



STATEMENT OF SUBSTANCE & PURPOSE ON THE TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION’S DRAFT COLLECTIVE INVESTMENT SCHEMES BY LAWS 2019

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SECTION I. BACKGROUND

On July 2, 2008, the Commission issued Guidelines for Collective Investment Schemes (“CISs”) in accordance with the Securities Industry Act, 1995 (“the Former Act”).

On December 31, 2012, the Securities Act, Chap. 83:02 (“the Act”) was operationalized and it replaced and repealed the Former Act. Notwithstanding the repeal, Section 170 of the Act contained transitional provisions which ensured that all By-laws, Guidelines and Rules made under the Former Act remained in force until replaced under the Act.

Accordingly, the referenced Guidelines for CISs, together with the Act and the Securities (General) By-Laws, 2015 outline the current regulatory framework for the CIS industry in Trinidad and Tobago.

In 2016, the International Organization of Securities Commissions (“IOSCO”) conducted a country assessment of Trinidad and Tobago (“T&T”). Via the assessment, IOSCO evaluated the Commission, and the securities market against eighteen (18) of IOSCO’s Objectives and Principles of Securities Regulation. IOSCO Principles 24-27 are considered to represent the international best practice requirements relating to the CIS Industry. A summary of these principles is presented below:

- **Principle 24** – Identifies eligibility criteria for CIS Operators and persons distributing CISs. It specifies that there ought to be a legislative requirement

for the supervision of CIS Operators and Distributors. The principle also outlines the need for CIS Operators and persons connected to CISs to maintain records and controls to address conflicts of interest.

- **Principle 25** – Addresses the legal form of CISs and Investors’ rights as well as structures and controls for separation and safekeeping of assets.

- **Principle 26** – Addresses disclosure of material information in an easy to use format, making information available to allow investors to evaluate investment opportunities, sales and marketing practices. The principle also identifies the need for continuous reporting on the CIS.

- **Principle 27** – among other things, this principle speaks to ensuring that the property of a CIS is fairly and accurately valued, as well as addressing pricing and redemption issues.

IOSCO’s findings in relation to its principles for CISs (Principles 24 to 27) were that, *inter alia*, the legal and regulatory regime applicable to CISs and CIS Operators in Trinidad and Tobago was deficient. Specifically, IOSCO’s report indicated that T&T’s CIS regime did not provide for a proper and adequate licensing regime nor for adequate and sufficient standards regarding eligibility, governance, organization and operational conduct applicable to CISs and CIS Operators.

These findings were unacceptable given the fact that the CIS market in T&T represents a significant portion of T&T’s securities market as well as a major substitute for T&T banking products (i.e. deposits). As of June 2019, there were:

- 67 active CISs;
- 15 entities which managed these CISs; and
- Assets under management for CISs amounted to approximately TT\$50.843 billion. This was approximately 15% of the total value of the securities market (TT\$341.282 billion) as at June 30, 2019 or 32.08% of the value of Trinidad and Tobago’s GDP for fiscal 2018.

Accordingly, the review and revision of Trinidad and Tobago’s CIS legal and regulatory regime became one of the priority items for the Commission in keeping with its Strategic Plan 2014-2018. After a lengthy process, which involved consultation with a CIS expert/consultant with international experience and a segment of participants in the Trinidad and Tobago’s CIS market, the Staff of the Commission has produced the proposed Draft By-Laws in an attempt to mitigate against any systemic risks posed by noted deficiencies within Trinidad and Tobago’s CIS legislative and regulatory framework. Staff is also of the view that these proposed draft By-laws will provide greater structure to the CIS regulatory framework.

Legislative Requirements

Section 148 of the Act provides that the Minister of Finance may, on the recommendation of the Commission, make By-laws as set out in the provision.

Section 149 requires that the Commission engage in public consultation prior to effecting a By-law.

