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BOARD NOTICES

BOARD NOTICE 90 OF 2014**FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****DETERMINATION OF SECURITIES, CLASSES OF SECURITIES, ASSETS OR CLASSES OF ASSETS THAT MAY BE INCLUDED IN A PORTFOLIO OF A COLLECTIVE INVESTMENT SCHEME IN SECURITIES AND THE MANNER IN WHICH AND THE LIMITS AND CONDITIONS SUBJECT TO WHICH SECURITIES OR ASSETS MAY BE SO INCLUDED**

I, Dube Phineas Tshidi, Registrar of Collective Investment Schemes, hereby determine, under sections 40, 45(a)(ii) and (b)(ii), 46 and 85 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), in the Schedule in respect of a collective investment scheme in securities-

- (a) the portfolios in which securities, classes of securities, assets or classes of assets may be included;
- (b) the securities, classes of securities, assets or classes of assets that may be so included; and
- (c) the manner in which and the limits and conditions subject to which securities, classes of securities, assets or classes of assets may be so included.



D P TSHIDI

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

SCHEDULE

Preamble

This Notice stipulates the portfolios which may comprise a collective investment scheme in securities, the types of investments that may be included in portfolios of a collective investment scheme in securities as well as the conditions, limits and the manner in which the portfolios and securities may be included in a collective investment scheme in securities.

The principles governing managers of collective investment schemes in respect of the administration of collective investment schemes as provided in the Act continue to apply. A manager must administer a collective investment scheme honestly, fairly, with skill, care and diligence and in the interest of investors. In the inclusion of investments in a portfolio of a collective investment scheme, the manager must ensure that all investments have been subjected to adequate due diligence in line with the investment objectives of the applicable portfolio.

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1. Definitions.

In this Schedule, “**the Act**” means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, and unless the context otherwise indicates—

“**AAOIFI**” means the Accounting and Auditing Organisation for Islamic Financial Institutions;

“**assets in liquid form**” means—

- (a) any amount of cash consisting of Reserve Bank notes and coins;
- (b) any balance in an account with a-
 - (i) bank;
 - (ii) branch of a foreign institution, which institution is authorised in terms of the Banks Act to conduct the business of a bank by means of such branch, or
 - (iii) foreign bank;
- (c) any positive net balance in a settlement account, other than a margin account, operated for the buying and selling of underlying assets;
- (d) any instrument determined in Chapter II of this Notice;
- (e) participatory interests in a money market portfolio referred to in Chapter II of this Notice;

on condition that the assets referred to in sub-paragraphs (a), (b), (d) and (e) are capable of being converted, without any penalty on capital in terms of the conditions of the security, into cash within seven days. In determining any limit under this Notice, exposure through a settlement account contemplated in paragraph (c) must be added to other exposures to the same issuer/guarantor;

“**bank**” means a bank as defined in the Banks Act, or a mutual bank as defined in the Mutual Banks Act;

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);

“**Bills of Exchange Act**” means the Bills of Exchange Act, 1964 (Act No. 34 of 1964);

“guarantee” means a guarantee, or an undertaking to provide the financial support necessary, to ensure full and timely debt service and redemption of a debt;

“index” means the compilation of securities listed on an exchange or a number of exchanges or the compilation of prices or rates of non-equity securities, publicly available from a recognised index compiler, representing a statistical indicator of the aggregate value of the securities comprising the index, provided that the composition of such an index meets the same level of diversification as contemplated in this Notice;

“Islamic Bond (Sukuk)” means a certificate of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity, as defined by AAOIFI ;

“Islamic Compliant Instrument” means an instrument held in a Shari’ah compliant portfolio, being a collective investment scheme in securities managed under the Act in compliance with the relevant standards of AAOIFI, structured in such a manner that the instrument held by the portfolio will be an instrument defined under paragraphs 2(1)(a);

“Mutual Banks Act” means the Mutual Banks Act, 1993 (Act No. 124 of 1993);

“physical exchange traded fund” means an exchange traded fund which tracks an index or the value of precious metals and which physically holds the underlying assets it is tracking;

“physical exchange traded notes” means exchange traded notes whose issuer physically holds the underlying assets of the index they are tracking; and

“recognised index compiler” means an entity which compiles and publishes indices which are acceptable to an exchange.

CHAPTER I

STANDARD PORTFOLIO

2. Application of Chapter

(1) For the purposes of this Chapter-

“**investment company**” means a company that is engaged primarily in the business of investment in the securities of companies for the purpose of revenue and profit and not for the purpose of exercising control;

“**securities**” means-

(a)

- (i) shares, preference shares, whether redeemable, convertible or perpetual and exchange depository receipts in public companies, whether listed or not;
- (ii) listed participatory interests in a collective investment scheme in property;
- (iii) participatory interests in a collective investment scheme in securities, whether listed or not,
- (iv) bonds, debentures, debenture stock and debenture bonds,
- (v) notes, whether secured or not, and whether or not they have inherent option rights or are convertible;
- (vi) Islamic bonds (Sukuks); and
- (vii) Islamic compliant instruments.

(b) the following listed financial instruments, subject to the conditions set out in Chapter V of this Notice-

- (i) a futures contract;
- (ii) an option contract;
- (iii) a warrant;
- (iv) an index tracking certificate;
- (v) an instrument based on any underlying asset or basket of underlying assets as defined in Chapter V of this Notice, other

- than an Islamic Bond (Sukuk) or an Islamic Compliant Instrument;
- (c) the following unlisted financial instruments, subject to the conditions set out in Chapter V of this Notice:
 - (i) forward currency swap;
 - (ii) forward currency option issued by a bank;
 - (iii) interest rate swap;
 - (iv) exchange rate swap; and
 - (v) index swap;
 - (d) any asset referred to in the definition of “**assets in liquid form**” in paragraph 1 of this Notice; or
 - (e) any “money market instrument” as determined in paragraph 5 of this Notice.

(2) This Chapter applies to a portfolio that consists of securities referred to in the definition of “**securities**” in sub-paragraph 2(1) but does not apply to any portfolio specifically dealt with in Chapters II, III, and IV of this Notice.

3. Conditions and limits of inclusion

(1)(a) Subject to sub-paragraphs (3), (8), (9), (10) and (11), a manager may include in a portfolio-

- (i) equity securities issued by any one concern-
 - (aa) with a market capitalisation of less than R2 billion, to an amount of five percent of the market value of all the assets comprised in the portfolio;
 - (bb) with a market capitalisation of R2 billion or more, 10 percent of the market value of all the assets comprised in the portfolio; or
- (ii) 120 percent, of that equity security’s weighting in its relevant index, subject to-
 - (aa) a maximum of 20 percent of the market value of all the assets comprising the portfolio where the benchmark is the index representing the overall market or exchange;

- (bb) a maximum of 35 percent of the market value of all the assets comprising the portfolio where the benchmark is an index, which is a sub-set of an overall market or exchange index;
- (iii) equity securities of any one class issued by any one concern-
 - (aa) with a market capitalisation of less than R2 billion, to an amount of five percent; or
 - (bb) with a market capitalisation of R2 billion or more, 10 percent, or
 - (cc) which is an investment company, 10 percent;
 of the aggregate amount of the equity securities of any one class issued by such concern or company, subject to –
 - (AA) an overall limit of 15 percent of the aggregate amount of equity securities of any one class issued by a concern within the same group as the manager, across the portfolios in all schemes administered by the manager; and
 - (BB) an overall limit of 24 percent of the aggregate amount of equity securities of any one class issued by a concern other than a concern within the same group as the manager, across the portfolios in all schemes administered by the manager,
- (b) (i) Where a portfolio breaches the limits set out in sub-paragraphs (a)(i) and (a)(ii) due to appreciation or depreciation of the market value of the equity securities in that portfolio, or as a result of any non-optional corporate action by the relevant concern, the manager may not purchase any further equity securities issued by that concern for as long as the market value of an equity security in any particular concern exceeds the limit specified in subparagraph (a)(i) and (ii).
 - (ii) Where a portfolio breaches the limits set out in sub-paragraph (a)(iii) due to an amalgamation, cession, transfer or take-over in terms of section 99 of the Act, or as a result of any non-optional corporate action by the relevant concern, the manager-
 - (aa) may not make any further investments in the equity securities of

the class in question as long as any limit determined in sub-paragraph (a)(iii) is exceeded;

(bb) must within 12 months after the date on which such amalgamation, cession, transfer, take-over or non-optional corporate action becomes effective or within such further period as the registrar may determine, reduce the equity securities of the class in question to the limits determined in sub-paragraph (a)(iii).

(2)(a) Subject to sub-paragraphs (3) and (9), at least 90 percent of the market value of a portfolio must consist of –

- (i) securities traded on an exchange;
- (ii) instruments contemplated in sub-paragraphs (8) and (9);
- (iii) securities (other than exchange securities) acquired by the manager pursuant to the exercise of rights attaching to any exchange securities included in the portfolio; or any combination thereof.

(b) If any securities which are not listed on an exchange are included in a portfolio, such securities must be valued daily based on a generally recognised methodology and by a person acceptable to the trustee, subject to the requirements of the Act.

(c) Prior to a manager including any financial instruments or unlisted securities in a portfolio, it must satisfy the trustee that a risk management program designed to identify, measure, on a daily basis, and adequately cover risks emanating from exposure to the security, is in place and is efficient.

(3)(a) A manager may include in a portfolio participatory interests in portfolios (“underlying portfolios”) of collective investment schemes in securities, including exchange traded funds registered as collective investment schemes, collective investment schemes in property or of foreign collective investment schemes to a maximum aggregate value of 80

percent of the market value of the first-mentioned portfolio, provided that-

- (i) the maximum exposure to any one underlying portfolio may not exceed 20 percent of the market value of the first-mentioned portfolio;
- (ii) in the case of an underlying portfolio which is part of a foreign collective investment scheme, the foreign collective investment scheme must-
 - (aa) be subject to a due diligence investigation conducted by the manager, to the satisfaction of the trustee, to ascertain whether the portfolio would qualify for approval in terms of section 65(1)(c) of the Act and that the portfolio is available for investment and is not otherwise prohibited in its domicile of registration and;
 - (bb) be subject to an annual review by the manager to ensure that it continues to comply with the requirements of section 65 if the foreign collective investment scheme has not been approved in terms of 65 of the Act;
- (iii) in the case of an underlying portfolio that is managed, directly or by delegation, by the same manager or by any other company with which the manager is linked by common management or control, or by a substantial direct or indirect holding, that manager or other company may not charge any form of manager's charge (including initial or upfront fees, redemption fees or exit fees) on the underlying portfolio;
- (iv) in the case of an underlying portfolio holding participatory interests in other portfolios, each of those portfolios may not constitute more than 20 percent of their respective investments in other portfolios;
- (v) a manager may only include physical exchange traded funds or

exchange traded notes in a portfolio;

- (vi) a manager may not include exchange traded funds or exchange traded notes which are capable of obtaining leveraged exposure to underlying assets.

(b) The limit determined in sub-paragraph 3(a) may be exceeded only if the excess is due to appreciation or depreciation of the value of the underlying participatory interests constituting the portfolio, provided that a manager may not, for as long as the excess continues, purchase any further participatory interests for the portfolio.

(4) For the purposes of sub-paragraph (3)(a), the value of a participatory interest held by one portfolio in another must be calculated by reference to the lower of the repurchase price or the net asset value of the relevant participatory interest, at the latest available price before a repurchase price is calculated, or the market value in the case of exchange traded funds.

(5) A manager must ensure that a portfolio's investment policy provides for the inclusion of participatory interests in that portfolio.

(6) A manager may only include in a portfolio, participatory interests issued by a fund of funds if-

(a) that fund of funds holds at least 85 percent of its assets outside the Republic; and

(b) the fund of funds is not invested in another fund of funds or feeder fund.

(7) If a manager finds that a fund of funds is invested in another fund of funds or a feeder fund contrary to the provisions of sub-paragraph (6)(b), the manager concerned must, if the non-compliance is not rectified within 30 days of the date on which the manager became aware of the non-compliance, furnish the registrar with a detailed plan setting out measures to rectify the non-compliance.

(8) (a) A manager may include in a portfolio listed and unlisted financial instruments, subject to the limits and conditions determined in Chapter V of this Notice.

(b) The financial instruments referred to in sub-paragraph 8(a) may only be

included for purposes of efficient portfolio management with the aim of reducing risk, reducing cost or generating capital or income for a portfolio with an acceptable level of risk or to achieve the investment objective of the portfolio. In this instance, the manager must ensure that a portfolio's investment policy provides for the inclusion of listed and unlisted financial instruments.

- (c) The manager must ensure that the listed or unlisted financial instruments are not used to leverage or gear the portfolio and are covered at all times.
- (9) (a) A manager may include the following non-equity securities, whether listed on an exchange or not, in a portfolio, subject to the limits prescribed in Table 1 below and, in respect of foreign non-equity securities, a due diligence investigation in accordance with the relevant provisions in Chapter VI of this Notice-
- (i) any money market instrument as defined in Chapter II of this Notice;
 - (ii) bonds, debentures, debenture stock and debenture bonds, notes, whether or not they have inherent option rights or are convertible;
 - (iii) assets in liquid form;
 - (iv) Islamic Bonds (Sukuk) and Islamic Compliant Instruments;
 - (v) preference shares determined as non-equity securities in accordance with sub-paragraph 12(b);
 - (vi) an instrument issued by a bank as the counterparty, that is fully paid for (fully funded) by the purchaser, not synthetic and that provides a return profile that follows, is similar to, or is clearly referenced to an index whose return profile is clearly described in the offering documentation; and
 - (vii) other non-equity securities as determined in item 4 of Table 1

Table 1

Item	Categories of non-equity securities	Limits being the maximum percentage of the aggregate market value of the portfolio	
		Per issuer/guarantor as applicable	In aggregate for all issuers/guarantors as applicable
1	Non-equity securities issued or guaranteed by:		100%
1.1	the government of the Republic of South Africa;	100%	100%
1.2	any foreign government which has been assigned a foreign currency sovereign rating not lower than that of the Republic of South Africa;	100%	100%
1.3	any foreign government that does not comply with 1.2;	30%	100%
1.4	the South African Reserve Bank; and	100%	100%
1.5	the African Development Bank.	30%	30%
2	Non-equity securities issued or guaranteed by a local or foreign bank which forms part of a group of companies (in terms of international accounting standards) of which the holding company is listed on an exchange:		100%
2.1	with a market capitalisation for the listed group holding company of more than R 20 billion;	30%	100%
2.2	with a market capitalisation for the listed group holding company of between R 2 billion and R 20 billion.	20%	100%
2.3	with a market capitalisation for the listed group holding company less than R2 billion.	10%	100%
3	Non-equity securities issued or guaranteed by:		100%
3.1	a public entity under the Public Finance Management Act, 1999 (Act No.1 of 1999); and	10%	100%
3.2	a municipality under the Local Government Municipal Finance Management Act, 2003 (Act No. 56 of 2003)	10%	20%
3.3	any local or foreign entity which is listed on an exchange,	10%	100%
4	Non-equity securities issued or guaranteed by local or foreign entities not described above where such security is:		25%
4.1	listed and traded on an exchange	5%	25%
4.2	not listed on an exchange, including, participatory interests in participation bonds	5%	10%

(b) In order to determine the market capitalisation of an internationally listed group holding company, a conversion must be done to Rand at

the prevailing foreign exchange rate on the date of inclusion and thereafter at least once every 30 days.

- (c) The limits prescribed in Table 1 may be exceeded only if the breach is due to appreciation or depreciation of the market value of the instruments comprising a portfolio; provided that a manager may not, for as long as the excess continues, purchase any further instruments of the class in respect of which the excess occurs for the portfolio.
- (d) If, after the date of inclusion of an instrument in a portfolio, a limit, prescribed in Table 1 becomes applicable to any instrument which limit is lower than the previous limit, the manager must rectify the position within 30 days of such reduced limit becoming applicable. If the manager and the trustee are of the view that rectification of the position within 30 days would be detrimental to a particular portfolio, the manager must, within seven days of the date of becoming aware of the change in limits, submit a detailed plan setting out measures to rectify the position, to the registrar for consideration for approval.
- (e) Where a manager, through no fault of its own, due to reasons other than the appreciation or depreciation of the market value of the instruments comprising a portfolio, is unable to comply with a limit prescribed in this paragraph, the manager must, if the breach is not rectified within 30 days of the date on which the manager becomes aware of the breach, submit a detailed plan setting out measures to rectify the breach, for consideration for approval by the Registrar.

(10) A manager may include in any index tracking portfolio, securities issued by any concern to an amount of 120 percent of that concern's weighting in a relevant index, subject to a maximum of 35 percent of the market value of all the assets comprising that portfolio.

(11) A manager may include in a precious metal and minerals portfolio, securities issued by any concern, equal to that concern's weighting in its relevant precious metal Index, subject to a maximum of 60 percent of the market value of all

the assets comprising that portfolio.

(12)(a) Where a manager includes preference shares in a portfolio, the shares must be treated as equity securities where the issuer of the shares has included them as part of its share capital on its balance sheet.

(b) Preference shares which do not form part of the share capital of an issuer must be treated as non-equity securities.

(13) A manager may only include in a portfolio instruments based on the value of any precious metal as defined in the Precious Metals Act, 2005 (Act No. 37 of 2005), to an aggregate maximum limit of 10 percent of the market value of all the assets comprising the portfolio, provided that-

(a) such instruments are listed and traded on an exchange and are not synthetic instruments;

(b) where the instruments are issued as exchange traded funds in the form of non-equity securities as contemplated for inclusion in terms of this Chapter, the exposure to such instruments must be added to the overall exposure permitted in terms of Table 1 for the relevant guarantor, or in the absence of a guarantor, the official market maker appointed by the issuer of the non-equity security;

(c) the portfolio may not be obliged to take physical delivery of the precious metal;

(d) the limit constitutes the entire commodity exposure of a portfolio; and

(e) these commodity exposure limits apply equally to a portfolio investing in a foreign collective investment scheme or exchange traded fund.

(14)(a) Despite the provisions of sub-paragraph (3) and subject to the provisions of paragraph 3(13), a manager may only invest in an exchange traded fund or an exchange traded note, whether organised as a portfolio of a collective investment scheme or not, where that exchange traded fund or exchange traded note ordinarily owns securities permitted by this Notice.

(b) A manager may only include physical exchange traded funds or exchange traded notes in a portfolio.

(c) A manager may not include exchange traded funds or exchange traded notes which are capable of obtaining leveraged exposure to underlying assets.

(15) The inclusion limits determined in this Chapter will apply, according to the type of instrument it is, irrespective of whether the instrument issued by an exchange traded fund is an equity instrument, a non-equity instrument or a participatory interest of a collective investment scheme.

(16) Where a manager enters into a repurchase agreement, the manager must ensure that-

(a) the securities which are the subject of such an agreement, and are to be included in a portfolio on the basis that one security has been exchanged for another, are-

(i) of equal value,

(ii) included subject to the limits and conditions of this Notice and the investment policy contained in the supplemental deed;

(b) the portfolio does not suffer any losses other than changes in value attributable to market movements; and

(c) any gains are applied for the benefit of the portfolio.

(17)(a) The manager must assess the quality of a security, and in doing so the manager must consider all applicable factors including the liquidity profile and the nature of the asset class represented by the security.

(b) In carrying out its due diligence investigation, the manager must not place inappropriate reliance on the credit rating of the security.

(18) The manager must ensure that if the inclusion of instruments in a portfolio will result in further exposure to another issuer, whose instruments are already included in the portfolio, the exposure created by the inclusion of the first-mentioned instruments is taken into account when determining the overall permissible exposure to the issuer.

- (19)(a) In order to ensure that an Islamic Compliant Instrument purchased complies with the requirements for inclusion in a Shari'ah compliant portfolio, the instrument must-
- (i) be based on the ownership of an underlying tangible asset or basket of tangible assets;
 - (ii) be negotiable; and
 - (iii) be such that title to the underlying tangible asset or basket of tangible assets passes from a portfolio to a third party within seven business days as from the date on which the relevant transaction of purchase and sale is concluded.
- (b) The sale price of the underlying tangible assets or basket of tangible assets must be fixed at the time of conclusion of the purchase and cannot be varied due to a movement in the market value of the underlying tangible assets or basket of tangible assets.
- (c) A manager that administers a portfolio in compliance with the relevant Standards of AAOIFI, in terms of which the portfolio may invest in Islamic Bonds (Sukuks) or Islamic Compliant Instruments, must, despite the limits prescribed at item 2 of Table 1, comply with the limits as set out in Table A for a period of 24 months from date of commencement of this Notice ("the initial period"), after which date the limits as set out in Table 1 shall apply:

Table A

Item	Categories of Securities	Per issuer/guarantor as applicable
2	Non-equity securities issued or guaranteed by a local or foreign bank which forms part of a group of companies (in terms of international accounting standards) of which the holding company is listed on an exchange:	
2.1	with a market capitalisation for the listed group holding company of more than R 20 billion;	50%
2.2	with a market capitalisation for the listed group holding company of between R2 billion and R 20 billion.	34%

- (d) Each manager must review and assess the development and growth of the Islamic financial services in South Africa on a continuous basis and, at least four months prior to the end of the initial period, furnish the Registrar with a report indicating the status of the market for Islamic financial services in South Africa.

CHAPTER II

MONEY MARKET PORTFOLIO

4. Definitions

For the purposes of this Chapter,-

“interest rate swap” means a transaction for the swap of interest rates;

“maturity date” means the date on which an issuer or guarantor is obliged to repay the principal or capital amount and interest due on a money market instrument;

“money market portfolio” means a portfolio consisting only of money market instruments in the currency of the Republic;

“Notice on Securitisation Schemes” means the notice known as Designation of an activity not falling within the meaning of “The Business of a Bank” (Securitisation Schemes), published under Government Notice 2 in Government Gazette 30628 of 1 January 2008, or its successor;

“weighted average duration” means a measure of the average length of time to maturity of all of the underlying instruments in the portfolio weighted to reflect the relative holdings in each instrument, where the maturity of a floating rate instrument is the time remaining until the next interest reset to the money market rate, rather than the time remaining before the principal value of the instrument must be repaid; and

“weighted average legal maturity” means the weighted average of the remaining life of each instrument held in a portfolio, meaning the time remaining until the principal value is repaid in full, disregarding interest and any discounts.

