

OVERVIEW OF THE MAJOR AMENDMENTS TO THE CIS BY-LAWS SINCE PUBLIC CONSULTATION IN AUGUST 2019

No.	Section of CIS By-Laws	WORDING OF SECTION	RATIONALE FOR CHANGE
1.	10 (1) (g)	<p><i>(g) documentary evidence demonstrating that either the sponsor or the CIS manager has the capacity to and shall invest an initial capital of at least five million dollars in Trinidad and Tobago dollars, or the equivalent amount in another currency, in the units of the CIS;</i></p> <p>WORDS IN BOLD ADDED</p>	<p>The reference to “initial capital” was added since later on in the By-Laws (see BL167) another provision was added which authorizes the draw down of units purchased with the initial capital (Please see No. 10 below).</p>
2.	16 Investment Restrictions	<p>1. <i>A CIS manager shall comply with such investment restrictions as set out in:</i></p> <p style="padding-left: 40px;"><i>a. the constituent documents of the CIS; and</i></p> <p style="padding-left: 40px;"><i>b. Schedule IV of these By-laws.</i></p> <p>2. <i>Notwithstanding paragraph (1), the CIS manager shall comply with such other investment restrictions as the Commission may determine from time to time.</i></p> <p>3. <i>A CIS Manager shall implement and maintain appropriate policies and procedures to ensure compliance with the requirements specified in paragraphs 1 and 2.</i></p> <p>16 (3) is a NEW SECTION ADDED</p>	<p>The highlighted section was added to ensure that a CIS Manager is required to create appropriate policies and procedures which serve to bring about compliance with the constituent documents and the Investment schedule in these By-laws. In so doing, for those restrictions which allow flexibility in usage (e.g. derivatives for trading purposes) it is expected that the conditions guiding its usage will be documented in policies and procedures. This will allow the Commission to conduct appropriate tests during its compliance reviews to ensure that compliance with restrictions are embedded in its operations. It also allows the CIS to specify the conditions under which derivatives or other risk management instruments may be used</p>

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3.	27 Internal Controls and Compliance Function	<p>1. A CIS manager shall establish, maintain and implement policies and procedures that create a system of controls and supervision sufficient to –</p> <ul style="list-style-type: none"> a. provide reasonable assurance that the CIS manager and each individual acting on its behalf, complies with the constituent documents, offering documents, the Act, the General By-laws and these By-laws; and b. manage the risks associated with its business in accordance with prudent business practices including through the use of stress testing parameters identified by the CIS Manager as being relevant to the CIS; <p>BY-LAW 27 (1) (b) was reworded</p> <p>2. The system of controls required under paragraph (1) shall include, but not be limited to –</p> <ul style="list-style-type: none"> a. risk management systems and controls to enable it to identify, assess, mitigate, control and monitor risks in relation to each CIS it operates and manages; and b. sound liquidity risk management processes taking into account normal and stressed market conditions. <p>3. (1) In addition to the stress testing carried out pursuant to paragraph (1) (b) above, the Commission may issue stress testing parameters in such form as the Commission may determine from time to time; (2) The stress testing parameters identified in (1) above may be issued to a specific CIS or to the entire CIS market.</p> <p>BL 27 (3) IS A NEW SECTION ADDED</p>	<p>BL 27 (1) (b) was reworded to make it clear that the CIS Manager must apply and utilize stress testing. By-law 27(3) also provides the Commission with the power to issue guidance to the market or a specific CIS regarding stress testing parameters.</p>
4.	48 Segregation	<p>(1) The custodian shall-</p> <ul style="list-style-type: none"> a. take custody and control of all assets of the CIS and hold them in trust for the unitholders in accordance with the offering documents and constituent documents, the Act, the General By-laws, these By-laws and such requirements as the Commission may determine; 	<p>A new BL 48 (2) was added to allow for circumstances where it is impossible for funds to be held in the name of the CIS Manager as is often the case in foreign</p>

