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**COLLECTIVE INVESTMENT
SCHEMES CONTROL BILL,
1999**

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SCHEDULE 1: MINIMUM CAPITAL REQUIREMENTS TO BE MAINTAINED BY MANAGER (SECTION 71)

SCHEDULE 2: MATTERS WHICH SHALL BE PROVIDED FOR IN DEED OF COLLECTIVE INVESTMENT SCHEME (SECTION 80)

SCHEDULE 3: LAWS REPEALED BY THIS ACT (SECTION 100)

BILL

To control, regulate and supervise the establishment and the carrying on of the business of collective investment schemes; and to provide for incidental matters.

PART I

COLLECTIVE INVESTMENT SCHEMES

Definitions

1. In this Act, unless the context indicates otherwise -

"**administration**" includes any act performed by a manager in connection with -

- (a) the management or control of;
- (b) the receiving, payment or investment of money, including interest, dividends or other income in respect of;
- (c) the selling, repurchase or cancellation of a participatory interest in, a collective investment scheme, and "administers", "administering" and "administered" have corresponding meanings; or
- (d) the buying and selling of assets or the handing over thereof for safe custody to a trustee or custodian of;

"**approved securities**" means securities which have a long-term or short-term issuer credit rating of "A-1" or of "A-" or higher on the global scale by either Moody's Investors Service Limited or Standard and Poor's or any other

rating agency approved by the registrar by notice in the *Gazette*: Provided that if the issuer has been rated by both agencies the lower of the two ratings will apply;

"assets", in relation to a portfolio of a collective investment scheme, means the assets comprised in or constituting a portfolio of a collective investment scheme and includes any income accruals derived or resulting from the management of the portfolio which are held for or are due to the investors in that portfolio;

"association" means an association referred to in section 6;

"authorised agent" means a person authorised by a manager of a collective investment scheme to solicit investments in a portfolio or to perform a function included in the definition of "administration" on behalf of such manager;

"close corporation" means a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);

"collective investment scheme" means a scheme in whatever form in pursuance of which members of the public are or will be invited or permitted to invest in a portfolio of a collective investment scheme having the following characteristics:

(a) two or more investors contribute to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;

(b) the object of the scheme is the collective investment of investors' contributions in a portfolio structured on the principle of the spreading of risk;

(c) the investors share the risk and the benefit of investment proportionate to their participatory interest; and

(d) a participatory interest must be repurchased by the manager on request of an investor at net asset value or has an established mechanism through which an investor's participatory interest may be sold at a market price,

and includes a feeder fund, fund of funds, hedge fund, open ended investment company, umbrella fund, or such other fund as the Minister may declare in terms of section 34;

"company" means any company incorporated or registered under the Companies Act, 1973 (Act No. 61 of 1973);

"court", in relation to any application or other matter, means any division of the High Court of South Africa having jurisdiction;

"custodian", in relation to a collective investment scheme, means the custodian appointed in terms of section 38 in respect of a collective investment scheme;

"deed", in relation to a collective investment scheme, means the agreement between a manager and a trustee or custodian or the instruments of incorporation whereby a collective investment scheme is established and administered, and includes an amendment of a deed and the deed of a management company which immediately prior to the commencement of this Act was a management company in terms of any law repealed by this Act;

"exchange securities" means securities which are listed and authorised to be dealt in on a recognised exchange, and the prices of which are quoted in a list issued for publication by such exchange;

"feeder fund" means a collective investment scheme the principal object of which is to invest in a single underlying collective investment scheme and to hold its own liquid assets;

"fund of funds" means a portfolio the assets of which, apart from liquid assets or approved securities, consist solely in the form of participatory interests in portfolios of other collective investment schemes;

"hedge fund" means a portfolio the investment objective of which is to reduce market risk and protect investors against a decline in the market value of assets, currency or interest rates;

"income accruals" means any dividends or interest or any other income for distribution received by the trustee or the manager on behalf of investors in a portfolio in the course of any income distribution period or carried forward from any previous income distribution period or due to such investors in respect of dividend or interest or any other income declarations made but not yet distributed;

"investor" means the owner of a participatory interest or a portion of a participatory interest in a portfolio of a collective investment scheme;

"liquid assets" means-

(a) approved securities with a remaining maturity of less than three years;

(b) deposits with a registered bank or mutual bank, registered otherwise than provisionally, or a foreign financial institution: Provided such bank or foreign financial institution has a long-term or short-term issuer credit rating of "A-1" or "A-" or higher on the global scale by Moody's Investors Service Limited or Standard and Poor's or any other rating agency as approved by the registrar by notice in the *Gazette*: Provided further that if the bank has been rated by more than one agency the lower of the ratings will apply; or

(c) money market instruments.

"manager", in relation to a collective investment scheme, means the person who is authorised in terms of this Act to administer a collective investment scheme and includes a management company which immediately prior to the commencement of this Act was a management company in terms of any law repealed by this Act;

"members of the public", as referred to in the definition of "collective investment scheme" and section 4, includes -

(a) members of any section of the public, whether selected as clients, members, shareholders, employees or ex-employees of the person issuing an invitation to acquire a participatory interest in a collective investment scheme; and

(b) a financial institution regulated by any law,

but excludes persons confined to a restricted circle of individuals who receive the invitation in circumstances which can properly be regarded as a domestic or private business venture between those persons and the person issuing the invitation;

"Minister" means the Minister of Finance;

"money market instruments" means the securities referred to in paragraph (c) of the definition of "securities" in Part III of this Act;

"open-ended investment company" means a public company with an authorised share capital which is structured in such a manner that it provides for the issuing of different classes of shares to:

(a) the promoter responsible for the administration of the company as a collective investment scheme; and

(b) investors which may be investing in different portfolios each distinguishable from each other by a different investment policy.

"participatory interest" means any interest, undivided share or share (whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit or undivided share or share remains constant or varies from time to time) which may be acquired by an investor in a portfolio of a collective investment scheme;

"portfolio" means the assets in a portfolio of a collective investment scheme in which members of the public are invited or permitted by a manager to acquire a participatory interest;

"prescribe" means prescribe in the *Gazette* by regulation by the Minister or by notice by the registrar as the case may be;

"recognised exchange" means an exchange licensed under the Stock Exchanges Control Act, 1985, the Financial Markets Control Act, 1989, or an exchange outside the Republic referred to in section 27;

"registrar" means the Registrar or the Deputy Registrar of Collective Investment Schemes referred to in section 46;

"regulation" means a regulation made under this Act;

"rule" means a rule referred to in section 15;

"this Act" includes a regulation, notice, rule or other measure prescribed or made under this Act;

"trustee", in relation to a collective investment scheme, means the trustee appointed in terms of section 38 in respect of a collective investment scheme;

"umbrella fund" means a collective investment scheme which is organised in such a manner that its portfolio is segregated into two or more divisions each distinguishable from each other by a differentiated investment policy and represented by different classes of investors.

Principles for conduct of business by collective investment scheme

2.(1) The business of a collective investment scheme must be carried on within the framework of the following

principles:

(a) High standards of -

(i) integrity;

(ii) fair dealing;

(iii) skill, care and diligence; and

(iv) market conduct,

must be observed at all times;

(b) before entering into a transaction with an investor -

(i) information about the investment objectives of the collective investment scheme, the calculation of the nett asset value and dealing prices, charges, risk factors and distribution of income accruals must be disclosed to the investor; and

(ii) the further information that is necessary to enable the investor to make an informed decision must be given to the investor timely and in a comprehensible way;

(c) conflict between the interests of the collective investment scheme and the interests of investors must be avoided and the interests of directors and management must be disclosed to investors;

(d) the assets of investors must be properly protected by way of segregation and identification;

(e) a collective investment scheme must maintain adequate financial resources to meet its commitments and to manage the risks to which its business is exposed;

(f) a collective investment scheme must -

(i) organise and control its business in a responsible manner;

(ii) keep proper records;

(iii) employ suitable, adequately trained, and properly supervised staff; and

(iv) have well defined compliance procedures; and

(g) a collective investment scheme must maintain an open and co-operative relationship with the office of the registrar and keep the office of the registrar promptly informed about anything that might reasonably be expected to be disclosed to such office.

(2) The Minister may make regulations, if necessary, to enforce compliance with the principles referred to in subsection (1).

(3) A regulation referred to in subsection (2) may provide for penalties for a contravention thereof or failure to comply therewith.

Collective Investment Schemes Advisory Committee

3.(1) There is an advisory committee to be known as the Collective Investment Scheme Advisory Committee (in this Act referred to as the advisory committee).

(2)

(a) The advisory committee consists of a chairperson and at least nine other members appointed by the Minister.

(b) A member of the advisory committee holds office for three years and is eligible for reappointment upon the expiration of his or her period of office: Provided that if on the expiry of the period of office of a member a reappointment is not made, such member must remain in office until a reappointment has been made.

(c) The Minister may at any time terminate the membership of a member if the Minister considers that there is a sufficient reason therefor.

(3) When appointing the members of the advisory committee the Minister must appoint -

- (a) one person with knowledge of collective investment schemes in securities other than property shares;
- (b) one person with knowledge of collective investment schemes in property shares;
- (c) one person with knowledge of participation bond schemes;
- (d) one person with knowledge of other collective investment schemes; and
- (e) one person with knowledge of the interests of investors.

(4) The advisory committee may conduct an investigation and advise or make recommendations to the registrar, or make recommendations to the Minister, regarding policy on any matter relating to the business of and the supervision of collective investment schemes, and must advise the Minister or the registrar on any matter referred to the advisory committee by the Minister or the registrar.

(5) The Commissions Act, 1947 (Act No. 8 of 1947), applies to any investigation by the advisory committee and witnesses and their evidence as if the advisory committee were a commission to which the said Act applied and the chairperson of the advisory committee were the secretary of such a commission.

(6) The registrar may submit to the advisory committee any information which is in his possession or which he may obtain and which is relevant to any matter which is being investigated or considered by the advisory committee.

(7)

(a) The first meeting of the advisory committee must be held at a time and place determined by the chairperson, and thereafter the advisory committee meets at a time and place determined by the advisory committee.

(b) The chairperson may at any time convene an extraordinary meeting of the advisory committee to be held at a time and place determined by him or her.

(c) The chairperson determines the procedure at a meeting of the advisory committee.

(d) The quorum for a meeting of the advisory committee is a majority of its members.

(e) The decision of a majority of the members of the advisory committee present at any meeting thereof is the decision of the advisory committee, and in the case of an equality of votes, the chairperson has a casting vote in addition to his deliberate vote.

(8)

(a) The advisory committee may appoint one or more subcommittees, which may, subject to the instructions of the advisory committee, perform those functions of the advisory committee that the advisory committee may determine.

(b) A subcommittee consists of so many members of the advisory committee or so many other persons as the advisory committee may deem necessary, and the advisory committee may at any time dissolve or reconstitute a subcommittee.

(c) The advisory committee must designate one of the members of the subcommittee as chairperson, and if the chairperson is absent from a meeting of the subcommittee, the members present must from among themselves elect a person to preside at the meeting.

(d) The advisory committee may make rules regarding the manner in which meetings of a subcommittee are to be convened, the procedure at, the functions of, and the quorums for, such meetings and the manner in which minutes of such meetings must be kept.

(9) The advisory committee may call upon any person to assist it or to investigate a matter relating to collective investment schemes.

(10) The administrative work incidental to the performance of the functions of the advisory committee and its subcommittees are performed by officers or employees in the office of the registrar designated for that purpose by the registrar.

Prohibition on carrying on of business of collective investment scheme unless registered in terms of Act

4.(1) No person may do any act or enter into any agreement or transaction for the purpose of establishing, carrying on the business of or administering any collective investment scheme, in pursuance of which members of the public are or will be invited or permitted for valuable consideration to acquire a participatory interest in a collective

investment scheme unless such person -

- (a) is a member of a self-regulatory association recognised by the registrar in terms of section 6 for the purposes of this Act and is registered as a manager of a collective investment scheme provided for under this Act or declared by the Minister under section 34;
- (b) is registered as a manager in the prescribed manner; or
- (c) is exempted from the provisions of this Act by the registrar by notice in the *Gazette*.

(2) A person who enters into a transaction or transactions in contravention of this section is in respect of each transaction guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Prohibition of misleading names and acts

5.(1) No person may, subject to subsection (3), unless it is entitled to carry on business as a manager under this Act, or except with the specific permission of the registrar pending the lodging and disposal of an application by such person for registration as a manager under this Act, or pending the change of its name, include in or have as part of its name or style or in any description of its business any reference to a collective investment scheme, participatory interest, portfolio, unit, unit trust or mutual fund or any derivative thereof, and no person who is not entitled to carry on business as a manager or as a trustee or custodian under this Act or is not the authorised agent of a manager may do any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the administration of a collective investment scheme.

(2) The registrar may on application by a person who is required to change his or her name by virtue of subsection (1) allow such person to effect such change on the conditions and within a period, not exceeding 6 months, determined by the registrar.

(3) No person may carry on any business under a name which includes the word "collective investment scheme", "investment scheme", "participatory interest" or "unit" or any connotation or derivative thereof, except with the approval in writing of the registrar and on such conditions and to such extent as he or she may deem fit.

(4) A person who contravenes a provision of this section is guilty of an offence.

PART II

ASSOCIATION OF COLLECTIVE INVESTMENT SCHEMES

Association of Collective Investment Schemes

6.(1) The registrar may -

- (a) on application by an association of a self-governing nature of persons carrying on the business of a collective investment scheme, if he or she is satisfied that the purpose of the association is in the public interest;
- (b) on payment of the prescribed application fee; and
- (c) on approval by him or her of the rules in terms of which the association intends to supervise and regulate the activities of its members,

grant, by notice in the *Gazette* and on the conditions that he or she may determine, official recognition thereto for the purposes of

- (i) regulating the activities of its members in terms of its rules;
- (ii) supervising the activities of its members in respect of those matters assigned or delegated to the association under this Act;
- (iii) consultation on matters affecting the relevant category of collective investment schemes; and
- (iv) for such other purposes as may be prescribed by the Minister:

(2) Recognition of an association in terms of subsection (1) may not be used as a basis for acting contrary to the legitimate interests of any person who is not a member of recognized association or of any other association representing persons belonging to any other category of financial institutions as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984).

Restriction on use of name or description implying connection with association

7. No person may apply to any company, close corporation, body, firm, business or undertaking a name or description signifying or implying some connection between the company, close corporation, body, firm, business or undertaking and an association which has been recognised in terms of section 6, unless such person is a member of such an association.

Application for issue or renewal of association licence

8.(1) Two or more persons may form an association and the association may after recognition in terms of section 6 apply to the registrar for a licence or to renew any such licence: Provided that for the purposes of this subsection a partnership is deemed to be one person.

(2) Every application relating to the issue or renewal of a licence to an association must be made on the prescribed form and be accompanied by the prescribed fee.

Issue of association licence

9.(1) The registrar may on such conditions as he or she may determine, issue to the association a licence, if the registrar is satisfied that -

- (a) the association is reasonably representative of the interests of the industry;
- (b) the association has sufficient financial resources for the proper exercise or carrying out of the powers and duties conferred upon or assigned to an association by or under this Act;
- (c) the proposed rules comply with the requirements of this Act;
- (d) the interests of the public will be served by the issue of the licence; and
- (e) members of the association will carry on the business of a collective investment scheme independently of one another and in competition with one another.

(2) A licence expires on 31 March of each year but may be renewed on conditions determined by the registrar.

(3) A prescribed licence fee is payable in respect of the issue or renewal of a licence: Provided that one-half of the prescribed fee is payable if the licence is issued or renewed after 30 September of any year.

Refusal of renewal of association licence

10.(1) The registrar may refuse to renew a licence if -

- (a) he or she is satisfied that during the year preceding the year for which the licence is to be renewed -
 - (i) the rules of the association concerned were not properly enforced;
 - (ii) the association did not comply with any of the requirements referred to in section 9(1)(a), (b), (d) or (e);
 - (iii) the association did not comply with any other provision of this Act; or
 - (iv) the association did not comply with any direction, request, condition or requirement of the registrar in terms of any provision of this Act; or
- (b) during the year preceding the year for which the licence is to be renewed the association failed to give effect to a decision of the appeal board referred to in section 59.

(2) No refusal under subsection (1) is of force unless the registrar has previously by notice in writing given the association concerned his reasons and an opportunity to show cause within a period specified in the notice why renewal should not be refused.

Cancellation or suspension of an association licence

11.(1) The registrar may cancel or suspend on the conditions he or she may determine the licence of an association if -

- (a) he or she is satisfied that the association has failed to comply with any of the requirements referred to in sections 9(1)(a), (b), (d) or (e), 10(1)(a)(i), or with any other provision of this Act, or with any direction, request, condition or requirement of the registrar in terms of any provision of this Act, and that such failure has resulted or could result in prejudice to the interests of the public;

(b) he or she is satisfied, after an inspection in terms of section 47, that the manner in which the business of an association is carried on is unsatisfactory or not calculated to serve the best interests of the public;

(c) he or she is satisfied that the association has ceased to carry on the business of an association or has within a reasonable period after licensing failed to carry on such business; or

(d) it is apparent that the licence was obtained through fraud.

(2) No cancellation or suspension of any licence under subsection (1) is of force unless the registrar has previously by notice in writing given the association concerned his or her reasons and an opportunity to show cause within a period specified in the notice why its licence should not be cancelled or suspended.

