

(1 May 2015 – to date)

## **COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002**

*(Gazette No. 24182, dated 13 December 2002. Commencement date: 3 March 2003, Proc. No. R. 18, Gazette No. 25007)*

### **FINANCIAL SERVICES BOARD**

#### **ADVERTISING, MARKETING AND INFORMATION DISCLOSURE REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES**

*Board Notice 92 in Government Gazette 37895 dated 8 August 2014. Commencement date: 1 March 2015.  
(Commencement date extended to 1 May 2015 by BN 54 in Government Gazette 38540, dated 6 March 2015)*

I, Dube Phineas Tshidi, the Registrar of Collective Investment Schemes, hereby determine, under section 90(4) and section 114(4)(b) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), advertising, marketing and information disclosure requirements and the manner in which managers must lodge advertising and marketing material with the registrar, as set out in the Schedule.

(Signed)

**DP TSHIDI**

**REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES**

### **SCHEDULE**

#### **Arrangement of Requirements**

##### **Part I**

#### **DEFINITIONS, OBJECTIVES AND APPLICATION**

1. Definitions
2. Objectives
3. Application

##### **Part II**

#### **GENERAL RULES FOR MARKETING AND ADVERTISING**

4. General standards for marketing and advertising a collective investment scheme
5. General advertising requirements

##### **Part III**

Prepared by:

## **MANDATORY DISCLOSURES**

6. Mandatory disclosures

### **Part IV**

## **PERFORMANCE DISCLOSURES**

7. General performance disclosure requirements
8. Past performance disclosure requirements
9. Publishing of performance
10. Ranking of portfolios
11. Illustrative reporting of investment performance
12. Publication of prices
13. Comparative advertising
14. Advertising of awards and credit ratings

### **Part V**

## **INFORMATION DISCLOSURE**

15. General requirements for information disclosure
16. General requirements for the Minimum Disclosure Document
17. Minimum Disclosure Document format
18. Application forms and process

### **Part VI**

## **GENERAL PROVISIONS**

19. Lodging of material with the registrar
20. Commencement and transitional arrangements
21. Short title

## **PART I**

## **DEFINITIONS, OBJECTIVES AND APPLICATION**

### **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 has that meaning and, unless the context otherwise indicates-

**"advertisement"** means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by any means of which a person seeks to-

- (a) bring to the attention of all or part of the members of the public-
  - (i) the existence or identity of a manager; or
  - (ii) the existence, nature, availability, properties, advantages, particulars, prospectus or any other offer document of any collective investment scheme that is available for investment, or the conditions on, or prices at, which any collective investment scheme is available for investment; or
- (b) solicit investment in any collective investment scheme,

and the expression **"advertising"** has a corresponding meaning;

**"annualised returns"** is the weighted average compound growth rate over the performance period measured;

**"application form"** means the document that is completed by the investor applying for investment in a portfolio;

**"financial services provider"** means an authorised financial services provider as defined in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

**"JSE Equities Rules"** means the JSE Equities Rules made by the JSE Limited, a licensed exchange under the Financial Markets Act, 2012 (Act No. 19 of 2012);

**"manager"** includes an operator of a foreign collective investment scheme approved under section 65 of the Act;

**"marketing material"** includes, brochures, prospectuses and websites;

**"MDD"** means a minimum disclosure document, which is a short document containing key information pertaining to a portfolio or scheme that a manager provides to an investor to assist the investor in understanding the collective investment scheme product;

**"NAV"** means net asset value, which is 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;

**"portfolio"** includes a foreign collective investment scheme or a sub-fund of a foreign collective investment scheme;

**"price"** means the price of a participatory interest being the NAV divided by the number of participatory interests in issue for that portfolio, as determined in the deed and related supplemental deed;

**"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 collective investment scheme, expressed as a percentage of the average daily value of the portfolio or collective investment scheme calculated over a period of a financial year by the manager of the portfolio or collective investment scheme; and

**"website"** has the meaning ascribed to it in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

## 2. Objectives

This Notice aims to-

- (a) provide a legal framework within which managers of collective investment schemes may advertise and market their products in a manner which ensures that investors base their investment decisions on full, accurate and comprehensive information;
- (b) protect investors from deceptive, misleading, unfair or fraudulent conduct by managers through advertising and marketing material;
- (c) promote the fair treatment of investors;
- (d) encourage fair competition amongst managers;
- (e) promote the use of plain and understandable language by managers in respect of any information provided or displayed to investors;
- (f) ensure alignment with relevant international information disclosure standards and practices;
- (g) encourage investor understanding of the key features of a collective investment scheme through the manager's use of suitable disclosures for the intended target market; and
- (h) determine the manner in which managers must lodge advertising and marketing material.

