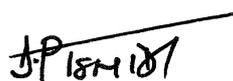


**BOARD NOTICE 257 OF 2013****FINANCIAL SERVICES BOARD****COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002****CONDITIONS IN TERMS OF WHICH FOREIGN COLLECTIVE INVESTMENT SCHEMES MAY SOLICIT INVESTMENTS IN THE REPUBLIC**

Under section 65(1)(c) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), I, Dube P. Tshidi, Registrar of Collective Investment Schemes, hereby determine in the Schedule the conditions with which a foreign collective investment scheme which solicits investments in such scheme from members of the public in the Republic must comply.



D P TSHIDI

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

**SCHEDULE****1. Definitions**

In this Schedule, “**the Act**” means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which meaning is assigned in the Act bears that meaning, and unless the context indicates otherwise-

“**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);

“**operator**” means any person or entity that is authorised by a regulator to administer a scheme;

“**regulator**” means a regulatory body that has primary responsibility for the approval, registration, regulation and supervision of collective investment schemes in a foreign

jurisdiction;

“**representative agreement**” means an agreement between the operator of a scheme and any manager registered under the Act, in terms of which agreement the operator of the scheme undertakes to comply with the applicable provisions of the Act and the conditions set out in this Schedule;

“**representative office**” means a company incorporated or registered in terms of the Companies Act, representing a scheme;

“**scheme**” means a collective investment scheme authorised to conduct business in a foreign country and includes any portfolio of such scheme.

## 2. Conditions for approval

(1) An operator applying for approval of a scheme in terms of section 65 of the Act, must be authorised and supervised by a regulator which has a regulatory environment of similar standing as the regulatory environment of the Republic.

(2) The scheme in which the operator intends to solicit investments in the Republic must-

- (a) be available for investment in its domicile of registration; and
- (b) be promoted in the Republic to the same type of investors under the same or substantially similar requirements and conditions relating to the type of investors as in its *domicile* of registration.

(3) The operator applying for approval of a scheme must-

- (a) enter into a representative agreement; or
- (b) establish and maintain a representative office.

(4) The operator applying for approval of a scheme must satisfy the registrar that-

- (a) the scheme is sufficiently liquid to meet investor redemptions;
- (b) the scheme does redemptions at regular intervals;
- (c) the scheme does not permit investment in an instrument that compels the acceptance of physical delivery of a commodity and the scheme particulars or prospectus prohibits it from accepting physical delivery;
- (d) the assets of investors are properly protected by application of the principle

of segregation and identification.

(5) The registrar may-

- (a) require written confirmation from the applicable regulator that the operator is fit and proper and in good standing with such regulator; and
- (b) take into consideration any other information regarding the operator, derived from whatever source, including any regulatory or supervisory authority, provided such information is disclosed to the applicant and the latter is provided a reasonable opportunity to respond to the information.

### 3. Application for approval of a scheme

An application for approval in terms of section 65 of the Act must be in writing and, to the extent applicable, include-

- (a) the full name of the scheme and portfolio;
- (b) the full name and address of the operator;
- (c) the full name and address of the regulator to which the operator is subject in the operator's *country* of registration;
- (d) the full name and address of the trustee or body that provides the fiduciary oversight to the scheme;
- (e) the full name and address of the custodian of the scheme;
- (f) a detailed explanation of the manner in which the operator will solicit investments in the scheme from members of the public in the Republic;
- (g) description of legal and operational structure of the scheme;
- (h) where a representative office has been established, details of the representative office of the scheme;
- (i) where a representative agreement has been concluded, details of the manager with which the operator has entered into the representative agreement, and a copy of the representative agreement;
- (j) written confirmation from the applicable regulator verifying that the scheme -
  - (i) has been approved and authorised in accordance with the

- legislation of the *domicile* of registration of the scheme;
- (ii) is subject to supervision by the regulator in the relevant jurisdiction;
  - (iii) is by applicable law permitted to solicit investment in the respective jurisdiction and outside its *domicile* of registration.
- (k) a certified copy of the approval or registration of the scheme;
  - (l) a certified copy of the fund rules and instruments of incorporation of the operator;
  - (m) the prospectus and any amendments to the prospectus;
  - (n) a document listing the differences and similarities between the scheme and a local collective investment scheme registered under the Act;
  - (o) a questionnaire relating to the scheme, completed on a form that may be obtained from the registrar;
  - (p) the latest annual financial report or equivalent report and any subsequent half yearly report of the scheme;
  - (q) a copy of any other document affecting the rights of investors in the scheme;
  - (r) confirmation by the auditor of the representative office that the representative office complies with the requirement in respect of paid-up share capital and reserves set out in paragraph 4(1); and
  - (s) such further information as the registrar may require.

#### 4. Representative office or agreement

- (1) (a) Where the operator has established a representative office, it must satisfy the registrar that its representative office maintains paid-up share capital and reserves of no less than R2 million.
- (b) Where the representative office conducts business other than representing the scheme, such business may only be financial services related business.
- (c) In the instance of subsection (b), capital to an amount of R 2 million must be dedicated to the scheme and at all times be invested in assets which are

capable of being liquidated within seven days.

(2) The auditor of a representative office must certify annually, and no later than three months after the financial year-end of the representative office, to the registrar that the operator has complied with the capital requirement in sub-paragraph (1).

(3) Where for any reason,-

- (a) a representative agreement is cancelled, the manager, which is a party to that agreement, must notify the registrar immediately in writing and cease solicitation of investment in the scheme concerned;
- (b) any term of the representative agreement is amended, the manager, which is a party to that agreement, must notify the registrar within 14 days with detail of such amendment;
- (c) the operation of a representative office is discontinued, the person appointed for the purposes of section 33(3) of the Companies Act must notify the registrar immediately in writing, and soliciting investments must cease.

#### **5. Approval and categorisation of a scheme**

(1) The registrar may approve a scheme constituting one or more portfolios or an additional portfolio under a scheme already approved in terms of section 65 of the Act.

(2) The registrar may categorise any scheme for purpose of identifying provisions of the Act applicable to such category of collective investment scheme.

(3) The registrar may, at any time, re-categorise a scheme in accordance with the category of the scheme and such scheme must ensure compliance with the requirements applicable to that category.

#### **6. Change of scheme**

If a scheme changes, the operator must-

- (a) notify the registrar in writing within 30 days of the change being effected;

and

- (b) apply for approval within three months of that change being effected, where such change relates to the requirements under paragraph 2 or 4 except for paragraph 4(3) of this Notice.

**7. Suspension of redemption of participatory interests**

The operator must immediately notify the registrar if it, at any time, suspends the repurchase of participatory interests, unless the suspension is a scheduled suspension of which investors are notified in the ordinary course of business.

**8. Advertising and disclosure of information**

When soliciting investments from members of the public in the Republic, the operator must comply with the applicable marketing and advertising requirements determined by the registrar.

**9. Fees**

Any application for approval or notification in terms of this Notice must be accompanied by the prescribed fee as determined by the registrar.

**10. Continued approval of scheme**

(1) A scheme approved in terms of section 65 of the Act prior to the publication of this Notice is regarded as being approved in terms of the Act from the date of publication of this Notice.

(2) An application for the approval of a portfolio of a scheme submitted before publication of this Notice will be considered by the Registrar based on the existing requirements.

(3) An application for the approval of a portfolio of a scheme referred to in subparagraph (1) made subsequent to the publication of this Notice must comply with this Notice.

**11. Short title and commencement**

(1) This Notice is called Conditions for Foreign Collective Investment Schemes,

2013, and repeals Notice 2076 of 1 August 2003, as published in Government Gazette No. 25283 as amended by Notice 1502 of 4 December 2005, as published in Government Gazette No 282287.

(2) This Notice comes into operation on 1 January 2014.

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