



ASIC

Australian Securities &
Investments Commission

REPORT 728

Response to submissions on CP 360 Corporate collective investment vehicles: Preparing for the commencement of the new regime

June 2022

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 360](#) *Corporate collective investment vehicles: Preparing for the commencement of the new regime* (CP 360) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see our regulatory guidance, including:

- [Regulatory Guide 2](#) *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application* (RG 2);
- [Regulatory Guide 3](#) *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3);
- [Regulatory Guide 105](#) *AFS licensing: Organisational competence* (RG 105);
- [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126); and
- [Regulatory Guide 166](#) *AFS licensing: Financial requirements* (RG 166).

Note: Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* and Regulatory Guide 166 *Licensing: Financial requirements* are currently being updated. Among other changes, the updated Regulatory Guide 166 will include an Appendix 10 for corporate directors of corporate collective investment vehicles. The updated version will be renamed 'AFS licensing: Financial requirements'.

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A Overview/Consultation process

- 1 In [Consultation Paper 360](#) *Corporate collective investment vehicles: Preparing for the commencement of the new regime* (CP 360), we consulted on proposals on how we will implement the ‘day one’ Australian financial services (AFS) licensing requirements for corporate collective investment vehicles (CCIVs).

Note: The CCIV regime commences on 1 July 2022, which we refer to in this report as ‘day one’.

- 2 The proposals in CP 360 related to how ASIC will:
 - (a) assess AFS licence applications from corporate directors seeking to operate a CCIV;
 - (b) assess AFS licence applications from persons seeking to provide financial product advice on and/or deal in securities in a CCIV; and
 - (c) administer the AFS licensee obligations that will apply to corporate directors.
- 3 This report highlights the key issues that arose from the submissions received on CP 360 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of the responses received. It is also not meant to be a detailed report on every question from CP 360. We have limited this report to the key issues.
- 5 We received six non-confidential responses to CP 360 from a range of stakeholders, including industry bodies, a market operator, law firms and responsible entities. We are grateful to respondents for taking the time to send us their comments. For a list of the respondents to CP 360, see the appendix. Copies of these submissions are currently on the [CP 360](#) page on the ASIC website.

Key issues arising from the consultation

- 6 The submissions generally supported the proposals for the licensing of corporate directors to operate a CCIV. The key issues raised by respondents related to:
 - (a) AFS licence or variation applications for CCIVs (see Section B);
 - (b) compensation and insurance arrangements for corporate directors (see Section C); and
 - (c) financial resource requirements for corporate directors (see Section D).

B AFS licence or variation applications for CCIVs

Key points

In [CP 360](#), we proposed an approach to AFS licence and variation applications for CCIVs. This report summarises the key themes of the submissions, as well as our response.

Issues raised in response to CP 360 related to:

- our proposed requirements for an AFS licensee that is currently authorised to act as a responsible entity of a retail managed investment scheme (responsible entity) and that wishes to obtain an authorisation to become a corporate director;
- our proposal to impose a licence condition limiting a corporate director's CCIV operations where the corporate director only operates wholesale CCIVs; and
- the timeframe within which an AFS licensee that is currently authorised to advise on and/or deal in interests in managed investment schemes can opt in to an ASIC-initiated licence variation to include an authorisation for 'securities in a CCIV'.

AFS licence authorisations for corporate directors: Process and requirements

7 In [CP 360](#), we consulted on proposals to require that, in addition to the 'core proofs', the following new proofs be submitted with an application for an AFS licence or variation to include an authorisation to be a corporate director:

- C13 proof: CCIV Operating Capacity Statement*—aimed at obtaining information from an applicant about the proposed CCIV and sub-funds, and compliance arrangements that are specific to the operation of CCIVs; and
- C13 proof: CCIV Asset Statement*—aimed at obtaining information from an applicant about the safeguarding and custody of CCIV assets (see proposals C1 and C2 in CP 360).

8 Respondents generally agreed with our proposals to require the new proofs. Some respondents recommended alternative processes for responsible entities seeking to become a corporate director to 'operate the business and conduct the affairs of the CCIV'. These submissions included:

- for existing responsible entities and operators of wholesale schemes, not requiring core proofs A5 (Business Description) or B1 (Organisational Competence), and only requiring information beyond the new

C13 proofs when that information is needed to show that the AFS licensee will be able to properly carry out the additional activity of operating a CCIV;

- (b) deeming recently provided and approved documentation as sufficient for the purposes of the AFS licence authorisation to operate a CCIV;
- (c) implementing an expedited process for the assessment of applications submitted by AFS licensees with sufficient experience in operating managed investment schemes; and
- (d) ASIC initiating a process whereby responsible entities and trustees of unregistered managed investment schemes could opt in to an AFS licence variation to authorise them to operate a CCIV, without requiring any proofs or paying an application fee.

