



# FONDS DE COMPENSATION

## TENDERING PROCEDURE AND GUIDELINES

### **Important information:**

Proposals must be drafted in English (preference), German or French.

**Proposals must be submitted by electronic means via the Luxembourg Portal for Public Procurement Contracts** (*Portail des marchés publics*) (the Portal). The Portal can be accessed using following web links:

[www.marches-publics.lu](http://www.marches-publics.lu)

[www.pmp.lu](http://www.pmp.lu)

**Deadline for electronic proposal remittance: 30 November 2021 at 4:00 p.m. CET.**

### **Disclaimer:**

Tendering companies are fully responsible of the registration and authentication process with regard to the Portal as well as the modalities in relation to the electronic submission and electronic signature of proposals. In this context, a handbook from the Portal is included within the tender documents. Further information can also be found by accessing following websites:

<https://marches.public.lu/fr/procedures/dematerialisation.html>

<https://pmp.b2g.etat.lu/?page=entreprise.EntrepriseHome>

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# 1 Preamble

## 1.1 Presentation of the Fonds de compensation

Fonds de compensation (the FDC) was created with the purpose of letting the reserve of the Luxembourgish general pension insurance scheme benefit from financial markets movements by investing this reserve on the financial markets through a diversified portfolio subject to strict risk and return criteria.

To this end, the FDC was created by the amended law of 6 May 2004 concerning the administration of the assets of the general pension insurance scheme. This law entrusted the FDC with the management of the above mentioned reserve, in particular through the intermediary of one or more collective investment schemes. The aforementioned law was amended by the law of 13 May 2008 concerning the introduction of a unified statute for the different private sector employees.

The FDC, as a public institution, is subject to the supervision of the Minister of Social Security exercised through the General Inspectorate of Social Security (*Inspection générale de la sécurité sociale*).

The Board of Directors that manages the FDC is composed of twelve members. An Investment Committee of six members, including three external experts, assists the Board of Directors. The main task of this committee is to prepare the investment decisions for the Board of Directors.

In July 2007, the FDC created a collective investment scheme in the form of a unit trust (mutual fund), in accordance with the amended law of 13 February 2007 concerning specialised investment funds and with the status of a public limited company. This body, entitled *Fonds de Compensation de la Sécurité Sociale, SICAV-FIS* (the SICAV), became FDC's investment vehicle and is subject to the supervision of the Luxembourgish financial regulatory authority *Commission de surveillance du secteur financier* (the CSSF). From August 2007 onwards, the reserve entrusted to the FDC has been gradually invested into the SICAV.

As of 31 August 2021, the SICAV incorporated 24 sub-funds with a total value of approximately 23.885 billion euros. Statutory texts as well as any appendices in relation to the FDC and the SICAV can be found by accessing FDC's website <http://www.fdc.lu>.

The portfolio management mandates will be assigned in accordance with the Law of 8 April 2018 regarding public tenders and the Grand Ducal Regulation of 8 April 2018 implementing the aforementioned law. All legislative texts in relation to public tenders can be found by accessing following website: <https://marches.public.lu/fr/legislation.html>.

The legislative texts in relation to the FDC and the SICAV can be found on the legal portal of the Government of the Grand Duchy of Luxembourg by accessing the website <http://www.legilux.public.lu> or by accessing FDC's website <http://www.fdc.lu>.

## 1.2 FDC contact details

Physical address: Fonds de compensation  
34-40, avenue de la Porte-Neuve, 1<sup>st</sup> floor  
L-2227 Luxembourg

Telephone: +352 26 20 34 83

Fax: +352 46 25 66

Email: [fondsdecompensation@fdc.lu](mailto:fondsdecompensation@fdc.lu)

Website: <http://www.fdc.lu>

## 2 Purpose and characteristics of the tender

### 2.1 Purpose

The purpose of this tender is the provision of portfolio management services within category 6 “Financial services” of the common procurement vocabulary (CPV).

More precisely, it relates to the awarding of **six (6) mandates** on behalf of FDC’s SICAV.

The tender is divided into four lots, each lot corresponding to a specific management type and asset class.