Juristic personality of association

12. An association is as from the date on which it is issued with a licence a juristic person capable of suing or being sued in the name in which it is licensed, and of acquiring, owning, burdening, hiring, letting and alienating property, and, subject to the provisions of this Act, of doing such things as may be necessary for or incidental to the exercise of its powers or the carrying out of its duties in terms of the rules.

Delegation of functions of executive committee

13. An executive committee of an association may, subject to the conditions it may determine, delegate or assign any power or duty conferred upon or assigned to it by or under this Act, excluding the sanctioning of a member under the rules of the association in question, to a subcommittee or a person designated but is not thereby divested or relieved of a power or duty so delegated or assigned.

Suspension of collective investment scheme

14.(1) Subject to the other provisions of this section but despite any arrangement whereby a collective investment scheme may be administered by a member of an association -

(a) an executive committee may in accordance with the rules of an association stop or suspend the rendering of a particular activity by a member of an association; or

(b) an executive officer of an association may, with the approval of seventy-five per cent of the members of a quorum of an executive committee, whenever he or she considers that it is desirable or for the purposes of compliance with and enforcement of the rules and the other requirements of an association, without prior notice to any person and without hearing any person, suspend for a period not exceeding 30 days the rendering of a particular activity by a member of an association.

(2) No stoppage or suspension referred to in subsection (1)(a) may be effected by the executive committee on a ground in respect of which the member concerned has not had the opportunity of making representations to the executive committee in support of the continued rendering of an activity.

(3) In the case of -

(a) a stoppage or suspension of a particular activity by an executive committee in terms of subsection (1)(a); or

(b) a suspension of a particular activity by an executive officer in terms of subsection (1)(b),

the executive committee or executive officer, as the case may be, may permit members to continue the activity in question for the sole purpose of fulfilling any obligations entered into before the stoppage or suspension.

(4)

(a) Whenever the registrar deems it desirable in the public interest, he or she may, after consultation -

(i) with the executive committee of an association, exercise any power referred to in subsection (1)(a);

(ii) with the executive officer of an association, exercise any power referred to in subsection (1)(b); or

(iii) with the executive committees of two associations, in a case contemplated in subparagraph (i), or with the executive officers of two associations, in a case contemplated in subparagraph (ii), transfer the rendering of a particular service from one association to another.

(b) Subsections (2) and (3) apply to the exercise of such powers, and in such application a reference therein to an executive committee or an executive officer, as the case may be, is construed as a reference to the registrar.

Rules of association

15.(1) Subject to the provisions of this Act and any exemption from or addition to the rules that may be granted or required by the registrar in a particular case, the rules of an association -

(a) must provide to the satisfaction of the registrar -

(i) for the manner in which and the conditions under which a body corporate qualifies for membership of the association;

(ii) for the establishment of an executive committee from members of the association and the composition and functions of such a committee;

(iii) for the manner in which and conditions under which members are to carry on their business so as to ensure compliance with the principles envisaged in section 2;

(iv) for the exclusion as a member if such member is administered by a person who is not of good character and high business integrity;

(v) for the standards of financial requirements, training and experience, and other qualifications of the directors and employees of a member, for admission as a member;

(vi) for the exclusion of a body corporate as a member where a director of the body corporate, a person concerned in the management of the body corporate or a person who has substantial control of the body corporate, would be excluded as a member by virtue of the provisions of this Act;

(vii) (aa) for meaningful disclosure of information, including the risks an investor is exposed to and whether the member of an association is acting in a principal or agent capacity; and

(bb) for the recording of the transactions effected by the members of an association, their investors and trustee or custodian;

(viii) for standards of conduct by members of an association and the investigation of complaints in respect of the activities of the members of an association;

(ix) for co-operation with the registrar by the furnishing of information in respect of the business of the members of an association;

(x) for the equitable and expeditious settlement of disputes between members in respect of the carrying on of their business;

(xi) (aa) for an appropriate mechanism whereby a member which has been sanctioned by an executive committee may appeal against the decision of the executive committee; and

(bb) that the membership of a member may not be suspended or terminated on any ground in respect of which he or she has not been informed of the reasons for such suspension or termination and has not had an opportunity of making representations to the executive committee, and that a person who has so made representations to the executive committee shall be entitled to be supplied with a copy of a record of the meeting at which his representations were considered;

(xii) for the manner in which and conditions under which members of an association may advertise the services rendered by them;

(xiii) (aa) for the manner in which fees must be charged by members of an association for their services, and the disclosure and notification thereof to investors; and

(bb) for the furnishing by members of an association to their investors of other information in respect of the business conducted by the members on behalf of investors;

(xiv) in respect of members of an association -

(aa) for the separation of a client's funds and other corporeal or incorporeal things from the assets of the member;

(bb) for a prohibition of the use of funds belonging to one investor to finance the dealings of another investor;

- (cc) for a prohibition of the use of an investor's funds in operating the member's own business; and
 - (dd) who buys any participatory interest from an investor or sells any participatory interest to such an investor on his own account, that the member must notify the client concerned in advance that such participatory interest were bought or sold by the member for its own account;
 - (xv) that, where relevant, any member must on request make available to an investor all information at the member's disposal for determining the current value of a participatory interest;
 - (xvi) (aa) for the manner in which and conditions under which a participatory interest in a collective investment scheme may be offered to members of the public;
 - (bb) for the stoppage or suspension of the business or any part thereof of a member of an association or the quotation of prices in respect of such business;
 - (cc) for the application of new or amended conditions imposed upon the carrying on of existing business by an executive committee of an association;
 - (xvii) for ensuring delivery or settlement in respect of transactions effected by the members of an association either by the member or the association's own arrangements or by means of arrangements made by the association with a financial institution or other association;
 - (xviii) for the appointment of -
 - (aa) an executive officer by the executive committee; and
 - (bb) employees by the executive officer;
 - (xix) for the dissolution of the association;
 - (xx) for further measures to ensure that the business of the association in question is carried on with due regard to the interests of investors;
 - (xxi) for the conditions under which a member must appoint an independent trustee or custodian; and
- (b) may provide to the satisfaction of the registrar -
- (i) for the effective monitoring of compliance with, and enforcement of, the rules or any arrangements made by the association with a financial institution or exchange for the rendering of services or facilities in respect of the association;
 - (ii) that a member may render sureties or security to the satisfaction of the executive committee, for the discharge of liabilities arising out of its activities;
 - (iii) (aa) that a fidelity fund may be established and maintained for the discharge, up to an amount as specified in the rules of an association, of outstanding liabilities of a member arising out of his or her activities; and
- (bb) that every member must contribute to such fund.
- (2)
- (a) The registrar must as soon as possible after granting a licence, cause the rules of the association concerned to be published in the *Gazette* in English and any other official language at the expense of the association concerned.
 - (b) No addition to, amendment or rescission (other than a suspension) of the rules is valid, unless -
 - (i) the prescribed fee has been paid;
 - (ii) it has been approved by the registrar in writing; and
 - (iii) a date has been stipulated in the registrar's approval for the coming into operation of such addition, amendment or rescission.
 - (c) The registrar must, after considering any objection as contemplated in paragraph (f), approve or disapprove an addition, amendment or rescission referred to in paragraph (b) within a period of 60 days after expiry of the period referred to in paragraph (f).
 - (d) If the registrar does not disapprove of an addition, amendment or rescission referred to in

paragraph (b) within a period of two months after expiry of the period referred to in paragraph (f), the registrar is deemed to have approved thereof and such addition, amendment or rescission comes into operation on the day immediately following upon the date of expiry of the aforesaid period of two months.

(e) Upon receipt of an application for approval in terms of paragraph (b), the registrar must cause to be published at the expense of the association in English and any other official language in the *Gazette* a notice setting forth the proposed addition, amendment or rescission.

(f) The said notice must call upon all interested persons (other than members of the association concerned) who have any objection to the proposed addition, amendment or rescission to lodge their objection with the registrar within a period of 30 days from the date of publication of the notice in the *Gazette*.

(3) A rule made under this section is binding on all members and on all officers or employees of members and on every person utilising the services of a member or who concludes a transaction with a member in the course of that member's business.

(4)

(a) A rule may, in respect of each contravention thereof by a member or an officer or employee of a member, prescribe one or more of the following penalties:

(i) A reprimand;

(ii) censure;

(iii) a fine not exceeding one million rand, which amount is payable to the fund referred to in paragraph (b)(iii) of subsection (1) or, if such fund does not exist, to the relevant association;

(iv) suspension;

(v) termination of membership; or

(vi) a direction to a member to terminate the employment of an officer or employee.

(b) The rule contemplated in paragraph (a) may also prescribe that full particulars regarding the imposition of a penalty must be published and that any person convicted under that paragraph may be ordered to pay the costs incurred in the investigation or hearing in question.

(5) Whenever the registrar considers it desirable in the public interest, he or she may, after consultation with the executive committee of an association and with the consent of the Minister, in the prescribed manner amend, add to or rescind the rules of that association.

(6)

(a) Subject to the prior approval of the registrar, an executive committee may suspend any of the rules of an association for a period not exceeding 90 days at a time and may during such suspension by resolution approved likewise by the registrar issue a directive to regulate the matter in question until such time as an appropriate amendment of the rules can be made in terms of this section.

(b) Subsections (3) and (4) of this section apply in respect of any contravention of or non-compliance with a directive.

Power of court to declare member disqualified

16.(1) If a court -

(a) convicts a member of an association of an offence under this Act or of an offence of which any dishonest act or omission is an element; or

(b) finds, in proceedings to which a member of an association is a party or in which his conduct is called in question, that he or she has been guilty of reckless or dishonest conduct,

the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare the member concerned to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a member of an association.

(2) The court may, on good cause shown, vary or abrogate a declaration made under subsection (1).

(3) The registrar or the clerk of the court which has made a declaration under subsection (1) or varied or abrogated a declaration under subsection (2), must as soon as possible notify the registrar and the association concerned thereof.

(4) No declaration made under subsection (1) in respect of a member affects any right on the part of an executive committee to take disciplinary action in terms of the rules against the member.

Voluntary dissolution of association

17.(1) An association may be dissolved voluntarily in such circumstances (if any) as may be specified for that purpose in its rules and in the manner provided for by such rules.

(2) Subject to subsection (1) the provisions of the Companies Act, 1973, relating to the voluntary winding-up of companies, apply with the necessary changes to the voluntary dissolution of an association.

(3) The liquidator of an association must -

(a) until the association is dissolved, send to the registrar accounting records such as are required by and in accordance with the regulations to be sent to the registrar by an association; and

(b) forward to the registrar a copy of every notice or account which in terms of the provisions of the Companies Act, 1973, he or she is required to furnish to the Master of the High Court.

(4) When the affairs of an association have been completely wound up, the Master of the High Court must send a certificate to that effect to the registrar, who must cancel the association's licence, and thereupon the association is dissolved.

Winding-up by court of association

18.(1) An order for the winding-up of an association may be granted by the court on the application of -

(a) the association or the executive committee of an association;

(b) one or more of its creditors;

(c) one or more of its members;

(d) jointly, any of or all the parties mentioned in paragraphs (a), (b) and (c);

(e) the provisional judicial manager or final judicial manager of the association; or

(f) the registrar.

(2)

(a) Subject to the provisions of subsection (1), the provisions of the Companies Act, 1973, relating to the winding-up of companies by the court apply with the necessary changes to an association.

(b) In the application of the provisions of the said Act -

(i) section 346(3) is construed as if after the words "except an application by" there were inserted the words "the registrar as defined in section 1 of the Collective Investment Schemes Control Act, 1999, or";

(ii) section 346(4)(a) is construed as if after the words "lodged with the Master" there were inserted the words "and registrar as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)";

(iii) section 346(b) is construed as if after the word "Master" there were inserted the words "or registrar as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984)"; and

(iv) section 357 is construed as if the registrar were included among the persons to whom notice is required to be given under subsection (1)(b) of that section.

(3) An order for the winding-up of an association by the court must not be made unless the court is satisfied that it is not desirable that an association be placed under judicial management.

Judicial management of association

19.(1) A judicial management order may be granted in respect of an association by the court on the application of the persons who are entitled under section 18(1) to make an application to the court for the winding-up of an association, and section 18(2)(b)(i) and (ii) applies with the necessary changes to an application for a judicial management order.

(2) Subject to section 20, the provisions of the Companies Act, 1973, relating to the judicial management of companies apply with the necessary changes to an association.

Appointment of judicial manager or liquidator

20. Despite the provisions of the Companies Act, 1973, a judicial manager or liquidator in respect of an association must be appointed by the Master of the High Court in consultation with the registrar.

Report by association to registrar

21. An association must within two months after the end of every calendar year submit a report to the registrar concerning the activities of its members, of its own activities under this Act and audited accounts and statements three months after the financial year-end to fairly present the financial affairs and status of the association.

PART III

COLLECTIVE INVESTMENT SCHEMES IN SECURITIES

Definitions

22. In this Part, unless the context indicates otherwise -

"collective investment scheme in securities" means a collective investment scheme the portfolio of which consists, subject to the provisions of this Act, mainly of securities and includes a derivative fund, an income fund, a money market fund, or such other fund as the registrar may determine by notice in the *Gazette* for the purposes of this definition;

"derivative fund" means a portfolio the assets of which consist mainly of instruments referred to in paragraphs (a), (b) and (d) of the definition of "financial instrument" in section 1 of the Financial Markets Control Act, 1989;

"income fund" means a portfolio the assets of which consist mainly of long term interest bearing loan stock;

"money market fund" means a portfolio the assets of which consist solely of money market instruments;

"securities" means -

(a) exchange securities, shares, including warrants, stock, including loan stock as defined in section 1 of the Financial Markets Control Act, 1989, participatory interests in a collective investment scheme in property shares, debentures, debenture stock and debenture bonds, and includes unsecured notes, whether or not they have inherent option rights or are convertible;

(b) the instruments referred to in paragraphs (a), (b) and (d) of the definition of "financial instrument" in section 1 of the Financial Markets Control Act, 1989;

(c) money market instruments, of a remaining maturity not exceeding 12 months, which have been issued by an issuer with a long-term or short-term issuer credit rating of "A-1" or "A-" or higher on the global scale by Moody's Investors Service Limited or Standard and Poor's or such other rating agency approved by the registrar by notice in the *Gazette*: Provided that if the issuer has been rated by more than one agency the lower of the ratings will apply; and

(d) participatory interests in a portfolio administered by a manager in terms of this Act or any other form of participation in a portfolio of a collective investment scheme, whether called a participatory interest or by any other name and whether listed on a recognised exchange or not;

Restrictions on management of collective investment schemes in securities

23.(1) No person other than a company which has been registered as a manager under section 24 may administer any collective investment scheme in securities.

(2) No company other than a company which -

(a) is a public company under the Companies Act, 1973; and

(b) has a paid-up share capital and non-distributable reserves available which together amount to not less than the capital prescribed and required in terms of this Act, available for employment in its

collective investment scheme business,

may be or may remain registered as a manager under section 24: Provided that the registrar may exempt a manager from compliance with the requirements of paragraph (b) for such a period, not exceeding six months, and on such conditions as he or she may determine.

(3) A manager which has not been exempted under the proviso to subsection (2), must, if at any time it ceases to comply with the requirements of paragraph (b) of that subsection, within a period of six weeks thereafter in writing report to the registrar to that effect.

(4) A person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Procedure in connection with registration of manager of collective investment scheme in securities

24.(1) A company which desires to be registered as a manager of a collective investment scheme in securities must lodge with the registrar an application for registration in the prescribed manner and form, disclose the prescribed particulars and pay the prescribed application fee.

(2) The registrar may call upon any applicant which has applied for registration under subsection (1) to furnish him or her with any further information which is relevant to the application.

(3) If the registrar is satisfied -

(a) that the deed which the applicant proposes to enter into for the purposes of the collective investment scheme in securities does not contain anything inconsistent with this Act and is based on sound financial principles;

(b) that the proposed directors, management, trustees or custodian and auditors are qualified as required by or under this Act; and

(c) that the manner in which the business of the applicant is to be carried on is not inconsistent with this Act and is based on sound financial principles,

he or she must, subject to the provisions of subsection (4) and on such conditions as he or she may determine, register the applicant as a manager and issue to it a certificate of registration in the prescribed form.

(4) The registrar may not register any company as a manager under this section unless he or she is satisfied that -

(a) such company is able to comply with subsection (3);

(b) is fit to assume the duties and responsibilities of a manager; and

(c) its registration as a manager will be in the public interest.

Change of name of manager of collective investment scheme in securities

25. A company registered under section 24 as a manager may not without the prior approval in writing of the registrar -

(a) change the name under which it is registered under this Act;

(b) use or refer to itself by a name other than the name under which it is so registered or a literal translation thereof; or

(c) use or refer to itself by an abbreviation of or a derivative from such name.

Determination of market value of securities in collective investment scheme in securities

26.(1) When a manager is unable to determine a market price for a security, whether listed or unlisted on an exchange, for the purposes of a collective investment scheme in securities, a fair market price for such security must, at the request of such manager, be determined by a broker who is a member of a licensed exchange or by the auditor of the manager of such collective investment scheme.

(2) If such manager does not agree with the price determined by the broker, it must refer the matter to the committee of the exchange concerned, which thereupon must determine the fair market price for such security.

