



# ASIC

Australian Securities &  
Investments Commission

## CONSULTATION PAPER 360

# Corporate collective investment vehicles: Preparing for the commencement of the new regime

March 2022

### About this paper

This consultation paper seeks feedback on our proposed guidance on corporate collective investment vehicles (CCIVs). It includes proposals on how we will:

- assess Australian financial services (AFS) licence applications from corporate directors seeking to operate a CCIV;
- assess AFS licence applications from persons seeking to provide financial product advice on and/or deal in CCIV securities; and
- administer the licensee obligations that will apply to corporate directors.

Note: The following draft updated guides are attached to this paper (available at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 360): Regulatory Guide 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application*, Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs*, Regulatory Guide 105 *AFS licensing: Organisational competence*, Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees*, and Regulatory Guide 166 *AFS licensing: Financial requirements*.

### 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.

### Document history

This paper was issued on 17 March 2022 and is based on legislation and draft regulations as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy in relation to funds management. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section G, 'Regulatory and financial impact'.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 14 April 2022 to:

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## What will happen next?

<b>Stage 1</b>	17 March 2022	ASIC consultation paper released
<b>Stage 2</b>	14 April 2022	Comments due on the consultation paper
<b>Stage 3</b>	June 2022	Updates to guidance, legislative instruments and pro formas required for 'day one' of the CCIV regime to be released no later than 30 June 2022
<b>Stage 4</b>	From 1 July 2022	Other updates to guidance and legislative instruments required for the CCIV regime are released

## A Background to the proposals

### Key points

The new legislative regime for corporate collective investment vehicles (CCIVs) is an alternative to the existing regime for managed investment schemes under the *Corporations Act 2001* (Corporations Act).

A CCIV is a new type of company limited by shares that is used for funds management, similar to corporate investment vehicles in some overseas jurisdictions.

In this paper, we are seeking feedback on our proposed guidance on the process of applying for an Australian financial services (AFS) licence in relation to CCIVs. We are also seeking feedback on our proposed approach to administering the licensee obligations that will apply to corporate directors.

We are adopting a phased approach to updating our guidance, legislative instruments and pro formas for CCIVs, and this paper relates to 'day one' licensing issues.

## The corporate collective investment vehicle regime

- 1 The *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* implements the legislative regime for CCIVs through amendments to the Corporations Act, the *Australian Securities and Investments Commission Act 2001* and the *Personal Property Securities Act 2009*.
- 2 The CCIV regime will commence on 1 July 2022. It provides an alternative to the existing managed investment scheme regime under the Corporations Act.  
  
Note: In this paper, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act.
- 3 A CCIV is a new type of company that is limited by shares and has a single 'corporate director'. The corporate director is a public company with an AFS licence authorising it to operate the business and conduct the affairs of the CCIV.
- 4 A CCIV is an umbrella vehicle that can comprise one or more sub-funds. It can offer multiple products and investment strategies within the same vehicle through its sub-fund structure.

- 5 The CCIV regime is intended to:
- (a) increase the competitiveness of Australia’s managed funds industry internationally to attract offshore investment, by drawing on the features of other equivalent vehicles internationally;
  - (b) offer internationally recognisable investment products, flow-through tax treatment, commercial flexibility and strong investor protections;
  - (c) complement the Asia Region Funds Passport regime; and
  - (d) contribute to the Australian Government’s broader objective of global regulatory alignment.

Note: See paragraphs 1.14–1.22 of the Explanatory Memorandum to the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021.

- 6 The CCIV regime incorporates some aspects of the existing regulatory framework for registered managed investment schemes.

- 7 We have developed our proposed guidance for CCIVs taking these legislative design principles into account. Where appropriate, and to the extent possible, we have tried to maintain regulatory parity between CCIVs and managed investment schemes.

## Proposed updates to our guidance, legislative instruments and pro formas for the CCIV regime

### Implementation of our work in two phases

- 8 Given that the CCIV regime commences on 1 July 2022, we have decided to update our guidance, legislative instruments and pro formas for CCIVs as set out in Table 1.

**Table 1: Phased implementation of our work**

Phase	Description
Phase 1	<p>In this phase, we will focus on ‘day one’ licensing issues—that is, updating our guidance on:</p> <ul style="list-style-type: none"> <li>• how to apply for an AFS licence to: <ul style="list-style-type: none"> <li>– operate a CCIV; and</li> <li>– provide financial product advice on and/or deal in CCIV securities; and</li> </ul> </li> <li>• how we will administer the licensee obligations that will apply to corporate directors.</li> </ul> <p>We will also update legislative instruments and pro formas that are required for ‘day one’.</p> <p>This paper only relates to our work in phase 1, which will be completed by 1 July 2022.</p>

Phase	Description
Phase 2	<p>We will update other guidance and also make consequential amendments to a number of other legislative instruments to support the implementation of the CCIV regime.</p> <p>These changes will generally be minor and are intended to promote regulatory parity between managed investment schemes and CCIVs where appropriate.</p> <p>In this phase, we will undertake targeted consultation as required. This work will extend beyond 1 July 2022.</p>

## Phase 1 updates

- 9 In phase 1, we are seeking feedback on updates to the following regulatory guides:
- (a) Regulatory Guide 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application* (draft updated RG 2 at Attachment 1 to this paper);
  - (b) Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* (draft updated RG 3 at Attachment 2 to this paper);
  - (c) Regulatory Guide 105 *AFS licensing: Organisational competence* (draft updated RG 105 at Attachment 3 to this paper);
  - (d) Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (draft updated RG 126 at Attachment 4 to this paper); and
  - (e) Regulatory Guide 166 *AFS licensing: Financial requirements* (draft updated RG 166 at Attachment 5 to this paper).
- Note: The draft updated guides, which are attached to this paper, are available on our website at [www.asic.gov.au](http://www.asic.gov.au) under CP 360.
- 10 We are also taking the opportunity to make some minor, technical updates to the above five regulatory guides. Any final guidance that we give will take into account the feedback we receive.
- 11 In phase 1, we will also:
- (a) update [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209);
  - (b) release an information sheet to provide guidance for corporate directors on registering a CCIV and a sub-fund, and
  - (c) update legislative instruments that are required for ‘day one’. This includes making a new legislative instrument that implements our proposed financial resource requirements for corporate directors.
- 12 As part of phase 1, we also intend to make minor updates to other regulatory guides that are most relevant for an AFS licensee that is operating a CCIV or



advising on and/or dealing in CCIV securities. We are not proposing to consult on these updates given they are minor in nature. We will publish these updates ahead of the CCIV regime commencing on 1 July 2022. These include:

- (a) Regulatory Guide 1 *AFS Licensing Kit: Part 1—Applying for and varying an AFS licensee* (RG 1);
- (b) Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104);
- (c) Regulatory Guide 133 *Funds management and custodial services: Holding assets* (RG 133); and
- (d) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

## B Preparing your AFS licence or variation application for CCIVs—Updates to RG 2

### Key points

We are proposing to include new guidance in RG 2 for corporate directors, financial product advisers and dealers on the AFS licence authorisations they must apply for in order to provide financial services in relation to CCIVs.

