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BOARD NOTICES

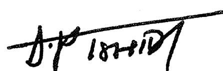
BOARD NOTICE 52 OF 2015

FINANCIAL SERVICES BOARD

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

DETERMINATION ON THE REQUIREMENTS FOR HEDGE FUNDS

I, Dube P Tshidi, Registrar of Collective Investment Schemes, hereby determine, under sections 42, 90(2) and (4) and 114(4)*(b)* of the Collective Investment Schemes Control Act, 2002, (Act No. 45 of 2002), the matters contained in the Schedule.



DP TSHIDI

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

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SCHEDULE

PART 1: INTRODUCTION

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 a meaning has been assigned in the Act, bears that meaning so assigned to it and unless the context otherwise indicates-

"absolute value-at-risk" means the value-at-risk of a portfolio expressed as a percentage of the portfolio's net asset value;

"assets" means assets as defined in the Act and includes liabilities;

"assets in liquid form" means-

(a) any amount of cash consisting of Reserve Bank notes and coins;

(b) any balance in an account, excluding a trust account as contemplated in section 105 of the Act, with a bank;

(c) any positive net balance in a settlement account, other than a margin account, operated for the buying and selling of underlying assets;

(d) a money market instrument;

(e) participatory interests in a money market portfolio referred to in Chapter II of Board Notice 90 of August 2014;

on condition that the assets referred to in paragraphs *(a), (b), (d)* and *(e)* are capable of being converted, without any penalty on capital in terms of the conditions of the security, into cash within seven days;

"authorised user" means an authorised user as defined in section 1 of the Financial Markets Act;

"bank" means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), a branch of a foreign institution, which institution is authorised in terms of the Banks Act to conduct the business of a bank by means of such branch, or a foreign bank;

"clearing house" means a licensed clearing house as defined in section 1 of the Financial Markets Act;

"commitment approach" means a methodology for calculating exposure that considers the effective exposure of derivatives to, and takes an aggregate view of, securities with the same or similar underlying exposure, where the total commitment is considered to be the sum of the absolute value of the commitment of each individual position, including derivatives after taking into account netting and hedging;

"counterparty" means a juristic person on whom the hedge fund is dependent to realise, collect or settle the securities or the value of securities;

"**counterparty exposure"** means a value that best reflects the hedge fund's exposure to a relevant counterparty and accurately reflects the economic loss that the hedge fund is exposed to if the counterparty defaults on its obligations;

"custodian" for purposes of this Notice includes a trustee contemplated in section 68 of the Act;

"depository" means-

(a) a bank; or

(b) the nominee of a prime broker,

entrusted with the safekeeping of the assets of hedge funds, and approved by the registrar;

"derivative instrument" or **"derivatives"** means a derivative instrument as defined in the Financial Markets Act;

"embedded derivative" means a security or money market instrument which includes a derivative, where-

(a) the security or money market instrument's cash flows are altered; or

(b) the cash flows simulate those of a derivative; or

(c) the security or money market instrument's economic characteristics and risks behave the same as a derivative and are dissimilar from the security or money market instrument; or

(d) the derivative has an impact on the pricing of the security or money market instrument;

"*en commandite* partnership" means a partnership where the *en commandite* partner's liability towards co-partners of the partnership is limited to the specified capital amount which the *en commandite* partner has contributed or undertaken to contribute to the partnership and the *en commandite* partner is not at risk to suffer

a loss or liability in excess of its investment in or contractual commitment to the partnership;

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"Financial Markets Act" means the Financial Markets Act, 2012 (Act No. 19 of 2012);

"Fit and Proper Requirements" means the Determination of fit and proper requirements and conditions for managers of collective investment schemes determined under section 42 of the Act;

"foreign bank" means a bank that is not a South African bank and is domiciled, registered and supervised as a bank outside of South Africa;

"FSP" means an authorised financial services provider under the FAIS Act;

"fund administrator" means a juristic person, who administers the accounting, reconciliation, investor liability, valuation of assets, pricing of participatory interests, and the maintenance of the register of investors for a hedge fund;

"hedge fund" means a hedge fund as defined in the Declaration made by the Minister under section 63 of the Act, published as Government Notice 141 of 2015 in *Government Gazette* Number 38503 of 25 February 2015;

"hedge fund FSP" means an authorised hedge fund FSP as defined in the Code of Conduct for Discretionary Financial Services Providers published under the FAIS Act;

"hedging arrangements" means a combination of trades in terms of which long and short exposure of similar assets may be netted before calculating exposure;

"leverage" means the use of securities, including derivative instruments, short positions or borrowed capital to increase the exposure beyond the capital employed to an investment;

"manager" means a manager of a QI fund or a retail hedge fund, whichever may be applicable;

"money market instrument" has the same meaning as contemplated in Board Notice 90 of 2014, published in *Government Gazette* Number 37895 of 8 August 2014;

"net asset value" means the total market value of all assets in a portfolio including any income accruals and less any deductible expenses such as audit fees, brokerage and service fees;

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"netting arrangements" means a combination of trades in terms of which long and short assets with exactly the same exposure may be netted before calculating the exposure;

"nominee" means a nominee approved under section 76 of the Financial Markets Act;

"prime broker" means a person offering prime brokerage services, such as lending money or securities for the purpose of short selling, clearing and settlement of trades, operational support facilities and customised technology and acting as counterparty to finance or execute transactions in securities;

"qualified investor" means any person, who invests a minimum investment amount of R1 million per hedge fund, and who-

(a) has demonstrable knowledge and experience in financial and business matters which would enable the investor to assess the merits and risks of a hedge fund investment; or

(b) has appointed a FSP who has demonstrable knowledge and experience to advise the investor regarding the merits and risks of a hedge fund investment;

