



**GUIDANCE NOTE**  
**FINANCIAL SERVICES BOARD**  
**REPUBLIC OF SOUTH AFRICA**

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

**HF01**

**07 SEPTEMBER 2015**

**GUIDANCE NOTE ON THE IMPLEMENTATION AND INTERPRETATION OF VARIOUS  
PROVISIONS OF BOARD NOTICE 52 OF 2015 ("THE NOTICE") UNDER THE COLLECTIVE  
INVESTMENT SCHEMES CONTROL ACT, 2002 ("CISCA")**

1. On 25 February 2015 the Minister of Finance declared the business of a hedge fund to be a collective investment scheme in terms of section 63 of CISCA ("the Declaration"). In terms of the Declaration persons operating hedge funds are required to submit with the Registrar applications to register as a manager of a collective investment scheme in hedge funds. In order to facilitate the registration of hedge funds, the Registrar issued Board Notice 52 of 2015 ("the Notice" or "BN 52") on 6 March 2015 determining the requirements for hedge funds under CISCA.
2. This Guidance Note seeks to provide guidance on some implementation and interpretation issued raised by industry related to the registration of hedge funds.

**3. SCOPE OF DECLARATION**

The declaration applies to all hedge funds except for private arrangements and segregated portfolios using hedge fund strategies.

**4. EFFECTIVE DATE OF THE NOTICE**

- 4.1. All hedge funds that were unregulated as at 31 March 2015 need to apply to be registered under CISCA by no later than 30 September 2015.

- 4.2. An existing unregulated hedge fund is NOT subject to the requirements of BN 52 until it is approved. Consequently none of the product regulation is applicable to the unregulated hedge fund. This includes compliance, reporting to the registrar, investment parameters, disclosures etc.
- 4.3. An existing unregulated hedge fund will have 12 months from the date of registration / approval under CISCA to be fully compliant with the regulations, that is to say, the Notice.
- 4.4. Any new hedge fund that is established after 1 April 2015 will be subject to the regulation under CISCA without any transitional period applicable. New hedge funds will therefore have to be approved in terms of CISCA and be compliant with effect from the date of registration / approval.

**5. TAX MATTERS**

A hedge fund will only be afforded the same tax treatment as other collective investment schemes from the date of approval or registration of that collective investment scheme.

**6. INTERPRETATION OF REGULATIONS**

**6.1. Definition of Qualified Investor**

- 6.1.1. The definition of a qualified investor determines that an investor in a qualified investor hedge fund must invest R1 million per hedge fund. This requirement should be interpreted to mean that an investor who invests this amount remains qualified if the amount invested reduces below the qualifying amount as a result of negative portfolio performance. The investor remains similarly qualified if he or she made a subsequent partial withdrawal provided that this withdrawal is not done in order to circumvent the legislation.
- 6.1.2. The minimum investment amount only becomes a requirement on registration of a specific portfolio as a qualified fund; this minimum is not applicable to an existing unregulated hedge fund that registers as a qualified investor hedge fund.

**6.2. Date of establishment of portfolio**

- 6.2.1. In terms of the disclosure provisions (paragraph 27(2)(c)) a manager must provide an investor with the date of establishment of a portfolio. Given that

some of the funds would have been in existence prior to the Declaration, a manager of a hedge fund that existed prior to being registered under Cisca can disclose both the establishment date and the date on which the fund became registered to comply with this requirement.

- 6.2.2. In respect of disclosing performance history, a manager must clarify which performance period applies to a previous unregulated structure and which performance period is covered as a regulated structure.

**6.3. List of all portfolios in the collective investment scheme (paragraph 27(2)(d))**

It is a further requirement in paragraph 27(2)(d) for a manager to disclose to the investor all the portfolios in the collective investment scheme. This provision should be interpreted to limit the portfolios to those offered by the relevant fund manager or promoter and does not extend to all portfolios comprising a scheme particularly in cases where the portfolios are offered under a hosting arrangement.

**6.4. Statement of transactions of assets bought and sold (paragraph 27(4)(e))**

Paragraph 27(4)(e) stipulates the information that must be disclosed to an investor by way of an investor statement. The Registrar is of the view that the information must be provided in a form that is useful and sensible to the investor and can be summarised where appropriate.

**6.5. Meaning of fund, scheme and portfolio**

- 6.5.1. It appears as though the terms “portfolio”, “fund” and “scheme” are used inconsistently throughout the notice and often at odds with common usage of the terms. Managers must note that the terminology as used in the Notice is intended to be consistent with usage in Cisca. While a fund in common usage is used to refer to a portfolio, Cisca does not make any reference to a fund.
- 6.5.2. In order to avoid confusion the Registrar wishes to clarify that the terms “fund”, “scheme” and “portfolio” should accordingly be interpreted as follows: “portfolio” refers to the product into which the investor invests (hedge fund in common usage), and “fund” whether it be used in the context of “hedge fund” or “QI Fund” refers to the scheme unless the context indicates otherwise.

6.5.3. Under Table 5 of Annexure A, item (a) the intention was for the second “portfolio” to refer to the fund making the investment and not the fund into which investment is made. The word “fund” was inadvertently changed during the drafting process when references to fund were substituted with “portfolio”. Accordingly (a) should be read to provide as follows:

*“Where a retail hedge fund invests in other portfolios, investment in any one portfolio may not exceed 75% of the market value of retail hedge fund”.*

**6.6. Bank Accounts**

It is important to note that whilst the operation of the section 104 and 105 accounts would be operated differently in hedge fund industry practice compared to existing long only collective investment schemes, the principles as determined under sections 104 and 105 of CISCA must be followed consistently.

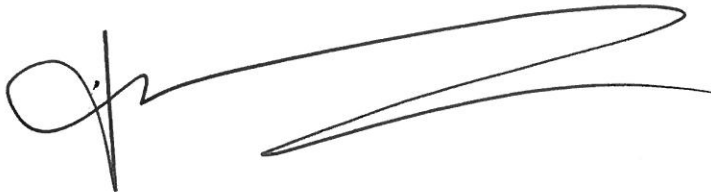
**7. FEES AND CHARGES**

The Registrar acknowledges that it is standard practice in the hedge funds industry to accrue and disclose fees at a more granular level than that allowed in the model deed. The model deed provides the minimum of what is expected and therefore it is acceptable to provide more granular disclosure of fees and charges. Where this is the case the Deed must provide for more detailed disclosure of fees and charges.

**8. APPLICATIONS**

- 8.1. In order to assist with the submission of applications the Registrar has provided standard templates. Managers are advised that these templates are not prescriptive, particularly in respect of the model deed and may accordingly be amended. The Registrar will consider deviations and amendments in respect of these documents provided that significant changes are highlighted and accompanied by sufficient explanation in a supporting document.
- 8.2. Managers are reminded that applications should include all the supporting information providing adequate detail to be accepted as a complete application. Supporting documents including business plans, risk management plans, liquidity management measures, and counterparty risk management will be scrutinised, as will the confirmation of applicable systems, to ensure that a sufficient level of detail has been provided to enable a proper consideration of the application.

- 8.3. The format of the application is a hard copy with electronic versions of documents provided on a suitable device.

A handwritten signature in dark ink, consisting of a large, stylized 'J' followed by a series of loops and a long, sweeping horizontal stroke.

**J A BOYD**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

