



Trinidad and Tobago Securities and Exchange Commission

Registration of Trust Form Collective Investment Schemes as Reporting Issuers

Trinidad and Tobago Securities and Exchange Commission has been faced with certain challenges to the application of the Securities Act, 2012 (the SA 2012) and the Securities (General) By-laws, 2015, as they relate to the registration of Collective Investment Schemes (CISs) constituted via trust. These challenges are based on the fact that the SA 2012 contemplates that any “*person*” that distributes a security must be registered as a Reporting Issuer. The SA 2012 also contemplates that the definition of person includes a “*trust*”. As a consequence, any CIS that is constituted via trust must be:

- registered with the Commission as a Reporting Issuer in accordance with Section 61(1) of the SA 2012; and
- registered with the Commission as a security in accordance with Section 62(1) of the SA 2012.

Trusts however, were not considered to be “*persons*” under the Securities Industry Act, 1995 (the SIA 1995) which was repealed and replaced by the SA 2012 on 31st December 2012. As a result, there was no requirement for the registration of a Reporting Issuer, when the Commission registered CISs; constituted as trusts, under the old law, SIA 1995.

In view of the provisions under the new law, SA 2012, CISs that are constituted as trusts are required to be registered with the Commission as Reporting Issuers. Although the SA 2012 is clear that trusts are “*persons*”, it is difficult in practice to identify the *legal* person that should be registered as a Reporting Issuer when considering applications for registration of CISs constituted as trusts. For instance, while the SA 2012 states that the Trustee would be required to sign the Distribution Statement, in an application for registration of a CIS as a security under Section 62; it does not specify who should sign the Registration Statement in support of the application for registration of the Reporting Issuer, in respect of a CIS constituted as a Trust under Section 61. Further, the SA 2012 does not expressly state *who* should be registered as a Reporting Issuer, in respect of a CIS, that is constituted as a Trust.

In addition, the SA 2012 is largely silent on the operations and general regulation of CISs. The continuous disclosure provisions contained in the SA 2012 are geared more toward the activities of traditional companies and not CISs constituted as trusts. The majority of the Commission’s regulatory framework, for CISs, is currently contained in the Commission’s Guidelines for Collective Investment Schemes which were issued in 2008 (the CIS Guidelines).



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As a result, there are some differences in the regulatory requirements that a Reporting Issuer, under the SA 2012, is required to comply with, versus the regulatory requirements that a CIS must comply with under the CIS Guidelines.

In summary, the regulatory framework for the local CIS industry is largely constrained by the inadequacy of the SA 2012 in relation to CISs, as well as the fact that the Commission is relying on the CIS Guidelines, as its primary tool, to outline the regulatory framework for the CIS industry. These issues will be addressed in the proposed Collective Investment Schemes By-Laws (the CIS By-laws) currently before the Ministry of Finance for final review.

In the interim, and pending the introduction of the CIS By-laws, the Commission has determined that where a CIS is being registered with the Commission; and that CIS is constituted as a Trust, then:

- the ***Trust*** must be registered with the Commission as a Reporting Issuer in accordance with Section 61 of the SA 2012;
- the Trustee would be responsible for signing the relevant registration forms as well as for the Trust's obligations under the SA 2012;
- the disclosures and reporting obligations that are required under the SA 2012 shall be in respect of the Trust and not the Trustee.
- Collective Investment Schemes constituted via trust (Trust Form CIS), and registered as Reporting Issuers, will be required to comply with the provisions of the SA 2012; and any supporting legislation as they relate to Reporting Issuers, save and except where the Commission indicates otherwise. These exceptions are outlined below:

A. Reporting and Disclosure Requirements:

- i. A Trust Form CIS will be exempted from Section 65 of the SA 2012, which requires the preparation and filing of Audited Annual Comparative Financial Statements within 90 days of the issuer's financial year end. This exemption will be granted subject to the CIS complying with the requirement to file an Annual Report with the Commission (in accordance with Section 63 of the SA 2012) within 120 days of the CIS' financial year end provided that the Annual Report contains the CIS' Audited Financial Statements for the relevant financial year end; and
- ii. The provisions of Section 66 of the SA 2012 require Reporting Issuers to file Interim Financial Statements on a quarterly basis. A Trust Form CIS however,



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will be required to prepare and file Interim Financial Statements, on a semi-annual basis instead of on a quarterly basis.

- B. Other -** The offering and legal constituent documents for Trust Form CIS' should contain the relevant disclosures regarding the preparation and filing of Annual Reports and Interim Financial Statements as stated at item A.

The foregoing is a temporary solution that the Commission has initiated, until the draft CIS By-laws are made into law, in an effort to address the ambiguity and deficiencies in the existing legislation. Applicants or interested persons are encouraged to contact us for further guidance or clarification.

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**Published Article – Business Express Newspaper
January 8th, 2020**