Foreign securities in which a collective investment scheme may invest

27. A manager may, subject to the provisions of this act or any other law, invest assets of a portfolio of a

collective investment scheme in foreign equity or non-equity securities: Provided that such foreign -

(a) non equity securities are from issuers located in a country which has a foreign currency sovereign rating by either Moody's Investors Service Limited or Standard and Poor's or such other rating agency approved by the registrar by notice in the *Gazette* of "A-" or higher and the issuer has a long-term issuer credit rating of "A-1" or "A-" or higher on the global scale by Moody's Investors Service Limited or Standard and Poor's or such other rating agency as approved by the registrar by notice in the *Gazette*: Provided further that if the country or the issuer has been rated by more than one agency the lower of the ratings will apply;

(b)

(i) equity securities are traded on an exchange which has been granted full membership by the International Federation of Stock Exchanges (FIBV); or

(ii) the manager has applied the due diligence guidelines prescribed by the registrar in respect of issuers of such equity securities.

PART IV

COLLECTIVE INVESTMENT SCHEMES IN

PROPERTY

Definitions

28. In this Part unless the context indicates otherwise -

"collective investment scheme in property" includes a scheme the portfolio of which consists of shares of property companies, urban immovable property, an interest in urban immovable property, approved securities or liquid assets, but excludes collective investment schemes referred to in Parts III, V and VI of this Act;

"property company" means a company all the issued shares of which are included in a portfolio, and the principal business of which consists in the acquisition and holding of -

(a) urban immovable property, or any undivided share or interest therein; and

(b) such other immovable property, undivided share therein, interest or leasehold in respect thereof, as the registrar may have approved;

"property shares" means securities in and of -

(a) a property company; or

(b) a holding company which has no subsidiaries other than property companies which are wholly owned subsidiaries as referred to in section 1(5) of the Companies Act, 1973;

"urban immovable property" means any piece of land registered as an erf, lot or stand in a deeds registry, including the office of the Rand Townships Registrar, which is situated in a township within the meaning assigned thereto in section 1 of the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940);

Restrictions on management of collective investment scheme in property

29.(1) No person other than a company which has been registered as a manager of a collective investment scheme in property shares under this Part may manage or carry on a collective investment scheme in property or issue participatory interest certificates thereunder.

(2) No person other than a company which -

(a) is registered as a public company under the Companies Act, 1973;

(b) has a paid-up share capital and non-distributable reserves which together amount to not less than the capital prescribed and required in terms of this Act, available for employment in its business; and

(c) has been formed exclusively for the purpose of establishing, carrying on or managing a collective investment scheme in property and confines its activities exclusively to that purpose,

may be or may remain registered as a manager under this Part: Provided that the registrar may exempt a manager from compliance with the requirements of paragraph (b) for such a period, not exceeding six months, and on such conditions as he or she may determine.

(3) A manager which has not been exempted under the proviso to subsection (2), must, if at any time it ceases to comply with the requirements of paragraph (b) of that subsection, within a period of six weeks thereafter in writing report to the registrar to that effect.

(4) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Procedure in connection with registration of manager of collective investment scheme in property

30. A company which desires to be registered as a manager of a collective investment scheme in property must lodge with the registrar an application for registration in the prescribed manner and form, disclose the prescribed particulars and pay the prescribed application fee.

Foreign country in which a collective investment scheme in property may invest

31. A manager may, subject to the provisions of this Act or any other law, invest assets of a portfolio of a collective investment scheme in property, in property shares or urban immovable property in a foreign country: Provided such foreign country has a foreign currency sovereign rating by either Moody's Investors Service Limited or Standard and Poor's or any other agency approved by the registrar by notice in the *Gazette* of "A" or higher: Provided further that if the country has been rated by more than one agency the lower of the ratings will apply.

Listing of participatory interests by exchange

32. A manager of a collective investment scheme in property which does not undertake to repurchase participatory interests issued by it from any investor must apply for permission for such participatory interests to be dealt in on a licensed exchange, and must ensure that the requirements of such exchange for inclusion of the participatory interests in its list of the stocks and shares which may be dealt in on such exchange, are complied with.

Certain provisions of Part III to apply to and in respect of a manager of a collective investment schemes in property

33. Sections 24(2), (3) and (4), 25, 26 and 27 apply, in so far as they can be applied, in respect of a manager of a collective investment scheme in property.

PART V

DECLARED COLLECTIVE INVESTMENT SCHEMES

Definitions

34. In this Part, unless the context indicates otherwise -

"declared collective investment scheme" means a collective investment scheme other than a collective investment scheme in securities or in property and which has been declared a collective investment scheme under section 35.

Declaration of specific type of business a collective investment scheme for purposes of this Act

35.(1) The Minister may by notice in the *Gazette* declare a specific type of business a collective investment scheme to which this Act or any part thereof applies.

(2) The Minister may for the purposes of subsection (1) by notice in the *Gazette* -

- (a) define the business activity of a declared collective investment scheme; and
- (b) prescribe the matters that must or may be included in the deed of a declared collective investment scheme; or
- (c) issue different notices for different types of declared collective investment schemes.

Certain provisions of Parts III and IV and other Acts apply in respect of declared collective investment scheme

36.(1) Sections 23, 24, 25, 26, 27, 31 and 32 apply, in so far as they can be applied, in respect of a manager of a declared collective investment scheme.

(2) A manager of a declared collective investment scheme is deemed, for the purposes of section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), to be a financial institution and that section applies, with the necessary changes required by the context, to such a scheme.

(3) A manager of a declared collective investment scheme is deemed, for the purposes of the Inspection of

Financial Institutions Act, 1984 (Act No 38 of 1984), to be a financial institution as defined in that Act and that Act applies, with the necessary changes required by the context, to such a scheme.

PART VI

FOREIGN COLLECTIVE INVESTMENT SCHEMES

Restrictions on foreign collective investment schemes to carry on business in Republic

37.(1) The registrar may -

- (a) on application in the prescribed form by a manager or operator of a foreign collective investment scheme which is carrying on the business of a collective investment scheme outside the Republic;
- (b) if it appears to him or her that the foreign collective investment scheme concerned that it makes provision for most of the matters provided for in this Act;
- (c) if a copy of the approval or registration by the relevant foreign jurisdiction authorising the foreign collective investment scheme to act as such, is submitted;
- (d) if the foreign collective investment scheme can comply with the conditions determined by the registrar by notice in the *Gazette* or any other conditions imposed by the registrar; and
- (e) on payment of the prescribed fee,

approve such application to carry on the business of the foreign collective investment scheme in the Republic in terms of this Part.

(2) A scheme approved in terms of subsection (1) is deemed, for the purposes of section 15A of the Financial Services Board Act, 1990, to be a financial institution and that section applies, with the necessary changes required by the context, to such a scheme.

(3) A scheme approved in terms of subsection (1) is deemed, for the purposes of the Inspection of Financial Institutions Act, 1984, to be a financial institution as defined in that Act and that Act applies, with the necessary changes required by the context, to such a scheme.

(4) A person who fails to obtain approval in terms of subsection (1) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Reciprocity

38.(1) If the Minister considers that in terms of any -

- (a) law of a foreign country; or
- (b) regulatory or supervisory action taken by an authority or body in that country,

a manager is unable to administer a collective investment scheme in that country under the same requirements as persons connected with that country are able to carry on such business, the Minister may by notice served on a person connected with such country which is administering or intends to administer a collective investment scheme in the Republic, suspend, disqualify or restrict the business of such person as provided for in this section.

(2) No notice may be served in terms of subsection (1) unless -

- (a) the Minister considers it to be in the national interest; and
- (b) the Minister has consulted the person concerned or if expedient a body representing the interest of the person to be affected.

(3) A notice must state -

- (a) the grounds on which it is given and identifying the country in relation to which those grounds are considered to exist; and
- (b) specify the date on which such notice will come into force and must provide for a reasonable period to complete performance of transactions entered into before a notice in terms of this section comes into force or for the termination of contracts of a continuing nature.

(4) A notice in terms of subsection (1) may suspend, disqualify, restrict or partially restrict the administration of a collective investment scheme by a person and may provide for -

- (a) withdrawing the registration or approval under this Act of a manager to administer a collective investment scheme in the Republic;
- (b) disqualifying a person from being registered or approved as a manager under this Act; or
- (c) restricting or partially restricting a manager registered or approved under this Act in respect of the administration of a collective investment scheme.

(5) A partially restrictive notice may prohibit a manager from -

- (a) entering into transactions of a specified kind or entering into them in specified circumstances or to a specified extent;
- (b) soliciting investments from a specified kind or otherwise than from such person; or
- (c) administering a collective investment scheme in a specified manner or otherwise than in a specified manner.

(6) For purposes of this section a person or manager is connected with a country if it appears to the Minister that -

- (a) in the case of an individual he is a national or resident in that country and administers a collective investment scheme from a principal place of business there;
- (b) in the case of a body corporate, that it is incorporated or has a principal place of business in that country or is controlled by a person or persons connected with that country;
- (c) in the case of a partnership, that it has a principal place of business in that country or that any partner is connected with that country; or
- (d) in the case of an unincorporated association which is not a partnership, that it is formed under the law of that country, has a principal place of business there or is controlled by a person or persons connected with that country.

Withdrawal of approval of foreign collective investment scheme

39. The registrar may at any time withdraw the approval under section 37 if -

- (a) he or she considers it to be desirable or in the interest of investors or potential investors to do so;
- (b) the manager has submitted inaccurate or misleading information in its application; or
- (c) any of the conditions referred to in section 37(1)(d) are no longer met.

PART VII

APPOINTMENT OF TRUSTEE OR CUSTODIAN

Appointment of trustee or custodian

40.(1) A manager must, depending on the structure of the collective investment scheme administered by it, appoint either a trustee or a custodian for its collective investment scheme.

(2) No person may become or act as a trustee or custodian of a collective investment scheme unless that person is registered as such under section 39 by the registrar.

(3) When the appointment of a trustee or custodian is terminated, otherwise than as contemplated in section 41(3), that trustee or custodian must as soon as possible submit a report to the registrar in which the following is stated:

- (a) Whether to its knowledge any irregularity or undesirable practice in the conduct of the affairs of the collective investment scheme which has caused or is likely to cause financial loss to investors in a portfolio of the collective investment scheme is contemplated, has taken place or is taking place;
- (b) particulars of the irregularity or undesirable practice; and
- (c) the reason, if known, or the presumable reason for the termination of its appointment.

(4) At the request of the trustee or custodian of a manager every director or employee of the manager shall submit to the trustee or custodian any book or document or information relating to any business of the manager or its collective investment scheme which is in his possession or at its disposal, and which the trustee or custodian may

deem necessary to perform its functions as trustee or custodian of the manager.

(5) No person may interfere with the performance by a trustee or custodian of its functions under this Act.

(6) A trustee or custodian which intends to retire from an appointment in terms of section 40, must give to the manager and to the registrar not less than six months' notice of such intention, and during the said period of six months the manager concerned must take steps to appoint as trustee or custodian some other person competent to act as such in terms of sections 41 and 42.

(7) If a manager fails to take the steps mentioned in subsection (6) within the said period of six months, the registrar may, after consultation with the manager, direct the manager to appoint as trustee or custodian a competent person nominated by the registrar.

(8)

(a) When it is impracticable for a trustee or custodian under a collective investment scheme to perform any part or the whole of its duties in terms of section 42, it may appoint a representative which is independent from the manager and any of its agents, to perform such functions.

(b) A trustee or custodian of a collective investment scheme who has appointed a representative as contemplated in paragraph (a), is not divested of the functions referred to in that paragraph.

Qualifications and registration of trustee or custodian

41.(1) No person other than -

(a) a public company under the Companies Act, 1973;

(b) a company or institution incorporated under a special Act, excluding a close corporation referred to in the Close Corporations Act, 1984 (Act No. 69 of 1984);

(c) an institution which is entitled to carry on business as a banking institution under the Banks Act, 1990 (Act No. 94 of 1990); or

(d) an institution which is registered as an insurer under the Long-term Insurance Act, 1998 (Act No. 52 of 1998),

may become or act as a trustee or custodian of a collective investment scheme.

(2) No company or institution referred to in subsection (1) may become or act as a trustee or custodian under a collective investment scheme unless it -

(a) maintains a paid-up capital and unimpaired reserves together amounting to not less than 10 million rand;

(b) has been registered by the registrar as a trustee or custodian for the collective investment scheme in question and is in possession of a certificate of registration in the prescribed form.

(3) The registrar may not register any company or institution as a trustee or custodian under this section unless he or she is satisfied that -

(a) the company or institution is not, in relation to the manager, either a holding company, or a subsidiary or fellow subsidiary company within the meaning of those terms as defined in the Companies Act, 1973; and

(b) the general financial and commercial standing and independence of the company or institution is such as to fit it for assuming the functions of a trustee or custodian and that the company or institution is by reason of the nature of its business sufficiently experienced and equipped to assume such functions,

and he or she may revoke any such registration already granted if at any time thereafter he or she ceases to be satisfied that the requirements referred to in paragraphs (a) and (b) of this subsection are met by the trustee or custodian which has been registered.

(4) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(5) The registrar must, before revoking a registration in terms of subsection (3), notify the trustee or custodian concerned of the grounds upon which such action is contemplated against it, and shall give it a reasonable opportunity of showing cause why the proposed action should not be taken, and the trustee or custodian has the

right to present its case verbally to the registrar and in doing so to be represented by any other person.

Duties of trustee or custodian

42.(1) A trustee or custodian of a collective investment scheme, whether he or she became such before or after the commencement of this Act, must -

(a) ensure that the sale, issue, repurchase, redemption and cancellation of participatory interests effected by or on behalf of a collective investment scheme are carried out in accordance with this Act and in accordance with the deed;

(b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with this Act and the deed;

(c) carry out the instructions of the manager unless they are inconsistent with this Act or the deed;

(d) ensure that in transactions involving the assets of a collective investment scheme any consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;

(e) ensure that the income accruals of a portfolio are applied in accordance with this Act and the deed;

(f) enquire into and prepare a report on the administration of the collective investment scheme by the manager during each annual accounting period, in which it must be stated whether the collective investment scheme has been administered -

(i) in accordance with the limitations imposed on the investment and borrowing powers of the manager by this Act; and

(ii) in accordance with the provisions of this Act and its deed, and if the manager does not comply with the limitations and provisions referred to in subparagraphs (i) or (ii), the trustee or custodian must state the reason for the non-compliance and outline the steps taken by it to rectify the situation;

(g) send the report referred to in paragraph (f) to the registrar and to the manager in good time to enable the manager to include a copy of the report in its annual report;

(h) create or cancel participatory interests in accordance with the conditions laid down in the deed and on receipt of written instruction from the manager: Provided that the trustee or custodian may refuse to create or cancel participatory interests if it considers that such creation or cancellation of participatory interests will prejudice the interests of investors;

(i) ensure that -

(i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured;

(ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept.

(2) A trustee or custodian must report to the manager any irregularity or undesirable practice concerning the collective investment scheme of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it must as soon as possible report such irregularity or undesirable practice to the registrar.

(3) The trustee or custodian must satisfy itself that every revenue account, profit and loss account, balance sheet or other prescribed return prepared by the manager in terms of section 73 is properly drawn up so as to exhibit truly and fairly the trading results or, as the case may be, the assets and liabilities of the manager and every portfolio of its collective investment scheme, according to the books of the manager and every such portfolio and any other information which may be necessary to effectively discharge its duties as trustee or custodian.

(4) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in subsection (1), is guilty of an offence.

Status of valuable consideration or assets

43. On receipt by a manager, its trustee, custodian or authorised agent of any:

(a) valuable consideration from an investor for the selling or the repurchase of a participatory interest;

or

(b) asset of a portfolio,

the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), applies and such valuable consideration or asset are deemed to be trust property for the purposes of that Act and a trustee or custodian must deal therewith in terms of this act, or the deed of a collective investment scheme and in the best interests of investors and the manager.

Liability of trustee or custodian in respect of loss of valuable consideration or assets

44. The trustee or custodian must indemnify the manager and investors against any loss or damage suffered in relation to any valuable consideration or assets in the custody of the trustee or custodian and which loss or damage is caused by any wilful or negligent act or omission by the trustee or custodian.

PART VIII

APPOINTMENT OF AUDITOR

Appointment and approval of auditor

45.(1)

(a) A manager must appoint an auditor for the collective investment scheme administered by it.

(b) A manager must within 30 days from the date of appointment of a person as auditor for the business of the collective investment scheme as a whole, apply to the registrar for approval of such appointment.

(c) The registrar may -

(i) grant or refuse an application under paragraph (b); or

(ii) withdraw any prior approval of the appointment of an auditor granted by the registrar under this section, and thereupon the auditor concerned must vacate his or her office as auditor of the collective investment scheme.

(d) If the registrar under subparagraph (i) of paragraph (c) refuses an application for approval of the appointment of an auditor or under subparagraph (ii) of that paragraph withdraws an approval previously granted by him or her, the manager of the collective investment scheme concerned must appoint another person as auditor and the provisions of paragraphs (a) and (b) apply in respect of the last-mentioned appointment.

(e) A person appointed under paragraph (a) as auditor of a collective investment scheme is deemed, if applicable, for the purposes of Chapter X of the Companies Act, 1973, to have been so appointed at the immediately preceding annual general meeting of the manager.

