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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GENERAL NOTICES

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### NOTICE 569 OF 2003

### FINANCIAL SERVICES BOARD

### COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

Under sections 25, 42, 45, 77, 90 and 114(3) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine the matters contained in the Schedule.



**J VAN ROOYEN**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

### SCHEDULE

#### Definitions

1. In this Schedule "the Act" means the Collective Investments 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.

#### Statements and information

2. A manager must in its financial statements to be lodged in terms of section 90(1) of the Act, reflect the following information:
  - (a) The amount of the dividends and interest and any other income for distribution which accrued to the assets comprised in every portfolio, indicating the classes of income and the amount derived from each class, and how the income has been or is intended to be allocated.
  - (b) In respect of each portfolio, the amount of the proceeds of capital gains,

- rights and bonus issues and any other accruals and receipts of a capital nature which have been or are to be invested in the scheme for the benefit of investors indicating the classes thereof and the amount derived from each class.
- (c) The total rand value and number of participatory interests in respect of each portfolio –
    - (i) at the beginning of the year;
    - (ii) sold during the year;
    - (iii) repurchased during the year; and
    - (iv) at the end of the year.
  - (d) The manager's income derived from all sources in the operation of the collective investment scheme, indicating the sources and the amount derived from each source, and the net profit or loss derived from such operation: Provided that a distinction must be made between the gross profit derived from an appreciation in value of participatory interests disposed of by the manager and the gross profit derived from the buying and selling of participatory interests for the manager's own account.
  - (e) In respect of securities that have been lent, a list thereof, the value thereof and the composition and nature of the collateral security held in respect of such loan.

### **List of assets**

- 3. (1) A manager of a collective investment scheme in securities must at the end of each calendar quarter, within 30 days after the end of such quarter, furnish to the registrar, electronically or otherwise, a full list of all underlying assets included in any portfolio administered by it, reflecting in respect of every portfolio, the market value of each asset included in that portfolio, and the value of each of those assets expressed -
  - (a) as a percentage of the total value of assets in the portfolio concerned; and
  - (b) as a percentage of the total amount of assets of that class issued

- by the concern in which the investment is held,  
and indicating which of such assets are exchange securities and which are not and if so, on which exchange such assets are listed.
- (2) If any asset is not listed on an exchange, the manager must indicate the mechanism used in the pricing of such asset.

### **Reporting to investors**

4. In terms of section 90(2) of the Act, a manager must transmit, electronically or otherwise, to every investor, in respect of each financial year, within three months after the end of such year, at least the following information:
- (a) A report by the chairman or managing director in which must be disclosed every material fact or circumstance that occurred during the year and which had an effect on the financial affairs of the portfolio and its manager and, in particular, details of any deviation from the investment policy and objective as contained in the deed.
  - (b) An abridged income statement and balance sheet of the portfolio.
  - (c) Details of any qualification made by the auditor in his report on the financial statements of the manager and the portfolio.
  - (d) The amount of each distribution by the portfolio and the date thereof.
  - (e) Performance figures of the portfolio for the current and previous years, based on repurchase price to repurchase price, compared, where relevant, to a market index.
  - (f) Details of all charges levied by the manager, any charge levied on the repurchase of participatory interests and any change in such charges or in the method of calculation thereof.
  - (g) The composition of the assets of the portfolio classified by appropriate category or industry sector.
  - (h) A statement that copies of the audited annual financial statements of the manager and of the scheme managed by it, are available, free of charge, on request by an investor.

**Lodging of copies of certain documents with registrar**

5. (1) Subject to any exemption granted in terms of section 90(4)(a) of the Act, a manager must not less than 14 days before the intended date of publication of any advertisement, brochure or pamphlet referred to in that section, lodge two copies thereof with the registrar.
- (2) The copies referred to in subparagraph (1) must bear or be accompanied by a covering certificate, signed by the directors of the manager, or by a director or responsible officer of the manager properly authorised thereto, on behalf of the directors.
- (3) No manager may publish any advertisement, brochure or pamphlet referred to in subparagraph (1), before the manager has been informed by the registrar that he has no objection to the terms thereof or before a direction by the registrar contemplated in section 17 of the Act has been complied with.
- (4) One copy of every return or notice referred to in section 90(4)(b) of the Act, must be lodged by the manager concerned with the registrar within 14 days after the furnishing thereof to the Registrar of Companies.

**Fees and penalties**

6. The following fees and penalties, which include VAT, are payable from the date of publication of this Notice at the times and by the persons indicated hereunder in respect of the following matters:
- (a) For a copy of the registrar's report to be prepared in terms of section 23 of the Act, payable by the applicant concerned, a fee of R100-00.
- (b) On lodging of an application under section 25 of the Act for the issue of a licence to an association, payable by the applicant concerned, a fee of R75 000.
- (c) On lodging of an application under section 22 of the Act for exemption from the provisions of the Act, payable by the applicant concerned, a fee

- of R15 000.
- (d) On lodging of an application under section 26 of the Act for the renewal of a licence to an association, payable by the association concerned, a fee of R10 000.
  - (e) On lodging of an application under section 42 of the Act for registration as a manager of a collective investment scheme in securities, including one portfolio, payable by the applicant concerned, a fee of R25 800.
  - (f) On lodging of an application by a manager of a collective investment scheme in securities for approval of a supplemental deed constituting an additional portfolio, payable by the applicant concerned, a fee of R8 350.
  - (g) On lodging of an application, in terms of section 43 of the Act –
    - (i) for approval of a change in the minority shareholding or directors or the use of another name or an abbreviation or derivative of its registered name, payable by the manager concerned, a fee of R500; and
    - (ii) for approval of a change in the controlling shareholding, payable by the manager concerned, a fee of R5 000.
  - (h) On lodging of an application under section 48 of the Act, read with section 42, for registration as a manager of a collective investment scheme in property, including one portfolio, payable by the manager concerned, a fee of R25 800.
  - (i) On lodging of an application by a registered manager of a collective investment scheme in property for approval of a supplemental deed constituting an additional portfolio, payable by the manager concerned, a fee of R8 350.
  - (j) On lodging of an application under section 53 of the Act for the registration as a manager of a collective investment scheme in participation bonds, payable by the applicant concerned, a fee of R16 500.
  - (k) On lodging of an application under section 64 of the Act, read with section 42, for the registration of a manager in respect of a declared collective investment scheme, including one portfolio, payable by the applicant

- concerned, a fee of R25 800.
- (l) On lodging of an application under section 65(1) of the Act for approval of a foreign collective investment scheme, including one portfolio, payable by the applicant concerned, a fee of R28 300.
  - (m) On lodging of an application under conditions imposed by the registrar under paragraph (c) of section 65(1) of the Act by a foreign collective investment scheme in respect of any additional fund or product in such scheme, payable by the applicant concerned, a fee of R8 350.
  - (n) On lodging of an application under conditions imposed by the registrar under paragraph (c) of section 65(1) of the Act by a foreign collective investment scheme for an alteration, rescission of or addition to such scheme, other than an application for an additional fund or product, payable by the applicant concerned, a fee of R13 100.
  - (o) On lodging of an application under conditions imposed by the registrar under paragraph (c) of section 65(1) of the Act by a foreign collective investment scheme for an alteration, rescission of or addition to a fund or product of such scheme, other than an application for an additional fund or product, payable by the applicant concerned, a fee of R5 200.
  - (p) On lodging of an application under section 69(2) of the Act for registration as a trustee or custodian, payable by the applicant, a fee of R15 000.
  - (q) On lodging of an application under section 78 of the Act, for a conversion of a collective investment scheme, payable by the applicant concerned, a fee of R15 000.
  - (r) For the issue of a certificate of registration of conversion in terms of section 82 of the Act, payable by the applicant concerned, a fee of R500.
  - (s) On lodging of an application, in terms of section 86 of the Act, to conduct business other than administration, payable by the manager concerned, a fee of R5 000.
  - (t) On lodging of an application for the approval of a ballot paper to be submitted to investors for their consent in terms of section 98(2) and



- section 99(1) of the Act, payable by the manager concerned in respect of each portfolio, a fee of R2 400.
- (u) On lodging of an application under section 98(3) of the Act for the replacement of a deed approved under the Unit Trusts Control Act, 1981, with a deed in compliance with this Act, payable by the manager concerned, a fee of R2 500.
  - (v) On lodging of an application under section 98(2) of the Act by a manager for approval of an amendment of a deed or supplemental deed, other than an application for an additional portfolio, payable by the manager, a fee of R5 200.
  - (w) On lodging of an application for the approval of the sale of a collective investment scheme in property or the property shares or immovable property included in a portfolio of such a scheme, payable by the manager concerned, a fee of R14 300.
  - (x) On lodging of an application for the approval of a conversion of a collective investment scheme in property to a loan stock company, payable by the applicant concerned, a fee of R14 300.
  - (y) On lodging of an application for the approval of the acquisition by a collective investment scheme in property of a loan stock company, payable by the manager concerned, a fee of R14 300.
  - (z) On lodging of an application for the winding-up of a portfolio under section 102 of the Act, payable by the manager concerned in respect of each portfolio, a fee of R8 350.
  - (aa) On lodging of an application for a copy of any document, per A4-sheet, or part thereof, payable by the applicant concerned, a fee of R3, 50.

### **Manner of payment of fees and penalties**

7. Fees and penalties referred to in paragraph 6 are payable by means of a cheque or money transfer in favour of the Financial Services Board.

**Interest in respect of unpaid fees and penalties**

8. Any fees and penalties which are not paid whenever they are payable in terms of paragraph 6, carry interest at a rate per annum equal to the prevailing prime overdraft rate payable by the FSB.

**Application for association licence**

9. An application for the issue or renewal of an association licence must be made in the form determined in Annexure A.

**Form of association licence**

10. An association licence is issued in the form determined in Annexure B.

**Application for registration as manager**

11. An application for registration as a manager of a collective investment scheme must be in the form determined in Annexure C.

**Form of registration certificate of manager**

12. The registration certificate of a manager is issued in the form determined in Annexure D.

**Application for approval of additional portfolio**

13. An application for approval of an additional portfolio must contain the information determined in Annexure E.

**Application of due diligence guidelines**

14. Under section 45(a)(ii) and (b)(ii) of the Collective Investment Schemes Control

Act, 2002 (Act No. 45 of 2002), a manager must apply the following minimum due diligence guidelines:

(a) Guidelines for the application of due diligence to an exchange on which foreign equity securities are listed:

(i) Liquidity and repatriation of funds

The overall liquidity of the exchange must be taken into account and whether securities or derivatives or both can be bought and sold in a reasonable time, at best execution and in adequate amounts; and the procedures and restrictions, if any exist, on the repatriation of funds to the Republic.

(ii) Regulation

(aa) 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 the said authorities.

(bb) The following must also be taken into account:

A The degree to which members of the exchange are subject to formal supervision by the exchange or another body, and in particular whether compliance by members with capital adequacy requirements are supervised .

B The involvement of a central securities depository and level of immobilisation or dematerialisation of scrip.

C 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.