5. Determination of money market instruments

For the purposes of this Chapter, money market instruments which may be included in a money market portfolio, other than deposits must be transferable and acknowledging indebtedness and are defined as follows:

- (a) "**asset with a branch of a foreign institution**" means a deposit with, or any instrument of indebtedness (as defined in sub-paragraphs (b) to (n)) issued by a branch of a foreign institution, which institution is authorised in terms of the Banks Act to conduct the business of a bank by means of such branch; provided that the foreign institution must be domiciled in a country which is assigned a foreign currency sovereign rating of at least the same as the Republic;
- (b) "**banker's acceptance**" means a bill as defined in the Bills of Exchange Act, drawn on and accepted by a bank;
- (c) "**bond**" means an acknowledgement of debt in which the issuer/guarantor undertakes to repay the debt together with interest on the maturity of the debt to the holder of the bond;
- (e) "**commercial paper**" means any negotiable acknowledgement of debt;
- (f) "**debenture**" means debenture stock, debenture bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;
- (g) "**deposit**" means a deposit as defined in the Banks Act, or in the Mutual Banks Act;
- (h) "**Islamic Compliant Instrument**" means an Islamic Complaint Instrument as defined in this Notice;
- (i) "**land bank bill**" means a bill or note as defined in the Bills of Exchange Act, drawn, accepted or issued by the Land and Agricultural Bank of South Africa;
- (j) "**negotiable certificate of deposit**" means a certificate of deposit issued by a bank, and payable to order or to bearer;
- (k) "**public entity bill**" means a bill or note as defined in the Bills of Exchange Act, drawn, accepted or issued by a parastatal institution;
- (l) "**promissory note**" means a promissory note as defined in the Bills of Exchange Act;
- (m) "**trade bill**" or "**trade note**" means a bill or note as defined in the Bills

of Exchange Act, drawn, accepted or issued to provide for the payment for goods;

- (n) **"treasury bill"** means a bill drawn by the Government on the Secretary to the Treasury calling on the latter to pay a sum certain in money to a specified person or his order or to bearer, on demand or on a certain specified future date.

6. Inclusion limits

(1) A manager may include money market instruments, whether listed on an exchange or not, in a money market portfolio, subject to paragraph 8(7) of this Notice, and the limits as specified in the table below.

Table 2

Item	Categories of Money Market Instruments	Limits being the maximum percentage of the aggregate market value of the portfolio	
		Per issuer/guarantor as applicable	In aggregate for all issuers/guarantors as applicable
1	Money market instruments issued or guaranteed by:		100%
	1.1 the Government of the Republic of South Africa;	100%	100%
	1.2 any foreign government which has been assigned a foreign currency sovereign rating not lower than that of the Republic of South Africa;	100%	100%
	1.3 the South African Reserve Bank.	100%	100%
2	Money market instruments issued or guaranteed by a local or foreign bank which forms part of a group of companies (in terms of the Companies Act) of which the holding company is listed on an exchange:		100%
	2.1 with a market capitalisation for the listed group holding company of more than R 20 billion;	30%	100%
	2.2 with a market capitalisation for the listed group holding company of between R 2 billion and R 20 billion.	20%	100%

3		Money market instruments issued or guaranteed by:		100%
	3.1	a public entity under the Public Finance Management Act, 1999 (Act No. 1 of 1999);	10%	100%
	3.2	any local or foreign entity which is listed on an exchange.	10%	100%
4		Money market instruments issued or guaranteed by entities not described above where such security:		25%
	4.1	Is listed and traded on an exchange	5%	25%
	4.2	Is not listed on an exchange,	5%	10%

(2) In order to determine the market capitalisation of an internationally listed group holding company, a conversion must be done to Rand at the prevailing foreign exchange rate at the date of inclusion of the instrument and thereafter at least once every 30 days.

(3) Where, after the date of inclusion of any money market instrument in a money market portfolio, a reduced inclusion limit becomes applicable to that instrument, the manager must rectify the position within 30 days of such reduced limit becoming applicable: Provided that if the manager and the trustee are of the view that rectification would be detrimental to a particular portfolio, the manager must, within seven days of the date of becoming aware of the change in limits, submit a detailed plan setting out measures to rectify the position to the Registrar for consideration for approval.

(4) Where a manager is unable to comply with any limit prescribed in this paragraph through no fault of its own, the manager must, if the non-compliance is not rectified within 30 days of the date on which the manager becomes aware of the non-compliance, submit a detailed plan setting out measures to rectify the position to the registrar for consideration for approval.

7. Reduction of participatory interests

(1) For the purposes of this paragraph, a “**reduction in value**” occurs where a loss on a sale or a default of a money market instrument results in a loss greater

than the income accrued in the portfolio in an accounting period.

(2) Within 21 days after any reduction in value, a manager must, provide the registrar and every investor in the portfolio details of the reduction, in writing.

(3) A reduction in value must be reflected in the accounts and returns to be kept and rendered to the registrar by the manager in terms of section 90(1) of the Act.

(4) The auditor of a manager must, where there is a reduction, provide the registrar on a quarterly basis with details of the reduction.

8. General

(1) At the time of its inclusion in a money market portfolio a money market instrument may not have a residual maturity exceeding 13 months.

(2) The weighted average legal maturity of money market instruments included in a money market portfolio, based on the value of the total money market portfolio, may not exceed 120 days.

(3) The weighted average duration of money market instruments included in a money market portfolio, based on the value of the total money market portfolio, may not exceed 90 days.

(4) The following money market instruments may not be included in a money market portfolio-

- (a) money market instruments having no fixed maturity;
- (b) money market instruments whose initial interest rates are not known at the date of inclusion;
- (c) money market instruments, including, but not limited to, credit linked notes whose return or redemption may be dependent on another instrument or another entity;
- (d) money market instruments, including, but not limited to, credit linked notes, whose return or redemption may be dependent on any event.

(5) The manager must at all times be able to calculate the return of the money market portfolio.

- (6) (a) The manager must assess the quality of a money market instrument; in making its assessment, the manager must take into account all applicable factors including the liquidity profile and the nature of the instrument.
- (b) In carrying out its due diligence investigation, the manager must not place inappropriate reliance on the credit rating of the instrument.
- (7) A manager may only include a money market instrument in a money market portfolio if the institution that issues or guarantees the money market instrument-
- (a) has capital and reserves amounting to at least R 100 000 000 and presents and publishes its annual accounts to the public; or
- (b) is an subsidiary within a group of companies which includes one or more listed companies, whose holding company has capital and reserves amounting to at least R 100 000 000, and presents and publishes its annual accounts to the public and where such subsidiary's accounts are included in the consolidated accounts of the group, as defined in the Companies Act, 2008, or
- (c) is a special-purpose institution as determined in the Notice on Securitisation Schemes provided that-
- (i) the special-purpose institution issues commercial paper in respect of a traditional securitisation scheme as defined in the Notice on Securitisation Schemes;
- (ii) the special-purpose institution, the money market instrument issued by such institution, the market maker, the sponsor or the provider of the liquidity facility, is listed on an exchange;
- (iii) the special-purpose institution provides sufficient disclosure to the manager to enable the manager to evaluate the default risk of the assets, held in the traditional securitisation scheme, as defined in the Notice of Securitisation Schemes; and
- (v) no synthetic securitisation schemes as defined in the Notice on

Securitisation Schemes are included in the money market portfolio.

(8)(a) A manager may include in a money market portfolio an interest rate swap, subject to sub-paragraphs 8(1), (2) and (3) and the conditions and limits determined in Chapter V of this Notice, provided that-

- (i) the interest rate swap applies to a specific money market instrument included in the portfolio;
- (ii) the maturity date of the instrument whose rate is being swapped is not extended by the swap agreement;
- (iii) the interest rate swap is supported by an International Swaps and Derivatives Association (ISDA) agreement and a credit support annex (CSA); and
- (iv) the inclusion of such an interest rate swap is only used for efficient portfolio management with the aim of reducing risk, reducing costs or generating capital or income for a portfolio with an acceptable level of risk and to achieve the investment objective of the portfolio.

(b) The manager must ensure that an unlisted transaction for the swap of interest rates is not used to leverage or gear the portfolio, and is covered at all times.

(9) Where a manager applies a constant price to a participatory interest of a money market portfolio, the manager must-

- (a) perform a mark-to-market valuation of the money market portfolio and each participatory interest on the last business day of each month to determine the variance of the mark-to-market value with the constant price; and
- (b) report any such calculation and any adjustment to the registrar within 15 days of performing the calculation or adjustment.

(10) Where a manager applies a variable price to a participatory interest of a money market portfolio, the manager must ensure that the Net Asset Value of the

portfolio is derived from market rates of the money market instruments constituting the portfolio.

(11) A manager must implement and apply a risk management programme to each money market portfolio, including stress testing of the portfolio on a quarterly basis, taking into account-

- (a) interest rate risk;
- (b) liquidity risk;
- (c) spread risk;
- (d) credit risk; or
- (e) any combination of (a), (b), (c) and (d).

(12) A money market portfolio's assets in liquid form must amount to at least four percent of the assets in the portfolio. Where the exposure of assets in liquid form falls below four percent, immediate and appropriate steps must be taken to correct the breach.

(13) For the purposes of this Chapter, assets in liquid form exclude money market instruments or accounts with foreign banks or any participatory interests in a money market portfolio.

(14)(a) A manager that administers a portfolio in compliance with the relevant standards of AAOIFI, in terms of which the portfolio may invest in Islamic Bonds (Sukuks) or Islamic Compliant Instruments, must, despite the limits prescribed at item 2 of Table 2, comply with the limits as set out in Table B for a period of 24 months from date of commencement of this Notice ("the initial period"), after which date the limits as set out in Table 2 of paragraph 6(1) shall apply:

Table B

Item	Categories of Money Market Instruments	Per issuer/guarantor as applicable
2	Money market instruments issued or guaranteed by a local or foreign bank which forms part of a group of companies (in terms of international accounting	

	standards) of which the holding company is listed on an exchange:	
2.1	with a market capitalisation for the listed group holding company of more than R 20 billion;	50%
2.2	with a market capitalisation for the listed group holding company of between R 2 billion and R 20 billion.	34%

- (b) Each manager must review and assess the development and growth of the Islamic financial services in South Africa on a continuous basis and at least four months prior to the end of the initial period furnish the Registrar with a report indicating the status of the market for Islamic financial services in South Africa.

CHAPTER III

FUND OF FUNDS PORTFOLIO

9. Definition

For the purposes of this Chapter, a “**fund of funds**” means a portfolio that consists of exchange rate swaps (where applicable and permitted in terms of the supplemental deed), assets in liquid form and participatory interests, whether listed on an exchange or not, in portfolios of collective investment schemes, but excluding participatory interests in collective investment schemes in participation bonds.

10. Conditions and limits of inclusion

The conditions and limits subject to which participatory interests in a portfolio may be included in a fund of funds, are as follows:

- (a) The investment in participatory interests by a fund of funds must consist of participatory interests in at least two other portfolios, provided that the investment in any one portfolio may not exceed 75 percent of the market value of the fund of funds.
- (b) The limit determined in sub-paragraph 10(a) may be exceeded only if the excess is due to appreciation or depreciation of the value of the underlying participatory interests constituting the portfolio, provided that a manager may not, for as long as the excess continues, purchase any further participatory interests.
- (c) A fund of funds may invest in participatory interests issued by another fund of funds only if that fund of funds holds assets outside the Republic of at least 85 percent of the value of the fund of funds and where that fund of funds is not invested in another fund of funds or feeder fund.
- (d) A fund of funds may invest in participatory interests issued by a feeder fund only if the feeder fund holds assets outside the Republic of at

least 85 percent of the value of the feeder fund.

- (e) If a manager is unable to comply with the provisions of sub-paragraph 10(c) and (d) through no fault of its own, the manager must, if the non-compliance is not rectified within 30 days of the date on which it becomes aware of the non-compliance, submit a detailed plan, setting out measures to rectify the position, to the registrar for consideration for approval.
- (f) The investment objectives of a fund of funds must clearly specify the nature of the participatory interests comprising the portfolio.
- (g) Where a manager of a fund of funds includes in a portfolio participatory interests of the portfolios of foreign collective investment schemes referred to in sub-paragraphs 10(a), (c) or (d) ("underlying portfolios"), the underlying portfolio must-
 - (i) have been approved in terms of section 65 of the Act, and be subject to an annual review by the manager to ensure that it continues to comply with the requirements of section 65; or
 - (ii) where the underlying portfolio has not been approved in terms of 65 of the Act, be subject to a due diligence investigation conducted by the manager, to the satisfaction of the trustee, to ascertain whether the portfolio would qualify for approval in terms of the conditions under section 65(1)(c) of the Act and that the portfolio is available for investment and is not otherwise prohibited in its domicile of registration.
- (h) Where an underlying portfolio is managed, directly or by delegation, by the same manager as the manager of the portfolio investing in the underlying portfolio or by any other company with which the manager is linked by common management or control, or by a substantial direct or indirect holding, such manager or other company may not charge any form of manager's charge (including initial fees or redemption fees) on the underlying portfolio.

- (i) Where a manager of a fund of funds includes participatory interests of a foreign feeder fund in the portfolio, such feeder fund may not have invested in another feeder fund or a fund of funds.
- (j) For the purposes of this Chapter, the value of a participatory interest held by one portfolio in another must be calculated by reference to the lower of the repurchase price or the net asset value of the relevant participatory interest, at the close of business on the day before the day a repurchase price was calculated.
- (k) To the extent that the assets in a portfolio are exposed to exchange rate risk, a manager may enter into financial transactions for the exclusive purpose of hedging such exchange rate risk subject to the conditions and limits stipulated in Chapter V, provided that the portfolio's investment policy provides for it to include financial instruments for the exclusive purpose of hedging exchange rate risks.
- (l) A fund of funds may not consist solely of participatory interests in a money market portfolio.

CHAPTER IV

FEEDER FUND PORTFOLIO

11. Definition

For the purposes of this Chapter, a “**feeder fund**” means a portfolio that, consists of exchange rate swaps (where applicable and permitted in terms of the supplemental deed), assets in liquid form and participatory interests in a single portfolio of a collective investment scheme in securities, whether listed on an exchange or not.

12. Conditions and limits of inclusion

The conditions and limits subject to which participatory interests in a portfolio of a collective investment scheme in securities may be included in a feeder fund are as follows-

- (a) A feeder fund may invest in participatory interests issued by a fund of funds only where the fund of funds is domiciled and regulated outside the Republic and where the fund of funds is not invested in another fund of funds or in a feeder fund;
- (b) Where a manager is unable to comply with the provisions of subparagraph 12(a) through no fault of its own, the manager concerned must, within 30 days of the date on which it becomes aware of the non-compliance, submit a detailed plan to the registrar for consideration for approval, setting out measures to rectify the position;
- (c) Where a manager of a feeder fund includes in the feeder fund participatory interests of a foreign registered fund (“underlying portfolio”), the underlying portfolio must-
 - (i) have been approved in terms of section 65 of the Act, and be subject to an annual review by the manager to ensure that it continues to comply with the requirements of section 65; or
 - (ii) where the underlying portfolio has not been approved in terms of

65 of the Act, the manager must conduct a due diligence investigation to the satisfaction of the trustee to ascertain if such portfolio would qualify for approval in terms of the conditions under section 65(1)(c) of the Act and that such portfolio is available for investment and is not otherwise prohibited in its domicile of registration;

- (d) When an underlying portfolio is managed, directly or by delegation, by the same manager as the manager of the portfolio investing in the underlying portfolio or by any other company with which the manager is linked by common management or control, or by a substantial direct or indirect holding, such manager or other company may not charge any form of manager's charge (including initial fees or redemption fees) on the underlying portfolio;
- (e) For the purposes of this Chapter, the value of a participatory interest held by one portfolio in another must be calculated by reference to the lower of the repurchase price or the net asset value of the relevant participatory interest, at the close of business on the day before the day a repurchase price was calculated;
- (f) To the extent that assets in a portfolio are exposed to exchange rate risk, a manager may enter into financial transactions for the exclusive purpose of hedging such exchange rate risk subject to the conditions and the limits stipulated in Chapter V, provided that a portfolio's investment policy provides for it to include financial instruments for the exclusive purpose of hedging exchange rate risks;
- (g) A feeder fund may not consist only of participatory interests in a money market portfolio.

CHAPTER V

INCLUSION OF FINANCIAL INSTRUMENTS IN A PORTFOLIO

13. Definitions

For the purposes of this Chapter-

“**call option**” means an option contract in terms of which the holder of the contract has the right, but not an obligation, to purchase the relevant underlying asset or to receive a cash settlement instead;

“**contract size**” or “**multiplier**”, in relation to a financial instrument, means the factor by which the price of an underlying asset is multiplied to arrive at the value of one contract as specified in either-

- (a) the rules of the relevant exchange on which the financial instrument is listed; or
- (b) the terms and conditions as defined in the offering document of the relevant financial instrument;

“**delta factor**”, in relation to a financial instrument, means the requirement for an exposure calculation for financial instruments as determined in accordance with-

- (a) a method prescribed by the relevant exchange for the specific financial instrument; or
- (b) the terms and conditions as defined in the offering document of the relevant financial instrument;

“**delta sign**”, in relation to a financial instrument, means the mathematical sign of the exposure of the financial instrument, determined by the sign of the delta factor, which can be either positive or negative, determined in accordance with-

- (a) the delta factor calculation prescribed by the relevant exchange for the specific financial instrument; or
- (b) the terms and conditions as defined in the offering document of the relevant financial instrument;

“effective exposure”, in relation to a listed financial instrument, means the exposure as calculated in paragraph 18 of this Notice;

“listed financial instrument” means an instrument as defined in paragraph 2(1)(b) of Chapter I of this Notice, which is listed and dealt on an exchange with full membership of the World Federation of Exchanges;

“put option” means an option contract in terms of which the holder of the contract has the right, but not an obligation, to sell the relevant underlying asset or to receive a cash settlement instead;

“transaction sign”, in relation to a financial instrument, means the transaction direction, whether buying or selling, of a financial transaction, as calculated in accordance with paragraph 18(4) of this Notice;

“underlying asset”, in relation to a listed or unlisted financial instrument, means-

- (a) any security;
- (b) an index as determined by an exchange;
- (c) a group of securities which are the subject matter of the financial instrument, whether such group of securities is represented by an index or not;
- (d) a currency rate; or
- (e) an interest rate;

“unlisted financial instrument” means an instrument as defined in paragraph 2(1)(c) of Chapter I of this Notice.

14. Inclusion of financial instruments in a portfolio

(1) A manager may include listed and unlisted financial instruments in a portfolio, subject to this Notice, the deed and supplemental deed.

(2) In the application of sub-paragraph 14(1) a manager may only write option contracts in compliance with the conditions set out in paragraph 16 of this Notice, or sell option contracts, which have previously been bought.

15. Exposure limits for listed financial instruments

(1) The sum of the effective exposures of listed financial instruments to be maintained in terms of this Chapter, together with the market value of all the physical underlying assets in the portfolio, may not exceed 100 percent of the market value of the portfolio.

(2) The effective exposure to listed financial instruments based on any specific underlying asset, which is not an index or basket of securities, together with the market value of any physical holding of that specific underlying asset, may not exceed the limitations laid down in paragraph 3(1) or Table 1, as applicable, of Chapter I of this Notice.

(3) For the purposes of this paragraph, the provisions of paragraph 3(1) (b) or Table 1, to the extent applicable, of Chapter I of this Notice in respect of breaches, which are due to appreciations or depreciations of the market value of the relevant securities, or an amalgamation, cession, transfer or take-over in terms of section 99 of the Act, apply *with* the necessary changes.

16. Maintaining of certain assets in a portfolio of listed financial instruments

(1) A manager which, in accordance with the provisions of this Notice, -

- (a) sells future contracts, call options or call warrants, or buys put options or put warrants, based on specific underlying assets which are not indices or a basket of securities, must maintain an exposure to the market value of such underlying assets which is at least equal to the effective exposures of the mentioned underlying assets;

- (b) sells futures contracts, call options or call warrants, or buys put options or put warrants, based on index futures or a basket of securities, must maintain an exposure to the same or similar underlying assets or other financial instruments with positive exposures to the same or similar underlying assets in the relevant portfolio, which is at least equal to the effective exposure of such listed financial instruments;
- (c) buys futures contracts, call options or call warrants, or sells put options or put warrants based on any underlying asset, must maintain an exposure to assets in liquid form, which is at least equal to the effective exposure of such listed financial instruments;
- (d) sells put options or put warrants, may maintain a bought put option or bought put warrant in place of assets in liquid form as required in sub-paragraph (c) only if the strike price of the bought put option or bought put warrant is not lower than the price of the sold put option or put warrant;
- (e) sells call options or call warrants, may maintain a bought call option or bought call warrant in place of underlying assets as required in sub-paragraph (a) or (b) only if the strike price of the bought call options or call warrants is lower than the price of the sold call option or call warrant;
- (f) sells or buys multiple options or multiple warrants or futures based on the same underlying assets which are not indices or a basket of securities with positive net effective exposure, must maintain assets in liquid form as prescribed in sub-paragraph (c);
- (g) sells or buys multiple options or multiple warrants or futures based on index futures or a basket of securities with positive net effective exposure, must maintain assets in liquid form as prescribed in sub-paragraph (c);
- (h) sells or buys multiple options or multiple warrants or futures or basket of securities based on the same or similar underlying asset with

negative net effective exposure, must maintain assets as prescribed in sub-paragraph (a) or (b) as applicable;

- (i) invests in currency futures, must maintain an exposure to assets in liquid form which is at least equal to the effective exposure of such currency futures.

(2) The duration exposure to non-equity securities may be hedged and netted with a financial instrument whose underlying asset is a government bond, a basket of government bonds or a government bond index, a corporate bond, a basket of corporate bonds or a corporate bond index, Johannesburg Interbank Agreed Rate (JIBAR) swap rate, inflation rate, the repurchase rate, or any other rate that is an index. However, any consequential or residual spread exposure as a result of the netting must be accounted for and disclosed.

17. Maintaining of certain assets in a portfolio for unlisted financial instruments

(1) A manager, which in accordance with the provisions of this Notice, includes in a portfolio an unlisted financial instrument, must ensure at all times that-

- (a) the net negative mark-to-market exposure of the unlisted financial instrument is at all times covered by assets in liquid form;
- (b) in the case of net positive mark-to-market exposure of the unlisted financial instruments, the exposure be aggregated to all existing physical underlying assets and effective exposures to the same issuer/guarantor and the aggregate must at all times remain within the limits as set out in Table 1 of Chapter I of this Notice.

(2) Netting is only permissible with respect to the same or similar unlisted financial instruments with the same issuer/guarantor, provided that the manager is able to legally enforce netting arrangements with that issuer/guarantor.

(3) The provisions of paragraph 16(2) will similarly apply with the necessary changes to unlisted financial instruments.

(4) The manager must ensure that unlisted financial instruments are not used to leverage or gear the portfolio and that the unlisted financial instruments are covered at all times.

18. Calculation of effective exposure for listed financial instruments

(1) The exposure of a futures contract or index tracking certificate of an underlying asset, group of underlying assets or an index must be calculated as the product of-

- (a) the number of contracts;
- (b) the relevant contract size; and
- (c) the current market value of the underlying asset, group of underlying assets or index.

