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CISCA CIRCULAR NO. 6 TO FOREIGN COLLECTIVE INVESTMENT SCHEMES ISSUED WITH REFERENCE TO BOARD NOTICE 46 OF 2007 ("NOTICE 46") UNDER THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002 ("THE ACT")

1. Background

It became compulsory on 1 August 1998 for a foreign collective investment scheme to obtain approval to market its products in South Africa. In approving these schemes, the approach of this Office has been to ensure that there is parity of regulatory standard between the home (foreign) regulatory environment and South Africa, and that the products offered are of a similar structure and risk profile to those offered by a South African collective investment scheme.

Foreign collective investment schemes domiciled in European Union ("EU") member states, registered as Undertakings for Collective Investments in Transferable Securities ("UCITS"), had various transitional deadlines to meet, the last of which was February 2007, to be fully compliant with amended EU Directive 85/611/EEC. These amendments amongst other reforms, afforded schemes the opportunity to utilise expanded investment powers in portfolios subject to appropriate risk management standards, as determined by the home regulator in compliance with the Directive.

A UCITS promoted in the Republic, approved under section 65 of the Act, requires approval by the Registrar under paragraph 7 of Notice 2076 of 2003 (as amended by Notice 1502 of 2005) on one, and possibly two counts, namely:

- (a) The change of scheme (per EU Directives 2001/107/EC and 2001/108/EC), which applies to all UCITS;
- (b) The kind of investments that it solicits in cases where expanded powers are adopted.

Board Members Dr CDR Rustonjee (Chairperson) AM Sithole (Deputy Chairperson) BM Hawksworth
Ms JV Mogadime Ms AMM Mokgabudi Ms LM Mojela Prof PJ Sutherland Ms HS Wilton
Executive Officer RJG Barrow



2. Interim Measures

Under section 22(b) of the Act, the Registrar of Collective Investment Schemes elected to exempt until 31 August 2007, foreign collective investment schemes from the provisions of paragraph 6 of Notice 2076, to afford the local industry and the Registrar an opportunity to consider the merits of adopting similar measures in South Africa, and if appropriate, commence with the preparation of local regulatory parameters. The exemption was published in Government Gazette No 29839 dated 4 May 2007 as Notice 46. As part of this process, the Association of Collective Investments ("ACI") in its letter dated 3 May 2007, confirmed its members' election to motivate a similar investment dispensation for South African domiciled schemes.

3. Measures following the expiry of the general exemption

Given the current context of developing a domestic equivalent to the expanded powers afforded UCITS III schemes, an appropriate accommodating policy response needs to be granted those foreign schemes currently operating under the temporary exemption in terms of Notice 46.

3.1 Contextualising the UCITS III amendments

UCITS III reforms have both liberalised investment powers and significantly bolstered risk management standards. These commensurate accountability measures, in jurisdictions previously considered of similar standing to that of the Republic under paragraph 3 of Notice 2076, affirm the standard of regulatory diligence. There is therefore no reason why a scheme previously regarded as suitable for approval under section 65 of the Act, should now not be considered eligible for continuing its promotion activities in the Republic. This does not imply that new applications for all schemes across all EU member states will be approved in future. The appropriateness of a fund's scope and mandate as well as the divergence of interpretation of the Directive amongst EU member states will be taken into account in the processing of each new application.

3.2 Procedures for existing schemes and new applications

Notice 46 required that all UCITS schemes furnish the Registrar, by not later than 31 May 2007, *"with proof that it is duly registered by the competent authority of its home jurisdiction, indicating any waivers granted or special conditions imposed, and that it was compliant with UCITS III by 13 February 2007"*. Schemes that chose to apply expanded investment powers available to them

under UCITS III were further asked to furnish the Registrar with copies of disclosures mandated by paragraph 1.2 of Notice 46. UCITS that chose to continue to operate as before, had to confirm the same to their South African investors and similarly submit copies of the requisite documents to this Office in terms of paragraph 1.3 of Notice 46. In order not to prejudice non-UCITS foreign schemes, similar requirements were stipulated in paragraph 1.4 of Notice 46.

