



GUIDANCE NOTE
FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002
(NO 45 OF 2002)

HF01A

16 AUGUST 2016

GUIDANCE NOTE ON THE TRANSITION PROCESS UNDER BOARD NOTICE 52 OF 2015
("THE NOTICE") UNDER THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002
("CISCA") : ISSUES ARISING FROM THE GENERAL EXEMPTION IN BOARD NOTICE 140
OF 2015

1. It has come to the Registrar's attention that, subsequent to the declaration by the Minister of Finance of the business of a hedge fund as a collective investment scheme in terms of section 63 ("the Declaration") and the promulgation of Board Notice 140 of 2015 ("the Exemption"), which exempted certain operators of hedge funds from registering as managers under CISCA, there are certain areas of uncertainty regarding the process of transition. This Guidance Note seeks to provide further guidance following the issuing of Guidance Note HF01 of 7 September 2015.
2. **INVESTMENT IN UNREGISTERED HEDGE FUNDS**
 - 2.1. The Registrar notes that there is a perception that once an applicant for registration as a manager of a CIS in Hedge Funds ("an Applicant") has been approved as a manager, it is no longer permitted to continue to include in its registered portfolios investments in unregistered underlying funds.
 - 2.2. The Registrar wishes to advise that the effect of the Declaration is that all hedge funds, despite their operators being unregistered, are portfolios of a declared collective investment scheme and are thus subject to regulation. During the transition period when applications are still being considered by the Registrar, an Applicant, or, once approved, a manager, may continue to hold interests in unregistered underlying hedge

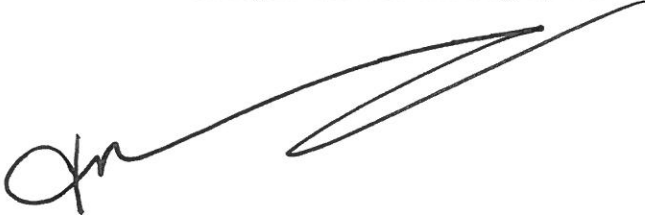
funds provided that those underlying hedge funds are administered (as defined in CISCA) by an Applicant or a person who has been exempted from registration as contemplated by the Exemption.

- 2.3. Consequently , a manager whose portfolio has interests in or is invested in a fund that is subject to the Exemption can continue investing in that hedge fund and need not disinvest for fear of non-compliance. The effect is that an operator of an existing hedge fund who has been registered as a manager, and whose hedge funds have transitioned to registered portfolios in accordance with CISCA, may continue to hold investments or interests in an unregistered hedge fund provided that that unregistered hedge fund is linked to an Applicant.
- 2.4. The Registrar is of the view that while a hedge fund may not be registered in terms of the Notice , it is nonetheless a regulated hedge fund by virtue of it being a declared collective investment scheme in terms of the Declaration.

3. APPLICABILITY OF SECTIONS 99 AND 102 OF CISCA

- 3.1. As stated above the Registrar advises that while a hedge fund may not be registered as contemplated in Board Notice 52 of 2015 ("the Notice") , that hedge fund is nonetheless a regulated hedge fund by virtue of it being a declared collective investment scheme in terms of the Declaration.
- 3.2. As at 1 April 2015, all hedge funds, despite not being registered, fall within the regulatory ambit of CISCA and are accordingly regulated. The operator of a declared collective investment scheme is therefore required to ensure that it complies with applicable provisions of CISCA as prescribed in the Declaration. Paragraph 30 of Board Notice 52 of 2015 promulgated by the Registrar does not exempt an operator of a declared collective investment scheme from the provisions of the Act, but instead exempts operators from full compliance with BN 52 for a period of 12 months from date of registration or approval, as is provided under Guidance Note HF01.
- 3.3. Accordingly, unless the Registrar determines otherwise, sections 99 and 102 of CISCA, remain applicable to declared hedge funds. Where it is necessary to determine conditions applicable to a transaction under section 99 or 102, these conditions will be determined as is appropriate taking cognizance of the merits of each transaction.

- 3.4. Consequently , if a manager chooses to amend its transition plan that was approved on registration, resulting in the need to amalgamate or wind up a portfolio then the provisions of section 99 and 102 will apply. The conditions applicable to such an amalgamation or winding-up will be dependent on the circumstances of each case.

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J A BOYD

REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES