

## **GUIDELINE ON BALLOTS FOR COLLECTIVE INVESTMENT SCHEMES**

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## 1. INTRODUCTION

In terms of sections 98(2)(a) of the Collective Investment Schemes Control Act, 2002 (CISCA), a deed of a collective investment scheme (CIS) or a supplemental deed of a collective investment scheme portfolio (CIS portfolio) may be amended with the consent of the majority in value of investors, excluding the collective investment scheme management company (CIS Manco). In certain circumstances set out in section 98(2)(b) of CISCA, the Financial Sector Conduct Authority (FSCA) may direct that the consent may be dispensed with.

In terms of section 99 of CISCA, the business of two or more CISs or two or more CIS portfolios may be amalgamated with the consent of investors, excluding the CIS Manco, holding a majority in value of participatory interests<sup>1</sup>.

A CIS Manco should conduct a ballot process (as set out in the deed of a CIS) to obtain investors' consent.

## 2. PURPOSE

The purpose of this guideline is to assist ASISA members with information that is aimed at improving the efficiency of the CIS balloting process. ASISA members should take their own decisions as to how they will use this guideline.

The guideline consists of five parts:

- Ballot information.
- Ballot timeline.
- Ballot communication.
- Communication to targeted portfolio investors.
- Application to the FSCA.
- Factual findings report of the auditor.

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<sup>1</sup> On 8 February 2023, the FSCA published an exemption from certain requirements of section 99(1) of CISCA subject to certain conditions, whereby a CIS Manco need not obtain the prior consent of investors in a targeted portfolio when amalgamating two or more collective investment schemes or two or more portfolios of a collective investment scheme. Please refer to paragraph 6 of this Guideline.

### 3. BALLOT INFORMATION

- 3.1 A CIS Manco is required to inform investors of details of the proposed amendment/amalgamation and the process that will be followed. A ballot letter should use plain language that an average investor can reasonably understand (for example the language used in minimum disclosure documents), and the technical legal language should be used in the schedule of amendments that is attached to the ballot letter as an annexure, as required by the FSCA.
- 3.2 A fundamental change to a deed or supplemental deed in terms of section 98 of CISCA is typically related to a change to the investment policy, the structure of a CIS portfolio or a change in asset classes or asset class limits<sup>2</sup>. Some changes may require a reclassification in terms of the ASISA Fund Classification Standard or the ASISA Hedge Fund Classification Standard.
- 3.3 There are generally two types of amalgamations in terms of section 99 of CISCA:
- An amalgamation, or merger, of two or more separate CIS portfolios in the same CIS, generally referred to as a pure amalgamation.
  - An amalgamation to facilitate the transfer of a CIS portfolio from one CIS/CIS Manco to another, generally referred to as an onboarding/offboarding amalgamation.
- Operational tasks required to effectively execute an amalgamation vary based on the nature of the amalgamation.
- 3.4 Where a registered investor is holding participatory interests as a nominee (for example a Linked Investment Services Provider (LISP) or a person duly appointed to act on behalf of the beneficial owners of such participatory interests (for example an investment manager), the nominee or such person should obtain written instructions from such owners as to how to respond to the ballot.
- 3.5 Communication of ballot information between a CIS Manco and a LISP can be challenging especially where the parties have differing requirements. The guidance on ballot information in paragraphs 3.6 and 3.7 is directed at these parties.

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<sup>2</sup> The following is a non-exhaustive list of examples of fundamental changes to a deed or supplemental deed:

- Investment policy including the investment objective.
- A benchmark which forms part of the investment policy or impacts the investment policy.
- Including new or additional types of investment instruments (securities).
- Including or deleting a requirement to comply with prudential investment guidelines for retirement funds.
- Asset allocation, including changes to geographic regions.
- An index tracked by an index tracking CIS portfolio.
- The structure of a CIS portfolio for example a feeder fund to a fund of funds or a single fund to a fund of funds.

- 3.6 A CIS Manco should inform a LISP of an intended ballot by providing a LISP with a draft ballot letter and a proposed ballot timeline (see paragraph 4 of these guidelines). The draft ballot letter should set out the relevant details of the intended ballot to enable a LISP to appropriately deal with the ballot considering the LISP's arrangements with its clients, for example instructions on special distributions or suspension of redemptions (freeze period). Once the FSCA has agreed that the CIS Manco may proceed with the ballot process, the CIS Manco should timeously provide the LISP with the final ballot letter.
- 3.7 CIS Mancos and LISPs should timeously communicate their stationery requirements. While it may be useful to standardise the requirements, it is impractical to do so due to the differences between ballots. The initial communication on stationery requirements to prepare for the ballot process could include the following information (where applicable):
- a) LISP Name.
  - b) Expected total number of investors affected by the ballot.
  - c) Expected number of investors that will receive an electronic ballot letter/targeted investor notification letter.
  - d) Expected number of investors that will receive a printed ballot letter/targeted investor notification letter by post.
  - e) An indication of whether an envelope is required and if so, the required envelope size and type (e.g., window or not, prepaid).
  - f) An indication of whether the envelope should be sealed.
  - g) An indication of whether the printed letters will be in colour, or black and white, or a combination of colour and black and white.
  - h) Confirmation of the return to sender address if ballot letter is undelivered.
  - i) Ballot return envelope addressed to the auditor.
  - j) The LISP's delivery address.
  - k) Any special instructions.
  - l) Details of a contact person(s) for queries.

#### **4. BALLOT TIMELINE**

- 4.1 A CIS Manco is required to submit a proposed ballot timeline together with the proposed ballot letter to the FSCA as part of an application for approval of a ballot. A proposed ballot timeline is set out below to assist ASISA members with the planning and managing of the CIS ballot process.

**Please note that some steps or parts of a step may not be relevant depending on the type of ballot (for example amalgamations and targeted portfolio investor notifications) and some steps are not relevant to a CIS Manco where a LISP is not involved.**

4.2 The FSCA requires a LISP to confirm that the ballot timeline has been agreed between the CIS Manco and the LISP.

	<b>Step in process</b>	<b>Timing (business days)</b>	<b>Comments/Info</b>
<b>Preparation for application to FSCA</b>			
1	CIS Manco notifies LISP of intended ballot. (Refer to paragraphs 3.6, 3.7 and 4.2 above).	<u>At least</u> 10 days before application to the FSCA.	This guideline is a minimum. A CIS Manco may decide to notify a LISP more than 10 days before the intended submission date to the FSCA.
2	LISP approves timeline and responds to CIS Manco with requested information.	By the date specified by the CIS Manco.	The response time could align with the timing of step 1 above.
<b>Application to FSCA &amp; FSCA response</b>			
3	CIS Manco submits ballot application and notification to targeted portfolio investors to FSCA for approval.	1	In the case of an amalgamation, the CIS Manco should include information to satisfy the conditions in paragraphs 2(d), (e) and (f) of the FSCA Exemption of 8 February 2023.
4	FSCA responds with no objection letter (approval for the ballot and targeted portfolio investor notification to proceed).	45 – 70	FSCA Service Level Commitment: Section 98 ballot = 45. Section 99 ballot = 70. Delays may be caused by incomplete applications and FSCA queries.
<b>Preparation prior to investor extract date</b>			
5	CIS Manco informs LISP of FSCA approval to proceed with the ballot and targeted portfolio investor notification.	1	
6	LISP confirms/updates expected number of physical and electronic ballot letters and targeted portfolio investor notification letters to CIS Manco.	2 - 3	

	<b>Step in process</b>	<b>Timing (business days)</b>	<b>Comments/Info</b>
7	CIS Manco arranges for the preparation/printing of the ballot letters and targeted portfolio investor notification letters (as approved by the FSCA).	1 – 5	Timing dependent on the size of the ballot. <u>No</u> changes may be made to the FSCA approved ballot letter <sup>3</sup> .
8	CIS Manco transmits/delivers letters to LISP and to distributors for bulk distribution/posting.	3 – 5	
<b>Investor extract and distribution of ballot letters and targeted portfolio investor notification letters</b>			
9	Extract of investors. a. CIS Manco extracts investor register for extract date. b. LISP extracts investor register for extract date.	1	
10	a. CIS Manco sends investor register for ballot to auditor. b. LISP sends investor register for ballot to auditor.	1	Auditors may have differing requirements for information to be provided in addition to the investor register.
11	Distribution: CIS Manco, LISP and other distributors transmit/post the ballot letters and targeted portfolio investor notification letters.	3 – 5	The FSCA requires the distribution/dispatch date to be within 7 business days from the extract date. <sup>4</sup>
<b>Ballot and targeted portfolio investor notification finalisation</b>			
12	Final ballot return date and final date for targeted portfolio investor objections.	30	The deed specifies 30 business days from distribution/dispatch date. An alternative time period may be agreed with the FSCA. The return date is included in the approved ballot letter.

<sup>3</sup> The FSCA no objection letter usually requires a CIS Manco to confirm in writing that the ballot letter is identical to the draft agreed with the FSCA. This confirmation means no information, including dates, in the ballot letter may be changed. In some cases, a CIS Manco corrects immaterial errors such as spelling errors and incorrect references. These immaterial changes could be communicated to the FSCA in the confirmation of whether the final ballot letter is identical to the draft agreed with the FSCA.

<sup>4</sup> The FSCA will consider a period of up to 10 business days if a CIS Manco provides a motivation for such longer period.