A corporate director will require an AFS licence authorising it to 'operate the business and conduct the affairs of a CCIV': see proposal B1. We are proposing that, in some circumstances, ASIC may grant this AFS licence subject to a condition that limits the corporate director to operating one CCIV with a single sub-fund: see proposal B2.

We are also proposing that, to provide financial product advice on and/or deal in CCIV securities, an AFS licensee must have a licence authorisation to provide financial product advice on and/or deal in 'securities': see proposal B3.

We are also making it clear that AFS licensees will not have to apply to ASIC for a licence variation to provide financial product advice on and/or deal in CCIV securities if:

- they are licensed to provide financial product advice on and/or deal in securities, since their AFS licence already covers 'securities'; and
- they are licensed to provide financial product advice on and/or deal in 'interests in managed investment schemes', and consent to an ASIC-initiated licence variation to include 'securities in a CCIV'. ASIC will contact these AFS licensees directly (see paragraphs 26–33).

A draft updated version of RG 2, which incorporates our proposed changes, is at Attachment 1 to this paper.

## Background

- 13 A corporate director must hold an AFS licence authorising it to provide the financial service of 'operating the business and conducting the affairs of a CCIV': see s1224F. In addition to this financial service, a corporate director may also provide other financial services, which require other authorisations. The CCIV itself is exempt from the requirement to hold an AFS licence: see s1241B.

Note: While a CCIV is exempt, its corporate director is taken to provide the financial services that are provided by the CCIV. The corporate director is generally required to hold an appropriate AFS licence to cover those services.

- 14 Any other person that provides financial services that relate to CCIVs (e.g. providing financial product advice on and/or dealing in CCIV securities)

must generally hold an AFS licence: see s911A(1) and 766A. CCIV securities are financial products and are defined as a ‘security’. A number of existing AFS licensees will not be required to apply for a licence variation to cover CCIV securities: for more information, see paragraphs 26–33.

- 15 To apply for an AFS licence or to vary an AFS licence, a person must lodge an application with ASIC: see s913A and 914A(2).
- 16 RG 2 provides guidance for applicants who wish to apply for, or vary, an AFS licence. It outlines our views on how to:
  - (a) complete the online [Form FS01 Application for AFS licence](#) and [Form FS03 Application for variation of authorisation and other conditions](#); and
  - (b) prepare ‘core proofs’, which are the key proofs that are generally required to be submitted by all applicants as follows:
    - (i) A5 Business Description;
    - (ii) People Proofs;
    - (iii) B1 Organisational Competence; and
    - (iv) B5 Financial Statements and Financial Resources.

Note: ASIC may also require additional proofs to be submitted by an applicant—see Section C and [draft updated RG 3](#) at Attachment 2 to this paper for further information.

## AFS licence authorisations for corporate directors

### Proposal

- B1** We propose to update RG 2 to include guidance that when completing Form FS01 or Form FS03, the proposed corporate director must:
- (a) select the new authorisation ‘operate the business and conduct the affairs of a CCIV’;
  - (b) specify whether it will be operating a retail CCIV, a wholesale CCIV, or both; and
  - (c) specify the CCIV’s asset type(s) (e.g. financial assets, direct real property).

Note: See [draft updated RG 2](#) at Attachment 1 to this paper.

### Your feedback

- B1Q1** Do you intend to apply for an AFS licence authorisation to ‘operate the business and conduct the affairs of a CCIV’? If so, please give details of:
- (a) whether you would be applying for a new AFS licence or seeking a variation of an existing AFS licence;

- (b) when you anticipate submitting your application to ASIC (e.g. on 1 July 2022 or a later date);
- (c) the type of CCIV you intend to operate (retail and/or wholesale); and
- (d) the CCIV's asset type(s).

B1Q2 Are there any practical problems associated with our proposal, or is any additional guidance required? Please give details.

B1Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

**B2** We propose to update 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. ASIC would impose this condition in circumstances where the corporate director failed to demonstrate that it had the organisational competence and capacity (e.g. systems and resources) to conduct broader operations.

Note: Following feedback on this proposal, we will make any consequential amendments required to [PF 209](#) and RG 105 to refer to the condition.

#### *Your feedback*

B2Q1 Do you agree with our proposal? If not, why not?

B2Q2 Do you consider a condition that limits the operations of either a retail CCIV or a wholesale CCIV in certain circumstances is appropriate? Please provide reasons.

B2Q3 Is there an alternative way that we could restrict a corporate director's operations (e.g. imposing a limit on the assets under management)? If so, please provide details.

## **Rationale**

### **Authorisation to operate a CCIV**

- 17 We are proposing to update RG 2 to reflect the changes we will make to Form FS01 and Form FS03 to include the new financial service of 'operate the business and conduct the affairs of a CCIV': see proposal B1(a).
- 18 If this authorisation is selected, the proposed corporate director will be required to outline:
- (a) whether it intends to operate the business and conduct the affairs of:
    - (i) a retail CCIV; and/or
    - (ii) a wholesale CCIV; and
  - (b) the nature of the proposed CCIV assets.

- 19 A corporate director may also provide other financial services relating to the CCIV (e.g. providing financial product advice on or dealing in underlying financial products). It will also need to be licensed to carry out these financial services and should select the necessary additional authorisations.

### **Condition limiting operations of a CCIV**

- 20 We are proposing to impose a condition limiting the operations of a CCIV if the corporate director fails to demonstrate that it has the organisational competence and capacity to conduct broader operations: see proposal B2. This condition can apply to both retail and wholesale CCIVs and is designed to help protect investors.

- 21 When considering applying this condition, we will take into account the corporate director's:

- (a) organisational competence (i.e. the prior experience of the responsible managers in operating registered or wholesale unregistered schemes, or retail or wholesale CCIVs, as applicable), including:
  - (i) experience with the same types of assets under management; and
  - (ii) the size and scale of prior operations; and

Note: Section D of this paper outlines our proposals on the organisational competence requirements for CCIVs.

- (b) capacity (this includes whether the corporate director has sufficient systems and resources to operate more than one CCIV and sub-fund).

- 22 To remove the condition, the corporate director would need to apply for a variation to its AFS licence condition.

- 23 We have modelled proposal B2 on the 'named scheme' authorisation that can be imposed to limit the operations of responsible entities of registered schemes.

- 24 We have imposed the 'named scheme' authorisation where the applicant cannot demonstrate that it has sufficient organisational competence and capacity to have more substantial operations and operate an extended number of registered schemes. The responsible entity can apply to ASIC to vary its AFS licence and operate multiple schemes with the same kind of assets ('kind schemes').

## **Advising on and/or dealing in CCIV securities**

### **Proposal**

- B3** We propose to update RG 2 to make it clear that, from 1 July 2022, any person that is seeking to provide financial product advice on and/or deal

in CCIV securities will need to apply for an AFS licence or variation to be authorised to provide financial product advice on and/or deal in 'securities'.

Note: Certain AFS licensees will not need to apply to vary their AFS licence to cover CCIV securities: see paragraphs 26–33.