## 3. Application

Prepared by:

- (1) This Notice applies to the marketing, advertising and information disclosure by managers of all collective investment schemes registered or approved under the Act, including foreign collective investment schemes, and where the collective investment schemes are listed, the JSE Equity Rules also apply.
- (2) A manager must take reasonable steps to satisfy itself that any product supplier or financial services provider that markets or distributes its CIS portfolios, has processes in place to comply with this Notice to the extent applicable, and in particular to ensure investors are provided with MDD's.

## **PART II**

### **GENERAL RULES FOR MARKETING AND ADVERTISING**

#### **4. General standards for marketing and advertising a collective investment scheme**

- (1) A manager may not advertise or market any collective investment scheme or portfolio-
  - (a) in a manner that is likely to create a misleading or false statement, promise or forecast regarding the collective investment scheme, a portfolio or a participatory interest;
  - (b) if such a scheme or portfolio is not registered or approved in accordance with the Act;
  - (c) in a manner that is fraudulent, misleading or deceptive in respect of-
    - (i) the nature of the collective investment scheme or portfolio;
    - (ii) the conditions on which a participatory interest of a collective investment scheme or portfolio may be purchased and sold;
    - (iii) the price at which a participatory interest may be purchased and sold;
    - (iv) the risks associated with the collective investment scheme or portfolio;
    - (v) the nature or scale of the activities of the manager;
    - (vi) the resources that are available to the manager; and
    - (vii) any other material aspects of a participatory interest, a portfolio or a collective investment scheme.
- (2) Prior to registration and approval by the registrar of a collective investment scheme or a portfolio, a manager may not-

- (a) distribute any advertising or marketing material relating to that collective investment scheme or portfolio;
- (b) make any reference to that collective investment scheme or portfolio at product launches.

## **5. General advertising requirements**

- (1) A manager must ensure that an advertisement for a collective investment scheme or portfolio clearly explains the nature of the collective investment scheme or portfolio being advertised.
- (2) When a manager publishes an advertisement which contains a statement of fact, the manager must, at the time the advertisement is published, have reasonable grounds to believe that fact to be true and that it will remain true for the period of time that the advertisement continues.
- (3) A manager must ensure that an advertisement-
  - (a) reflects the charges of the most expensive class, offered by the manager in a portfolio and available for direct investment by members of the public, other than financial institutions;
  - (b) specifies where a schedule of fees can be obtained if it is not included in the advertisement;
  - (c) identifies the manager who published or caused the advertisement to be published;
  - (d) discloses the fact that the manager is registered or approved under the Act;
  - (e) only specifies the terms and conditions applicable to an investment if those terms and conditions give a fair indication of the nature and risks of the investment;
  - (f) is capable of being understood by any investor or potential investor that might reasonably be expected to see the advertisements;
  - (g) does not state or imply that the collective investment scheme or portfolio is suitable for a particular type of investor unless the manager has assessed that that collective investment scheme or portfolio is suitable for that specific type of investor;
  - (h) discloses any special areas of risk relating to the investment;
  - (i) does not specify a rate of return without specifying how the rate is calculated, and any element which may involve a reduction of the investor's capital must be specified;
  - (j) is not designed in a manner which is likely to give rise to misunderstandings;

- (k) is not designed in a manner which is likely to disguise the significance of any warning statement or information which is required to be included in accordance with this notice;
  - (l) is not presented in a manner that prevents the advertisement from being clearly identifiable as an advertisement; and
  - (m) does not signify, in any way, that the advertisement has been approved by the registrar.
- (4) A manager must consider the appropriateness of a specific medium for advertising if content limitation may result in there being insufficient space or time to provide balanced information on the investment.
  - (5) A manager must ensure that an internet advertisement is such that investors are able to reproduce a copy of the advertisement, including any disclaimers or warnings.
  - (6) A manager may not publish an advertisement which contains a statement relating to taxation benefits unless the statement contains appropriate qualifications to show what the benefits mean in practice and to whom they apply.
  - (7) A manager must keep a record, whether electronically or otherwise, of all advertisements that the manager has published, including, the date of publication, the publications in which the advertisements have been included, and evidence to support any statement made in an advertisement which purports to be a statement of fact or opinion, or details of how to access the evidence supporting a statement made in an advertisement.
  - (8) A manager must keep all material referred to in sub-paragraph (7) for a period of at least five years.