"qualified investor hedge fund" or **"QI fund"** means a hedge fund in which only qualified investors may invest;

"retail hedge fund" means a hedge fund in which any investor may invest;

"securities" means securities as defined in section 1 of the Financial Markets Act;

"short selling" means the sale of securities that the seller does not own, or a sale that is completed by the delivery of a security borrowed by, or for the account of the seller;

"systemic risk" refers to systemic risk as defined in the Financial Markets Act;

"total expense ratio" means a measure of a portfolio's assets that have been expended as payment for services rendered in the management of the portfolio or fund, expressed as a percentage of the average daily value of the portfolio or fund calculated over a period of a financial year by the manager of the portfolio or fund;

"total exposure" means the aggregate of the absolute value of the exposures of all the long and short securities in the portfolio or fund; and

"value-at-risk" means a measure of a maximum expected loss of a portfolio at a given confidence level over a specified time period.

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2. Objects and registration

(1) This Notice aims to-

(a) provide for the protection of investors in hedge funds;

(b) assist in the monitoring and management of systemic risk;

(c) promote the integrity of the hedge fund industry;

(d) enhance transparency in the hedge fund industry; and

(e) promote financial market development.

(2) A person must be-

(a) registered as a manager in accordance with section 42 of the Act; and

(b) authorised to administer a hedge fund,

in order to administer a hedge fund.

PART 2: QUALIFIED INVESTOR HEDGE FUND

3. Specific duties applicable to a manager of a QI fund

A manager of a QI fund-

(a) may only invite or permit qualified investors to invest in a QI fund,

(b) must ensure that only qualified investors, who have provided a declaration of their eligibility, are included in the QI fund;

(c) must employ a structure that limits the liability of an investor to give effect to the principle that an investor will not suffer a loss in excess of the value of its investment or contractual commitment in the QI fund;

(d) must appoint either-

(i) a custodian as contemplated in section 68 of the Act; or

(ii) an independent fund administrator.

to perform the functions set out in section 70(1) to (3) of the Act;

(e) must, where an independent fund administrator has been appointed as contemplated in sub paragraph *(d)*, appoint a separate depository for safekeeping of the assets;

(f) may, where a custodian is appointed, appoint a separate depository for safekeeping of the assets;

(g) may include assets as set out in its founding documents in the QI fund, provided that the following principles are adhered to-.

(i) the liquidity of securities may not compromise the liquidity terms of the portfolio;

(ii) securities based on the value of commodities may be traded, provided that-

(aa) the security is listed on an exchange;

(bb) specific disclosure is made to investors of the nature and extent of the exposure to physical delivery;

(cc) the liquidity terms of the QI fund are not compromised; and

(dd) the position is closed out before physical delivery is required.

(iii) securities must be subject to reliable valuation by the manager and must be negotiable and transferable;

(h) may only delegate the management of the assets of the portfolio to a hedge fund FSP.

4. Leverage

(1) A manager of a QI fund must-

(a) set the level of exposure or value-at-risk for each portfolio of the QI fund;

(b) provide for the limit referred to at subparagraph (1)(a) in the mandate and the founding documents of a portfolio of the QI fund; and

(c) inform the registrar of the limits referred to in subparagraph (1)(a).

(2) A manager may not change the limits set in accordance with subparagraph (1) without approval of the investors and the registrar.

5. Liquidity and repurchases

A manager of a QI fund must-

(a) have an appropriate framework to measure and manage the liquidity risk of each portfolio against its repurchase obligations;

(b) implement and maintain a repurchase policy, which policy must provide for-

(i) a level of liquidity for the relevant portfolio of the QI fund that would enable the manager to repurchase participatory interests

within three calendar months of receipt of an investor instruction to repurchase;

(ii) the circumstances under which the manager may suspend the repurchase of participatory interests, provided that suspension must be in accordance with the provisions of the Notice of Suspension of Repurchase of Participatory Interests by Manager of Collective Investment Scheme In Securities prescribed by the registrar under section 114(3)*(f)* of the Act;

(c) apply liquidity stress-testing providing for-

(i) increased investor repurchases;

(ii) shortage of liquidity of the underlying assets of the portfolio; and

(iii) an analysis of the period of time required to meet repurchase requests in the simulated stress scenarios.

PART 3: RETAIL HEDGE FUND

6. Liquidity and repurchases

(1) A manager may borrow up to ten per cent of the value of a portfolio for liquidity purposes in respect of the repurchase of participatory interests.

(2) A manager may not encumber any assets of a portfolio, except for investment purposes.

(3) A manager must have an appropriate framework to measure and manage the liquidity risk of each portfolio against its repurchase obligations.

(4) A manager must implement and maintain a repurchase policy, which policy must provide for-

(a) a level of liquidity for each portfolio that would enable the manager to repurchase participatory interests within one calendar month of receipt of an investor instruction to repurchase;

(b) subject to subparagraph (5), the circumstances under which the manager may suspend repurchase of participatory interests.

(5) A manager may only suspend the repurchase of participatory interests-

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(a) in exceptional circumstances and when in the interest of investors; and

(b) in accordance with the Notice of Suspension of Repurchase of Participatory Interests by Manager of Collective Investment Scheme In Securities prescribed by the registrar under section 114(3)(f) of the Act.

(6) A manager must inform the registrar of any suspension of the repurchase of participatory interests without delay.

(7) Where the inclusion of a derivative results in an immediate or future commitment for a portfolio, the following liquidity requirements apply-

(a) for a derivative that may require settlement in cash, the portfolio must at all times hold sufficient assets in liquid form to effect the required settlement; and

(b) for a derivative that requires physical settlement, the portfolio must hold the physical asset or hold sufficient assets in liquid form to cover the full payment obligation for the physical asset.