#### *Your feedback*

B3Q1 Do you intend to provide financial product advice on and/or deal in CCIV securities? If so:

- (a) do you have an existing AFS licence authorisation that you will rely on to provide the financial services to clients without applying to ASIC for a licence variation; or
- (b) will you apply for a new AFS licence or variation? If so, what is the anticipated timing of your application (e.g. on commencement at 1 July 2022 or a later date)?

B3Q2 Are there any practical problems associated with our proposal or is any additional guidance required? Please give details.

B3Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

## **Rationale**

- 25 Proposal B3 reflects the fact that CCIV securities are a financial product and legally defined as a type of 'security'.

### **AFS licensees who will not need to apply to vary their AFS licence to cover CCIV securities**

- 26 Some existing AFS licensees will not be required to apply for a licence variation to provide financial product advice on and/or deal in CCIV securities.

#### *Existing AFS licensees authorised to advise on and/or deal in securities*

- 27 A significant number of existing AFS licensees are authorised to provide financial product advice on and/or deal in 'securities'. As CCIV securities are legally defined as 'securities', these AFS licensees will be able to rely on their existing authorisations to provide financial product advice on and/or deal in CCIV securities. These AFS licensees will not require a licence variation to transition to the CCIV regime.

*Existing AFS licensees authorised to advise on and/or deal in managed investment schemes*

- 28 In recognition of the similarities between CCIVs and managed investment schemes, we consider that AFS licensees authorised to provide financial product advice on and/or deal in managed investment schemes should be able to readily transition to the CCIV regime. We will facilitate this transition through an ASIC-initiated licence variation.
- 29 Before the commencement of the CCIV regime, we will write to the AFS licensees that currently hold a relevant authorisation. Our letter will explain the process for ASIC to add an authorisation for ‘securities in a CCIV’. For AFS licensees that ‘opt in’, we will add a ‘securities in a CCIV’ authorisation where the licensee holds a similar existing financial service authorisation for managed investment schemes.
- 30 We consider a narrower authorisation—limited to ‘securities in a CCIV’—is appropriate, given we are not conducting an assessment of organisational competence to support granting a broader ‘securities’ authorisation.
- 31 As ASIC will initiate these variations, AFS licensees who ‘opt in’ will not be required to submit any proofs or pay an application fee.
- 32 ASIC-initiated variations will not be offered in circumstances where we have significant compliance concerns with an AFS licensee.
- 33 If AFS licensees do not wish to ‘opt in’, they may apply for the authorisation at a later date. However, they will need to apply to vary their AFS licence in accordance with the usual licence variation process.

## C Additional proofs for corporate directors— Updates to RG 3

### Key points

We are proposing to update our guidance in RG 3 to outline that a corporate director will be required to submit the following new proofs with their application for an AFS licence or variation that authorises them to ‘operate the business and conduct the affairs of a CCIV’:

- C13 proof: CCIV Operating Capacity Statement (see proposal C1); and
- C13 proof: CCIV Asset Statement (see proposal C2).

A corporate director will also be required to submit any additional proofs that apply to AFS licensees generally under RG 3.

A draft updated version of RG 3, which incorporates our proposed changes, is at Attachment 2 to this paper.

## Background

- 34 RG 3 sets out the additional proofs that ASIC may request an applicant to submit with their AFS licence or variation application. These proofs supplement the ‘core proofs’ that must be submitted with an application, as outlined in RG 2 (see Section B) and help ASIC assess the application.
- 35 For certain AFS licence authorisations, there are additional tailored proofs that an applicant must submit to provide further information about their business operations. For example, to apply for an authorisation to operate a registered scheme, an applicant must submit:
- (a) the C2 proof: Scheme Operating Capacity Statement, which includes further details of the scheme(s) that will be operated; and
  - (b) the C2 proof: Scheme Property Statement, which includes further details of the custody arrangements for scheme property.

## Additional proofs for corporate directors

### Proposal

- c1 We propose to update RG 3 to introduce the new C13 proof: CCIV Operating Capacity Statement. This proposed proof requires the proposed corporate director to describe:
- (a) the CCIV the corporate director intends to operate, including:
    - (i) the target investors (retail or wholesale); and



- (ii) the proposed number of sub-funds, CCIV asset type and number of investors;
- (b) any existing CCIVs that the corporate director operates;
- (c) for any cross-investment of assets between different sub-funds of the CCIV, the arrangements for preventing circular cross-investment within the CCIV and how the corporate director will monitor voting and record-keeping obligations for cross-investments;
- (d) who will hold legal title to the CCIV assets and arrangements for identifying and recording the status of assets held by the CCIV or another person for each sub-fund;
- (e) any accounting, computing and operating systems for the CCIV, and how the corporate director will monitor and maintain these systems;
- (f) how the corporate director will manage access to and security of records of the CCIV (and those relating to each sub-fund) and client records;
- (g) how the corporate director will value the CCIV assets and price the CCIV securities; and
- (h) how the corporate director will market the CCIV, the sub-funds and the corporate director's services.

Note: See Section C of [draft updated RG 3](#) at Attachment 2 to this paper.

#### *Your feedback*

- C1Q1 Do you agree with our proposal? If not, why not?
- C1Q2 Do you consider the items that must be covered in the new C13 proof: CCIV Operating Capacity Statement are appropriate? If not, please give reasons.
- C1Q3 Are there any practical problems associated with our proposal, or a need for additional guidance? Please give details.
- C1Q4 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

**c2** We propose to update RG 3 to introduce the new C13 proof: CCIV Asset Statement. This proposed proof requires the proposed corporate director to describe:

- (a) what the corporate director will define as CCIV assets and how these will be held and protected; and
- (b) where another person has been or will be engaged to hold the assets, a description of:
  - (i) the process the corporate director has undertaken to ensure the person will meet the minimum standards for holding the CCIV assets;
  - (ii) the person's organisational structure, including the identification and segregation of CCIV assets;

- (iii) the process the corporate director will use to monitor the person;
- (iv) the person's business and compliance reporting structure; and
- (v) how conflicts of interest will be managed between custody and operational areas.

#### *Your feedback*

- C2Q1 Do you agree with our proposal? If not, why not?
- C2Q2 Do you consider the items that must be covered in the new C13 proof: CCIV Asset Statement are appropriate? If not, please give reasons.
- C2Q3 Are there any practical problems associated with our proposals, or a need for additional guidance? Please give details.
- C2Q4 Are there any additional costs associated with the implementation of our proposals? Please give details and, if possible, quantify these costs.

## **Rationale**

- 36 We consider it appropriate to introduce tailored additional proofs for CCIVs to help us assess whether to grant an authorisation to 'operate the business and conduct the affairs of a CCIV'.
- 37 The new C13 proof: CCIV Operating Capacity Statement is 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. This is similar to the C2 proof: Scheme Operating Capacity Statement, which responsible entities must submit to operate a registered scheme.
- 38 The new C13 proof: CCIV Asset Statement is aimed at obtaining information from an applicant about the safeguarding and custody of CCIV assets. This is similar to the C2 proof: Scheme Property Statement, which responsible entities must submit to operate a registered scheme. This proof will provide ASIC with information about how a corporate director and holders of CCIV assets will comply with the minimum standards for the custody of CCIV assets.

