



The Trinidad and Tobago Securities and Exchange Commission

**Draft Collective Investment Schemes
By-Laws**

February 20th 2019



Presentation outline

1. What is a CIS
2. Historical Context
3. Current CIS Environment
4. IOSCO Assessment
5. Key changes contemplated in Draft By-laws
6. Supporting documents
7. Next Steps



What is a CIS?

Definition from the Securities Act 2012:

“**collective investment scheme**” means any arrangement with respect to property of any description including money—

- a. the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it, or otherwise to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and
- b. that does not invest—
 - i. for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is itself a collective investment scheme; or
 - ii. for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is itself a collective investment scheme.



Historical Context

“Progression” in Overarching Legislative Framework

- Securities Industry Act, 1995
- Foreign Mutual Fund Policy Guideline
- CIS Guidelines
- Securities Act 2012
 - Register security in accordance with section 62
 - Register issuer in accordance with section 61
 - Receipt for prospectus in accordance with section 73
 - Distributor of the CIS registered as a Broker-Dealer in accordance with section 51
 - Compliance with CIS Guidelines 2008/Policy Guideline 11.1
- **Draft CIS By-Laws**

Current CIS Environment

As at January 2019:

- 67 Active CIS
- Managed by **13 entities**
- **TT\$49.49 Billion** in AUM





Current CIS Environment - Issues

- **Uneven Playing Field** - Historical inconsistencies in how CIS were registered
- **Current framework largely deficient**
 - Mix of CIS Guidelines and SA 2012
 - Establishing jurisdiction over key parties to CIS
 - CIS Manager
 - Responsible Person
 - Prospectus requirements
 - Reporting
 - Renewal/Updates
 - Asset Valuation, Pricing, Redemption
- **IOSCO Assessment**



IOSCO Assessment

- **Principles Relating to CIS**
 - Principle 24 – persons marketing or operating a collective investment scheme.
 - Principle 25 – the legal form and structure of collective investment schemes.
 - Principle 26 – disclosure of information.
 - Principle 27 – basis for asset valuation, pricing and redemption.
- **IOSCO Report** – CIS Guidelines in the current form is not compliant



Key changes proposed in the CIS regulatory framework

By-law versus Guidelines

- IOSCO requires the regime to be directly legally enforceable.
- The CIS Guidelines 2008 are only enforceable through Compliance Directions under section 90 of the SA 2012.
- There were also many areas that were not covered in the Guidelines which are now provided for in the Draft By-Laws.



