



ISLAMIC FINANCIAL SERVICES BOARD

**EXPOSURE DRAFT
GUIDING PRINCIPLES ON DISCLOSURE
REQUIREMENTS FOR ISLAMIC CAPITAL MARKET
PRODUCTS (ŞUKŪK AND ISLAMIC COLLECTIVE
INVESTMENT SCHEMES) [IFSB-19]**

**SUMMARY OF COMMENTS RECEIVED
DURING PUBLIC CONSULTATION
AND THE IFSB SECRETARIAT RESPONSES**

Release Date of Comments	: June 2017
Public Consultation Period	: 31 October to 31 December 2016
Release Date of IFSB-19	: April 2017
Web URL of IFSB-19	: http://ifsb.org/published.php#IFSB-19

BACKGROUND

1. On 6 April 2017, the Council of the IFSB, in its 30th Meeting, resolved to approve the issuance of the Guiding Principles on Disclosures Requirements for Islamic Capital Market Products (*Şukūk* and Islamic Collective Investment Schemes) (IFSB-19).
2. IFSB-19 outlines disclosure requirements for *şukūk* and Islamic Collective Investment Schemes (ICIS), covering the main stages of disclosure, i.e. initial, ongoing (periodic and immediate) and point-of-sale. In addition, the document provides guidance on the disclosure requirements for private offerings, government and multilateral issuances and cross-border issuances with regard to *şukūk*. Apart from general principles applicable to *şukūk*, guidance have been provided for Sharī'ah-related disclosures, structure-related disclosures, as well as disclosures on the entities material to an investment decision in the *şukūk*. As for ICIS, the document suggests applications to legal structures, Sharī'ah-related disclosures, operations-related disclosures as well as disclosures for specialist ICIS.
3. Prior to the issuance of the IFSB-19, the IFSB issued the corresponding Exposure Draft (ED-19) for public consultation from 31 October to 31 December 2016. The IFSB is now publishing the summary of the feedback received during the public consultation period, along with responses by the Secretariat. The feedback received comprised not only written feedback but also verbal comments shared during a Roundtable Discussion and a Public Hearing on ED-19 held on 30 November and 13 December 2016, respectively.
4. The IFSB received a total of 120 comments on the ED-19 during the Public Consultation. In line with the recommendations in paragraph 5.11 of the revised '*Guidelines and Procedures for the Preparation of Standards and Guidance/Technical Notes – April 2016*', this document is released as a summary of the main feedback to ED-19 received during the Public Consultation process, along with the key actions undertaken by the Secretariat.

COMMENTS* ON ED-19

No.	Name of Institution/Body/Individual*	IFSB Membership Type
1.	Banking Regulation and Supervision Agency, Turkey	Full
2.	Central Bank of Kuwait	Full
3.	Indonesia financial Services Authority – Otoritas Jasa Keuangan (OJK)	Full
4.	Securities and Exchange Organization of Iran	Full
5.	Capital Market Authority, Kuwait	Associate
6.	Labuan Financial Services Authority, Malaysia	Associate
7.	Securities and Commodities Authority, United Arab Emirates	Associate
8.	The Bank of Korea	Associate
9.	Abu Dhabi Islamic Bank, United Arab Emirates	Observer
10.	AmlInvestment Bank Bhd, Malaysia	Observer
11.	Bank Islam Malaysia Berhad, Malaysia	Observer
12.	CIMB Group Holdings Berhad, Malaysia**	Observer
13.	Hong Leong Islamic Bank, Malaysia	Observer
14.	Insurance Authority, United Arab Emirates	Observer
15.	Mizuho Bank, Ltd., Japan	Observer
16.	National Bank of Kyrgyz Republic	Observer
17.	RHB Islamic Bank Berhad, Malaysia	Observer
18.	S&P Global Ratings, UAE	Observer
19.	Sudan Financial Services Company, Sudan	Observer
20.	The Hong Kong Association of Banks, Hong Kong	Observer
21.	Turkey Finans Katilim Bankasi A.S., Turkey	Observer
22.	Ziraat Kaytilim Bankasi, Turkey	Observer
23.	Egyptian Financial Supervisory Authority	Non-Member
24.	General Council for Islamic Banks and Financial Institutions (CIBAFI)	Non-Member
25.	Zaid Ibrahim & Co., Malaysia	Non-Member
26.	Hissam Kamal Hassan (Research Fellow, ISRA)	Individual
27.	Osman Aurakzai (Islamic Banking Research Center, Jeddah)	Individual

* Arranged in alphabetical order as per Membership Type

** CIMB Group Holdings Berhad had provided verbal comments (Roundtable) and additional comments in writing.

Summary of Main Comments and the IFSB's Responses

General Comments

No.	Theme	Issues/ Comments	IFSB Response
1.	2 SEPARATE STANDARDS FOR ŞUKŪK AND ICIS	The disclosure requirements for <i>şukūk</i> and ICIS should be addressed in 2 separate standards.	The mandate given to the Working Group (WG) by the Council of the IFSB was to produce a single standard on disclosure in Islamic capital markets. We consider that it should not be difficult for a regulator that wishes to do so to implement the provisions for <i>şukūk</i> and ICIS separately.
2.	DISCLOSURES FOR RETAIL INVESTORS	There is no emphasis on disclosures for retail investors.	The standard has addressed disclosures for retail investors in paragraphs 19, 22, 60, 131, 132, 133, 135, 136, 170, 175.
3.	STRUCTURE OF STANDARD – ISSUANCE AND LISTING	To assist regulators, the standard should be structured to address the disclosure requirements at the point of issuance and listing.	We take note of this comment. However, the thematic grouping as used in the standard allows a better discussion of underlying issues. We consider that, in each area, the standard is clear on when each of the specified disclosures should be made.
4.	ADEQUATE CONTROLS	What are the adequate controls put in place to ensure the <i>şukūk</i> and ICIS comply with the regulations set by the regulators?	Being a disclosure standard, it is intended to be implemented, like its conventional counterparts, by incorporation into national regulation. If the required disclosures are not made, the controls would be exactly the same as for conventional disclosures in the jurisdiction in question, normally involving intervention by the securities commission and/or the relevant exchange.
5.	DISCLOSURES FOR ISLAMIC EQUITIES	Does the IFSB have plans to come up with disclosure requirements for Islamic equities?	At present it appears that the regulatory designation of certain equities as Islamic, was not a common enough practice internationally to require treatment in the current standard.

No.	Theme	Issues/ Comments	IFSB Response
			Should it become so in the future, the Council will decide whether to deal with it in some future IFSB standard.
6.	IOSCO VS IFSB STANDARDS	The ED-19 is meant to be complementary to existing IOSCO standards by dealing with issues specific to ICM products. Greater clarity and detail should be given concerning when an issuer or investor should consider IOSCO standards in conjunction with IFSB standards and when it should not.	IFSB standards are implemented through regulatory authorities within the applicable Sharī'ah governance, legal and regulatory framework that exist in their jurisdiction. It will thus be for RSAs to determine the standards that should be complied with by any particular issuer.

Section I: Introduction

No.	Theme	Issues/ Comments	IFSB Response
7.	DIFFERENCE OF ŞUKŪK TO CONVENTIONAL BONDS	To highlight the difference of <i>şukūk</i> to conventional bonds.	<i>Şukūk</i> are indeed different from conventional bonds in terms of their Sharī'ah basis and rulings and this has been reflected under footnote no. 2.
8.	KEY INFORMATION DOCUMENT (KID)	Key Information Document (KID) are currently not consumer friendly. It is focused on design and not outcome.	The standard does not propose the use of KID, but simply recommends disclosures to be made to retail investors in a KID, where such a document is used in the jurisdiction.
9.	REGULATORY APPROACH	The regulatory approach should be in itself Islamic, not just Islamic instruments. Conventional approach to disclosure is evolving and not wholly compatible with Islamic ideal (<i>caveat emptor vs caveat venditor</i>).	The standard is written for all capital market regulators who are members of the IFSB which include regulators from secular countries such as Luxembourg, Hong Kong and the Philippines. We note, however, that capital markets regulation in general does indeed place a greater responsibility on vendors than the ordinary commercial law, partly to compensate for asymmetries of information and bargaining power.

No.	Theme	Issues/ Comments	IFSB Response
10.	SHARĪ'AH COMPLIANCE ON ONGOING BASIS	<i>Şukūk</i> are normally reviewed and authenticated for SharĪ'ah Compliance only at the time of initial point of sale and there is no establish practice to ensure SharĪ'ah compliance on an ongoing basis like annual SharĪ'ah compliance certification and disclosure to the exchange.	Ongoing disclosure of material changes is, however, essential so investor can decide whether to remain invested in the <i>şukūk</i> .
11.	COMPREHENSIVE DISCLOSURE REQUIREMENTS FOR ICIS	There should be a detached comprehensive set of disclosure requirements for ICIS. In view of that, IFSB should consider extending the implementation deadline, particularly specific disclosure requirements for ICIS.	We note that the IOSCO standards, already in force, have comprehensive disclosure standards for conventional CIS, and we do not consider that the additional disclosures required by this standard are sufficient to justify a delay in implementation.

Section II: Guiding Principles (General Principles)

No.	Theme	Issues/ Comments	IFSB Response
12.	SPECIFIC DISCLOSURE REQUIREMENTS	<p>The standard should include the following specific disclosure requirements:</p> <ul style="list-style-type: none"> (i) The mainline of business activity undertaken by the issuer and any other activity planned to be undertaken during the tenor of the <i>şukūk</i> or ICIS. (ii) The entire sources of funds of the issuer besides the issuance amount (i.e. the entire debt amount existing or planned to be borrowed during the tenor of the instrument, must be disclosed with tentative dates) (iii) Full and accurate disclosure of the uses of funds that is: <ul style="list-style-type: none"> a. Percentage of funds applied to the mainline of business activity undertaken. 	<p><u><i>Şukūk</i></u></p> <ul style="list-style-type: none"> (i) This is required in the standard under paragraphs 98, 123, 139, 143. (ii) Future debt amount is speculative and issuers are not required to disclose it. Existing debt is disclosed via financial statements. (iii) We specify disclosure of how proceeds will be used, and disclosure of any SharĪ'ah deficiency in the underlying assets, under paragraphs 70 and 107. <p><u>ICIS</u></p> <p>Since an ICIS normally invests in the securities of many issuers, and its investments will properly change over its lifetime, such disclosures could not be made in advance. The</p>

No.	Theme	Issues/ Comments	IFSB Response
		b. Percentage of non-Sharī'ah compliant investment made (existing or planned with tentative dates) must be disclosed	disclosures that can properly be made in advance are concerned with the way that investments will be selected; see Principle C.1.
13.	MATERIALITY	What is material has not been defined clearly and is left ambiguous regarding Sharī'ah matters. From a Sharī'ah perspective the bottom line should be that the information should be sufficient enough for a layman to understand how it works to generate money for his investment.	Materiality generally means something that influences an investment decision. It is not possible to define what is material, without the context of a particular instrument and target investors. For example, there are issues that are material in the context of a property fund (the activities of tenants) that would not be material in a <i>ṣukūk</i> issued by an airline. Similarly, there are issues that might be material for an instrument targeting international investors that would not be material for one targeting domestic investors (currency risk might be an example). Also, private institutional offerings are commonly directed only at sophisticated institutional investors, whose understanding can be assumed to be greater than that of laymen.
14.	STANDARD FORMAT/ TEMPLATE	The standard should provide a standard format or template of disclosure requirements for regulators or supervisory authorities to follow.	It is up to an RSA to create a template consistent with its existing disclosure requirements if it wishes. A single template will not fit within every jurisdiction's practice.
15.	SHARĪ'AH PROCESS AND PROCEDURES	To require the disclosure of Sharī'ah process and procedures.	Agreed in principle. The Sharī'ah process and procedures for <i>ṣukūk</i> are required under paragraphs 66, 138, 141.
16.	RISK OF UNDERLYING ASSETS	It is recommended that the risk of the underlying assets should also be disclosed.	Agreed in principle. This is addressed under paragraph 70.
17.	WHAT IS TIMELY DISLCOSURE	The standard quotes conventional standards and regulation for disclosure regimes that provide appropriate timescales, but does not give any such guidance for timely disclosure of information which is material to the investment decision	'Timely' is a term used by IOSCO without being specific and what is meant by timely will vary from one country to another and from one situation to another. The term 'timely information' is used because of the structural differences between countries. Moreover,

No.	Theme	Issues/ Comments	IFSB Response
			timeliness cannot be defined in each country, certainly not in numerical terms, therefore timeliness should be determined at the national level instead of being defined under the standard.

Section II: Guiding Principles (*Sukūk* Disclosure)

No.	Theme	Issues/ Comments	IFSB Response
18.	EXEMPTIONS FOR GOVERNMENTS, GOVERNMENT ENTITIES AND MULTILATERAL FINANCIAL INSTITUTIONS	Full exemption on disclosure requirements should not be given to Governments, Government Entities and Multilateral Financial Institutions. The exemptions could provide incentive for not disclosing certain material information which will create challenges in cross-border offerings.	The standard is aimed at capital market authorities, who in general exempt entirely from their rules issuances by their own governments and major multilateral bodies e.g. the World Bank and its agencies and the Islamic Development Bank. Some of these bodies require such exemption as a condition of issuance. In practice, however, we observe that governments and multilateral bodies do largely follow regulatory standards (insofar as these are applicable to what are inherently non-commercial bodies). We have amended paragraphs 42 and 46 to clarify this matter.
19.	DISCREPANCY FROM AAOIFI STANDARDS OR ISLAMIC INTERNATIONAL FIQH ACADEMY FATWĀ	To require disclosure of discrepancy from the AAOIFI standards or International Islamic Fiqh Academy in the Fatwa and prospectus.	There is an acceptable diversity of views on Sharī'ah. Just because a major expert/ body in Sharī'ah does not agree with the <i>şukūk</i> structure, there should not be an assumption of non-compliance, as long as there is a respected fatwa by the appointed Sharī'ah adviser under the <i>şukūk</i> .
20.	DISCLOSURES FOR ŞUKŪK	The disclosure framework for any <i>şukūk</i> should reflect all the characteristics of the security, its type, rating and differentiating it from other types of securities. In addition to identifying any of its financial or credit or risk	Most of these, notably the structure of the <i>şukūk</i> , are covered elsewhere in the standard. We have amended paragraph 54 to include the disclosure of credit rating expected on issue.