### **PART III**

#### **MANDATORY DISCLOSURES**

##### **6. Mandatory disclosures**

- (1) A manager must include the following disclosures in all marketing material: -
  - (a) collective investment schemes are generally medium to long-term investments;
  - (b) the value of participatory interests or the investment may go down as well as up;
  - (c) past performance is not necessarily a guide to future performance;
  - (d) collective investment schemes are traded at ruling prices and can engage in borrowing and scrip lending;

- (e) a schedule of fees and charges and maximum commissions is available on request from the manager;
  - (f) a detailed description of how performance fees are calculated and applied;
  - (g) a statement that the manager does not provide any guarantee either with respect to the capital or the return of a portfolio.
- (2) In addition to the general disclosures in sub-paragraph (1), a manager must disclose, in respect of-
- (a) an exchange traded fund registered as a collective investment scheme,
    - (i) that the exchange traded fund is listed on an exchange and may therefor incur additional costs;
    - (ii) the difference between an exchange traded fund and other collective investment scheme portfolios;
    - (iii) the index that the exchange traded fund tracks and how it will track the index;
    - (iv) where an investor can view the index and its performance as tracked by the exchange traded fund;
    - (v) the tracking error of the exchange traded fund;
    - (vi) where the index tracking portfolio engages in securities lending activities, information on such securities lending activities, the percentage of securities lent out, the names of all the counterparties related to these activities as well as the risks associated with counterparty exposure;
  - (b) a money market portfolio-
    - (i) that a money market portfolio is not a bank deposit account;
    - (ii) whether the price of a participatory interest is a marked-to-market value or targeted at a constant value;
    - (iii) that the total return to the investor is made up of interest received and any gain or loss made on any particular instrument; and that in most cases the return will merely have the effect of increasing or decreasing the daily yield, but that in the case of abnormal losses it can have the effect of reducing the capital value of the portfolio;



- (iv) how the yield is calculated;
  - (v) that excessive withdrawals from the portfolio may place the portfolio under liquidity pressures; and that in such circumstances a process of ring-fencing of withdrawal instructions and managed pay-outs over time may be followed;
- (c) a portfolio that derives its income primarily from interest-bearing instruments in accordance with section 100(2) of the Act, whether the yield is historic or current as well as the date of calculation of the yield;
- (d) a fund of funds portfolio, that a fund of funds is a portfolio that invests in portfolios of collective investment schemes that levy their own charges, which could result in a higher fee structure for the fund of funds;
- (e) a feeder fund, that a feeder fund is a portfolio that invests in a single portfolio of a collective investment scheme, which levies its own charges and which could result in a higher fee structure for the feeder fund; and
- (f) a third-party-named portfolio, that the manager retains full legal responsibility for the third-party-named portfolio.
- (3) Where foreign securities are included in a portfolio, the manager must, before entering into a transaction to purchase foreign securities, disclose to potential investors any material risk, such as-
- (a) potential constraints on liquidity and the repatriation of funds;
  - (b) macroeconomic risks;
  - (c) political risks;
  - (d) foreign exchange risks;
  - (e) tax risks;
  - (f) settlement risks; and
  - (g) potential limitations on the availability of market information.

## **PART IV**

### **PERFORMANCE DISCLOSURES**

#### **7. General performance disclosure requirements**

Prepared by:

- (1) A manager must ensure that an advertisement relating to the performance of a portfolio, manager or collective investment scheme-
  - (a) is objective and reasonable;
  - (b) is truthful;
  - (c) is representative of the portfolio history;
  - (d) is not taken out of context;
  - (e) conforms with accepted mathematical procedures; and
  - (f) does not create unreasonable expectations of future performance.
- (2) A manager may only publish forecasts or commentary about the expected future performance of asset classes or the market in general if the forecasts are based on disclosed reasonable assumptions and the manager indicates that the forecasts or commentary are not guaranteed to occur.
- (3) A manager must ensure that an advertisement which contains performance information, including awards and rankings, also includes references to their sources and date.
- (4) A manager may not publish an advertisement which-
  - (a) implies that portfolio performance achieved in the past will be repeated;
  - (b) includes returns over terms shorter than three years, other than in the case of money market portfolios; or
  - (c) includes any future returns based on historic data.