(f) If an auditor which has been removed from its office as auditor of a collective investment scheme by the manager of such collective investment scheme, considers that it was removed for improper reasons, it shall forthwith inform the registrar by registered post thereof.

(2) No director or employee of a manager, trustee or custodian and no firm of which any such director or employee is a member, may be appointed as an auditor of a collective investment scheme.

Accounting records and audit

46.(1) A manager must in respect of itself and every collective investment scheme administered by it -

(a) keep the accounting records and financial statements in one of the official languages of the Republic, as may be prescribed;

(b) preserve such records in a safe place for a period of at least five years as from the date of the latest entry therein; and

(c) cause such records to be audited, not later than three months after the financial year end of the manager or collective investment scheme, as the case may be, or such later date as the registrar may allow, by an auditor whose appointment has been approved by the registrar in terms of section 45.

(2) The auditor of a collective investment scheme must annually audit the accounting records and financial statements of the manager and of the whole of the business of a collective investment scheme administered by

the manager.

(3) The auditor must, in conformity with generally accepted accounting practice, examine the accounting records and financial statements and satisfy himself that every account, statement and balance sheet complies with the requirements of this Act and is properly drawn up so as to fairly present the financial position and the results of the operations of the manager and every portfolio of its collective investment scheme according to the books kept by the manager and any other information which may be necessary for that purpose.

(4) When the auditor of a collective investment scheme has conducted an audit in terms of subsection (3), he or she must report to the manager and investors to the effect that he has examined the accounting records and the annual financial statements in the manner required by this Act and that in his or her considered opinion they fairly present the financial position and the results of the operations of the manager and its collective investment scheme.

(5) If the auditor is unable to make such a report or to make it without qualification, he or she must include in his or her report a statement explaining the facts or circumstances which prevent him or her from making his or her report or from making it without qualification.

(6) The auditor's report under subsection (4) must, unless all the members present agree to the contrary, be read out at the annual general meeting of the manager.

Duty of auditor to disclose irregularity or undesirable practice

47. The auditor must report to the manager any irregularity or undesirable practice in the management of the manager or the administration of the collective investment scheme which has come to his or her notice, and if that irregularity or undesirable practice is not discontinued and rectified within a period of one month from the date on which it was reported to the manager, the auditor must report it to the registrar.

PART IX

SUPERVISORY AUTHORITY

Appointment of registrar and deputy registrar of collective investment schemes

48. The executive officer and a deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No 97 of 1990), are also the Registrar and the Deputy Registrar of Collective Investment Schemes, respectively.

Powers of registrar to call for information or of inspection

49.(1) The registrar may in writing direct a person, whether registered or not or approved or not in terms of this Act, who is involved in the carrying on of the business of a collective investment scheme, to provide him or her with any information, document or record about such business for the purpose of investigating the business of such person.

(2) In addition to the powers and duties conferred or imposed upon him or her by this Act, the registrar has all the powers and duties conferred or imposed upon him or her by the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998).

(3) A reference in this Act to a directive, an investigation or an inspection referred to in this section is construed as a reference to a directive, an investigation or an inspection under the Inspection of Financial Institutions Act, 1998.

Powers of registrar after investigation

50.(1) If the registrar, after an investigation or inspection has been done under section 49, considers that the interests of the investors of a collective investment scheme or of the public at large so require, he or she may -

(a) apply to the court under section 346 of the Companies Act, 1973, for the winding-up of a manager or of a portfolio of a collective investment scheme as if he or she were a creditor thereof;

(b) apply to the court under section 427(2) of the Companies Act, 1973, for a judicial management order in respect of a manager or of a portfolio of a collective investment scheme as if he or she were a creditor thereof;

(c) apply to the court under section 6 of the Financial Institutions (Investment of Funds) Act, 1984, for the appointment of a curator for the business of the manager or for the business of a portfolio of its collective investment scheme;

(d) require a manager to appoint, in accordance with the registrar's directions, in place of the serving

trustee or custodian, a competent person nominated by the registrar;

(e) require a manager to take steps, in accordance with the registrar's directions and the provisions of section 85, for the winding-up of a portfolio of its collective investment scheme, the realisation of the assets, and the distribution of the net proceeds thereof, together with any income accruals or other moneys available for distribution, among the investors in proportion to their respective participatory interests;

(f) direct a manager or a trustee or custodian to take any steps, or to refrain from doing or continuing to do any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection;

(g) direct a manager to withdraw from the administration of a collective investment scheme, whereupon the trustee or custodian must in accordance with the registrar's directions, but subject to sections 23, 24, 28, 29 and 37, arrange for another manager to take over the management of the collective investment scheme; or

(h) if a person administers a collective investment scheme in contravention of this Act, apply to the court to have the collective investment scheme wound up and the court may make any order it considers appropriate for the winding up of the collective investment scheme.

(2) The registrar may oppose any application in terms of the Companies Act, 1973, or otherwise for the winding-up of, or for a judicial management order in respect of a manager or for the winding-up of a portfolio of a collective investment scheme in terms of section 85 of this Act, and timely notice of any such intended application must be given to the registrar by the applicant.

(3) A person who refuses or fails to comply with a request or direction referred to in paragraphs (d), (e), (f) and (g) of subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Cancellation or suspension of registration or approval of manager

51.(1) The registrar may, subject to subsection (2), cancel the registration of a manager under this Act -

(a) if he or she is satisfied that the manager has contravened or failed to comply with any provision of this Act, or with any direction or requirement given or imposed under this Act, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;

(b) if he or she is satisfied, after an investigation in terms of section 49 has been done, that the manner in which a manager carries on the business of a collective investment scheme is unsatisfactory or undesirable or not calculated to serve the best interests of its investors;

(c) if it is apparent that the registration of the manager was obtained through fraud; or

(d) a manager is wound up, either voluntary or by the court,

or may, on any ground referred to in paragraph (a), (b) or (c) suspend the registration of a manager for a period not exceeding 12 months at a time.

(2) The registrar may not cancel or suspend the registration of a manager for any reason referred to in subsection (1)(a), (b) or (c) unless he or she has -

(a) notified the manager of his or her intention and of the grounds upon which he or she proposes to do so;

(b) allowed the manager to make representations to him or her in connection with the proposed cancellation or suspension; and

(c) at the manager's request, afforded it a reasonable opportunity to rectify or eliminate the defect, irregularity or undesirable practice.

(3) An application for re-registration as a manager by a company whose registration has been cancelled under this section must be dealt with as if it were its first application for registration.

(4) If the registration of a manager is cancelled in terms of subsection (1)(a), (b) or (c), the provisions of this Act with regard to the continuance or the winding-up of the portfolio of a collective investment scheme or the winding-up of the manager apply: Provided that the registrar may in any such case direct the former manager to defray in whole or in part the expenses incurred in continuing the administration of the collective investment scheme, or in realising any of the assets, and also any remuneration to which a trustee or custodian may be

entitled to.

(5) If the registration of a manager has been suspended under subsection (1), the manager may not, during the period of suspension, issue any fresh participatory interests or participatory interest certificates, but must, in respect of participatory interests or participatory interest certificates already issued, continue the administration of the collective investment scheme and deal with such interests and certificates in all respects as it would have been bound to do had its registration not been suspended.

Registrar may object to certain documents

52. The registrar may disapprove of the terms of any price list, advertisement, brochure or similar document relating to a collective investment scheme published or proposed to be published by a manager or any of its authorised agents if he or she considers the terms are calculated to mislead or are, for any other good and sufficient reason, objectionable or undesirable, and he or she may direct the manager to discontinue or refrain from publication or distribution of any such document, or to amend its terms as he or she may specify.

Power of registrar to impose penalties for failure or inability to comply with prudential or supervisory requirements

53.(1) If a manager fails to comply with a provision of section 7(1), or is unable to comply with any other prudential or supervisory requirements imposed by or under this Act, it must forthwith in writing report its failure or inability to the registrar, stating the reasons for such failure or inability.

(2) The registrar may summarily take action under this Act against a manager referred to in subsection (1) or, if in the circumstances he or she deems it fit to do so, condone the failure or inability and afford the manager concerned an opportunity, subject to such conditions as the registrar may determine, to comply with the relevant provisions within a specified period.

(3) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against a manager in respect of any failure or inability referred to in subsection (1), the registrar may, subject to any condonation granted under subsection (2), by way of a written notice impose upon that manager, in respect of such failure or inability, a fine -

(a) in the case of any failure or inability to comply with the provisions of section 7(1), not exceeding three per cent of the amount of the shortfall for each day on which such failure or inability continues;

(b) in the case of any failure or inability to comply with any other prudential or supervisory requirement imposed by or under this Act, not exceeding one per cent of the amount of the shortfall; or

(c) in the case of any failure or inability to submit to the registrar within any period fixed by or under this Act any statement, report, return or other document or information required by or under this Act to be so submitted, not exceeding R200 for every day during which the failure continues.

(4) A fine imposed under subsection (3) shall be paid to the Financial Services Board within such period as may be specified in the relevant notice, and if the manager concerned fails to pay the fine within the specified period the registrar may by way of civil action in a competent court recover from that manager the amount of the fine or any portion thereof which he or she may in the circumstances consider justified.

Power of registrar to request audit

54.(1) The registrar may at any time direct a manager to have its accounts, records and financial statements and those of a portfolio of a collective investment scheme under its administration audited and to submit the results of such an audit to the registrar within the time specified by the registrar.

(2) Any person who, pursuant to subsection (1), gives information, an explanation or access to records which he or she knows to be false or misleading, is guilty of an offence.

Attendance of meetings of Association and furnishing of certain documents to registrar

55.(1) The registrar or a person nominated by him or her may attend any meeting of an association or the executive committee of an association or a subcommittee of that committee, and take part in all the non-voting proceedings at such meeting.

(2) An executive officer of an association must on request furnish the registrar with all notices, minutes and documents which are furnished to the members of the association, and the members of the executive committee or a subcommittee of that committee.

Declaration of certain practices as irregular or undesirable

56.(1) The registrar may, with the approval of the Minister, by notice in the *Gazette*, declare a particular practice or

method of conducting collective investment scheme business to be an "irregular or undesirable practice" or an "undesirable method of conducting business": Provided that the Minister may give such approval only if -

(a) the registrar has given notice in the *Gazette* of his or her intention to declare a practice or method of conducting business to be irregular or undesirable not less than 30 days before such approval is given and in which notice all interested persons are invited to make representations in writing to him or her within 21 days from the date of publication of the notice; and

(b) the registrar has consulted with the advisory committee.

(2) No person may, after the expiry of 21 days from the date of publication of the notice whereby a practice or method of conducting business has been declared to be irregular or undesirable, employ such a practice or method of conducting business.

(3) The registrar may in writing direct any person who employed a practice or method of conducting business, whether before, during or after the date of the notice referred to in subsection (2), which was declared to be irregular or undesirable, to rectify, in a manner required by the registrar, anything which was caused by or arose out of the employment of that irregular or undesirable practice or method of conducting business, in a manner required by the registrar.

(4) A person who has been directed in terms of subsection (3) to rectify anything, must effect such rectification within 7 days after being so directed or within such longer period as the registrar may approve.

(5) A person who -

(a) contravenes subsection (2); or

(b) refuses or fails to comply with a direction referred to in subsection (3) or fails to comply with subsection (4),

is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Exemptions

57. When the registrar considers it in the public interest, he or she may exempt on such conditions and to such extent as he or she may determine: -

(a) a manager from any provision of this Act; or

(b) any category of persons from any provision of this Act,

in so far as such provision does not already make provision for exemption by the registrar or the Minister, and may at any time in like manner revoke or amend such exemption.

Annual report by registrar

58.(1) The registrar must once in every calendar year submit to the Minister a report concerning his or her activities in terms of this Act, the activities of all managers and associations and, in general, concerning all matters relating to the business of collective investment schemes and analogous schemes.

(2) A report contemplated in subsection (1) must be laid upon the Tables of Parliament within 14 days of publication thereof, if Parliament is then in session or, if Parliament is not then in session, within 14 days of the commencement of its next ensuing session.

Appeal Board

59. A person aggrieved by a decision by the registrar under a power conferred or a duty imposed upon him or her by or under this Act, may appeal to the Appeal Board referred to in section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), on the terms and conditions determined in that Act.

PART X

CONVERSION OF COLLECTIVE INVESTMENT SCHEME

Definitions

60.(1) In this Part, unless the context otherwise indicates -

"**applicable date**", in relation to a conversion of a collective investment scheme, means the date of the conversion

or, if any other date is specified in the conversion scheme as the applicable date for purposes of the conversion, that other date;

"**collective investment scheme**" includes any one or more portfolios under such scheme and may, depending on the structure of the scheme, include a manager;

"**conversion**" means a conversion of the legal format of a trust, or company based collective investment scheme to any other legal format referred to in this definition;

"**conversion scheme**" means a scheme regulating the conversion of a collective investment scheme from one legal format to another and governing the reciprocal rights and obligations of the parties to the conversion, and in particular -

- (a) specifying the basis, terms and conditions and cost of the conversion;
- (b) providing for the issue of participatory interests in a collective investment scheme established by the conversion;
- (c) providing, subject to subsection (2), for an offer, either to persons who immediately before the applicable date are investors with a qualifying interest in the collective investment scheme or to such investors and to members of the public, to take up participatory interests in the collective investment scheme established by the conversion; and
- d) providing for the redemption in cash of the participatory interest of any investor who does not elect to take up a participatory interest in the collective investment scheme established by the conversion or who holds a qualifying interest of a lesser value than the value determined in the conversion scheme as the minimum for a qualifying interest;

"**qualifying interest**", in relation to a collective investment scheme which is converted, means any participatory interest in such scheme which was issued before the applicable date;

(2) Participatory interests contemplated in paragraph (c) of the definition of "conversion scheme" may be offered to members of the public to the extent only to which they are not taken up by persons holding immediately before the applicable date a qualifying interest in the collective investment scheme concerned.

Conversion of collective investment scheme

61. A manager may not convert a collective investment scheme -

- (a) without the approval of the registrar;
- (b) unless authorised by a resolution adopted by a majority in value of investors in the manner prescribed by the registrar; and
- (c) otherwise than in accordance with this Part.

Application for registrar's approval

62.(1) A manager must apply to the registrar for his approval of a conversion before a resolution on the matter is passed by investors.

(2) An application referred to in subsection (1) must be accompanied by the following documents in duplicate, namely -

- (a) an exposition of the reasons for the proposed conversion and of the manner in which it is proposed to effect the conversion;
- (b) a proposed conversion scheme;
- (c) the proposed deed;
- (d) a proposed resolution -
 - (i) authorising in accordance with the conversion scheme the conversion of the collective investment scheme;
 - (ii) approving the provisions of the proposed conversion scheme;
 - (iii) approving the deed, referred to in paragraph (c); and

(iv) providing for such other matters in connection with the conversion as may be considered necessary;

(e) a list of the names and employment history of the persons designated to act as the first directors of the proposed manager after the conversion.

(3) A manager must furnish the additional particulars in connection with the conversion that the registrar may require.

Consideration of application

63.(1) The registrar may not approve the conversion of a collective investment scheme if -

(a) any of the documents referred to in section 62(2) is inconsistent with this Act or contains a provision which is undesirable;

(b) the basis or conditions on which a participatory interest in the proposed collective investment scheme, is offered to investors referred to in paragraph (c) of the definition of "conversion scheme" in section 60, or to such investors and members of the public, are not reasonable or fair or may have the effect that a participatory interest in the proposed scheme may be acquired contrary to this or any other Act; or

(c) the application does not comply with a requirement of this or any other Act.

(2)

(a) For the purposes of considering the basis and conditions on which a participatory interests in any proposed collective investment scheme is offered to investors referred to in paragraph (c) of the definition of "conversion scheme" in section 60, or to such investors and members of the public, the registrar may, after consultation with the manager, designate a person to investigate and advise him or her independently of the manager, on the reasonableness and fairness of the proposed basis and conditions.

(b) The costs of an investigation in terms of paragraph (a) must be paid by the manager.

(3) The registrar may not refuse an application in terms of subsection (1)(a) or (b) without having afforded the manager a reasonable opportunity to adjust the relevant document in accordance with the registrar's requirements.

Resolution by investors

64.(1) As soon as the registrar has approved a conversion, the manager must obtain in the prescribed manner a resolution passed by investors authorising the conversion.

(2) If the investors pass a resolution authorising the conversion, the registrar must, at the request of the manager, issue a certificate to it confirming the registrar's approval of the conversion.

Registration of memorandum and articles of association by Registrar of Companies

65.(1) If the business of a collective investment scheme is converted into a company based scheme, it is converted into a public company upon registration by the Registrar of Companies in terms of section 63 of the Companies Act, 1973, of the memorandum and articles of association of the public company which is established by the conversion.

(2) The Registrar of Companies may, despite the Companies Act, 1973, register the memorandum and articles of association of a public company established by the conversion, but may not register such a memorandum and articles of association unless the application is accompanied by a certificate issued in terms of section 64(2).

(3) For the purposes of the registration of the memorandum and articles of association of any such company in terms of the Companies Act, 1973, the persons referred to in section 62(2)(e) shall, if they accept their appointment as the first directors of the company, sign the memorandum and articles of association as if they were the subscribers of such company as contemplated in section 54(2) of the Companies Act, 1973.

(4) No registration fee and additional fee referred to in section 62(1) and (2) of the Companies Act, 1973, are payable in respect of the registration in terms of that Act of the memorandum and articles of association of a public company formed specifically for the purpose of obtaining registration in terms of this section as a company.

