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GENERAL NOTICES

**NOTICE 2071 OF 2003
FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****DETERMINATION OF SECURITIES, CLASSES OF SECURITIES, ASSETS OR
CLASSES OF ASSETS THAT MAY BE INCLUDED IN A PORTFOLIO OF A
COLLECTIVE INVESTMENT SCHEME IN SECURITIES AND THE MANNER IN
WHICH AND LIMITS AND CONDITIONS SUBJECT TO WHICH SECURITIES OR
ASSETS 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, classes of securities, assets or classes of assets may be included;
- (b) the securities, classes securities, assets or classes of assets that may be so included; and
- (c) the manner in which and the limits and conditions subject to which securities, classes of securities, assets or classes of assets may be so included.

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

SCHEDULE

Definition

1. In this Schedule –

“assets in liquid form” means -

- (a) any amount of cash consisting of Reserve Bank notes and subsidiary coin;
- (b) any instrument determined in Chapters III and IV; or
- (c) participatory interests in money market portfolios referred to in Chapters III and IV,

and which is capable of being converted into cash within seven days;

“guarantee” means a guarantee covering both full and timely debt service and full and timely redemption of debt;

“rating” means a credit rating, conducted at the request of the issuer of an instrument, by a rating agency with unrestricted access to all confidential and other sensitive information, including management interaction, and which rating must be publicly disclosed;

“rating agency” means –

- (a) Standard & Poor's (S&P);
- (b) Moody's Investor Services Limited or Moody's Investor Services South Africa (Pty) Limited (Moody's);
- (c) Fitch Ratings Limited or Fitch Southern Africa (Pty) Limited (Fitch Ratings);
- (d) CA-Ratings; and
- (e) Global Credit Rating Co. (GCR); and

“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. (1) For the purposes of this Chapter -
- “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;
 - (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; or
 - (c) any asset referred to in the definition of “assets in liquid form” in paragraph 1.
- (2) This Chapter applies to a portfolio that consists of securities referred to in the definition of “securities” in paragraph 2(1) 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), (10), (11) and (12), no manager may include in a 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 Headline, Economic Group or Specialist 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 consists, subject to paragraphs 3(4) and 3(10), 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 an exchange security, 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 or a foreign collective investment scheme to a maximum of 20 per cent of the market value of the first-mentioned portfolio: Provided that if the underlying portfolio is a portfolio of a foreign collective investment scheme, the following criteria apply: -
- (i) At least 90 per cent of the interest-bearing instruments included in the underlying portfolio must be assigned a credit rating of "investment grade" on the national rating scale by a rating agency;
 - (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 has 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 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 collective investment scheme must ensure that a portfolio's investment policy is suitably amended to empower it to include participatory interests in such portfolio.
- (7) The manager of a collective investment scheme may only include in a portfolio 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 or in another fund of funds.
- (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 a 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 35 percent of the market value of all the assets comprised in the portfolio.
- (12) A manager may not include in a precious metals and minerals 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, FTSE/JSE Platinum or FTSE/JSE Diamond Index, subject to a maximum of 60 per cent of the market value of all the assets comprised in that 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;

“financial instrument” means –

- (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

“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.
- (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.

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 is assigned 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 applies.

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 or national rating.

| Rating Band as per Table in Annexure B | Inclusion Limit per Instrument and Issuer as a Percentage of all Assets Comprising the Portfolio |
|--|--|
| 1 | 30% |
| 2 | 20% |
| 3 | 5% |

Note: The short term instrument rating applies. In the absence of a short term instrument rating, the short term institutional rating applies and in the absence of a short term institutional rating the long term instrument rating applies.

- (2) The total investment exposure to –
 - (a) any single issuer may not exceed the percentage applicable to the short term institutional rating assigned to that issuer in the corresponding rating band, and
 - (b) all issuers with ratings in rating band 3 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: Provided that if the manager and the trustee or custodian are satisfied that such action would be to the detriment of a particular portfolio, the manager must, within 7 days of the date of becoming aware of the lower rating, submit a detailed plan for approval to the registrar setting out measures to rectify the position.
- (4) A manager may invest up to 30 percent of the value of the underlying assets comprising a portfolio in all 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, and not rated but carrying an explicit guarantee by the Government of the Republic.