D The powers of the exchange and the supervising body to intervene in members' business in the event of misconduct and financial difficulties , including the power to reject applicants for membership, terminate

- membership and delist a security.
- E The initial listing standards and ongoing supervision of securities traded on the exchange, including the publication of prospectuses and audited annual financial statements.
  - F The everyday availability of current information about securities, derivatives, quotations, transactions, prices and spreads.
  - G Requirements for the issue of contract notes or their equivalents.
  - H Whether there is a requirement for trade reporting of the securities or derivatives or both to the exchange or other supervisory body.
  - I Whether the clearing and settlement arrangements normally used for transactions on the exchange are prompt and secure.
  - J The risk of loss in the event of insolvency of a member of the exchange.
  - K The manner in which the exchange investigates and deals with complaints.
  - L 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.
- (iii) Regular operation
- (aa) The exchange must have regular trading hours during which the listed equity securities may be traded.
  - (bb) The following must also be taken into account :
    - A The availability and timing of price and

volume information and the manner in which it is distributed.

B In respect of listed equity securities the degree to which, and the speed at which, companies listed on the exchange must release price sensitive information, and the medium through which that information is distributed.

(iv) 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.

(v) Open to the public

(aa) 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.

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

### **Resolution authorising conversion**

15. A resolution by investors authorising a conversion of a collective investment scheme, as required by sections 77 and 80(1) of the Act, must be obtained in the following manner:

- (a) Every investor may vote in respect of each participatory interest held by him or her.
- (b) An investor or his or her authorised representative may exercise all his or

her voting rights as aforesaid, but is not obliged to exercise all his or her votes or exercise all the votes he or she is entitled to in the same way.

### **Commencement**

16. This Notice comes into operation on 3 March 2003.

## **ANNEXURE A**

### **APPLICATION FORM FOR ISSUE OR RENEWAL OF AN ASSOCIATION LICENCE**

#### **The Registrar of Collective Investment Schemes**

I, the undersigned, being chairman/chief executive officer of ..., hereby apply, in terms of section 25(2) of the Act, for the issuing of a licence to, or the renewal of the licence of, the said association, which represents collective investment schemes in

In support of the application I submit the following documents:

- (a) Two copies of the proposed rules.
- (b) A list of all members and a statement whether the association represents all managers of the particular industry.
- (c) A statement of the activities the association seeks to self-regulate.
- (d) A summary of what staff and systems are in place to supervise compliance by its members with the rules and those matters assigned or delegated to the association.
- (e) The address of the head office of the association.
- (f) The names of the chairperson and chief executive officer of the association.

(g) The prescribed fee of R \_\_\_\_\_

.....

**CHAIRMAN/CHIEF EXECUTIVE OFFICER**

**Address:** .....  
.....  
.....

**Date:** .....

**ANNEXURE B**

**REPUBLIC OF SOUTH AFRICA**

**FINANCIAL SERVICES BOARD**

**COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**

**ASSOCIATION LICENCE**

I hereby certify that ..... has been granted, in terms of section 26 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), a licence/renewal of a licence as an association in respect of collective investment schemes in ....., for the period ending ....., to carry on the business of an association as contemplated in section 25 of the Act at ..... (physical address).

Dated at ..... this ..... day of .....

.....

**Registrar of Collective Investment Schemes**

**ANNEXURE C**

**APPLICATION FORM FOR REGISTRATION AS MANAGER**

**The Registrar of Collective Investment Schemes**

I, the undersigned, being chairperson / chief executive officer of....., duly empowered thereto, hereby apply for the registration of the said company as a manager of a collective investment scheme in .....

I submit with the application, the following information:

- (a) A description of the company seeking registration as well as an organogram indicating the group-structure and ownership of the company;
- (b) a copy of the latest audited annual financial statements;
- (c) full particulars of the collective investment scheme the company proposes to carry on and the manner in which it proposes to carry on such scheme;
- (d) an indication of the company's existing client base and an indication of the target market;
- (e) a business plan on how the marketing of the proposed scheme will be done;
- (f) the business objectives of the proposed scheme including the intended strategies to achieve these objectives and the different phases of achieving such objectives;
- (g) an indication of the portfolios applied for with this application as well as



- those intended for the future;
- (h) the names and addresses of the chairperson, directors and chief executive officer of the company together with their *curriculum vitae* and an indication whether any of the aforementioned persons has ever been convicted of an offence resulting from dishonesty, fraud or embezzlement, or whether the estate of any of the said persons was sequestered or whether any of them was a controlling shareholder or a director of a company or close corporation at the time when it was placed under judicial management or in liquidation;
  - (i) the name of the trustee/custodian for the scheme;
  - (j) the name of the auditor;
  - (k) the name of the investment manager and confirmation of its authorisation as such;
  - (l) a description of the administration system to be used or, in the event of this being outsourced, the name of the appointee and confirmation that such system is capable of the administration of the scheme;
  - (m) confirmation of membership of the relevant industry association or intention to become a member;
  - (n) the name and *curriculum vitae* of the compliance officer (if any) or other person responsible for ensuring compliance with prudential requirements;
  - (o) the names and *curriculum vitae* of all managerial staff responsible for the administration;
  - (p) details of projected cash-flow and income of the manager for the first three years;
  - (q) an indication of how the liquidity resources of the manager will be managed;
  - (r) an indication of the pricing structure of the different portfolios;
  - (s) detail of the address of the head office;
  - (t) a copy of the memorandum and articles of association as approved by the Registrar of Companies and registered in terms of the Companies Act, 1973;
  - (u) four pro-forma copies of the deed and the same number of each

- supplemental deed;
- (v) motivations for the establishment of the portfolios in accordance with Annexure E to the General Notice determined by the registrar;
- (w) the proposed launch date(s);
- (x) such other information as the registrar may require; and
- (y) the prescribed fee of R \_\_\_\_\_.

.....  
**CHAIRPERSON/CHIEF EXECUTIVE OFFICER**

Address: .....

.....

.....

.....

Date: .....

**ANNEXURE D**

**REPUBLIC OF SOUTH AFRICA**  
**FINANCIAL SERVICES BOARD**

**COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**

**CERTIFICATE OF REGISTRATION OF MANAGER**

I hereby certify that .....  
 has been registered by me as a manager of a collective investment scheme in  
 ....., in terms of section 42(3), 51, 54(4) or 117(3)(b) of the  
 Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).

Dated at .....this ..... day of .....

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**ANNEXURE E**

**APPROVAL OF ADDITIONAL PORTFOLIO**

The following information must accompany an application for approval of a new portfolio:

- (a) Proper motivation for additional portfolio.
- (b) Objective(s) of proposed portfolio.
- (c) Key characteristics of proposed portfolio:
  - (i) Investment policy;
  - (ii) investment parameters;
  - (iii) income distribution and the intervals thereof;
  - (iv) limitation of portfolio size (if applicable); and
  - (v) industry association portfolio classification.
- (d) Investor market to be targeted:
  - (i) Provide details of intended market target; and
  - (ii) provide details of distribution and marketing strategies.
- (e) Name of Investment Manager.
- (f) Motivation for name of portfolio.
- (g) Proposed launch date of portfolio.
- (h) Other documents to accompany application:
  - (i) Pro-forma supplemental deed;
  - (ii) auditor's confirmation of capital invested; and
  - (iii) letter from systems-provider confirming ability of system to provide service for the additional portfolio.

**NOTICE 570 OF 2003****FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****DETERMINATION OF SECURITIES AND CLASSES OF SECURITIES THAT MAY  
BE INCLUDED IN A PORTFOLIO OF A COLLECTIVE INVESTMENT SCHEME IN  
SECURITIES AND THE MANNER IN WHICH AND LIMITS AND  
CONDITIONS SUBJECT TO WHICH SECURITIES MAY BE SO INCLUDED**

Under sections 40, 46 and 85 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine in the Schedule in respect of a collective investment scheme in securities –

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

**J VAN ROOYEN****REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

## SCHEDULE

### Definition

1. In this Schedule –

**“assets in liquid form”** means any asset which is capable of being liquidated within seven days;

**“securities”** means –

- (a) shares, stock, including loan stock as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), participatory interests in a collective investment scheme (excluding participatory interests in a collective investment scheme in participation bonds), whether listed or not, debentures, debenture stock and debenture bonds, unsecured notes, whether or not they have inherent option rights or are convertible and money market instruments determined in Chapter III;
- (b) the following listed financial instruments:
  - (i) A futures contract;
  - (ii) an option contract;
  - (iii) a warrant;
  - (iv) an index tracking certificate; and
  - (v) an instrument based on an underlying asset;

**“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.

## CHAPTER I

### GENERAL PORTFOLIO

#### Application of Chapter

2. This Chapter applies to a portfolio that consists of -
- (a) securities referred to in the definition of "securities" in paragraph 1; and
  - (b) any amount of cash consisting of Reserve Bank notes and subsidiary coin,
- but does not apply to any other portfolio specifically dealt with in Chapters III, IV, V and VI.

#### Conditions and limits of inclusion

3. (1) Subject to subparagraphs (4), (9) and (10), no manager may include in a portfolio, other than an index tracking or gold portfolio -
- (a) securities issued by any one concern to an amount in excess of five per cent, or in the case of a concern with a market capitalisation of R2 billion or more, 10 per cent, of the market value of all the assets comprised in the portfolio, or 120 per cent of that securities' free float weighting in the relevant Headline, Economic Group- or Specialist Index as published by the JSE Securities Exchange South Africa, whichever is the greater, subject to -
    - (i) a maximum of 20 per cent of the market value of all the assets comprising the portfolio where the benchmark is the FTSE/JSE All Share Index;
    - (ii) a maximum of 35 per cent of the market value of all the assets comprising the portfolio where the benchmark is a Specialist Index or Headline Index other than the

**FTSE/JSE All Share Index,**

except in so far as the excess is due to appreciation or depreciation of the value of the underlying assets comprised in that portfolio, provided that as long as the market value of an investment in any particular concern exceeds the limit specified in subparagraph (a), the manager may not purchase any further securities issued by that concern; or

- (b) securities of any one class issued by any one concern to an amount in excess of five per cent, or in the case of a concern with a market capitalisation of R2 billion or more, 10 per cent, or in the case of securities in any investment company, 10 per cent, of the aggregate amount of the securities of any one class issued by such concern or company, subject to –
- (i) an overall limit of 15 per cent of the aggregate amount of 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
  - (ii) an overall limit of 24 per cent of the aggregate amount of 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,

except in so far as the excess is due to an amalgamation, cession, transfer or take-over in terms of section 99 of the Act, provided that –

- (i) the manager may not make any further investments in securities of the class in question as long as any limit determined in subparagraph (b) is exceeded;
- (ii) the manager must within 12 months after the date on which such amalgamation, cession, transfer or take-over becomes effective or within such further period as the

registrar may determine, reduce the securities of the class in question to the limits determined in subparagraph (b).

- (2) A manager must include securities in a portfolio which consist to the extent of at least 90 per cent of the market value of the portfolio, of -
- (a) exchange securities;
  - (b) instruments contemplated in subparagraphs (9) and (10);
  - (c) 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.
- (3) If a security, other than a security referred to in subparagraph (2), does not become an exchange security within a period of one year from the date of its inclusion in a portfolio, or within such further period as the registrar may allow where he or she is satisfied that the security is likely to become an exchange security within a reasonable period, the manager concerned must substitute exchange securities for such securities at either the value at which they were included in the portfolio or the price which can be obtained for them, whichever is the higher: Provided that an unlisted security included in a portfolio must be valued at fair value at least once a month, or if such value is not available, section 44 of the Act applies.
- (4) (a) A manager may include in a portfolio participatory interests in a portfolio ("underlying portfolio") of a collective investment scheme in securities to a maximum of 20 per cent of the market value of the first-mentioned portfolio: Provided that -
- (i) at least 90 per cent of the interest-bearing instruments included in the underlying portfolio must have a credit rating of "investment grade" by Moody's Investors Service Limited, Standard and Poor's or Fitch;
  - (ii) borrowing of money must be limited to 10 per cent of the value of the underlying portfolio and the money borrowed may only be used for the redemption of participatory



- interests;
- (iii) the underlying portfolio does not include unlisted derivative instruments or any uncovered exposures;
  - (iv) the underlying portfolio does not gear or leverage.
- (b) The limit determined in subparagraph (4)(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.
- (5) For the purposes of subparagraph (4)(a), the value of a participatory interest held by one portfolio in another must be calculated by reference to the repurchase price, excluding any charges, of the relevant participatory interest, at the close of business on the previous day on which a repurchase price was calculated.
  - (6) The manager of a portfolio must ensure that the portfolio's investment policy is suitably amended to empower it to include participatory interests in such portfolio.
  - (7) The manager of a portfolio may only invest in participatory interests issued by a fund of funds of which at least 85 per cent of the value of the fund of funds' portfolio is held in participatory interests outside the Republic: Provided that such fund of funds is not invested in participatory interests issued by the manager's portfolio.
  - (8) If a manager contravenes the proviso to subparagraph (7) through no fault of its own, the manager concerned must, within 30 days of the date on which it becomes aware of the contravention, submit a detailed plan for approval to the registrar setting out measures to rectify the position.
  - (9) A manager may include in the portfolio financial instruments on the conditions and subject to the limits determined in Chapter II.
  - (10) A manager may include in a portfolio rated non-equity securities in the manner and on the conditions determined in

### Chapter VII.

- (11) A manager may not include in any index tracking portfolio securities to an amount in excess of a percentage, equal to that securities' free float index weighting in the relevant Headline, Economic Group, Specialist or Industrial Sector Index to be replicated, of the market value of all the assets comprised in the portfolio, subject to a maximum of 35 per cent of such market value.
- (12) A manager may not include in a gold portfolio securities issued by any one concern to an amount in excess of a percentage, equal to that concern's weighting in the FTSE/JSE Gold Index, plus 5 per cent, subject to a maximum of 60 per cent of the market value of all the assets comprised in the gold portfolio.
- (13) For the purposes of this Notice "investment company" means a company which is engaged primarily in the business of investment in the shares and stocks of other companies for the purpose of revenue and profit and not for the purpose of exercising control.

## CHAPTER II

### INCLUSION OF FINANCIAL INSTRUMENTS IN A PORTFOLIO

#### Definitions

4. For the purposes of this Chapter –

**"asset portfolio"** in relation to a portfolio, means the portfolio of underlying assets comprising the portfolio;

**"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 thereof;

**"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;

**“nominal exposure”**, in relation to a financial instrument, means the exposure as calculated in paragraph 8(3);

**“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 thereof;

**“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 8(4);

**“underlying asset”**, in relation to a financial instrument, means –

- (a) any security;
- (b) an index as determined by an exchange;

- (c) a group of securities which is the subject matter of the financial instrument, whether such group of securities is represented by an index or not; or
- (d) in the case of a warrant, option contract or futures contract, any underlying asset referred to in paragraphs (a), (b) or (c) of this definition.

#### **Inclusion of financial instruments in portfolio**

- 5. (1) A management company may include financial instruments in a portfolio, subject to these conditions, the deed and supplemental deeds.
- (2) In the application of subparagraph (1) a manager may only sell option contracts which have previously been bought.

#### **Exposure limits**

- 6. (1) The sum of the nominal exposures to assets in liquid form as a result of the inclusion of financial instruments in a portfolio, together with the market value of all the physical underlying securities in the portfolio, may not exceed 100 percent of the market value of the portfolio.
- (2) The nominal exposure to financial instruments on any specific underlying asset, which is not an index or group of securities, together with the market value of any physical holding of that specific underlying security, may not exceed the limitations laid down in paragraph 3(1).
- (3) For the purposes of this paragraph, the provisions of paragraph 3(1)(a) and (b) in respect of excesses, 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 *mutatis mutandis*.

#### **Maintaining of certain assets in portfolio**

- 7. A manager which in accordance with the provisions of these conditions -

- (a) sells future contracts, sells call options or call warrants, or buys put options or put warrants, based on specific underlying assets which are not indices, must maintain in the relevant portfolio a market value of such underlying assets with positive nominal exposures to the same underlying assets;
- (b) sells futures contracts, sells call options or call warrants, or buys put options or put warrants, based on index futures or a group of securities, must maintain an exposure to appropriate underlying assets or other financial instruments with positive exposures to similar underlying assets in the relevant portfolio, which is at least equal to the nominal exposure of such financial instruments;
- (c) buys futures contracts, buys 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 in line with the nominal exposure prescribed in paragraph 6(1);
- (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 paragraph 7(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 paragraph 7(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 based on the same underlying assets and requiring the nominal exposure to liquid instruments prescribed in paragraph 7(c), may maintain assets in liquid form as needed for only one such option or warrant transaction; and
- (g) sells or buys multiple options or multiple warrants based on the same underlying assets and requiring the nominal exposure to underlying assets prescribed in paragraph 7(a) or (b), may maintain such

instruments as needed for only one such option or warrant transaction.

### **Calculation of nominal exposure to underlying assets in portfolio**

8. (1) The exposure of a futures contract or index tracking certificate to 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;
  - (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;
  - (d) the delta factor being one.
- (3) The nominal exposure to any financial instrument must be calculated as the product of -
  - (a) the exposure, calculated in accordance with paragraph 8(1) or (2);
  - (b) the transaction sign.
- (4) The transaction sign is positive for any financial instrument purchased and negative for any financial instrument sold.
- (5) The nominal exposure to financial instruments on any underlying asset is the sum of the nominal exposure of all financial instruments on the underlying asset.

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**Calculation of nominal exposure to assets in liquid form associated with the financial instruments on underlying assets in portfolio**

9. (1) The nominal exposure to assets in liquid form of any financial instrument required in accordance with paragraph 7 must be calculated as the nominal exposure of any financial instrument calculated in accordance with paragraph 8(3).
- (2) The nominal exposure to assets in liquid form for the portfolio must be calculated as the sum of the nominal exposures of all the assets in liquid form calculated for all financial instruments in the portfolio in accordance with paragraph 9(1).

**Report by the independent auditor**

10. 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 an auditor's report substantially conforming to Annexure A.

**CHAPTER III****MONEY MARKET PORTFOLIO****Definition**

11. For the purposes of this Chapter, "money market portfolio" means a portfolio consisting solely of money market instruments.

## Determination of market instruments

12. For the purposes of this Chapter, "money market instruments", in the currency of the Republic, which may be included in a money market portfolio, are defined as follows:

- (a) "**banker's acceptance**" means a bill as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964), drawn on and accepted by a bank as defined in the Banks Acts, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- (b) "**bridging bond**" means an acknowledgement of debt in which the issuer thereof undertakes to repay the debt together with interest on the maturity of the debt to the holder of the bridging bond;
- (c) "**commercial paper**" means any negotiable acknowledgement of debt;
- (d) "**debenture**" means a debenture as defined in the Companies Act, 1973 (Act No. 61 of 1973);
- (e) "**deposit**" means a deposit as defined in the Banks Act, 1990, or in the Mutual Banks Act, 1993;
- (f) "**land bank bill**" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the Land and Agricultural Bank of South Africa;
- (g) "**national housing bill**" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by the National Housing Board;
- (h) "**negotiable certificate of deposit**" means a certificate of deposit issued by a bank as defined in the Banks Act, 1990, or a mutual bank as defined in the Mutual Banks Act, 1993, and payable to order or to bearer;
- (i) "**parastatal bill**" means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by a parastatal institution;
- (j) "**promissory note**" means a promissory note as defined in the Bills of Exchange Act, 1964;
- (k) "**stock**" means loan stock as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
- (l) "**trade bill**" or "**trade note**" means a bill or note as defined in the Bills of



Exchange Act, 1964, drawn, accepted or issued to provide for the payment for goods;

- (m) **"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; and
- (n) **"asset with a branch of a foreign institution"** means a deposit with, or any instrument of indebtedness (as defined in subparagraphs (a) to (m)) issued by a branch of a foreign institution, which institution is authorised in terms of the Banks Act, 1990, to conduct the business of a bank by means of such branch: Provided that the foreign institution must be from a country which has a foreign currency sovereign rating of at least the same as the Republic: Provided further that if more than one rating exist, the lower of the ratings apply.

### **Inclusion limits**

- 13. (1) A manager may not include money market instruments in a money market portfolio if the value thereof exceeds the percentage of the value of the money market portfolio as indicated in the table below against the applicable domestic rating.

RATING AGENCY	SHORT TERM INSTITUTIONAL RATING OF THE ISSUER	LIMIT ON ALL INSTRUMENTS PER ISSUER AS PERCENTAGE OF VALUE OF PORTFOLIO
Standard and Poor's Moody's Investor Services Ltd Fitch	A+ Prime 1 F1+	30%
Standard and Poor's Moody's Investor Services Ltd Fitch	A1 N/a F1	20%
Standard and Poor's Moody's Investor Services Ltd Fitch	A2 N/a "	5%

**NOTE:** Where more than one rating exists, the lower of the ratings applies.

- (2) The total investment exposure limit to all issuers with ratings by Standard and Poor's of A2 may not exceed 20 per cent of the market value of a money market portfolio.
- (3) If, after the date of its inclusion in a money market portfolio, any money market instrument is rated lower than its original rating at the date of inclusion, the manager must rectify the position within 30 days of such lower rating.
- (4) The limits prescribed in subparagraphs (1) and (2) may be exceeded only if the excess is due to appreciation or depreciation of the value of the underlying money market instruments comprised in a money market portfolio.
- (5) A manager may not, for as long as the excess continues, purchase any further money market instruments of the class in respect of which the excess occurs.

**Reduction of participatory interests**

14. (1) A manager must within 21 days after the reduction in value of any participatory interest in a money market portfolio, provide the registrar and every investor in such portfolio in writing with details of the reduction.
- (2) A reduction must be reflected in the accounts and returns to be kept and rendered by the manager in terms of section 90(1) of the Act.
- (3) The auditor of a manager must, in the case of a reduction, provide the registrar with details thereof on a quarterly basis.

**General**

15. (1) Only money market instruments denominated in a single currency may be included in a money market portfolio.
- (2) At the time of its inclusion in a money market portfolio a money market instrument may not have a maturity exceeding 12 months.
- (3) The weighted average maturity 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) Money market instruments -
- (a) having no fixed maturity; or
  - (b) in respect of which the interest rate is not known at the date of inclusion,
- may not be included in a money market portfolio.
- (5) The manager must at all times be able to calculate the return of the money market portfolio.

## **CHAPTER IV**

### **MONEY MARKET PORTFOLIO IN FOREIGN CURRENCY**

#### **Definition**

- 16.** For the purposes of this Chapter, "money market portfolio in a foreign currency" means a portfolio consisting solely of money market instruments denominated in a currency other than that of the Republic.