(8) A manager must conduct a self-assessment exercise of each portfolio to determine its adequate exposure calculation (value-at-risk or commitment approach).

7. Fees

A manager must-

(a) specify in its founding documents the maximum level of all fees charged by the manager to the retail hedge fund;

(b) give investors reasonable notice, but not less than three months, of any increase in the fees referred to in subparagraph *(a)*.

8. Counterparty-exposure

(1) A manager-

(a) must limit the counterparty exposure of a portfolio to the net asset value of the portfolio per one counterparty subject to Table 1 in Annexure A;

(b) may only net the counterparty exposure with the same counterparty and in the same portfolio, provided that the

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manager is able to legally enforce netting arrangements with that counterparty.

(2) When calculating counterparty exposure, a manager must take into account-

(a) any initial or variation margin posted to, and held by, a counterparty;

(b) the verifiable market value of the derivative, including any excess collateral;

(c) any net exposure to a counterparty generated through a securities lending or repurchase agreement; and

(d) counterparty exposures created through the reinvestment of collateral.

9. Collateral

(1) A retail hedge fund may-

(a) post collateral to its counterparties; or

(b) receive collateral:

(i) to manage its counterparty exposure;

(ii) where counterparty limits have been breached.

(2) A manager must ensure that collateral arrangements satisfy the following rules and principles-

(a) Legal Agreements: Collateral arrangements must be governed by appropriate global master collateral agreements.

(b) Liquidity: Collateral must be sufficiently liquid to ensure that it can be converted to cash within seven days in a default event at a price that is close to its pre-sale valuation.

(c) Valuations: Collateral must be capable of being valued on a daily basis and must be marked-to-market daily taking into account any haircuts on non-cash collateral, where applicable.

(d) Issuer credit quality: Creditworthiness of the issuer of the collateral must be taken into account and relevant haircuts must be applied to take into account issuer default risk.

(e) Legal rights: A manager must ensure that the collateral obligation is legally enforceable and that the collateral will be available to a

portfolio without recourse to a counterparty, in the event of a default by the counterparty.

(f) Concentration risks: A manager must take into account the concentration risks to a single issuer in a portfolio.

(g) Relatedness: A manager may not accept securities issued by the counterparty as collateral.

(h) Cash collateral: A manager must appropriately manage the reinvestment risk of cash collateral.

10. Permitted assets and securities

(1) A manager may only include investments in other retail hedge funds or in collective investment schemes in securities in accordance with the limits set out in Table 5 of Annexure A in a portfolio.

(2) A manager may only include securities in a portfolio as set out in the founding document, provided that the following principles are adhered to and subject to the exposure limits set out in Table 1 of Annexure A-

(a) where the securities are listed, the securities must be dealt with on an exchange; or on a market which is regulated, operates regularly, is recognised and open to the public;

(b) a security based on the value of a commodity must comply with paragraph 3*(g)*(ii) and settled prior to its maturity so as not to require physical delivery of any commodity;

(c) a reliable valuation for the security must exist; and

(d) the liquidity of instruments must not compromise the liquidity terms of the portfolio.

11. Non- permitted asset classes

A manager may not include in a portfolio, investments in-

(a) immovable property;

(b) a portfolio of a QI fund; or

(c) a private equity fund.

12. Derivatives

(1) When a manager includes derivatives in a portfolio, the manager must-

(a) ensure that the exposure does not exceed the net asset value of that portfolio, provided that when a transferable security or money market instrument contains an embedded derivative, the exposure created by that derivative must be taken into account when exposure is calculated;

(b) be satisfied that an over-the counter derivative can be valued with reasonable accuracy and on a reliable and consistent basis;

(c) ensure that the derivative can be sold, liquidated or closed out by an offsetting transaction, at market value at any time, at the manager's initiative;

(d) ensure that the fund administrator has the ability to value the derivatives instruments independently, where applicable;

(e) ensure that the underlying assets of the derivative are taken into consideration in determining the resulting exposure;

(f) not permit the position exposure to the underlying assets of derivatives (including embedded derivatives in transferable securities, money market instruments or investment funds) when combined with positions resulting from direct investments, to exceed the investment limits or counterparty limits;

(g) ensure that the derivative does not result in the delivery of a security that is not permitted under this Notice.

(2) A manager must ensure that the portfolio-

(a) is at all times capable of meeting its payment and delivery obligations for cash settled derivatives by holding assets in liquid form which are sufficient to cover the obligations; and

(b) establishes and maintains risk management processes which monitor derivative positions so that they are adequately covered in accordance with these requirements.

13. Financial indices

(1) For a security to be classified as an index security, the security must replicate a financial index that is-

(a) sufficiently diversified;

(b) an adequate benchmark of the market to which it refers;

(c) published in an appropriate manner and be readily accessible; and

(d) compiled and calculated independently from the manager, the retail hedge fund and the issuer of the security.

(2) Indices may, based on the eligibility criteria set out in subparagraph (1), consist of amongst others, commodity, metal, real estate and private equity.

14. Exposure

(1) A manager may only include securities and assets in a portfolio in accordance with the limits set out in Annexure A to this Notice.

(2) A manager may create leverage in a portfolio by borrowing funds, using short positions or by engaging in derivative transactions with counterparties.

(3) A manager may calculate the portfolio's total exposure and leverage by either-

(a) the value-at-risk approach; or

(b) the commitment approach.

(4) A manager must be able to demonstrate that the risk assessment methodology it uses for a portfolio is appropriate for that portfolio and there must be consistency in the choice of approach used.

