



TRINIDAD AND TOBAGO
SECURITIES AND EXCHANGE COMMISSION

MARKET GUIDANCE I

CONTENTS OF CONSTITUENT
DOCUMENTS FOR
COLLECTIVE INVESTMENT SCHEMES

6th DECEMBER 2023

MARKET GUIDANCE I

CONTENTS OF CONSTITUENT DOCUMENTS

The CIS Bye-Laws, 2022 set out the regulatory framework for the Collective Investment Scheme (CIS) Industry and provide the following definition of “constituent documents”:

“constituent documents” are the principal documents governing the formation and operation of the CIS, and include –

- (i) the trust deed in the case of a unit trust,*
- (ii) the articles of incorporation/continuance and Bye-laws in the case of a company; or*
- (iii) the memorandum and articles of association or similar documents for other entities where applicable,*

and such other agreements as may be necessary for the formation and operation of the CIS;”

This market guidance seeks to provide parties related to a CIS with general information on items to be covered in the Trust Deed where the CIS is constituted as a trust, or the company filings for a CIS constituted as a company. The Commission may provide further guidance in this area from time to time.

The constituent documents of a CIS shall contain such provisions as are required for the parties administering a CIS to properly carry out their respective functions/ responsibilities as set out in these Bye-Laws.

GENERAL DOCUMENTS REQUIREMENTS FOR ESTABLISHMENT OF A CIS:

For a unit trust

1. Trust Deed / Declaration of Trust; and
2. Investment Management Agreement

For a Company

1. Memorandum of Association or Articles of Incorporation/Continuation/Certificate of Incorporation
2. Bye Laws
3. Notice of Directors - Section 71 Companies Act Chap 81:01 of the Law of the Republic of Trinidad and Tobago (“the Companies Act”)
4. Notice of Change of Directors (may be needed initially) - Section 79 Companies Act
5. Notice of Address - Section 176 Companies Act
6. Register of Directors and Secretaries – Section 178 of the Companies Act showing the names, addresses and occupations of each Director and the Secretary
7. Register of Directors’ holdings -Section 179 & 180 Companies Act
8. Shareholder Agreement, where applicable
9. Annual Return - Section 194 Companies Act showing the authorised share capital and the classes of shares, the number of units and amount of shares distributed in a given year; and
10. Investment Management Agreement

KEY CLAUSES FOR INCLUSION IN THE TRUST DEED FOR A CIS CONSTITUTED AS A TRUST

1. DATE OF ISSUANCE/EXECUTION OF THE CONSTITUENT DOCUMENT

2. NAME OF THE CIS

A statement of the name of the CIS that is a name consistent with the objectives of the CIS stated in accordance with the Act and the Bye-laws.

3. GOVERNING LAW - A statement that the:

- CIS is established under and governed by the laws of Trinidad and Tobago; or
- CIS is established in a recognized foreign jurisdiction and governed by such laws as the Commission may approve, where a CIS is seeking authorisation as a foreign CIS from the Commission.

4. TRUST DEED TO BE BINDING AND AUTHORITATIVE

A statement that the trust deed is binding on each participant as if the participant had been a party to it and so to be bound by its provisions and authorises and requires the custodian and the CIS manager to do the things required of them through the terms of the deed.

5. DECLARATION OF TRUST

A declaration that the assets of the CIS are held by the trustee for and on behalf of the unitholders *pari passu*, according to the number of units held by each unitholder.

6. ANNUAL ACCOUNTING PERIOD

State the dates in the calendar year on which the annual accounting begins and ends.

7. UNITHOLDER'S LIABILITY TO PAY

A provision that a unitholder is not liable to make any further payment after he has paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

8. INVESTMENT OBJECTIVES

General description of the CIS's investment objectives, which shall be set out in detail in the prospectus and Key Facts Statement.

9. DURATION OF THE CIS

A statement indicating whether the CIS is to be terminated after the expiration of a particular period. The declaration for a closed-end fund shall specify its termination date.

10. CURRENCY

A statement indicating in what currency the accounts of the CIS will be held.

11. CIS MANAGER'S PERIODIC CHARGE

Subject to the CIS Bye-laws, a statement authorising the CIS manager to make a periodic charge payable out of the assets of the CIS and specifying:

- i. how it shall accrue and be paid, with a statement of the maximum of that charge expressed as an annual percentage of the value of the assets of the CIS;
- ii. circumstances in which the annual charge may vary from that expressed above; and
- iii. the process through which shareholder consent will be obtained for the variation.