3.3 Existing Schemes

Upon expiry of the temporary exemption on 31 August 2007, the following will apply to existing schemes approved under section 65:

- 3.3.1 UCITS falling within the ambit of paragraph 1.3 of Notice 46, will, subject to submission of the information stipulated in the said paragraph, be approved by the Registrar;
- 3.3.2 UCITS applying expanded powers, falling within the ambit of paragraph 1.2 of Notice 46, should in addition to the information already submitted in terms of the said paragraph, forward to the Registrar by not later than 28 September 2007, full information relating to the risk management, control systems and methods submitted to the home regulator. These UCITS will be reviewed on a case-by-case basis.
- 3.3.3 UCITS domiciled in Luxembourg, Ireland and the United Kingdom applying expanded powers, falling within the ambit of paragraph 1.2 of Notice 46, are regarded by this Office, based on its assessment of their regulatory requirements, as schemes acceptable for continued promotion. These UCITS should, in addition to the information already submitted in terms of the said paragraph, forward to the Registrar by not later than **28 September 2007**, full information relating to the risk management, control systems and methods submitted to the home regulator. Subject to submission of the information stipulated in paragraph 1.2 of Notice 46 as well as the additional information requested under this sub-paragraph, these UCITS will be approved by the Registrar;
- 3.3.4 Other foreign schemes falling within the ambit of paragraph 1.4 of Notice 46 (i.e. non-UCITS having adopted expanded powers), should in addition to the information already submitted in terms of the said paragraph, forward to the Registrar by no later than **28 September 2007**, full information relating to the risk management, control systems and methods submitted to the home regulator. These schemes will be reviewed on a case-by-case basis based on this Office's assessment of their regulatory requirements.

- 3.3.5 The review processes mentioned in 3.3.2 and 3.3.4 above, are not intended to introduce additional requirements over and above what the home regulator has stipulated, but to determine what those requirements are, how they are being applied and whether the applicable fund's revised investment policy, scope, objective and powers are appropriate for promotion to South African investors. If these are determined, and subject to the regulatory standard being the same as at the instance of initial approval under section 65, it must follow that the approval by the Registrar will be granted.
- 3.3.6 Managers of schemes with portfolios utilising expanded powers are reminded of the conditions set down in Notice 2076, paragraph 9.(f), concerning disclosure to investors, and in particular paragraphs 9.(f)(v) and (l) concerning "taxation of the scheme", as applicable to South African residents.
- 3.3.7 All the abovementioned schemes remain approved under section 65, unless advised otherwise.
- 3.3.8 Schemes not approved per above as at 31 August 2007, will be granted an individual exemption, pending approval or until notified otherwise.

3.4 New applications

New applications will continue to be considered on a case-by-case basis as is the norm. Paragraph 5 of Notice 2076 outlines application requirements. Paragraph 5.(g) which specifies, "*such further information that the registrar may require*", should now be interpreted as including the risk management, control systems and methods submitted to the home regulator and should be submitted with each application. Similarly, paragraph 9.(b) of Notice 2076 should be interpreted to include disclosure per Notice 46 "*that the scheme's risk management and control policies are appropriate, given the scheme's risk profile, and are available to such investors on request*" as contemplated in paragraphs 1.2(b) and 1.4(a)(iv) of Notice 46 and should be disclosed as such under paragraph 9.(b). The requirements of paragraphs 9.(a) to (l) of Notice 2076 remain.

3.5 Impact on Cisca Circular No 2 dated 16 March 2006

By consequence of the temporary exemption granted by Notice 46 and the above changes, some of the requirements of Circular No 2 (paragraphs 3 and 8) are superseded by the latitude granted to UCITS by amended EU Directive 85/611/EEC. Otherwise, the stipulations of the said Circular remain current.

3.6 General

3.6.1 Despite the fact that this Office stated that the intention of the Registrar is not to 'gold plate' regulatory requirements, but rather to assess schemes and jurisdictions on their own merits with applications for approval, including information required by the home regulator, this Office anticipates that there will be queries as to what this might constitute. To this end, refer to the attached "**Appendix A**" which provides examples of the type of information this Office will want to review for portfolios applying to utilize expanded powers. This outline is based upon considerable foreign regulatory experience of approving UCITS from a multiplicity of jurisdictions, and will hopefully aid applicants in their preparation. It is not exhaustive or prescriptive, but rather offered as a guide.