Lot	Reference of the mandate	Management type of the mandate	Indicative volume of the mandate
Lot 1	Global Bonds (hedged), Sustainable Approach	Active	2 mandates in respect of an indicative amount of assets of EUR 850 million each
Lot 2	Global Equities, Sustainable Approach	Active	2 mandates in respect of an indicative amount of assets of EUR 1000 million each
Lot 3	Emerging Markets Equities, Sustainable Approach	Active	1 mandate in respect of an indicative amount of assets of EUR 600 million
Lot 4	Global Equities, 2°C Aligned	Indexed	1 mandate in respect of an indicative amount of assets of EUR 500 million

#### Important notices:

- the full characteristics of each mandate are set out in the draft issue document (the Issue Document) of FDC’s SICAV referenced as Appendix 7 within the tender documents;
- stand-by mandates: the FDC might assign one or more stand-by mandates. The definition and characteristics of a stand-by mandate are given under section 2.5 of the present tendering procedure and guidelines (the Guidelines);
- for Lot 1, Lot 2 and Lot 3, the FDC is looking for active mandates outperforming the benchmarks associated to the given mandates. In addition, the tendering company must include a sustainable approach/sustainable research into its

investment strategy and decision-making process. The type, scale and portfolio-impact of this sustainable approach/research are not predefined by the FDC and can therefore have various forms (positive screening approach (best-in-class, thematic investments, climate aware, etc.), negative screening approach (thematic or climate related exclusions, etc.), engagement approach, etc.). In this context, it is possible to tender with an explicit sustainable investment strategy or with an investment strategy that will consequently be adapted for the mandate by adding a sustainable approach/sustainable research to fulfil the sustainable criteria associated to the mandates of Lot 1, Lot 2 and Lot 3. **This being said, the proposed sustainable investment strategy must be classified as Article 8 or Article 9 product as defined by regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector regulation (SFDR regulation).** Finally and regardless the investment strategy offered, the proposal must always comply with the investment guidelines as stated in the Issue Document as well as with the terms and conditions of the investment management agreement (the Agreement) being part of the consultation documents (e.g. performance target, allowed investment universe, tracking error, etc.);

- **for Lot 4, the FDC is looking for an indexed global equities investment strategy allowing to align the mandate with the Paris Agreement<sup>1</sup> goal of limiting global warming to well below 2°C while aiming to replicate the benchmark associated to the given mandate as close as possible. This being said, the proposed sustainable investment strategy must be classified as Article 8 or Article 9 product as defined by regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector regulation (SFDR regulation).** Finally and regardless the investment strategy offered, the proposal must always comply with the investment guidelines as stated in the Issue Document as well as with the terms and conditions of the Agreement being part of the consultation documents (e.g. performance target, allowed investment universe, tracking error, etc.);
- below is a summary of the key specifications of each Lot. Detailed specifications can be found in the Issue Document. In case of discrepancies between the specifications shown below and the Issue Document, the Issue Document always prevails.

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<sup>1</sup> As adopted by 196 parties at Conference of Parties 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016.

<b>Criteria</b>	<b>Lot 1: Global Bonds (hedged), Sustainable Approach</b>	<b>Lot 2: Global Equities, Sustainable Approach</b>	<b>Lot 3: Emerging Markets Equities, Sustainable Approach</b>	<b>Lot 4: Global Equities, 2°C Aligned</b>
<b>Benchmark</b>	Bloomberg Barclays Global Aggregate - Ex Securitized Total Return Index (hedged into EUR)	MSCI World Total Return (net)	MSCI Emerging Markets Total return (net)	MSCI World Total Return (net)
<b>Bloomberg ticker</b>	H05881EU	NDDUWI	NDUEEGF	NDDUWI
<b>Objective</b>	Outperform the benchmark's performance while investing in bonds included in the given benchmark and considering sustainability criteria/research in the investment approach	Outperform the benchmark's performance while investing in equities included in the given benchmark and considering sustainability criteria/research in the investment approach		Replicate the benchmark's performance while investing in equities included in the given benchmark and aligning the mandate with the Paris Agreement goal of limiting global warming to 2°C
<b>Engagement</b>	Engagement including environmental topics at company level is requested by the FDC			
<b>SFDR classification</b>	Article 8 or Article 9			
<b>Indicative volume (EUR)</b>	1700 million (850 million per mandate)	2000 million (1000 million per mandate)	600 million	500 million
<b>Investment style</b>	Active			Indexed
<b>Structure</b>	Management of a segregated account with direct investments (i.e., no investments through mutual funds)			
<b>Applicable supplement within the Issue Document</b>	Supplement 22.6 and Supplement 22.8	Supplement 21.2 and Supplement 21.3	Supplement 21.10	Supplement 21.6
<b>Investment universe</b>	Only securities included in the associated benchmarks while considering FDC's exclusion list (see Issue Document and applicable supplements for further details)			
<b>Maximum counterparty/issuer exposure</b>	5% - 35% (see Issue Document and applicable supplements for further details)	5% (see Issue Document and applicable supplement for further details)		
<b>Derivatives</b>	Restricted use (see Issue Document and applicable supplements for further details)			
<b>Maximum Tracking Error ("ex-ante")</b>	2.0%	4.0%	6.0%	1.0%
<b>Depository/Central Administration</b>	Citibank Europe plc, Luxembourg Branch (communication via SWIFT or electronic interface)			