- (5) A manager may invest up to 10 percent of the value of the underlying securities comprising a portfolio in all instruments issued by a local subsidiary of a foreign entity or concern and that foreign entity or concern guarantees that instrument, and where that foreign entity or concern is assigned a rating on the international foreign currency rating scale of "A", or equivalent, or better.
- (6) A manager may invest up to 10 percent of the value of the underlying securities comprising a portfolio in all instruments issued by an entity or concern and which entity or concern is assigned a rating on the international foreign currency rating scale of "A", or equivalent, or better.

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 a rating agency on the international rating scale referred to in Annexure B.

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:

| Rating Band as per Table in Annexure B | Inclusion Limit per Instrument and Issuer as a Percentage of all Assets Comprising the Portfolio |
|--|--|
| 1 | 30% |
| 2 | 20% |
| 3 | 5% |

Note: The short term instrument rating applies. In the absence of a short term instrument rating, the short term institutional rating applies and in the absence of a short term institutional rating the long term instrument rating applies.

- (2) The total investment exposure to –
 - (a) any single issuer may not exceed the percentage applicable to the short term institutional rating assigned to that issuer in the corresponding rating band, and
 - (b) all issuers with ratings determined in rating band 3 of the table in paragraph 18(1) may not exceed 20 per cent, of the market value of the money market portfolio.
- (3) 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: Provided that if a manager and the trustee or custodian are satisfied that such action would be to the detriment of a particular portfolio, the manager must, within 7 days of the date of becoming aware of the lower rating, submit a detailed plan for approval to the registrar setting out measures to rectify the position.

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 investment schemes in property and in 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 or another 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) If a manager of a fund of funds includes in such fund participatory interests of the portfolios referred to in subparagraphs (a) and (c) of a foreign collective investment scheme ("underlying portfolios"), it must satisfy the registrar that such participatory interests 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 is assigned a credit rating of "investment grade" on the national rating scale by a rating agency;
 - (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 feeder fund 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 feeder fund or another fund of funds.
 - (b) If a manager contravenes the proviso to paragraph 24(a) 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.
 - (c) If a manager of a feeder fund includes in such fund participatory interests of the portfolio referred to in paragraph 23 of a foreign collective investment scheme ("underlying portfolio"), it must satisfy the registrar that such participatory interests have 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 is assigned a credit rating of "investment grade" on the national rating scale by a rating agency;
- (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 in a portfolio –
 - (i) 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, and
 - (ii) instruments guaranteed by the Government of the Republic or issued or guaranteed by the government of a foreign country which is assigned a foreign currency rating sovereign rating of at least the same as the Republic, to the extent of up to 30 per cent of the value of the portfolio.
- (b) A manager may not include in a portfolio –
 - (i) subject to paragraph 25(f), 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 and IV; 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 or national rating:

| Rating Band as per Table in Annexure B | Inclusion Limit per Instrument and Issuer as a Percentage of all Assets Comprising the Portfolio |
|--|--|
| 1 | 30% |
| 2 | 20% |
| 3 | 10% |
| 4 | 5% |

Note: (1) For instruments with an initial maturity of 12 months or less the short term instrument rating applies. In the absence of a short term instrument rating, the short term institutional rating applies and in the absence of a short term institutional rating the long term institutional rating applies.

(2) For instruments with an initial maturity of more than 12 months the long term instrument rating applies. In the absence of a long term instrument rating, the long term institutional rating applies.

- (c) The total investment exposure to –
- (i) a single issuer may not exceed the percentage applicable to the short term institutional rating assigned to that issuer in the corresponding rating band, and
 - (ii) all issuers with ratings determined in row 4 of the table in paragraph 25(b) may not exceed 20 per cent, of the market value of the portfolio.
- (d) A manager may invest up to 30 percent of the value of the underlying assets comprising a portfolio in all 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, and not rated but carrying a guarantee by the Government of the Republic.

