

Statutory Instrument 173 of 1998.

[ACT 25/97

Collective Investment Schemes (Advertising of Internal
Schemes) Regulations, 1998

It is hereby notified that the Minister of Finance has, in terms of section 42 of the Collective Investment Schemes Act, 1997, made the following regulations:—

Title

1. These regulations may be cited as the Collective Investment Schemes (Advertising of Internal Schemes) Regulations, 1998.

Interpretation

2. (1) In these regulations—

“associate”, in relation to a trustee, manager or investment adviser, means a holding company or a subsidiary of a holding company of the trustee, manager or investment adviser;

“contractual advertisement” means an advertisement constituting an offer to persons to enter into a contract to participate in an internal scheme on the basis of such advertisement, and having a coupon or proposal form annexed to it, or otherwise inviting a person to participate in the scheme in direct response to the advertisement;

“investment adviser” means any person to whom the manager delegates the investment management of the assets of a scheme, or any part of such assets.

(2) In these regulations, the terms “fund of funds”, “money market fund”, “restricted internal scheme”, “securities fund” and “umbrella fund” shall bear the meanings assigned to them in section 2 of the Collective Investment Schemes (Internal Schemes) Regulations, 1998.

Advertisements generally

3. (1) Every advertisement inviting persons to become or offer to become participants in an internal scheme, or containing information

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

calculated to lead directly or indirectly to persons becoming participants in an internal scheme shall—

- (a) be issued by or in the name of the manager of the scheme and indicate that it is so issued;
- (b) not contain any statement of fact which the manager does not reasonably believe to be true at the time the advertisement is issued;
- (c) be clear in its terms and not disguise the significance attaching to any such terms or the fact that it is an advertisement;
- (d) not contain any statement or implication that the scheme or its manager or trustee is approved of or endorsed by the Minister or the Registrar, other than a statement that the scheme is registered or the manager or trustee licensed;
- (e) not contain any statement of opinion by any person which the manager does not believe to be honestly held by the person at the time the advertisement is issued;
- (f) not quote or report the statement of any person without that person's consent;
- (g) make no projection of future performance and no guarantee of return of capital or income;
- (h) if it contains any figures showing the performance of the scheme, cover a period of not less than five years preceding the advertisement or the period since the registration of the scheme, whichever is the shorter period;
- (i) if it describes charges for participation in the scheme, include the forecast total expense ratio, or the actual total expense ratio for the preceding year, being the ratio of all expenses to the value of the property of the scheme on an average basis;
- (j) not be misleading in any respect.

(2) The manager of an internal scheme shall keep a copy of any advertisement issued or authorized by it, and a record of the evidence used to support any statement of fact or opinion made in any such advertisement, for a period of not less than three years from the date of publication of the advertisement, and shall make such record and advertisement available on request for inspection by the Registrar or an inspector.

*Advertisements soliciting investments in units
of particular schemes*

4. (1) In addition to the requirements of section 3, an advertisement soliciting investment in units in one or more named individual internal schemes shall contain prominently, in a separate paragraph and in type no smaller than that used in the main text of the advertisement, statements---

- (a) providing a fair indication of the nature of the objectives of each scheme and of the risks involved in investing in each of them; and
- (b) that the price of the units and the income from them can go down as well as up; and
- (c) that return of the amount invested is not guaranteed; and
- (d) that a copy of the trust deed constituting each scheme is available for inspection by the public free of charge at the offices of the trustee and the manager; and
- (e) identifying the addresses in Zimbabwe at which inspection of the trust deed of each scheme may take place as described in paragraph (d); and
- (f) that a copy of the prospectus containing full information regarding each scheme is obtainable from the manager without charge; and
- (g) that registration of a scheme does not imply any recommendation or approval of the scheme or its objectives by the Minister or the Registrar; and
- (h) complying with subsections (2) and (3) where any indication is given as to the past or projected yield per unit in each scheme; and

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

- (i) in the case of a restricted internal scheme, that the scheme is a restricted internal scheme in which the redemption and disposal of units is subject to certain restrictions not applicable to other classes of internal scheme, including a statement describing the nature of these restrictions.
- (2) An advertisement referred to in subsection (1) shall not indicate the past yield per unit in a scheme unless—
 - (a) the scheme has operated for a period of at least twelve months; and
 - (b) the yield is calculated on income actually received during the twelve-month period immediately preceding the issue of the advertisement; and
 - (c) the advertisement discloses—
 - (i) whether the yield is calculated before or after the deduction of tax, and if after the deduction of tax the rate of tax deducted;
 - (ii) whether the yield is calculated by reference to the offer or bid price of a unit or a mid-market price, and on what date;
 - (iii) whether charges paid under the trust deed during the period for which the yield is calculated have been deducted or the yield is before such deduction;
 - (iv) such other information as the Registrar may require from time to time in guidelines issued by him.
- (3) An advertisement referred to in subsection (1) shall not indicate the projected yield per unit in a scheme unless—
 - (a) the scheme has operated for a period of less than twelve months; and
 - (b) the yield is such amount as the manager reasonably forecasts to be the yield for a period not exceeding twelve months; and
 - (c) in calculating the projected yield, the advertisement discloses the information referred to in paragraph (c) of subsection (2).

- not—
- (4) An advertisement referred to in subsection (1) shall
- (a) make references to the past performance of a scheme unless—
 - (i) such references are qualified by a statement to the effect that past performance is not necessarily a guide to future performance;
 - (ii) the advertisement properly attributes the source of information concerning such performance and the basis on which it was prepared;
 - (iii) any chart, graph or index used to assess or compare such performance is used accurately, fairly and not misleadingly;
 - (b) compare one scheme with another unless the comparison is fair and reasonable in the light of all the relevant information;
 - (c) imply that units in a scheme are available only in limited quantities or for a limited period or on special terms for a limited period unless such is the case.