(2) The exposure of an option contract or a warrant to an underlying asset, group of underlying assets, index or index future, must be calculated as the product of-

- (a) the number of option or warrant contracts;
- (b) the relevant contract size;
- (c) the current market value of one relevant underlying asset, one group of the underlying assets, an index or index future; and
- (d) the delta factor.

(3) The effective exposure to any listed financial instrument must be calculated as the product of-

- (a) the exposure, calculated in accordance with paragraph 18(1) or (2) of this Notice; and
- (b) the transaction sign.

(4) The transaction sign is positive for any listed financial instrument purchased and negative for any listed financial instrument sold.

(5) The net effective exposure to listed financial instruments on the same or similar underlying asset is the sum of the effective exposures of all the listed financial instruments to the same or similar underlying asset.

19. Assets in liquid form associated with listed and unlisted financial instruments to be maintained in terms of this Chapter

(1) A manager must at all times ensure that a portfolio has sufficient assets in liquid form in aggregate to comply with the requirements of paragraphs 16(c), 16(f), 16(g), 16(h), 16(i) and 17 of this Notice.

(2) The amount of assets in liquid form may be adjusted by any amount held in a margin account of an exchange as cover but may not include borrowed funds.

20. Report by the manager

After the inclusion of a financial instrument in a portfolio, and while a financial instrument remains included in a portfolio, a manager must furnish the registrar within 30 days after the last business day of each quarter with a report substantially conforming to Annexure A to this Notice.

CHAPTER VI

FOREIGN EQUITY AND FOREIGN NON-EQUITY SECURITIES

21. Guidelines for due diligence investigation

When considering inclusion of foreign equity or foreign non-equity securities in a portfolio in accordance with section 45 of the Act, a manager must conduct a due diligence investigation in accordance with the following guidelines-

(1) **In respect of an exchange on which foreign equity and foreign non-equity securities are listed and traded:**

(a) **Liquidity and repatriation of funds**

In considering a foreign exchange, the following must be taken into account:

- (i) the overall liquidity of the exchange;
- (ii) whether securities or derivatives can be bought and sold in a reasonable time, at best execution and in adequate amounts; and
- (iii) the procedures and restrictions, if any, on the repatriation of funds to the Republic.

(b) **Regulation**

(i) The exchange must be subject to supervision by an authority, which must be a statutory body, an agency of a national Government, state department of such Government or another body designated for that purpose by one of said authorities.

(ii) In addition, the following factors must be taken into account:

(aa) The degree to which members of the exchange are subject to formal supervision by the exchange or another body, and in particular whether compliance with capital adequacy requirements by members is supervised;

(bb) the involvement of a central securities depository and level of immobilisation or dematerialisation of scrip;

(cc) the existence of a form of contract guarantee, e.g. a buying-in obligation by the exchange to ensure that its members' transactions are settled;

(dd) the powers of the exchange or the supervising body to intervene in members' business in the event of misconduct and financial difficulties, including the power not to approve applications for membership, terminate membership and delist a security;

(ee) the initial listing standards and on-going supervision of securities traded on the exchange, including the publication of prospectuses and audited annual financial statements;

(ff) the everyday availability of current information about securities, derivatives, quotations, transactions, prices and spreads;

(gg) requirements for the issue of contract notes or their equivalents;

(hh) whether there is a requirement for trade reporting of the securities or derivatives or both to the exchange or other supervisory body;

(ii) whether the clearing and settlement arrangements normally used for transactions on the exchange are prompt and secure;

(jj) the risk of loss in the event of insolvency of a member of the exchange;

(kk) the manner in which the exchange investigates and deals with complaints;

(ll) whether any type of guarantee fund is maintained to protect investors in respect of liabilities arising prior to the default of a member or a fidelity insurance policy exists as a front-line protection for member firms particularly in so far as employee fidelity is concerned.

(c) **Regular operation**

(i) The exchange must have regular trading hours during which the listed foreign equity and non-equity securities may be traded.

(ii) The following additional considerations must be taken into account-

(aa) the availability and timing of price and volume information and the manner in which it is distributed;

(bb) in respect of listed foreign equity and non-equity securities the degree to which, and the speed at which, companies with listed foreign non-equity securities on the exchange must release price sensitive information, and the medium through which that information is distributed.

(d) **Recognised exchange**

The exchange must be recognised or registered as a market or exchange or self-regulatory organisation by an authority which must be a statutory body, an agency of a national government, a state department of such government or another body designated for that purpose by one of the said authorities.

(e) Open to the public

Investments listed or admitted to dealing on the exchange must be freely available for trading by the public directly, or through members of the exchange, during normal trading hours.

The extent to which overseas investors are permitted to hold securities listed and traded on the exchange must be taken into account.

(2) In respect of foreign non-equity securities which are not listed on an exchange:

(a) Liquidity and repatriation of funds

The following must be taken into account

- (i) overall liquidity in respect of unlisted foreign non-equity securities
- (ii) whether the unlisted foreign non-equity securities can be bought and sold in a reasonable time, at best execution and in adequate amounts;
- (iii) and the procedures and restrictions, if any, on the repatriation of funds to the Republic.

(b) Nature of the foreign non-equity securities

The manager must consider the relative and/or inherent risk levels of one security type compared to another and the appropriateness for its inclusion in a portfolio, for example secured debt measured against non-secured debt, or government guaranteed debt measured against debt not guaranteed by a government.

(c) Credit risk profile

The manager must consider the likelihood or risk of loss of principal amounts or loss of a financial reward, stemming from an issuer's failure to repay a loan or otherwise meet a contractual obligation and the appropriateness for inclusion in a portfolio, for example measuring risk against reward considerations, and the credit worthiness of an issuer.

(d) **Maturity profile**

The manager must consider the maturity profile of an issuer to assess the issuer's ability to borrow and its liquidity position. Consequently the manager must consider the appropriateness of the inclusion of the particular foreign non-equity security of the issuer in a portfolio.

(e) **Duration profile**

The manager must consider the sensitivity of the price (the value of principal amounts) of foreign non-equity securities to a change in interest rates. Consequently, the manager must determine the appropriateness of the inclusion of the particular foreign non-equity security in a portfolio.

(f) **Currency risk profile**

The manager must consider the risk that arises from the change in price of one foreign currency against the South African Rand and other major currencies. Consequently, the manager must determine the appropriateness of the inclusion of the particular foreign non-equity security denominated in a specific foreign currency in a portfolio.

(g) **Macro and micro economic factors**

(i) *Domestic political situation*

The manager must reasonably consider all factors that contribute to a stable political environment that would be conducive to a stable investment environment.

(ii) *Economic growth prospects*

The manager must consider the economic growth prospects of a foreign country in order to assess the merits and prospects of investing in foreign non-equity securities issued by entities in a particular foreign country.

(iii) *Monetary and fiscal policies*

The manager must consider the monetary and fiscal policies of a foreign country in order to assess whether it would be, and is likely to remain conducive to supporting a stable environment for investment.

(iv) Open to foreign investors

The extent to which foreign investors are permitted to hold foreign non-equity securities must be taken into account.

CHAPTER VII

GENERAL

22. Disclosure of fees

For the purposes of paragraphs 3(6), 10(c) and (d) and 12(a) of this Notice, when a portfolio invests in participatory interests of another portfolio, the manager must disclose to potential investors, on the application form, that the fee structure is higher as well as the anticipated aggregate of the fees levied by itself and by the other portfolio.

23. Consequences of repurchases

(1) Where non-compliance with a condition, limit or requirement set in this Notice occurs because the manager has met its obligation to satisfy offers to repurchase participatory interests, the manager:

- (a) where a limit determined in this Notice is exceeded, may not for as long as such breach continues, purchase any further securities or instruments issued by that entity; or
- (b) where certain assets are not maintained in a portfolio as required by paragraphs 16,17 and 19 of this Notice, must take immediate steps to rectify such breach.

(2) Where a breach as set out in paragraph 23(1) is not rectified within 30 days of the date on which it occurred, the manager must submit a detailed plan of rectification to the registrar.

24. Operational trust account

Any amount deposited, transferred or held in an account determined in section 105 of the Act, operated as an account for funds within a portfolio, must be applied to any limit prescribed in this Notice.

25. Transitional measures

If, after the date of this Notice coming into effect, any limits prescribed in paragraphs 3(9) and 6(1) are exceeded but the portfolio would have been in compliance with the limits prescribed in Board Notice 80 of 2012, the manager may hold the securities exceeding the limits prescribed in this Notice to maturity and must furnish the registrar with a report on a quarterly basis listing the securities so held and indicating the remaining term to maturity.

26. Repeal and commencement

(1) The following notices and provisions are repealed from the date this notice comes into effect:

- (a) Board Notice 80 of 2012, as published in *Government Gazette* No. 35321 of 10 May 2012;
- (b) Notice 57 of 2014, as published in *Government Gazette* No 37697 of 30 May 2014;
- (c) Paragraph 14 of General Notice 569 of 28 February 2003; and
- (d) Paragraph 1 of Notice 2073 of 1 August 2003.

(2) This Notice comes into effect on date of publication.

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ANNEXURE A

REPORT OF COMPLIANCE OFFICER OF MANAGER IN RESPECT OF SYSTEM OF INTERNAL CONTROL

We, (NAME), CHIEF EXECUTIVE OFFICER/MANAGING DIRECTOR, and
 (NAME), COMPLIANCE OFFICER, have examined the system of internal control regarding
 (NAME OF PORTFOLIO), designed to ensure compliance by (NAME OF
 MANAGER) with Chapter V of Notice ... of.

We hereby certify that –

- (a) the system of internal control over compliance with Chapter V is suitability designed to provide reasonable assurance that the controls have prevented or detected non-compliance with Chapter V;
- (b) the system of internal control designed to ensure compliance with Chapter V, operated as designed throughout the quarter ended

We draw attention to the following instances of non-compliance with Chapter V which were/were not subsequently corrected.

.....

(Signature)

(Signature)

Address

Date

BOARD NOTICE 91 OF 2014**FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****CAPITAL REQUIREMENTS WITH WHICH A MANAGER OF A COLLECTIVE INVESTMENT SCHEME IN SECURITIES MUST COMPLY**

I, Dube Phineas Tshidi, Registrar of Collective Investment Schemes, hereby determine, under section 88 (1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), the capital to be maintained by a manager of a collective investment scheme in securities for the matters and risks set out in the Schedule.



DP TSHIDI
REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

SCHEDULE**PREAMBLE**

The Registrar determines the capital to be employed and maintained by a manager of a collective investment scheme in securities to:

- (a) ensure that a manager has sufficient capital to enable the continued operation of 13 weeks (operational capital);
- (b) provide funds to cover the initial expenses in a portfolio (seed capital); and
- (c) ensure that there is sufficient capital when a manager buys participatory interests from and sells participatory interests to investors for the own account of the manager (position risk capital).