Note: Draft reg 8B.5.50 of the [Corporations and Other Legislation Amendment \(Corporate Collective Investment Vehicle Framework Regulations 2021\)](#) (exposure draft) imposes minimum standards that apply to holders of the CCIV assets and requirements for a corporate director to monitor an asset holder's compliance with these standards.

## D Organisational competence requirements for CCIVs—Updates to RG 105

### Key points

We are proposing to update our guidance in RG 105 to outline how we will assess compliance with the organisational competence obligation in s912A(1)(e) in relation to CCIVs: see proposal D3. We are proposing to impose requirements similar to those that apply to operating a managed investment scheme: see proposal D1 and D4(a).

To operate the business and conduct the affairs of:

- a retail CCIV—we are proposing that responsible managers must demonstrate qualifications and prior experience in relation to operating a registered scheme or a retail CCIV and the underlying assets; and
- a wholesale CCIV—we are proposing that responsible managers must demonstrate qualifications and prior experience in relation to operating a registered scheme, a wholesale unregistered scheme, or a retail or wholesale CCIV and the underlying assets (see proposal D2).

To provide financial product advice on and/or deal in CCIV securities, we are proposing that the responsible managers must demonstrate qualifications and experience in securities, CCIVs or managed investment schemes: see proposal D4(b).

We will also consider similar overseas experience when assessing organisational competence.

A draft updated version of RG 105, which incorporates our proposed changes, is at Attachment 3 to this paper.

## Background

- 39 Section 912A(1)(e) requires an AFS licensee to maintain competence to provide the financial services covered by its licence.
- 40 RG 105 sets out guidance on what we look for when we assess compliance with the ‘organisational competence obligation’ in s912A(1)(e). At a minimum, an AFS licensee must nominate responsible managers who:
- (a) are directly responsible for significant day-to-day decisions about the ongoing provision of the financial services;
  - (b) together, have appropriate knowledge and skills for all the financial services and products to be provided, including the legal and compliance obligations and the investment and operational issues of all kinds of assets under management; and

- (c) individually, meet one of the five options in Table 1 of RG 105 for demonstrating appropriate knowledge and skills.

Note: If you are a body corporate, we will also assess whether any of your responsible officers who are not responsible managers as defined in s9 are of good fame and character—see s913B(3).

## Corporate director's competence to 'operate the business and conduct the affairs of a CCIV'

### Proposal

- D1** We propose that, when we assess a corporate director's competence to 'operate the business and conduct the affairs of a CCIV', we will require that:

- (a) the corporate director must have at least one responsible manager with knowledge and skills in relation to the financial service (i.e. operating the business and conducting the affairs of a CCIV);
- (b) the corporate director must have at least one responsible manager with knowledge and skills in relation to the CCIV assets; and
- (c) each responsible manager must meet one of the five options in Table 1 of RG 105 (see RG 105.55 of [draft updated RG 105](#)).

#### *Your feedback*

D1Q1 Do you agree with our proposal? If not, why not?

D1Q2 Are there any practical problems associated with our proposal? Please give details.

D1Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

- D2** We propose that, when we assess whether a responsible manager meets the knowledge and skills (i.e. experience) component of Options 1 to 5 in Table 1 of RG 105, we will consider the following as relevant:

- (a) for the financial service of operating the business and conducting the affairs of:
  - (i) a retail CCIV—qualifications and prior experience in operating a registered scheme or retail CCIV (or similar overseas experience); and
  - (ii) a wholesale CCIV—qualifications and prior experience in operating a registered scheme, wholesale unregistered scheme, or a retail or wholesale CCIV (or similar overseas experience); and
- (b) for the CCIV assets—qualifications and prior experience in managing the same type of assets.

**Your feedback**

- D2Q1 Do you agree with our proposal? If not, why not?
- D2Q2 Are there any practical problems associated with our proposal? Please give details.
- D2Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

**D3** We propose to update RG 105 to reflect proposals D1–D2.

Note: See Section B of [draft updated RG 105](#) at Attachment 4 to this paper.

**Your feedback**

- D3Q1 Do you agree with our proposal? If not, why not?
- D3Q2 Is any additional guidance required? Please give details.

**Rationale**

- 41 In proposals D1–D2, we are proposing to apply the same organisational competence standards that apply to operators of managed investment schemes to corporate directors. This is because responsible entities of registered schemes (and operators of wholesale managed investment schemes) perform functionally similar roles to corporate directors when managing other people’s money. Our proposals are aimed at promoting competitive neutrality and parity of treatment between managed investment schemes and CCIVs.
- 42 In assessing the qualifications and skills of the responsible manager to provide the financial services, we consider that qualifications and experience in operating either a CCIV or a managed investment scheme are relevant. In assessing the qualifications and skills of the responsible manager to undertake asset management activities, we consider that qualifications and prior experience in managing the same types of assets are acceptable.

## Responsible manager’s competence to advise on and/or deal in CCIV securities

**Proposal**

- D4** We propose that, when assessing:
- (a) a responsible manager’s competence to provide financial product advice on and/or deal in CCIV securities, each responsible manager must meet one of the five options in Table 1 of RG 105 (see RG 105.55 of [draft updated RG 105](#)); and
  - (b) whether a responsible manager meets the knowledge and skills component (i.e. experience) of Options 1 to 5 in Table 1 of RG 105, we will consider the following as relevant:

- (i) qualifications and prior experience in providing financial product advice on and/or dealing in securities, including CCIV securities;
- (ii) qualifications and prior experience in providing financial product advice on and/or dealing in interests in a managed investment scheme; and/or
- (iii) similar overseas experience.

#### *Your feedback*

D4Q1 Do you agree with our proposal? If not, why not?

D4Q2 Are there any practical problems associated with our proposal? Please give details.

D4Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

**D5** We propose to update RG 105 to reflect proposal D4.

Note: See Section B of [draft updated RG 105](#) at Attachment 4 to this paper.

#### *Your feedback*

D5Q1 Do you agree with our proposal? If not, why not?

D5Q2 Is any additional guidance required? Please give details.

## **Rationale**

- 43 A CCIV incorporates both features of a company and a managed investment scheme. Accordingly, we consider it is appropriate to take into account qualifications in and experience with securities and/or interests in a managed investment scheme when we assess responsible managers against Options 1 to 5 in Table 1 of RG 105. We will also consider experience in CCIVs and overseas experience, similar to the approach we have adopted for corporate directors.

## E Compensation and insurance arrangements for corporate directors—Updates to RG 126

### Key points

We are proposing to update RG 126 to outline the compensation arrangements that a corporate director of a retail CCIV must meet. We are proposing to impose requirements similar to those that apply to operating a registered scheme (i.e. a professional indemnity (PI) insurance policy covering PI and fraud by officers): see proposals E1–E3.

A draft updated version of RG 126, which incorporates our proposed changes, is at Attachment 4 to this paper.