## **2.2 Type of procedure**

Within the meaning of the Law of 8 April 2018 regarding public tenders, the procedure of the present tender is qualified as an “European open procedure”. An open procedure is a procedure in which any interested economic operator may present a proposal. Tenderers who do not have the desired profile and do not fulfil the minimum requirements for participation shall be immediately excluded from the tender.

There shall not be any negotiation with tenderers at any stage in the procedure.

## **2.3 Subscriptions/Redemptions**

The FDC, acting through the SICAV, may adjust the amount of assets allocated to the managers by way of subscriptions or redemptions. These subscriptions or redemptions therefore imply an increase or decrease in the assets allocated for management.

This is the reason why the allocated amounts shown in the table above are indicative and constitute only a reasonable estimation based on (i) a probable amount of assets available at the time of the initial subscription and (ii) their breakdown between the different sub-funds of the SICAV as foreseen at the time of drafting the Guidelines.

## **2.4 Asset allocation between the different asset managers**

The FDC, acting through the SICAV, solely decides the asset allocation between the different sub-funds. It is hereby specified that each mandate shall correspond to an Agreement relative to one sub-fund of the SICAV.

As the case may be and in the interest of the SICAV, the FDC may decide to reduce the assets invested in a sub-fund.

It is hereby specified that throughout the term of a mandate, the FDC may launch new public tenders similar to the present one.

## **2.5 Stand-by mandates**

Stand-by mandates are mandates that the SICAV reserves the right to activate when needed. As the case may be, these mandates might not be subject to any asset contribution during the term of the stand-by mandates. This is the reason why no indicative amount is indicated for stand-by mandates.



Should a stand-by mandate be activated, initial subscription and further asset allocations or reductions will be done under the same conditions as set out in sections 2.3 and 2.4 of the Guidelines.

Stand-by mandates are indeed equal and subject to the same specifications as the other mandates. Stand-by managers receive no compensation as long as the respective stand-by mandate has not been activated.

Tenderers agree to the fact that, based on the ranking of the proposals received, they may be awarded a stand-by mandate.

## **2.6 Term of the mandates**

According to applicable law at the time of publication of the contract notice related to the present tender and the drafting of the Guidelines, the term of a mandate or stand-by mandate is in principle set at three (3) consecutive years with effect from the signature of the Agreement with the possibility of renewal from year to year except in the case of early termination. The duration of a mandate or stand-by mandate may not exceed ten (10) years. Each of the parties may terminate the Agreement by means of three months' notice by registered letter with acknowledgement of receipt.

## **2.7 Delegation of the mandate**

Delegation of the mandate to one or more entity(ies) within the same group, including entities outside the European Union (the EU), is possible under the condition that the tenderer (contracting party) fulfils the minimum requirements and holds the appropriate approval as mentioned under section 2.8 of the Guidelines. Details relating to the delegation will be specified in the Agreement.