Certificate of registration and notice in Gazette of conversion

66.(1) Within 14 days after the date of a conversion the manager must forward four certified copies of its deed to the registrar, and upon receipt of such documents the registrar must, against payment of the prescribed

registration fee, issue to it a certificate of registration as a manager of the converted collective investment scheme.

(2) The registrar must give notice in the *Gazette* of any conversion in terms of this Part.

Effects of conversion

67.(1) The business of a converted collective investment scheme which existed before the conversion continues to exist after the conversion but in the converted format and as from the date of such conversion -

(a) the relevant provisions of this Act apply to it;

(b) a reference in any document to the former collective investment scheme is, unless inconsistent with the context or otherwise clearly inappropriate, construed as a reference to the collective investment scheme in its new format;

(c) the persons who immediately before the conversion were directors of the manager must vacate their offices as such directors and the persons referred to in section 62(2)(e) become the directors of the manager of the converted collective investment scheme;

(d) the investors holding a qualifying interest become investors in the converted collective investment scheme; and

(e) all participatory interests issued by the former collective investment scheme and which were not repurchased or cancelled before the conversion become participatory interests in the converted collective investment scheme.

(2) The conversion of a collective investment scheme does not affect anything done by the manager before its conversion.

Issue of participatory interests to persons who were investors in former collective investment scheme

68.(1) An offer to investors holding a qualifying interest to take up a participatory interest in a collective investment scheme established by a conversion in terms of this Part must be made in writing to each individual investor, and any such offer must be accompanied by a statement issued by the manager concerned and containing such particulars in connection with the offer, the conversion, the collective investment scheme's profit and business prospects and general state of affairs and the other affairs of the collective investment scheme, as the registrar may require.

(2) The provisions of the Companies Act, 1973, with respect to the issue of a prospectus or an offer of shares, do not apply to an offer referred to in subsection (1).

(3) Upon a request made in writing by an investor holding a qualifying interest to a manager to apply the proceeds of such interest for the payment of a participatory interest in a collective investment scheme to be converted -

(a) such qualifying interest may be redeemed immediately despite the conditions attached thereto; and

(b) such proceeds may be applied for the payment of such participatory interest.

(4) No stamp duty in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), is payable in respect of the issue of participatory interests in a public company established by a conversion.

PART XI

GENERAL

Nature of and restrictions on assets which may be included in or lent by portfolio of collective investment scheme

69.(1) No manager may sell or offer for sale any participatory interest in a portfolio of a collective investment scheme if at the date of such offer the portfolio to which that participatory interest relates included assets in excess of the percentage prescribed by the registrar of the market value of all the assets comprised in the portfolio, except in so far as the excess is due to the appreciation, depreciation, amalgamation, cession, transfer or take-over of assets comprised in that portfolio: Provided that -

(a) the manager shall not make any further investments in assets of the class in respect of which the excess occurs and as long as the prescribed percentages are exceeded;

(b) the manager must within 12 months after the date on which such appreciation, depreciation, amalgamation, cession, transfer or take-over becomes effective or within such further period as the registrar may determine reduce the assets of the class in question to at least the prescribed percentage.

- (2) No manager may subject to the provisions of section 78 lend or offer to lend assets included in a portfolio in excess of the percentage prescribed by the registrar of the market value of all the assets comprised in a portfolio.
- (3) The registrar may in respect of subsections (1) or (2) prescribe different percentages for different assets or portfolios of a collective investment scheme.

Restriction of business and capacity in which manager may trade

70.(1) The manager of a collective investment scheme may in respect of:

- (a) the trading in (the selling or repurchase) participatory interests act as a principal only;
- (b) any other business act as a principal or agent.

(2) A manager may conduct any other business as referred to in subsection (1)(b) but must -

- (a) apply to the registrar for his or her prior approval; and
- (b) the registrar may, if he or she considers that the investors of such manager will not be prejudiced, approve on such conditions as he or she may determine the application of a manager to conduct such other business.

Capital requirements which managers of collective investment scheme must maintain (Listed in Schedule 1)

71.(1) A manager must on an ongoing basis hold the capital prescribed in Schedule 1.

(2) The registrar may if he or she considers it in the interest of the collective investment scheme industry exempt the managers of a particular type of collective investment scheme from any or all the requirements referred to in subsection (1) and prescribe capital requirements for such managers.

Obligation of manager to maintain minimum capital requirements and failure or inability to comply

72.(1) No manager may be registered or approved or allowed to continue to be a manager unless at the time of its registration and thereafter while it is authorised to administer a collective investment scheme it has in the Republic unencumbered capital that exceed the minimum capital requirements prescribed under section 71.

(2) A manager which is authorised to administer a collective investment scheme must hold at the end of 60 days following the date of commencement of this Act, the capital requirements referred to in section 71.

Financial statements and other information to be furnished by manager

73. (1) A manager must -

(a) not later than three months after the close of its financial year send to the registrar a copy of the duly audited financial statements of the manager and of every portfolio of the collective investment scheme managed by it; and

(b) on a date prescribed, such other statements and information as may be prescribed: Provided that a manager must within a period of 30 days after receipt of a written request from the registrar, or within such further period thereafter as the registrar may allow, lodge with the registrar such further information and explanations in connection with the financial and other statements referred to as may be specified in the request.

(2) A manager must, not later than three months after the close of the financial year of every portfolio of the collective investment scheme managed by it, send to every investor in such portfolio such information relating to the state of affairs and results of the operation of the portfolio as may be prescribed.

(3) Copies of the financial, other statements and information referred to in subsections (1) and (2) must be kept available at the principal office of the manager for inspection during ordinary office hours by any investor in the collective investment scheme concerned or other person interested in the purchase of a participatory interest in such scheme.

(4) A manager must, in accordance with the regulations or notices, lodge with the registrar -

(a) copies of all advertisements, brochures and pamphlets published or proposed to be published by the manager or any of its authorised agents, and of all proposed additions thereto and variations thereof, signed and certified in the prescribed manner by or on behalf of the directors of the manager: Provided that the registrar may exempt the manager to such extent and on such conditions as he or she may determine, from the obligation to lodge a copy of any such advertisement, brochure or pamphlet prior to its publication;

(b) a copy of every return or notice which the manager is required to furnish to the Registrar of Companies under section 216(2) of the Companies Act, 1973.

Exercise of voting power by manager

74. If a manager or its nominee exercises the voting power conferred to it by the assets held in a portfolio, the manager or such nominee shall owe a duty to the investors in that portfolio to exercise that voting power in such a manner as is best calculated to serve the interests of those investors without, however, entirely subordinating the interests of the concern in which the voting power is held, to the immediate interests of such investors.

No manager or director thereof may derive unauthorised gain from acquisition of assets

75. No manager and no director or employee of a manager may either directly or indirectly have any personal interest in or derive any pecuniary advantage from the acquisition or sale by the manager, director or employee of any assets of a portfolio except if such advantage accrues in the ordinary course of its business to the manager, director or employee by virtue of any difference between the price at which it, he or she acquires a participatory interest and the price at which a participatory interest is subsequently sold or by virtue of any underwriting of participatory interests done by a manager, director or employee.

Permissible deductions from distributable yields

76.(1) The following amounts may be deducted from the income accruing to investors in a portfolio, excluding the proceeds of capital gains, rights and bonus issues of shares -

- (a) charges payable on the buying or selling of assets for the portfolio such as brokerage, MST, VAT or stamp duties;
- (b) auditors' fees, bank charges, trustee and custodian fees and other levies or taxes;
- (c) directors fees (only if the manager is an open ended investment company); and
- (d) the agreed and disclosed service charges of the manager.

(2) No other amounts than those referred to in subsection (1) may be deducted by a manager from the income accruing to investors.

Calculation of price and limitation of amount of rounding off accrual

77.(1) No manager may sell any participatory interest in a portfolio at a price which exceeds or is less than the net asset value of that participatory interest: Provided that where participatory interests in a newly established portfolio are offered to the public for the first time, a manager is permitted to make an initial offer on a specified date or for a specified period of a specific number of participatory interests at a fixed price based on the made-up price of the participatory interests on a previous date, which shall not be more than 28 days prior to the closing date of the offer.

(2) In making payment to the investors of a portfolio of a distribution of income accruals on the participatory interests belonging to them, a manager may round off, to the nearest one cent any amount so paid in respect of every so many participatory interests as represents the minimum number which, in terms of the portfolio's deed, must be purchased at any one time: Provided that any amount which, by virtue of such rounding-off, is left in the portfolio must be carried forward to the credit of investors in the next ensuing distribution.

Sale of participatory interests only on payment of full purchase price and restriction on lending or borrowing of money

78. No manager may for the account of any portfolio -

- (a) sell or offer for sale any participatory interest except on terms requiring payment of the full purchase price of the participatory interest to be made upon the acceptance by the manager or any of its duly authorised agents, of the purchaser's offer for the purchase of the participatory interest;
- (b) lend or advance any money on the security of participatory interests sold by it, or otherwise; or
- (c) borrow money without the approval of the registrar and on such conditions as determined by the registrar.

Power of manager to borrow money to bridge liquid asset shortfall of a portfolio

79. Despite section 78 a manager may, in the case where insufficient liquidity exists in a portfolio or assets cannot be realised to repurchase or cancel participatory interests, borrow on security of assets of a portfolio for the account of a portfolio concerned from a registered financial institution at the best commercial terms available for

the account of the portfolio the necessary funds for such repurchase until assets can be realised to repay such a loan: Provided that:

- (a) the maximum amount so borrowed may not exceed 10% of the market value of such portfolio at the time of borrowing; or
- (b) the repayment of any amount borrowed may not prejudice investors.

Matters which must be provided for in deed (Listed in Schedule 2)

80.(1) Every deed must set out the requirements for the administration of a portfolio and it must contain, amongst others, provisions to regulate the matters detailed in Schedule 2.

(2) The registrar may, if he or she considers it in the interest of the collective investment schemes industry, exempt a particular type of collective investment scheme from any or all of the provisions of subsection (1) and prescribe the matters to be provided in a deed by such type of collective investment scheme.

Certain void provisions of deed and amendment of deed

81.(1) A provision in a deed which is inconsistent with this Act is void.

(2) The parties to a deed may by supplemental deed amend such deed but no amendment of a deed is valid -

(a) unless the consent thereto of a majority in value of investors has been obtained in the manner prescribed in the deed: Provided that if the registrar is satisfied that any such amendment is required only to enable the provisions of this Act or of the deed to be given effect to more conveniently or economically or otherwise to benefit the investors, will not prejudice the interests of investors and does not amend the fundamental provisions or objects of the deed or operate to release the trustee, custodian or the manager from any responsibility to the investors, he or she may direct that such consent be dispensed with;

(b) unless the registrar is satisfied that any such alteration, rescission or addition does not contain anything inconsistent with the provisions of this Act or with sound financial principles.

(3) Subject to the provisions of subsection (2), a deed which immediately prior to the commencement of this Act was a deed in terms of any law repealed by this Act, must within twelve months from the date of the coming into operation of this Act be varied, amended, supplemented or replaced by a deed made between a manager and a trustee or custodian or otherwise as the registrar may approve to ensure compliance with the provisions of this Act.

Amalgamation of business of collective investment schemes or portfolios and cession, transfer or take over of rights of investors

82.(1) The business of two or more collective investment schemes or two or more portfolios of a collective investment scheme may not be amalgamated, and the rights of the investors in a portfolio may not be ceded or transferred to or be taken over by any other person or portfolio, except with the prior consent of -

(a) investors holding a majority in value of participatory interests in each collective investment scheme or portfolio (hereinafter in this section referred to as an original scheme or portfolio) to which a proposed amalgamation, cession, transfer or take-over refers; and

(b) the registrar, granted on such conditions as he or she in writing may determine.

(2) A copy of the transaction (hereinafter in this section referred to as the proposed transaction) whereby the proposed amalgamation, cession, transfer or take-over is to be effected and such other particulars as may be necessary to enable the registrar to exercise his or her powers under this section, must be submitted to the registrar by the parties to the proposed transaction.

(3) The registrar must grant his or her consent under subsection (1)(b) only if he or she is satisfied that -

(a) every investor in an original scheme or portfolio has been furnished in writing, within a reasonable period before the date determined by the registrar in terms of subsection (4), with particulars of the proposed transaction, including particulars of the provisions of subsection (4) and of the procedure which the parties concerned intend to follow so as to ensure that every such investor shall, on the date on which the proposed transaction becomes effective, hold in the new scheme or portfolio participatory interests with an aggregate money value which is not less than the aggregate money value of the participatory interests which such investor, immediately before the date on which the proposed transaction becomes effective, held in an original scheme or portfolio;

(b) the proposed transaction will not be detrimental to any investor in an original scheme or portfolio;

and

(c) investors holding a majority in value of participatory interests in an original scheme or portfolio have not refused their consent to the proposed transaction.

(4) For the purposes of subsection (1)(a) it is deemed that the majority of investors in an original scheme or portfolio have given their consent to the proposed transaction unless investors holding a majority in value of participatory interests in such scheme or portfolio in writing notified the manager in question on or before a date determined by the registrar and disclosed by the manager in writing to every such investor, that they refused their consent to the proposed transaction.

(5) When a proposed transaction becomes effective -

(a) the provisions of the deed of the new scheme or portfolio or of the scheme or portfolio which acquired rights by amalgamation, cession, transfer or take-over bind the investors in an original scheme or portfolio;

(b) all the assets of an original scheme or portfolio vest in and form part of the new scheme or portfolio or, as the case may be, the scheme or portfolio which acquired such assets by amalgamation, cession, transfer or take-over;

(c) the provisions of the deed of the new scheme or portfolio or of the scheme or portfolio which acquired rights by amalgamation, cession, transfer or take-over, apply to the assets referred to in paragraph (b) and to any income accruals or other benefits which accrue therefrom to investors; and

(d) an investor in an original scheme or portfolio acquires participatory interests in the new scheme or portfolio or in the scheme or portfolio which acquired rights by amalgamation, cession, transfer or take-over, having the same aggregate money value as that of the participatory interests held, immediately before the date on which the proposed transaction became effective, by such investor in an original scheme or portfolio.

(6) If a proposed transaction becomes effective, every Registrar of Deeds -

(a) in whose deeds registry property or other rights are registered in the name of or in favour of an original scheme or portfolio;

(b) on production to him or her of a certificate in which the registrar states that -

(i) he or she in terms of subsection (1)(b) has granted consent to the proposed transaction; and

(ii) the amalgamation, cession, transfer or take-over in question has been carried out properly; and

(c) on production to him or her of the title deed or other deed or document in question,

must, on such title deed or other deed or document and in his or her registers or other books, make such endorsements and entries as may be necessary as a result of the said amalgamation, cession, transfer or take-over to effect or record the transfer of the said property or other rights to the new scheme or portfolio or, as the case may be, to the scheme or portfolio acquiring rights by means of the amalgamation, cession, transfer or take-over in question.

(7) No transfer or stamp duty or registration or other fees are payable in respect of any endorsement or entry made in terms of subsection (6), and no stamp duty or other fees are payable in respect of the issue of a substituting participatory interest or the transfer of assets as a result of any amalgamation, cession, transfer or take-over in terms of this section.

(8) Except in so far as this section provides otherwise, an amalgamation, cession, transfer or take-over in terms of this section does not derogate from the rights of any creditor or any obligation relating to an original scheme or portfolio.

Contents of price list, advertisements, brochures and similar documents

83.(1) If in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents for the purpose of promoting the sale of participatory interests in a collective investment scheme, the price of any participatory interest is mentioned or a particular portfolio is referred to, the undermentioned particulars must be clearly set out therein with reference to each such participatory interest or portfolio, namely -

(a) the charges that may be levied by the manager, the method of calculation and the quantum of

those charges and the time when they may be levied; and

(b) the basis on which the manager undertakes to repurchase participatory interests offered to it and the basis on which selling and repurchase prices will be calculated in accordance with this Act and the terms and conditions of the deed.

(2) Any reference in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents, to the yield to be derived from any participatory interest offered for sale by the manager, must be confined -

(a) in the case of any such document published after the lapse of a period of 12 months following the date of the first offer of participatory interests to the public, to particulars of the yield, calculated in the manner prescribed by the deed, for the last preceding period of 12 months for which a distribution has been declared, and a statement as to any facts likely to influence future yield; and

(b) in the case of any such document published within the first-mentioned period, to information as to the probable yield calculated in a manner clearly set out in such document.

(3) If, in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents, it is stated that investors in a portfolio of the collective investment scheme are entitled to participate in its profits, there must also be stated what amount was so distributed during the previous financial year, expressed as a percentage of the aggregate market value, as at the close of that year, of all assets then held on behalf of investors in that portfolio.

(4) There must be included in every price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents in which participatory interests are commended to the public, a statement in clear and unambiguous terms, to the effect that the value of participatory interests in a portfolio is subject to fluctuation from time to time relative to the market value of the assets comprised in the portfolio: Provided that the registrar may, subject to such conditions as he or she may deem fit, exempt a manager or any such agent from the provisions of this subsection in relation to any advertisement or any particular type of advertisement which is of such a nature that it would be unreasonable to require the manager or such agent to comply with this subsection.

Principal office and public officer in Republic

84.(1) A manager must maintain a principal office in the Republic and must appoint a public officer in the Republic and must notify the registrar in writing of the location and address of that office and of the name of its public officer.