#### **Determination of foreign currency market instruments**

- 17.** Money market instruments, which are denominated in a currency other than that of the Republic, that may be included in a money market portfolio in a foreign currency, are short term interest bearing instruments or deposits acknowledging indebtedness -
- (a) with an initial or residual maturity of less than 12 months; and
  - (b) issued by an issuer domiciled in a country other than the Republic, which issuer or instrument issued by such issuer, has been rated by Moody's Investors Service Limited with a rating of "A3" or "Prime1", or higher, or by Standard and Poor's with a rating of "A-" or "A-1", or higher or by Fitch with a rating of "A-" or "F1", or higher: Provided that if the issuer or instrument has been rated by more than one agency the lower of the ratings applies.

#### **Inclusion limits**

- 18.** (1) Money market instruments -
- (a) as determined in this Chapter;
  - (b) denominated in a currency other than that of the Republic; and

- (c) issued by any one concern or body domiciled or based outside the Republic,
- may not be included in a money market portfolio if the value thereof exceeds the percentage of the value of the money market portfolio as indicated in the table below against the applicable rating:

Institutional Rating						Instrument (Issue) Rating						Limit on all instruments per issuer as percentage of value of portfolio
Standard and Poor's		Moody's Investors Service Limited		Fitch		Standard and Poor's		Moody's Investors Service Limited		Fitch		
Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	
AAA	A-1+	Aaa	Prime 1	AAA	F1+	AAA	A-1+	Aaa	Prime 1	AAA	F1+	30%
AA+	N/a	Aa1	N/a	AA+	F1	AA+	N/a	Aa1	N/a	AA+	F1	20%
AA	"	Aa2	"	AA	N/a	AA	"	Aa2	"	AA	N/a	
AA-	"	Aa3	"	AA-	"	AA-	"	Aa3	"	AA-	"	
A+	A-1	A1	N/a	A+	N/a	A+	A-1	A1	N/a	A+	N/a	5%
A	"	A2	"	A	"	A	N/a	A2	"	A	"	
A-	"	A3	"	A-	"	A-	"	A3	"	A-	"	

**Note:** If an institutional rating is not available, the instrument rating applies and if a short-term rating is not available, the applicable long-term rating applies.

- (2) If any foreign money market instrument or issuer has been rated by more than one agency, the lower of the ratings applies.
- (3) The total investment exposure limit to all issuers with ratings determined in the last row of the table in paragraph 18(1) may not exceed 20 per cent of the market value of the money market portfolio.
- (4) If, after the date of its inclusion in a money market portfolio, any foreign instrument is rated lower than its original rating at the date of inclusion, the manager must rectify the position within 30 days of such lower rating.
- (5) The limits prescribed in subparagraphs (1) and (3) may be exceeded only if the excess is due to appreciation or depreciation of the value of the underlying money market instruments comprised in a money market portfolio.

- (6) A manager may not, for as long as the excess continues, purchase any further money market instruments of the class in respect of which the excess occurs.

### **Reduction of participatory interests**

19. (1) A manager must within 21 days after the reduction in value of any participatory interest in a money market portfolio, provide the registrar and every investor in such portfolio in writing with details of the reduction.
- (2) A reduction must be reflected in the accounts and returns to be kept and rendered by the manager in terms of section 90(1) of the Act.
- (3) The auditor of a manager must, in the case of a reduction, provide the registrar with details thereof on a quarterly basis.

### **General**

20. (1) Only money market instruments denominated in a single currency may be included in a money market portfolio.
- (2) At the time of its inclusion in a money market portfolio a money market instrument may not have a maturity exceeding 12 months.
- (3) The weighted average maturity of money market instruments included in a money market portfolio, based on the total value of the money market portfolio, may not exceed 90 days.
- (4) Money market instruments -
  - (a) having no fixed maturity; or
  - (b) in respect of which the interest rate is not known at the date of inclusion,may not be included in a money market portfolio.
- (5) The manager must at all times be able to calculate the return of the money market portfolio.

## CHAPTER V

### FUND OF FUNDS PORTFOLIO

#### Definition

21. For the purposes of this Chapter, a "fund of funds" means a portfolio that, apart from assets in liquid form, consists solely of participatory interests, whether listed on an exchange or not, in portfolios of collective investment schemes other than collective schemes in property and participation bonds.

#### Conditions and limits of inclusion

22. 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 not less than two other portfolios: Provided that the investment in any one portfolio may not exceed 75 per cent of the market value of the fund of funds.
  - (b) The limit determined in subparagraph (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 only invest in participatory interests issued by a fund of funds of which at least 85 per cent of the value of the latter fund's portfolio is held in participatory interests outside the Republic: Provided that such fund of funds does not hold participatory interests issued by the first-mentioned fund of funds.
  - (d) If a manager contravenes the proviso to paragraph 22(c) through no fault of its own, the manager concerned must, within 30 days of the date on



which it becomes aware of the contravention, submit a detailed plan for approval to the registrar setting out measures to rectify the position.

- (e) The investment objectives of a fund of funds must clearly specify the nature of the participatory interests comprising such fund.
- (g) A manager of a fund of funds must satisfy the registrar that the participatory interests of the portfolios referred to in subparagraph (a) ("underlying portfolios") have a risk profile which is not significantly higher than the risk profile of other underlying securities which may be included in terms of the Act in a similar portfolio other than a fund of funds:  
Provided that -

- (i) at least 90 per cent of the interest-bearing instruments included in an underlying portfolio must have a credit rating of "investment grade" by Moody's Investors Service Limited, Standard and Poor's or Fitch;
- (ii) borrowing of money must be limited to 10 per cent of the value of an underlying portfolio and the money borrowed may only be used for the redemption of participatory interests;
- (iii) the underlying portfolio does not include unlisted derivative instruments or any uncovered exposures;
- (iv) the underlying portfolio does not gear or leverage.

## CHAPTER VI

### FEEDER FUND PORTFOLIO

#### Definition

23. For the purposes of this Chapter, a "feeder fund" means a portfolio that, apart from assets in liquid form, consists solely of participatory interests in a single portfolio of a collective investment scheme.

### **Conditions and limits of inclusion**

**24.** The conditions and limits subject to which participatory interests in a portfolio of a collective investment scheme, may be included in a feeder fund, are as follows:

- (a) A manager of a feeder fund must satisfy the registrar that the participatory interests of the portfolio referred to in paragraph 23 ("underlying portfolio") has a risk profile that is not significantly higher than the risk profile of other underlying securities which may be included in terms of the Act in a similar portfolio other than a feeder fund: Provided that -
- (i) at least 90 per cent of the interest-bearing instruments included in the underlying portfolio must have a credit rating of "investment grade" by Moody's Investors Service Limited, Standard and Poor's or Fitch;
  - (ii) borrowing of money must be limited to 10 per cent of the value of the underlying portfolio and the money borrowed may only be used for the redemption of participatory interests;
  - (iii) the underlying portfolio does not include unlisted derivative instruments or any uncovered exposures;
  - (iv) the underlying portfolio does not gear or leverage.

## **CHAPTER VII**

### **NON-EQUITY SECURITIES**

#### **Conditions and limits of inclusion**

**25.** The conditions and limits for inclusion of non-equity securities in a portfolio are as follows:

- (a) A manager may include instruments issued by the Government of the Republic and listed on an exchange, to the extent of up to 100 per cent of the value of a portfolio.
- (b) A manager may not include in a portfolio –
  - (i) instruments issued by any public entity as defined in the Public Finance and Management Act, 1999 (Act No.1 of 1999), and listed in terms of that Act as a Major Public Entity and National Public Entity,
  - (ii) any money market instrument as defined in Chapter III; or
  - (iii) stock, including loan stock as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), debentures, debenture stock and debenture bonds, unsecured notes, whether or not they have inherent option rights or are convertible, if the value thereof exceeds the percentage of the value of the portfolio as indicated in the table below against the applicable domestic rating:

Institutional Rating						Instrument (Issue) Rating						Limit on all instruments per issuer as percentage of value of portfolio
Standard and Poor's		Moody's Investors Service Limited		Fitch		Standard and Poor's		Moody's Investors Service Limited		Fitch		
Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	Long Term	Short Term	
AAA	A-1+	Aaa	Prime 1	AAA	F1+	AAA	A-1+	Aaa	Prime 1	AAA	F1+	30%
AA+	N/a	Aa1	N/a	AA+	F1	AA+	N/a	Aa1	N/a	AA+	F1	20%
AA	"	Aa2	"	AA	N/a	AA	"	Aa2	"	AA	N/a	
AA-	"	Aa3	"	AA-	"	AA-	"	Aa3	"	AA-	"	
A+	A-1	A1	N/a	A+	N/a	A+	A-1	A1	N/a	A+	N/a	5%
A	N/a	A2	"	A	"	A	N/a	A2	"	A	"	
A-	"	A3	"	A-	"	A-	"	A3	"	A-	"	

**Note:** If an institutional rating is not available, the instrument rating applies and if a short-term rating is not available, the applicable long-term rating applies.

Where more than one rating exists, the lower of the ratings apply.

- (c) The total investment exposure limit to all issuers with ratings determined in the last row of the table in paragraph 25(b) may not exceed 20 per cent of the market value of the portfolio.
- (d) The limits prescribed in paragraphs 25(b) and 25(c) may be exceeded only if the excess is due to appreciation or depreciation of the value of the instruments comprised in a portfolio.
- (e) 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.

## **CHAPTER VIII**

### **GENERAL**

#### **Disclosure of Fees**

26. For the purposes of paragraphs 3(7), 22(c) and 24, when a portfolio invests in participatory interests of another portfolio, the manager must disclose that the fee structure is higher and also disclose the anticipated aggregate of the fees levied by itself and by the other portfolio, to potential investors before entering into a transaction.

#### **Commencement**

27. This Notice comes into effect on 3 March 2003.

**ANNEXURE A****REPORT OF INDEPENDENT AUDITOR OF MANAGER IN RESPECT OF SYSTEM  
OF INTERNAL CONTROL**

(Paragraph 10 of Notice)

We have audited the system of internal control regarding .....  
(NAME OF PORTFOLIO), designed to ensure compliance by  
..... (NAME OF MANAGER) with Chapter II of Notice ... of  
2003.

Compliance with Chapter II and the maintenance of an effective system of internal control is the responsibility of the directors of the manager. Our responsibility is to express an opinion as to whether or not –

- (a) internal controls were suitably designed to provide reasonable assurance that they would, if operating as designed, prevent or detect any non-compliance with Chapter II;
- (b) the internal controls operated as designed throughout the quarter ended .....

Because of inherent limitations in any system of internal control, errors or irregularities may occur and not be detected. Also, projections of any evaluation of the internal controls to future periods are subject to the risk that the system of internal control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

We conducted our audit in accordance with generally accepted auditing standards. These standards require that we adopt procedures to obtain an understanding of the system of internal control designed to ensure compliance with Chapter II, to evaluate the adequacy of the controls and to test the operating effectiveness of those controls.

We consider that our auditing procedures were appropriate in the circumstances to express our opinion presented below.

In our opinion –

- (a) the system of internal control over compliance with Chapter II was suitably designed to provide reasonable assurance that the controls would, if operating as designed, have prevented or detected non-compliance with Chapter II;
- (b) the system of internal control designed to ensure compliance with Chapter II, operated as designed throughout the quarter ended .....

Without qualifying our opinion above, we draw attention to the following instances of non-compliance with Chapter II which were/were not subsequently corrected: ....