## **2.8 Minimum requirements and appropriate approval**

Following minimum requirements (without prejudice to the other selection criteria set out in the tender documents) must be fulfilled:

- the tenderer (contracting entity) must be established in a member state of the EU, in a member state of the European Free Trade Association (the EFTA) or in the United Kingdom (the UK);
- the tenderer (contracting entity) must be approved as asset manager in the EU, in a member state of the EFTA or the UK;
- the tenderer (contracting entity) must be submitted to a regulatory authority supervision recognised by the CSSF;
- the tenderer (contracting entity) must provide evidence, at least at group level, of authorisation as third-party asset manager for at least five (5) years;

- for Lot 1: minimum assets under management for institutional clients<sup>2</sup> at group level of EUR ten (10) billion at proposal remittance and minimum assets under management for institutional clients at group level of EUR five (5) billion in actively managed global bonds at proposal remittance;
- for Lot 2: minimum assets under management for institutional clients at group level of EUR ten (10) billion at proposal remittance and minimum assets under management for institutional clients at group level of EUR five (5) billion in actively managed global equities at proposal remittance;
- for Lot 3: minimum assets under management for institutional clients at group level of EUR ten (10) billion at proposal remittance and minimum assets under management for institutional clients at group level of EUR five (5) billion in actively managed emerging markets equities at proposal remittance.
- for Lot 4: minimum assets under management for institutional clients at group level of EUR ten (10) billion at proposal remittance and minimum assets under management for institutional clients at group level of EUR five (5) billion in actively or passively managed global equities at proposal remittance.

The companies that will be awarded with a mandate will have to provide evidence of their approval covering portfolio management services on behalf of third parties in the Grand Duchy of Luxembourg on the date of signature of the Agreement at the latest.

In this respect, two situations may arise:

- the tenderer has its registered office in the Grand Duchy of Luxembourg (i);
- the tenderer is established in a member state of the EU, in a member state of the EFTA or the UK (ii).

(i) *Tenderers whose registered office is in the Grand Duchy of Luxembourg*

These companies must provide documentary evidence of their approval covering portfolio management services on behalf of third parties. A supporting document certifying that the tendering company is actually approved must be produced within a deadline of fifteen (15) calendar days as from the date of notification of the contract awarding decision.

Tenderers who fail to produce such a supporting document within the required deadline shall be rejected and the contract shall be automatically awarded to the next tenderer as per the ranking classification, the latter being bound to produce the aforementioned document under the same terms and conditions.

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<sup>2</sup> Institutional clients: pension funds, insurance firms, treasury departments, central banks, supranational entities, etc. Distributors of financial products for private clients and managers of individual life insurance contracts are excluded.

- (ii) *Tenderers who are established in a member state of the EU, in a member state of the EFTA or in the UK*

These companies must be approved for the activity covering portfolio management services on behalf of third parties in their country of origin. A supporting document certifying that the tendering company is actually approved for portfolio management services on behalf of third parties in its country of origin must be produced within a deadline of fifteen (15) calendar days as from the date of notification of the contract awarding decision. Moreover, to carry out their activity in the Grand Duchy of Luxembourg, these companies must be authorised to operate on the territory of Luxembourg by way of freedom to provide services.

Tenderers who fail to produce such a supporting document within the required deadline or who are not authorised to operate on the territory of Luxembourg shall be rejected and the contract shall be automatically awarded to the next tenderer as per the ranking classification, the latter being bound to produce the aforementioned document under the same terms and conditions and to proof evidence of the relevant authorisation.

**Important notice:**

FDC would like to stress that the provision of regulated services in Luxembourg without a proper authorisation is not authorised and reminds that it is the full responsibility of a tendering company to ensure that it has taken the necessary steps and submitted the necessary application(s) to be able to provide services in Luxembourg and conclude contracts in Luxembourg.

## 3 Selection of tenderers

### 3.1 Main stages of the tendering procedure

The main steps of the tendering procedure are as follows:

- a) 1 October 2021 onwards: publication of the contract notice at the Portal, in the Official Journal of the European Union (OJEU), in the Luxembourg press and on-line publishing on FDC's website [www.fdc.lu](http://www.fdc.lu) and tender documents available for download on the Portal;
- b) 1 October 2021 to 29 October 2021 until 4:00 p.m. CET: request to obtain the "Questionnaire and performance file" (Appendix 1 within the tender documents) and the "Investment Management Agreement" (Appendix 6 within the tender documents) using the "Model request to obtain the tender documents" (Appendix 8 within the downloadable tender documents on the Portal);
- c) 30 November 2021 until 4:00 p.m. CET: deadline for submitting proposals by electronic means via the Portal;
- d) 1 December 2021 to 27 February 2022: examination and evaluation of proposals;
- e) 28 February 2022: dispatch of invitations to the best classified tenderers for a clarification hearing<sup>3</sup> at FDC's registered office or at the tenderer's registered office;
- f) 15 March 2022 to 18 March 2022: clarification hearings with the best classified tenderers at FDC's registered office or at the tenderer's registered office;
- g) 28 March 2022: dispatch of the tender result notifications;
- h) 12 April 2022 onwards: signature of the Agreement with the awarded tenderers.