## **8. Past performance disclosure requirements**

- (1) A manager may only publish an advertisement which includes a statement relating to past performance if-
  - (a) the basis on which the performance is measured is clearly stated and the presentation of the performance is fair and reasonable;
  - (b) the statement is accompanied by a warning that past performance is not indicative of future performance; and

- (c) the past performance is relevant to the investment or the service offered by the manager.
- (2) When a manager includes past performance in an advertisement or marketing material, the manager must ensure that-
- (a) annualised or cumulative figures are used and are the figures as at month-end quoted against relevant indices or benchmarks for periods of a minimum of one rolling year and in multiples of full years for periods longer than one year;
  - (b) cumulative performance figures include the relevant annualised figures for the same period and are reflected with equal prominence as the cumulative figures;
  - (c) returns for any periods may not be extrapolated to longer periods except in the case of a money market portfolio where annualised current yields are used;
  - (d) a history of at least the most recent rolling ten years is shown, or where the portfolio has been in existence for less than ten years, the history since inception or change of classification of that portfolio;
  - (e) an explanation of annualised figures is added;
  - (f) the lowest and highest actual annual figure for the period to show variability is added; and
  - (g) actual annual figures are available to the investor on request.
- (3) A manager may, provided the selected performance publication option is applied on a consistent basis, publish its portfolio returns on one or more of the following bases-
- (a) rolling monthly;
  - (b) rolling quarterly;
  - (c) rolling annual; or
  - (d) year-to-date.
- (4) When a manager includes since-inception-performance in an advertisement or marketing material, the manager must ensure that-
- (a) the launch date is clearly stated;

- (b) if since-inception cumulative performance figures are in full years, (for example five years or ten years), these figures must include the relevant annualised figures for the same period reflected with equal prominence as the cumulative figures;
  - (c) performance figures of less than six months' duration are not shown in the advertisement.
- (5) A manager must ensure that performance information that is advertised is not older than three months at the time of publication.
- (6) Where a manager quotes actual case histories in an advertisement relating to the past performance of a portfolio, these must start with the inception of the quoted investor's account and all relevant data must be made available for audit on request.
- (7) A manager must ensure that performance statistics in an advertisement clearly reflect-
  - (a) whether recurring investment or lump sum investment performances are being quoted;
  - (b) whether or not income distributions, prior to deduction of applicable taxes, are included in the calculations; and
  - (c) that NAV to NAV figures have been used.
- (8) Where a manager advertises a collective investment scheme in securities listed on an exchange, performance calculations must be based on the NAV calculated by the manager at the valuation point defined in the deed.
- (9) A manager must make investment performance calculations available for verification upon request by any person.

## **9. Publishing of performance**

- (1) A manager must ensure that-
  - (a) publishing of performance of a portfolio is based on performance calculations which are done on a NAV to NAV basis over all reporting periods; provided that where a NAV is not available, the value used to calculate the performance and which was agreed with the trustee must be clearly stated and a description of how the figures were calculated must be provided;
  - (b) reinvestment of income is calculated on the actual amount distributed per participatory interest, using the ex-dividend date NAV price of the applicable class of the portfolio, irrespective of the actual reinvestment date;

- (c) all publication of performance is accompanied by a disclosure indicating that the performance is calculated for the portfolio, as well as that the individual investor performance may differ as a result of initial fees, the actual investment date, the date of reinvestment and dividend withholding tax.
- (2) Where a manager has changed the manner and method of publishing performance, the manager must include notification to that effect in the three subsequent MDD documents.

## **10. Ranking of portfolios**

- (1) The general principle applicable to the ranking of portfolios with multiple classes of participatory interests is that only the most expensive class in each portfolio offered by the manager, and available for direct investment by members of the public, other than financial institutions, at the beginning of the reporting period, can be ranked.
- (2) A manager may only advertise that a portfolio is highest in performance, if it is factually ranked the highest in performance of all portfolios in its relevant peer group.
- (3) A manager may advertise ranking of a portfolio within a relevant peer group provided that-
  - (a) there are at least five portfolios in the relevant peer group, and
  - (b) the other portfolios may not be specifically named.

