



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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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 sequestrated 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.