No.	Theme	Issues/ Comments	IFSB Response
		characteristics, or any security, any <i>kafālah</i> or guarantee, or any options, or any other Sharī'ah considerations associated with the issued security.	
21.	BASEL III COMPLIANT <i>ŞUKŪK</i>	All <i>şukūk</i> issued with the aim that they should be admissible as regulatory capital within either the Basel III regime or that set out in IFSB-15, should also comply with the Sharī'ah requirements and not only with the requirement of the relevant banking supervisor.	Agreed in principle. Principle S.2 already addresses the Sharī'ah-related disclosures. There is no implication in the text that regulatory capital <i>şukūk</i> need not meet Sharī'ah related requirements (and in fact IFSB-15 is relatively strict on the types that might prove eligible).
22.	USE OF ARABIC TERMS	Disclosure requirements should be written in clear language, because sometimes including the use of Arabic terms is misleading to investors in non-Arab speaking countries.	We have amended paragraph 19 under Principle G1, to address the use of Arabic terms (in a non-Arabic document).
23.	DEFINITIONS OF “OBLIGOR”, “ISSUER” AND “ORIGINATOR”	To provide definition of “obligor”, “issuer” and “originator” in the standard.	The differentiation between these terminologies is explained in paragraph 50 – Terminology.
24.	SHARĪ AH-COMPLIANT AND NON SHARĪ AH- COMPLIANT ACTIVITIES OF THE ISSUER AND/ OR OBLIGOR.	To require disclosure of Sharī'ah-compliant and non Sharī'ah-compliant activities of the issuer and/ or obligor.	Paragraph 70 covers this point in relation to the <i>şukūk</i> assets, and thus the actual issuer. It also covers the use to which the proceeds would be put. To go further and cover other activities of the obligor would breach the principle that <i>şukūk</i> are based on a particular pool of assets and activities, and hence different from bonds, which are normally a general investment in the originator.
25.	DETAILS OF SCHOLARS' REVIEW	It should be disclosed if all the scholars have signed the fatwa, reviewed the structure and the documentation themselves and furthermore if they have reviewed the documents in English or have reviewed the translated in Arabic documents.	These items are mostly covered under paragraphs 66 and 68.

No.	Theme	Issues/ Comments	IFSB Response
26.	RISKS FOR ŞUKŪK	To require disclosure of risks for <i>şukūk</i> which are different from conventional bonds. E.g. reclassification risk, loss of accrued profit in excess of the nominal face value, etc.	The standard, and in particular the disclosures under Principle S.3, cover the legal risks associated with the <i>şukūk</i> structure.
27.	MULTIPLE FATAWĀ	The standard should also address <i>fatwā</i> given by Sharī'ah Advisers of joint lead managers and not just a single <i>fatwā</i> .	The wordings "Any <i>fatwā</i> " under paragraph 68 also refers to each individual Sharī'ah pronouncement issued by each joint lead arranger. These multiple <i>fatawā</i> can be put on website for ease of reference. We have also added footnote no. 17 to address multiple <i>fatawā</i> .
28.	CHALLENGING TO REQUIRE CONTINUOUS DISCLOSURE	Requirement on continuous disclosure may be operationally challenging in certain scenarios, e.g. underlying assets or activities that include impermissible component that requires purification	The requirement in paragraph 79(ii) for continuous disclosure is limited to material changes in the disclosures made under paragraph 70. If such changes are indeed material, they could well affect Sharī'ah compliance.
29.	TRADEABILITY ISSUES FOR ŞUKŪK	The standard must look at operational matters and trading of <i>şukūk</i> . Sharī'ah Adviser of the issuer might be of the view that the <i>şukūk</i> is tradeable at the point of issuance or the primary market. The Sharī'ah Adviser at the banks' level may have a different view on tradeability and might say that the <i>şukūk</i> is only tradeable if it is backed by tangible assets.	The standard recommends disclosure of limitations on tradability and the reasoning for investors to consider. The Sharī'ah Adviser of the banks may then decide whether to invest in the <i>şukūk</i> or not.
30.	PRICE THAT ŞUKŪK IS TRADED AT	The change of hands of <i>şukūk</i> during the life is not at par but it is at the remaining value of at the principal and the remaining amount of marked-up value.	We have amended paragraph 71 to address this point.
31.	TRADIBILITY RATIO	To require disclosure of tradability ratio in the prospectus.	Paragraph 70 requires disclosure of the asset pool ratio, and we have amended it to address any breach of this ratio.

