

**NOTICE 131 OF 2010****FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****EXEMPTION OF MANAGER OF COLLECTIVE INVESTMENT SCHEME IN  
SECURITIES FROM CERTAIN PROVISIONS OF NOTICE 1503 OF 2005**

I, Dube P Tshidi, Registrar of Collective Investment Schemes, under section 22(a), read with section 40 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) ("the Act"), hereby exempt a manager that administers a collective investment scheme in securities under the Act in compliance with the relevant Standards of the Accounting and Auditing Organization for Islamic Financial Institutions ("AAOIFI"), from certain provisions of Notice 1503 of 2005 ("the Notice"), as set out in the Schedule.

This Notice takes effect on the date of publication thereof.



**D P TSHIDI**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

**SCHEDULE**

- A. A manager that administers a portfolio as contemplated in Chapters I and VII of the Notice is hereby exempted from the definition of "securities" as contained in paragraph 2(1)(a) of the Notice on condition that the following definition shall apply:

**"securities" means –**

- (a) exchange deposit receipts in public companies, stock, bonds;

- (b) Islamic bonds (Sukuks) which are defined by AAOIFI as “certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity”;
- (c) notes, whether secured or not and whether or not they have inherent option rights or are convertible;
- (d) participatory interests in a collective investment scheme (excluding participatory interests in a collective investment scheme in participation bonds), whether listed or not;
- (e) preference shares, whether redeemable, convertible or perpetual;
- (f) shares; and
- (g) “Shari’ah compliant instruments” means an instrument held in a Shari’ah compliant portfolio, structured in a manner that the instrument held by the portfolio will be an instrument defined under paragraphs (a) to (f) above, provided that in order to ensure that the instrument purchased will comply with the requirements for inclusion in such portfolio, the instrument must be based on the ownership of an underlying tangible asset or basket of tangible assets: Provided that where such an instrument is not a listed security, that instrument or the issuer of such instrument must be rated at least A- or better, or the equivalent thereof, the instrument must be negotiable and title to the underlying tangible asset or basket of tangible assets must pass from a portfolio to a third party within seven business days as from the date on which the relevant transaction of purchase and sale is concluded and the sale price of the underlying tangible assets or basket of tangible assets must be fixed at the time of conclusion of the purchase and cannot be varied due to a movement in the market value of the underlying tangible assets or basket of tangible assets.

- B. A manager administering a money market portfolio as contemplated under Chapters III and IV of the Notice is hereby exempted from the “Determination of market instruments” as contained in paragraph 12 of the Notice on condition that the following determination shall apply:

**“Determination of money market instruments”**

12. For the purposes of this Chapter, “money market instruments” which may be included in a money market portfolio, must be transferable and acknowledge indebtedness and are defined as follows:

- (a) **“asset with a branch of a foreign institution”** means a deposit with, or any instrument of indebtedness (as defined in subparagraphs (c), (d), (e), (g), (j), and (k)) 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 in addition to the rating of the issuer and the instrument according to Annexure B or C: Provided further that if more than one rating exist, the lower of the ratings applies;
- (b) **“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);
- (c) **“commercial paper”** means any negotiable acknowledgement of debt;
- (d) **“deposit”** means a deposit as defined in the Banks Act, 1990, or in the Mutual Banks Act, 1993;

- (e) **"Islamic bonds"** (Sukuks) which are defined by AAOIFI as "certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity";
- (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 referred to in the Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002);
- (g) **"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;
- (h) **"promissory note"** means a promissory note as defined in the Bills of Exchange Act, 1964;
- (i) **"public entity bill"** means a bill or note as defined in the Bills of Exchange Act, 1964, drawn, accepted or issued by a public entity, other than the Land and Agricultural Bank of South Africa, listed under the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (j) **"Shari'ah compliant Instruments"** means an instrument held in a Shari'ah compliant portfolio, structured in a manner that the instrument held by the portfolio will be an instrument defined under paragraphs (a) to (i) above and (k) to (m) below, provided that –
  - (i) the instrument is based on the ownership of an underlying tangible asset or basket of tangible assets;
  - (ii) where such an instrument is not a listed security, that instrument or the issuer of such instrument is rated at least A- or better, or the equivalent thereof;
  - (iii) the instrument is negotiable and title to the underlying tangible asset or basket of tangible assets passes from a portfolio

to a third party within seven business days as from the date on which the relevant transaction of purchase and sale is concluded; and

- (iv) the sale price of the underlying tangible assets or basket of tangible assets is fixed at the time of conclusion of the purchase and cannot be varied due to a movement in the market value of the underlying tangible assets or basket of tangible assets;
- (k) **"stock"** means stock as defined in the definition of "securities" in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (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; and
- (m) **"treasury bill"** means a bill issued under the Public Finance Management Act, 1999 (Act No. 1 of 1999).