1. The capital to be maintained by a manager of a collective investment scheme in securities must be calculated in relation to the financial statements of a manager as prepared in terms of International Financial Reporting Standards (IFRS) in the manner set out in the Table below:

1.	Eligible capital consisting of the total of— <ul style="list-style-type: none"> (a) issued ordinary share capital; (b) issued preference share capital (if not redeemable within one year and not redeemable at the option of the holder);
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	<p>(c) share premium account;</p> <p>(d) non-distributable reserves;</p> <p>(e) retained income—</p> <p>(i) if audited, 100 per cent must be included; and</p> <p>(ii) 50 per cent of the positive unaudited retained income or 100 per cent of the negative unaudited retained income must be included;</p> <p>(f) loans (only if properly subordinated in favour of the manager);</p> <p>(g) guarantees (only from a third party and only if exercisable on demand by the manager).</p>
2.	<p>Less adjustment for—</p> <p>(a) intangible assets;</p> <p>(b) guarantees provided by the manager;</p> <p>(c) contingent liabilities;</p> <p>(d) net deferred tax assets;</p> <p>(e) any assets which are not convertible into cash within 14 business days including but not limited to –</p> <p>(i) fixed assets, net of related secured loans;</p> <p>(ii) investment in unlisted businesses.</p>
3.	Adjusted capital [paragraph 1 Table item 1 <i>minus</i> paragraph 1 Table item 2].
4.	<p>Less required capital to be maintained consisting of—</p> <p>(a) a basic capital which must be a sum equivalent to 13 weeks' annual fixed expenditure for the whole of the collective investment scheme business of a manager or such other amount as the registrar may determine in a particular case as provided for under 2 (4); <i>plus</i></p> <p>(b) seed capital of R1 million to be invested by the manager in each portfolio administered by the manager: Provided that—</p> <p>(i) the prescribed amount may be withdrawn once the portfolio reaches a size of R50 million net asset value under management; and</p> <p>(ii) the sum of R1 million is to be re-invested in the portfolio where the net asset value of the portfolio has been reduced to below R50 million for a continuous period of 6 months; <i>plus</i></p> <p>(c) where the manager buys from and sells to investors participatory interests of its scheme for its own account, position risk capital of a sum equivalent to a percentage of the amount paid for participatory interests in a portfolio determined as follows in respect of each type of portfolio:</p> <p>* Money market portfolio: 10 per cent;</p> <p>* Income portfolio: 15 per cent; and</p> <p>* All other portfolios: 25 per cent.</p>

5.	Liquid resources [paragraph 1 Table item 3 <i>minus</i> paragraph 1 Table item 4], which must be a positive amount.
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2. (1) For the purposes of paragraph 1 Table item 4 (a) fixed expense amounts must be determined as set out in the computation table and notes below:

COMPUTATION OF FIXED EXPENSE BASE REQUIREMENT			
Expense Category	Treat as Fixed Expense Amounts	Treat as Trading Expense and "non-cash" items	Expenses per Income Statement
Accounting and secretarial or other services, charges, etc.	X		
Auditors' remuneration	X		
Depreciation		X (Note (a))	
Insurance	X		
Interest paid other than to Directors			
Bank overdraft	X	X (Note (f))	
Other Finance	X	X (Note (f))	
Charges and fees	X	X (Note(b))	
Motor vehicle expenses	X		
Net loss on realisation of fixed assets		X (Note (a))	
Office rental	X		
Machine and other leasing charges/rentals	X		
Printing and Stationery	X		
Salaries and wages	X	X (Note(c))	
Telephone, telex and postages	X		
Other expenses	X	X (Notes(d)+(g))	
Directors' Salaries	X	X (Note (e))	
Directors' Fees	X	X (Note (e))	
Interest	X	X (Note (e))	
			TOTAL

Notes to the computation table: In determining fixed expense amounts, the following principles must be applied:


- (a) Depreciation and profits or losses on sales of fixed assets are non-cash items and must not be taken into account.
- (b) Charges relating to active trading must be excluded. Fixed charges must be included. Asset management fees that are calculated as a percentage of

assets under management may be excluded. Any fixed amount or any portion of asset management fees not calculated as a percentage of assets under management, contractually agreed to with the asset manager, must be included. Any other variable fee that is calculated as a percentage of assets under management may be excluded; provided that any fixed contracted portion thereof must be included and treated as fixed expenses. This includes, but is not limited to, the fixed portion payable to an intermediary or employed sales personnel before the percentage commission is applied, as well as any fixed amount in outsourcing costs for administration.

- (c) Non-contractual payments by way of profit share or performance related bonuses must be excluded.
 - (d) Exceptional or extraordinary items may be excluded.
 - (e) Payments to directors must only be included to the extent that they are made irrespective of profitability.
 - (f) Interest paid to counterparties which is trade related may be excluded.
 - (g) Loss arising from the conversion of foreign currency balances may be excluded.
- (2) The 13 weeks' annual fixed expenditure must be calculated as the previous financial year's expenses divided by four or if no financial year was completed, this amount must be budgeted for to the satisfaction of the registrar.
- (3) The 13 weeks' liquid capital may not be invested in any portfolios other than a money market portfolio.
- (4) The registrar may, where he has reason to believe that the size of the operations of a manager has been or is likely to be expanded during any financial period, require a manager to submit a budget based on the expanded operations. Where a manager has reason to believe that its operations in any financial period will decline from that of the previous year, it may submit a revised budget for approval by the registrar.
3. The calculation of the capital position by a manager must be submitted to the registrar as at the last business day of each calendar month, within 14 business days after the end of such calendar month, in the form determined by the registrar.
4. A manager must, at least once a year, evaluate its risk to professional liability and fidelity claims and must in accordance with the risk identified during risk evaluation maintain suitable professional indemnity or fidelity insurance cover of no less than R5 million.
5. (1) Notice 2072 of 2003, as published in *Government Gazette* No. 25283 of 1 August 2003, is hereby repealed.
- (2) This Notice comes into effect on date of publication.
- (3) Paragraph 1 Table item 4(b) must be complied with within 6 months from the date that this Notice comes into effect.

BOARD NOTICE 92 OF 2014**FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002****ADVERTISING, MARKETING AND INFORMATION DISCLOSURE
REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES**

I, Dube Phineas Tshidi, the Registrar of Collective Investment Schemes, hereby determine, under section 90(4) and section 114(4)(b) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), advertising, marketing and information disclosure requirements and the manner in which managers must lodge advertising and marketing material with the registrar, as set out in the Schedule.

**DP TSHIDI****REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

SCHEDULE**Arrangement of Requirements****Part I****DEFINITIONS, OBJECTIVES AND APPLICATION**

1. Definitions
2. Objectives
3. Application

Part II**GENERAL RULES FOR MARKETING AND ADVERTISING**

4. General standards for marketing and advertising a collective investment scheme
5. General advertising requirements

Part III**MANDATORY DISCLOSURES**

6. Mandatory disclosures

Part IV**PERFORMANCE DISCLOSURES**

7. General performance disclosure requirements
8. Past performance disclosure requirements
9. Publishing of performance
10. Ranking of portfolios
11. Illustrative reporting of investment performance
12. Publication of prices
13. Comparative advertising
14. Advertising of awards and credit ratings

Part V**INFORMATION DISCLOSURE**

15. General requirements for information disclosure
16. General requirements for the Minimum Disclosure Document

17. Minimum Disclosure Document format

18. Application forms and process

Part VI

GENERAL PROVISIONS

19. Lodging of material with the registrar

20. Commencement and transitional arrangements

21. Short title

PART I
DEFINITIONS, OBJECTIVES AND APPLICATION

1. Definitions

In this Schedule, “**the Act**” means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates—

“**advertisement**” means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by any means of which a person seeks to-

- (a) bring to the attention of all or part of the members of the public-
 - (i) the existence or identity of a manager; or
 - (ii) the existence, nature, availability, properties, advantages, particulars, prospectus or any other offer document of any collective investment scheme that is available for investment, or the conditions on, or prices at, which any collective investment scheme is available for investment; or
- (b) solicit investment in any collective investment scheme,

and the expression “**advertising**” has a corresponding meaning;

“**annualised returns**” is the weighted average compound growth rate over the performance period measured;

“**application form**” means the document that is completed by the investor applying for investment in a portfolio;

“**financial services provider**” means an authorised financial services provider as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

“**JSE Equities Rules**” means the JSE Equities Rules made by the JSE Limited, a licensed exchange under the Financial Markets Act, 2012 (Act No. 19 of 2012);

“**manager**” includes an operator of a foreign collective investment scheme approved under section 65 of the Act;

“**marketing material**” includes, brochures, prospectuses and websites;

“**MDD**” means a minimum disclosure document, which is a short document containing key information pertaining to a portfolio or scheme that a manager

provides to an investor to assist the investor in understanding the collective investment scheme product;

“**NAV**” means net asset value, which is the total market value of all assets in a portfolio including any income accruals and less any deductible expenses such as audit fees, brokerage and service fees;

“**portfolio**” includes a foreign collective investment scheme or a sub-fund of a foreign collective investment scheme;

“**price**” means the price of a participatory interest being the NAV divided by the number of participatory interests in issue for that portfolio, as determined in the deed and related supplemental deed;

“**total expense ratio**” means a measure of a portfolio’s assets that have been expended as payment for services rendered in the management of the portfolio or collective investment scheme, expressed as a percentage of the average daily value of the portfolio or collective investment scheme calculated over a period of a financial year by the manager of the portfolio or collective investment scheme; and

“**website**” has the meaning ascribed to it in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

2. Objectives

This Notice aims to-

- (a) provide a legal framework within which managers of collective investment schemes may advertise and market their products in a manner which ensures that investors base their investment decisions on full, accurate and comprehensive information;
- (b) protect investors from deceptive, misleading, unfair or fraudulent conduct by managers through advertising and marketing material;
- (c) promote the fair treatment of investors;
- (d) encourage fair competition amongst managers;
- (e) promote the use of plain and understandable language by managers in respect of any information provided or displayed to investors;
- (f) ensure alignment with relevant international information disclosure standards and practices;

- (g) encourage investor understanding of the key features of a collective investment scheme through the manager's use of suitable disclosures for the intended target market; and
- (h) determine the manner in which managers must lodge advertising and marketing material.

3. Application

- (1) This Notice applies to the marketing, advertising and information disclosure by managers of all collective investment schemes registered or approved under the Act, including foreign collective investment schemes, and where the collective investment schemes are listed, the JSE Equity Rules also apply.
- (2) A manager must take reasonable steps to satisfy itself that any product supplier or financial services provider that markets or distributes its CIS portfolios, has processes in place to comply with this Notice to the extent applicable, and in particular to ensure investors are provided with MDD's.

PART II

GENERAL RULES FOR MARKETING AND ADVERTISING

4. General standards for marketing and advertising a collective investment scheme

- (1) A manager may not advertise or market any collective investment scheme or portfolio-
 - (a) in a manner that is likely to create a misleading or false statement, promise or forecast regarding the collective investment scheme, a portfolio or a participatory interest;
 - (b) if such a scheme or portfolio is not registered or approved in accordance with the Act;
 - (c) in a manner that is fraudulent, misleading or deceptive in respect of-
 - (i) the nature of the collective investment scheme or portfolio;
 - (ii) the conditions on which a participatory interest of a collective investment scheme or portfolio may be purchased and sold;

- (iii) the price at which a participatory interest may be purchased and sold;
- (iv) the risks associated with the collective investment scheme or portfolio;
- (v) the nature or scale of the activities of the manager;
- (vi) the resources that are available to the manager; and
- (vii) any other material aspects of a participatory interest, a portfolio or a collective investment scheme.

(2) Prior to registration and approval by the registrar of a collective investment scheme or a portfolio, a manager may not-

- (a) distribute any advertising or marketing material relating to that collective investment scheme or portfolio;
- (b) make any reference to that collective investment scheme or portfolio at product launches.

5. General advertising requirements

(1) A manager must ensure that an advertisement for a collective investment scheme or portfolio clearly explains the nature of the collective investment scheme or portfolio being advertised.

(2) When a manager publishes an advertisement which contains a statement of fact, the manager must, at the time the advertisement is published, have reasonable grounds to believe that fact to be true and that it will remain true for the period of time that the advertisement continues.