## **11. Illustrative reporting of investment performance**

- (1) A manager may-
  - (a) use illustrative investment performance together with portfolio performance tables to show the effect of costs and other factors that impact investment performance;
  - (b) not use illustrative investment performance for showing portfolio performance.
- (2) A manager must, in all illustrative investment performance reporting, disclose that-
  - (a) the investment performance is for illustrative purposes only;
  - (b) the investment performance is calculated by taking the actual initial fees and all ongoing fees into account for the amount shown; and
  - (c) income is reinvested on the reinvestment date.

## **12. Publication of prices**

- (1) A manager must, in respect of each of its portfolios, including third-party-named portfolios, publish daily prices of the most expensive class offered by the manager for investment by members of the public, other than financial institutions, and the latest total expense ratio applicable to that portfolio on its website, if any, and in at least one national newspaper.
- (2) A manager may only publish prices in respect of portfolios or classes of participatory interests that are offered for investment by the manager to members of the public, other than financial institutions.

## **13. Comparative advertising**

- (1) A manager may only make a comparison between-
  - (a) its collective investment scheme or portfolio and another collective investment scheme or portfolio if the collective investment schemes or portfolios have sufficiently similar features;
  - (b) the returns of its collective investment scheme or portfolio and those of another collective investment scheme or portfolio if the information used is current, complete and accurate.
- (2) Where a manager advertises comparisons of returns, the manager must use statistics published at quarter-end or month-end against relevant benchmarks for periods of a minimum of one year and in multiples of full years for longer periods.
- (3) A manager may not, in comparative advertising, -
  - (a) use comparisons of returns data older than three months after the end of any calendar quarter;
  - (b) mention specific competitive portfolios, managers or collective investment schemes;
  - (c) make comparisons between portfolios that are grouped in a sector in which there is no commonality of investment objectives, nor may any ranking be advertised.
- (4) A manager may only compare portfolios within a peer group where the basis of inclusion or exclusion is disclosed and where the selection criteria are consistently applied.

## **14. Advertising of awards and credit ratings**

- (1) A manager who wishes to advertise its current awards-
  - (a) may only advertise an award once it has been formally awarded;

- (b) must state -
  - (i) the name of the award and/or its logo;
  - (ii) the date of the award; and
  - (iii) that the full details and basis of the award are available from the manager.
- (2) A manager may advertise its historical awards older than 12 months provided that-
  - (a) the award is not the sole focus of the advertisement;
  - (b) the name of the award and/or its logo is given;
  - (c) the date of the award is disclosed; and
  - (d) the advertisement discloses that the full details and basis of the award are available from the manager.
- (3) A manager may only advertise a credit rating assigned to a portfolio by a credit rating agency registered under the Credit Rating Services Act, 2012 (Act No. 24 of 2012), and provided that-
  - (a) the credit rating was issued at the request of the manager;
  - (b) the credit rating agency had unrestricted access to all confidential and other sensitive information, including management interaction; and
  - (c) the name of the credit rating agency is provided and a description and methodology of the rating is publicly available.

## **PART V**

### **INFORMATION DISCLOSURE**

#### **15. General requirements for information disclosure**

- (1) A manager must ensure that disclosure of any information in respect of a collective investment scheme is fair, consistent, transparent and accurate.
- (2) In order to achieve the objective of fair treatment of investors, a manager must ensure that disclosure of any information is provided in plain language which is concise, clear and not misleading.

- (3) Subject to the requirement being provided for in the supplemental deed of a respective portfolio, a manager must disclose in all marketing material that the manager has a right to close the portfolio to new investors in order to manage it more efficiently in accordance with its mandate.
- (4) A manager must disclose quarterly to an investor by way of an investor statement, the following minimum information-
- (a) the series or class of assets invested in;
  - (b) the net asset value and participatory interest price multiplied by the number of notional participatory interests held in the portfolio;
  - (c) equalisation credit (where applicable);
  - (d) return for the quarter;
  - (e) transactions processed;
  - (f) subscriptions (new investments) and number of participatory interests;
  - (g) management fees; and
  - (h) performance fee / incentive fee.
- (5) A manager must publish on its website quarterly, a general investor report, which must also be available to investors on request, that details-
- (a) the number of participatory interests;
  - (b) net asset value per participatory interest;
  - (c) an analysis of the portfolio with reference to the extent to which it has or has not adhered to its policy objective;
  - (d) total expense ratio applicable to the portfolio;
  - (e) a statement of changes in the composition of the portfolio during the reporting period; and
  - (f) any additional information relevant for the portfolio, taking account of the requirements for the MDD.

