

29 November 2021

MARKET NOTICE

REQUIREMENTS FOR MARKET PARTICIPATION: COLLECTIVE INVESTMENT SCHEMES



This document is intended as a guide for prospective market participants in determining whether businesses proposing to/or operating within their respective territories may be considered Collective Investment Schemes for the purposes of the Securities Act of 2001 (the Act).

You are encouraged to review the Securities Act and the Securities (Collective Investment Scheme) Regulations enacted in the respective country for a complete presentation of the requirements. When further clarification is required you may refer to the Commission's Secretariat using the contact information provided at the end of this document.

The operation of Collective Investment Schemes in the Eastern Caribbean Currency Union (ECCU) is governed by the Securities Act 2001 (the Act) and the Securities (Collective Investment Scheme) Regulations. Sections 99 through 111 of the Act deal specifically with the interpretation, requirements for licensing of intermediaries, conditions for approval, restrictions, revocation of licence and winding up of a Collective Investment Scheme. The Securities (Collective Investment Schemes) Regulations, as required by Section 109 of the Act, are intended to provide detailed instructions for approval and licensing requirements as well as the operation of Collective Investment Schemes.

For a complete discussion of the regulatory requirements, interested persons should review the [Securities \(Advertisement\) Regulations](#), [Securities \(License and Fees\) Regulations](#) and the [Securities \(Collective Investment Schemes\) Regulations](#).

OVERVIEW OF THE LEGISLATION

The Act defines a collective investment scheme as:

- "99(1)(a) a unit trust;
- (b) an investment company;
- (c) investment contracts, investment programmes or any other arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the

- property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of property or sums paid out of such profits or income; and*
- (d) *any scheme that the Commission may deem to be a collective investment scheme for the purpose of the Act;”*

Generally, a collective investment scheme is an investment vehicle that pools the contributions of many investors for investment in securities.

The Act and the Securities (Collective Investment Scheme) Regulations require that collective investment schemes be authorised and management companies and custodians be licensed by the Commission.

THE UNIT TRUST

The unit trust is an entity established by Trust deed and registered with the Registrar of Companies within the jurisdictions.

THE INVESTMENT COMPANY

The investment company is an incorporated entity established by its memorandum and articles of incorporation and registered with the Registrar of Companies within the jurisdiction.

INVESTMENT CONTRACTS

An investment contract that is a collective investment scheme is an agreement between an asset manager and an investor which provides for the management of pooled contributions, and allow investors to receive profits or income arising from the acquisition, holding, management or disposal of property or sums paid out of such profits or income.

OPERATING STRUCTURE

The legislation requires that collective investment schemes must comprise the scheme, a management company, except for a self-managed investment company, and a custodian. The scheme, which is the investment vehicle in which the unit holders are invested, may take any of the forms described under Section 99 of the Act.

For the purposes of the ECCU securities legislation a company is a management company of a collective investment scheme if, at a minimum, it:

1. Runs the day to day administrative activities of the scheme.
2. Determines the composition the scheme's portfolio of assets.
3. Ensures that the capital of the scheme is invested in accordance with the formation documents and the regulations.
4. Prepares the scheme's accounts and provides the documents necessary for public disclosure.
5. Calculates and discloses the value of the scheme's units.
6. Determines (where applicable) and publishes the issue, sale, repurchase and redemption price of the units of the scheme.
7. Provides investment instruction to the scheme's custodian.
8. Prepares and publishes the scheme's particulars.

For the purposes of the ECCU securities legislation a company is a custodian of a collective investment scheme if, at a minimum, it:

1. Holds the property of the scheme for safe-keeping based on the agreement between itself and the management company.
2. Ensures that the management company executes its duties and that the property of the scheme is invested and income applied in accordance with the formation documents and the Regulations.
3. Ensures that the management company calculates the value of the units of the scheme.

4. Carries out the investment instructions of the management company.
5. Ensures compliance with the investment and borrowing limitations of the regulations.
6. Prepares an opinion as to the effectiveness of the management company for publication in the annual report.
7. Ensures that units are not issued until subscriptions have been paid.
8. Monitors transactions of units of the scheme that are owned by the management company.
9. Ensures that the management company's investments are segregated from scheme assets.
10. Establishes and maintains a register of participants of the scheme.

The Commission takes this opportunity to inform that the legislative framework for collective investment schemes has been substantially revised.

A new Investment Funds Bill has been drafted and will replace the foregoing provisions of the Act and the Securities (Collective Investment Scheme) Regulations. We anticipate that the new legislation will come into force in the ECCU member countries within the next 12 to 18 months, following enactment in all the ECCU member countries.

**Eastern Caribbean Securities Regulatory Commission
P O Box 1855
Basseterre
SAINT CHRISTOPHER (ST KITTS) AND NEVIS
info@ecsrconline.org/www.ecsrc.com**