### Background

- 44 Section 912B requires an AFS licensee that provides services to retail clients to have arrangements for compensating those clients for loss or damage. The loss or damage must be suffered because of breaches of Ch 7 by that licensee or its representatives. These arrangements must either comprise PI insurance cover that is adequate, considering the nature of the AFS licensee's business and its potential liability for compensation claims, or an alternative arrangement that has been approved by ASIC.
- 45 Certain AFS licensees, such as responsible entities of registered schemes, are subject to a specific PI insurance requirement as a condition of their licence. A responsible entity must maintain an insurance policy covering professional indemnity and fraud by officers that:
- (a) is adequate, taking into account the nature of the activities it carries out under its AFS licence; and
  - (b) covers claims amounting in aggregate to whichever is the lesser of:
    - (i) \$5 million; or
    - (ii) the sum of the value of all scheme property of all registered schemes.
- 46 RG 126 sets out how ASIC administers the compensation requirements under s912B.

## PI insurance requirements for corporate directors of retail CCIVs

### Proposal

**E1** We propose 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. The licence condition will require a corporate director to:

- (a) maintain an insurance policy covering professional indemnity and fraud by officers;
- (b) ensure that the PI insurance is adequate, taking into account the nature of the activities it carries out under its AFS licence; and
- (c) ensure that the PI insurance covers claims amounting in aggregate to whichever is the lesser of:
  - (i) \$5 million; or
  - (ii) the value of the CCIV assets of all retail CCIVs it operates.

Note: Following feedback on this proposal, we will update [PF 209](#) to apply our proposed PI insurance requirements on corporate directors.

#### *Your feedback*

- E1Q1 Do you agree with our proposal? If not, why not?
- E1Q2 Are there any practical problems associated with our proposal? Please give details (including details of any issues that you consider will arise in relation to acquiring PI insurance, based on relevant experience and engagement with insurers).
- E1Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

**E2** To calculate the sum in proposal E1(c)(ii), we propose that:

- (a) the 'CCIV assets of all retail CCIVs' includes the assets of all sub-funds of the retail CCIVs that the corporate director operates;
- (b) the 'assets of all sub-funds' is to be calculated by reference to the meaning of 'assets of a sub-fund' in s1233H (which reflects the gross value of the assets of the sub-fund); and
- (c) the value of any cross-invested shares can be excluded (i.e. shares that are referable to another sub-fund in the same CCIV).

#### *Your feedback*

- E2Q1 Do you agree with our proposal? If not, why not?
- E2Q2 Do you agree with our proposal to use the assets of all sub-funds in calculating a corporate director's PI insurance requirement? If not, why not?
- E2Q3 Do you agree with our proposal to exclude the value of cross-invested shares in a CCIV for the purposes of calculating a corporate director's PI insurance requirement? Please give reasons for your response.



E2Q4 Are there any practical problems associated with our proposal? Please give details.

E2Q5 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.

**E3** We propose to update RG 126 to reflect proposals E1–E2.

Note: For our proposed guidance on this requirement, see Section A of [draft updated RG 126](#) at Attachment 5 to this paper.

#### *Your feedback*

E3Q1 Do you agree with our proposal? If not, why not?

E3Q2 Is any additional guidance required? Please give details.

## **Rationale**

- 47 We consider that responsible entities and corporate directors perform functionally similar roles as operators of retail collective investment schemes and managers of retail client money. Therefore, we propose to extend similar PI insurance requirements to corporate directors and reflect this in our guidance in [draft updated RG 126](#).
- 48 We consider it appropriate that the same amount of cover of \$5 million that applies to responsible entities should also be adopted for corporate directors (i.e. the \$5 million limb of the PI insurance requirement).
- 49 Where the \$5 million limb of the PI insurance requirement is not applicable, we are proposing that cover should be calculated by reference to the value of the CCIV assets of all retail CCIVs: see proposal E1(c)(ii). We consider that this will be similar to how the value of ‘scheme property’ of a registered scheme is calculated.
- 50 A CCIV can engage in cross-investment between sub-funds of the CCIV. Therefore, we are proposing to exclude the value of any cross-invested shares in each of the sub-funds: see proposal E2(c). We consider that this is appropriate because it avoids the same CCIV asset being counted in the calculation multiple times.
- 51 The proposed PI insurance requirement for corporate directors will be a separate, standalone compliance obligation. That is, a corporate director cannot satisfy this licence condition by relying on compensation arrangements for another financial service.

## F Financial resource requirements for corporate directors—Updates to RG 166

### Key points

We are proposing to update RG 166 to outline the financial resource requirements that a corporate director must meet.

We are proposing that a corporate director of a retail CCIV must meet:

- a tailored cash needs requirement;
- a tailored audit requirement; and
- a net tangible assets (NTA) requirement (see proposals F1(a)–F1(c)).

We are proposing that a corporate director of a wholesale CCIV must meet the base level financial requirements that apply generally to AFS licensees: see proposal F1(d).

A draft updated version of RG 166, which incorporates our proposed changes, is at Attachment 5 to this paper.

## Background

- 52 Section 912A(1)(d) states that an AFS licensee must have available adequate resources to provide the financial services covered by its licence and to carry out supervisory arrangements. This includes financial, technological and human resources.
- 53 RG 166 sets out guidance on the financial resource requirements that AFS licensees must meet. The requirements vary depending on the financial products and services offered by AFS licensees.
- 54 An AFS licensee must generally meet the following base level financial requirements:
- (a) *the solvency and positive net assets requirement*—that is, the licensee must:
    - (i) be able to pay all debts as and when they become due and payable; and
    - (ii) have total assets that exceed total liabilities and, at all times, have no reason to suspect that total assets would no longer exceed total liabilities on a current balance sheet;
  - (b) *the cash needs requirement*—that is, the licensee must have sufficient resources to meet anticipated cash flow expenses; and

- (c) *the audit requirement*—that is, the licensee must include information about their compliance with the financial requirements in the audit report under s989B(3).

55 Some AFS licensees (including responsible entities of registered schemes and investor directed portfolio service (IDPS) operators) also have additional financial requirements that reflect the particular financial products and services offered. This includes an NTA requirement, with an obligation to hold:

- (a) cash or cash equivalents the greater of \$150,000 or 50% of the required NTA; and
- (b) liquid assets to the amount of the required NTA (see Appendix 2 of [draft updated RG 166](#)).

## Financial requirements for corporate directors

### Proposal

F1 We propose to update RG 166 to include:

- (a) a tailored cash needs requirement for corporate directors of retail CCIVs;
- (b) a tailored audit requirement for corporate directors of retail CCIVs;
- (c) an NTA requirement for corporate directors of retail CCIVs (see Table 2 for our proposed application of the NTA requirements to corporate directors of retail CCIVs); and
- (d) a requirement that corporate directors of a wholesale CCIV must meet the base level financial requirements and any other financial requirements that may apply in the provision of a financial service, including the surplus liquid fund requirement (set out in Sections B–D of RG 166).

Note 1: See Appendix 10 of [draft updated RG 166](#) at Attachment 5 to this paper.

Note 2: We will make an instrument that implements our proposed financial requirements for corporate directors before the CCIV regime commences. The instrument will be similar to [Class Order \[CO 13/760\]](#) *Financial requirements for responsible entities and operators of investor directed portfolio services*, which applies to responsible entities.

### Your feedback

F1Q1 Do you agree with our proposals? If not, why not?