(3) A manager must ensure that an advertisement-

- (a) reflects the charges of the most expensive class, offered by the manager in a portfolio and available for direct investment by members of the public, other than financial institutions;
- (b) specifies where a schedule of fees can be obtained if it is not included in the advertisement;
- (c) identifies the manager who published or caused the advertisement to be published;
- (d) discloses the fact that the manager is registered or approved under the Act;

- (e) only specifies the terms and conditions applicable to an investment if those terms and conditions give a fair indication of the nature and risks of the investment;
 - (f) is capable of being understood by any investor or potential investor that might reasonably be expected to see the advertisements;
 - (g) does not state or imply that the collective investment scheme or portfolio is suitable for a particular type of investor unless the manager has assessed that that collective investment scheme or portfolio is suitable for that specific type of investor;
 - (h) discloses any special areas of risk relating to the investment;
 - (i) does not specify a rate of return without specifying how the rate is calculated, and any element which may involve a reduction of the investor's capital must be specified;
 - (j) is not designed in a manner which is likely to give rise to misunderstandings;
 - (k) is not designed in a manner which is likely to disguise the significance of any warning statement or information which is required to be included in accordance with this notice;
 - (l) is not presented in a manner that prevents the advertisement from being clearly identifiable as an advertisement; and
 - (m) does not signify, in any way, that the advertisement has been approved by the registrar.
- (4) A manager must consider the appropriateness of a specific medium for advertising if content limitation may result in there being insufficient space or time to provide balanced information on the investment.
- (5) A manager must ensure that an internet advertisement is such that investors are able to reproduce a copy of the advertisement, including any disclaimers or warnings.
- (6) A manager may not publish an advertisement which contains a statement relating to taxation benefits unless the statement contains appropriate qualifications to show what the benefits mean in practice and to whom they apply.
- (7) A manager must keep a record, whether electronically or otherwise, of all advertisements that the manager has published, including, the date of

publication, the publications in which the advertisements have been included, and evidence to support any statement made in an advertisement which purports to be a statement of fact or opinion, or details of how to access the evidence supporting a statement made in an advertisement.

(8) A manager must keep all material referred to in sub-paragraph (7) for a period of at least five years.

PART III

MANDATORY DISCLOSURES

6. Mandatory disclosures

(1) A manager must include the following disclosures in all marketing material:-

- (a) collective investment schemes are generally medium to long-term investments;
- (b) the value of participatory interests or the investment may go down as well as up;
- (c) past performance is not necessarily a guide to future performance;
- (d) collective investment schemes are traded at ruling prices and can engage in borrowing and scrip lending;
- (e) a schedule of fees and charges and maximum commissions is available on request from the manager;
- (f) a detailed description of how performance fees are calculated and applied;
- (g) a statement that the manager does not provide any guarantee either with respect to the capital or the return of a portfolio.

(2) In addition to the general disclosures in sub-paragraph (1), a manager must disclose, in respect of-

- (a) an exchange traded fund registered as a collective investment scheme,
 - (i) that the exchange traded fund is listed on an exchange and may therefor incur additional costs;
 - (ii) the difference between an exchange traded fund and other collective investment scheme portfolios;
 - (iii) the index that the exchange traded fund tracks and how it will track the index;

- (iv) where an investor can view the index and its performance as tracked by the exchange traded fund;
 - (v) the tracking error of the exchange traded fund;
 - (vi) where the index tracking portfolio engages in securities lending activities, information on such securities lending activities, the percentage of securities lent out, the names of all the counterparties related to these activities as well as the risks associated with counterparty exposure;
- (b) a money market portfolio-
- (i) that a money market portfolio is not a bank deposit account;
 - (ii) whether the price of a participatory interest is a marked-to-market value or targeted at a constant value;
 - (iii) that the total return to the investor is made up of interest received and any gain or loss made on any particular instrument; and that in most cases the return will merely have the effect of increasing or decreasing the daily yield, but that in the case of abnormal losses it can have the effect of reducing the capital value of the portfolio;
 - (iv) how the yield is calculated;
 - (v) that excessive withdrawals from the portfolio may place the portfolio under liquidity pressures; and that in such circumstances a process of ring-fencing of withdrawal instructions and managed pay-outs over time may be followed;
- (c) a portfolio that derives its income primarily from interest-bearing instruments in accordance with section 100(2) of the Act, whether the yield is historic or current as well as the date of calculation of the yield;
- (d) a fund of funds portfolio, that a fund of funds is a portfolio that invests in portfolios of collective investment schemes that levy their own charges, which could result in a higher fee structure for the fund of funds;
- (e) a feeder fund, that a feeder fund is a portfolio that invests in a single portfolio of a collective investment scheme, which levies its own charges and which could result in a higher fee structure for the feeder fund; and
- (f) a third-party-named portfolio, that the manager retains full legal responsibility for the third-party-named portfolio.

(3) Where foreign securities are included in a portfolio, the manager must, before entering into a transaction to purchase foreign securities, disclose to potential investors any material risk, such as-

- (a) potential constraints on liquidity and the repatriation of funds;
- (b) macroeconomic risks;
- (c) political risks;
- (d) foreign exchange risks;
- (e) tax risks;
- (f) settlement risks; and
- (g) potential limitations on the availability of market information .

PART IV PERFORMANCE DISCLOSURES

7. General performance disclosure requirements

(1) A manager must ensure that an advertisement relating to the performance of a portfolio, manager or collective investment scheme-

- (a) is objective and reasonable;
- (b) is truthful;
- (c) is representative of the portfolio history;
- (d) is not taken out of context;
- (e) conforms with accepted mathematical procedures; and
- (f) does not create unreasonable expectations of future performance.

(2) A manager may only publish forecasts or commentary about the expected future performance of asset classes or the market in general if the forecasts are based on disclosed reasonable assumptions and the manager indicates that the forecasts or commentary are not guaranteed to occur.

(3) A manager must ensure that an advertisement which contains performance information, including awards and rankings, also includes references to their sources and date.

(4) A manager may not publish an advertisement which-

- (a) implies that portfolio performance achieved in the past will be repeated;

- (b) includes returns over terms shorter than three years, other than in the case of money market portfolios; or
- (c) includes any future returns based on historic data.

8. Past performance disclosure requirements

- (1) A manager may only publish an advertisement which includes a statement relating to past performance if-
 - (a) the basis on which the performance is measured is clearly stated and the presentation of the performance is fair and reasonable;
 - (b) the statement is accompanied by a warning that past performance is not indicative of future performance; and
 - (c) the past performance is relevant to the investment or the service offered by the manager.
- (2) When a manager includes past performance in an advertisement or marketing material, the manager must ensure that-
 - (a) annualised or cumulative figures are used and are the figures as at month-end quoted against relevant indices or benchmarks for periods of a minimum of one rolling year and in multiples of full years for periods longer than one year;
 - (b) cumulative performance figures include the relevant annualised figures for the same period and are reflected with equal prominence as the cumulative figures;
 - (c) returns for any periods may not be extrapolated to longer periods except in the case of a money market portfolio where annualised current yields are used;
 - (d) a history of at least the most recent rolling ten years is shown, or where the portfolio has been in existence for less than ten years, the history since inception or change of classification of that portfolio;
 - (e) an explanation of annualised figures is added;
 - (f) the lowest and highest actual annual figure for the period to show variability is added; and
 - (g) actual annual figures are available to the investor on request.

- (3) A manager may, provided the selected performance publication option is applied on a consistent basis, publish its portfolio returns on one or more of the following bases-
- (a) rolling monthly;
 - (b) rolling quarterly;
 - (c) rolling annual; or
 - (d) year-to-date.
- (4) When a manager includes since-inception-performance in an advertisement or marketing material, the manager must ensure that-
- (a) the launch date is clearly stated ;
 - (b) if since-inception cumulative performance figures are in full years, (for example five years or ten years), these figures must include the relevant annualised figures for the same period reflected with equal prominence as the cumulative figures;
 - (c) performance figures of less than six months' duration are not shown in the advertisement.
- (5) A manager must ensure that performance information that is advertised is not older than three months at the time of publication.
- (6) Where a manager quotes actual case histories in an advertisement relating to the past performance of a portfolio, these must start with the inception of the quoted investor's account and all relevant data must be made available for audit on request.
- (7) A manager must ensure that performance statistics in an advertisement clearly reflect-
- (a) whether recurring investment or lump sum investment performances are being quoted;
 - (b) whether or not income distributions, prior to deduction of applicable taxes, are included in the calculations; and
 - (c) that NAV to NAV figures have been used.
- (8) Where a manager advertises a collective investment scheme in securities listed on an exchange, performance calculations must be based on the NAV calculated by the manager at the valuation point defined in the deed.
- (9) A manager must make investment performance calculations available for verification upon request by any person.

9. Publishing of performance

- (1) A manager must ensure that-
 - (a) publishing of performance of a portfolio is based on performance calculations which are done on a NAV to NAV basis over all reporting periods; provided that where a NAV is not available, the value used to calculate the performance and which was agreed with the trustee must be clearly stated and a description of how the figures were calculated must be provided;
 - (b) reinvestment of income is calculated on the actual amount distributed per participatory interest, using the ex-dividend date NAV price of the applicable class of the portfolio, irrespective of the actual reinvestment date;
 - (c) all publication of performance is accompanied by a disclosure indicating that the performance is calculated for the portfolio, as well as that the individual investor performance may differ as a result of initial fees, the actual investment date, the date of reinvestment and dividend withholding tax.
- (2) Where a manager has changed the manner and method of publishing performance, the manager must include notification to that effect in the three subsequent MDD documents.

10. Ranking of portfolios

- (1) The general principle applicable to the ranking of portfolios with multiple classes of participatory interests is that only the most expensive class in each portfolio offered by the manager, and available for direct investment by members of the public, other than financial institutions, at the beginning of the reporting period, can be ranked.
- (2) A manager may only advertise that a portfolio is highest in performance, if it is factually ranked the highest in performance of all portfolios in its relevant peer group.
- (3) A manager may advertise ranking of a portfolio within a relevant peer group provided that-
 - (a) there are at least five portfolios in the relevant peer group, and

- (b) the other portfolios may not be specifically named.

11. Illustrative reporting of investment performance

- (1) A manager may-
 - (a) use illustrative investment performance together with portfolio performance tables to show the effect of costs and other factors that impact investment performance;
 - (b) not use illustrative investment performance for showing portfolio performance.
- (2) A manager must, in all illustrative investment performance reporting, disclose that-
 - (a) the investment performance is for illustrative purposes only;
 - (b) the investment performance is calculated by taking the actual initial fees and all ongoing fees into account for the amount shown; and
 - (c) income is reinvested on the reinvestment date.

12. Publication of prices

- (1) A manager must, in respect of each of its portfolios, including third-party-named portfolios, publish daily prices of the most expensive class offered by the manager for investment by members of the public, other than financial institutions, and the latest total expense ratio applicable to that portfolio on its website, if any, and in at least one national newspaper.
- (2) A manager may only publish prices in respect of portfolios or classes of participatory interests that are offered for investment by the manager to members of the public, other than financial institutions.

13. Comparative advertising

- (1) A manager may only make a comparison between-
 - (a) its collective investment scheme or portfolio and another collective investment scheme or portfolio if the collective investment schemes or portfolios have sufficiently similar features;
 - (b) the returns of its collective investment scheme or portfolio and those of another collective investment scheme or portfolio if the information used is current, complete and accurate.

