NOTICE 778 OF 2011

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002

DETERMINATION OF THE LIMITS AND CONDITIONS FOR THIRD PARTY NAMED PORTFOLIOS OF COLLECTIVE INVESTMENT SCHEMES

FINANCIAL SERVICES BOARD

Under section 46(2) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Dube Phineas Tshidi, the Registrar of Collective Investment Schemes, after consultation with the Collective Investment Schemes Advisory Committee established in terms of section 8 of the Act, have determined in the Schedule the limits and conditions applicable to Third Party Named Portfolios of Collective Investment Schemes.

DP TSHIDI

DP TSHIDI

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

SCHEDULE

INDEX

PREAMBLE

Prior to the enactment of the Collective Investment Schemes Control Act, 2002 a practice colloquially described as "white labelling" emerged within the collective investment schemes industry. This was the practice whereby a third party, who did not have the capacity or the intention to establish a collective investment scheme, requested a manager to establish a portfolio in the name of the third party under the manager's registered collective investment scheme.

It is considered desirable that this practice be more closely regulated in order to protect the interests of investors;

Section 46(2) of the Act empowers the Registrar to determine the manner, limits and conditions applicable to portfolios of collective investment schemes;

This Notice regulates third party named portfolios by *inter alia* providing for two categories of arrangements which will be allowed, namely incubator portfolios where the financial services provider intends to become a manager and co-named portfolios where the financial services provider has no intention to become a manager. The reason for the differentiation is to assist emerging entities to attain the required level of skills and experience to be authorised as managers in their own right. If the intention of the financial services provider is not to, eventually, as prescribed in this Notice, register as a manager, the collective investment scheme manager, who remains ultimately responsible for the portfolio, must connect its name to the portfolio. Transparency is therefore achieved by disclosure requirements. Portfolios sizes will be regulated to ensure viable portfolios. Finally it must be ensured that the core business of a manager remains the administration of its own portfolios rather than providing a platform for third party portfolios to which its name is not connected.

PART I

1. Application of Notice

This Notice does not apply to authorised agents and third party arrangements other than the situation where the name of a financial services provider is utilised in the name of a portfolio.

2. Definitions

In this Schedule, "Act" means the Collective Investment Schemes Control Act, 2002. Any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context otherwise indicates—

"**co- named portfolio**" means a portfolio bearing the name of both the manager and the financial services provider and where the financial services provider undertakes financial services of a discretionary nature, as contemplated in the Financial Advisory and Intermediary Services Act, 2002 in relation to the assets of the portfolio;

"**financial services provider**" means a discretionary financial services provider as defined in section 2 of the Code of Conduct for Administrative Financial Services Providers promulgated in terms of the Financial Advisory and Intermediary Services Act, 2002, and who is acting as an authorised agent of the manager;

"**incubator portfolio**" means a portfolio bearing the name of a financial services provider who intends to apply to the Registrar to be approved as a manager within three years after the Registrar has approved the portfolio, and where the financial services provider undertakes financial services of a discretionary nature, as contemplated in the Financial Advisory and Intermediary Services Act, 2002, in relation to the assets of the portfolio;

"**registered name of portfolio**" means the name under which the portfolio was approved by the Registrar in terms of section 42, read with section 98 of the Act;

"**third party named portfolio**" means an incubator portfolio or co-named portfolio established in terms of an agreement.

PART II

INCUBATOR PORTFOLIOS

3. Application

An application by a manager to establish an incubator portfolio must be made in accordance with the provisions of section 42 read with section 98 of the Act, and be accompanied by

(a) A business plan including the following:-

(i) the projected size of the portfolio over a five-year period;
(ii) an indication of where assets will be sourced;
(iii) a description of any possible area of conflict of interest , and the actions to be taken in circumstances of a conflict of interest;
(iv) a description of the marketing and distribution strategies; and
(v) a description of systems and resources to be used.

and

(b) An agreement contemplated in paragraph 6 of this Notice.