Auditor CA (SA)

Address

Date

**NOTICE 571 OF 2003****FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****EXEMPTION OF COLLECTIVE INVESTMENT SCHEME IN SECURITIES  
FROM CERTAIN PROVISIONS OF COLLECTIVE INVESTMENT SCHEMES  
CONTROL ACT, 2002**

1. Under section 22(a) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) ("the Act"), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby exempt a manager administering a collective investment scheme in securities under the Act and which manager is a member of The Association of Unit Trusts of South Africa, from sections 90(4) and 100 of the Act.
2. This Notice comes into effect on 3 March 2003.



**J VAN ROOYEN**  
**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**NOTICE 572 OF 2003****FINANCIAL SERVICES BOARD  
COLLECTIVE INVESTMENT SCHEMES  
CONTROL ACT, 2002****CAPITAL REQUIREMENTS WITH WHICH A MANAGER OF A COLLECTIVE  
INVESTMENT SCHEME IN SECURITIES MUST COMPLY**

Under section 88(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine in the Schedule 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.



**J VAN ROOYEN**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

1. The capital to be maintained by a manager of a collective investment scheme in securities must be calculated as follows:
  - (1) Eligible capital consisting of the total of -
    - (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);
    - (c) share premium account;
    - (d) non-distributable reserves;
    - (e) retained income -
      - (i) if audited, 100 per cent may be included;
      - (ii) if not audited, 50 per cent may be included;



- (f) loans (only if properly subordinated in favour of the manager);
  - (g) guarantees (only from a third party and only if exercisable on demand by the manager).
  - (h) **Total**
- (2) Less adjustment for non-liquid assets consisting of -
- (a) all liabilities, including loans not included under 1(1)(f);
  - (b) contingent liabilities;
  - (c) debtors and other current assets which are not convertible into cash within 14 business days;
  - (d) guarantees provided by the manager;
  - (e) amount of investment in other business;
  - (f) **Total.**
- (3) Adjusted liquid capital 1(1)(h) minus 1(2)(f).
- (4) Less required capital to be maintained consisting of -
- (a) a basic capital which must be the greater of an amount of R600 000 or a sum equivalent of 13 weeks' of 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(3); *plus*
  - (b) seed capital of R1 million to be invested by the manager in each portfolio administered by the manager. Provided that -
    - (i) the prescribed amount may be reduced by 10 per cent for every R1 000 000 invested by investors in a portfolio which investors may not be connected to but must be independent from the manager; and
    - (ii) if the sum of R1 000 000 has been reduced to nil in terms of subparagraph (i) and disinvestment from a portfolio causes the investment in the portfolio to reduce to less than R10 000 000, a manager need not reinvest any further sum in terms of this paragraph; *plus*
  - (c) position risk capital of -

(i) 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:

- \* Money market portfolio 10 per cent;
- \* income portfolio 15 per cent; and
- \* all other portfolios 25 per cent;

and

(ii) a sum equivalent to three times the margin requirement for listed futures or option contracts traded on a licensed exchange.

(d) **Total.**

(5) Liquid resources 1(3) minus 1(4)(d).

2. (1) For the purposes of 1(4)(a) fixed cost amounts must be determined as follows:

<b>COMPUTATION OF FIXED EXPENDITURE BASE REQUIREMENT</b>			
<b>Expense Category</b>	<b>Treat as Fixed Cost Amounts</b>	<b>Treat as Trading Costs and "non-cash" items</b>	<b>Expenses per Income Statement</b>
Accounting and secretarial or other services, charges, etc.	X		
Auditors' remuneration	X		
Depreciation		X (a)	
Insurance	X		

Interest paid other than to Directors			
Bank overdraft	X	X	(f)
Other Finance	X	X	(f)
Charges and fees	X	X	(b)
Motor vehicle expenses	X		
Net loss on realisation of fixed assets		X	(a)
Office rental	X		
Machine and other leasing charges/rentals	X		
Printing and Stationery	X		
Salaries and wages	X	X	(c)
Telephone, telex and postages	X		
Other expenses	X	X	(d)+(g)
Salaries and Directors' Fees	X	X	(e)
Interest	X	X	(e)
			<b>TOTAL</b>

**Note:**

*In determining fixed cost 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.*

- (c) *Non-contractual payments by way of profit shares 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 counter parties which is trade related may be excluded.*
- (g) *Loss arising from the conversion of foreign currency balances may be excluded.*

- 
- (2) The thirteen weeks' fixed expenditure must be calculated as the previous financial year's divided by four or if no financial year was completed, this amount must be budgeted for to the satisfaction of the registrar.
  - (3) 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, call upon 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 days after the end of such calendar month, in the form determined by the registrar.
  4. This Notice comes into effect on 3 March 2003.

**NOTICE 573 OF 2003****FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****SUSPENSION OF REPURCHASE OF PARTICIPATORY INTERESTS BY  
MANAGER OF COLLECTIVE INVESTMENT SCHEME IN SECURITIES**

Under section 114(3)(f) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby prescribe in the Schedule the circumstances under, and the conditions on which, the repurchase of participatory interests in a portfolio of a collective investment scheme in securities may be suspended.

**J VAN ROOYEN****REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES****SCHEDULE****Definition**

1. 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.

### **Circumstances under which repurchase of participatory interests may be suspended**

2. The manager may, subject to the deed and condition 3 and with the consent of the trustee or custodian, suspend the repurchase of participatory interests if offers for repurchase of participatory interests are received, the aggregate amount of which is more than five per cent of the market value of a portfolio as at the last valuation point: Provided that this condition does not preclude a manager from entering into an agreement with an investor determining a more restrictive basis on which repurchase offers will be honoured.

### **Conditions in respect of suspension**

3. (1) (a) The repurchase of participatory interests, irrespective of their aggregate amount or value, may not be suspended if 10 business days' valid notice of the offer for repurchase has been given to the manager.  
(b) The repurchase of participatory interests offered for repurchase by an investor, the aggregate amount or value of which does not exceed R50 000 on the day of such offer, may not be suspended.
- (2) For the purpose of calculating the five per cent referred to in condition 2, the aggregate amount or value of all offers for repurchase received on a specific day, must be reduced by the aggregate amount of all sales of participatory interests on that day.

### **Duties of manager**

4. (1) If a manager decides to suspend the repurchase of participatory

interests under the circumstances contemplated in condition 2, it must forthwith and with the consent of the trustee or custodian, segregate a portion of the assets, equivalent to the value of all received offers for repurchase, from the rest of the assets in the portfolio.

- (2) The manager must –
  - (a) forthwith notify the investor(s) concerned that repurchasing has been suspended in accordance with the deed and this Notice: Provided that in such case the investor must be given the option to withdraw its offer to repurchase on the day of such notification or to accept assets equivalent in value to the offer for repurchase;
  - (b) forthwith notify the investor(s) concerned that it will endeavor to honour the repurchase request within 20 business days from the date of suspension; and
  - (c) calculate, and communicate to the investor(s) on a daily basis, a single price per participatory interest based on the segregated assets.
- (3) If the manager fails to meet the offer to repurchase participatory interests within 20 business days, it must tender assets to that investor for payment: Provided that the investor may consent to an extension of the 20 business days to enable the manager to liquidate the relevant assets.
- (4) The manager must forthwith notify the registrar –
  - (a) that the repurchasing has been suspended in accordance with the deed and this Notice; and
  - (b) of the reasons for the suspension and how it will be dealt with.
- (5) Where the manager has tendered assets in terms of condition 4(3)-

- (a) the manager must forthwith notify the trustee or custodian that the repurchase of participatory interests will be effected by the transfer of assets; and
  - (b) the trustee or custodian must, on receipt of such evidence of title as it may require –
    - (i) cancel the relevant participatory interests; and
    - (ii) transfer to an investor his or her proportionate share in the assets of the portfolio.
- (6) For the purposes of this condition –
- (a) “proportionate share” means –
    - (i) such part of the segregated assets in the portfolio as is proportionate to or as nearly as is practicably proportionate to the investor’s share in the assets; or
    - (ii) such selection from the assets of the portfolio as the trustee or custodian may, after consultation with the manager, decide is reasonable, having regard to the need to be fair both to the investor concerned and the continuing investors;
  - (b) “valid notice” means notice in writing or such other method that has been agreed upon between the manager and the investor.

### **Commencement**

**5.** This Notice comes into effect on 3 March 2003.



**NOTICE 574 OF 2003**  
**COLLECTIVE INVESTMENT SCHEMES**  
**CONTROL ACT, 2002**

**FOREIGN COUNTRIES IN WHICH COLLECTIVE INVESTMENT SCHEME IN**  
**SECURITIES OR IN PROPERTY MAY INVEST**

Under sections 45(a)(i) and 49 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine in the Schedule the ratings, by specific rating agencies, that a foreign country and an issuer of non-equity securities located in such foreign country, must have in order to enable collective investment schemes in securities or in property to invest in such foreign country.



**J VAN ROOYEN**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

1. A manager of a collective investment scheme in securities may invest the assets of a portfolio in non-equity securities from an issuer -
  - (a) located in a foreign country which has a foreign currency sovereign rating of "A3" or higher by Moody's Investors Service Limited, of "A-" or "A-1" or higher by Standard and Poor's or of "A-" or higher by Fitch Ratings Limited or Fitch Southern Africa (Pty) Limited ("Fitch"); and
  - (b) which has a long-term credit rating of "A-1" or "A-" or higher on the

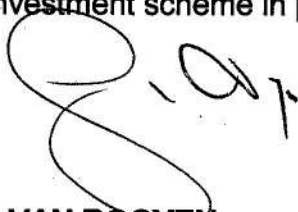
international scale by Moody's Investors Service Limited, Standard and Poor's or Fitch.

2. A manager of a collective investment scheme in property may invest the assets of a portfolio in immovable property, property shares or participatory interests in a collective investment scheme in property, in a foreign country having a foreign currency sovereign rating of "A3" or higher by Moody's Investors Service Limited, of "A-" or "A-1" or higher by Standard and Poor's or of "A-" or higher by Fitch.
3. This Notice comes into effect on 3 March 2003.

**NOTICE 575 OF 2003**  
**FINANCIAL SERVICES BOARD**  
**COLLECTIVE INVESTMENT SCHEMES**  
**CONTROL ACT, 2002**

**CAPITAL REQUIREMENTS WITH WHICH A MANAGER OF A COLLECTIVE  
INVESTMENT SCHEME IN PROPERTY MUST COMPLY**

Under section 88(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine in the Schedule the capital to be maintained by a manager of a collective investment scheme in property for the matters and risks set out in the Schedule.



**J VAN ROOYEN**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

1. The capital to be maintained by a manager of a collective investment scheme in securities must be calculated as follows:
  - (1) Eligible capital consisting of the total of -
    - (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);
    - (c) share premium account;
    - (d) non-distributable reserves;
    - (e) retained income -
      - (i) if audited, 100 per cent may be included;
      - (ii) if not audited, 50 per cent may be included;

- (f) loans (only if properly subordinated in favour of the manager);
  - (g) guarantees (only from a third party and only if exercisable on demand by the manager).
  - (h) **Total**
- (2) *Less adjustment for non-liquid assets consisting of -*
- (a) all liabilities, including loans not included under 1(1)(f);
  - (b) contingent liabilities;
  - (c) debtors and other current assets which are not convertible into cash within 14 business days;
  - (d) guarantees provided by the manager;
  - (e) amount of investment in other business;
  - (f) **Total.**
- (3) Adjusted liquid capital 1(1)(h) minus 1(2)(f).
- (4) *Less required capital to be maintained consisting of -*
- (a) a basic capital which must be the greater of an amount of R600 000 or a sum equivalent of 13 weeks' of 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(3); *plus*
  - (b) seed capital of R1 million to be invested by the manager in each portfolio administered by the manager: Provided that -
    - (i) the prescribed amount may be reduced by 10 per cent for every R1 000 000 invested by investors in a portfolio which investors may not be connected to but must be independent from the manager; and
    - (ii) if the sum of R1 000 000 has been reduced to nil in terms of subparagraph (i) and disinvestment from a portfolio causes the investment in the portfolio to reduce to less than R10 000 000, a manager need not reinvest any further sum in terms of this paragraph; *plus*
  - (c) position risk capital of -
    - (i) a sum equivalent to 25 per cent of the amount paid for

participatory interests in a portfolio and held by the manager for its own account; and

- (ii) a sum equivalent to three times the margin requirement for listed futures or option contracts traded on a licensed exchange.