(5) A manager using the commitment approach when calculating exposure must ensure that a portfolio's total exposure to the market does not exceed 200 per cent of the total net asset value of the portfolio.

(6) *(a)* When calculating the exposure using the value-at-risk approach, all the positions of the portfolio must be considered.

(b) A manager must always set the maximum value-at-risk limit according to a portfolio's defined risk profile.

(c) A manager must ensure that the value-at-risk model-

(i) is appropriate for the relevant portfolio or portfolios of the retail hedge fund and takes into account the investment strategy being pursued and the types and complexity of the securities and money market instruments used;

(ii) takes into account the general market risks;

(iii) is supported by appropriate back-testing and stress-testing of the portfolio that allows for, *inter alia*, a comparison to expected loss, and where-

(aa) a one day change in portfolio value exceeds the related one day value-at-risk measure, the model must be adjusted; and

(bb) the event described in subparagraph *(aa)* occurs more than four times in the most recent 250 business days, the manager must without delay report this to the registrar, who may take measures and apply stricter criteria for the use of value-at-risk.

(7) *(a)* When using the commitment approach in a portfolio, all derivatives must be converted into the effective exposure of an equivalent position in the underlying asset of the derivative contract.

(b) Where the commitment approach is used, a manager must apply this approach to all derivative positions, whether used as part of the portfolio's general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management.

(c) Where the commitment approach is used, a manager may consider hedging and netting arrangements, provided they fulfil the criteria relating to the commitment approach.

(d) Hedging arrangements must-

(i) ensure that there is a verifiable reduction of risk;

(ii) relate to the same or similar asset class;

(iii) be efficient in stressed market conditions.

(e) Netting arrangements-

(i) may only include those derivative trades which offset the risks linked to other trades on the same underlying asset, leaving no material residual risk;

(ii) must be effected within specific maturity segments in respect of interest rate securities.

(8) When calculating exposure of a security that contains exposure to another security, a manager must separate the security into its individual underlying exposure components.

15. Monthly reporting to the registrar

A manager must in respect of each portfolio, on a monthly basis, within 14 days of the end of the month, furnish the registrar electronically or otherwise, with-

(a) all long and short positions in the portfolio reflecting the market value and the effective exposure, and the value of each of these positions expressed-

(i) as a percentage of the total value of assets in the portfolio concerned; and

(ii) where possible, as a percentage of the total amount of assets of that class issued by the entity in which the investment is held,

and indicating which of such assets cannot be liquidated prior to the next redemption date;

(b) exposure or value-at-risk limits permitted in the founding documents of the portfolio;

(c) exposure or value-at-risk applied during the reporting period;

(d) the level of counterparty exposure; and

(e) the capability of the internal systems of control for derivatives.

PART 4: GENERAL PROVISIONS APPLICABLE TO ALL HEDGE FUNDS

16. Permitted structures

(1) A manager may only establish a scheme using the following structures for its hedge fund-

(a) a collective investment scheme trust arrangement as contemplated in the Act; or

(b) an *en commandite* partnership.

(2) Despite subparagraph (1), a manager of a retail hedge fund, must regardless of which structure it uses for its hedge fund, appoint a custodian as contemplated in Part IX of the Act and may appoint a separate depository for safekeeping of assets.

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17. Collateral

A manager may only use assets which are included in a portfolio as collateral.

18. Platforms and hosting arrangements

(1) A manager may establish a scheme as a platform for purposes of creating or hosting different portfolios which are administered independently of each other and managed by different FSPs.

(2) A manager, in establishing a platform-

(a) must comply with the principle of segregation and identification;

(b) must ensure that the assets included in each portfolio on its platform are properly protected from creditor claims;

(c) may not permit the assets of one portfolio to be used to meet the liabilities of any other portfolio of the scheme; and

(d) must ensure that the name of each portfolio on its platform bears the name of the manager and that of the relevant FSP.

19. Fund administration

(1) A manager must conduct proper due diligence when appointing a fund administrator and must ensure that its fund administrator-

(a) is an FSP;

(b) is a juristic person;

(c) is domiciled in the Republic;

(d) has the requisite experience, knowledge and capital; and

(e) has adequate internal controls and systems to ensure proper administration of the portfolio.

(2) Despite the provisions of subparagraph (1), where the assets of the portfolio are held in a foreign country, the manager may appoint a fund administrator regulated by an appropriate supervisory authority and subject to on-going supervision by that supervisory authority, to perform the functions of a fund administrator.

(3) Where the manager itself performs the fund administration services, the registrar may request an independent verification of the appropriateness of the administration system and capabilities.

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20. Prime Broker

(1) A manager may only appoint a prime broker, that is-

(a) an authorised user that has been admitted as an equity member under the exchange rules defined in the Financial Markets Act; or

(b) a bank.

(2) A manager must act with due skill, care and diligence when appointing a prime broker, and only appoint a prime broker that-

(a) is financially sound at all times; and

(b) has the necessary organisational structure appropriate for the services to be provided to the portfolio.

(3) A manager must ensure that it is conversant with all counterparty and prime broker legal agreements, including re-hypothecation arrangements.

21. Counterparties

(1) A hedge fund may only invest in derivative instruments where the counterparty is-

(a) the South African Government;

(b) a bank;

(c) a long-term insurer registered or deemed to be registered as a long-term insurer under the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

(d) a short-term insurer registered or deemed to be registered as a short-term insurer under the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

(e) a clearing house; or

(f) an authorised user;

(g) a person outside the Republic who is registered, licensed, recognised, approved or otherwise authorised to render services or conduct the business of a bank or a business referred to in paragraphs *(b)* to (f) by a foreign regulator with functions similar to those of the registrar, the Registrar of Banks, the Registrar of Financial Services Providers or the Registrar of Long-term or Short-term Insurance.