No.	Theme	Issues/ Comments	IFSB Response
32.	DETAILS ON PURIFICATION PAYMENTS	Detailed breakdown of purification payments (for <i>ṣukūk</i>) is unnecessary as long as these payments are made and disclosed. The disclosures requirements for <i>ṣukūk</i> can be similar to those suggested for ICIS (concerning treatment of tainted assets or income).	The disclosure requirements for <i>ṣukūk</i> under paragraph 72 are consistent with those for ICIS under paragraphs 146 & 147.
33.	SHARĪ AH AND INTERPRETATION	The <i>ṣukūk</i> documentation should not have any wording which should imply explicitly or implicitly that Sharī'ah principles will not be considered or relied upon by the jurisdiction courts.	The standard specifies the substantive disclosures that should be made in the prospectus, not the content of the contracts. As a matter of disclosure, the legal counsel involved in drafting a prospectus may judge it appropriate to say something in the prospectus about how courts might address the Sharī'ah aspects of the contracts.
34.	ṢUKŪK CONTRACTS	To clarify the reason for providing only these <i>ṣukūk</i> contracts (as mentioned in the standard) and cover (near) exhaustive list of contracts.	We have amended paragraph 89 to say that the contracts mentioned are those that are currently commonly encountered by capital market regulators and they are not intended to be exhaustive.
35.	TAKĀFUL OR INSURANCE ARRANGEMENTS	There should be disclosure requirements regarding <i>takāful</i> or insurance arrangements for other types of <i>ṣukūk</i> structures, and not only for disclosure requirements for <i>ijārah ṣukūk</i> .	This has been dealt with (for all <i>ṣukūk</i>) in paragraph 100.
36.	TOTAL LOSS EVENT FOR IJĀRAH ṢUKŪK.	To require disclosure of total loss event under <i>ijārah ṣukūk</i> .	We have amended paragraph 90 (d) to reflect this disclosure.
37.	DISCLOSURES FOR IJĀRAH ṢUKŪK.	The following items should be disclosed under the <i>ijārah ṣukūk</i> arrangement. (i) Recourse to the asset and its disposal thereof in case of default (ii) Ownership of the asset (iii) Recording of title of the asset, late payment penalties (iv) Responsibility for maintenance and insurance	Agreed in principle. Most of these disclosures have already been covered under paragraphs 73, 90(d), 90(e), 90(f), 90(g), 104, 108, 113, 114. Title recording, however, depends on local law and cannot be prescribed uniformly. We have also amended paragraphs 101 and 103 to address sale undertaking.

No.	Theme	Issues/ Comments	IFSB Response
		(v) What happens in case of partial and total loss of the asset (vi) Responsibilities of the lessee as service agent and related indemnities (vii) Any relevant undertakings (purchase or sale).	
38.	VALUATION AND FINANCIAL QUALITY OF ASSETS	Valuation and the financial quality of the assets should also be disclosed.	This disclosure is mentioned under paragraph 99.
39.	DISCLOSURES FOR ISTISNĀ`ŞUKŪK	The following items should be disclosed under the <i>istisnā`şukūk</i> arrangement. (i) The methodology for calculation of price (ii) The possibility of changing the price (iii) Calculation of damages in case of delay or non-delivery, and if such damages are liquidated damages, and the formula for such a calculation.	Agreed. We have amended paragraphs 91(c) and (g) to reflect these disclosures.
40.	PURCHASE UNDERTAKING	To require disclosure on purchase undertaking for <i>mushārahah şukūk</i> .	The disclosure regarding purchase undertaking is mentioned under paragraph 101.
41.	“ON BALANCE SHEET” AND “OFF BALANCE SHEET” TREATMENTS	To require disclosure of “On Balance sheet” and “Off Balance sheet” treatments of <i>muḍārahah</i> to protect investors and mitigate possible risks.	IFSB is not an accounting standards setter, and therefore the treatment of <i>şukūk</i> or <i>şukūk</i> assets in the accounts of either the originator or investors can be dealt by the relevant national accounting bodies or accounting standard setting organisations.
42.	DISCLOSURES FOR COMMODITY MURĀBAḤAH ŞUKŪK	To include the disclosure requirements for commodity <i>murābahah</i> .	Disclosures requirements for <i>şukūk</i> arranged under the principle of <i>murābahah</i> can be found under paragraph 93.
43.	PROVISION FOR CHANGE OF TRUSTEE, DELEGATE TRUSTEE OR AGENT OF THE ŞUKŪK HOLDER	To include the provision for change of trustee, delegate trustee or agent of the <i>şukūk</i> holder.	We have amended paragraph 106(d) to reflect this disclosure.
44.	TRUSTEE-RELATED TERMS	Disclosure requirements may be too extensive if we were to disclose all trustee-related terms. To only consider giving prospective investors	We disagree. The proposed disclosure requirement will add value to the disclosure of <i>şukūk</i> . In addition, disclosure at a specific location is not an effective