ASIC's response

Under s913B of the *Corporations Act 2001* (Corporations Act), ASIC must only grant an AFS licence if we have no reason to believe that an applicant is likely to contravene the general licensee obligations. We apply the same principles to assessing an AFS licence variation.

It is important for ASIC to exercise a reasonable degree of scrutiny in relation to applications to be a corporate director, even though the applicant may already be an AFS licensee that is authorised to act as a responsible entity. Given the specific requirements that apply to corporate directors, we need to conduct an assessment of a licensee's variation application to be able to form a view about whether the licence should be amended.

We acknowledge that some AFS licensees with an interest in operating CCIVs may have been recently assessed for a new or varied licence. In light of this, we will accept re-lodgement of a previously prepared B1 Organisational Competence proof that covers the nominated responsible manager's competence in operating registered or unregistered managed investment schemes of the same asset type as proposed to be held by the CCIV.

We will also accept re-lodgement of 'fit and proper' persons documentation that has been provided to ASIC since 18 February 2020 for responsible managers and officers of the responsible entity (this is the date the law was amended to require ASIC to apply the fit and proper person test, and to apply it to a wider range of matters and people associated with an applicant).

We will accept the prior information and statements relating to competence and fitness and propriety if the AFS licensee confirms in its variation application that the information remains true and accurate.

Regardless of whether the applicant has recently been licensed or had a variation approved, we will require core proofs relating to

the applicant's business description (A5 Business Description) and the new non-core proofs for corporate directors (C13 proof: CCIV Operating Capacity Statement and C13 proof: CCIV Asset Statement) to understand the applicant's proposed CCIV business and certain compliance arrangements for CCIVs.

The required content of the A5 Business Description proof will depend on how the AFS licensee is proposing to structure its CCIV activities. If the licensee is going to operate its CCIV activities separately from its responsible entity business, we will only require an A5 Business Description proof that addresses the licensee's new CCIV-related business activities, along with:

- confirmation that the prior A5 Business Description proof concerning its responsible entity activities remains true and correct; or
- information relating to any material changes.

We expect that, in most cases, there will be some cross-over between an AFS licensee's CCIV and responsible entity activities. If so, we will expect the A5 Business Description proof to adequately address its combined CCIV and responsible entity activities.

We will prioritise AFS licence applications from prospective corporate directors for an initial period of, at least, the first six months following commencement of the CCIV regime.

Due to the similarities in the managed investment scheme and CCIV regimes, we expect that applications from existing responsible entities seeking a retail CCIV authorisation, and trustees of unregistered managed investment schemes seeking a wholesale CCIV authorisation, that do not raise any regulatory concerns will be finalised more quickly than other AFS licence variation applications.

We will be updating our guidance in [Information Sheet 240 AFS licence applications: Providing information for fit and proper people and certain authorisations](#) (INFO 240) to clarify what proofs we will require to be submitted with an application for an authorisation as a corporate director

Limit on the number of sub-funds operated by new corporate directors

- 9 In [CP 360](#), we proposed to update [Regulatory Guide 2 AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application](#) (RG 2) to make it clear that, in certain circumstances, ASIC may impose a condition limiting a corporate director's CCIV operations to one CCIV with a single sub-fund: see proposal B2. We proposed to impose this condition in circumstances where the corporate director had not been able to demonstrate that it had the organisational competence and capacity to conduct broader operations.

- 10 One respondent suggested that, to ensure alignment with the existing managed investment scheme regime, the condition to limit a corporate director's CCIV operations to one CCIV with a single sub-fund should not apply to operators of wholesale CCIVs.

ASIC's response

After considering the feedback, we have reconsidered our position and will generally not impose a limit of a single sub-fund on corporate directors of wholesale CCIVs. This approach is equivalent to our approach to the licensing of operators of wholesale managed investment schemes.

We have maintained the position in [CP 360](#) that we may impose a limit of a single sub-fund on a corporate director that operates a retail CCIV where, in our opinion, the corporate director has not demonstrated that it has the organisational competence and capacity to conduct broader operations.

Timeframe for opting in to ASIC-initiated AFS licence variation

- 11 In [CP 360](#), we proposed that we would write to AFS licensees that currently hold authorisations to provide advice on and/or deal in interests in managed investment schemes ('financial intermediaries') and give them the opportunity to 'opt in' to an ASIC-initiated variation of their AFS licence to add an authorisation for 'securities in a CCIV'.
- 12 Respondents were broadly supportive of our proposal. Some respondents requested that ASIC allow an extended period of time (e.g. one year or two years) for AFS licensees to utilise this opt-in process.