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(2) A manager must conduct appropriate stress-testing to assess counterparty exposure and the impact of a change in the risk profile of the counterparty on financing and collateral requirements.

22. Valuation and pricing

(1) A manager must establish, maintain, enforce and document a policy which outlines the procedures and methodologies for the valuation of the assets held in or used by each portfolio.

(2) A manager must ensure that the valuation methodology is consistently applied according to the valuation policy.

(3) The valuation policy must-

(a) be reviewed periodically to ensure continued appropriateness;

(b) provide for the obligations, roles and responsibilities of all parties involved in the valuation process, including, where applicable, the fund administrators;

(c) provide for all listed securities to be priced according to market prices as contemplated in section 44 of the Act, and unlisted securities to be priced according to a generally recognised methodology approved by the custodian, or where applicable, by the fund administrator;

(d) in the case of a retail hedge fund,-

(i) provide for pricing that is at least equal to the purchase and repurchase date;

(ii) ensure that daily valuation is conducted, and that a requirement to provide daily valuation is included in the founding document;

(e) in the case of a QI fund, ensure that –

(i) pricing takes place at least equal to the purchase or repurchase dates of the relevant portfolio, whichever is more frequent; and

(ii) valuation is performed monthly;

(f) ensure that an appropriate level of independent review is undertaken for each valuation and in particular any valuation that is influenced by the manager or the hedge fund FSP;

(g) describe the process for handling and documenting instances where the manager has disagreed with the valuations or

established a contrary price, including providing for the review by an independent party;

(h) provide for initial due diligence investigations performed by a person, other than a manager, of any person that is appointed to perform valuation services;

(i) ensure that the valuation methodology is transparent and available to investors; and

(j) when using models for valuations, ensure-

(i) that the model is included in the valuation policy;

(ii) that the valuation procedures and policies indicate the main features of the model; and

(iii) that the model is subject to independent validation, by a person who-

(aa) was not involved in the process of developing the model; and

(bb) has adequate competence and experience in the valuation of assets using such models.

23. Remuneration and reward policy

A manager must have a remuneration and reward policy that ensures-

(a) the interest of the investors are aligned with those of the manager; and

(b) sound and prudent risk management and risk-taking which is consistent with the relevant risk profile of the portfolio.

24. Risk management, risk management policy and risk manager

(1) A manager must establish, document, maintain, and enforce a risk management policy , which must provide for the management of operational risk, business risk, liquidity risk, and credit-counter party risk, appropriate to the nature, scale and complexity of its business, and for-

(a) the measures, techniques and procedures which must be employed to measure and manage risks, including risk measurement techniques to carry out stress tests, back tests and scenario analysis appropriate to each portfolio's investment

strategy, taking into account the different risk profiles that may apply to each portfolio;

(b) appropriate and timely corrective actions, where stress tests and scenario analysis reveal particular vulnerability to a given set of circumstances;

(c) the frequency with which stress tests and scenario analyses must be conducted depending on the nature of the portfolio, the investment strategy, liquidity profile, type of investor and repurchase policy of the portfolio;

(d) independent performance of the risk management function, including details of the allocation of responsibilities within the manager for risk management and operating procedures;

(e) risk management to be performed on a daily basis;

(f) appropriate internal control mechanisms to avoid or mitigate operational failures, including professional liability risks; and

(g) procedures to ensure-

(i) on-going monitoring of the total value of the assets under management; and

(ii) adjustments to the amount of coverage for professional liability risks following any significant change in assets under management.

(2) A manager must review the risk management policy when necessary, but at least annually.

(3) A manager must establish a risk function separate from its investment management function and fund administration function, which function must-

(a) determine the risk management policy of the hedge fund;

(b) conduct active risk measuring;

(c) perform risk monitoring and reporting; and

(d) ensure, on a daily basis, that the risk limits are complied with.

25. Execution

A manager must take reasonable steps to ensure the best possible execution result for a transaction, taking into account price, costs, speed, likelihood of execution and settlement, the nature and size of the order and any other consideration relevant to the execution of the order.

26. Short selling

(1) A manager may engage in physical short selling and derivatives creating short positions.

(2) Naked short selling, which in this context means the selling of a security without being in possession of the security or ensuring that it can be borrowed, is not allowed.

27. Disclosure and reporting to investors

(1) Despite the requirements determined by the registrar under Board Notice 92 of 2014 published in *Government Gazette* No 37895 of 8 August 2014, the provisions of this paragraph apply in respect of the disclosure and reporting of information to investors by a hedge fund.

(2) A manager must provide the following information to a potential investor before investing in a portfolio-

(a) the name of the hedge fund and of the manager stated clearly and unambiguously;

(b) the name of the portfolio;

(c) the date of establishment of the portfolio;

(d) a list of all portfolios in the hedge fund;

(e) names of the members of the board of the manager;

(f) the legal structure of the portfolio;

(g) accounting and distribution dates of the portfolio;

(h) a description of the investment strategy and objectives of the portfolio and all associated risks;

(i) a description of the procedures by which the portfolio may change its investment strategy or investment policy, or both;

(j) whether the portfolio invests in underlying funds;

(k) a description of the types of assets in which the portfolio may invest;

(l) any investment restrictions applicable to the portfolio;

(m) the circumstances in which the portfolio may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset re-use arrangements, and the maximum level of leverage which the portfolio is entitled to use;

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(n) where applicable, the identity of the hedge fund's depository, custodian, fund administrator, prime broker, auditor, hedge fund FSP and any other service provider and a description of their duties;