No.	Theme	Issues/ Comments	IFSB Response
		the rights to view the Trust Deed at the trustee's office upon request.	approach to disclosure for instruments that may be marketed internationally.
45.	SHARĪ AH-COMPLIANT OR NON-SHARĪ AH-COMPLIANT ŞUKŪK RESTRUCTURING	In a restructuring exercise, it is a market practice that consent from majority investors is required before the restructuring exercise can be done. If any of the investors do not agree to the restructuring, the Issuer must redeem the said investor's portion of the <i>şukūk</i> or bring in a new investor to replace the said investor. <i>Şukūk</i> should always be Sharī'ah-compliant, should be declared as an event of default if it becomes non- Sharī'ah-compliant and trigger immediate redemption. In view of this, it is not necessary to require disclosure whether the <i>şukūk</i> contracts limit a restructuring of the <i>şukūk</i> to one that is Sharī'ah-compliant or also permit a non- Sharī'ah-compliant restructuring as restructuring will happen when the Issuer has defaulted or going to default.	It is not a matter of practice but of contract to get a majority (usually supermajority) consent to restructuring since it involves imposing losses. With a collective action clause, the loss can be imposed on holdouts without their consent. We feel that the recommended disclosure is appropriate.
46.	LEGAL UNCERTAINTY ON COURTS INTERPRETATION AND ENFORCEMENT	It is not practical and challenging to implement paragraph 115 as this disclosure requirement would require input from solicitors and solicitors may be reluctant to provide such advice as they are not able to predict how courts might interpret or enforce key provisions in <i>şukūk</i> contracts that are legally untested.	The standard requires only that where there is legal uncertainty, this fact should be disclosed. It does not require detailed assessment of likely outcomes.
47.	CHALLENGES OF ONGOING DISCLOSURES	We believe that ongoing disclosure should be made only if it involves strong potential event of default including a change in the Sharī'ah-compliant status. Otherwise, the requirement for ongoing disclosure on periodic basis will add more work, time and cost to the issuer and will make <i>şukūk</i> less attractive. If the standard requires, unnecessary and ongoing	We have amended paragraph 116 to address disclosure of amendments, modifications and changes that materially affect Sharī'ah aspects.

No.	Theme	Issues/ Comments	IFSB Response
		disclosures this will prove costly and issuers will move away from it.	
48.	NEGATIVE PLEDGE AND DECISIONS OF <i>ŞUKŪ</i>HOLDERS	No mention of Negative Pledge. To disclose requirement of <i>şukū</i> holders to take decisions during the lifetime of the <i>şukū</i> .	Negative Pledge is a general disclosure point common to all fixed income instruments and mentioned in the IOSCO principles. It applies equally to conventional and Islamic instruments and therefore does not require specific mention in this standard. Any issues on which <i>şukū</i> holders might be required to decide during the lifetime would be disclosed as matters of governance, analogously to matters requiring the approval of bondholders in a conventional instrument.
49.	SHARĪ AH AUDIT	This standard is not articulating Sharī'ah audit disclosures with respect to <i>şukū</i> . We recommend addressing these disclosures for <i>şukū</i> , similar to ICIS.	<i>Şukū</i> issuers and obligors are not generally subject to a Sharī'ah audit in most jurisdictions. If at some point this changes, related disclosure requirements can be considered.

Section II: Guiding Principles (ICIS Disclosure)

No.	Theme	Issues/ Comments	IFSB Response
50.	SPECIALIST FUNDS	The standard mentioned that it is principally aimed at ICIS that invest in tradeable securities, however, not all specialist funds (e.g. private equity/ venture capital) invest in tradeable securities.	As mentioned in paragraph 129, the standard deals with the disclosure requirements for specialist funds under a separate section, namely Principle C.3.
51.	DISCLOSURES IN CONSTITUTIONAL DOCUMENTS	To put in a footnote, that in the absence of key essential documents for disclosure for those funds, these disclosures can still be imposed by the RSAs in the constitutional documents of the funds.	Agreed. As stated in paragraph 132, the standard is written mainly around the needs of retail investors, for whom disclosure in a constitutional document would not be an effective means of communication. However, we have