Key changes proposed in the CIS regulatory framework

Authorization of the CIS

1. Registration as Reporting issuer
2. Registration of the security
3. Prospectus Receipt
4. Key Facts Statement

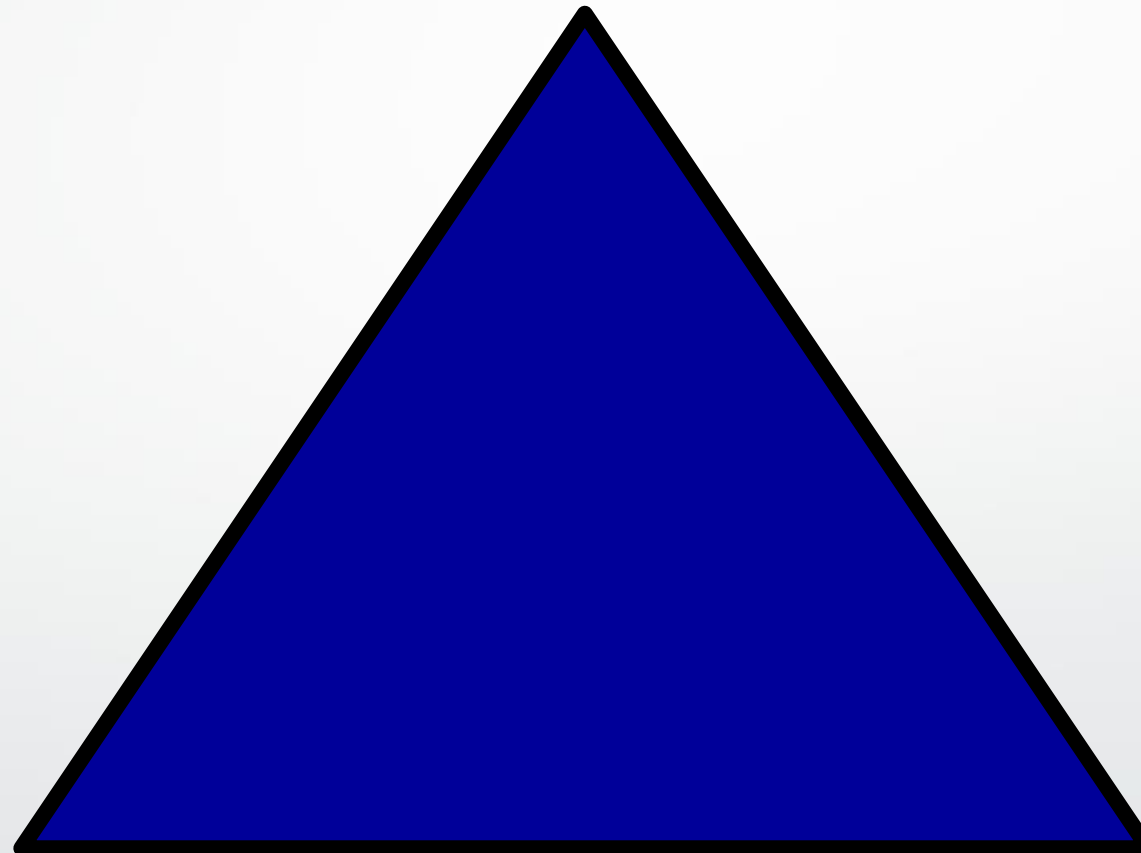
Annual renewal requirements

1. Market access fees
2. Updated Key Facts Statement
3. Annual Report
4. Confirmation of service providers



Key parties in CIS Governance Framework

Responsible Person



CIS Manager

Custodian



Registration of the CIS Manager

Registration of CIS Manager - Creation of a new category of broker-dealer permitted to carry-on business of a CIS Manager:

- i. Restricted Broker-Dealer –
 - Persons that only want to act as a CIS manager and not conduct other BD activities can registered as a Restricted Broker-Dealer
- ii. Current Broker-Dealers
 - can perform activities of a CIS manager provided they demonstrate that they have CIS related controls in place

Annual renewal required



Responsible Person

"Responsible person means the entity that is responsible for the governance and oversight of the operations of the CIS, including compliance with the legal and regulatory framework:

- i. where the CIS is constituted in a trust form the responsible person shall be the trustee;*
- ii. where the CIS is constituted in corporate form the responsible person shall be that corporate entity; and*
- iii. where the CIS is constituted in a form other than a company or trust, the responsible person shall be an entity appointed by the sponsor."*



Authorization of Responsible Person

Responsible person

For a trust form CIS the responsible person is the Trustee

- Registration under FIA 2008
- Authorization under CIS By-Laws

For a corporate form CIS the responsible person is the corporate entity

- Authorization under CIS By-Laws



Authorization of Custodian

- *This is a new requirement since CIS Guidelines 2008 merely provided that the Custodian had to be licensed under the FIA;*
- The Custodian is required to be independent of the CIS Manager;
- The TTCD is automatically deemed to be authorized (BL 47);
- Annual self-assessments now required whereby the Custodian must assess the compliance of sub-custodians with the CIS By-Laws (BL 54).