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		<p><i>b. subject to paragraph (2) below, hold cash and register registrable assets in the name of the CIS or in trust for the CIS;</i></p> <p><i>c. hold the assets of the CIS that are securities in an account at a central securities depository as far as practicable;</i></p> <p><i>d. ensure that its books and records clearly separate and segregate assets of the CIS from:</i></p> <ul style="list-style-type: none"> <i>i. the assets of the custodian;</i> <i>ii. the assets of the responsible person;</i> <i>iii. the assets of the CIS manager;</i> <i>iv. the assets of other clients of the custodian; and</i> <i>v. assets of any other CIS;</i> <p><i>e. where borrowing is undertaken for the account of the CIS, register any CIS assets pledged as collateral in the lender's name or in that of a nominee appointed by the lender; and</i></p> <p><i>f. provide asset reconciliations to the responsible person and the CIS manager, which confirm the assets held by the custodian on behalf of the CIS.</i></p> <p>(2) Where a foreign jurisdiction allows the security to be held in the name of the custodian or sub-custodian, the security will be permitted to be held in that way.</p> <p>THE HIGHLIGHTED WORDS WERE ADDED</p>	<p>jurisdictions where the assets must be held in the name of the Custodian or Sub-Custodian.</p>
5.	73	<p>1. The CIS manager may, with the agreement of the responsible person, suspend sales and redemptions of units of a CIS:</p> <ul style="list-style-type: none"> a. <i>in exceptional circumstances, after having determined that a suspension is in the best interest of participants;</i> b. <i>with the prior written permission of the Commission; or</i> c. <i>as otherwise permitted or required by law.</i> <p>WORDS IN BOLD CHANGED</p> <p>2. For the purposes of paragraph (1), exceptional circumstances include, but are not limited to, situations where normal trading is suspended on a stock exchange or other market on which securities are traded, if those</p>	<p>This provision previously required the CIS Manager to merely consult with the Responsible Person before suspending the sales and redemptions of units of a CIS.</p> <p>We believe however that for a step as significant as the suspension of a CIS that the Responsible Person should also agree to this step (not just be consulted on same).</p>

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		<p><i>securities represent more than fifty (50) percent by value of the total assets of the CIS, provided that those securities are not traded on any other exchange or market that represents a reasonably practical alternative for the CIS.</i></p> <p>3. <i>The CIS manager shall within one (1) day of the decision to suspend subscriptions and redemptions of units of a CIS as permitted in paragraph (1):</i></p> <ul style="list-style-type: none"> <i>a. notify the Commission if the dealing in units is suspended, stating the reasons for the suspension; and</i> <i>b. make public disclosure of the suspension in every medium in which the CIS's prices are normally published.</i> <p>4. <i>Where there is a suspension of a CIS, the CIS Manager shall:</i></p> <ul style="list-style-type: none"> <i>a. ensure that subscription or redemption requests submitted during the period of suspension are not processed; and</i> <i>b. promptly notify any client who wishes to either subscribe or redeem units of the CIS of their inability to do so during the period of suspension in accordance with 3(b) above.</i> <p>5. <i>The suspension should cease as soon as practicable when the exceptional circumstances cease to exist, and in any event, within thirty (30) days of the commencement of the suspension.</i></p> <p>6. <i>Notwithstanding paragraph (4), the suspension may be extended if the CIS manager satisfies the responsible person and the Commission that it is in the best interest of unitholders that the dealing in units to remain suspended and any such extension should be subject to weekly review by the responsible person.</i></p>	

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6.	77 Valuation of Units	<p>1. <i>The CIS manager shall issue, redeem or repurchase units in a CIS at a price arrived at by dividing the CIS's net asset value by the number of units outstanding, adjusted by adding or subtracting, as the case may be, any fees and charges, in compliance with the CIS's prospectus or constituent documents.</i></p> <p>2. <i>For the purposes of paragraph (1):</i></p> <p><i>i. the net asset value per unit shall be determined at the next valuation point after the request for subscriptions or redemptions is received by the CIS manager.</i></p> <p><i>ii. For the purpose of paragraph (i) above the valuation point shall be the time of day at which the CIS' net asset value is calculated.</i></p> <p>WORDS IN BOLD WERE CHANGED & HIGHLIGHTED SECTION WAS ADDED</p> <p>3. <i>The issue price of a unit of a closed-end CIS that has previously distributed its securities shall not:</i></p> <p><i>a. as far as practicable, be a price that causes dilution of the net asset value of other outstanding units of the closed-end CIS at the time the unit is issued; and</i></p> <p><i>b. be a price that is less than the most recent net asset value per security of that CIS calculated prior to the pricing of the offering.</i></p>	The wording of By-Law 77 (2) was adjusted to make it clear that historical pricing will not be allowed and forward pricing must be used. This is in line with international best practice.
7.	105 Underwriting	<p>1. Subject to sub-paragraph (2) a CIS manager shall not invest in a primary issue of a security where the CIS manager, a party related to the CIS or a related person to the CIS manager is the underwriter of that security, unless prior approval has been obtained from the responsible person.</p> <p>2. Paragraph (1) above does not apply to:</p> <p>(b) debt securities issued by the government; or</p> <p>(c) treasury notes issued by the government pursuant to the Treasury Bills Act, Chapter 71:40 and Treasury Notes Act, Chapter 7:39</p>	<p>We made this change to allow the CIS Manager to invest in a GOTT issue where that issue was being arranged by a related party of the CIS Manager without having to first get the approval of the Responsible Person.</p> <p>It should be noted that investment by CIS in any other issue (other than the GOTT securities specified) underwritten by the CIS Manager or a related party would require the approval of the Responsible Person.</p>