(2) Whenever a manager has changed its principal office in the Republic or has appointed a new public officer, it must within twenty-one days from such change or appointment give notice in writing thereof to the registrar.

(3) Process in any legal proceedings against a manager may be served at the principal office of the manager in the Republic, and if such office is no longer in existence, service upon the registrar is deemed to be service upon the manager.

Winding-up of portfolio of collective investment scheme

85.(1) If at the time (whether before or after the commencement of this Act) when a portfolio was first formed under a collective investment scheme, no period was fixed for the duration of that portfolio, the manager may, or if for any reason the manager is unable to do so, the trustee or custodian may, with the approval of investors holding a majority in value of participatory interests, wind-up that portfolio at any time.

(2) Despite subsection (1), any competent division of the Court may, on the application of a manager, trustee or custodian, order any such portfolio to be wound-up if the Court is satisfied that to do so would be in the interest of the investors in that portfolio.

(3) Upon the winding-up of a portfolio in terms of this section the manager must under the control and supervision of the trustee or custodian realise all the assets of such portfolio as soon as possible having regard to the interests of investors, but it incurs no liability by reason of the exercise of its discretion as to the time of realisation of any assets.

(4) The net proceeds of the realisation of such assets must be deposited in a trust account controlled by the trustee or custodian and must under the control and supervision of the trustee or custodian be distributed by the manager or the trustee or custodian, as the case may be, amongst the investors and the manager in proportion to their respective participatory interests in the portfolio.

(5) Pending the realisation of the assets in such winding-up the manager or trustee or custodian must on behalf of the collective investment scheme collect all income accruals in respect of such portfolio and must deposit and distribute the amounts collected in the manner prescribed in subsection (4).

(6) Despite the provisions of the Companies Act, 1973, this section and sections 87 and 88 of this Act must be applied to the winding-up of a portfolio of an open-ended investment company and none of the assets of a portfolio administered by such a company may be utilised for the payment of any claim of a creditor of the company.

Manner of dealing with trust property on winding-up of portfolio of collective investment scheme

86.(1) Despite section 85 the registrar may, if it appears to him or her that it would be in the interest of the investors to continue the collective investment scheme for a period of time, direct the manager, trustee or custodian to postpone the realisation of any assets for such period or periods, not exceeding five years at a time, as the registrar may determine and, pending such realisation, to carry on the scheme in accordance with the registrar's directions and to collect and deal with all income accruals, bonuses and other distributions in accordance with subsections (4) and (5) of section 85.

(2) A manager, trustee or custodian which is acting in accordance with a direction of the registrar given in terms of subsection (1) may terminate his or her obligations as trustee or custodian on giving six months' notice in writing to the registrar, and the registrar may thereupon appoint some other fit and proper person to take over the duties and obligations of the manager, trustee or custodian, subject to such conditions as the registrar may stipulate.

(3) As remuneration for any services rendered by it in terms of this section a manager, trustee or custodian or a person appointed by the registrar to take over the duties and obligations of a manager, trustee or custodian shall be entitled to a fee calculated at such rate, as the registrar may determine, on all moneys received by him or her in carrying out his or her duties under this section, and the registrar may authorise the amount of such fee to be deducted, in such proportions as he or she may determine, from income accruals or any moneys realised by the sale of assets in terms of this section.

Status of assets of portfolio of collective investment scheme given to or received by manager, trustee or custodian

87. For the purposes of a claim against a manager, trustee or custodian there must be excluded from the assets of the manager, trustee or custodian -

(a) any valuable consideration or participatory interest certificate given by any investor to that manager, trustee or custodian or its authorised agents, or received by that manager, trustee or custodian or its authorised agents for the selling or repurchase of a participatory interest; or

(b) the assets of a portfolio or the income accruals on such assets.

Separation of funds of investors and other persons

88.(1) A manager must open and maintain a separate operational trust account controlled by the trustee or custodian for each portfolio at a registered bank and must on the date of receipt of any payment from or on behalf of an investor or the first business day thereafter deposit in such account either the cheque, draft or instrument by means of which such payment is made or, alternatively, deposit for same day value in such account funds equal to the amount of such payment.

(2) Funds deposited into an operational trust account referred to in subsection (1) may only be withdrawn for the purposes of making payment -

(a) to the investor, person or manager entitled to such payment; or

(b) in terms of this Act, any other law and the deed:

Provided that if after such withdrawal any deposited cheque, draft or other instrument against which such withdrawal was made is not subsequently honoured, the manager shall immediately pay the shortfall arising from such default into the operational trust account or cancel any participatory interest issued in respect of such defaulting payment.

(3) Any excess remaining in the account after payment of or provision for all claims of investors whose funds have, or should have been deposited in such operational trust account, is not trust property as determined in section 43.

(4) The division of the Court having jurisdiction over a manager may, on application by an association referred to in section 6, the registrar or by any other person having a financial interest in or claim against an operational trust account referred to in subsection (1), on good cause shown, prohibit such manager from operating such account in any way and may appoint a curator to control and administer such account with such rights, duties and powers in relation thereto as the Court may deem fit.

False or misleading statements

89. No person may make a statement or disseminate information which he or she knows, or ought reasonably to

know, is false or misleading or is likely -

- (a) to induce other persons to purchase or deal in a participatory interest in a portfolio; or
- (b) to have the effect of inflating, depressing or maintaining the price to purchase or deal in a participatory interest in a portfolio.

Fraudulently inducing person to purchase or deal in participatory interests

90. No person may -

- (a) by making or publishing any statement, promise or forecast which he or she knows is misleading, false or deceptive; or
- (b) by concealing material information at his disposal,

induce another person to purchase or deal in a participatory interest in a portfolio.

Evidence

91. A record purporting to have been made or kept in the ordinary course of the business of a collective investment scheme, or a copy of or an extract from such record duly certified to be correct, is on its mere production by the State in any criminal proceedings under this Act, any other law or the common law against the person who carries or carried on the business in question or any other person, admissible in evidence and on the face of it be proof of the facts contained in such record, copy or extract.

Action for damages

92.(1)

- (a) A person who contravenes or fails to comply with any provision of this Act or any rule or directive of an association or regulation, or notice or directive under this Act is liable to any other person for any loss or damage suffered by that person as a result of such contravention or failure; and
- (b) the defences applying to an action for damages in respect of a breach of a statutory duty are available to any defendant in an action contemplated in paragraph (a).

(2) A person who contravenes a provision of section 89 or 90 is liable to pay damages to any other person who, by dealing in or purchasing a participatory interest in a collective investment scheme, suffers a loss as a result of the difference between the price at which the dealing takes place and the price at which it would be likely to have taken place if the contravention had not occurred.

(3) The amount of damages for which a person is liable under subsection (2) is limited to twice the profit gained or likely to be gained, or loss avoided or likely to be avoided, by him or her as a result of the relevant contravention of the section in question.

(4) An action contemplated in subsection (1) or (2) does not lie after the expiration of a period of two years commencing -

- (a) in a case contemplated in subsection (1), on the day of the relevant contravention or failure; or
- (b) in a case contemplated in subsection (2), on the day of completion of the dealing in which the loss occurred.

(5) The registrar may, if he or she considers it to be in the public interest, bring an action in a competent court in the name of, and for the benefit of, an investor for recovery of damages for a loss referred to in subsection (2) suffered by that investor.

(6) Nothing contained in this section shall affect any liability which a person may incur under the common law or any law.

Certain written matter to bear names of certain persons

93. No person may publish or issue to the public or circulate any written comment which may influence the value of any participatory interest in a collective investment scheme unless such comment is accompanied by -

- (a) the name of the person or persons who compiled the comment, or the name of the person or persons on the editorial staff of a newspaper or periodical whom the editor considers to have compiled the comment; or

(b) disclosure of the source from which the comment was obtained, or the information on which it was based.

Operation of Companies Act in relation to manager

94.(1) Except as expressly provided by this Act, the operation of the Companies Act, 1973 (Act No. 61 of 1973), is not affected in relation to a manager within the meaning of this Act.

(2) Chapter VI of the Companies Act, 1973, does not apply to any offer of participatory interests by a manager to members of the public or to investors.

(3) In the application of section 357 of the Companies Act, 1973, in respect of a manager, the registrar shall be deemed to be included among the persons to whom notice is required to be given under subsection (1)(b) of that section.

(4) In the application of section 427(2) of the Companies Act, 1973, in respect of a manager, section 346(4)(a) shall be construed as if the words "or to the Registrar of Collective Investment Schemes appointed under the Collective Investment Schemes Control Act, 1999", were inserted after the words "shall be lodged with the Master" in that section.

(5) The registrar may, in respect of any manager which is being wound-up or judicially managed, by order in writing direct the liquidator or the judicial manager, as the case may be, to furnish him or her with a copy of any particular account, return, statement or other document which the liquidator or the judicial manager is required under any provision of the Companies Act, 1973, to be furnished to the Registrar of Companies or to the Master, or to furnish him from time to time with copies of all or any of such accounts, returns, statements or documents as and when they are furnished to the said registrar or to the Master.

(6) Immediately after the confirmation of the final account in the winding-up of a manager, the Master of the High Court concerned shall give the registrar notice thereof.

Delegation of functions

95.(1) The Minister may delegate any power conferred upon him or her by this Act to the Director-General: Finance or any other officer in the Department of Finance, the registrar or an association.

(2) An association may -

(a) on such conditions as the association may determine delegate to the chairman, executive officer or any other officer or employee of the association any power conferred upon the association by or under this Act including a power delegated to the association under this Act; or

(b) authorise the chairman, the executive officer or any other officer or employee of the association to perform any duty assigned to the association by or under this Act.

(3) The registrar may -

(a) delegate to an officer or employee of the Financial Services Board or an association any power conferred upon the registrar by or under this Act, including a power delegated to the registrar under this Act; or

(b) authorise such officer or employee to perform any duty assigned to the registrar by or under this Act.

(4) Any delegation under subsection (1), (2)(a) or (3)(a) does not prohibit the exercise of the power in question by the Minister, association or registrar, as the case may be.

(5) Anything done or omitted to be done by an officer or employee of an association or the registrar in the exercise of any power or the performance of any duty delegated or assigned to them under subsection (2) or (3), or by the deputy executive officer of the Financial Services Board, is deemed to have been done or omitted by the association or the registrar.

Exemption from Act 57 of 1988

96. The Trust Property Control Act, 1988 (Act No 57 of 1988), does not apply in respect of a collective investment scheme operated in terms of this Act.

Regulations by Minister and notice by registrar to achieve purposes of this Act

97.(1) The Minister may make regulations -

(a) as to any matter which is required or permitted by this Act to be prescribed by regulation under this Act;

(b) prescribing the manner in which the remuneration and allowances of members of the advisory board referred to in section 3(1), and of the other persons referred to in section 3(8)(b), are determined; or

(c) prescribing matters in addition to those contemplated in any other provision of this Act in respect of which fees shall be payable, the fee payable in respect of each such matter, and, in relation to such fees as well as fees payable under any such other provision of this Act, the persons by whom the fees shall be payable, the manner of payment thereof and, where it is deemed necessary, the payment of interest in respect of overdue fees.

(2) The registrar may by notice in the *Gazette*:

(a) prescribe the records to be kept and furnished to the registrar by a manager;

(b) prescribe the forms or returns to be used for the purposes of this Act, the information to be supplied therein or the manner and time limits for the lodgement thereof with the registrar; or

(c) the manner in which and the period within which -

(i) application for the renewal of an association licence must be made; or

(ii) notice must be given of the issue, cancellation or suspension of an association licence.

(3) The Minister may make different regulations or the registrar may issue different notices:

(a) in respect of different types of collective investment schemes or different types of portfolios; or

(b) prescribing, generally, any matter, whether or not connected with any matter specified in subsections (1) or (2) of this section, which he or she considers necessary or expedient to prescribe or to regulate in order that the objects of this Act may be achieved and the generality of this provision not being limited by the preceding subsections.

(4) Fees which are in terms of or by virtue of a provision of this Act payable, and interest so payable in respect of overdue fees, are a debt due to the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), and may be recovered by the registrar by action in any competent court.

Offences

98. Any person who contravenes or fails to comply with -

(a) the provisions of sections 5, 37, 40(5), 42(4), 51(5), 54(2), 75, 76, 77(1), 78, 89, 90 and 93;

(b) solicits an investment in a portfolio of a collective investment scheme or performs a function referred to in the definition of "administration" without being authorised as an agent by a manager; or

(c) who fails to comply with any lawful direction or requirement of the registrar under any provision of this Act,

is guilty of an offence.

Penalties

99. Any person who is, in terms of any provision of this Act, guilty of an offence in respect of which no penalty is specifically provided, is liable to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

Repeal of Laws and savings (Listed in Schedule 3)

100.(1) Subject to the provisions of subsection (2), the laws set out in Schedule 3 are hereby repealed to the extent set out in the third column thereof.

(2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1), and which could be done under a provision of this Act, is deemed to have been done under the last-mentioned provision.

Short title

101.(1) This Act is called the Collective Investment Schemes Control Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

SCHEDULE 1

MINIMUM CAPITAL TO BE MAINTAINED BY MANAGER

(SECTION 71)

A manager must manage its affairs in such a way that the sum of its minimum capital available in liquid assets does not at any time amount to less than the following:

(a) Basic requirement: The greater of (i) or (ii):

(i) a sum of R600 000;

(ii) a sum equivalent to 13 weeks of fixed overheads for the whole of the collective investment scheme of a manager; plus

(b) Seed capital requirement: a sum of R1 000 000 to be invested by the manager in each portfolio administered by the manager: Provided that:

(i) the prescribed amount may be reduced by 10 per cent for every R1 000 000 invested by investors in a portfolio which investors may not be connected to but must be independent from the manager;

(ii) if the sum of R1 000 000 has been reduced to nil in terms of subparagraph (i) and disinvestment from a portfolio causes the investment in the portfolio to reduce to less than R10 000 000, a manager need not reinvest any further sum in terms of this paragraph; plus

(c) Position risk requirement:

(i) a sum equivalent to 25% of the amount paid for participatory interests in a portfolio; and

(ii) a sum equivalent to three times the margin requirement for listed futures or options contracts traded on a regulated exchange,

when such participatory interests or futures or options contracts are bought by a manager for own account and held for resale with the intention of making a profit,

must be provided from additional financial resources of the manager and does not impair the requirements provided for in paragraphs (a) or (b); plus

(d) Repurchase risk requirement: In respect of a manager which undertakes to repurchase participatory interests a sum equivalent to the requirement as prescribed by the registrar.

SCHEDULE 2

MATTERS WHICH MUST BE PROVIDED FOR IN DEED

OF COLLECTIVE INVESTMENT SCHEME

(SECTION 80)

1. A deed must provide for the requirements applicable to the administration of a collective investment scheme and must, amongst others, contain provisions to the following effect namely:

(a) That in respect of a portfolio -

(i) any moneys received for investment in participatory interests;

(ii) dividends, interest or any other income accruals on assets;

(iii) the proceeds of capital gains, rights or bonus issues; and

(iv) any moneys received from the realisation of assets,

must be handed to the trustee or custodian in cash or deposited in a trust account or accounts controlled by the trustee or custodian for the benefit of the investors in that portfolio;

(b)

(i)

(aa) that if a manager undertakes to repurchase participatory interests, it shall be incumbent upon the manager responsible for administering a portfolio to repurchase any number of participatory interests offered to it for repurchase for the manager's own account, on the basis of prices calculated not more than 24 hours prior to the offer or on such other basis determined in the deed;

(bb) that if a manager does not undertake to repurchase participatory interests and a portfolio is illiquid and prices cannot be calculated as determined in subparagraph (aa), specifying the maximum quantum for a single repurchase request and the circumstances under which the pricing or the settlement of repurchase requests may be delayed or complied with proportionally or suspended;

(cc) a portfolio is deemed to be illiquid if the assets of a portfolio comprise assets of a market sector which has declined in value by 15% over the previous five trading days. However, despite such a decline participatory interest in a portfolio affected by such a decline must be priced within 10 trading days for purposes of repurchase of participatory interests;

(dd) if a particular sector of the market remains illiquid after the period of five days referred to in paragraph (cc) an investor which has requested a repurchase of the participatory interests that it owns, may be paid in the form of assets from the portfolio; and

(ee) the provisions setting out procedures for the repurchase of participatory interests must be fair to all investors; or

(ii) alternatively, ensure that there is an appropriate mechanism for the repurchase of participatory interests at a market price.

2. Every such deed, must further provide for -

(a) the investment policy to be followed in respect of each portfolio;

(b) the frequency and the basis on which the assets of a portfolio are to be valued and the selling and repurchase prices of participatory interests are to be calculated;

(c) if assets other than securities listed on an exchange may be included in any portfolio, the basis on which the market value of such assets is to be determined for the purposes of administering the scheme;

(d) the manner in which participatory interests shall be transferred from the manager to an investor or from an investor to a manager;

(e) if applicable, the manner in which participatory interests are to be created;

(f) the manner in which the yield from participatory interests is to be calculated;

(g) the manner in which participatory interests are to be cancelled.

(h) the risks to which an investor in a particular portfolio may be exposed to;

(i) the limits, terms and conditions under which the lending of assets, excluding cash, of a portfolio to earn income for investors, may take place;

(j) the limits, terms and conditions under which investment strategies such as leveraging and short selling (the selling of assets of which the portfolio is not the owner) may be engaged in; and

(k) the manner in which a deed may be amended.