	Step in process	Timing (business days)	Comments/Info
13	CIS Manco provides LISP with details of targeted portfolio investors that lodged objections and requests confirmation of values.	1	Refer to paragraph 6 below.
14	LISP confirms aggregate value and percentage of holdings of objections lodged by targeted portfolio investors to CIS Manco.	5	
15	Auditor prepares factual findings report and submits to CIS Manco.	5 – 10	Timing depends on the size of the ballot.
16	CIS Manco submits reports to FSCA: a. Auditor's report. b. CIS Manco Compliance Confirmation.	1	Auditor's report – refer to paragraph 7 below.  CIS Manco Compliance Confirmation - refer to paragraph 8 below.
17	FSCA instruction that deeds may be signed (in principle approval).	10	
18	CIS Manco and trustees sign the relevant deed.	5	
19	CIS Manco sends signed deed to FSCA.	1	
20	FSCA final approval including stamped deed or deed noted accordingly.	5	
21	a. In the case of a section 98 ballot, CIS Manco confirms FSCA approval to LISP and/or to investors and/or to intermediaries. b. In the case of section 99 ballot, CIS Manco confirms FSCA approval to LISP (if applicable).	1 - 2	In the case of a section 99 ballot – a. the envisaged ballot effective date is generally included in the ballot letter and the targeted portfolio investor notification; b. a CIS Manco generally does not again inform investors of this date; c. some LISPS however still communicate the ballot effective date to investors after the FSCA approval has been received.  In the case of a section 98 ballot, an investor should have an opportunity to decide on disinvestment.
22	If applicable, LISP confirms FSCA approval to investors.	1 - 3	

	Step in process	Timing (business days)	Comments/Info
<b>Ballot implementation</b>			
23	Ballot implementation date.	3 – 10	

## 5. BALLOT COMMUNICATION

The method of communicating ballot information to investors or amalgamation information to targeted portfolio investors depends on the context of the CIS Manco business and the method of communication selected by investors. The communication may be through electronic means or by physical post or both. The Electronic Communications and Transactions Act 2002 (Chapter III) provides for written communication to be in the form of a data message, accessible in a manner usable for subsequent reference.

A CIS Manco and/or LISP could consider the following additional steps to support investors to be informed of a ballot and to respond to such ballot, or in the case of a targeted portfolio investor, to lodge an objection:

- a) Send a short message services (sms) to inform investors of a ballot or targeted portfolio investors of an amalgamation.
- b) Send an email or sms reminder to vote or lodge an objection before the cut-off date.
- c) Place a notification of a pending ballot or amalgamation information on the website.
- d) Place a notification of a ballot with a link to the ballot letter or an amalgamation with a link to the targeted portfolio investor notification on the website during the ballot process.
- e) Inform intermediaries of a pending ballot and/or of a ballot process that is underway (including a ballot letter and/or a targeted portfolio investor notification letter) and kindly request their assistance to communicate the ballot to investors or the amalgamation to targeted portfolio investors.



## **6. COMMUNICATION TO TARGETED PORTFOLIO INVESTORS IN THE CASE OF AN AMALGAMATION**

On 8 February 2023, the FSCA published an exemption from certain requirements of section 99(1) of Cisca subject to certain conditions, whereby a CIS Manco need not obtain the prior consent of investors in a targeted portfolio when amalgamating two or more collective investment schemes or two or more portfolios of a collective investment scheme.

When ballot information is communicated to investors, a CIS Manco should provide the targeted portfolio investors with a warning of the proposed amalgamation so that they may consider their options and have an opportunity to exercise their rights before the transfer is concluded.

A CIS Manco should inform targeted portfolio investors of the amalgamation, provide appropriate and accurate information concerning the expected impact of the amalgamation, and inform investors of their right to object to the amalgamation.

The letter to targeted portfolio investors could also –

- a) provide an email address or other electronic mechanism of the CIS Manco if an investor wishes to lodge an objection or an alternative communication method (e.g., phone or communication via intermediary) if an investor does not have access to email;
- b) request an investor to provide identification information and an authorisation to enable a CIS Manco to request information from a LISP; and
- c) request an investor to provide a reason for the objection.

## **7. APPLICATION TO THE FSCA**

The application to the FSCA for the approval of a ballot should generally contain the following information:

- a) A motivation letter to the FSCA describing/explaining the background and details of the intended ballot. The letter should also demonstrate how the CIS Manco will ensure that investors are treated fairly in changing portfolios or where portfolios will no longer be available.
- b) A draft ballot letter including at least the following information:
  - i) The full detail on the name of the affected CIS portfolio/s.