(o) where applicable, a description of any material arrangements of the manager with a prime broker or other counterparty, including-

(i) the manner in which conflicts of interest are managed;

(ii) any provision in the contract with the custodian and depository on the possibility of transfer and re-hypothecation of assets; and

(iii) the level of counterparty exposure; and

(iv) the methodology of calculating counterparty exposure;

(p) a description of any delegated administration function and of any safe-keeping function delegated by the depository, identification of the delegated person and any conflicts of interest that may arise from such delegations;

(q) a description of the portfolio's valuation and pricing methodologies;

(r) a description of the liquidity risk management of the portfolio, including the repurchase rights both in normal and in exceptional circumstances;

(s) any gating, side pocket or repurchase restrictions that may exist in the portfolio and how those restrictions may be triggered;

(t) any special repurchase arrangement or rights of some investors;

(u) a description of all fees, charges and expenses and the maximum amount thereof which is borne directly by investors;

(v) a description of all charges paid by the portfolio;

(w) a description of how the manager ensures fair treatment of investors;

(x) whenever an investor receives preferential treatment or has the right to receive preferential treatment, including ring-fencing arrangements -

(i) a description of that preferential treatment;

(ii) the type of investors who may receive such preferential treatment; and

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(iii) where relevant, those investors' legal or economic relationship with the manager or the portfolio;

(y) the latest annual report referred to in section 90 of the Act;

(z) the procedure and conditions for the issue and sale of participatory interests of a portfolio;

(A) the latest net asset value of the portfolio and the latest price of the participatory interests of the portfolio; and

(B) a description of how and when the quarterly reporting under subparagraph (2) will be provided.

(3) A manager must disclose to the investor quarterly, within 30 days after the end of each calendar quarter-

(a) the sources of leverage, including the type, the value and the providers of leverage;

(b) the exposure limit or value-at-risk permitted in the founding document and mandate;

(c) highest exposure or value at risk applied during the reporting period;

(d) the exposure or value-at-risk as at the quarter-end;

(e) the extent to which assets are encumbered or re-hypothecated;

(f) the methodology for conducting stress-testing;

(g) a report on the portfolio's counterparty exposure;

(h) the latest total expense ratio applicable to the portfolio; and

(i) any changes to the liquidity risk profile of the portfolio.

(4) A manager must disclose to an investor by way of an investor statement at least quarterly, the following minimum information–

(a) the name of the portfolio invested in, together with the series or class of participatory interests invested in;

(b) the net asset value and participatory interest price multiplied by the number of notional participatory interests held in the portfolio;

(c) where applicable, equalisation credit and debit or series invested in;

(d) monthly return;

(e) transactions of assets bought and sold;

(f) subscriptions (new investments) and number of participatory interests;

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(g) repurchases and number of participatory interests;

(h) a breakdown of net profit or loss for the period, including-

(i) realised gain or loss;

(ii) unrealised gain or loss;

(iii) dividends and dividend expenses;

(iv) manufactured dividends;

(v) interest earned and interest incurred;

(vi) management fees;

(vii) performance fees;

(i) trading expenses in aggregate; including-

(i) brokerage costs;

(ii) scrip borrowing fees; and

(iii) transaction fees;

(j) other expenses in aggregate, including-

(i) accounting fees;

(ii) administration fees;

(iii) audit fees;

(iv) bank charges;

(v) custodian or depository fee;

(vi) exit fees payable for involuntarily premature dis-investment of assets; and

(vii) other transaction fees.

28. Annual report

(1) A manager must, in respect of the hedge fund and each portfolio prepare an annual report for each financial year which report must contain-

(a) the financial statements in terms of section 90(1) of the Act;

(b) details of any activities that had a material impact on the business of the manager, the hedge fund, and the portfolios during the financial year;

(c) any material changes in the information listed in paragraph 27(3) during the financial year.

(2) A manager must inform investors of the availability of the annual report and provide it to investors on request.

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29. Quarterly reporting to the registrar

(1) A manager must within 30 days after the end of each calendar quarter, furnish to the registrar, in respect of each portfolio of the hedge fund that it manages, electronically or otherwise, a report containing-

(a) a full list of all gross and net assets in the relevant portfolio, including all long and short positions, reflecting the market value of each asset and exposure included in that portfolio, with the value of each of those assets expressed as-

(i) a percentage of the total value of assets in the portfolio concerned;

(ii) a percentage of the total amount of assets of that class issued by the entity in which the investment is held,

(b) the exposure or value-at-risk limits permitted under the portfolio mandate and the exposure or value-at-risk applied during the reporting period, and the exposure or value-at-risk as at the quarter-end;

(c) the method of calculating exposure or value-at-risk and showing how limits have been complied with, including;

(i) the sources of leverage, including the type, the amount and the providers of leverage;

(ii) level of collateralisation and the re-hypothecation of assets;

(iii) level of counterparty exposure;

(iv) the capability of the internal control systems for derivatives;

(v) the number of new investors; and

(vi) the current risk profile of the portfolio and the systems employed by the manager to manage risks, including market, liquidity, counterparty, derivatives, operational and other risks;

(d) a list of all the portfolios that the manager administers.

(2) A manager must-

(a) not later than 90 days after the close of its financial year, provide the registrar a copy of the hedge fund's audited financial statements and the annual report referred to in paragraph 28; and

(b) on or before a date specified by the registrar, lodge with the registrar such further information and explanations as the registrar may request.

(3) A manager must inform the registrar without delay of any change in the liquidity risk profile of a portfolio.

PART 5: MISCELLANEOUS

30. Transitional arrangements

(1) A manager of a hedge fund in existence at the date of commencement of this Notice must comply with the provisions of this Notice within 12 months after registration as a manager, subject to any additional conditions imposed by the Registrar, and any other manager must comply fully with the provisions of this Notice from date of registration.