F1Q2 Are there any practical problems associated with our proposals, or is any additional guidance required? Please give details, including details of whether any additional changes are required to the categories of 'Tier 500,000 class assets' (see RG 166.189 of [draft updated RG 166](#)) and 'special custody assets' (see RG 166.188 of [draft updated RG 166](#)) to reflect the CCIV assets of a retail CCIV.

- F1Q3 Do you agree with our proposal (see Table 2) to use the assets of all sub-funds in the retail CCIVs operated by a corporate director in calculating a corporate director's NTA requirement? If not, why not?
- F1Q4 Do you agree with our proposal (see Table 2) to exclude the value of cross-invested shares for the purposes of calculating a corporate director's NTA requirement? Please give reasons for your response.
- F1Q5 Are there any additional costs associated with the implementation of our proposals? Please give details and, if possible, quantify these costs.

## Rationale

- 56 Responsible entities and corporate directors perform functionally similar roles as operators of retail collective investment schemes and managers of retail client money. Accordingly, we are proposing to extend the same financial resource requirements that apply to responsible entities to corporate directors of retail CCIVs.
- 57 We have adopted an NTA requirement that aligns with the NTA requirement imposed on responsible entities with adjustments as necessary to reflect the CCIV's sub-fund structure: see Table 2.

Note: For further details about the proposed NTA requirement, see RG 166.378–RG 166.403 in [draft updated RG 166](#) at Attachment 5 to this paper.

**Table 2: The proposed NTA requirement for corporate directors**

Type of CCIV	How the CCIV assets are held	NTA requirement
Retail CCIV	<p>A person other than the CCIV holds all CCIV assets of the retail CCIV(s) the corporate director operates, and that person holds at all times a minimum NTA of the greater of:</p> <ul style="list-style-type: none"> <li>• \$10 million; or</li> <li>• 10% of their average revenue.</li> </ul> <p>or</p> <p>All CCIV assets are special custody assets.</p>	<p>The corporate director must hold at all times a minimum NTA of the greater of:</p> <ul style="list-style-type: none"> <li>• \$150,000;</li> <li>• 0.5% of the average value of the CCIV assets of all retail CCIV(s) that the corporate director operates, up to \$5 million NTA; or</li> </ul> <p>Note: See paragraph 58 for guidance on how to calculate the value of the CCIV assets of all retail CCIVs.</p> <ul style="list-style-type: none"> <li>• 10% of average corporate director revenue.</li> </ul>

Type of CCIV	How the CCIV assets are held	NTA requirement
Retail CCIV	All CCIV assets are 'Tier \$500,000 class assets' (these assets are subject to concessional NTA requirements).	<p>The corporate director must hold at all times a minimum NTA of the greater of:</p> <ul style="list-style-type: none"> <li>• \$500,000;</li> <li>• 0.5% of the average value of CCIV assets of all retail CCIV(s) that the corporate director operates, up to \$5 million NTA; or</li> </ul> <p>Note: See paragraph 58 for guidance on how to calculate the value of the CCIV assets of all retail CCIVs.</p> <ul style="list-style-type: none"> <li>• 10% of average corporate director revenue.</li> </ul>
Retail CCIV	No CCIV assets are held by a person that meets the NTA requirements, nor are the assets Tier \$500,000 class assets.	<p>The corporate director must at all times hold a minimum NTA of the greater of:</p> <ul style="list-style-type: none"> <li>• \$10 million; or</li> <li>• 10% of average corporate director revenue.</li> </ul>
Wholesale CCIV	Not applicable.	No NTA requirements apply.

- 58 When calculating the value of the CCIV assets of all retail CCIVs operated, the corporate director is to:
- include the 'assets of all sub-funds' in the retail CCIVs operated (regardless of whether any particular sub-fund is retail or wholesale);
  - determine the 'assets of all sub-funds' by reference to the meaning of 'assets of a sub-fund' in s1233H (which reflects the gross asset value of the sub-fund); and
  - exclude the value of any cross-invested shares (i.e. shares that are referable to another sub-fund in the same CCIV).
- 59 Our proposed approach to calculating the value of the CCIV assets of all retail CCIVs operated is similar to calculating the value of 'scheme property' of a registered scheme, tailored to the CCIV's sub-fund structure. This is consistent with the approach we have proposed for the PI insurance requirement for retail CCIVs: see proposal E2.
- 60 In calculating the value of the CCIV assets, we are proposing to exclude the value of any cross-invested shares where a CCIV engages in cross-investment. We consider that this is appropriate because it avoids the same CCIV asset being counted multiple times.
- 61 The proposed NTA requirement will be a separate, standalone compliance obligation. That is, a corporate director must meet this licence condition and separately meet any other financial resources requirements, including NTA requirements, triggered by the provision of other financial services under its AFS licence.

- 62 Operators of a wholesale unregistered scheme do not have to meet the tailored financial requirements that apply to responsible entities of registered schemes. We are proposing that similarly, corporate directors of wholesale CCIVs should not have to meet the tailored financial requirements: see proposal F1(d).

## G Regulatory and financial impact

63 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) meeting the Australian Government objectives of the CCIV regime;
- (b) promoting confidence in the CCIV regime through implementing protections for investors; and
- (c) improving transparency about our views and actions we may take.

64 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

65 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS where required, ASIC does give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

66 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 3.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
Asia Region Funds Passport	An agreement between economies in the Asia region that allows passport funds established and regulated in one participating economy to offer interests to investors in another participating economy
ASIC	Australian Investments and Securities Commission
asset holder	A person who holds scheme property or assets of a registered scheme, CCIV assets, IDPS property or financial products or a beneficial interest in financial products held under a custodial service
CCIV	A corporate collective investment vehicle—a company that is registered as a corporate collective investment vehicle under the Corporations Act  Note: This is a definition contained in amended s9 of the Corporations Act.
CCIV assets	Includes the money and property of a CCIV, as referred to in s1233H and 1234G of the Corporations Act
CCIV security	A security in a CCIV
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
corporate director	The company named in ASIC's record of the CCIV's registration as the corporate director or temporary corporate director of the CCIV  Note: This is a definition contained in s9 of the Corporations Act.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
custodian	A person with primary contractual responsibility to an AFS licensee to act as, or directly or indirectly engage, an asset holder
IDPS	An investor directed portfolio service as defined in <a href="#">Class Order [CO 13/763]</a> <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order



Term	Meaning in this document
managed investment scheme	Has the same meaning as in the Corporations Act Note: A notified foreign passport fund is a managed investment scheme for the purpose of the Corporations Act: see s1213E.
NTA	Net tangible assets—see RG 166.164 in Section E of <a href="#">draft updated RG 166</a> for the meaning of this term
PI insurance	Professional indemnity insurance—liability insurance that covers loss arising from an error, omission or negligent act occurring in conduct of the holder's professional business
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
retail CCIV	A CCIV that satisfies the retail CCIV test in s1222K of the Corporations Act or is notified as a retail CCIV under s1222L of the Corporations Act Note: This is a definition contained in s1222J.
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the <i>Corporations Regulations 2001</i>
RG 2 (for example)	An ASIC regulatory guide (in this example numbered 2)
s9 (for example)	A section of the Corporations Act (in this example numbered 9), unless otherwise specified
sub-fund	All or part of the business of the CCIV that is registered as a sub-fund under s1222S of the Corporations Act Note: This is a definition contained in s1222Q.
wholesale CCIV	A CCIV that is not a retail CCIV
wholesale unregistered scheme	A managed investment scheme that is not required to be registered under s601EB of the Corporations Act

