

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF  
SECTION 10(3), READ WITH 10A OF THE FINANCIAL SERVICES  
BOARD ACT, 97 OF 1990**

CASE NO: **04/2014**

In the matter of:

**THE REGISTRAR OF COLLECTIVE  
INVESTMENT SCHEMES**

Applicant

and

**INDEQUITY INVESTMENTS MANAGERS LTD**

Respondent

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**ORDER**

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WITH DUE CONSIDERATION to the settlement agreement in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 (the FI Act), I hereby determine that the Respondent has contravened the sections of the Collective Investment Schemes Control Act, No 45 of 2002 (CISCA), indicated below and impose the following penalty on the Respondent:

1. R20 000 for two contraventions of section 43(1)(a) of CISCA;
2. R10 000 for the contravention of section 73(3) of CISCA;
3. R20 000 for the contravention of Notice 910 of 2010; and
4. Furthermore, in terms of section 6D of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 (the Act), the parties agreed that the Respondent, as part of the aforementioned determination, will pay cost in an amount of R22 000.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the ...<sup>10</sup>... day of **APRIL 2014**.

A handwritten signature in black ink, appearing to read 'C F Eloff', written over a horizontal dotted line.

**C F Eloff**  
**Chairperson of the Enforcement Committee**

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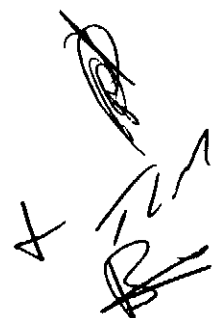
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**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7) (a) OF  
THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, 28  
OF 2001**

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**1. The parties**

- 1.1. The Applicant is the Registrar of Collective Investment Schemes ("the Registrar") herein represented by Jurgen Boyd in his capacity as the Deputy Registrar of of Collective Investment Schemes.
- 1.2. The Respondent is Indequity Investments Managers Ltd ("Indequity") a duly registered public company as contemplated in the Companies Act 71 of 2008, (1999/012170/06). The Respondent is an authorised financial services provider, in terms of the Financial Advisory and Intermediary Services Act, No 37 of 2002, with FSP number 597.
- 1.3. Indequity is herein represented by Christiaan Tielman Meyer ("Meyer") the key individual and compliance officer of Indequity and who warrants that he is authorised by the Respondent to conclude this agreement.

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## 2. The contraventions

2.1. It is agreed between the parties that Indequity contravened the following:

**2.1.1. Section 43(1)(a) of the Collective Investment Schemes Act, No 45 of 2002 (CISCA) in that:**

2.1.1.1. Indequity was registered as a manager of a collective investment scheme on 9 December 2004;

2.1.1.2. On 18 September 2012 Indequity changed its name to Heiden Grimaud Fund Managers;

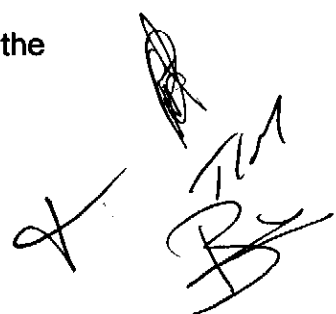
2.1.1.3. Indequity informed the Registrar of the name change on 8 October 2012; and

2.1.1.4. Therefor Indequity changed its name under which it was registered under CISCA without the prior approval of the Registrar in writing.

**2.1.2. Section 43(1)(a) of the Collective Investment Schemes Act, No 45 of 2002 (CISCA) in that:**

2.1.2.1. At the time Indequity was being registered as a manager of a collective investment scheme, its shareholders were Indequity Group (50% shareholder) and Mr Dawie Botha (Botha) (50% shareholder);

2.1.2.2. On 1 October 2009 Atlantic Africa Ltd (previously Indequity Capital Ltd) became the 100% shareholder of Indequity;



2.1.2.3. Indequity only informed the Registrar of the change of its shareholding on 27 February 2013; and

2.1.2.4. Therefor Indequity changed its shareholding without the prior approval of the Registrar in writing.

**2.1.3. Section 73(3) of CISCA in that:**

2.1.3.1. PKF South Africa Incorporated chartered accountants and business advisors (PKF) was the appointed auditors of Indequity at the time Indequity was being registered as a manager of a collective investment scheme;

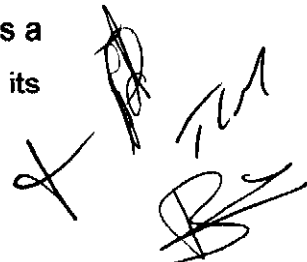
2.1.3.2. During 2007 Indequity appointed Grant Thornton South Africa (Grant Thornton) as its new auditor;

2.1.3.3. Indequity approached the Registrar only during October 2013 for approval of the appointment of its new auditor; and

2.1.3.4. Indequity therefore appointed an auditor and failed to apply to the Registrar for approval of such appointment within 30 days from the date of appointment.

**2.1.4. Par 3 of Notice 910 of 2010, in that:**

2.1.4.1. At the time Indequity was being registered as a manager of a collective investment scheme, its



directors were Messrs. Meyer, Botha and Lourens Janse van Rensburg (Janse van Rensburg), the latter being a non-executive member;

2.1.4.2. Janse van Rensburg resigned as a director during October 2012 and Botha resigned during February 2013;

2.1.4.3. Indequity submitted applications for the approval of new directors to the Registrar during January 2013. However, the submissions were incomplete and Indequity delayed the process by failing to meet the outstanding requirements timeously. Subsequently the Registrar only approved the appointment of the new directors on 11 October 2013;

2.1.4.4. Notice 910 of 2010 (which came into effect on 21 September 2010) requires that a manager must have a minimum of 4 directors, of which 50% must be non-executive directors; and

2.1.4.5. Therefore, during the period 21 September 2010 until 11 October 2013 Indequity failed to comply with Notice 910 of 2010 in that it failed to appoint a minimum of four directors as members of the board and of which 50% is non-executive directors.

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### **3. The mitigating circumstances**

3.1. It is also been agreed that the following mitigating factors are relevant to the matter:

3.1.1. No loss was suffered by investors as a result of the contravention; and

3.1.2. Indequity fully cooperated with the Registrar during the enforcement process.

### **4. The agreed penalty**

4.1. In the light of the above, and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties have agreed that Indequity will pay the following penalties:

4.1.1. R20 000 for two contraventions of Section 43(1)(a) of CISCA;

4.1.2. R10 000 for the contravention of Section 73(3) of CISCA;

4.1.3. R20 000 for the contravention of Notice 910 of 2010; and

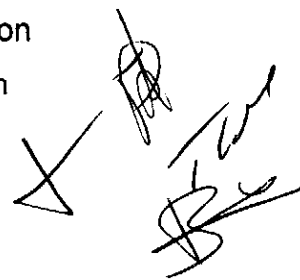
4.1.4. Contribution of costs of the Registrar in the amount of R22 000 in settlement of the matter.

4.2. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act.



## 5. Other conditions

- 5.1. This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement.
- 5.2. If Indequity does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, Indequity herewith consents to pay all legal costs to the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 5.3. No leniency or postponement given by the FSB to Indequity or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.
- 5.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 5.5. This Agreement shall not be a novation of the cause of action in terms whereof Indequity was found to have contravened the Act.
- 5.6. This agreement constitutes the whole agreement between the parties in respect of the contraventions referred to in 2 above and the penalty.
- 5.7. The parties choose as their *domicilium citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However the notice contemplated in

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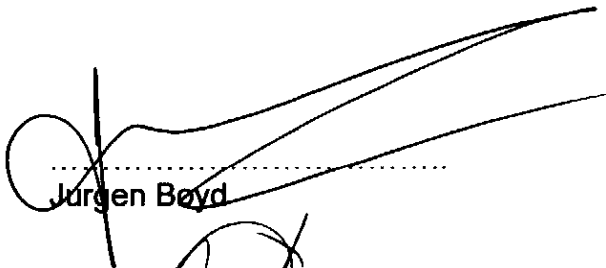
terms of section 6E of the FI Act may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

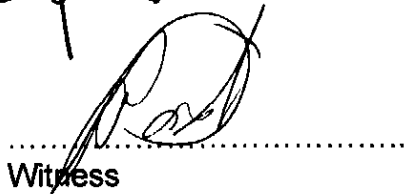
5.7.1. Financial Services Board:

Johannes.vandeventer@fsb.co.za

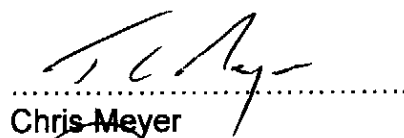
5.7.2. Respondent:

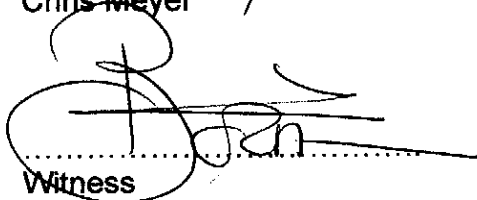
Signed at Pretoria on 8 April 2014 on behalf of the Applicant.

  
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Jurgen Boyd

  
.....  
Witness

Signed at Treue on 4 April 2014 on behalf of the Respondent.

  
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Chris Meyer

  
.....  
Witness