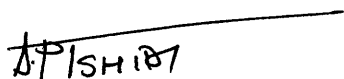
3.6.2 The Registrar reserves the right to revise the measures in this Circular from time to time and to impose additional requirements as may be considered appropriate in future on UCITS III and other comparable foreign collective investment schemes, in general or on a case-by-case basis.

4. **Impact on the development of a similar dispensation for domestic schemes**

The above measures allow foreign schemes approved under section 65 the constancy necessary for continued business within the Republic, while affording new applicants the opportunity to apply for approval as before. This de-links the development of a domestic alternative to UCITS III, from the immediate need for certainty by foreign schemes.

5. **Acknowledgement of receipt**

Kindly return the attached acknowledgment of receipt of this Circular duly completed and signed by an officer of the manager to this Office by not later than 28 September 2007.

A handwritten signature in black ink, appearing to read "A.P. Ishi", with a horizontal line drawn above it.

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES

APPENDIX A

Examples of the type of information the Registrar will want to review for schemes using expanded powers:

1. General Information

- 1.1 Description of the entities or business units responsible for Financial Derivative Instruments (“FDI’s”) valuations, risk measurement and management. Descriptions of the overall level of expertise of the key personnel (e.g. employment history), and/or departments involved and independence of these personnel/entities (e.g. reporting lines within the organisation). An organizational chart would be helpful for such purpose.
- 1.2 Information of the specific types of FDI’s that will be utilised by the fund. An explanation of the types of risks that may impact the fund by utilising the specific types of FDI’s referred to above.
- 1.3 A description of the valuation rules for the specified types of FDI’s, including the policy with regard to the valuation of illiquid FDI’s and OTC (unlisted) FDI’s, and in particular, the frequency of valuation and policy on independent verification.
- 1.4 A brief overview of the systems being used by the risk-manager to monitor, measure and manage the risk process.
- 1.5 A summary of policies in relation to the monitoring and management of legal risk, particularly in the context of OTC derivatives and any other relevant risks.

2. Information with regards to Risk Exposure and Leverage

- 2.1 A description of the methodology used by the fund to calculate its Global Exposure and Leverage with the appropriate rationale based on whether the fund is classified as a sophisticated or a non-sophisticated fund as per the European Commission Recommendation 2004/383/EC of 27 April 2004 (e.g. if a sophisticated fund uses a Value at Risk method it must indicate the calculation parameters, both quantitative and qualitative).
- 2.2 Policies and procedures for stress testing and scenario analysis, where applicable.
- 2.3 A description of the policy adopted/to be adopted regarding issuer concentration risk (position risk) and cover requirements.
- 2.4 Procedures and policies of the fund to monitor and control the levels of Global Exposure and Leverage are in compliance with requirements, including details of

the management controls and systems for:

- 2.4.1 monitoring trade execution;
 - 2.4.2 monitoring position netting;
 - 2.4.3 monitoring of compliance with internal policies/procedures and quantitative limits; and
 - 2.4.4 preventing limit breaches.
- 2.5 A description of any additional risk management policies and procedures used e.g. benchmarks, back testing, tracking-error, stop-losses.
- 2.6 A description of the methodology used by the fund to calculate its counterparty exposure.
- 2.7 Procedures and policies of the fund to monitor and control its counterparty exposure and risk, including:
- 2.7.1 Counterparty approval criteria;
 - 2.7.2 Policy on collateral;
 - 2.7.3 Policy on netting;
 - 2.7.4 Details of the management controls and systems for:
 - 2.7.4.1 monitoring of compliance and quantitative limits e.g. concentration limits; and
 - 2.7.4.2 preventing limit breaches.

3. Information on reporting procedures

Description of internal reporting procedures including the escalation procedures and remedial policy in the event of limit breaches.

ACKNOWLEDGMENT OF RECEIPT

I, the undersigned, (Name) _____,
hereby acknowledge receipt of a copy of CISCA Circular No. 6.

Signed at _____ this _____ day of September 2007

Signature

Name of Manager