No.	Theme	Issues/ Comments	IFSB Response
			added footnote no. 33 under paragraph 135 to address disclosure in constitutional documents.
52.	EX-ANTE AND EX-POST DISCLOSURES	IFSB-6 made recommendations as to the disclosures ex-ante (before fund is offered to the market) and ex-post (after fund is offered to the market). To include these disclosures in the standard.	The standard does not use the terms <i>ex ante</i> and <i>ex post</i> , but does cover the relevant disclosures, especially in paragraphs 139-145. For example, paragraphs 142 and 145 are particularly concerned with the <i>ex post</i> review processes.
53.	INTERNAL CONSTROLS AND PROCEDURES	Disclosure on “ <i>internal controls and procedures to detect and to minimize the risks of such non-conformity (to Sharī’ah principles)</i> ”, should not appear in the ICIS prospectus/offering document and instead should be stipulated in the policies and procedures of the fund manager of the ICIS (as part of the internal operations of an Islamic fund management company).	The standard takes the position that these disclosures are ones that would be material to investors, and should therefore reside in a document that is available to investors. The internal procedures of the management company would not normally be such a document. However, we have amended paragraph 141 to refer to “ <i>processes to detect and control the risks of such non-conformity</i> ”.
54.	REPORT FROM SHARĪ AH ADVISOR OF ICIS OR EXTERNAL SHARĪ AH AUDITOR	“ <i>An ICIS should also include in its annual report a report from its Sharī’ah advisors (if any) on the operations of the ICIS during the year, and the report of any external Sharī’ah auditor.</i> ” Propose to change this requirement to either a report from Sharī’ah advisor of the ICIS or a report from any external Sharī’ah auditor.	In paragraph 145, the phrases “ <i>(if any)</i> ” and “ <i>any external Sharī’ah auditor</i> ” are both intended to imply that reports should be disclosed if they exist, but not to impose a requirement to have such reports.
55.	ACTIVITIES UNDER ICIS AND THEIR SHARĪ AH-COMPLIANCE	The activities mentioned under paragraph 152, should be mentioned in general in the ICIS prospectus/offering document and not to detail out the reason why those activities are judged to be Sharī’ah-compliant. Sometimes fund manager wants to have the ability to use hedging for the ICIS, hence it will be mentioned in general in the prospectus/offering document and in actual fact, fund manager may not perform hedging. Hence, our practice is to have a sentence in	The activities mentioned in paragraph 152 are ones where investors might properly be concerned about Sharī’ah compliance, and it would in principle be easy for a fund to invest in impeccably compliant securities, but to use hedging techniques which are not compliant. Hence the requirement for disclosure, but note that the recommended disclosures do already permit disclosure of process. So a disclosure that Sharī’ah advisers will be

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		<p>general in the ICIS prospectus/offering document i.e. approval from Sharī'ah adviser needs to be sought prior to involvement in hedging or securities borrowing or lending.</p>	<p>consulted at the time would be acceptable within the draft as it stands.</p>
56.	<p>PROPERTY FUNDS – MORTGAGE REITS AND CONVENTIONAL INVESTORS</p>	<p>Under property funds, the document should address property funds that invest in financing real estate such as Mortgage REITs both with 'recourse' and 'without recourse' as well as sub-ordinated financing which may include the option to buy the property.</p> <p>The document should also address the possibility of partnerships with third parties, financing third parties or leasing from/to third parties who may resort to conventional financing. In such cases the relationship with the third party should be clear as well as any association that the fund may have with regard to conventional lenders.</p>	<p>Mortgage REITs are used primarily in the US, and have invested dominantly in residential mortgage-backed securities. For obvious Sharī'ah reasons, this model is difficult to replicate in Islamic finance, and we are not aware of any Islamic mortgage REITs. Since the standard is trying to cover the areas of most immediate relevance to the market, we did not see the need to deal with this hypothetical case</p> <p>The point about association with conventional investors has more immediate relevance. We have inserted a new subparagraph 156(v) as follows:</p> <p><i>“(v) An Islamic property fund may invest in a property alongside a conventional investor, taking only a percentage ownership. While this is not problematic in itself (just as an Islamic equity fund may invest in a company alongside non-Muslims), if this involves interest-bearing finance being secured over the property, this will raise substantial Sharī'ah issues.”</i></p> <p>We have also inserted a new subparagraph 157(iv) as follows:</p> <p><i>“(iv) where there are or may be other investors in a property, whether such investors may take a mortgage or other conventional financing with their share of the property as collateral;”</i></p>