12. TRUSTEE'S DISBURSEMENTS

The description of expenses or disbursements of the trustee, which are payable out of the assets of the CIS.

13. INITIAL PRICE

A statement of the initial offering price of units, including a breakdown on how it has been calculated and identifying clearly any preliminary charges or expenses.

14. FEES AND EXPENSES (including remuneration of the participating parties and charges to the CIS's portfolio)

- a. **Responsible Person's Remuneration** - A statement authorising the CIS manager to make payments to the trustee by way of remuneration for its services, relieving the trustee from any obligation to account for those payments to the unitholder or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.
- b. **Responsible Person's Remuneration Chargeable to the Assets of the CIS** - A statement authorising any payments to the trustee, by way of remuneration for its services as provided for in (a) above, to be paid (in whole or in part) out of the assets of the CIS.

15. TERMINATION OF FUND

Provisions setting out how the trust may be terminated, including any events that automatically trigger termination, and the rights of unitholders on such termination.

16. AMENDMENT OF CONSTITUENT DOCUMENTS

Provisions setting out the procedure for amendment of the trust deed, specifying those amendments that would require unitholder consent.

17. PARTIES TO THE TRUST

Provisions identifying the parties to the trust shall include, but not be limited to:

- a. Each party's roles, powers, duties and obligations;
- b. Removal;
- c. Retirement; and
- d. Conflict of Interest.

18. MEETINGS OF UNITHOLDERS

Provisions setting out the matters that require unitholder consent shall be included and the notice period for such meetings shall be specified.

19. INVESTMENT IN CIS MANAGED BY THE CIS MANAGER OR A CONNECTED PERSON

Subject to the CIS Bye-laws, a statement as to whether or not the assets of the CIS may include units in another CIS that is:

- a. managed by the CIS manager or by another company in the same group as the CIS manager; or
- b. managed by any person who controls the CIS manager or the CIS manager controls.

**KEY CLAUSES FOR INCLUSION IN THE CONSTITUENT DOCUMENTS OF A CIS
CONSTITUTED AS A COMPANY**

1. GOVERNING LAW

A statement that the constituent documents are made:

- a. under and governed by the laws of the Republic of Trinidad and Tobago; or
- b. in such foreign jurisdiction and governed by such laws as the Commission may approve, where a CIS is seeking authorisation as a foreign CIS from the Commission.

2. INVESTMENT OBJECTIVES

A general description of the investment objectives to be detailed in the prospectus and Key Facts Statement.

3. CURRENCY

A statement indicating in what currency the accounts of the CIS will be held.

4. ANNUAL ACCOUNTING PERIOD

State the dates in the calendar year on which the annual accounting begins and ends.

5. NO PARTLY PAID UNITS

A provision that no partly paid units may be issued and no credit shall be granted to unitholders or potential unitholders.

6. MANAGEMENT OR INVESTMENT COMPANY'S PERIODIC CHARGE

Subject to the CIS Bye-laws, a statement authorizing the CIS manager to make a periodic charge payable out of the assets of the CIS and specifying:

- i. how it shall accrue and be paid, with a statement of the maximum of that charge expressed as an annual percentage of the value of the assets of the CIS;
- ii. circumstances in which the annual charge may vary from that expressed above; and
- iii. the process through which shareholder consent will be obtained for the variation.

8. CUSTODIAN'S REMUNERATION

Subject to the CIS Bye-laws, a statement authorizing the CIS manager to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the unitholders or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

9. CUSTODIAN'S REMUNERATION CHARGEABLE TO THE ASSETS OF THE CIS

A statement authorizing any payments to the custodian by way of remuneration for its services under (8) to be paid (in whole or in part) out of the assets of the CIS.

10. CUSTODIAN'S DISBURSEMENTS

The description of any expenses or disbursements of the custodian that are payable out of the assets of the CIS.

11. INITIAL PRICE

A statement of the initial offering price of units, including a breakdown on how it has been calculated and identifying clearly the preliminary charges or expenses.

12. TERMINATION OF FUND

Provisions setting out how the CIS may be terminated, including any events that automatically trigger termination, and the rights of unitholders on such termination.

13. AMENDMENT OF CONSTITUENT DOCUMENTS

Provisions setting out the procedure for amendment of the constituent documents, specifying those amendments that would require unitholder consent.

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Subject to the CIS Bye-laws, a statement as to whether or not the assets of the CIS may include units in another CIS that is:

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- b. managed by any person who controls the CIS manager or the CIS manager controls.