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to update RG 2 to include guidance that when completing Form FS01 or Form FS03, the proposed corporate director must:</p> <ul style="list-style-type: none"> <li>(a) select the new authorisation 'operate the business and conduct the affairs of a CCIV';</li> <li>(b) specify whether it will be operating a retail CCIV, a wholesale CCIV, or both; and</li> <li>(c) specify the CCIV's asset type(s) (e.g. financial assets, direct real property).</li> </ul> <p>Note: See draft updated RG 2 at Attachment 1 to this paper.</p>	<p>B1Q1 Do you intend to apply for an AFS licence authorisation to 'operate the business and conduct the affairs of a CCIV'? If so, please give details of:</p> <ul style="list-style-type: none"> <li>(a) whether you would be applying for a new AFS licence or seeking a variation of an existing AFS licence;</li> <li>(b) when you anticipate submitting your application to ASIC (e.g. on 1 July 2022 or a later date);</li> <li>(c) the type of CCIV you intend to operate (retail and/or wholesale); and</li> <li>(d) the CCIV's asset type(s).</li> </ul> <p>B1Q2 Are there any practical problems associated with our proposal, or is any additional guidance required? Please give details.</p> <p>B1Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.</p>
<p>B2 We propose to update 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. ASIC would impose this condition in circumstances where the corporate director failed to demonstrate that it had the organisational competence and capacity (e.g. systems and resources) to conduct broader operations.</p> <p>Note: Following feedback on this proposal, we will make any consequential amendments required to PF 209 and RG 105 to refer to the condition.</p>	<p>B2Q1 Do you agree with our proposal? If not, why not?</p> <p>B2Q2 Do you consider a condition that limits the operations of either a retail CCIV or a wholesale CCIV in certain circumstances is appropriate? Please provide reasons.</p> <p>B2Q3 Is there an alternative way that we could restrict a corporate director's operations (e.g. imposing a limit on the assets under management)? If so, please provide details.</p>

Proposal	Your feedback
<p>B3 We propose to update RG 2 to make it clear that, from 1 July 2022, any person that is seeking to provide financial product advice on and/or deal in CCIV securities will need to apply for an AFS licence or variation to be authorised to provide financial product advice on and/or deal in 'securities'.</p> <p>Note: Certain AFS licensees will not need to apply to vary their AFS licence to cover CCIV securities: see paragraphs 26–33.</p>	<p>B3Q1 Do you intend to provide financial product advice on and/or deal in CCIV securities? If so:</p> <p>(a) do you have an existing AFS licence authorisation that you will rely on to provide the financial services to clients without applying to ASIC for a licence variation; or</p> <p>(b) will you apply for a new AFS licence or variation? If so, what is the anticipated timing of your application (e.g. on commencement at 1 July 2022 or a later date)?</p> <p>B3Q2 Are there any practical problems associated with our proposal or is any additional guidance required? Please give details.</p> <p>B3Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.</p>

Proposal	Your feedback
<p>C1 We propose to update RG 3 to introduce the new C13 proof: CCIV Operating Capacity Statement. This proposed proof requires the proposed corporate director to describe:</p> <ul style="list-style-type: none"> <li>(a) the CCIV the corporate director intends to operate, including: <ul style="list-style-type: none"> <li>(i) the target investors (retail or wholesale); and</li> <li>(ii) the proposed number of sub-funds, CCIV asset type and number of investors;</li> </ul> </li> <li>(b) any existing CCIVs that the corporate director operates;</li> <li>(c) for any cross-investment of assets between different sub-funds of the CCIV, the arrangements for preventing circular cross-investment within the CCIV and how the corporate director will monitor voting and record-keeping obligations for cross-investments;</li> <li>(d) who will hold legal title to the CCIV assets and arrangements for identifying and recording the status of assets held by the CCIV or another person for each sub-fund;</li> <li>(e) any accounting, computing and operating systems for the CCIV, and how the corporate director will monitor and maintain these systems;</li> <li>(f) how the corporate director will manage access to and security of records of the CCIV (and those relating to each sub-fund) and client records;</li> <li>(g) how the corporate director will value the CCIV assets and price the CCIV securities; and</li> <li>(h) how the corporate director will market the CCIV, the sub-funds and the corporate director's services.</li> </ul>	<p>C1Q1 Do you agree with our proposal? If not, why not?</p> <p>C1Q2 Do you consider the items that must be covered in the new C13 proof: CCIV Operating Capacity Statement are appropriate? If not, please give reasons.</p> <p>C1Q3 Are there any practical problems associated with our proposal, or a need for additional guidance? Please give details.</p> <p>C1Q4 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.</p>
<p>Note: See Section C of draft updated RG 3 at Attachment 2 to this paper.</p>	

Proposal	Your feedback
<p>C2 We propose to update RG 3 to introduce the new C13 proof: CCIV Asset Statement. This proposed proof requires the proposed corporate director to describe:</p> <ul style="list-style-type: none"> <li>(a) what the corporate director will define as CCIV assets and how these will be held and protected; and</li> <li>(b) where another person has been or will be engaged to hold the assets, a description of: <ul style="list-style-type: none"> <li>(i) the process the corporate director has undertaken to ensure the person will meet the minimum standards for holding the CCIV assets;</li> <li>(ii) the person's organisational structure, including the identification and segregation of CCIV assets;</li> <li>(iii) the process the corporate director will use to monitor the person;</li> <li>(iv) the person's business and compliance reporting structure; and</li> <li>(v) how conflicts of interest will be managed between custody and operational areas.</li> </ul> </li> </ul>	<p>C2Q1 Do you agree with our proposal? If not, why not?</p> <p>C2Q2 Do you consider the items that must be covered in the new C13 proof: CCIV Asset Statement are appropriate? If not, please give reasons.</p> <p>C2Q3 Are there any practical problems associated with our proposals, or a need for additional guidance? Please give details.</p> <p>C2Q4 Are there any additional costs associated with the implementation of our proposals? Please give details and, if possible, quantify these costs.</p>
<p>D1 We propose that, when we assess a corporate director's competence to 'operate the business and conduct the affairs of a CCIV', we will require that:</p> <ul style="list-style-type: none"> <li>(a) the corporate director must have at least one responsible manager with knowledge and skills in relation to the financial service (i.e. operating the business and conducting the affairs of a CCIV);</li> <li>(b) the corporate director must have at least one responsible manager with knowledge and skills in relation to the CCIV assets; and</li> <li>(c) each responsible manager must meet one of the five options in Table 1 of RG 105 (see RG 105.55 of draft updated RG 105).</li> </ul>	<p>D1Q1 Do you agree with our proposal? If not, why not?</p> <p>D1Q2 Are there any practical problems associated with our proposal? Please give details.</p> <p>D1Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.</p>