## 16. General requirements for the Minimum Disclosure Document

Prepared by:



- (1) A manager must produce a MDD for each portfolio administered under its collective investment scheme, including third-party-named portfolios.
- (2) A manager must use a MDD for purposes of disclosing information to an investor prior to entering into a transaction with the investor, and for purposes of providing a general investor report to its investors as contemplated in paragraph 15.
- (3) A manager must ensure that each MDD-
  - (a) sets out the essential characteristics of a portfolio or portfolio class which will enable an investor to understand the nature and the risks of the portfolio and to make informed investment decisions;
  - (b) is updated every quarter following the launch date of a portfolio and discloses the date of issue;
  - (c) is in the format prescribed in paragraph 17;
  - (d) contains a statement that it is the MDD;
  - (e) discloses at least the following information-
    - (i) the registered portfolio name and, where applicable, the registered number;
    - (ii) the investment objective and a summary of the investment policy of the portfolio as provided for in terms of the supplemental deed and any other mandate that may be narrower than the investment policy;
    - (iii) the risk reward profile of the investment, including appropriate guidance on and warnings of the risks associated with investment in the relevant portfolio;
    - (iv) the portfolio benchmark, where applicable;
    - (v) fees and charges associated with the most expensive class available directly from the manager for investment by members of the public, other than financial institutions; (total expense ratio, management fees, initial fees, performance fees, advisory fees and any other applicable fees);
    - (vi) the portfolio launch or inception date;
    - (vii) the portfolio category or classification;

- (viii) the portfolio size;
  - (ix) distribution dates and the value distributed per participatory interest over the past 12 months;
  - (x) performance of the portfolio;
  - (xi) the name of the manager, trustee and/or custodian and their relevant contact details;
  - (xii) portfolio valuation and transaction cut-off time;
  - (xiii) asset allocation;
  - (xiv) mandatory disclosures set out in paragraph 6;
  - (xv) the frequency of publication of prices and where or how prices are published or made available; and
  - (xvi) where and how to obtain, free of charge, additional information on the proposed investment including, but not limited to, brochures, application forms and the annual report and any half-yearly report.
- (4) A manager must make available on request, to existing and prospective investors, details of the investments of a portfolio as at the most recent calendar quarter-end in order to enable the investors to make informed investment decisions.
- (5) Where a manager delegates or outsources the management of the investments in a portfolio to a financial services provider, the full details of that financial services provider must be disclosed to the investor, including whether the financial services provider is authorised under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) to act in such capacity.

#### **17. Minimum Disclosure Document format**

- (1) A manager must ensure that the MDD-
- (a) does not contain unnecessary technical jargon;
  - (b) is no longer than two double-sided or four one-sided pages of A4-sized paper;
  - (c) is set in readable characters or font, spacing and format.

- (2) A manager may provide the MDD to an investor in a durable medium other than paper or through a website where the investor specifically selects that other medium or consents in writing to the provision of information on a website.

## **18. Application form and process**

- (1) A manager must obtain from an investor a signed application form or contract, which constitutes the agreement with the investor and records the arrangements between the parties, and complies with the requirements in this paragraph.
- (2) A manager must ensure that it discloses all conflicts or possible conflicts that may exist between the interests of the manager and the interests of an investor and the manner in which the conflict is being managed.
- (3) A manager must require the investor to provide, as a minimum, the following information on the application form-
  - (a) investor details;
  - (b) investor's communication choice;
  - (c) the investor's source of funds;
  - (d) the investor's investment plan or portfolio selection;
  - (e) the investor's instruction on income distribution;
  - (f) bank details of the investor for purposes of collection of investment contributions as well as payment of redemptions and distributions;
  - (g) chosen method of payment;
  - (h) debit order authorisation and annual increases, if any;
  - (i) investor's instructions regarding withdrawals or redemption;
  - (j) the investor's declarations including that of having noted and understood all of the information provided; and
  - (k) date and signature.