SCHEDULE 3

LAWS REPEALED BY THIS ACT

(SECTION 100)

No and year	Short title	Extent of amendment
Act No 54 of 1981	Unit Trusts Control Act, 1981	The whole
Act No 38 of 1984	Inspection of Financial Institutions Act, 1984	Section 26
Act No 51 of 1988	Financial Institutions Amendment Act, 1988	Sections 1, 2, 3, 4, 9, 20, 26, 29, 30 and 39
Act No 64 of 1990	Financial Institutions Amendment Act, 1990	Sections 1, 38 and 45
Act No 97 of 1990	Financial Services Board Act, 1990	Sections 1 and 2
Act No 54 of 1991	Financial Institutions Amendment Act, 1991	Sections 1, 2, 6 and 45
Act No 41 of 1992	Financial Services Board Amendment Act, 1992	Sections 1 and 2
Act No 83 of 1992	Financial Institutions Amendment Act, 1992	Section 37
Act No 7 of 1993	Financial Institutions Amendment Act, 1993	Section 42
Act No 104 of 1993	Financial Institutions Second Amendment Act, 1993	Sections 1, 3, 5, 6, 11, 29, 40, 41 and 45
Act No 53 of 1996	Unit Trusts Control Amendment Act, 1996	The whole
Act No 12 of 1998	Unit Trusts Control Amendment Act, 1998	The whole

CONTROL AND REGULATION OF COLLECTIVE

INVESTMENT SCHEMES BILL

MEMORANDUM ON THE OBJECTS OF THE BILL

Introduction

The purpose of financial regulation and supervision is in principle to:

- * enhance competition and thus the efficiency of the market;
- * support the stability of institutions; and
- * promote investor protection.

The first legislation for the regulation and supervision of the unit trust industry was promulgated in 1947 and has been amended several times in an attempt to keep abreast with developments within the industry and the needs of investors. To enable local industry to become more competitive, to remain competitive and to upgrade regulation and supervision of the industry the revision of the current legislation has become necessary and in the public interest.

The Policy Board for Financial Services and Regulation has in its conceptual framework for regulation of the financial services industry envisaged legislation to control and regulate collective investment schemes.

The proposals contained in the Bill were developed through the following process:

- * A survey was conducted of the opinion of the members of the unit trust industry, the South African regulatory authorities and other related institutions;
- * The legislative and regulatory approaches followed in selected international dispensations were reviewed;
- * The principles for the regulation of collective investment schemes as defined by the International Organisation of Securities Commissions (IOSCO) and as incorporated in the UCITS Directive (European Community Directive 85/611 for undertakings for collective investments in transferable securities) were reviewed;
- * The Association of Unit Trusts held workshops in August 1997 and November 1998 which was attended by representatives of unit trust management companies and the Financial Services Board.
- * A document containing proposals setting out the guiding principles within which the drafting of legislation and regulations related to collective investment schemes may take place was developed by

the Association of Unit Trusts of South Africa, in consultation with the Financial Services Board. Specialist input was provided by Deloitte & Touche's Financial Institutions Team and by attorneys Maitland and Company (Paris).

The Financial Services Board and the Association of Unit Trusts therefore took the initiative to prepare draft legislation to control, regulate and supervise the industry based on internationally accepted principles and best practice. The principles contained in the Bill therefore provide for:

- * the control, regulation and supervision of all investment based collective investment schemes including unit trust schemes and all foreign and local collective investment schemes which want to carry on business within the Republic of South Africa;
- * the appointment of a representative advisory committee to advise the Minister and the registrar on the business and the supervision of collective investment schemes;
- * the recognition of an industry association(s) which may be entrusted with duties and powers for the self regulation of the conduct of its members;
- * risk based capital requirements for the managers of collective investment schemes;
- * comprehensive disclosure and additional requirements to further protect investors; and
- * independent custodianship of the assets representing the interests of investors.

Part I

Clause 1

Clause 1 contains the necessary definitions for interpretation of the provisions of the Bill and contains extensive definitions for "collective investment schemes", "administration", "investor" and "participatory interest". The intention is that the activities of all variations of financially based collective investment schemes are included so as to ensure that the protection envisaged in the Bill for investors in such schemes, is available to all such investors.

Clause 2

This clause contains the principles in terms of which any collective investment scheme shall carry on its business. The principles are the norms which apply internationally for such business and prudence, fair business practices and investor protection are emphasised.

Clause 3

This clause is based on section 2B of the existing Unit Trusts Control Act (the existing Act) and provides for the appointment of an advisory committee to advise the Minister and the Registrar of Collective Investment Schemes **on policy or any matter relating to the business of and the supervision of collective investment schemes**. The objectives of the advisory committee differ from the objectives of the Policy Board for Financial Services and Regulation as the latter's function is to advise the Minister on **policy matters relating to financial services and financial regulation**.

Clause 4

This clause is based on sections 3 and 37 of the existing Act and provides for a prohibition on the carrying on of the business of a collective investment scheme unless authorised in terms of the Bill.

Clause 5

This clause is based on section 38 of the existing Act and regulates the use of words or the derivatives of words relating to a collective investment scheme for any business that is not authorised in terms of the proposed legislation and which would be misleading to investors.

Part II

Clause 6

This clause provides for the recognition of an industry association which may in accordance with its rules and in terms of duties and powers delegated to it by the Minister under the Bill, be tasked with the supervision of its members in respect of those activities specified by the Minister.

Clause 7

This clause provides for the prohibition of any person or business to imply a connection with any association referred to in clause 6 unless such person is a member of such an association.

Clauses 8, 9, 10 and 11

These clauses provide for the issue, renewal, refusal, withdrawal or suspension of a licence of an association. A licence may only be issued by the registrar if certain criteria are met on an ongoing basis as detailed in clause 9 and as the public interest is at stake it is important that if any one of these criteria is no longer being met by an association that a licence may be refused, withdrawn or suspended.

Clause 12

This clause recognises an association as a juristic person upon the issuing of a licence to it.

An association should be able to own or lease offices, employ staff and institute legal proceedings or defend actions against it. In the circumstances there should be no doubt concerning its legal status and its ability to participate in legal affairs.

Clause 13

This clause enables an executive committee of an association to delegate powers or assign duties to the extent that it may determine to members of the executive committee or employees of the association.

Clause 14

In terms of clause 6 of the Bill an association if recognised by the registrar will be required to supervise the activities of its members in the public interest in respect of those matters assigned or delegated to it in terms of the Bill.

This clause gives an executive committee and the executive officer of an association which have been so recognised, the power to suspend a particular activity of a member or its membership should such a suspension be warranted. Such a suspension can only take place after a member has had the opportunity to make representations for the continuation of the activity. Any decision to suspend an activity will furthermore be subject to an appeal in terms of the rules of an association in terms of clause 15.

The clause also provides that such a suspension may be ordered by the registrar after consultation with the association and a hearing of the member(s) concerned. Any decision by the registrar is subject to an appeal to the Appeal Board in terms of clause 60.

Clause 15

This clause provides for the rules that an association shall and may have for purposes of supervising the business of its membership and for protecting the interests of investors. The rules of an association shall be binding on all members, the employees of members and any person concluding a transaction with a member and such rules shall be published in the Gazette.

Clauses 16, 17, 18, 19 and 20

These clauses provide for disqualification of a member by a court if convicted of an offence under the Bill and for the voluntary dissolution of an association or for the winding-up or appointment of a judicial manager or liquidator for an association by a court.

Clause 21

This clause provides for an annual report by an association to the registrar on the activities of an association and its members.

Part III

Clause 22

This clause contains the necessary definitions for interpretation of the provisions of Part III of the Bill which deals with the various types of collective investment schemes and portfolios in securities which may be registered in terms of this Part. This segment of industry is subject to rapid development and new kinds of funds and products are designed almost every week. The previous restriction of investment by a collective investment scheme in a collective investment scheme in shares of property companies, has been removed.

Clauses 23 and 24

These clauses are based on the provisions of sections 3 and 4 of the existing Act and deals with the criteria that

are required for an applicant to be registered as a manager of a collective investment scheme in securities and the procedures in connection with an application and the registration of such a manager.

Clause 25

This clause provides that a manager may not change its registered name or abbreviation or derivative of such name without the prior written approval of the registrar.

Clause 26

The provisions of this clause are based on the provisions of the existing section 7 of the Act. The purpose of this clause is to enable a manager to determine the market value of a security included in the portfolio of a collective investment scheme if such market value is not current due to the infrequent trading of that particular security.

Clause 27

The purpose of this clause is to allow a diversification of investments by local collective investment schemes in more than one economy. A provision with a similar purpose exists in the existing Act.

Part IV

Clauses 28 to 33

The clauses in this part of the Bill contains the necessary definitions for interpretation of the provisions of Part IV of the Bill and deal with the requirements and procedures for the registration of a manager of a collective investment schemes in property.

It also allows for a diversification of investments in more than one economy. A provision with a similar purpose exists in the existing Act.

Part V

Clauses 34 to 36

These clauses deal with all other types of collective investment schemes that are unregulated (excluding those in securities and property shares which are dealt with in Parts III and IV, respectively, of the Bill). Clause 34 empowers the Minister, when considered to be in the public interest, to declare a particular type of collective investment scheme as a collective investment scheme to be controlled and regulated by this Act. It also provides the Minister with the power to define the issues that are required for such control and regulation and furthermore to prescribe the matters that should be dealt with in the deed or instruments of incorporation for the administration of such a collective investment scheme.

Market developments are continuously and rapidly taking place and new investment instruments and schemes offered to the public are created daily. It is considered necessary for achieving the objects of this Bill, that the Minister should be able to also regulate such schemes which may be unknown at the moment and which may be launched in future. These clauses empower the Minister to promulgate regulations with a view to place the prudential, solvency and other investor protecting measures that are included in this Bill in operation in respect of such schemes for the benefit of investors.

Part VI

Clauses 37, 38 and 39

These clauses deal with foreign collective investment schemes that are marketed locally. These clauses represent provisions issued under the existing Act and that already exist with a view to regulate the activities of foreign schemes to protect local investors and to avoid the situation that due to regulatory arbitrage local industry is at a competitive disadvantage to such foreign schemes.

It also provides the Minister with the necessary powers to intervene and regulate the business (by a restriction on or a prohibition) of the business of foreign collective investment schemes locally on an equal basis should local schemes be discriminated against in a particular foreign jurisdiction.

Part VII

Clauses 40 and 41

These clauses impose an obligation on a manager to appoint either a trustee or a custodian in respect of every collective investment scheme and determine the requirements for such a trustee or custodian. These clauses are based on the provisions of section 20 of the existing Act and the objective is to achieve a separation of assets belonging to investors from the manager which would ensure that in the case of the insolvency of a manager that

the assets of investors are not included in the insolvent estate of the manager.

Clause 42

This clause details the duties and obligations of a trustee or custodian of a collective investment scheme and is based on the provisions of section 21 of the existing Act. The provisions of this clause have been extended substantially with a view to clarify the duties of trustees and custodians and to provide additional protection for investors.

Clause 43

This clause contains new provisions and provides that any valuable consideration handed over by an investor to a manager for the acquisition or redemption of a participatory interest in a collective investment scheme, will in future be subject to the provisions of the Financial Institutions (Investment of Funds) Act, 1984. It further provides that as soon as such valuable consideration or any asset of a portfolio have been handed over to a manager it will be deemed to be in the custody of the trustee or custodian and will therefore provide the protection of custodianship and becomes "trust property" as envisaged in the aforesaid Act.

Clause 44

This clause contains new provisions and determines that a trustee or custodian will be required to provide an indemnity to a manager and investors that the trustee or custodian will make good any loss or damage that the investors of a collective investment scheme may suffer as a result of any wrongful or negligent act or omission by a trustee or custodian.

Part VIII

Clauses 45 to 47

These clauses are based on the provisions of section 11 of the existing Act and provide for the appointment of an auditor by a manager of a collective investment scheme for the whole of the business of such a collective investment scheme and for the approval of such appointment by the registrar. It, furthermore, provides for the accounting records to be kept by a manager in respect of a collective investment scheme and for the audit of such accounting records and the financial statements in respect of each portfolio of a collective investment scheme.

Clause 45 imposes a new duty on an auditor to disclose any irregularity or undesirable practice to a manager and if such irregularity or undesirable practice is not discontinued and rectified within a period of thirty days as from the date upon which it was reported to the manager, the auditor is required to report such irregularity or undesirable practice to the registrar.

Part IX

Clauses 48 and 49

These clauses provide for the appointment of the Registrar and Deputy Registrar of Collective Investment Schemes to be in tandem with the appointment of the Executive Officer and Deputy Executive Officer of the Financial Services Board.

It also provides for the powers of the registrar to call for information from a collective investment scheme whether registered or not and to investigate the business and activities of such a scheme and furthermore to provide for an inspection and for such inspection the provisions of the Inspection of Financial Institutions Act, 1984, will likewise apply.

Clauses 50 and 51

These clauses provide that should an investigation or inspection in terms of the aforesaid clauses warrant such action, the registrar is empowered to apply to a division of the High Court for the winding up, judicial management or the appointment of a curator for the business of the manager or for the business of any portfolio of its collective investment scheme. Further, it provides the registrar with sufficient powers:

- to require a manager to appoint a replacement trustee or custodian for a collective investment scheme in the case of the winding up of a collective investment scheme;
- to issue directions with regard to the realisation of the assets of a particular portfolio;
- to direct the manager of a collective investment scheme to refrain from certain activities in order to eliminate an irregularity or an undesirable practice and;
- to arrange for the withdrawal of a manager from the business of a collective investment scheme should this be warranted and for the trustee or custodian to arrange for another manager to take over

the management of the scheme.

It also provides the registrar with the power to cancel or suspend the registration or approval of a collective investment scheme under certain circumstances relative to a failure or negligence to comply with the conditions of the Bill, or in the case where the business of a collective investment scheme is managed unsatisfactorily or undesirably or is conducted in a manner which is not in the best interest of investors, in the case of fraud or in the case of being wound up.

Clause 52

In terms of this clause the registrar may disapprove of the terms of any advertisement, brochure or similar document which is published relating to the business of a collective investment scheme if in his or her judgement:

- the said terms are calculated to mislead or are objectionable or undesirable and to direct a manager to discontinue or refrain from the publication or distribution of any such documents; or
- to introduce variations or modifications to the wording of such a document as he or she may specify before such document is distributed. This clause is based on the provisions of section 13 of the existing Act.

Clause 53

This clause provides that in respect of any manager who fails to submit or transmit or to furnish the registrar within the period fixed or prescribed under the Bill with any statement, report, return or other document or information as may be required by or under the Bill, to be submitted, transmitted or furnished, the registrar may impose a penalty not exceeding two hundred rand per day for every day of such failure to submit such documentation or to comply with the requests of the registrar in this regard.

Clause 54

This clause provides the registrar with the necessary power to at any time direct a manager to have an audit performed on the accounting records and financial statements of the manager or any portfolio of a collective investment scheme under the administration of a manager and to submit the result of such an audit to the registrar within the time as may be specified by the registrar.

Clause 55

This clause provides that the registrar, or any person nominated by him or her, may attend any meeting of an association referred to in section 6 of the Bill or the executive committee of an association or any committee of such executive committee and to take part in the non voting proceedings of such meetings. Furthermore, an executive officer of an association shall on request furnish the registrar with all notices, minutes and documents of the said meetings. As it is envisaged that an executive committee may be authorised in terms of delegated powers to supervise the activities and the business of its members, it is important that ways and means be created in terms of which a close relationship shall exist between the registrar, who is the supervisory authority in terms of this Bill, and any association which is recognised under the Bill.

Clause 56

This clause is similar to provisions in the Insurance Act and prescribes a procedure in terms of which after an inspection or after the approval by the Minister, a particular practice or business which is irregular or undesirable from the perspective of the investing public could, after notice thereof in the Gazette and after the hearing of any objections, be declared an undesirable practice by the registrar.

Clause 57

This clause provides the registrar with the power to exempt any manager from certain provisions of the Bill and any category of persons from any provision of the Bill. This is required to enable the supervisory authorities certain flexibility for the exemption of requirements which are inappropriate in view of the business of a particular type of collective investment scheme or where the activities of a category of persons which are already regulated and may be in conflict with any provision of this Bill.

Clause 58

This clause requires the registrar to submit a report to the Minister once every calendar year on the supervision of the industry, on the activities of all managers of collective investment schemes and in general on analogous schemes and also requires that such a report should be laid upon the tables of Parliament.

Clause 59

This clause provides a mechanism in terms of which a person who is aggrieved by a decision by the registrar under

this Bill, may appeal against such a decision to the Appeal Board created in terms of section 26 of the Financial Services Board Act, 1990.

Part X

Clauses 60 to 68

This part of the Bill provides for a mechanism in terms of which a trust based collective investment scheme (the existing Act only provides for the registration of trust based schemes) may be converted to either a contract base (the French type collective investment scheme) or an open-ended investment company (the United Kingdom and American type of collective investment scheme) and also from the latter two to the former kind of scheme. The procedure provides for:

- * documentation specifying the basis, terms and conditions of such a conversion;
- * the approval by the registrar and by a majority in value of investors;
- * the protection of the interest of existing investors;
- * the effects of the conversion with regard to the rights of investors and other persons; and
- * the registration of the memorandum and articles of association with the Registrar of Companies in the case of an open-ended investment company.