(d) **Total.**

- (5) Liquid resources 1(3) minus 1(4)(d)).

- 2. (1) For the purposes of 1(4)(a) fixed cost amounts must be determined as follows:

<b>COMPUTATION OF FIXED EXPENDITURE BASE REQUIREMENT</b>			
<b>Expense Category</b>	<b>Treat as Fixed Cost Amounts</b>	<b>Treat as Trading Costs and "non-cash" items</b>	<b>Expenses per Income Statement</b>
Accounting and secretarial or other services, charges, etc.	X		
Auditors' remuneration	X		
Depreciation		X (a)	
Insurance	X		
Interest paid other than to Directors			
Bank overdraft	X	X (f)	
Other Finance	X	X (f)	
Charges and fees	X	X (b)	

Motor vehicle expenses	X		
Net loss on realisation of fixed assets		X	(a)
Office rental	X		
Machine and other leasing charges/rentals	X		
Printing and Stationery	X		
Salaries and wages	X	X	(c)
Telephone, telex and postages	X		
Other expenses	X	X	(d)+(g)
Salaries and Directors' Fees	X	X	(e)
Interest	X	X	(e)
			<b>TOTAL</b>

**Note:**

*In determining fixed cost 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 proportionate to a manager's service fee receivable may be excluded.*
- (c) *Non-contractual payments by way of profit shares or performance related bonuses must be excluded.*
- (d) *Annual listing fees must be included but 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 counter parties which is trade related may be excluded.*
- (g) *Loss arising from the conversion of foreign currency balances may be excluded.*

(2) The thirteen weeks' fixed expenditure must be calculated as the previous financial year's divided by four or if no financial year was completed, this amount must be budgeted for to the satisfaction of the registrar.

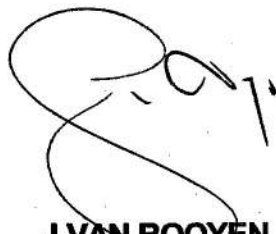
(3) The registrar may, where he has reason to believe that the size of the operations of a manager has been or is likely to be expanded during any financial period, call upon a manager to submit a budget based on the expanded operations. Where a manager has reason to believe that its operations in any 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 days after the end of such calendar month, in the form determined by the registrar.

4. This Notice comes into effect on 3 March 2003.

**NOTICE 576 OF 2003****FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****EXEMPTION OF COLLECTIVE INVESTMENT SCHEME IN PARTICIPATION  
BONDS FROM CERTAIN PROVISIONS OF COLLECTIVE INVESTMENT  
SCHEMES CONTROL ACT, 2002**

1. Under section 22(a) of the Collective Investment Schemes Control Act, 2002 (Act No.45 of 2002) ("the Act"), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby exempt a manager administering a collective investment scheme in participation bonds under the Act, from the application of the following provisions of the Act:
  - (a) The words "the calculation of the nett asset value and dealing prices" in section 3(a);
  - (b) the words "of whom more than 50 per cent are independent from the manager or its holding company or subsidiary of such holding company or fellow subsidiary of such manager" in paragraph (c) of the definition of "nominee company" in section 52(1);
  - (c) Part IX (sections 68 to 72);
  - (d) the words "and those of every portfolio of the collective investment scheme administered by the manager" in paragraph (a) of section 90(1);
  - (e) sections 90(4) and 100 if the manager is a member of The Association of Mortgage Scheme Managers in South Africa;
  - (f) sections 90(2); 93; 94; 95(1)(b), 97; 98; 104 and 105.
  
2. This Notice comes into effect on 3 March 2003.



**J VAN ROOYEN**  
**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**



**NOTICE 577 OF 2003**  
**FINANCIAL SERVICES BOARD**  
**COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**  
**RULES FOR THE ADMINISTRATION OF A COLLECTIVE INVESTMENT**  
**SCHEME IN PARTICIPATION BONDS**

Under section 52(2) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby make the rules, contained in the Schedule, for the administration of a collective investment scheme in participation bonds.



**J VAN ROOYEN**  
**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

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### **Definitions**

1. In these Rules "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 –

**"deposit"** means a deposit as defined in the Banks Act, 1990 (Act No. 94 of 1990), or in the Mutual Banks Act, 1990 (Act No. 124 of 1993);

**"non-reducible participation bond"** means a participation bond, other than a reducible participation bond, in terms whereof the conditions regarding the repayment of the capital and the payment of interest will be as agreed between the manager and the mortgagor from time to time;

**"reducible participation bond"** means –

- (a) a participation bond which provides for the redemption by regular annual payments or payments at shorter intervals of the capital amount advanced and of interest due on the amount outstanding under the bond; and
- (b) a former non-reducible participation bond which after the registration of the participation bond, has been converted by a written agreement between the mortgagee and the mortgagor, to a reducible participation bond as contemplated in paragraph (a);

**"scheme"** means a collective investment scheme in participation bonds as defined in the Act.

### **Valuation of property and screening of borrower**

2. Before granting a loan upon the security of a participation bond, the manager must -
  - (a) take into account the financial standing and integrity of the borrower; and
  - (b) arrange for the immovable property to be hypothecated under the participation bond, to be valued by a person who, in the opinion of the manager, is competent to make such a valuation and who must, in assessing the value of the property, take cognisance of the type of property, its locality, its state of repair, its saleability and its income producing potential.

### **Approval of loans**

3. The Board of Directors of the manager (who may delegate this function to a committee or other person) must approve all loans granted upon the security of a participation bond.

### **Maximum amount of bond**

4. Subject to rule 5, not more than seventy-five percent (75%) of the value, determined in terms of rule 2(b), of the immovable property mortgaged or to be mortgaged under a participation bond may be advanced by the manager upon the security of such bond if the bond is a reducible mortgage bond and not more than sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of such value if the bond is a non-reducible bond: Provided that should there be a pari passu ranking charge over the immovable property mortgaged or to be mortgaged under such participation bond, the maximum amounts as aforesaid which may be advanced by the manager, must be reduced by the maximum possible indebtedness secured under such pari passu ranking charge.

### **Maximum amount of bond: Collateral security**

5. Where the manager accepts collateral security for the debt secured under a participation bond in the form of a surety or a collateral mortgage bond ranking as first mortgages over immovable property and registered or endorsed as a participation bond, rule 4 applies to such collateral security and the manager may advance –
  - (a) in the case of a reducible participation bond, an amount not exceeding seventy-five percent (75%); or

- (b) in the case of a non-reducible participation bond, an amount not exceeding sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ), of the aggregate value of the immovable property mortgaged under such participation bond and the immovable property mortgaged under such surety or collateral mortgage bond, as the case may be: Provided that should there be a pari passu ranking charge over the immovable property mortgaged or to be mortgaged under such surety or collateral mortgage bond, the maximum amounts as aforesaid which may be advanced by the manager must be reduced by the maximum possible indebtedness secured under such pari passu ranking charges.

### **Maintenance and inspection of property**

6. The manager must ensure that every participation bond and every surety or collateral mortgage bond, accepted by the manager as collateral security, contains a condition that the mortgagor concerned must keep the mortgaged property in good order and repair and the manager must at least once in every three years inspect or cause every such property to be inspected in order to ensure that such condition is complied with.

### **Insurance of property**

7. The manager must take reasonable care to ensure that –
- (a) every immovable property mortgaged under a participation bond is adequately insured by the mortgagor concerned with a short term insurer authorised to carry on insurance business within the Republic of South Africa against the risks of fire, storm and tempest and such other risks and contingencies as the manager may from time to time consider necessary; and
- (b) the policy of insurance is ceded to the nominee company.

**Safe custody of documentation**

8. All documentation in respect of participation bonds and all other securities registered in the name of, ceded, pledged or delivered, to the nominee company for the purposes of the scheme, must, except when in the temporary custody of others for the purposes of the scheme, be kept in safe custody in the safes or strong-rooms of the manager or with a bank approved by the manager.

**Offer of participatory interests**

9. A manager may not offer, grant or hold participatory interests in a scheme, the aggregate value of which exceeds the balance of the principal debt owing under all participation bonds included in the scheme.

**Disclosure of information in application form**

10. An application to invest in a participatory interest by members of the public must be in writing and must contain the following information:
- (a) That money invested in the scheme must remain invested in such scheme for a period of not less than 5 years;
  - (b) that the participant's investment is secured by all the participation bonds included in the scheme and that the debt owing under such 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) that neither the manager nor the nominee company guarantees the repayment of the debt;
  - (d) that, upon the expiry of the 5-year period referred to in section 58 of

- the Act, the participant may withdraw his investment, subject to rule 22(2) and subject thereto that the participant has given the manager written notice;
- (e) the period of the written notice referred to in rule 22(2)(b), which period shall not be more than 3 months;
  - (f) that the participant may, within the 5 -year period referred to in section 58 of the Act, transfer, cede or encumber his participatory interest, subject to rule 22(1);
  - (g) that the interest payable by the mortgagors under participation bonds may fluctuate during the terms of such bonds and that interest payable to the participant may fluctuate;
  - (h) that 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;
  - (i) that the manager must furnish with each payment of interest, in writing or by electronic means, each participant, at intervals not more than 3 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;
  - (j) such further information that the registrar may require.

### **Receipt of funds for investment in a scheme**

- 11.** Any money accepted or received by the manager from any person for investment in a scheme, must be kept on deposit by the manager in the name of the nominee company on behalf of the person from whom it was accepted or received and such money must remain so invested until such person is granted a participatory interest in such scheme or until the money is repaid to such person: Provided that if a participatory interest is not

granted to such person within 60 days from the date of acceptance or receipt of such money by the manager, or within such further period as the registrar may allow in a particular case, the manager must forthwith refund such money to such person.

### **Funds received in reduction of principal debt**

- 12.** Any money received by the manager in reduction of the principal debt owing under a participation bond included in a scheme must be kept on deposit by the manager in the name of the nominee company on behalf of all the participants in the scheme until such money is –
- (a) re-invested by the manager in another participation bond or bonds included in such scheme; or
  - (b) repaid to the participants in such scheme: Provided that the said money may not be repaid to any participant, or his successor, until the expiry of the 5-year period referred to in section 58 of the Act.

### **Registers to be kept by manager**

- 13.** (1) The manager must keep Registers of Bonds and of Participatory Interests, which must include the following information:
- (a) Register of Bonds
    - (i) Particulars of all participation bonds included in the scheme;
    - (ii) the balances owing under the bonds from time to time;
    - (iii) the names of the mortgagors; and
    - (iv) a description of the properties so bonded.
  - (b) Register of Participatory Interests
    - (i) The names of participants in the scheme;
    - (ii) the extent of their participatory interests from time to time; and



- (iii) the date of each investment by such participants.
- (2) The said registers must be available for inspection by any person, free of charge, at the registered office of the manager during the normal business hours of the manager.