- (4) A manager must ensure that the following minimum information is disclosed to a potential investor during the application process-
- (a) all fees and charges relating to a particular investment, including management fees, initial fees, performance fees including the method of calculation, advisory fees and any other applicable fees and charges;
  - (b) the details, fees payable to and signature of the financial services provider;
  - (c) complaints process;
  - (d) terms and conditions of investment;
  - (e) the manner in which participatory interests may be bought or sold;
  - (f) how the NAV and price are calculated
  - (g) mandatory disclosures set out in paragraph 6; and
  - (h) a summary overview of the portfolio and information regarding the participatory interests, similar to the content of the MDD.
- (5) A manager of a collective investment scheme in participation bonds must ensure that an application form for that scheme is in writing and provides (in addition to the information contemplated in section 3 of the Act) that-
- (a) money invested in the scheme must remain invested in the scheme for a period of not less than five years;
  - (b) the participant's investment is secured by all the participation bonds included in the scheme and that the debt owing under the bonds is, to the extent of the participatory interest granted to such participant, a debt owing to such participant and not to the manager or the nominee company;
  - (c) neither the manager nor the nominee company guarantees the repayment of the debt;
  - (d) upon the expiry of the five year period referred to in section 58 of the Act, the participant may withdraw his or her investment, subject to the Rules for the administration of collective investment schemes in participation bonds and subject to the participant having given the manager no more than three months' written notice;

- (e) the participant may, within the five year period referred to in section 58 of the Act, transfer, cede or encumber his participatory interest, subject to the rules for the administration of collective investment schemes in participation bonds;
- (f) the interest payable by the mortgagors under participation bonds may fluctuate during the terms of the bonds and that interest payable to the participant may fluctuate;
- (g) the interest paid by mortgagors to the manager in terms of participation bonds, less the manager's administration fees, which must be determined by the manager from time to time, must be paid by the manager to the participants at intervals determined by the manager; and
- (h) the manager must furnish each participant, with each payment of interest, in writing or by electronic means, at intervals of not more than three months, with a statement of account disclosing the amount of capital owing to the participant and indicating how the net amount of interest paid has been calculated.

## **PART VI**

### **GENERAL PROVISIONS**

#### **19. Lodging of material with the registrar**

- (1) A manager must lodge with the registrar, against the prescribed fee, copies of all advertisements and marketing material, MDDs and application forms ("material") to be published by the manager or any of its authorised representatives prior to publication or use of the material.
- (2) Subject to the provisions of sub-paragraph 19(1) a manager must lodge application form templates at least once annually, within 30 days of the commencement of the manager's new financial year.
- (3) Where the registrar objects to any material lodged with him or her, on any grounds contemplated in section 17 of the Act, within 30 days of lodgement, the manager may not use the material further until the objection has been addressed to the registrar's satisfaction and the registrar has confirmed in writing that the objection has been addressed.
- (4) If at any time it appears that any material is not appropriate on the grounds contemplated by section 17 of the Act, notwithstanding the fact that the registrar may not have raised any objections regarding the material at the time it was originally lodged with him or her, the registrar may express his or her concerns and require the manager to address the concerns raised within a stipulated time frame.
- (5) If the manager is unable to address the registrar's concerns to the satisfaction of the registrar, the registrar may require that the manager desist from any further use of the material until the material has been modified to the registrar's satisfaction.

- (6) In assessing whether any material complies with this Notice, the registrar may take into account matters of fact or opinion or forecasts which have been omitted (or might properly have been included) in the material as well as the content and form of the material itself, the context in which it is published, the general impression that it creates, and the likelihood of any person being misled by it.

## **20. Commencement and transitional arrangements**

- (1) The following provisions are repealed from the date of coming into operation of this Notice-

- (a) Notice 571 of 2003;
- (b) sub-clause 1(e) of Notice 576 of 2003; and
- (c) paragraph 5 of Notice 569 of 2003,

as published in *Government Gazette* 24984 of 28 February 2003.

- (2) This Notice comes into effect on 1 March 2015.

## **21. Short Title**

This Notice is called the Advertising, Marketing and Information Disclosure Requirements for Collective Investment Schemes.