SECTION II. KEY POLICIES CONTAINED IN THE PROPOSED CIS BY-LAWS

By-law versus Guidelines

1. Registration

- a. Creation of a new category of broker-dealer permitted to carry-on business of a CIS manager:
 - i. Restricted broker-dealer
 - ii. Current broker-dealers can be a CIS manager provided that they meet the requirements of a restricted broker- dealer

2. Authorisation

- a. Responsible Person
- b. Custodian

3. Other parties related to the CIS

Defined and established roles, responsibilities and eligibility criteria for:

- a. Sponsor
- b. Distributor
- c. Registrar
- d. Auditors

4. Outsourcing

- a. Established criteria for the outsourcing of any function in relation to the CIS, to third parties.
- b. Placed restrictions on key roles and functions that may not be outsourced.
- c. Set standard of care for third party service providers appointed by a party related to a CIS.
- d. Established minimum standards for the service agreement with a third party.
- e. Established a requirement for annual performance assessments to be performed on the third party service provider.

5. Suspension of subscriptions and redemptions

6. Pricing errors

- 7. Created books and records requirements similar to that of the General By-laws for parties related to a CIS.**
- 8. Conflicts of interest:**
 - a. CIS Manager independent of the Responsible Person
 - b. CIS Manager independent of the Custodian
- 9. Termination of a CIS**
- 10. Foreign CIS**
- 11. Self-managed Funds**
- 12. Continuous Disclosure Requirements for parties related to the CIS and the CIS**

SECTION III. OVERVIEW OF THE PROPOSED CIS BY-LAWS

PART I of these By-laws, comprising Clauses 1 to 5, outlines the connection with these By-laws to the Act and the Securities (General) By-laws 2015 (the “General By-Laws”). This Part also gives definitions for key terms that have not been previously defined in the Securities legislation that are pertinent to these By-laws including definitions of “constituent documents”, “central securities depository” “key facts statement”, “parties related to a CIS”, “responsible person” and a “self-managed CIS”.

PART II of these By-laws, comprising Clauses 6 to 8, outline the fiduciary duties of parties related to a CIS, the composition of directors of a CIS Manager and responsible person and the duty to submit information related to a CIS to the Commission.

PART III of these By-laws outlines the Establishment of a Collective Investment Scheme (CIS) and comprises Clauses 9 to 21.

- Clauses 9 to 12 describe the authorization requirements of a CIS and continuation thereof.
- Clause 13 outlines what the Constituent Documents of a CIS shall contain and limitations thereto.
- Clause 14 outlines the composition of a CIS’s offering documents, inclusive of a prospectus, key facts statement and comparative annual financial statements of the CIS.
- Clause 15 states that the cost of incorporation of a CIS shall not be borne by the CIS or its Unit holders.

- Clause 16 outlines the Investment Restrictions of a CIS and is more particularly described in the constituent documents of a CIS and Schedule II to these By-laws.
- Clause 17 outlines the material changes that require the approval of unitholders, the procedure for voting by the unitholders on said change(s), and consequent filing requirements of an amended prospectus and requisite notice following said change(s).
- Clause 18 covers amendment to offering and constituent documents of a CIS.
- Clause 19 covers the procedure for the withdrawal or retirement of key parties related to the CIS.
- Clause 20 outlines instances where the Commission may revoke the authorization of a responsible person, CIS manager or custodian or the approval of a self-managed CIS subject to the party being given an opportunity to be heard.
- Clause 21 gives the Commission the power to direct a responsible person, CIS manager or custodian to take any action in the interest of unitholders.

PART IV of these By-laws relates to the CIS Manager and comprises Clauses 22 to 33. More particularly, Clauses 22 and 23 cover the eligibility requirements to be a CIS Manager and

- Clause 22 in particular introduces a new sub-category of broker-dealer which is a “restricted broker-dealer”.
- Clause 24 covers authorization of a CIS Manager by the Commission.
- Clauses 25 and 26 outline the roles and responsibilities of the CIS Manager.
- Clauses 27 to 29 outline the CIS Manager’s duties to maintain internal controls and internal audit controls respectively.
- Clauses 30 and 31 deal with the functional separation of the duties of the CIS Manager where the CIS Manager is part of a group of companies.
- Clauses 32 and 33 outline the CIS Manager’s duty to maintain and make available for inspection, the financial statements of the CIS.