**Power of manager to exercise and enforce rights of participants under participation bonds**

14. The manager may at all times in its sole discretion and without reference to participants in a scheme exercise and enforce through and in the name of the nominee company, on behalf of the participants, any or all of their rights under any participation bond included in such scheme and, without affecting the generality of the foregoing, may –
- (a) grant any consent in any case where the consent of a mortgagee, a legal holder of a bond or a holder of a bond is required in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);
  - (b) institute any legal proceedings in respect of the participation bond and any security collateral thereto, in particular to recover any amount owing, and sell the immovable property mortgaged under the participation bond and under any security collateral thereto in execution of any judgement obtained;
  - (c) grant to the mortgagor under the participation bond extension of time to pay the mortgage debt or interest thereon;
  - (d) subject to rules 4 and 5, grant re-advances to the mortgagor under the participation bond or grant any additional advance upon the security of a pari passu participation bond, at such rate of interest and upon such terms of repayment as the manager may deem fit;
  - (e) agree to change the rate of interest payable under the participation bond and to amend any other conditions thereof; and

- (f) receive notice from or give notice to the mortgagor under the participation bond for the repayment of the whole or any portion of the debt secured under the participation bond.

#### **Rights of participants: Recovery of debts**

15. Despite rule 14 a participant may in respect of a participation bond instruct the manager to take all the necessary steps through and in the name of the nominee company to recover from the mortgagor such portion of the principal debt as is necessary to repay in full the participatory interest of such participant in such bond: Provided that a participant may only so instruct the manager if -
- (a) the mortgagor has failed to comply with the conditions of the bond; or
  - (b) subject to the terms and conditions of the bond, the participants in the scheme (excluding the manager) in which such participation bond is included, who hold a majority in value of the participatory interests in such scheme, have instructed the manager in writing to recover from the mortgagor such portion of the principal debt as is necessary to repay in full the participatory interests of all such participants.

#### **Rights of participants: Legal proceedings**

16. A participant may not take any action, legal or otherwise, in his or her own name to enforce the rights held by such participant in any participation bond included in a scheme.

#### **Duty of participants to refund legal costs not recovered**

17. Where any proceedings are instituted by or through and in the name of the nominee company in respect of a particular participation bond included in a

scheme, the participants in that scheme must refund to the nominee company, or the manager, as the case may be, pro rata any of the costs of such proceedings that may not be recovered by the nominee company or the manager from the mortgagor.

#### **Assets of nominee company not included in a scheme**

18. The rights of a participant in a particular participation bond included in a scheme are limited to his rights in respect of such bond and any collateral security relating thereto and do not extend to other property or securities registered in the name of the nominee company or to any other assets of the nominee company not included in such scheme.

#### **Distribution of funds received in reduction of principal debt**

19. (1) Subject to sub-rule (2), the manager shall not be obliged to distribute any payment made in reduction of the principal debt owing by a mortgagor under a particular participation bond amongst all the participants in the scheme in which such bond is included proportionately to the extent of their participatory interests therein, but may in its sole discretion allocate such payment to any one or more of the participants.
- (2) Any payment received by the manager as a result of legal proceedings taken against the mortgagor under a participation bond for the recovery of the amount due under such bond or which represents a dividend received from the trustee, executor, liquidator or judicial manager of the mortgagor, or is a payment received in terms of a compromise between the mortgagor and his creditors, is the property of the participants in the scheme in which such bond is included to the extent of their respective participatory interests and must be allocated by the manager to the said participants

proportionately to the extent of their participatory interests in such scheme.

- (3) The manager must, subject to rule 12, immediately credit the proceeds of any participation bond repaid, whether in whole or in part, and any payment allocated in terms of sub-rule (1) or (2) to the account of the participant entitled thereto and must thereafter deal with such payments in accordance with the instructions of such participant.

#### **Payment of interest to participants**

20. Every participation bond must provide that the mortgagor must pay interest on the principal debt secured by such bond to the manager as agreed upon by the manager and mortgagor. Such interest, less the manager's administration fee and such other fees and charges as imposed and determined by the manager from time to time must within 30 days after the date on which interest payments have been received from the mortgagor, be paid by the manager to participants.

#### **Statements of account**

21. The manager must furnish, in writing or by electronic means, each participant with a statement of account, at intervals of not more than three months, disclosing the amount of capital owing to the participant concerned and indicating how the net amount of interest paid has been calculated.

#### **Cession, transfer or encumbering of participatory interest and withdrawal of investment**

22. (1) A participant may transfer, cede or encumber part or the whole of his

or her participatory interest without the consent of any of the mortgagors concerned provided that –

- (a) the manager is not obliged to note such a cession, transfer or encumbrance unless informed in writing thereof and such fees and charges as may be determined by the manager have been paid by such participant or his or her successor;
  - (b) such cession, transfer or encumbrance is only enforceable against the manager if the manager has confirmed in writing that the cession, transfer or encumbrance has been noted and that the afore-mentioned fees and charges have been paid in full; and
  - (c) the manager may refuse to note such cession, transfer or encumbrance if such participatory interest is ceded or transferred to, or encumbered in favour of, more than one person with the result that the extent of any participatory interest held by any such person is less than the minimum investment determined by the manager from time to time.
- (2) A participant may, upon the expiry of the 5-year period referred to in section 58 of the Act, withdraw part or the whole of the funds invested by him or her in a scheme, if -
- (a) the manager has consented to such withdrawal: Provided that the manager may withhold such consent subject thereto that the manager furnishes reasons for withholding such consent;
  - (b) the participant has given the manager written notice, the period of which must be determined by the manager and disclosed in the application form, of his or her intention to withdraw such investment; and
  - (c) the participant has paid such fees and charges as the manager may impose.

**Insurance**

23. The manager must hold adequate insurance against losses resulting from the negligence, dishonesty or fraud of all persons (including valuers and directors) employed by the manager and the nominee company for the purpose of the scheme.

**Appointment of new manager**

24. The manager may, on not less than six months written notice to the registrar and all participants in the scheme, appoint a new manager, subject to –
- (a) the consent of the registrar and the participants holding a majority in value of the participatory interests in all participation bonds included in the scheme; and
  - (b) the new manager entering into an agreement with the nominee company in terms of paragraph (c) of the definition of "nominee company" in section 52 of the Act.

**Termination of scheme**

25. The manager may terminate the scheme at any time provided that not less than six months written notice must be given to all participants and to the registrar, specifying the date of such termination. From the date of such written notice the manager may not accept monies for investment in participation bonds.

**Duty of manager upon termination of scheme**

26. Upon the termination of the scheme, the manager must –

- (a) subject to their respective terms and conditions, call in all participation bonds included in such scheme and pay out participants to the extent of their participatory interest provided that with the consent of the registrar and all participants, the manager may cause the nominee company to cede any such bond, or all such bonds, to the participants to the extent of their respective rights to and interest in such bond or all such bonds; and
- (b) withdraw all deposits and pay out the money so withdrawn to the participants entitled thereto.

**Amalgamation and cession of rights or take-over of nominee company**

- 27.** (1) Despite these rules the manager may after having obtained the written consent of the registrar authorise the nominee company to -
- (a) amalgamate with; or
  - (b) cede any rights of the said company under any participation bond registered in its name to; or
  - (c) take over any rights under any participation bond from, any other nominee company, which has been approved by the registrar.
- (2) The manager and the nominee companies which are parties to an amalgamation, cession, transfer or take-over in terms of sub-rule (1) must ensure that -
- (a) any surety mortgage bond, collateral security or any cash pertaining to a participation bond which is ceded or transferred, is ceded or transferred with the participation bond concerned to the nominee company taking over the rights under such participation bond in order to vest in such nominee company the rights and obligations referred to in the Act; and

- (b) in the case of an amalgamation, or in the case of a cession of the rights under all the participation bonds included in a scheme, any cash is transferred to the nominee company taking over the rights under such participation bonds, in order to vest in such nominee company the rights and obligations referred to in the Act.

### Notices

28. (1) Any notice, statement of account or other document required to be served on a participant shall be deemed to have been duly served if sent by post to or delivered at his or her address as stated on the application form, or at such other address as notified in writing by the participant to the manager from time to time, and be deemed to have been served four days after the same was posted or delivered. In proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was posted. Any notice sent to a participant by means of a facsimile shall be deemed to have been served on the date of transmission. If so requested by a participant any notice may be sent electronically and shall be deemed to have been served on the same day it was sent.
- (2) Any notice or document sent by post to or delivered at the participant's address referred to in subrule (1) shall, notwithstanding that such participant is deceased, insolvent, or under any other legal disability, and whether or not the manager has notice of his or her death, insolvency or other disability, be deemed to have been duly served, and such service shall be deemed a sufficient service on all persons who have an interest in the participatory interests of the participant concerned.
- (3) The accidental omission to give notice to a participant, or the non-



receipt of any notice by any participant, does not give rise to any claim by such participant against the scheme or the manager, and does not invalidate anything done pursuant to or in terms of such notice.

### **Electronic and telephonic transacting**

- 29.** (1) The manager may allow for transacting via electronic and telephonic means, subject to subrules (2) and (3) and the consent of the participant or a prospective participant.
- (2) If the participant consents to electronic or telephonic transacting, the participant must be fully apprised in the initial application form used for electronic and telephonic transacting and in all application forms posted on the manager's website, of the conditions of electronic and telephonic transacting.
- (3) Such application forms must at least provide for -
- (a) the procedure to effect electronic or telephonic transacting and the costs involved;
  - (b) the procedure for registration of an electronic or telephonic transaction;
  - (c) the legal implications of such a transaction for the participant;
  - (d) all disclaimers by the manager;
  - (e) any limitation of liability afforded to the manager;
  - (f) the security risks and risk of interception inherent to electronic and telephonic transacting;
  - (g) related precautionary or security measures;
  - (h) confirmation to participants that telephone calls are recorded and that such records are retained for a period of five years;
  - (i) confirmation by the manager that its website complies with relevant legislative requirements applicable in the Republic;

- (j) a warning that taxation of other jurisdictions are not taken into account;
  - (k) a warning that information contained on the website does not constitute advice.
- (4) The terms and conditions under which electronic or telephonic transacting is done must be displayed on screen or verbally communicated, as the case may be.

### **Rules are binding**

- 30.** These rules are binding on the manager, the nominee company, participants and their successors in title.

**NOTICE 578 OF 2003**  
**FINANCIAL SERVICES BOARD**  
**COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**

**CAPITAL REQUIREMENTS WITH WHICH A MANAGER OF A COLLECTIVE  
INVESTMENT SCHEME IN PARTICIPATION BONDS MUST COMPLY**

Under section 88(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine in the Schedule the capital to be maintained by a manager of a collective investment scheme in participation bonds for the matters and risks set out in the Schedule.



