

GUIDELINE ON BALLOTS FOR COLLECTIVE INVESTMENT SCHEMES

Effective date: 7 July 2021

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.

A CIS Manco must 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.

The guideline consists of five parts:

- Ballot information.
- Ballot timeline.
- Ballot communication.
- Application to the FSCA.
- Factual findings report of the auditor.

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 limits¹. 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:

- a) An amalgamation, or merger, of two or more separate CIS portfolios in the same CIS, generally referred to as a pure amalgamation.
- b) 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.

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.

¹ 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.

3.7 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.
- d) Expected number of investors that will receive a printed 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.

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

	Step in process	Timing (business days)	Day	Comments/Info
Preparation for application to FSCA				
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.	-10	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.

	Step in process	Timing (business days)	Day	Comments/Info
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.
Application to FSCA & FSCA response				
3	CIS Manco submits ballot application to FSCA for approval.	1	0	
4	FSCA responds with no objection letter (approval for the ballot to proceed).	45 – 70	45 - 70	FSCA Service Level Commitment: Section 98 ballot = 45. Section 99 ballot = 70. Delays may be caused by incomplete applications and FSCA queries.
Preparation prior to investor extract date				
5	CIS Manco informs LISP of FSCA approval to proceed with the ballot.	1	46/71	
6	LISP confirms/updates expected number of physical and electronic ballot letters to CIS Manco.	2 - 3	48/49 73/74	
7	CIS Manco arranges for the preparation/printing of the ballot letters (as approved by the FSCA).	1 – 5	49/54 74/79	Timing dependent on the size of the ballot. <u>No</u> changes may be made to the FSCA approved ballot letter ² .
8	CIS Manco transmits/delivers letters to LISP and to distributors for bulk distribution/posting.	3 – 5	52/59 77/84	

² 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.

	Step in process	Timing (business days)	Day	Comments/Info
Investor extract and distribution of ballot letters				
9	Extract of investors. a. CIS Manco extracts investor register for extract date. b. LISP extracts investor register for extract date.	1	53/60 78/85	
10	a. CIS Manco sends investor register to auditor. b. LISP sends investor register to auditor.	1	54/61 79/86	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.	3 – 5	57/66 82/91	The FSCA requires the distribution/dispatch date to be within 7 business days from the extract date. ³
Ballot finalisation				
12	Final ballot return date.	30	87/96 112/121	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.
13	Auditor prepares factual findings report and submits to CIS Manco.	5 – 10	92/106 117/131	Timing depends on the size of the ballot.
14	CIS Manco submits auditor's report to FSCA.	1	93/107 118/132	
15	FSCA instruction that deeds may be signed (in principle approval).	10	103/117 128/142	
16	CIS Manco and trustees sign the relevant deed.	5	108/122 133/147	
17	CIS Manco sends signed deed to FSCA.	1	109/123 134/148	

³ 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)	Day	Comments/Info
18	FSCA final approval including stamped deed or deed noted accordingly.	5	114/128 139/153	
19	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	115/130 140/155	In the case of a section 99 ballot – a. the envisaged ballot effective date is generally included in the ballot letter; 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.
20	If applicable, LISP confirms FSCA approval to investors.	1 - 3	116/133 141/158	
Ballot implementation				
21	Ballot implementation date.	3 – 10	119/143 144/168	

Note: Some steps are not relevant to a CIS Manco where a LISP is not involved.

5. BALLOT COMMUNICATION

The method of communicating ballot information to 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.

- 5.1 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:
- a) Send a short message services (sms) to inform investors of a ballot.
 - b) Send an email or sms reminder to vote before the cut-off date.
 - c) Place a notification of a pending ballot on the website.
 - d) Place a notification of a ballot with a link to the ballot letter 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 kindly request their assistance to communicate the ballot to investors.

- 5.2 During the Covid-19 pandemic, the FSCA enquired whether the measures in paragraph 5.1 were implemented and required a Covid-19 clause to be included in the ballot letter.

Example of Covid-19 clause:

COVID-19 contingency: Due to the impact of the COVID-19 pandemic we have implemented various contingency plans, amongst others:

- If you are unable to provide us with a copy of your signed ballot letter, please contact us via email or call us at the number below and we will make alternative arrangements to assist you with submitting your vote to the auditors before the due date.
- If the ballot is aborted or delayed before the response deadline, we will stop the ballot process, agree a new effective date with the FSCA, restart the process and recirculate ballot letters.
- If the response deadline is met and the ballot is successful, but the effective date must be postponed, we will agree a new effective date with intermediary investment platforms and obtain approval from the FSCA and notify investors of the change.

6. 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 whom the ballot paper must 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 must be given the option to redeem participatory interests or to switch to another portfolio, at no cost to the investor. In this regard there must 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) 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 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.

- d) 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 must be disclosed to investors and provided for in the draft supplemental deed.

- e) A list of the LISPs, if any, invested in the portfolio and confirmation that such LISPs agree with the proposed timeline.

- f) 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.

- g) 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 favor 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 were given the opportunity to take part in the ballot and that the majority of the investors had not declined the proposed amalgamation of each of the affected portfolios.
- 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.

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HISTORY OF AMENDMENTS

Effective date	Amendments

Responsible Senior Policy Advisor: Adri Messerschmidt