Authorization

Authorization is not Registration

- Process meant to ensure that service providers are fit and proper
- Authorization Applicable to following CIS Service Providers:
 - Responsible Person
 - Custodian



Key changes proposed in the CIS regulatory framework – Cont'd

Other parties related to the CIS

Defined and established roles responsibilities and eligibility criteria for:

- i. Sponsor
- ii. Distributor
- iii. Registrar
- iv. Auditors



Key changes proposed in the CIS regulatory framework

Outsourcing

- i. Established criteria for the outsourcing of any function to third parties in relation to the CIS
- ii. Can outsource tasks – not responsibility
- iii. Not all roles may be outsourced
- iv. Set standards of due care for third party service providers appointed by a party related to a CIS
- v. Minimum standards for the service agreement with the third party
- vi. Annual performance assessments to be performed on the third party service provider



**Any
Questions?**



Let's take a 15 minute break





Key changes proposed in the CIS regulatory framework - Cont'd

Suspension of subscriptions and redemptions

- CIS By-laws provides for voluntary suspension by the CIS Manager:
 - in exceptional circumstances after consultation with the Responsible Person; or
 - with prior written consent of the Commission
- Notification requirements to the Commission and the public
- Commission may also suspend the distribution if it considers it to be in the public interest



Key changes proposed in the CIS regulatory framework

Pricing and pricing errors

- Provisions addressing how CIS assets are valued and how Net Asset Value (“NAV”) is calculated,
- Frequency of calculations and publication of NAV,
- Errors –
 - requires the immediate rectification of pricing errors where errors are more than 0.5% of the CIS NAV
 - Responsible Person, Custodian and the Commission must be informed and affected unitholders must be compensated



Key changes proposed in the CIS regulatory framework

Conflicts of interest

- 1) CIS manager independent of the responsible person
- 2) CIS manager independent of the custodian
- 3) Must have written policies that identify, avoid, mitigate or manage all conflicts
- 4) An individual shall not be:
 - a director of more than one CIS manager at a time
 - a member of the investment committees of differently managed CIS



Key changes proposed in the CIS regulatory framework - Cont'd

Termination of a CIS

- Included provisions to assist with orderly winding up of CIS
- The constituent documents must outline the process for effecting the merger or termination of a CIS
- Introduces requirement for a termination plan
- Approval by the Commission



Key changes proposed in the CIS regulatory framework - Cont'd

Foreign CIS

- Similar to what obtains currently under Policy Guideline 11.1
- Eligible for registration and distribution in T&T if:
 - Equivalent or better protections in place in country of domicile
 - Regulator and TTSEC in information sharing agreement
- Can use foreign offering document with appropriate addendum
- Must appoint:
 - a local agent for service of process
 - local distributor(s) – must be registered Broker-Dealer



Key changes proposed in the CIS regulatory framework - Cont'd

Continuous Disclosure Requirements for the CIS

- a) Key Facts Statement
- b) Financial Statements – annual and interim
- c) Transactions of a CIS
- d) Annual Report of CIS Performance and update of Key Facts Statement
- e) Quarterly Portfolio Statement
- f) Unitholder Account Statements
- g) Material Change Report



Key changes proposed in the CIS regulatory framework - Cont'd

Transitional Provisions

- 2 year period
- Applicable to:
 - Existing CIS
 - CIS Manager
- Responsible Person
- CIS Custodian
- Allowed to continue operations
- Need to bring themselves into compliance with provisions of the By-laws
- Submit applications for regularization



Documents supporting the CIS by-laws

Supporting schedules:

- **Schedule I** - Fee Schedule
- **Schedule II** - Prospectus Disclosure Requirements For Collective Investment Schemes
- **Schedule III** - Addendum For Regulated Foreign CIS
- **Schedule IV** - Investment Restrictions



Documents supporting the CIS by-laws (Cont'd)

Market Guidance

- Contents of Constituent Documents
- Key Facts Statement
- Promotion and Presentation Standards
- Contents of The Termination Plan



Next steps

- Preliminary Consultation: Written Comments by March 1st 2019
- Revisions
- Initiation of Legislative Process
- Transition Period
- Full Implementation



Questions?

Written comments to be sent on or before

March 1st 2019 via electronic mail to:

CISBy-Laws@ttsec.org.tt



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