Proposal	Your feedback
<p>D2 We propose that, when we assess whether a responsible manager meets the knowledge and skills (i.e. experience) component of Options 1 to 5 in Table 1 of RG 105, we will consider the following as relevant:</p> <ul style="list-style-type: none"> <li>(a) for the financial service of operating the business and conducting the affairs of: <ul style="list-style-type: none"> <li>(i) a retail CCIV—qualifications and prior experience in operating a registered scheme or retail CCIV (or similar overseas experience); and</li> <li>(ii) a wholesale CCIV—qualifications and prior experience in operating a registered scheme, wholesale unregistered scheme, or a retail or wholesale CCIV (or similar overseas experience); and</li> </ul> </li> <li>(b) for the CCIV assets—qualifications and prior experience in managing the same type of assets.</li> </ul>	<p>D2Q1 Do you agree with our proposal? If not, why not?</p> <p>D2Q2 Are there any practical problems associated with our proposal? Please give details.</p> <p>D2Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.</p>
<p>D3 We propose to update RG 105 to reflect proposals D1–D2.</p> <p>Note: See Section B of draft updated RG 105 at Attachment 4 to this paper.</p>	<p>D3Q1 Do you agree with our proposal? If not, why not?</p> <p>D3Q2 Is any additional guidance required? Please give details.</p>
<p>D4 We propose that, when assessing:</p> <ul style="list-style-type: none"> <li>(a) a responsible manager's competence to provide financial product advice on and/or deal in CCIV securities, each responsible manager must meet one of the five options in Table 1 of RG 105 (see RG 105.55 of draft updated RG 105); and</li> <li>(b) whether a responsible manager meets the knowledge and skills component (i.e. experience) of Options 1 to 5 in Table 1 of RG 105, we will consider the following as relevant: <ul style="list-style-type: none"> <li>(i) qualifications and prior experience in providing financial product advice on and/or dealing in securities, including CCIV securities;</li> <li>(ii) qualifications and prior experience in providing financial product advice on and/or dealing in interests in a managed investment scheme; and/or</li> <li>(iii) similar overseas experience.</li> </ul> </li> </ul>	<p>D4Q1 Do you agree with our proposal? If not, why not?</p> <p>D4Q2 Are there any practical problems associated with our proposal? Please give details.</p> <p>D4Q3 Are there any additional costs associated with the implementation of our proposal? Please give details and, if possible, quantify these costs.</p>

Proposal	Your feedback
<p>D5 We propose to update RG 105 to reflect proposal D4.</p> <p>Note: See Section B of draft updated RG 105 at Attachment 4 to this paper.</p>	<p>D5Q1 Do you agree with our proposal? If not, why not?</p> <p>D5Q2 Is any additional guidance required? Please give details.</p>
<p>E1 We propose 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. The licence condition will require a corporate director to:</p> <ul style="list-style-type: none"> <li>(a) maintain an insurance policy covering professional indemnity and fraud by officers;</li> <li>(b) ensure that the PI insurance is adequate, taking into account the nature of the activities it carries out under its AFS licence; and</li> <li>(c) ensure that the PI insurance covers claims amounting in aggregate to whichever is the lesser of: <ul style="list-style-type: none"> <li>(i) \$5 million; or</li> <li>(ii) the value of the CCIV assets of all retail CCIVs it operates.</li> </ul> </li> </ul> <p>Note: Following feedback on this proposal, we will update PF 209 to apply our proposed PI requirements on corporate directors.</p>	<p>E1Q1 Do you agree with our proposals? If not, why not?</p> <p>E1Q2 Are there any practical problems associated with our proposals? Please give details (including details of any issues that you consider will arise in relation to acquiring PI insurance, based on relevant experience and engagement with insurers).</p> <p>E1Q3 Are there any additional costs associated with the implementation of our proposals? Please give details and, if possible, quantify these costs.</p>
<p>E2 To calculate the sum in proposal E1(c)(ii), we propose that:</p> <ul style="list-style-type: none"> <li>(a) the 'CCIV assets of all retail CCIVs' includes the assets of all sub-funds of the retail CCIVs that the corporate director operates;</li> <li>(b) the 'assets of all sub-funds' is to be calculated by reference to the meaning of 'assets of a sub-fund' in s1233H (which reflects the gross value of the assets of the sub-fund); and</li> <li>(c) the value of any cross-invested shares can be excluded (i.e. shares that are referable to another sub-fund in the same CCIV).</li> </ul>	<p>E2Q1 Do you agree with our proposals? If not, why not?</p> <p>E2Q2 Do you agree with our proposal to use the assets of all sub-funds in calculating a corporate director's PI insurance requirement? If not, why not?</p> <p>E2Q3 Do you agree with our proposal to exclude the value of cross-invested shares in a CCIV for the purposes of calculating a corporate director's PI insurance requirement? Please give reasons for your response.</p> <p>E2Q4 Are there any practical problems associated with our proposals? Please give details.</p> <p>E2Q5 Are there any additional costs associated with the implementation of our proposals? Please give details and, if possible, quantify these costs.</p>

Proposal	Your feedback
<p>E3 We propose to update RG 126 to reflect proposals E1–E2.</p> <p>Note: For our proposed guidance on this requirement, see Section A of draft updated RG 126 at Attachment 5 to this paper.</p>	<p>E3Q1 Do you agree with our proposal? If not, why not?</p> <p>E3Q2 Is any additional guidance required? Please give details.</p>
<p>F1 We propose to update RG 166 to include:</p> <ul style="list-style-type: none"> <li>(a) a tailored cash needs requirement for corporate directors of retail CCIVs;</li> <li>(b) a tailored audit requirement for corporate directors of retail CCIVs;</li> <li>(c) an NTA requirement for corporate directors of retail CCIVs (see Table 2 for our proposed application of the NTA requirements to corporate directors of retail CCIVs); and</li> <li>(d) a requirement that corporate directors of a wholesale CCIV must meet the base level financial requirements and any other financial requirements that may apply in the provision of a financial service, including the surplus liquid fund requirement (set out in Sections B–D of RG 166).</li> </ul> <p>Note 1: See Appendix 10 of draft updated RG 166 at Attachment 5 to this paper.</p> <p>Note 2: We will make an instrument that implements our proposed financial requirements for corporate directors before the CCIV regime commences. The instrument will be similar to Class Order [CO 13/760] Financial requirements for responsible entities and operators of investor directed portfolio services, which applies to responsible entities.</p>	<p>F1Q1 Do you agree with our proposals? If not, why not?</p> <p>F1Q2 Are there any practical problems associated with our proposals, or is any additional guidance required? Please give details, including details of whether any additional changes are required to the categories of ‘Tier 500,000 class assets’ (see RG 166.189 of draft updated RG 166) and ‘special custody assets’ (see RG 166.188 of draft updated RG 166) to reflect the CCIV assets of a retail CCIV.</p> <p>F1Q3 Do you agree with our proposal (see Table 2) to use the assets of all sub-funds in the retail CCIVs operated by a corporate director in calculating a corporate director’s NTA requirement? If not, why not?</p> <p>F1Q4 Do you agree with our proposal (see Table 2) to exclude the value of cross-invested shares for the purposes of calculating a corporate director’s NTA requirement? Please give reasons for your response.</p> <p>F1Q5 Are there any additional costs associated with the implementation of our proposals? Please give details and, if possible, quantify these costs.</p>