- (2) Where a manager advertises comparisons of returns, the manager must use statistics published at quarter-end or month-end against relevant benchmarks for periods of a minimum of one year and in multiples of full years for longer periods.
- (3) A manager may not, in comparative advertising,-
 - (a) use comparisons of returns data older than three months after the end of any calendar quarter;
 - (b) mention specific competitive portfolios, managers or collective investment schemes;
 - (c) make comparisons between portfolios that are grouped in a sector in which there is no commonality of investment objectives, nor may any ranking be advertised.
- (4) A manager may only compare portfolios within a peer group where the basis of inclusion or exclusion is disclosed and where the selection criteria are consistently applied.

14. Advertising of awards and credit ratings

- (1) A manager who wishes to advertise its current awards-
 - (a) may only advertise an award once it has been formally awarded;
 - (b) must state –
 - (i) the name of the award and/or its logo;
 - (ii) the date of the award; and
 - (iii) that the full details and basis of the award are available from the manager.
- (2) A manager may advertise its historical awards older than 12 months provided that-
 - (a) the award is not the sole focus of the advertisement;
 - (b) the name of the award and/or its logo is given;
 - (c) the date of the award is disclosed; and
 - (d) the advertisement discloses that the full details and basis of the award are available from the manager.
- (3) A manager may only advertise a credit rating assigned to a portfolio by a credit rating agency registered under the Credit Rating Services Act, 2012 (Act No. 24 of 2012), and provided that-

- (a) the credit rating was issued at the request of the manager;
- (b) the credit rating agency had unrestricted access to all confidential and other sensitive information, including management interaction; and
- (c) the name of the credit rating agency is provided and a description and methodology of the rating is publicly available.

PART V

INFORMATION DISCLOSURE

15. General requirements for information disclosure

- (1) A manager must ensure that disclosure of any information in respect of a collective investment scheme is fair, consistent, transparent and accurate.
- (2) In order to achieve the objective of fair treatment of investors, a manager must ensure that disclosure of any information is provided in plain language which is concise, clear and not misleading.
- (3) Subject to the requirement being provided for in the supplemental deed of a respective portfolio, a manager must disclose in all marketing material that the manager has a right to close the portfolio to new investors in order to manage it more efficiently in accordance with its mandate.
- (4) A manager must disclose quarterly to an investor by way of an investor statement, the following minimum information—
 - (a) the series or class of assets invested in;
 - (b) the net asset value and participatory interest price multiplied by the number of notional participatory interests held in the portfolio;
 - (c) equalisation credit (where applicable);
 - (d) return for the quarter;
 - (e) transactions processed;
 - (f) subscriptions (new investments) and number of participatory interests;
 - (g) management fees; and
 - (h) performance fee / incentive fee.
- (5) A manager must publish on its website quarterly, a general investor report, which must also be available to investors on request, that details-
 - (a) the number of participatory interests;

- (b) net asset value per participatory interest;
- (c) an analysis of the portfolio with reference to the extent to which it has or has not adhered to its policy objective;
- (d) total expense ratio applicable to the portfolio;
- (e) a statement of changes in the composition of the portfolio during the reporting period; and
- (f) any additional information relevant for the portfolio, taking account of the requirements for the MDD.

16. General requirements for the Minimum Disclosure Document

- (1) A manager must produce a MDD for each portfolio administered under its collective investment scheme, including third-party-named portfolios.
- (2) A manager must use a MDD for purposes of disclosing information to an investor prior to entering into a transaction with the investor, and for purposes of providing a general investor report to its investors as contemplated in paragraph 15.
- (3) A manager must ensure that each MDD-
 - (a) sets out the essential characteristics of a portfolio or portfolio class which will enable an investor to understand the nature and the risks of the portfolio and to make informed investment decisions;
 - (b) is updated every quarter following the launch date of a portfolio and discloses the date of issue;
 - (c) is in the format prescribed in paragraph 17;
 - (d) contains a statement that it is the MDD;
 - (e) discloses at least the following information-
 - (i) the registered portfolio name and, where applicable, the registered number;
 - (ii) the investment objective and a summary of the investment policy of the portfolio as provided for in terms of the supplemental deed and any other mandate that may be narrower than the investment policy;
 - (iii) the risk reward profile of the investment, including appropriate guidance on and warnings of the risks associated with investment in the relevant portfolio;

- (iv) the portfolio benchmark, where applicable;
- (v) fees and charges associated with the most expensive class available directly from the manager for investment by members of the public, other than financial institutions; (total expense ratio, management fees, initial fees, performance fees, advisory fees and any other applicable fees);
- (vi) the portfolio launch or inception date;
- (vii) the portfolio category or classification;
- (viii) the portfolio size;
- (ix) distribution dates and the value distributed per participatory interest over the past 12 months;
- (x) performance of the portfolio;
- (xi) the name of the manager, trustee and/or custodian and their relevant contact details;
- (xii) portfolio valuation and transaction cut-off time;
- (xiii) asset allocation;
- (xiv) mandatory disclosures set out in paragraph 6;
- (xv) the frequency of publication of prices and where or how prices are published or made available; and
- (xvi) where and how to obtain, free of charge, additional information on the proposed investment including, but not limited to, brochures, application forms and the annual report and any half-yearly report.

(4) A manager must make available on request, to existing and prospective investors, details of the investments of a portfolio as at the most recent calendar quarter-end in order to enable the investors to make informed investment decisions.

(5) Where a manager delegates or outsources the management of the investments in a portfolio to a financial services provider, the full details of that financial services provider must be disclosed to the investor, including whether the financial services provider is authorised under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) to act in such capacity.

17. Minimum Disclosure Document format

- (1) A manager must ensure that the MDD-
 - (a) does not contain unnecessary technical jargon;
 - (b) is no longer than two double-sided or four one-sided pages of A4-sized paper;
 - (c) is set in readable characters or font, spacing and format.
- (2) A manager may provide the MDD to an investor in a durable medium other than paper or through a website where the investor specifically selects that other medium or consents in writing to the provision of information on a website.

18. Application form and process

- (1) A manager must obtain from an investor a signed application form or contract, which constitutes the agreement with the investor and records the arrangements between the parties, and complies with the requirements in this paragraph.
- (2) A manager must ensure that it discloses all conflicts or possible conflicts that may exist between the interests of the manager and the interests of an investor and the manner in which the conflict is being managed.
- (3) A manager must require the investor to provide, as a minimum, the following information on the application form-
 - (a) investor details;
 - (b) investor's communication choice;
 - (c) the investor's source of funds;
 - (d) the investor's investment plan or portfolio selection;
 - (e) the investor's instruction on income distribution;
 - (f) bank details of the investor for purposes of collection of investment contributions as well as payment of redemptions and distributions;
 - (g) chosen method of payment;
 - (h) debit order authorisation and annual increases, if any;
 - (i) investor's instructions regarding withdrawals or redemption;
 - (j) the investor's declarations including that of having noted and understood all of the information provided; and
 - (k) date and signature.

- (4) A manager must ensure that the following minimum information is disclosed to a potential investor during the application process-
- (a) all fees and charges relating to a particular investment, including management fees, initial fees, performance fees including the method of calculation, advisory fees and any other applicable fees and charges;
 - (b) the details, fees payable to and signature of the financial services provider;
 - (c) complaints process;
 - (d) terms and conditions of investment;
 - (e) the manner in which participatory interests may be bought or sold;
 - (f) how the NAV and price are calculated
 - (g) mandatory disclosures set out in paragraph 6; and
 - (h) a summary overview of the portfolio and information regarding the participatory interests, similar to the content of the MDD.
- (5) A manager of a collective investment scheme in participation bonds must ensure that an application form for that scheme is in writing and provides (in addition to the information contemplated in section 3 of the Act) that-
- (a) money invested in the scheme must remain invested in the scheme for a period of not less than five years;
 - (b) the participant's investment is secured by all the participation bonds included in the scheme and that the debt owing under the bonds is, to the extent of the participatory interest granted to such participant, a debt owing to such participant and not to the manager or the nominee company;
 - (c) neither the manager nor the nominee company guarantees the repayment of the debt;
 - (d) upon the expiry of the five year period referred to in section 58 of the Act, the participant may withdraw his or her investment, subject to the Rules for the administration of collective investment schemes in participation bonds and subject to the participant having given the manager no more than three months' written notice;
 - (e) the participant may, within the five year period referred to in section 58 of the Act, transfer, cede or encumber his participatory interest, subject to

- the rules for the administration of collective investment schemes in participation bonds;
- (f) the interest payable by the mortgagors under participation bonds may fluctuate during the terms of the bonds and that interest payable to the participant may fluctuate;
 - (g) the interest paid by mortgagors to the manager in terms of participation bonds, less the manager's administration fees, which must be determined by the manager from time to time, must be paid by the manager to the participants at intervals determined by the manager; and
 - (h) the manager must furnish each participant, with each payment of interest, in writing or by electronic means, at intervals of not more than three months, with a statement of account disclosing the amount of capital owing to the participant and indicating how the net amount of interest paid has been calculated.

PART VI GENERAL PROVISIONS

19. Lodging of material with the registrar

- (1) A manager must lodge with the registrar, against the prescribed fee, copies of all advertisements and marketing material, MDDs and application forms ("material") to be published by the manager or any of its authorised representatives prior to publication or use of the material.
- (2) Subject to the provisions of sub-paragraph 19(1) a manager must lodge application form templates at least once annually, within 30 days of the commencement of the manager's new financial year.
- (3) Where the registrar objects to any material lodged with him or her, on any grounds contemplated in section 17 of the Act, within 30 days of lodgement, the manager may not use the material further until the objection has been addressed to the registrar's satisfaction and the registrar has confirmed in writing that the objection has been addressed.
- (4) If at any time it appears that any material is not appropriate on the grounds contemplated by section 17 of the Act, notwithstanding the fact that the

registrar may not have raised any objections regarding the material at the time it was originally lodged with him or her, the registrar may express his or her concerns and require the manager to address the concerns raised within a stipulated time frame.

(5) If the manager is unable to address the registrar's concerns to the satisfaction of the registrar, the registrar may require that the manager desist from any further use of the material until the material has been modified to the registrar's satisfaction.

(6) In assessing whether any material complies with this Notice, the registrar may take into account matters of fact or opinion or forecasts which have been omitted (or might properly have been included) in the material as well as the content and form of the material itself, the context in which it is published, the general impression that it creates, and the likelihood of any person being misled by it.

20. Commencement and transitional arrangements

(1) The following provisions are repealed from the date of coming into operation of this Notice-

- (a) Notice 571 of 2003;
- (b) sub-clause 1(e) of Notice 576 of 2003; and
- (c) paragraph 5 of Notice 569 of 2003,

as published in *Government Gazette* 24984 of 28 February 2003.

(2) This Notice comes into effect on 1 March 2015.

21. Short Title

This Notice is called the Advertising, Marketing and Information Disclosure Requirements for Collective Investment Schemes.

NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- Advertising : 012 748 6205/6206/6207/6208/6209/6210/6211/6212
- Publications Enquiries : 012 748 6052/6053/6058 GeneralEnquiries@gpw.gov.za
- Maps : 012 748 6061/6065 BookShop@gpw.gov.za
- Debtors : 012 748 6060/6056/6064 PublicationsDebtors@gpw.gov.za
- Subscription : 012 748 6054/6055/6057 Subscriptions@gpw.gov.za
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at www.gpwonline.co.za for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 748 6052, 748 6053, 748 6058

Advertisements: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211

Subscriptions: Tel: (012) 748 6054, 748 6055, 748 6057

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 748 6052, 748 6053, 748 6058

Advertensies: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211

Subskripsies: Tel: (012) 748 6054, 748 6055, 748 6057