- (e) A manager may invest up to 10 percent of the value of the underlying securities comprising a portfolio in all instruments issued by a local subsidiary of a foreign entity or concern and that foreign entity or concern guarantees that instrument, and where that foreign entity or concern is assigned a rating on the international foreign currency rating scale of "A", or equivalent, or better.
- (f) A manager may invest up to 10 percent of the value of the underlying securities comprising a portfolio in all instruments issued by an entity or concern and which entity or concern is assigned a rating on the international foreign currency rating scale of "A", or equivalent, or better.
- (g) The limits prescribed in paragraphs 25(a)(ii), 25(b), 25(c), 25(d), 25(e) and 25(f), may be exceeded only if the excess is due to appreciation or depreciation of the value of the instruments comprised in a portfolio.
- (h) 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. (1) Notice 570 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
- (2) This Notice comes into effect on 1 August 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

ANNEXURE B

RATING SCALES OF RATING AGENCIES

| Chapter III & IV Rating Band | S&P | | Moody's | | Fitch Ratings | | CA-Ratings | | GCR | | Chapter VII Rating Band |
|------------------------------|------------------|-------------------|------------------|--------------------------|------------------|-------------------|------------------|-------------------|------------------|-------------------|-------------------------|
| | Long Term Rating | Short Term Rating | Long Term Rating | Short Term Rating | Long Term Rating | Short Term Rating | Long Term Rating | Short Term Rating | Long Term Rating | Short Term Rating | |
| 1 | AAA | A-1+ | Aaa.za | Prime 1.za | AAAzaf | F1+zaf | zaAAA | zaA1+ | AAA | A1+ | 1 |
| | AA+ | A-1+ | Aa1.za | Prime 1.za | AA+zaf | F1+zaf | zaAA+ | zaA1+ | AA+ | A1+ | 2 |
| | AA | A-1+ | Aa2.za | Prime 1.za | AAzaf | F1+zaf | zaAA | zaA1+ | AA | A1+ | |
| | AA- | A-1+ | Aa3.za | Prime 1.za | AA-zaf | F1+zaf | zaAA- | zaA1+ | AA- | A1 | |
| 2 | A+ | A-1 | A1.za | Prime 1.za | A+zaf | F1zaf | zaA+ | zaA1 | A+ | A1 | 3 |
| | A | A-1 | A2.za | Prime 1.za or Prime 2.za | Azaf | F1zaf | zaA | zaA1 | A | A1 | |
| 3 | A- | A-2 | A3.za | Prime 1.za or Prime 2.za | A-zaf | F2zaf | zaA- | zaA2 | A- | A1- | |
| | BBB+ | A-2 | Baa1.za | Prime 2.za | BBB+zaf | F2zaf | zaBBB+ | zaA2 | BBB+ | A2 | 4 |
| | BBB | A-2 | Baa2.za | Prime 2.za or Prime 3.za | BBBzaf | F2zaf | zaBBB | zaA2 | BBB | A2 | |

Note:

1. The above table refers to the domestic or national rating scales.
2. In applying the global or international rating scales, the suffix ".za" in the case of Moody's, the suffix "-zaf" in the case of Fitch Ratings and the prefix "za" in the case of CA-Ratings must be disregarded. GCR does not assign global or international ratings.
3. In the instance of an instrument, entity or concern being assigned a rating by two or more rating agencies, the lowest rating applies.
4. The ratings in the above table are subject to the provisions determined in the Notice published under section 45(a)(i) of the Act.

NOTICE 2072 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.



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 other creditors);
 - (g) guarantees (only from a third party and only if exercisable on demand by the manager).
 - (h) **Total**
- (2) **Less adjustments for impaired capital consisting of –**
- (a) intangible assets;
 - (b) guarantees provided by the manager;
 - (c) contingent liabilities.
 - (d) **Total**
- (3) **Available capital resources [1(1)(h) minus 1(2)(d)]**
- (4) **Less adjustments for non-liquid assets consisting of –**
- (a) fixed assets, net of related secured loans;
 - (b) investment in other businesses;
 - (c) debtors and other current assets which are not convertible into cash within 14 business days.
 - (d) **Total**
- (5) **Adjusted liquid capital [1(3) minus 1(4)(d)]**
- (6) **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 cost 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 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.
- (d) **Total.**
- (7) **Liquid resources [1(5) minus 1(6)(d)].**
2. (1) For the purposes of 1(6)(a) fixed cost amounts must be determined as follows:

| COMPUTATION OF FIXED COST BASE REQUIREMENT | | | |
|---|--|--|--|
| Expense Category | Treat as Fixed Cost Amounts | Treat as Trading Costs and "non-cash" items | Expenses per Income Statement |
| 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) |
| | | | TOTAL |

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 cost 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 business days after the end of such calendar month, in the form determined by the registrar.
4. (1) Notice 572 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
- (2) This Notice comes into effect on 1 August 2003.

