (b) Dividends or interest in arrears, if any.
25. Certified copies of agreements with:-
 - (a) Authorized Participant (APA)
 - (b) Selling Agents
 - (c) Managing Director and Technical Directors.
26. Any other documents/material contract and such other particulars as may be required by the Exchange.

Note:

All the documents/information should be attested by the Chief Executive/Secretary of the AMC pertaining to the ETF.

FORM-I

**FORM OF APPLICATION UNDER SECTION 9 OF THE SECURITIES AND EXCHANGE
ORDINANCE, 1969 FOR LISTING A SECURITY ON A STOCK EXCHANGE**

Date: _____

The General Manager

Karachi Stock Exchange (Guarantee) Limited
Karachi

Dear Sir,

1. We hereby apply for the listing of our (name of the fund) on your Stock Exchange.
2. Necessary information and documents as required in Schedule-I of the Regulations Governing Exchange Traded Funds (ETF) of the Karachi Stock Exchange (Guarantee) Limited are furnished.

Yours Sincerely,

SIGNATURE & ADDRESS

Copy to:

The Securities & Exchange Commission of Pakistan
ISLAMABAD

FORM-II

**FORM FOR SUBMISSION OF
UNDERTAKING AND PAYMENT OF FEES**

Date:_____

The General Manager

Karachi Stock Exchange (Guarantee) Limited
Karachi

Dear Sir,

Re: **LISTING ON THE STOCK EXCHANGE**

With reference to our Listing application under Section 9 of the Securities and Exchange Ordinance, 1969, we enclose herewith the following:-

- (1) An unconditional undertaking under the Common Seal of the AMC duly signed in accordance with the provisions contained in the Articles of Association of our AMC.
- (2) A cheque of Rs._____ towards Listing Fee at the rate of one twentieth of one percent (1/20 of 1%) of the total size of the Fund of Rs._____ subject to maximum of Rs. 500,000.
- (3) A cheque of Rs._____ towards Annual Listing Fee as per your Listing Regulations.

Yours Sincerely,

(Signature of Authorized Person)

**FORM OF UNCONDITIONAL UNDERTAKING UNDER
LISTING REGULATION NO. 5 ON NON-JUDICIAL STAMP PAPER**

Date: _____

The Governing Board of Directors

Karachi Stock Exchange (Guarantee) Limited
Karachi

UNDERTAKING

We undertake, unconditionally, to abide by the Listing Regulations and the Regulations Governing Exchange Traded Funds of the Karachi Stock Exchange (Guarantee) Limited which presently are, or hereinafter may be in force.

We further undertake:

- (1) That the ETF units of our (Name of the Fund) shall be quoted on the Ready Quotation Board and/or the Futures Counter at the discretion of the Exchange;
- (2) That the Exchange shall not be bound by our request to remove the ETF units from the Ready Quotation Board and/or the Futures Counter;
- (3) That the Exchange shall have the right, at any time to suspend or remove the said ETF units for any reason which the Exchange considers sufficient in public interest, subject however to the procedure laid down in Section 9 of the Securities & Exchange Ordinance, 1969 and/or its Listing Regulations;
- (4) That such provisions in the Articles of Association of our AMC or in any declaration or agreement relating to any other security as are or otherwise not deemed by the Exchange to be in conformity with the Listing Regulations of the Exchange shall, upon being called upon by the Exchange, be amended to supersede the Articles of Association of our AMC or the nominee relating to the other securities to the extent indicated by the Exchange for purposes of amendment and we shall not raise any objection in relation to a direction by the Exchange for such amendment; and
- (5) That our ETF may be delisted by the Exchange in the event of non-compliance and breach of this undertaking.

(Signature of Authorized Person)

Common Seal of the AMC