A procedure for the conversion of a scheme is considered necessary as a particular manager may find that one type of scheme is more efficient from a cost and business point of view than another type. Internationally trust based schemes are considered to be outdated and are converting rapidly to other types of collective investment schemes such as contract based or open ended investment companies.

Part XI

Clause 69

This clause is based on the provisions of section 6 of the existing Act and provides the Minister with the necessary powers to by regulation prescribe prudential limits with regard to the maximum quantum of specific assets or minimum quantum of liquid assets that must be included in a portfolio of a collective investment scheme. Existing restrictions in this regard provide for example that a securities portfolio may not invest in more than 5 per cent of the market value of all securities comprised in a portfolio, in respect of one specific company. Restrictions of this nature are normally found in jurisdictions all over the world to provide prudential guidelines to manage the risk of investment concentration and contagion and to allow for a meaningful spread of investment and risk.

Clause 70

This clause restricts the capacity in which a manager may trade. A manager of a collective investment scheme may, in terms of the existing legislation, act in a dual capacity, i.e. it may trade with its clients in an agency or in a principal capacity when selling or repurchasing participatory interests in a collective investment scheme. The intention of this clause is to protect investors against a conflict of interest and to restrict managers to trade in participatory interests in one capacity only, i.e. as a principal.

Clauses 71 and 72

These clauses deal with the minimum capital requirements for managers to carry on the business of administering a collective investment scheme. The requirements are formulated on a base level and on a risk based approach and are formulated on current international approaches. The proposed requirements are detailed in Schedule 1 to the Act and include capital to be maintained on an ongoing basis in respect of:

* **basic capital:** The highest of -

- . R600 000; or
- . a sum equivalent to 13 weeks of fixed overhead costs; plus

* **seed capital:**

a sum of R1 million to be invested in each portfolio which may be reduced by 10% for every R1 million invested by investors (the R1 million is based on a maximum requirement in the existing Act); plus

* **position risk**

capital: a sum equivalent to 25% of any amount used for buying participatory interests for the manager's own

account which are held for resale or with the intention of making a profit to cover the risk of declining market values of such participatory interests; plus

*** repurchase risk**

capital: a manager will in terms of clauses 70 and 71 of the Bill and paragraph 1(c) of Schedule 1 of the Bill be required to act as a principal only for the selling and repurchase of participatory interest. If a manager gives a firm undertaking to repurchase participatory interests sufficient capital to cover this risk is necessary and will be prescribed by the registrar. If the market is illiquid and if no undertaking is provided by a manager for the repurchase of participatory interests, the pricing and settlement of repurchases of participatory interests may be delayed as determined in the deed of the particular portfolio of a collective investment scheme.

In addition to this clause 77 provides that 10% of the market value of a portfolio may be borrowed by the manager on the security of the assets of a portfolio for the account of a portfolio to accommodate repurchase requests during temporary liquidity shortfalls.

In the case of a manager which is unable to maintain the minimum capital requirements or if it fails or is unable to comply with the capital requirements, provision is also made for the reporting of such incidents and for the registrar to either condone the shortfall or to impose a fine not exceeding 3% of any amount representing the shortfall with regard to any of the capital requirements.

Clause 73

This clause is based on section 10 of the existing Act and provides for the financial statements and other information that has to be furnished by a manager to the registrar for purposes of the supervision over collective investment schemes in terms of the Bill. It also provides for meaningful disclosure to investors.

Clause 74

This clause is based on the provisions of section 14 of the existing Act and the intention of it is to protect the interest of investors in a portfolio if any voting rights are exercised by a manager in terms of the underlying assets in that portfolio.

Clause 75

This clause determines that no manager and no director or employee of a manager shall have any personal interest, directly or indirectly, or derive any pecuniary advantage from the acquisition or sale by such manager of any assets to a particular portfolio. This clause is based on the provisions of section 16 of the existing Act and the intention is to ensure that all assets purchased for a portfolio is done on an arms-length basis and that there can be no conflict of interest as far as the manager and the investors are concerned.

Clause 76

This clause is based on the provisions of section 17 of the existing Act and the purpose thereof is to protect investors by limiting the costs that may be deducted from the income of a particular portfolio. In terms of the Bill it is proposed that in future:

- * charges payable on the buying or selling of assets for a portfolio such as MST, VAT and stamp duties;
- * auditors' fees, bank charges, brokerage, trustee and custodian fees and other levies or taxes;
- * directors' fees in the case of an open ended investment company;
- * service charges of the manager,

may be defrayed against the income of a portfolio.

This will enable industry to move to single pricing in line with international practice. With a single pricing system, dealing costs are paid by a portfolio and are not charged to individual investors buying or selling participatory interests. This system is used by over 80% of the world's investment funds. The system is fair in that dealing costs reflect actual asset transactions and these are not retained by a manager in the event that new participatory interests are not created, i.e. in the case of secondary trading of existing participatory interests. Since all investors will at some point be both a buyer or a seller of a portfolio's participatory interests, this system ensures that costs are shared equally over time by all investors.

Clause 77

This clause is based on the provisions of section 19 of the existing Act and provides protection to investors with regard to:

- * the selling of a participatory interest in a portfolio at a price not less than the nett asset value except for a limited offer in a new portfolio; and

- * payment on distribution date to investors the of the full income earned and allow to some extent for the rounding off of payments, should such payments amount to less than full cents in the Rand. Any income not paid out, however, must be retained and distributed at the next ensuing distribution date.

Clauses 78 and 79

These clauses are based on section 15 of the existing Act and prohibits any manager from selling or offering for sale any participatory interest unless the full purchase price is paid, or to lending or advancing any money on the security of participatory interest.

It is also proposed that the restriction on borrowing by a manager for own account or the account of a portfolio be brought into line with international practice and to allow such a manager, with the approval of the registrar, to:

- * borrow for the manager's own account; or

- * borrow for the account of a portfolio up to 10% of the market value of a particular portfolio if insufficient liquidity exists in a portfolio to pay investors who have requested that their participatory interests be repurchased.

Clause 77 regulates that any borrowing to bridge a liquidity shortfall of a portfolio should take place at the best commercial terms available, that such borrowing may only take place from a registered financial institution and only until assets can be realised at values not detrimental to investors to repay such a loan.

Clauses 80 and 81

These clauses provide for those matters that must be regulated in the deed of a collective investment scheme and the manner in which a deed may be amended. It is based on the provisions of section 22 of the existing Act and in terms of the definition of "deed" such matters should be incorporated in the founding documentation of trust based, contract based or company based collective investment schemes.

Clause 79 provides for the procedure and requirements that are to be met for the amendment of a deed. It is based on the provisions of section 23 of the existing Act.

Clause 82

This clause is based on the provisions of section 24 of the existing Act and provides for the procedures and requirements that have to be followed in the case where the business of more than one portfolio of a collective investment scheme or schemes are amalgamated or the rights of investors in participatory interests are ceded, transferred or taken over by a portfolio in another scheme.

Clause 83

This clause is based on the provisions of sections 10 and 12 of the existing Act and requires a manager or its trustee or authorised agents to disclose in every price list, advertisement, brochure or similar documents:

- * the charges that may be levied by a manager, the method of calculation and the quantum of those charges and the time when they may be levied;

- * on what basis an undertaking is given by the manager for the repurchase of participatory interests and the basis on which prices will be calculated for this purpose;

- * particulars of the yield, calculated as prescribed by the deed for the last twelve months for which a distribution has been declared and a statement of any facts that may likely influence future yields or if no business has been conducted yet, information as to the probable yield;

- * details of any profits that were distributed during the previous financial year, expressed as a percentage of the aggregate market value of all assets held on behalf of investors in that portfolio; and

- * a statement that the value of participatory interest in each portfolio is subject to fluctuations from time to time relative to the market value of the assets comprised in a portfolio.

The registrar is also provided with the power, as in the existing Act, to approve exemptions from the aforesaid requirements.

Clause 84

In terms of this clause every manager is required to maintain a principal office in the Republic and to appoint a

public officer and to notify the registrar in writing of the location and address of the principal office and the name of its public officer and any changes thereto.

In any legal proceedings against a collective investment scheme documentation may be served on the manager at the principal office.

Clauses 85 and 86

These clauses deal with the winding up of a portfolio of a collective investment scheme and the procedures with regard to the realisation of assets and the collection of income accruals to be distributed to investors. The existing Act provides a separation of assets between a portfolio of a unit trust and its manager and in the case of the insolvency of a manager that the assets of a portfolio may not be contaminated and will be protected for the benefit of its investors. The Bill provides that this principle shall also apply in the case of company based schemes that are provided for in the Bill.

Provision is also made that, despite the approval by a majority of investors to wind up a portfolio, the registrar may direct the manager, trustee or custodian to postpone the realisation of assets for a period of time if it appears to him that it would be in the interest of the investors to continue the scheme. Furthermore, it provides that remuneration for the services rendered by a manager, trustee or custodian or a person appointed by the registrar to take over the duties and obligations of a manager, trustee or custodian in terms of these clauses, may be defrayed from the income accruals or any money realised by the sale of assets in terms of these clauses.

Clauses 87 and 88

In order to protect the investments of investors these clauses determine that any valuable consideration or participatory interest of an investor shall, as soon as it is handed to a manager, be deemed to be in the possession of a trustee, custodian or authorised agent of a manager, trustee or custodian and that such valuable consideration or participatory interest shall be excluded from the assets of such manager, trustee, custodian or authorised agent; and that every manager shall open and maintain a separate operational trust account for each portfolio. Furthermore, it determines that such valuable consideration or participatory interest shall not under any circumstances form part of the assets of the manager, trustee or custodian or its authorised agent or any other person. The purpose of these clauses is to protect investors by a separation of assets of a portfolio in which investors have invested from the estate of any of the aforementioned instances.

Clauses 89 and 90

These clauses prohibit any person from making a false or misleading statement or publishing any statement, promise or forecast which is misleading, false or deceptive in order to fraudulently induce a person to deal in participatory interests.

Clause 91

This clause provides that in respect of the business of a collective investment scheme any copy or extract from a record duly certified shall on the face of it be proof of the facts contained in such record, copy or extract.

Clause 92

This clause provides that should any person cause any loss or damage as a result of any contravention or failure to comply with any provision of this Bill or any rule or directive of an association or regulation or notice or directive under this Bill, that such a person may be liable for damages to any other person who have dealt in a participatory interest and who has suffered a loss. The quantum of such damages a court may award is limited to the difference between the price at which dealing took place and the price at which it would have likely to have taken place if the contravention had not occurred. This clause also provides that should the registrar be of the opinion that it is in the public interest, he or she may bring an action in a competent court in the name of or for the benefit of any investor for the recovery of damages or for a loss that may be suffered due to such misleading or false or fraudulent statements or inducements.

As provided for in the Financial Markets Control Act, 1989 (Act No 55 of 1989), any action shall not lie after the expiration of a period of two years.

Clause 93

This clause provides that in respect of any publication that may influence the value of any participatory interest in a collective investment scheme, such publication should be accompanied by the name of the person or persons who compiled the publication or the name of the person or persons on the editorial staff of the newspaper or periodical who, in the opinion of the editor thereof, have compiled the report or comments.

Clause 94

This clause determines to what extent the Companies Act will be applicable to a company who has been registered

as a manager in terms of the Bill. It provides that the Registrar of Collective Investment Schemes must be given notice of any account that is lodged with the Master of the High Court or any return, statement or other document which a liquidator or judicial manager is required to compile and lodge with the Master of the High Court.

Clause 95

This clause empowers the Minister, an association and the registrar to delegate any function in terms of this Bill or to assign any duty to be performed under this Bill.

Clause 96

This clause determines that the Trust Property Control Act, 1988 (Act No 57 of 1988), shall not apply in respect of collective investment schemes operated in terms of this Act. This clause is based on section 40 of the existing Act. The Bill has much more specific and onerous provisions with regard to trust based collective investment schemes and are necessary to avoid any conflict of interpretation.

Clause 97

This clause provides the Minister with the power to make regulations for the purposes of this Act and provides the registrar with the necessary power to prescribe by notice those matters relating to application forms that may be necessary for the purposes of this Bill. This clause is based on the provisions of section 42 of the existing Act.

Clauses 98 and 99

These clauses determine which failures, non compliance or contraventions of the provisions of this Bill would be regarded as offences as well as a general penalty in respect of such offences for which no specific fine or period of imprisonment has been provided for in the Bill.

Clause 100

This clause deals with the repeal of the existing legislation as well as that anything done or deemed to have been done under the provisions of any law so repealed will be considered to have been done in terms of the provisions of this Bill.

Clause 101

This clause contains the short title as well as the necessary powers for the President to by proclamation in the Gazette put the Bill into operation. The President may fix different dates in respect of the coming into operation of different provisions of this Bill, should this be necessary, in view of the regulations that may be required for the proper implementation or administration of certain provisions of the Bill.

Schedule 1

Schedule 1 contains the minimum capital to be maintained by a manager in respect of its business plus the risk based capital requirements detailed in the schedule.

Schedule 2

Schedule 2 contains the matters which must be provided for in the deed of each portfolio of a collective investment scheme.

Schedule 3

Schedule 3 contains a list of the legislation that is to be repealed on the coming into operation of this Bill.

Consultation

A copy of the Bill was transmitted to the management companies of all unit trust schemes, the Association of Unit Trusts of South Africa and the Financial Services Board for their comments.

Objections

From the comments received the following objections have been made to provisions of the Bill:

Clause 41(3)(a)

In terms of the provisions of this clause a trustee or custodian (limited to public companies with a paid-up capital of R10 million) may, in relation to a collective investment scheme, not be a holding or subsidiary company. This restriction is currently provided for in section 20(3) of the existing Act and the purpose thereof is to enhance the important investor protection role that a trustee plays in this industry and to:

- * ensure the independence of a trustee or custodian;
- * avoid any contagion of a trustee should the holding or any subsidiary company in its group be unable to meet its liabilities and be declared insolvent.

It is submitted that the independence of the trustee or custodian of a collective investment scheme should be on par with that of the auditor of a collective investment scheme and that no compromise of such independence should be possible.

Clause 70

In terms of the provisions of this clause the capacity in which a manager may act in the selling and repurchase of participatory interests is that of a principal. No trading in participatory interest in an agent capacity by a manager will be possible.

Members of industry objected to this restriction and submitted that this would place them at a competitive disadvantage as other financial institutions such as insurers, banks, stockbrokers, etc. are permitted to carry on business in dual capacity, i.e. to trade either as an agent or as a principal with their investors.

Due to the obligation of a manager to repurchase participatory interests and the conflict of interest arising from trading with its clients it is submitted that managers should be required to trade in participatory interests in a principal capacity only.

Clause 81

This clause contains exactly the same provisions of section 23 of the existing Act and provides for a procedure in terms of which the deed of a collective investment scheme may be amended, i.e.:

- * in the case where the rights of investors are affected such an amendment can only be made if the consent of investors is obtained as prescribed in the deed; or alternatively
- * in the case where the rights of investors are not affected (to give effect to policy or detail issues such as a change of name) an amendment can be made with the approval of the registrar.

Industry submits that the Bill should provide for a contractual as well as a statutory option for such changes and that on merit even changes that could prejudice investors may be approved by the registrar.

Conclusion

The Association of Unit Trusts and the Financial Services Board believe that there is an urgent need for the introduction of the proposed legislation and that there are notable benefits to be gained for the South African economy as a whole. Some of these reasons are:

- * preservation of the local industry's competitive position;
- * the stemming and reversal of losses of investment, employment and revenue;
- * the need for alternative and more suitable collective investment scheme vehicles; and
- * enhancement of regulation, supervision and investor protection.

These reasons are dealt with in more detail below.

S A competitive position

The relaxation of exchange control and the integration of international financial markets have resulted in a significant increase in the investment options available to local investors in foreign jurisdictions and has furthermore been expanded by the numerous foreign financial institutions which are now actively soliciting investments from local investors. There is no quantitative data to show cross border market penetration in South Africa by value but the current structure which limits unit trusts to trust based vehicles only can be seen as a severe hindrance for local industry to compete efficiently with foreign competitors. The proposed Bill therefore not only sets a framework to allow for a diversification of trust based collective investment schemes by allowing for more competitive company based collective investment schemes that are now prevalent internationally, but also to for prudency draw into the regulatory net other types of financially based collective investment schemes that are not regulated at the moment.

The combination of trust structure, exchange control and taxation has, furthermore, also driven South African companies to establish off-shore investment companies and apply capital and skill to do business internationally.

It would be sensible to make it worthwhile for all those activities to be carried out in South Africa and to reverse

the impression that South Africa is declining more and more as an investment destination.

Innovation

It is internationally accepted that innovation is not possible within a trust based format. Open ended investment company schemes should allow much greater innovation in the collective investment scheme arena. Many such products already exist internationally and are sold to local investors. They are also used off-shore by local companies but cannot be sold in South Africa at present. It would be beneficial to South Africa's balance of trade and employment prospects if these products could be designed locally and sold in the domestic and foreign markets.

The Association of Unit Trusts of South Africa, together with the Financial Services Board, believe hat the proposed legislation to allow for the diversification of collective investment schemes would serve many worthwhile purposes.

Send any comments or enquiries to [Stiaan](#).