PART V of these By-laws relates to the Responsible Person and comprises Clauses 34 to 43.

- Clause 34 covers authorization of a responsible person by the Commission.
- Clause 35 outlines the eligibility requirements of the responsible person.
- Clause 36 outlines the authorization of the responsible person.
- Clauses 37 and 38 outline the roles and responsibilities of the responsible person.
- Clause 39 outlines the duty to conduct an examination into the administration of the CIS by the responsible person as well as the preparation of the annual report on same, which must be sent to the CIS Manager.
- Clause 40 outlines the duty of the responsible person to ensure that the methods adopted by the CIS Manager in calculating the value of units are adequate to ensure that the sale, issue, repurchase, redemption and

cancellation prices are in accordance with the provisions of the offering documents, and constituent documents, any relevant By-laws, and any guidance issued by the Commission.

- Clause 41 covers promotions and presentations of the CIS.
- Clause 42 covers the reporting relationship that the responsible person has to the Commission.
- Clause 43 covers the duty of the responsible person to ensure that the CIS Manager maintains proper accounting records and other records as are necessary.

PART VI of these By-laws relates to the Custodian and comprises Clauses 44 to 55.

- Clause 44 covers authorization of the Custodian by the Commission.
- Clauses 45 and 46 outline the eligibility requirements of a Custodian.
- Clause 47 authorizes the Central Depository to be a Custodian.
- Clause 48 sets out the roles and responsibilities of the Custodian.
- Clause 49 covers segregation of assets of a CIS by the Custodian.
- Clause 50 outlines the use of sub custodians.
- Clauses 51 and 52 give guidance on the contents of Custodian and Sub-Custodian Agreements.
- Clause 53 outlines the Custodian's dealings with CIS property.
- Clauses 54 and 55 cover the self-assessment of custodian/sub custodian agreements.

PART VII of these By-laws relates to the other parties related to a CIS and comprises Clauses 55 to 70.

- Clause 55 outlines the eligibility requirements of a distributor.
- Clauses 56 to 58 outline the roles and responsibilities of a distributor.
- Clause 59 sets out the Offering document delivery obligations.
- Clause 60 outlines the duties of the Registrar of a CIS.
- Clause 61 outlines the appointment of an external auditor of a CIS and duties of said auditor.
- Clause 62 sets out the accepted qualifications of the auditor whilst
- Clause 63 sets out the criteria for assessing the independence of auditors.
- Clause 64 sets out a limitation on the time which a member of an auditor shall have primary responsibility for the audit of a CIS.
- Clause 65 limits the services to be provided by auditors to a CIS.
- Clause 66 covers an instance where the Commission may appoint another auditor to conduct an independent audit and shall fix the remuneration to be paid to the auditor where it is not satisfied with the audited annual financial statements.

- Clause 67 covers the duty of the responsible person to report to the Commission on the termination of appointment, replacement or the cessation of an auditor to a CIS.
- Clause 68 covers the notice of resignation of an auditor.
- Clause 69 covers the removal of an auditor.
- Clause 70 covers the appointment of a replacement auditor.

PART VIII of these By-laws deals with subscriptions and redemptions and comprises Clauses 71 to 74.

- Clause 71 outlines policies and procedures on fair treatment of investors that the CIS manager must have.
- Clause 72 outlines redemptions under a close ended CIS.
- Clause 73 outlines the suspension of subscriptions and redemptions by a CIS manager.
- Clause 74 outlines the Commission's authority with respect to suspensions.

PART IX of these By-laws deals with valuations and pricing and comprises Clauses 75 to 78.