(2) Where a manager of a hedge fund in existence at the date of commencement of this Notice wishes to apply for registration of that fund as a QI fund, the current investors in the hedge fund are deemed to be qualified investors, and to comply with the requirements for a qualified investor set out in this Notice; provided that any investor subscribing to the fund after the commencement date must be fully compliant with the requirement for qualified investors.

31. Short title and commencement date

This Notice is called the Determination on the Requirements for hedge funds and comes into force on 1 April 2015.

ANNEXURE A

EXPOSURE LIMITS FOR PERMITTED ASSETS

Table 1: For Equity Securities (including unlisted securities)

Description	RETAIL HEDGE FUNDS
Exposure limits	• 10% per security or 30% per security as long as the aggregate excess exposure above 10% is limited to 40% of the net asset value of the portfolio; • the aggregate (transferable equity securities, money market instruments, or deposits) exposure per counterparty must be less than or equal to 30% • a maximum 20% in aggregate in securities based on the value of gold, other metals, and commodities if the securities are listed on an exchange (in accordance with Board Notice 90 of 2014) and as long as physical delivery is limited subject to paragraph 10(2)(b) ; • a maximum of 20% in unlisted transferable equity securities as long as these securities are negotiable, can be independently valued, and do not compromise the ability of the portfolio to meet its liquidity terms. • maximum of 10% in any other securities or assets

Table 2: For Interest Rate Instruments

DESCRIPTION	RETAIL HEDGE FUNDS
Permitted securities	The following are permitted as interest rate securities or interest rate trades: • Bonds and debentures; • Notes (unsecured/secured/with or without other option rights); • Islamic bonds or instruments; • Repurchase transactions; • Listed futures; • Listed options, warrants or index certificates; • Unlisted forex swaps (spot/ forward); • Unlisted interest rate swaps; • Unlisted Forward Rate Agreements; • Unlisted interest rate options (including swaptions, caps, floors, caplets and floorlets); • Instruments based on assets/baskets returns • Exchange Traded Funds or Notes based on other permitted interest rate securities or interest rate trades • Trade bill, trade note; • Treasury bill; • Promissory note; • Parastatal bill; • Negotiable certificate of deposit; • Land Bank bill;

	• Asset with a branch of a foreign bank; • Banker's acceptance; • Bridging bonds; • Commercial paper; • Deposit
Exposure limits	(1) A manager may include the following interest rate securities whether listed on an exchange or not, in a portfolio in the following manner: *(a)* any money market instrument and repurchase transaction, provided that the market value of such interest rate securities does not exceed the percentage/s, specified in Table 3 below, with netting of issuer / borrower / counterparty risk applied; *(b)* bonds, debentures, debenture stock and debenture bonds, notes, whether or not they have inherent option rights or are convertible, provided that the applicable market value or exposure of such interest rate securities does not exceed the percentage/s, specified in Table 3 below, with netting of issuer / borrower / counterparty risk; *(c)* credit derivatives, provided that the market value of such interest rate securities does not exceed the percentage/s on a look-through basis, specified in Table 3 below, with netting of issuer / borrower / counterparty risk. (2) Interest rate derivatives may be used, provided that the portfolio exposure or value-at-risk complies with the limits set out in this Notice. (3) Market risk: A manager may select one of the exposure limits specified in Table 3 below. A portfolio has to stipulate upfront in the investment policy which approach it will employ to measure exposure. (4) The calculation of commitment must be based on an exact conversion of the financial derivative position into the market value of an equivalent position in the underlying asset of that derivative. (5) The commitment calculation of each financial derivative position should be converted to the base currency of the hedge fund using the ruling spot exchange rate. (6) Where any currency derivative has two legs that are not in the base currency of the portfolio, both legs must be taken into account in the commitment calculation.

	(7) *(a)* OTC counterparty exposure in the case of derivatives that involves collateral movements requires an ISDA agreement & CSA. *(b)* Counterparty exposure on interest rate derivatives is measured as the present value of the derivative (e.g. on, but not limited to, interest rate swaps, forward rate agreements, swaptions, caps and floors). (8) Netting to be applied under the commitment approach. The following steps must be taken by a manager when calculating total exposure using the commitment approach: *(a)* Calculate the commitment of each individual derivative (as well as any embedded derivatives and leverage linked to efficient portfolio management (EPM) techniques). *(b)* Identify netting and hedging arrangements. For each netting or hedging arrangement, calculate a net commitment as follows : (i) commitment is equal to the sum of the commitments of the individual financial derivative instruments (including embedded derivatives) after derivative netting; (ii) if the netting or hedging arrangement involves security positions, the market value of security positions can be used to offset commitment; (iii) the value of the resulting calculation is equal to net commitment. *(c)* Total exposure is then equal to the sum of: (i) the value of the commitment of each individual derivative not involved in netting or hedging arrangements; and (ii) the value of each net commitment after the netting or hedging arrangements as described above.