### 3.2 Selection criteria

The selection will be based on qualitative and quantitative criteria of which the tenderers bear witness by responding to a questionnaire.

Proposals will be evaluated and classified based on following criteria:

- a) Tenderers experience and expertise of the staff dedicated to the management of the given mandate: weighting of 10%;
- b) Investment process: weighting of 50%:
  - implemented resources
  - consistency and clarity of the investment process

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<sup>3</sup> The hearings are only for clarification purposes. The clarifications hearings cannot lead to a better score of the respective tenderer.

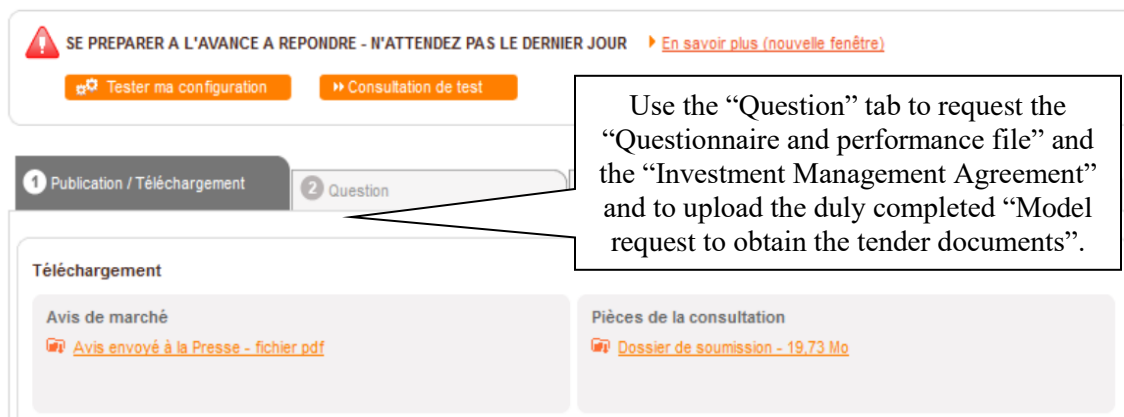
- risk management
  - compliance monitoring
  - reporting
  - operational process
  - performance.
- c) Scope, consistency and clarity of the sustainable approach/research (Lot 1 to 3) respectively of the approach allowing to align with the Paris Agreement goal of limiting global warming to well below 2°C (Lot 4) : weighting of 20%.
- d) Total management fees: weighting of 20%.

### 3.3 Procedure for obtaining the tender documents

The tender documents are available for download on the Portal, except the “Questionnaire and performance file” (Appendix 1 within the tender documents) and the “Investment Management Agreement” (Appendix 6 within the tender documents). How to access a tender via the Portal or download tender documents on the Portal is described in the Portal’s handbook.



In order to protect the confidentiality of the information made available in the “Questionnaire and performance file” and the “Investment Management Agreement”, these documents need to be requested separately. In order to do so, tenderers are requested to send a secure message and upload the duly completed “Model request to obtain the tender documents” (Appendix 8 within the downloadable tender documents on the Portal) using the “Question” tab on the Portal.



Tenderers will receive the requested documents within two (2) working days following their request.

The above mentioned tender documents can be requested until **29 October 2021 at 4:00 p.m. CET** at the latest.

### **3.4 Deadline and procedure for the proposal remittance**

The proposals must be remitted by electronic means via the Portal by **30 November 2021 at 4:00 p.m. CET** at the latest. **Proposals that are uploaded after this deadline will not be considered. The remittance of a paper version is not authorised** (any received paper version will thus be rejected without any examination and evaluation).

#### **3.4.1 Support elements of the proposals**

All documents stated under section 3.4.2 of the Guidelines have to be submitted duly signed by electronic means via the Portal.

**Proposals with a missing signature or with an invalid signature<sup>4</sup> will be rejected.**

The “Questionnaire and performance file” must also bear the header of the tenderer.

#### **3.4.2 Content of the proposal**

The proposal must contain following documents:

- a) **The duly completed and signed undertaking declaration** referenced as Appendix 2 within the tender documents;

An authorised person must sign the undertaking agreement. The undertaking agreement commits the tenderer to the terms and conditions of this tender and all supporting document and their appendices.

- b) **An official document (less than three (3) months old) certifying the registration of the tenderer in the trade register or with the competent public authority that records commercial companies;**

It is up to the tenderer to provide documentary evidence of its registration under the conditions provided by the legislation of the state in which it is established.

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<sup>4</sup> Are considered as valid signatures eIDAS trusted signatures. For more information on eIDAS trusted signatures, please visit: <https://webgate.ec.europa.eu/tl-browser/#/>

- c) **The duly completed and signed declaration swearing that the tenderer is not prohibited from participating in public tenders** referenced as Appendix 3 within the tender documents;
- d) **The duly completed and signed declaration swearing that the tenderer has fulfilled the tax and social obligations of its country** referenced as Appendix 4 within the tender documents;
- e) **The duly completed and signed declaration swearing that the tenderer holds the appropriate approvals referred to in section 2.8 of the Guidelines** referenced as Appendix 5 within the tender documents;
- f) **The duly completed and signed “Questionnaire and performance file”** referenced as Appendix 1 within the tender documents. The Questionnaire and performance file must also bear the header of the tenderer.

### **3.5 Language of the proposal**

All the documents set out in section 3.4.2 of the Guidelines must be drafted in either English, French or German.

The FDC will not accept the return of a proposal that is not completed in one of the languages indicated above.

Any other document should also be drafted in one of the above mentioned languages or, if this is not the case, be accompanied by a certified true translation.

### **3.6 Important notices**

The signature of the Agreement will take place after the awarding of the contract. It is reminded that the Agreement, referenced as Appendix 6 within the tender documents, is an integral part of the present tender and is therefore not subject to any modifications (except those for compulsory regulations or those to the appendices for operational reasons).

In accordance with section 2.8 of the Guidelines, a supporting document related to the approval covering portfolio management services on behalf of third parties, such as also requested in Appendix B of the Agreement, must be produced within fifteen (15) calendar days as from the tender results notification. Tenderers who fail to produce such a supporting document within the required deadline shall be rejected and the contract shall be automatically awarded to the next tenderer as per the ranking classification.

Tenderers whose registered office is not in Luxembourg must be authorised to operate on the territory of Luxembourg by way of freedom to provide services. Tenderers who are not authorised to operate on the territory of Luxembourg shall be rejected and the contract

shall be automatically awarded to the next tenderer as per the ranking classification, the latter being bound to proof evidence of the relevant authorisation.

Tenderers' answers will be considered as definitive in accordance with the public tender regulations and will not give subject to any subsequent negotiation.

The investment management fees indication will be considered as definitive and will not give subject to any subsequent negotiation.

**The accumulation of mandates (active or indexed) within a same asset class<sup>5</sup> is not possible. The accumulation of indexed mandates respectively the accumulation of indexed and active mandates in different asset classes is only possible if the accumulated assets under management do not exceed 20% of the total net assets of the SICAV.** For information, the SICAV's total net assets amounted to approximately EUR 23.885 billion as of 31 August 2021.

The above mentioned limit applies to every separate legal entity of a group. This being said, a tendering company managing already one (or more) mandate(s) for the SICAV will not be awarded with the contract if the accumulated assets under management will exceed the given limit.

### 3.7 Clarification questions

Clarification questions must be addressed to the FDC via a secure message using the "Question" tab on the Portal (cf. section 3.3 of the Guidelines). Such questions can be introduced until **19 November 2021 at 4:00 p.m. CET**. Questions introduced after this deadline will not be answered by the FDC.

Questions must be written in English, French or German and may only be used to obtain clarification about the terms and the purpose of this tender and its appendices. They must be written in a non-personalised manner and may not under any circumstances contain information on the proposal a tenderer intends to make.

**Technical or operational questions (settlement, cut-off times, account opening, etc.) will be clarified after the awarding of the contract**, together with the SICAV's depository and central administration.

**Questions related to the registration process, access management or handling of the Portal will not be answered by the FDC.** Such questions must be addressed to the Portal's contact details or Helpdesk.