- Clause 75 outlines the calculation of net asset value.
- Clause 76 covers the frequency of calculation and publication.
- Clause 77 covers the valuation of the units of the CIS.
- Clause 78 covers pricing errors.

PART X of these By-laws deals with the keeping of accurate books and records and comprises Clauses 79 and 80.

PART XI of these By-laws deals with conflicts of interest and comprises Clauses 81 to 98.

- Clauses 81 and 82 outline the independence of the CIS Manager, custodian and responsible person.
- Clause 83 outlines prohibitions on an individual being a director of more than one CIS manager at a time; or a member of the investment committees of CIS managed by different CIS managers at the same time.
- Clause 84 outlines general duties relating to conflicts.
- Clauses 85 and 86 provide guidance on general disclosure obligations.
- Clause 87 outlines disclosure of interests in investments.
- Clause 88 outlines disclosure by the CIS Manager of its interest or holdings in securities and any interest it may have in special purpose arrangements.
- Clause 89 covers instances of recusal from meetings where conflicts of interest may arise.
- Clauses 90 and 91 cover the receipt of gifts and benefits.

- Clauses 92 to 95 cover rebates and soft commission arrangements.
- Clauses 96 to 98 cover the general duty with respect to transactions with related parties.

PART XII of these By-laws deals with the conduct of business of a CIS and comprises Clauses 99 to 107.

- Clauses 99 to 101 outline investments with CIS mandates.
- Clause 102 outlines defensive positions and the procedure when a defensive position is taken.
- Clause 103 is a general clause which states that all transactions carried out by or on behalf of the CIS shall be at arm's length terms and executed on the best available terms.
- Clause 104 deals with order allocations.
- Clause 105 covers underwriting and prohibits a CIS Manager from investing in a primary issue of a security where the CIS Manager, a party related to the CIS or to the CIS manager is the underwriter of that security, unless prior approval has been obtained from the responsible person.
- Clauses 106 and 107 cover the Investment Management Agreement between the CIS Manager and the responsible person.

PART XIII of these By-laws covers Outsourcing and comprises Clauses 108 to 117.

- Clauses 108 to 110 cover the outsourcing of the functions of a CIS.
- Clause 111 covers the duty of parties related to a CIS to disclose the identity and status of persons acting on its behalf to investors.
- Clause 112 covers the duty to ensure that the outsourced functions are carried out in a proper manner.
- Clauses 113 and 114 cover the duty, due care and diligence the CIS shall have when selecting a third party to outsource to.
- Clause 115 outlines the contents of the service agreement between the CIS and third parties.
- Clause 116 covers the prohibition from allocating fees to third parties for their services from the CIS itself.
- Clause 117 covers the performance assessment of the third parties by the CIS.

PART XIV of these By-laws deals with the termination of a CIS and comprises Clauses 118 to 126.

- Clauses 118 to 123 outline instances in which a CIS may be terminated.
- Clause 124 covers the duty to issue a notice to the Commission notifying of a termination of a CIS.

- Clause 125 covers the continued accounting and annual reporting obligations of a CIS upon termination or winding up.
- Clause 126 covers the termination of a class of units.

PART XV of these By-Laws sets out the continuous disclosure obligations of a CIS and comprises Clauses 127 to 138.

- Clause 127 covers the requirements of what is included in financial statements of a CIS.
- Clause 128 covers the certification of Annual and Interim Financial Statements of a CIS.
- Clause 129 covers the preparation and filing of comparative annual financial statements.
- Clause 130 covers the preparation and filing of interim financial statements.
- Clause 131 covers the transactions of a CIS.
- Clause 132 covers the annual report of the CIS's Performance and update of Key Facts Statement.
- Clause 133 covers the contents of the Annual Report of the CIS's performance.
- Clause 134 covers the duty of the CIS Manager to file with the Commission, all material filed abroad.
- Clause 135 covers the delivery of Financial Statements and Annual Reports to the Commission.
- Clause 136 covers the preparation of the Quarterly Portfolio Statement by the CIS Manager.
- Clause 137 covers the duty of a CIS Manager to send statements of account to each unitholder of each CIS under its management.
- Clause 138 covers the material change report of a CIS.