**J VAN ROOYEN**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

1. The capital to be maintained by a manager of a collective investment scheme in participation bonds must be calculated as follows:
  - (1) Eligible capital consisting of the total of -
    - (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);
    - (c) share premium account;
    - (d) non-distributable reserves;
    - (e) retained income -

- (ii) if not audited, 50 per cent may be included;
  - (f) loans (only if properly subordinated in favour of the manager);
  - (g) guarantees (only from a third party and only if exercisable on demand by the manager).
  - (h) **Total**
- (2) Less adjustment for non-liquid assets consisting of -
- (a) contingent liabilities;
  - (b) amount of investment in other business;
  - (c) **Total**.
- (3) Adjusted liquid capital 1(1)(h) minus 1(2)(c).
- (4) Less required capital to be maintained consisting of -
- (a) a basic capital which must be the greater of an amount of R600 000 or a sum equivalent of 13 weeks' of 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(3); *plus*
  - (b) seed capital of R1 million to be invested by the manager in each portfolio administered by the manager: Provided that -
    - (i) the prescribed amount may be reduced by 10 per cent for every R1 000 000 invested by investors in a portfolio which investors may not be connected to but must be independent from the manager; and
    - (ii) if the sum of R1 000 000 has been reduced to nil in terms of subparagraph (i) and disinvestment from a portfolio causes the investment in the portfolio to reduce to less than R10 000 000, a manager need not reinvest any further sum in terms of this paragraph; *plus*
  - (c) position risk capital of a sum equivalent to -
    - (i) 10 per cent of the amount paid for participatory interests in a scheme and held by the manager for its own account, calculated on the amount so paid which exceeds the last three month's investment inflow into the scheme; or

(ii) 1 per cent of the amount paid for participatory interests in a scheme and held by the manager for its own account, calculated on the amount so paid which does not exceed the last three month's investment inflow into the scheme;

(d) **Total.**

(5) Liquid resources 1(3) minus 1(4)(d)).

2. (1) For the purposes of 1(4)(a) fixed cost amounts must be determined as follows:

<b>COMPUTATION OF FIXED EXPENDITURE BASE REQUIREMENT</b>			
<b>Expense Category</b>	<b>Treat as Fixed Cost Amounts</b>	<b>Treat as Trading Costs and "non-cash" items</b>	<b>Expenses per Income Statement</b>
Accounting and secretarial or other services, charges, etc.	X		
Auditors' remuneration	X		
Depreciation		X (a)	
Insurance	X		
Interest paid other than to Directors			
Bank overdraft	X	X (f)	
Other Finance	X	X (f)	
Charges and fees	X	X (b)	
Motor vehicle expenses	X		

Net loss on realisation of fixed assets		X	(a)
Office rental	X		
Machine and other leasing charges/rentals	X		
Printing and Stationery	X		
Salaries and wages	X	X	(c)
Telephone, telex and postages	X		
Other expenses	X	X	(d)+(g)
Salaries and Directors' Fees	X	X	(e)
Interest	X	X	(e)
			<b>TOTAL</b>

**Note:**

*In determining fixed cost 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.*
- (c) *Non-contractual payments by way of profit shares 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 counter parties which is trade related may be excluded.*
- (g) *Loss arising from the conversion of foreign currency balances may be excluded.*

- (2) The thirteen weeks' fixed expenditure must be calculated as the previous financial year's divided by four or if no financial year was completed, this amount must be budgeted for to the satisfaction of the registrar.
- (3) 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, call upon 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 days after the end of such calendar month, in the form determined by the registrar.
4. This Notice comes into effect on 3 March 2003.

**NOTICE 579 OF 2003**  
**FINANCIAL SERVICES BOARD**  
**COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**

**CONDITIONS IN RESPECT OF A COLLECTIVE INVESTMENT SCHEME  
CARRIED ON OUTSIDE BUT PROMOTED IN THE REPUBLIC**

Under section 65(1)(c) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Jeffrey van Rooyen, Registrar of Collective Investment Schemes, hereby determine the Conditions in the Schedule, with which a collective investment scheme carried on outside but promoted in the Republic, must comply.



**J VAN ROOYEN**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

**Definitions**

1. In these Conditions "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 –

"**associate**", in relation to a juristic person –

- (a) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
- (b) which is not a company, means another juristic person which would have



- been a subsidiary of the first-mentioned juristic person -
- (i) had such first-mentioned juristic person been a company; or
  - (ii) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
- (c) means any person in accordance with whose directions or instructions the board of directors or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;

**“foreign country”** means any country other than the Republic in which a scheme is authorised to conduct business;

**“operator”** includes any person or entity participating in the administration of a scheme;

**“representative agreement”** means an agreement between the manager or operator of a scheme and any company registered under the Act as a manager of a collective investment scheme in securities in terms of which agreement the manager or operator of the scheme undertakes to comply with the Act and the conditions set out in this Schedule;

**“representative office”** means a company incorporated under the Companies Act, 1973 (Act No. 61 of 1973);

**“scheme”** means a collective investment scheme authorised to conduct business in a foreign country.

### **Representative agreement or office**

2. If the manager or operator of a scheme applies for approval in terms of section 65 of the Act, such manager or operator (“the applicant”) must enter into a representative agreement or maintain a representative office.

### **Regulatory environment**

3. The foreign country in which a scheme referred to in condition 2 is carried on must have a regulatory environment at least of the same standing as the regulatory environment of the Republic.

### **Capital requirement**

4. A representative office must have and maintain a paid-up share capital and reserves of not less than R2 000 000, which at all times must be invested in assets which are capable of being liquidated within seven days: Provided that the registrar may exempt a representative office from compliance with this condition for such a period, not exceeding six months, as he or she may determine.

### **Application for approval**

5. An application for approval in terms of section 65 of the Act, must be accompanied by the following:
  - (a) The name of the foreign country in which a scheme was originally authorised to conduct business and a letter of confirmation by the supervisory body which granted such authorisation to the effect that the applicant is -
    - (i) in the opinion of the supervisory body fit and proper to operate a scheme;
    - (ii) actively conducting a scheme in that country; and
    - (iii) permitted to promote its scheme in the Republic.
  - (b) If the applicant has entered into a representative agreement, a copy of such agreement.
  - (c) If the applicant has established a representative office, the name, physical and registered addresses, a copy of the certificate of incorporation and of the memorandum and articles of association and

details of the shareholders, of the representative office and the name of the officer appointed for the purposes of section 176 of the Companies Act, 1973, in respect of the representative office.

- (d) Copies of any founding statement, promoter's agreement, prospectus or application form that will be used in the promotion of the scheme as well as the most recent audited annual financial statements of the scheme.
- (e)
  - (i) A list relating to differences and similarities between the scheme and a local collective investment scheme registered under the Act; and
  - (ii) a questionnaire relating to the scheme, completed on forms that may be obtained from the registrar before the lodging of an application.
- (f) Confirmation by the auditor of the scheme that the representative office complies with the requirement in respect of paid-up share capital and reserves.
- (g) Such further information that the registrar may require.

### **Risk of Investment**

- 6. The registrar may refuse to approve a scheme in terms of section 65 of the Act -
  - (a) unless the applicant satisfies the registrar that the investments that a scheme proposes to offer for sale in the Republic have a risk profile which is not significantly higher when compared to the risk profile of similar investments in participatory interests offered for sale in the Republic by managers registered under the Act;
  - (b) if the scheme invests in markets not similar to those qualifying for investment by local collective investment schemes registered under the Act;
  - (c) unless not less than 90 per cent of the interest-bearing instruments included in a fund have a credit rating of "investment grade" by Moody's Investors Service Limited or Standard and Poor's;
  - (d) unless the borrowing of money is limited to 10 per cent of the value of a

fund and such borrowing is only permitted for the purpose of the redemption of participatory interests;

- (e) if the inclusion in a fund of unlisted derivative instruments or uncovered exposures is allowed;
- (f) if gearing (leveraging) by a fund is permitted; or
- (g) if investments are offered for sale which may not in terms of the Act be offered for sale by a manager registered under the Act.

### **Change of scheme**

7. If a scheme, subsequent to its approval in terms of section 65 of the Act, undergoes a change in the scheme that it promotes or the kind of investments that it solicits, it must obtain the approval of the registrar for such change against payment of the prescribed fee.

### **Advertising and disclosure of information in marketing material**

8. A scheme approved in terms of section 65 of the Act must comply with the Code of Advertising for Unit Trusts, which has been adopted by The Association of Unit Trusts of South Africa and which forms part of the Code of Advertising Practice as administered by the Advertising Standards Authority of South Africa.

### **Disclosure of information**

9. A scheme approved in terms of section 65 of the Act must disclose the following minimum information in any document in terms of which an investment is offered to members of the public by such scheme:
- (a) Details of the structure of the scheme, (that is whether founded as a trust, a company, a mutual fund or any other type of entity), including the stated objectives and the investment policy of the scheme and the ownership to be acquired by investors in relation to such scheme.
  - (b) The primary risks related to investment in the scheme including currency

rate risks.

- (c) The borrowing powers of the scheme and whether its assets may be encumbered in any way or whether it may engage in scrip lending.
- (d) Whether the scheme employs a third party that is not an associate of any other party involved in the scheme, to act as trustee or custodian and the manner in which assets are safeguarded and regulatory compliance by the scheme is monitored.
- (e) The charges that are levied on investors and the quantum and basis of calculation thereof.
- (f) If any investment is offered by the scheme and the regulatory requirements applicable to such scheme differ from those applicable in the Republic, full details of such differences must be disclosed in any price list, advertisement, marketing material, application form or similar document, including the fact that the scheme has to comply with different requirements in respect of -
  - (i) investment of its own resources in the scheme;
  - (ii) any limit imposed on the scheme as regards investment in individual underlying assets;
  - (iii) investment in derivative instruments;
  - (iv) the expenditure that may be charged against or deductions that may be made from the income of the scheme; and
  - (v) taxation of the scheme.
- (g) The policy of the scheme regarding investment in listed instruments or in unlisted instruments as well as the manner in which the market value of unlisted instruments is determined.
- (h) The terms and conditions on which the scheme repurchases participatory interests and the manner in which selling and repurchase prices are calculated.
- (i) The intervals at which pricing of participatory interests for the purpose of sales and repurchases are done.
- (j) The name of the auditor of the scheme.
- (k) The nature and frequency of reports that are furnished to investors and

the availability of other reports to investors.

- (l) The manner in which a distribution to the investor and any capital gain or loss accruing to the investor will be taxed in the country of origin of the scheme and in the Republic.

### **Compliance**

10. The auditor of a representative office must certify annually to the registrar that the requirement in respect of paid-up share capital and reserves has been complied with.

### **Cancellation of approval**

11. If for any reason -

- (a) any representative agreement is cancelled, the manager which is a party to that agreement, must notify the registrar immediately in writing and cease to promote any investment offered by the scheme concerned; or
- (b) the operation of a representative office is discontinued, the person appointed for the purposes of section 176 of the Companies Act, 1973, must notify the Registrar immediately in writing thereof.

### **Withdrawal of approval**

12. (1) If the registrar receives any notification in terms of condition 11, he or she may withdraw the approval of the scheme concerned.
- (2) The registrar may at any time withdraw or review any approval in terms of section 65(1) of the Act.

### **Levy**

13. A scheme approved in terms of section 65(1) of the Act must pay an annual levy to the Financial Services Board in terms of section 65(2) of the Act.

**Penalties**

14. (1) A person who contravenes or fails to comply with any provision of these Conditions, commits an offence.
- (2) In respect of such offence a penalty, not exceeding the penalty prescribed in section 18(3)(b) of the Act, may be imposed.

**Commencement**

15. This Notice comes into effect on 3 March 2003.
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