Table 3: Money market instruments, repurchase transactions, bonds, debentures, debenture stock and debenture bonds, notes, credit derivatives

Item		Categories of Securities	Limits being the maximum percentage of the net asset value of the portfolio	
			Per issuer/guarantor as applicable	In aggregate for all issuers/guarantors as applicable
1		Non-equity securities issued or guaranteed by:		200%
	1.1	the government of the Republic of South Africa;	200%	200%
	1.2	any foreign government which has been assigned a foreign currency sovereign rating not lower than that of the Republic of South Africa;	100%	100%
	1.3	the South African Reserve Bank.	100%	100%
2		Non-equity securities issued or guaranteed by a local or foreign bank and repurchase transactions entered into with a local or foreign bank which forms part of a group (in terms of international accounting standards) of which the holding company is listed on an exchange:		100%
	2.1	with a market capitalisation for the listed group holding company of more than R 20 billion;	100%	100%
	2.2	with a market capitalisation for the listed group holding company of between R 2 billion and R 20 billion.	20%	100%
3.		Non-equity securities issued or guaranteed by an authorised user, other than a bank, and repurchase transactions entered into with an authorised user, other than a bank	30%	100%
4		Non-equity securities issued or guaranteed by:		100%
	4.1	a public entity under the Public Finance Management Act,1999 (Act No.1 of 1999); and	10%	100%
	4.2	any local or foreign entity which is listed on an exchange, including foreign companies, foreign public entities, foreign local authorities and foreign development institutions	10%	100%
5		Non-equity securities issued or guaranteed by entities not described above where such security is:		25%
	5.1	listed and traded on an exchange	5%	25%
	5.2	not listed on an exchange, including, participatory interests in participation bonds	5%	10%

Table 4: Market risk and total exposure limits

Item		Total exposure measure	
1		Commitment approach	a portfolio's total exposure to the market does not exceed **200%** of the total net asset value of the portfolio
2		Value-at-Risk approach	
		Absolute value-at-risk	Absolute value-at-risk using daily historical data must be calculated on a daily basis to determine with a 99% confidence level that the potential loss over the following month will not exceed 20% of the portfolio's net asset value

Table 5: Investing in other portfolios

DESCRIPTION	RETAIL HEDGE FUND
Exposure Limits	Where a retail hedge fund invests in other portfolios, (a) investment in any one portfolio may not exceed 75% of the market value of the portfolio; (b) it may invest in participatory interests issued by a fund of funds only if that fund consisting of other portfolios is domiciled and regulated outside the Republic and where the fund consisting of other portfolios is not invested in another fund consisting of other portfolios or feeder fund. (c) it may invest in participatory interests issued by a feeder fund only if the feeder fund holds assets outside the Republic of at least eighty five per cent of the value of the feeder fund
Due Diligence	A due diligence should be conducted by the manager before and during the period of the investment, in respect of underlying hedge funds that the portfolios intends or is invested in.

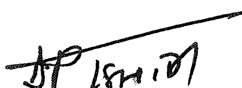
BOARD NOTICE 53 OF 2015

FINANCIAL SERVICES BOARD

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

DETERMINATION OF CONDITIONS AND THE MANNER IN WHICH PARTICIPATORY INTERESTS IN COLLECTIVE INVESTMENT SCHEMES IN SECURITIES, PROPERTY AND PARTICIPATION BONDS MAY BE ISSUED TO AN INVESTOR AS A TAX FREE INVESTMENT

I, Dube Phineas Tshidi, Registrar of Collective Investment Schemes, hereby determine, under sections 46, 51 and 114(4)(b) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), in the Schedule in respect of a collective investment scheme in securities, a collective investment scheme in property and a collective investment scheme in participation bonds, the conditions and manner in which participatory interests may be issued in a portfolio as tax free investments under the Income Tax Act, 1962.



D P TSHIDI
REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

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SCHEDULE

1. PREAMBLE

Following the determination of tax free investments in the Regulations, this notice stipulates the additional conditions of the Registrar in addition to the conditions pertaining to collective investment schemes under the Act, for the regulation of collective investment schemes as tax free investments.

2. 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–

"Income Tax Act" means the Income Tax Act, 1962 (Act No 58 of 1962);

"Regulations" means the Regulations in terms of section 12T of the Income Tax Act.

3. CONDITIONS

(1) Where a manager markets, sells or otherwise provides participatory interests to an investor as being a tax free investment, the manager must ensure that it and the portfolio, or class of participatory interests or account provided for the investor constituting the tax free investment, fully comply with the Regulations at all times.

(2) Within 60 days of first issuing any participatory interest as a tax free investment, the manager must submit to the Registrar a report obtained from an independent auditor, confirming that the administrative and accounting systems of the manager are capable of -

(a) separately identifying each investor's tax free investment account,

(b) managing annual and lifetime investment limits,

(c) accounting for and managing all transactions in and out of the investors' account in compliance with the Regulations; and

(d) properly reporting on the investor's account to the investor on a quarterly basis.

(3) The manager must ensure that it includes the report referred to at subparagraph (2) above in the manager's annual audit.

(4) The manager must in addition to other determined disclosures, fully disclose to the investor prior to accepting a tax free investment transaction from an investor, the fact that the account is a tax free investment, the nature of a tax free investment, the maximum annual and lifetime investment limits, how these limits operate and

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what the consequences are for the investor should these limits be exceeded as well as the general tax implications of a tax free investment.

4. **COMMENCEMENT**

This Notice commences on the date of publication.

BOARD NOTICE 54 OF 2015

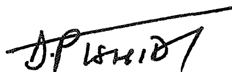
FINANCIAL SERVICES BOARD

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

DETERMINATION OF THE EFFECTIVE DATE OF A NOTICE

1. I, Dube P Tshidi, Registrar of Collective Investment Schemes, hereby determine, under section 114(4)(b) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), **("the Act")** that, having considered concerns raised by managers regarding operational requirements related to compliance with Board Notice 92 of 2014 as published in *Government Gazette* Number 37895 of 8 August 2014 **("the Notice"),** it is necessary for purposes of achieving the objects of the Act to amend the effective date of the Notice as published.

2. In the interest of the collective investment scheme industry I accordingly determine that the Notice will be effective from **1 May 2015**.



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from Government Printing Works

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