4. Naming

An incubator portfolio must bear the name of the financial services provider with whom the manager has entered into an agreement as contemplated in paragraph 6 of this Notice.

5. Duration

(1) The Registrar approves the name of an incubator portfolio for a period of three years.

(2) During the three-year period, referred to in sub-paragraph 1, and not more than six months after expiry of the three year period, the financial services provider must lodge an application for registration as a manager of a collective investment scheme in securities as contemplated in section 42 of the Act.

(3) If an application contemplated in sub-paragraph (2) is not lodged within the period prescribed in sub-paragraph (2), the manager must apply to the Registrar to-

(a) wind up the portfolio in accordance with section 102 of the Act; or
(b) amalgamate the portfolio with one of its portfolios in accordance with section 99 of the Act; or
(c) rename the portfolio in accordance with section 43(1) of the Act to reflect the registered name of the manager.

(4) The manager may apply for an extension of the three-year period on good cause shown, provided that the total duration of the portfolio name may not exceed five years from the date of initial approval of that name. The application for extension must be lodged with the Registrar before expiry of the three-year period referred to in sub-paragraph (1).

6. Agreements

(1) A manager must enter into an agreement with the financial services provider, which agreement must:-

(a) stipulate the three-year period for which the agreement will subsist;
(b) identify and address all possible areas of conflict of interest between the parties;
(c) indicate the functions of the respective parties in relation to the portfolio, including all sub-contracting arrangements;
(d) outline how the manager will capitalise the portfolio should it not reach the minimum size as contemplated in paragraph 12;
(e) stipulate that the manager shall commit to the incubator portfolio as if it were one of its own portfolios, in accordance with all relevant legislation;
(f) indicate that on termination of the agreement the portfolio remains the responsibility of the manager who shall continue to meet its commitment to investors and that it will rename, amalgamate or wind-up the portfolio in accordance with the Act;
(g) stipulate the extent to which the financial services provider will be entitled to participate in the manager's foreign allowance as contemplated in Exchange Control Regulations;
(h) stipulate that the manager's identity and role in the portfolio must be disclosed to investors;
(i) stipulate that the financial services provider may not enter into a similar agreement with another manager;

(j) stipulate that the manager remains responsible for compliance with the Act and that the compliance function of the manager may not be outsourced or delegated to another party;
(k) stipulate that the portfolio may only be marketed under its registered name;
(l) stipulate that the financial services provider must render financial services of a discretionary nature in relation to the assets of the portfolio.

(2) Subject to the provisions of sections 42, read with section 98(2) of the Act and paragraph 3 of this Notice, the manager must submit the agreement to the Registrar.

(3) A manager may not amend the agreement without prior written notice to the Registrar.

(4) Should the parties terminate the agreement, prior to the expiration of the three year period the manager must, within ten working days of the date of termination, inform the Registrar, in writing, that the agreement has been terminated and immediately take the steps stipulated in paragraph 5(3) of this Notice.

7. Disclosure

The manager must ensure that the financial services provider has procedures in place to adequately disclose, in all communications to investors, the following:-

(a) the identity of the manager, including its contact information; and
(b) its role and responsibility as manager of the portfolio

8. Portfolios under Administration

A manager may not have more than 30% of its number of portfolios comprised of incubator portfolios, nor may a manager have more than 30% of its total assets under management in incubator portfolios.

PART III

CO-NAMED PORTFOLIOS

9. Application

An application by a manager to establish a co-named portfolio must be made in accordance with the provisions of section 42, read with section 98 of the Act, and be accompanied by:

(a) a business plan including the following:-
(i) the projected size of the portfolio over a five-year period;
(ii) an indication of where assets will be sourced;
(iii) a description of any possible area of conflict of interest and the actions to be taken in circumstances of a conflict of interest ;
(iv) a description of the marketing and distribution strategies; and
(v) a description of systems and resources to be used.

and

(b) An agreement, as contemplated in paragraph 11.

10. Naming

A co-named portfolio must bear the name of both the financial services provider and the manager.

11. Agreements

(1) A manager must enter into an agreement with the financial services provider, which agreement must:-

(a) identify and address all possible areas of conflict of interest between the parties;

(b) indicate the functions of the respective parties in relation to the portfolio including all sub-contracting arrangements;

(c) outline how the manager will capitalise the portfolio should it not reach the minimum size as contemplated in paragraph 12;

(d) stipulate that the manager shall commit to the portfolio as if it were one of its own portfolios, in accordance with all relevant legislation;

(e) indicate that on termination of the agreement the portfolio remains the responsibility of the manager who shall continue to meet its commitment to investors and to rename, amalgamate or wind-up the portfolio;

(f) stipulate the extent to which the financial services provider will be entitled to participate in the manager's foreign allowance as contemplated in Exchange Control Regulations;

(g) stipulate that the manager's identity and role in the portfolio will be disclosed to the investor;

(h) stipulate that the financial services provider may not enter into a similar agreement with another manager;

(i) stipulate that the manager remains responsible for compliance with the Act and that the compliance function of the manager shall not be outsourced or delegated to another party;

(j) stipulate that the portfolio may only be marketed under its registered name; and

(k) stipulate that the financial services provider must render financial services of a discretionary nature in relation to the assets of the portfolio.

(2) Subject to the provisions of section 42, read with section 98, of the Act and paragraph 9 of this Notice, the manager must submit the agreement to the Registrar.

(3) A manager may not amend the agreement without prior written notice to the Registrar.

(4) Should the parties terminate the agreement, the manager must, within ten working days of the date of termination, inform the Registrar, in writing, that the agreement has been terminated and the manager must apply to the Registrar to:

(a) wind up the portfolio in accordance with section 102 of the Act; or
(b) amalgamate the portfolio with one of its portfolios in accordance with section 99 of the Act; or
(c) rename the portfolio in accordance with section 43(1) of the Act to reflect only the registered name of the manager.

PART IV

GENERAL PROVISIONS

12. Minimum Size of Portfolios

(1) The assets under management of a third party named portfolio, may not be less than R50 million after a period of three-years from date of approval of the name of the portfolio.

(2) If the assets under management of the third party named portfolio have not reached R50 million on expiry of the three year period referred to at sub-paragraph 1, the manager must apply to the Registrar to:-

(a) wind up the portfolio in accordance with section 102 of the Act; or
(b) amalgamate the portfolio with one of its portfolios in accordance with section 99 of the Act.

13. Duplicate Portfolios

A manager may not appoint a financial services provider to provide financial services in respect of one of the manager's own portfolios if that financial services provider is providing financial services in respect of an incubator or co-named portfolio of a similar nature within the manager's collective investment scheme.

14. Transitional Arrangements

(1) This Notice applies to all applications, whether submitted to the Registrar or not.

(2) A manager of a third party named portfolio previously known as a white label portfolio, approved by the Registrar before the commencement of this Notice, must submit an application to the Registrar in accordance with the provisions of this Notice to approve such portfolio as either an incubator portfolio or a co-named portfolio.

(3) The manager of a portfolio, referred in sub-paragraph (2), that has been in existence for more than five years may not apply for such portfolio to be approved as an incubator portfolio. If the financial services provider whose name is linked to the portfolio does not apply to be registered as a manager, the manager of the portfolio must either apply to co-name the portfolio or apply for such portfolio to be wound up or amalgamated in accordance with the provisions of the Act.

(4) Applications referred to in sub-paragraphs (2) and (3) must be submitted to the Registrar within twelve months of commencement of this Notice.

15. Short Title

This Notice is called the Determination of the Limits and Conditions for Third Party Named Portfolios of Collective Investment Schemes.