PART XVI of these By-Laws is the nomenclature provision and is covered in Clause 139.

PART XVII of these By-Laws relate to foreign CIS' and comprises Clauses 140 to 154.

- Clause 140 covers the recognition of foreign jurisdictions by the Commission.
- Clauses 141 and 142 cover the application by the responsible person or manager of a regulated foreign CIS for the approval of the CIS.
- Clause 143 covers the requirements for offering documents of a foreign CIS.
- Clause 144 covers amendments of offering documents of a foreign CIS.
- Clause 145 covers the delivery obligation associated with the offering documents of a foreign CIS.
- Clause 146 covers the continuous disclosure requirements.
- Clause 147 covers the filing of material abroad.

- Clause 148 covers the delivery of continuous disclosure requirements to unitholders.
- Clause 149 states that all offering and disclosure documents shall be written in the English language.
- Clause 150 covers acceptable accounting principles and auditing standards for an authorized foreign CIS.
- Clause 151 covers acceptable auditors for authorized foreign CIS.
- Clause 152 covers the receipt of offering documents by the Commission.
- Clause 153 covers the Principal Distributor.
- Clause 154 covers the procedure for the change of agent for service or principal distributor.

PART XVIII of these By-Laws deals with closed-ended CISs and comprises Clauses 155 and 156.

PART XIX of the By-Laws deals with self-managed CIS' and comprises Clauses 157 to 162.

- Clause 157 covers the approval requirements of a self-managed CIS.
- Clause 158 covers the approval of a self-managed CIS by the Commission.
- Clauses 159 and 160 cover the business restrictions of a self-managed CIS.
- Clause 161 covers the application of provisions in the Act and General By-laws that are applicable to broker-dealers.
- Clause 162 covers the exemption that a self-managed CIS approved under this Part is not required to be licensed as a broker dealer under the Act or registered as a CIS Manager under these By-laws.

PART XX of these By-Laws set out miscellaneous provisions and comprises Clauses 163 and 166.

- Clause 163 covers the imposition of penalties by the Commission for contravention of these By-Laws.
- Clause 164 covers the website requirements for a CIS Manager.
- Clause 165 provides for exemptions from any provision of these CIS By-Laws; and
- Clause 166 requires all policies and procedures under the CIS By-Laws to be in writing.

PART XXI of these By-Laws sets out the Transitional Provisions for CIS Managers, Responsible Persons and Custodians of a CIS. This part comprises Clauses 167 to 170.

SCHEDULES TO THE BY-LAWS

SCHEDULE I:	FEE SCHEDULE
SCHEDULE II:	PROSPECTUS DISCLOSURE REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES
SCHEDULE III:	ADDENDUM FOR FOREIGN REGULATED CIS'
SCHEDULE IV:	INVESTMENT RESTRICTIONS ¹

MARKET GUIDANCE

- I. CONTENTS OF CONSTITUENT DOCUMENTS
- II. 8PROMOTION AND PRESENTATION STANDARDS
- III. KEY FACTS STATEMENT
- IV. CONTENTS OF THE TERMINATION PLAN
- V. FORMS

SECTION IV. REFERENCES

1. Securities Act Chap. 83:02;
2. Securities (General) By-Laws, 2015;
3. Guidelines for Collective Schemes- issued in accordance with Section 6(b) of the Securities Industry Act 1995- July 2, 2018;
4. International Organization of Securities Commissions (IOSCO) Methodology for assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation; and

¹ These are slightly different from those set out in the CIS Guidelines issued by the Commission in 2008.

5. Principles for the Supervision of Operators of Collective Investment Schemes-
Technical Committee of the International Organization of Securities
Commissions- September 1997.