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8.	131 Provision of information on CIS to the Commission	<p>1. <i>Every Responsible Person shall provide to the Commission, within such period and in such form as the Commission may determine via Order from time to time, information on a CIS relating to:</i></p> <ul style="list-style-type: none"> <i>a. Assets and liabilities;</i> <i>b. Revenue and expenses;</i> <i>c. Investment portfolio;</i> <i>d. Unitholders; and</i> <i>e. any other matter that the Commission may require.</i> <p>2. <i>For the purpose of paragraph (1), the responsible person may delegate to the CIS manager the responsibility to provide the information to the Commission and shall immediately notify the Commission of such delegation.</i></p>	This entire section was reworded to require submission of data needed for the Commission's Micro-Macro Prudential Reporting Framework. This information is currently required pursuant to an Order of the Commission but should also be a requirement under legislation as well. Item 131 (1) (e) is broad enough to cover the MMRF Data currently collected and any additional data which may be required.
9.	162 Self managed fund not to act as a broker-dealer or CIS Manager for other funds	<i>A self-managed CIS approved under this Part is not eligible for registration as a broker dealer under the Act or authorization as a CIS manager under these By-laws.</i>	Section 162 was reworded – Based on a query received by the Commission it was important to note that the Self-managed fund can only act as CIS Manager (broker-dealer) in respect of that fund. These types of funds do not comply with best practice for the governance of collective investment schemes and while they are permitted in some jurisdictions, it is appropriate to apply very stringent restrictions to such funds. For e.g. they are should not be allowed to manage multiple funds.

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10.	167 Capital Requirements	<p>1. <i>The capital levels that shall be applied to registrants specified in these By-Laws may be determined by the Commission in accordance with international standards and modified from time to time by order of the Commission.</i></p> <p>2. <i>The units acquired with the initial capital referred to in By-Law 10 (g) may be drawn down in five (5) equal tranches commencing at the times specified in paragraph 3 and 4 below as applicable, subject to-</i></p> <p><i>(a) the Commission being satisfied that the requested draw down of initial capital would not adversely affect the investors in the fund;</i></p> <p><i>(b) the total number of units which may be drawn down in all five (5) tranches not exceeding the total number of units acquired by the CIS at the time of authorization; and</i></p> <p><i>(c) the Commission providing written approval for each draw down request if conditions (a) and (b) are satisfied.</i></p> <p>3. <i>In the case of CIS' pre-dating the coming into force of these By-Laws, the first draw down referred to in paragraph 2 above may be requested at any time after the fifth anniversary of the coming into force of these By-Laws; and</i></p> <p>4. <i>In the case of CIS' which are authorized after the coming into force of these By-Laws, the first draw down referred to in paragraph 2 above may be requested at any time after the fifth anniversary from the date of first authorization of the CIS under these By-Laws.</i></p>	<p>The Highlighted paragraphs were added to allow CIS' to draw down on the initial (seed) capital once the fund is up and running and is operating well.</p> <p>This is something the Market has been requesting for some time and the best practice indicates that there is no need for initial capital to be retained in a Fund indefinitely.</p>
11.	Schedule IV - Investment Restrictions Concentration Restriction	<p>1. <i>Unless stated otherwise, the value of a CIS's holdings:</i></p> <p style="padding-left: 40px;"><i>a. of any class of securities issued by a single issuer shall not exceed 10% of that class of securities; and</i></p> <p style="padding-left: 40px;"><i>b. of securities issued by any single issuer shall not exceed 10% of the CIS's total net asset value.</i></p> <p>2. <i>An exemption from paragraph (1) may be considered on a case-by-case basis for a CIS whose sole objective is to track an index with constituent stocks exceeding the 10% restrictions.</i></p> <p>WORDS IN BOLD WERE ADDED</p>	<p>An express exemption has been added to allow for index-based funds to operate without having to seek exemptions from the Investment Restrictions in the CIS By-Laws.</p>

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12.	Schedule IV - Investment Restrictions Use of derivatives for Hedging	<p>1. CIS may invest in warrants, options, futures, commodities and other derivatives, <i>for hedging purposes only.</i></p> <p>2. The writing of uncovered options is prohibited.</p> <p>WORDS IN BOLD WERE ADDED</p>	<p>The August 2019 Draft of the CIS By-Laws prohibited the use of derivatives completely. Based on feedback from various stakeholders, it appears that this is too restrictive and that CISs should be allowed to use derivatives for the purpose of hedging.</p> <p>However, the CIS would have to disclose this investment strategy as part of the Policies and Procedures required under By-Law 16. This will assist the TTSEC in monitoring any use of derivatives for purposes other than hedging.</p>
13.	Schedule IV - Investment Restrictions Limitation on Real Property	<p>1. A CIS shall not invest in any type of real property or interests in real property.</p> <p>2. Subject to the investment restrictions in this Schedule, a CIS may invest in shares in real estate companies and interests in real estate investment trusts (REITs).</p> <p>3. The limitation at paragraph (1) does not apply to a CIS that is a REITs.</p> <p>WORDS IN BOLD WERE ADDED</p>	<p>An express exemption has been added to allow Real Estate Investment Trusts (REITs) to operate without having to seek exemptions from the Investment Restriction (on holding of real property) in the CIS By-Laws.</p>