- ii) The proposed amendment or amalgamation and the motivation for such amendment or amalgamation.
  - iii) The expected impact of the amendment or amalgamation on investors.
  - iv) The ballot process and relevant dates.
  - v) Details of the auditor to who the ballot paper should be sent.
  - vi) A comparison of the current investment policy and the future investment policy of the CIS portfolio.
  - vii) A comparative table indicating the current and proposed provisions of the deed or supplemental deed.
  - viii) Investors should be given the option to redeem participatory interests or to switch to another portfolio, at no cost to the investor. In this regard there should be an explanation that such redemption could result in a capital gains tax event.
  - ix) With respect to ballots for amalgamations, investors should be made aware that this is a deemed vote in that when a response is not received, it is deemed that the investor agrees to the amalgamation.
- c) In the case of an amalgamation, a draft notification letter to targeted portfolio investors including at least the following information:
- i) The full detail of the name of the affected CIS portfolio/s.
  - ii) The proposed amalgamation and the motivation for such amalgamation.
  - iii) The expected impact of the amalgamation on investors in the targeted portfolio.
  - iv) The process and relevant dates.
  - v) Investors should be given the option to redeem participatory interests or to switch to another portfolio, at no cost to the investor. In this regard there should be an explanation that such redemption could result in a capital gains tax event.
  - vi) Investors should be given an option to lodge an objection to the amalgamation with the following details –
    - An email address or other electronic mechanism of the CIS Manco if an investor wishes to lodge an objection or an alternative communication method (e.g., phone or communication via intermediary) if an investor does not have access to email.
    - A request to an investor to provide identification information and an authorisation to enable a CIS Manco to request information from a LISP.
    - A request to an investor to provide a reason for the objection.

- d) A ballot timeline that includes the expected date of approval from the FSCA, the date the letter will be mailed or electronically distributed, the date of extraction of investor details from the system, the closing date of the ballot, the date the FSCA can expect the auditor's report and if applicable, the CIS Manco Compliance Confirmation as well as the effective date of the amendment. A CIS Manco should allow at least 30 business days to provide a vote. Ballot letters should be mailed or electronically distributed within 7 business days of the date of extraction of investors' details.
- e) A draft supplemental deed/s to effect the amendment / amalgamation / cessation as a result of the amalgamation. With respect to amalgamations, there is a requirement for a special distribution for each of the portfolios, if the amalgamation takes effect on a date other than the end of an accounting period. This should be disclosed to investors and provided for in the draft supplemental deed.
- f) A list of the LISPs, if any, invested in the portfolio and confirmation that such LISPs agree with the proposed timeline.
- g) In respect of investors:
  - i) The number of investors in the portfolio/s.
  - ii) A breakdown of the number of investors that invested directly with the CIS Manco and/or indirectly (via LISPs).
  - iii) A breakdown of the number of investors receiving communication via the post office and/or electronically.
  - iv) If the CIS Manco communicates with investors via the post office, information on whether the CIS Manco has made any efforts to change the communication method from post office to email to mitigate the risk that investors do not receive the communication via the post office.
  - v) Further information on what alternative means of communication the CIS Manco will follow to ensure that investors who receive communication via the post office, are aware of the ballot in progress.
- h) Confirmation that the CIS Manco has ensured the availability of the auditor to count the results of the ballot and provide the report to the CIS Manco for the process to continue.

## 7. ACTUAL FINDINGS REPORT OF THE AUDITOR

The FSCA generally requires the auditor's factual findings report to include the following:

- a) Agreed upon procedures with the CIS Manco.
- b) Factual Findings.
- c) Investor extract date.
- d) Conclusion.
- e) A table with the information on the ballot count, portfolio value at the date of extraction of the investors' details, responses received, responses not received, responses in favour of the amendment/amalgamation.
- f) For a section 98 ballot, the information provided in the factual findings report should demonstrate that all investors were given the opportunity to take part in the ballot and that at least 25% in value responded in writing, which excludes the CIS Manco, and of which the majority agreed to such amendment.
- g) For a section 99 ballot, the information provided in the factual findings report should demonstrate that all investors in the source portfolio were given the opportunity to take part in the ballot and that the majority of the investors in the source portfolio had not declined the proposed amalgamation.
- h) Where a CIS Manco, its collective investment scheme and all the portfolios thereunder cease due to amalgamation, the FSCA requires that audited financial statements for the CIS Manco and the portfolios be submitted within 3 months after cessation thereof, based on the last day it existed.

## 8. CIS MANCO COMPLIANCE CONFIRMATION

For a section 99 ballot, a CIS Manco should prepare a Compliance Confirmation signed off by the Compliance Officer of the CIS Manco to report on the number of objections received from targeted portfolio investors and the aggregate value and percentage of holdings it represents.

**HISTORY OF AMENDMENTS**

<b>Date of publication</b>	<b>Amendments</b>
20 July 2023	Resulting from FSCA Exemption for Targeted Fund Portfolio Investors.

Responsible Senior Policy Advisor: Adri Messerschmidt