No.	Theme	Issues/ Comments	IFSB Response
57.	DISCLOSURE ISSUES FOR PROPERTY FUNDS	<i>“Property funds that invest only in tradeable securities pose no particular disclosure issues”</i> . Sharī’ah screening criteria should be applicable to such securities to be disclosed. For example, some banks use the “NAV” (Net Asset Value) concept as opposed to “Market Capitalization” in their screening ratio for investing in REITs, unlike tradeable equities.	This is implicit in the approach described in paragraph 154, which makes clear that the disclosures set out for specialist funds are additional to those for funds investing in tradeable securities. To make the point clearer, under paragraph 155, we have added after <i>“no particular disclosure issues”</i> the words <i>“beyond those dealt with in section 2.3.2”</i> .
58.	PURELY SHARĪ’AH-COMPLIANT OR ‘BEST-EFFORT’ SHARĪ’AH-COMPLIANT FUND	To disclose whether the fund is purely Sharī’ah-compliant or ‘best-effort’ Sharī’ah-compliant fund.	Disclosure of the Sharī’ah screening approach as described in paragraph 139 should deal with this issue.
59.	ISLAMIC PRIVATE EQUITY FUND	For Islamic Private Equity, no specific disclosure have been proposed over and above those applicable to conventional PE firms. However an Islamic private equity fund will need to consider the Sharī’ah compliance of each of the companies in which it invests in.	The types of investment that may be made, and the process to ensure that each is Sharī’ah compliant, are required disclosures for <u>all</u> funds under paragraph 139.
60.	COMPREHENSIVE DISCLOSURE NEEDED FOR ICIS	The disclosure requirements for the special types of ICIS are too superficial, and lack detailed disclosures which might prove to be inadequate to issuing institutions. We believe that each one of these segments requires a comprehensive and functional set of disclosure principles. Otherwise, we run the risk of the segment’s growth being held back.	This standard is intended to deal with the disclosures that derive from Islamic specificities, and that are therefore different from those required from the corresponding conventional funds. Where such specificities have been identified either in the course of preparation of the standard or in the comments, we have attempted to address them.
61.	MONEY MARKET FUND – SHARĪ’AH RULING ON MECHANISM	For Islamic money market fund, the requirement to disclose <i>“the Sharī’ah ruling on any mechanism used to stabilise unit value under conditions of stress”</i> may not be appropriate. Instead, a general statement should be included in the Sharī’ah Investment Guidelines in order to mitigate any variation of investment instruments to be invested by the ICIS.	Some conventional money market funds, referred to as “Constant NAV” or “Stable NAV” funds, are structured so that any changes in the net value of the assets held are “smoothed” or “buffered”, generally through a contribution of some kind from the operator or one of its group. The standard recommends that if the structure of the fund incorporates a mechanism of this kind, then the ruling on its compliance should be disclosed (since doubts have been expressed

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			about whether such a mechanism can in fact be structured in a Sharī'ah-compliant way).
62.	OTHER PROPOSED DISCLOSURES	<p>To require disclosure of the following in the essential disclosure documents:</p> <ol style="list-style-type: none"> 1) Conflict of interest in respect of the fund sponsor/manager as well as external advisers (e.g. Sharī'ah Adviser, auditors, property managers) 2) Risk of availability of exit for Sharī'ah assets as well as the process of liquidation (Some Regulatory Supervisory Authorities, e.g. Bermuda, impose additional requirement ICIS for fund manager to clarify information on disposal and liquidation risk of the fund's assets. The Sharī'ah-compliant asset could be rare in certain jurisdictions, therefore there exist the risk of availability of exit for those fund assets 3) Fiduciary risk that may trigger because of Sharī'ah structure e.g. <i>mushārahah</i>, <i>muḍārahah</i> 	<ol style="list-style-type: none"> 1) The conventional standards already have comprehensive requirements on restricting, managing and disclosing conflicts of interest. (See in particular IOSCO Core Principle 24, Key Question 12.) These are broad enough to cover Sharī'ah advisors, as well as the various functions that exist in conventional funds. 2) The comment is fundamentally about the disclosure of liquidity risk. As noted in paragraph 129, disclosure is already required by conventional frameworks. The paragraph draws attention to the need to enforce these disclosures. 3) The standard deals with common legal forms of CIS structure, which in practice are similar to those used in conventional finance. These forms, and associated regulation, impose substantial fiduciary requirements on the manager, and there are no additional fiduciary risks for ICIS.
63.	PROFIT-SHARING INVESTMENT ACCOUNTS (PSIAs)	Disclosures on investment accounts where bank act as intermediary, is extremely limited. This need to be addressed in the standard.	Profit-sharing investment accounts (PSIAs) are discussed briefly in paragraph 128 of the standard. The IFSB took the view that, since this standard is to be applied by capital market authorities, few of which have authority over PSIAs, they should not be addressed in detail here.

THANK YOU

The IFSB wishes to express its gratitude to all parties who had responded to the Exposure Draft of IFSB-19 with comments and feedback during the Public Consultation period.



IFSB-19: Guiding Principles on Disclosure Requirements for Islamic Capital Market Products (Sukûk and Islamic Collective Investment Schemes)

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