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<sup>5</sup> FDC's investment strategy consists of following asset classes: global equities, global equities 2°C aligned, emerging markets equities, global small cap equities, global sustainable impact equities, EUR denominated bonds, EUR denominated green bonds, global bonds, emerging markets bonds, EUR denominated liquidities and global real estate.



### **3.8 Alternative proposals**

No alternative proposals shall be considered.

### **3.9 Clarification hearings with the best classified tenderers**

The FDC proceeds to clarification hearings with the best classified tenderers. These hearings are for clarification purposes only and cannot lead to a better score of the respective tenderer(s).

In this context, the FDC will send to the concerned tenderers an invitation with an agenda setting out the sequence of the hearing session. All invited tenderers will receive the same agenda. **The presence of the lead portfolio manager for the clarification hearings is compulsory.**

Please note that these clarification hearings might be held either at FDC's registered office or at the tenderer's registered office.

### **3.10 Period of validity of the proposals**

Proposals are valid for a period of five (5) months with effect from the closing day of the proposal remittance being **30 November 2021**.

### **3.11 Awarding of the contract**

The awarding of the contract shall be pronounced by FDC's Board of Directors.

The awarding term should normally not exceed two (2) months from the opening of the proposals. Nevertheless, with regard to the scope and complexity of the current tender, the FDC refers to article 49 (2) of the Grand Ducal Regulation from 8 April 2018 determining the modalities of the Law from 8 April 2018 regarding public tenders. The given article provides that the awarding term can be longer without exceeding five (5) months.

Thus, the notification of the awarding decision will be communicated on **28 March 2022** by the FDC. Similarly, tenderers whose proposal has been rejected will also be informed. Such notification will **clearly indicate the reasons why a proposal has been rejected**.

In the event that the FDC would find a divergence between the information provided by the tenderer and the reality of the situation, it may withdraw the awarding decision without this resulting in any entitlement to a compensation of any kind whatsoever. In

this case the contract shall be assigned to the next tenderer as per the ranking classification.

## **4 Additional information**

### **4.1 Applicable law**

The Luxembourg law is applicable to this tender.

### **4.2 Tender fees**

The FDC informs tenderers that it is not liable for any direct or indirect costs relating to the preparation, presentation or explanation of the proposals.

Tenderers shall bear all the costs and expenses arising from this tender.

### **4.3 Confidentiality**

- a) Tenderers are hereby informed that the FDC will collect and process data on their behalf, their partners, employees and staff as it is deemed necessary for monitoring the tender process, the evaluation of the proposals and the awarding of the contract. The data shall not be communicated to any third party, without prejudice to the provisions set out in below section 4.3 b) of the Guidelines, and shall be retained for the period provided by the law. The persons concerned shall have the right to access and amend their data by contacting the FDC.
- b) Tenderers are hereby informed that the FDC has entrusted independent consultants established in Switzerland with the task of assisting in the conception and realisation of this tender. As a result, any information submitted by tenderers during the process may be transmitted to these independent consultants.

The FDC and all its officials and service providers are required not to divulge any information in the context of this tender which is not already lawfully in their possession and which would be covered by or could adversely affect professional secrecy.

The processing<sup>6</sup> by the FDC of personal data<sup>7</sup> communicated by the tenderers relating to this tender is regulated by national and European legislation respectively, from May 25, 2018 onwards, by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (the GDPR regulation).

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<sup>6,7</sup> As defined in article 4 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

In compliance with legal and contractual obligations binding the FDC, communicated personal data may be transferred to a processor and/or subcontractor. In particular and on the basis of an existing consultancy contract, personal data may be transferred to FDC's independent consultants established in Switzerland.

Tenderers are hereby informed that a transfer of personal data to a third country may take place where the European Commission has decided that the third country in question ensures an adequate level of protection. Such a transfer does not require any specific authorization.

The personal data are retained by the FDC in compliance with the technical and organizational security measures necessary to avoid any personal data breach<sup>8</sup>.

The holder of personal data is entitled to ask the rectification and the erasure of its data within the limits set down by the GDPR regulation applicable from May 25, 2018 onwards.

Any breach of personal data will, from May 25, 2018 onwards, be notified by the FDC to the competent supervisory authority as soon as possible and, if possible, seventy-two (72) hours at the latest after becoming aware of the breach.

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<sup>8</sup> As defined in article 4 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

## **5 List of Appendices**

- Appendix 1: Questionnaire and performance file
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