
GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 580

15 July 2011

ATTORNEYS ACT, 1979

AMENDMENT OF REGULATIONS RELATING TO THE ATTORNEYS FIDELITY FUND

The Minister of Justice and Constitutional Development has under section 81(2) of the Attorneys Act, 1979 (Act No. 53 of 1979), with the concurrence of the Chief Justice of South Africa and after consultation with the presidents of the various law societies, made the regulations in the Schedule.

SCHEDULE

Definition

1. In this Schedule "the Regulations" means the regulations published under Government Notice No. 1581 of 7 November 1941, as amended by Government Notices Nos. 2691 of 31 December 1942, 2144 of 26 November 1943, 1476 of 16 July 1948, 1264 of 25 May 1951, 354 of 25 February 1955, 1785 of 9 September 1955, 731 of 24 May 1957, R. 508 of 30 March 1972, R. 1458 of 13 July 1984, R. 47 of 2 January 1987, R. 347 of 22 February 1991, R. 1708 of 18 November 1994, R. 1746 of 31 December 1997, R. 41 of 19 January 2001 and R. 354 of 20 April 2001.

Substitution of regulation 9 of the Regulations

2. Regulation 9 of the Regulations is hereby substituted for the following regulation:

"Definitions for purposes of regulations 9 to 10H

9. For purposes of regulations 9A, 9B, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H—

"asset in liquid form" means—

(a) cash;

- (b) bankers' acceptances, commercial paper, debentures, bank deposits, Land Bank bills, National housing bills, negotiable certificates of deposit, parastatal bills, promissory notes, and treasury bills capable of being converted into cash within seven days; and
- (c) participatory interests in a money market portfolio of a collective investment scheme;

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

"bank" means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), and a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), registered otherwise than provisionally;

"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;

"bill of exchange" means a short-term negotiable debt instrument;

"call option" means a derivative instrument that allows the holder the right, but not an obligation, to buy a pre-determined quantity of an underlying asset at a predetermined price, on or before a predetermined date;

"call warrant" means an instrument that gives the holder the right to buy shares from the issuer;

"Code of Practice" means the Code of Practice Relating to Fund Classification for South African Regulated Collective Investment Portfolios, as issued by the Association of Collective Investments South Africa, which Code of Practice became effective on 16 September 2008;

"Collective Investment Schemes Control Act" means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

"collective investment scheme" means a scheme as defined in the Collective Investment Schemes Control Act;

"commercial paper" means any negotiable acknowledgement of short-term debt issued by a company;

"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;

"convertible debenture" means a debenture in terms of which the debenture holder has the option to return the debenture to the issuer in exchange for a specified number of equity shares of that issuer within a specified time period;

"core liabilities" refers to the liabilities of the fund as determined by section 38(2) of the Act;

"credit default swap agreement" means an agreement between two parties to transfer the credit exposure of fixed income assets according to a prearranged formula which is specified at the time the agreement is entered into;

"debenture" means a debenture as defined in the Companies Act, 1973 (Act No. 61 of

1973);

"delta" or **"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;

"deposit" means a deposit as defined in the Banks Act, 1990 (Act No. 94 of 1990);

"direct holding" means a holding without any intermediaries;

"effective exposure" in relation to a financial instrument, means the exposure as calculated in terms of regulation 10E(1);

"equities" means—

- (a) ordinary or preference shares in companies, excluding shares in property companies;
- (b) convertible debentures, whether voluntarily or compulsorily convertible; and
- (c) participatory interest in a collective investment scheme which are classified as equity portfolios in paragraph 2 of the Code of Practice;

"financial instrument" means—

- (a) a futures contract;
- (b) an option contract, whether a call or put;
- (c) a warrant;
- (d) an index tracking certificate;
- (e) an instrument based on an underlying asset;
- (f) a swap agreement;
- (g) a forward rate agreement; and
- (h) a credit default swap agreement:

Provided such instrument is fully covered, is priced on a mark-to-market basis daily and complies with all limits applicable to it as determined by the exchange on which it is listed;

"forward rate agreement" means an agreement between two parties to borrow or lend a specified amount at a specified future date at an interest rate that is fixed at the time the agreement is entered into;

"futures contract" means a derivative instrument that obligates the holder to buy a predetermined quantity of an underlying asset at a predetermined price, on or before a predetermined date;

"index futures contract" means a future on an index;

"index tracking certificate" means a certificate representing all the companies within a specified index according to their index weighting on an exchange;

"Land Bank bill" means a bill or note as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964), drawn, accepted or issued by the Land and Agricultural Development Bank of South Africa, established in terms of the Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002);

"listed investment company" means a listed company that has as its main objective the generation of return from its underlying investments, and not for the purpose of

exercising control;

"money market instrument" means—

- (a) a banker's acceptance;
- (b) commercial paper;
- (c) a secured debenture;
- (d) a deposit;
- (e) a Land Bank bill;
- (f) a national housing bill;
- (g) a negotiable certificate of deposit;
- (h) a parastatal bill;
- (i) a promissory note; and
- (j) a treasury bill,

in the currency of the Republic of South Africa, and which at the time of inclusion in the fund may not have a period of maturity exceeding 12 months;

"negotiable certificate of deposit" means a certificate of deposit issued by a bank and payable to order or to bearer;

"nominal exposure" in relation to a financial instrument, means the exposure as calculated in regulation 10F;

"non-equity government securities" means—

- (a) instruments issued by the Government of the Republic of South Africa and listed on an exchange; and
- (b) instruments partly or fully guaranteed by the Government of the Republic of South Africa;

"non-equity securities" means—

- (a) non-equity government securities;
- (b) debentures, debenture stock and debenture bonds, unsecured notes; and
- (c) participatory interests in collective investment schemes which are classified as Domestic Fixed Interest portfolios by the Code of Practice;

"parastatal bill" means a bill or note as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964), drawn, accepted or issued by a parastatal institution;

"parastatal institution" means a government-owned company or enterprise;

"portfolio" means a portfolio of a collective investment scheme as defined by the Collective Schemes Control Act, 2002 (Act No. 45 of 2002);

"promissory note" means a promissory note as defined in the Bills of Exchange Act, 1964 (Act No. 34 of 1964);

"property" means—

- (a) direct holding in property; and
- (b) participatory interests in collective investment schemes that are defined as Real Estate General Portfolios by the Code of Practice;

"property company" means a company that invests primarily in real estate or land;

"put option" means a derivative instrument that allows the holder the right to sell a pre-determined quantity of an underlying asset at a predetermined price, on or before a predetermined date, or to receive a cash settlement in lieu thereof;

"put warrant" means a warrant that gives the holder the right to sell shares to the

issuer;

"rating" means a credit rating, which is an opinion regarding the creditworthiness of an entity, a credit commitment, a debt or debt-like security or an issuer of such obligation, conducted at the request of the issuer of an instrument, by a rating agency with access to all confidential and other sensitive information supplied by the issuer, including management interaction, and which rating must be publicly available;

"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); and
- (d) Global Credit Rating Co. (GCR);

"secured debenture" means a debenture that is backed or secured by collateral to reduce the risk associated with lending;

"securities" means—

- (a) shares;
- (b) preference shares, whether redeemable, convertible or perpetual;
- (c) exchange depositary receipts in public companies;
- (d) stock or bonds;
- (e) participatory interests in a collective investment scheme, excluding participatory interests in a collective investment scheme in participation bonds;
- (f) debentures, debenture stock and debenture bonds; or
- (g) notes, whether secured or not and whether or not they have inherent option rights or are convertible;

"strike price" means a predetermined price;

"swap agreement" means a binding agreement between two parties to exchange future cash flows according to a prearranged formula which is specified when the agreement is entered into;

"transaction sign", in relation to a financial instrument, means the transaction direction, whether buying or selling, of a financial transaction, and is positive for a financial instrument purchased and negative for any financial instrument sold;

"treasury bill" means a bill drawn by the Government of the Republic of South Africa on the Secretary to the National Treasury, calling on the latter to pay a certain sum to a specified person or his or her order or to bearer, on demand or on a certain specified future date;

"underlying asset", means the asset that underlies and gives value to a security, and in relation to a financial instrument, warrant, option contract or futures contract, means –

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

"warrant" means an instrument that allows the holder the right to purchase a pre-

determined quantity of shares from the issuer at a pre-determined price on or before a predetermined date.

Insertion of regulations after regulation 9 of the Regulations

3. The following regulations are hereby inserted in the Regulations after regulation 9 of the Regulations:

"Assets required for purposes of fund's obligations in terms of section 45 of Act

9A. So much of the money as may be determined by the Minister in terms of section 38(2) of the Act which is not immediately required for purposes of the fund's obligations in terms of section 45 of the Act must be invested by the board of control in terms of section 38(4) of the Act in any one or more of the following forms of security:

- (a) Money market instruments;
- (b) non-equity government securities;
- (c) stock of any local authority in the Republic authorised by law to levy property rates; and
- (d) loans against security of a first mortgage bond on urban immovable property, subject to the relevant investment limits as prescribed in regulation 9B.

Conditions and investment limits

9B. (1) The fund may not invest in—

- (a) securities issued by a company to an amount in excess of 5%, or in the case of a company with a market capitalisation of R2 billion or more, 10%, of the market value of all the assets comprising the fund; and
- (b) securities of any one class issued by a company to an amount in excess of 5%, or in the case of a company with a market capitalisation of R2 billion or more, 10%, or in the case of securities in any listed investment company, 10%, of the aggregate amount of the securities of any one class issued by such company.

(2) (a) The fund may only invest in money market instruments that have a credit rating by a rating agency, which rating must be publicly disclosed: Provided that the fund may not invest in money market instruments if the value thereof exceeds the percentage of the value of the fund as indicated in the table below against the applicable domestic or international rating:

Rating Band as per table in Annexure C	Inclusion Limit per Instrument and Issuer as a percentage of all assets comprising the fund
1	30%
2	20%
3	5%

- (b) The total investment exposure of the fund to—
- (i) 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
 - (ii) all issuers with ratings in rating band 3 may not exceed 20% of the market value of the fund.

(c) If, after the date on which the fund invested in a money market instrument, that money market instrument is rated lower than its rating at the date of investment, the board of control must rectify the position within 30 days of such lower rating: Provided that if the board of control is satisfied that such rectification would be to the detriment of the fund, the board of control must, within 14 days of the date of becoming aware of the lower rating, submit a plan for approval to the Minister setting out measures to rectify the position."

Substitution of regulation 10 of the Regulations

4. Regulation 10 of the Regulations is hereby substituted for the following regulation:

"Assets over and above those required for purposes of fund's obligations in terms of section 45 of Act

10. Such amount of money as may be available for investment in terms of section 38(3) of the Act, may be invested by the board of control as prescribed in regulations 9A, 9B, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H."

Insertion of regulations after regulation 10 of the Regulations

5. The following regulations are hereby inserted in the Regulations after regulation 10 of the Regulations:

"Conditions and investment limits

10A. (1) The fund is subject to the relevant conditions and investment limits as prescribed in regulations 9A and 9B.

(2) The fund may invest in equities to a maximum aggregate amount of 60% of the market value of all the assets of the fund.

(3) The fund may invest in property to a maximum aggregate amount of 10% of the market value of all the assets of the fund.

(4) The fund may not invest in non-equity securities issued by a company to an amount in excess of 20% of the market value of all the assets comprising the fund.

(5) The fund may invest in the participatory interest of a collective investment scheme that is defined by the Code of Practice as equity portfolios.

(6) The investment limits prescribed in these Regulations may be exceeded only if such excess is due to the appreciation or depreciation of the value of the instruments comprising the fund.

(7) The fund may not, for as long as the excess contemplated in subregulation (6) continues, purchase any further instruments of the class in respect of which the excess occurs.

Inclusion of financial instruments in fund

10B. The fund may include financial instruments, subject to the prior approval of the board of control, and if in accordance with the provisions of these Regulations the fund—

- (a) sells futures contracts, call options or call warrants, or buys put options or put warrants, based on specific underlying assets which are not indices, the fund must maintain a market value of such underlying assets in the fund with positive nominal exposures to the same underlying assets;
- (b) sells futures contracts, call options or call warrants, or buys put options or put warrants, based on index futures or a group of securities, the fund must maintain an exposure to appropriate underlying assets in the fund, or other financial instruments with positive exposures to similar underlying assets in the fund, which is at least equal to the nominal exposure of these financial instruments;
- (c) buys futures contracts, call options or call warrants, or sells put options or put warrants based on any underlying asset, the fund must maintain an exposure to assets in liquid form in line with the nominal exposure prescribed in regulation 10D(1);
- (d) sells put options or put warrants the fund may maintain a bought put option or bought put warrant in lieu of assets in liquid form as required in paragraph (c) only if the strike price of the bought put option or bought put warrant is not lower than the price of the sold put option or sold put warrant;
- (e) sells call options or call warrants, the fund may maintain a bought call option or bought call warrant in place of underlying assets as required in paragraph (a) or (b) only if the strike price of the bought call options or bought call warrants is lower than the price of the sold call option or sold call warrant;
- (f) sells or buys multiple options or multiple warrants based on the same underlying assets and requires the nominal exposure to liquid instruments prescribed in paragraph (c), the fund 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 the fund requires the nominal exposure to underlying assets contemplated in paragraph (a) or (b).

Conditions

10C. The fund may sell financial instruments only which have been bought by

it.

Exposure limits

10D. (1) The sum of the nominal exposures to assets in liquid form as a result of the inclusion of financial instruments in the fund, together with the market value of all the physical underlying securities in the fund, may not exceed 100% of the market value of the fund.

(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 direct holding of that specific underlying security, may not exceed the limitations laid down in regulation 9B(1).

(3) For the purposes of this regulation, the provisions of regulation 9B(1)(a) and (b) in respect of excesses, which are due to appreciations or depreciations of the market value of the relevant securities shall apply.

Calculation of effective exposure to underlying assets in fund

10E. (1) The effective exposure of any financial instrument to an underlying asset, a group of underlying assets or an index must be calculated as the product of the—

- (a) number of contracts;
- (b) relevant contract size;
- (c) current market value of that contract;
- (d) delta, if applicable; and
- (e) transaction sign.

(2) The net effective exposure of financial instruments to equity securities is the sum of all effective exposures to all financial instruments calculated in accordance with subregulation (1).

Calculation of nominal exposure to assets in liquid form associated with financial instruments on underlying assets in fund

10F. (1) The nominal exposure to assets in liquid form of any financial instrument required in accordance with regulation 10D must be calculated as the nominal exposure of any financial instrument calculated in accordance with regulation 10E(1).

(2) The nominal exposure to assets in liquid form for the fund must be calculated as the sum of the nominal exposures of all the assets in liquid form calculated for all financial instruments in the fund in accordance with subregulation (1).

Cover required

10G. (1) Exposure created through the inclusion of financial instruments

must be fully covered by assets in liquid form or, in order of priority, by the same, similar or appropriate underlying assets.

(2) Cover for the exposure of financial instruments to equity securities with positive effective exposure as calculated in accordance with regulation 10E(2), must be in the form of assets in liquid form of at least equivalent in value to such exposure.

(3) Cover for the exposure of financial instruments to equity securities with a negative effective exposure as calculated in accordance with regulation 10E(2), must be in the form of underlying assets of at least equivalent in market value to such exposure.

(4) The sum of effective exposure as calculated in regulation 10E(2) must be matched by an equivalent value of assets in liquid form: Provided that the assets in liquid form, together with the market value of all the physical underlying assets in the portfolio, may not exceed 100% of the market value of the fund.

(5) The value of assets in liquid form that must be held as cover in terms of this regulation may be reduced by the amount held in a margin account with an exchange.

Report by independent auditor on financial instruments

10H. After the fund has invested in financial instruments, and while a financial instrument remains in the fund, the fund must furnish the Minister and the board of control within 30 days after the last business day of each calendar quarter with an auditor's report substantially conforming to Annexure D."

Insertion of Annexures C and D after Annexure B of the Regulations

6. The following annexures are hereby inserted in the Regulations after Annexure B:

"ANNEXURE C (Regulation 9B(2))

NATIONAL RATING SCALES OF RATING AGENCIES

	S&P		Moody's		Fitch Ratings		GCR	
Money Market 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
1	AAA	A-1+	Aaa.za	Prime 1.za	AAAzaf	F1+zaf	AAA	A1+
	AA+	A-1+	Aa1.za	Prime 1.za	AA+zaf	F1+zaf	AA+	A1+
	AA	A-1+	Aa2.za	Prime 1.za	AAzaf	F1+zaf	AA	A1+
	AA-	A-1+	Aa3.za	Prime 1.za	AA-zaf	F1+zaf	AA-	A1

2	A+	A-1	A1.za	Prime 1.za	A+zaf	F1+zaf or F1zaf	A+	A1
	A	A-1	A2.za	Prime 1.za or Prime 2.za	Azaf	F1zaf	A	A1
	A-	A-2	A3.za	Prime 1.za or Prime 2.za	A-zaf	F1zaf or F2zaf	A-	A1-
3	BBB+	A-2	Baa1.za	Prime 2.za	BBB+zaf	F2zaf	BBB+	A2
	BBB	A-2	Baa2.za	Prime 2.za or Prime 3.za	BBBzaf	F2zaf or F3zaf	BBB	A2

Note:

1. The above table refers to the domestic or national rating scales.
2. In the instance of an instrument, entity or concern being assigned a rating by two or more rating agencies, the lowest rating applies.
3. Where the short-term rating of an instrument or issuer spans more than one rating band, reference must be made to the long-term issuer rating to determine the applicable rating band for inclusion limit purpose.

ANNEXURE D (Regulation 10H)

REPORT OF INDEPENDENT AUDITOR TO CHAIRPERSON OF THE BOARD OF CONTROL IN RESPECT OF SYSTEM OF INTERNAL CONTROL

We have audited the system of internal control maintained by the Attorneys Fidelity Fund in relation to its asset portfolio.

Compliance with regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H of the Regulations made in terms of the Attorneys Act, 1979 (Act No. 53 of 1979), and the maintenance of an effective system of internal control is the responsibility of the board of control of the fund. 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 Regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H; and
- (b) the internal controls operated as designed throughout the quarter ending

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 with respect 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 required degree of compliance with the provisions of regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H of the Regulations may not be observed.

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 regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H of the Regulations, to evaluate the adequacy of the controls and to test the operating effectiveness of those controls. We consider that our auditing procedures were sufficiently appropriate in the circumstances to enable us to express our opinion particularised below.

In our opinion—

- (a) the system of internal control over compliance with regulations 9 and 10 of the Regulations was suitably designed to provide reasonable assurance that if controls had operated as designed, they would have prevented or detected non-compliance with regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H of the Regulations;
- (b) the system of internal control designed to ensure compliance with regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H of the Regulations in fact, operated as designed throughout the quarter ended.....

Without qualifying our opinion above, we draw attention to the following instances of non-compliance with regulations 9, 9A, 9B, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G and 10H of the Regulations which were/were not subsequently corrected:

Auditor CA (SA)
Address
Date ".