



GUIDANCE NOTE
FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA

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

NO. 2A

22 NOVEMBER 2017

GUIDANCE NOTE ON PARAGRAPH 5 OF BOARD NOTICE 257 OF 2013

This document provides guidance on the categorisation of any scheme as a foreign collective investment scheme ("foreign CIS) in Hedge Funds in terms of paragraph 5(2) and 5(3) of Board Notice 257 of 2013 ("the Notice") read in conjunction with paragraph 13 of Guidance Note 2.

BACKGROUND

1. The Notice prescribes the conditions in terms of which a foreign CIS may solicit investments in the Republic.
2. Guidance Note 2 was issued in December 2013 with the purpose of providing guidance for the approval of a foreign CIS.
3. Subsequent to the above, on 25 February 2015, the Minister of Finance declared the business of hedge funds as a collective investment scheme under Government Notice 141 of 2015 ("the declaration").
4. For purposes of the declaration, a **"hedge fund"** is defined as an arrangement in pursuance of which members of the public are invited or permitted to invest money or other assets and which uses any strategy or takes any position which could result in the arrangement incurring losses greater than its aggregate market value at any point in time, and which strategies or positions include but are not limited to -
 - (a) leverage; or
 - (b) net short positions.

5. Pursuant to the declaration, the Registrar hereby provides guidance to the industry on circumstances under which any scheme may be categorised as a foreign CIS in hedge funds.

CRITERIA/CONSIDERATIONS/CONDITIONS FOR CLASSIFICATION/CATEGORISATION OF A FOREIGN CIS IN HEDGE FUNDS

6. To ensure equivalent treatment with the manner in which domestic schemes are categorised, Undertakings for Collective Investment in Transferable Securities (UCITS) compliant schemes and/or any other scheme, may be categorised as a foreign CIS in Hedge Funds:

6.1 if it includes, but is not limited to, the use of -

- 6.1.1 Financial Derivative Instruments ("FDI") which may result in the losses exceeding the Net Asset Valuation (NAV) of the portfolio (leverage of the fund);
- 6.1.2 FDI for purposes other than hedging or efficient portfolio management such as for (a) investment purposes; and/or (b) to follow an active investment strategy; and/or (c) furtherance of the investment objective or strategy; and/or (d) to actively manage the investment policy or objective; and/or (e) to obtain or manage exposure to the market or to specific asset classes (including the use of total return swaps);
- 6.1.3 FDI or structures/strategies which are considered to be complex or exotic in its composition;
- 6.1.4 An investment strategy which is associated with hedge funds, including but not limited to long/short strategies, market neutral strategies, fixed income arbitrage strategies, option strategies or statistical arbitrage;
- 6.1.5 Hedge fund index funds;
- 6.1.6 Net short positions;
- 6.1.7 Complex debt instruments;
- 6.1.8 Synthetic instruments including synthetic ETFs;
- 6.1.9 Structured products where any of the above is possible;
- 6.1.10 Investment in other collective investment schemes that include any of the above activities.

6.2 Where a scheme or portfolio is not sufficiently liquid; i.e. it has additional notice periods for redemptions (other than daily redemptions) due to insufficient liquidity.

7. The disclosures and content of the scheme particulars of a scheme are significant /fundamental in considering where a scheme or portfolio should be categorized.

APPROVED FOREIGN CIS

8. Schemes currently approved in terms of section 65 of CISCA are required to self-assess their prospectuses in terms of this guidance note. It should be noted that in certain instances, only a fund and not an entire scheme might be affected. Where a scheme or a fund is affected, the operator of the foreign CIS should contact the Registration team within the Collective Investment Scheme Department of the Financial Services Board.



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REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES