

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE  
ESTABLISHED IN TERMS OF SECTION 10 (3) OF THE FINANCIAL SERVICES  
BOARD ACT, NO. 97 OF 1990**

In the matter of:

CASE NUMBER: 2/2018

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

Applicant

**NOVARE COLLECTIVE INVESTMENT SCHEMES  
(RF) (PTY) LIMITED**

Respondent

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**ORDER**

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In terms of section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 and with due consideration to the settlement agreement attached marked annexure "A", I hereby determine that the Respondent contravened section 106 (a) of the Collective Investment Schemes Control Act, 45 of 2002.

I hereby impose on the Respondent a penalty of R30 000 (Thirty thousand Rand) inclusive of costs.

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

Signed at **DURBAN** on the 29<sup>th</sup> day of **March 2018**.

  
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**E.A MOOLIA**

**Deputy Chairperson of the Enforcement Committee**

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In the matter of:

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

Applicant

NOVARE CIS (RF) (PTY) LIMITED

Respondent

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SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7)(a) OF THE  
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, No.28 OF 2001

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1. PARTIES TO THE AGREEMENT

1.1 The Applicant is the Registrar of Collective Investment Schemes (the Registrar) herein represented by Mr Jurgen Boyd in his capacity as the Deputy Executive Officer of Collective Investment Schemes; and

1.2 The Respondent is Novare CIS (RF) (Pty) Limited a company duly registered in terms of the laws of South Africa with company registration number 2013/191159/07 and whose principal place of business is situated at Third Floor, the Cliffs Office Block, Niagara Way, Tyger Falls, Carl Cronje Drive, Bellville, Cape Town.

1.3 The Respondent is an authorised Manager registered in accordance with the Collective Investment Schemes Control Act, 45 of 2002 (CISCA).

1.4 The Respondent is herein represented by Ms Rene Miles who warrants that she is duly authorised by the Respondent to enter into this agreement.

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## 2. THE CONTRAVENTION OF SECTION 106 (a) OF CISCA

- 2.1. The Applicant is of the opinion that the Respondent contravened section 106 (a) of CISCA.
- 2.2. The Respondent wishes to enter into a settlement agreement with the Applicant as contemplated in section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act").
- 2.3. It is agreed between the parties that the following facts are relevant to the contravention:

2.3.1. The Respondent's Minimum Disclosure document published during September 2016 to September 2017 in respect of the Novare Money Market Fund (the Fund) quoted performance data for the period 2010 to 2015;

2.3.2. The performance data quoted in the document related to the Novare Money Market Fund whilst it was still managed as a segregated fund and prior to it moving over to the CIS environment;

2.3.3. Although the performance data was not incorrect, the Registrar believes that the Respondent's failure to indicate clearly that the performance data applied to a period prior to the Registrar's approval of the Fund had the potential to mislead investors in believing that the approved Fund had a long track record.

## 3. THE MITIGATING FACTORS

- 3.1. It is agreed that *inter alia* the following mitigating factors are relevant to the matter:

3.1.1. The Respondent accepted responsibility for the contravention.

3.1.2. The Respondent co-operated with the Applicants with regard to the enforcement action.

3.1.3. The Respondent has rectified the contravention.

3.1.4. The Respondent's conduct was not to intentionally mislead Investors.

#### **4. THE AGGRAVATING FACTORS**

4.1. It is also agreed that the following aggravating factors are relevant to the matter:

4.1.1. The Respondent's conduct showed that there was a lack of oversight in its operations which led to the contravention.

4.1.2. The conduct mentioned had the potential of unjustly benefitting the Respondent in circumstances where investors were misled.

#### **5. THE AGREED PENALTY**

5.1. In light of the above, the parties have agreed that the Respondent will pay a penalty of R30 000 (Thirty Thousand Rand) inclusive of costs.

#### **6. OTHER CONDITIONS**

6.1. 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. If the Enforcement Committee declines to make this agreement an order, then in such event this agreement will be null and void.

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- 6.2. Should the Respondent not comply with the terms of this agreement and it becomes necessary for the Registrar and/or the FSB to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the Registrar and/or the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission, interest and Value Added Tax.
- 6.3. No leniency or postponement given by the Registrar to the Respondents 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. Any leniency or postponement granted by the Registrar or any amendment to this Agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.
- 6.4. Any receipt of a payment by the Registrar and/or the FSB after the due date, which date shall be outlined in an invoice for payment of the penalty shall be without prejudice to any of the rights of the Registrar and/or the FSB.
- 6.5. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 6.6. This agreement is in full and final settlement only in respect of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 6.7. 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 terms of section 6C of the FI Act may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

**The Applicant:**

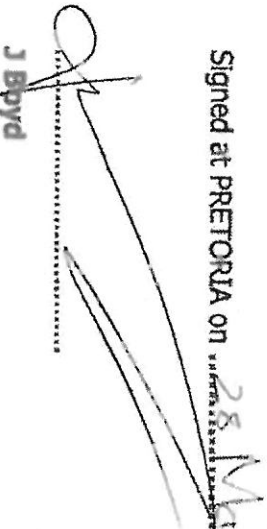
Financial Services Board:  
Block B, Riverwalk Office Park  
41 Matroosberg Road  
Ashlea Gardens ext. 6  
Pretoria  
0081

**The Respondent**

Third Floor, the Cliffs Office Block,  
Tyger Falls,  
Carl Cronje Drive,  
Bellville, Cape Town  
E mail: [Amanda@novare.com](mailto:Amanda@novare.com)

6.8. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B (7)(b) of the F I Act.

Signed at PRETORIA on 28 March 2018 on behalf of the Applicant.

  
J Boyd

Signed at Rosetten on 28 March 2018 on behalf of the Respondent.

R MILES