ASIC's response

On 19 April 2022, as proposed in [CP 360](#), we wrote to AFS licensees that already held authorisations to advise and/or deal in managed investment schemes and asked if they would like to opt in to the ASIC-initiated variation of their licences.

This one-off offer was aimed at assisting these AFS licensees to easily transition to the CCIV regime, while balancing the need for ASIC to have certainty regarding the resources required to facilitate this process in the lead up to day one. AFS licensees that did not take up the offer of an ASIC-initiated variation by 3 May 2022 can still apply for a variation to their licence. At this stage, we do not intend to extend the opt-in period for the ASIC-initiated variations for these AFS licensees beyond 3 May 2022.

If an AFS licensee subsequently applies to vary its licence it will need to pay an application fee and submit the required proofs. In these circumstances, ASIC will grant an authorisation to advise and/or deal in 'securities', rather than the narrower 'securities in a CCIV' authorisation granted under the ASIC-initiated licence variation process.

C Compensation and insurance arrangements for corporate directors

Key points

This section outlines the submissions on our proposals and our responses in relation to the professional indemnity (PI) insurance requirements for corporate directors of retail CCIVs.

The key issues raised in response to [CP 360](#) related to:

- whether the PI insurance requirements for corporate directors of retail CCIVs should be separate requirements to the PI insurance requirements for responsible entities; and
- the availability of appropriate PI insurance on day one of the CCIV regime.

PI insurance requirements for corporate directors of retail CCIVs

- 13 In [CP 360](#), we sought feedback on our proposals to impose a specific PI insurance requirement for corporate directors of retail CCIVs through a condition on their AFS licence, similar to the current requirements for responsible entities: see proposals E1 to E3. We proposed that this PI insurance requirement would be a separate obligation, meaning that a corporate director could not rely on PI insurance covering another financial service.
- 14 Respondents broadly agreed with the proposal that corporate directors of retail CCIVs should maintain PI insurance, and that the amount of cover required should be similar to the amount required by responsible entities. However, most respondents did not agree with our proposal to impose the PI insurance requirement as a separate obligation where the corporate director was an existing responsible entity already subject to the PI insurance requirements for responsible entities. Respondents also raised concerns about the availability of appropriate PI insurance on day one of the CCIV regime.

ASIC's response

After considering the feedback, we have revised our position. An AFS licensee that is both a responsible entity and a corporate director will be subject to a requirement that it has adequate PI insurance having regard to the nature of the activities carried out by the licensee under the licence: see reg 7.6.02AAA of the *Corporations Regulations 2001*.

The insurance must also cover claims amounting in aggregate to the lesser of:

- \$5 million; and
- the sum of the value of all scheme property of all registered schemes for which it is the responsible entity and the value of the CCIV assets of all retail CCIVs for which it is corporate director.

At this stage, we are unable to comment on the likely availability of appropriate PI insurance on day one of the CCIV regime.

Following implementation of the CCIV regime, we will monitor the impact of this approach through our regular industry liaison meetings.

D Financial resource requirements for corporate directors

Key points

This section outlines the submissions on our proposals and our responses in relation to the financial resource requirements for corporate directors of retail CCIVs.

The primary issue raised in response to [CP 360](#) related to whether the net tangible asset (NTA) requirement should be a separate requirement from the NTA requirement for responsible entities.

NTA requirement for corporate directors of retail CCIVs

- 15 In [CP 360](#), we sought feedback on our proposal that corporate directors would be subject to the same NTA requirement as responsible entities of registered schemes: see proposal F1.
- 16 Respondents broadly agreed with the proposal that corporate directors of retail CCIVs should be required to hold sufficient financial resources, including NTA. Most respondents did not agree with our proposal to impose the NTA requirement as a separate compliance obligation where the corporate director was also a responsible entity. Respondents instead advocated applying an aggregated test for an AFS licensee that is both a corporate director of a retail CCIV and a responsible entity.

ASIC's response

After considering the feedback, we have revised our position. An AFS licensee that is both a responsible entity and a corporate director will have a single NTA requirement.

The method for determining how much NTA is required will be the greater of:

- a minimum NTA dollar amount (generally being \$150,000 if a custodian is used, or \$10 million if a custodian is not used); or
- a formula based on:
 - the combined value of the scheme property of all registered schemes and the value of the assets of all retail CCIVs; or
 - the responsible entity's revenue and the corporate director's revenue.

This approach is equivalent to our approach to applying the NTA requirement to financial services authorisations with specific NTA

requirements, such as those offered by responsible entities that are also investor directed portfolio service (IDPS) operators.

Following implementation of the CCIV regime, we will monitor the impact of this approach through our regular industry liaison meetings.

Appendix: List of non-confidential respondents

- Baker McKenzie
- Cboe Australia
- Challenger Limited
- Financial Services Council (FSC)
- Law Council of Australia
- Property Council of Australia