**NOTICE 2073 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.



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 located in a foreign country, which has a foreign currency sovereign rating, and the issuer has a long-term credit rating on the international foreign currency rating scale, of "Baa2" or higher by Moody's Investors Service Limited, or "BBB" or higher by Standard and Poor's, by Fitch Ratings Limited or Fitch Southern Africa (Pty) Limited ("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 , of "Baa2" or higher by Moody's Investors Service Limited, or "BBB" or higher by Standard and Poor's or by Fitch Ratings Limited or Fitch Southern Africa (Pty) Limited ("Fitch").

3.
 - (1) Notice 574 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
 - (2) This Notice comes into effect on 1 August 2003.

NOTICE 2074 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.



REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

SCHEDULE

1. The capital to be maintained by a manager of a collective investment scheme in property 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 other creditors);
 - (g) guarantees (only from a third party and only if exercisable on demand by the manager).
 - (h) **Total**
- (2) **Less adjustments for impaired capital consisting of –**
- (a) intangible assets;
 - (b) guarantees provided by the manager;
 - (c) contingent liabilities.
 - (d) **Total**
- (3) **Available capital resources [1(1)(h) minus 1(2)(d)]**
- (4) **Less adjustments for non-liquid assets consisting of –**
- (a) fixed assets, net of related secured loans;
 - (b) investment in other businesses;
 - (c) debtors and other current assets which are not convertible into cash within 14 business days.
 - (d) **Total**
- (5) **Adjusted liquid capital [1(3) minus 1(4)(d)]**
- (6) **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 cost 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 25 per cent of the amount paid for participatory interests in a portfolio and held by the manager for its own account.
- (d) **Total.**
- (7) **Liquid resources [1(5) minus 1(6)(d)].**
2. (1) For the purposes of 1(6)(a) fixed cost amounts must be determined as follows:

| COMPUTATION OF FIXED COST BASE REQUIREMENT | | | |
|---|------------------------------------|--|--------------------------------------|
| Expense Category | Treat as Fixed Cost Amounts | Treat as Trading Costs and "non-cash" items | Expenses per Income Statement |
| 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) |
| | | | TOTAL |

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.*

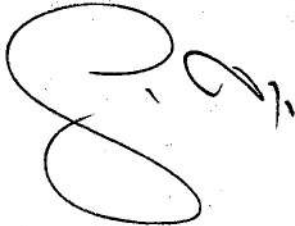
- (c) *Non-contractual payments by way of profit shares or performance related bonuses must be excluded.*
 - (d) *Annual listing fees must be included but exceptional or extraordinary items may be excluded.*
 - (e) *Payments to directors must only be included to the extent that they are made irrespective 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 cost 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 business days after the end of such calendar month, in the form determined by the registrar.
4. (1) Notice 575 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
- (2) This Notice comes into effect on 1 August 2003.

**NOTICE 2075 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.



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 –
 - (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 other creditors);
 - (g) guarantees (only from a third party and only if exercisable on demand by the manager).
 - (h) **Total**
- (2) **Less adjustments for impaired capital consisting of –**
- (a) intangible assets;
 - (b) contingent liabilities.
 - (c) **Total**
- (3) **Available capital resources [1(1)(h) minus 1(2)(c)]**
- (4) **Less adjustments for non-liquid assets consisting of –**
- (a) fixed assets, net of related secured loans;
 - (b) investment in other businesses.
 - (c) **Total**
- (5) **Adjusted liquid capital [1(3) minus 1(4)(c)]**
- (6) **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 cost 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; and
 - (ii) one 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.**

(7) **Liquid resources [1(5) minus 1(6)(d)].**

2. (1) For the purposes of 1(6)(a) fixed cost amounts must be determined as follows:

| COMPUTATION OF FIXED COST BASE REQUIREMENT | | | |
|---|------------------------------------|--|--------------------------------------|
| Expense Category | Treat as Fixed Cost Amounts | Treat as Trading Costs and "non-cash" items | Expenses per Income Statement |
| 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) |
| | | | TOTAL |

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 cost 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 business days after the end of such calendar month, in the form determined by the registrar.
4. (1) Notice 578 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
- (2) This Notice comes into effect on 1 August 2003.

NOTICE 2076 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.



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, Standard and Poor's or Fitch Ratings Limited;
 - (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. (1) Notice 579 of 2003, as published in *Government Gazette* No. 24984 of 28 February 2003, is hereby repealed.
- (2) This Notice comes into effect on 1 August 2003.
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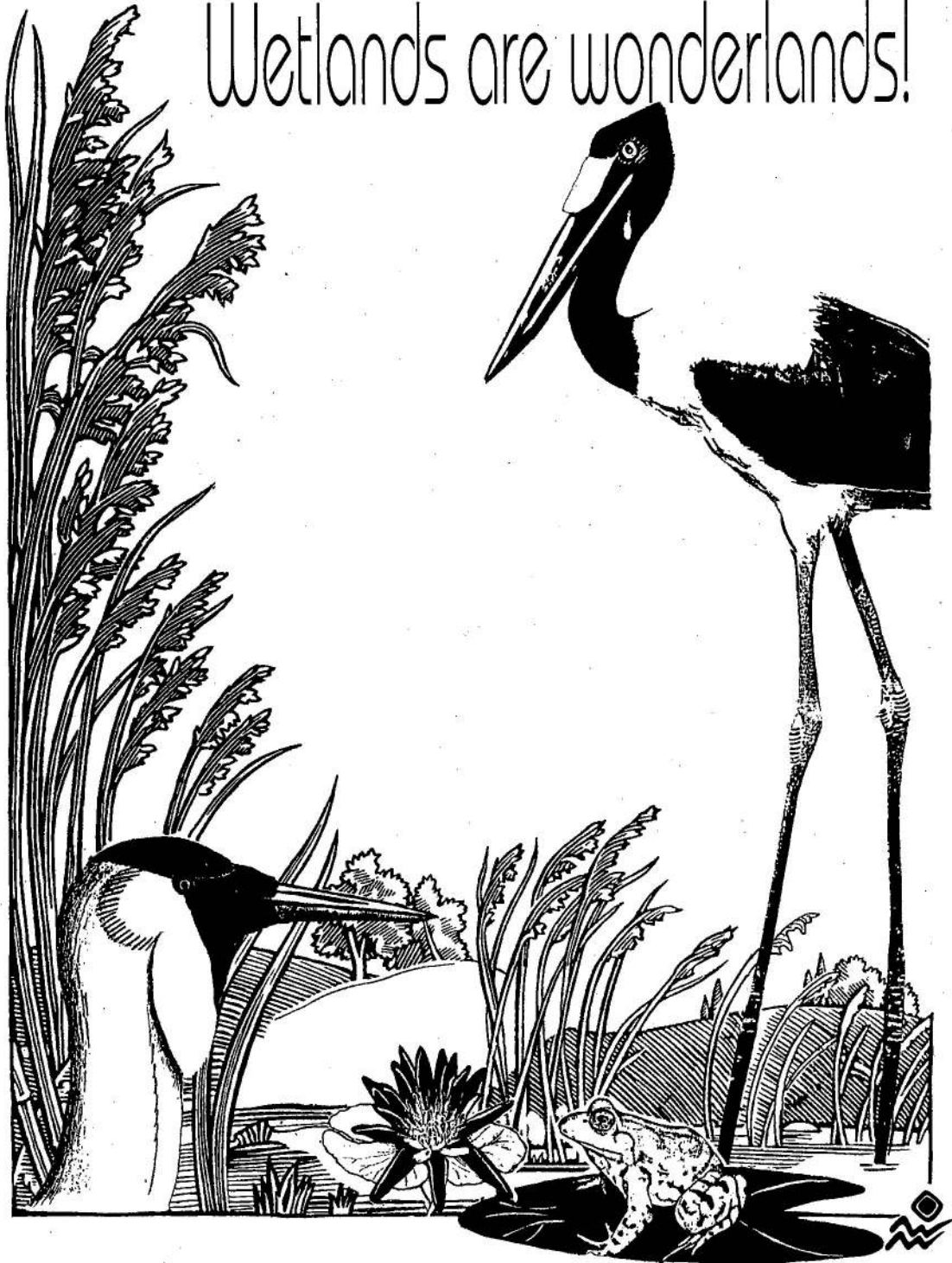
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