Contractual advertisements

5. (1) No contractual advertisement shall be issued unless it complies with subsection (2) and—

- (a) it is handed to a person; or
- (b) it is issued only at the request of a person responding to an advertisement referred to in section 3 or 4; or
- (c) it is issued to a person who has indicated in writing that he wishes to receive it.

(2) Every contractual advertisement shall, in addition to complying with the requirements of sections 3 and 4, include the following—

- (a) a statement of the investment objectives of the scheme and any policies which the manager proposes to adopt in selecting the investments of the scheme, including a statement of dividend policy;

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

- (b) a statement of the minimum amount which a person is required to invest in the scheme;
- (c) if regular amounts are required to be invested in the scheme, a statement of the minimum amounts so required and the minimum frequency of contribution;
- (d) in the case of an initial offer of units, the price at which units in the scheme will be issued, and in other cases the basis for determining that price;
- (e) a statement of the nature and amount or rate of any charges which will be made for participation in the scheme, including any preliminary charge and periodic charge, and what discretion, if any, the manager has to vary the periodic charge, and, where the scheme concerned is a fund of funds, what anticipated charges, if any, the participant may bear as a result of the scheme's participation in other schemes;
- (f) a statement as to what the annual yield per unit in the scheme is or is expected to be, calculated in accordance with subsection (2) or (3) of section 4;
- (g) a statement of how information about current prices of units and the most recent yield per unit may be seen or obtained;
- (h) where the scheme allows a participant to reinvest in the scheme the income due to him, a statement disclosing that fact and how the income will be reinvested;
- (i) a statement of when a certificate of title to units in the scheme will be sent to the participant;
- (j) a statement of the times at which units are valued and dealt in;
- (k) a statement describing how units may be redeemed and when payments on redemption will be made and, in the case of a restricted internal scheme, the restrictions on redemption which apply;
- (l) details of any arrangements under which a participant may make regular withdrawals from the amount of his investment in the scheme;

- (m) a statement of where and how copies of the prospectus and of the trust deed of the scheme may be seen or obtained;
- (n) a statement disclosing whether any commission is payable to any intermediary, salesman or representative and, if so, the amount of the commission.

Special requirements relating to contractual advertisements for restricted internal schemes

6. (1) In addition to the requirements of section 5, no contractual advertisement relating to a restricted internal scheme shall be issued to a person other than an investor or potential investor identified by the manager or its agent to be an experienced investor, being an investor experienced in making investments of the type or involving the degree of risk attaching to the scheme, and where the manager or its agent, after making due inquiry, reasonably considers that participation in the scheme is suitable for such investor.

(2) A person making an investment in response to a contractual advertisement relating to a restricted internal scheme shall sign an acknowledgement that he has been made aware of the restrictions which apply to the scheme, including especially the restriction that the redemption or other disposal of the units in the scheme may be prevented or prohibited, and that the investments held within the scheme may be volatile in value and may not be capable of realisation except at a disadvantageous price or after delay.

Prospectuses

7. (1) The manager of an internal scheme shall prepare and be responsible for statements in a prospectus relating to the scheme.

(2) The prospectus of an internal scheme shall not contain any untrue or misleading statement, and its contents shall comply with the requirements of the Schedule.

(3) The manager shall lodge copies of the prospectus with the Registrar and make them available to every participant and person who applies to become a participant.

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

(4) The Registrar may require the manager to submit to him and to publish a revised prospectus at least annually and whenever there is a material change in the information provided in the prospectus.

Registrar may require advertisements or prospectuses to be amended or withdrawn

8. The Registrar may, after affording the manager concerned a reasonable opportunity to make representations to him in the matter, require in writing any manager to withdraw or amend in the manner directed any advertisement issued by or on behalf of the manager which, in the reasonable opinion of the Registrar, contravenes the Act or these Regulations:

Provided that neither the State nor the Registrar shall be liable in respect of any loss or damage sustained by any person in consequence of any false or misleading statement contained in any advertisement or prospectus relating to an internal scheme.

SCHEDULE (Section 7 (2))

CONTENTS OF PROSPECTUSES OF INTERNAL SCHEMES

1. The prospectus shall include the following particulars of the manager—
 - (a) its name, the nature of its corporate form, the country and date of incorporation, the amount of its issued share capital and how much of it is paid up, and the full names of its directors;
 - (b) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
 - (c) the address of the manager's registered office and of its head office if different from its registered office;
 - (d) the licence number of the manager issued by the Registrar;
 - (e) the name/s of any other internal schemes managed by the same manager.
2. The prospectus shall include the following particulars of the trustee—
 - (a) its name, the nature of its corporate form, the country and date of incorporation, the amount of its issued share capital and how much of it is paid up, and the full names of its directors.

- (b) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
 - (c) the address of the trustee's registered office and of its head office if different from the registered office, and a description of its principal business activity;
 - (d) the licence number of the trustee issued by the Registrar.
3. The prospectus shall include the following particulars of any investment adviser, if the manager employs one—
- (a) its name, whether or not it is registered or licensed, and if so by whom;
 - (b) the address of its registered office or of its principal place of business;
 - (c) if the investment adviser is a body corporate in a group of which the manager is a member, that fact;
 - (d) if its principal activity is not acting as an investment adviser, what that activity is;
 - (e) the main terms of the agreement between it and the manager and, if it has the authority to make decisions on behalf of the manager, that fact and a description of the matters on which it has that authority;
 - (f) if the investment adviser is authorized to deal on behalf of the scheme and is an associate of the manager, the nature of that association and the maximum percentage commission payable to it under the agreement referred to in subparagraph (c) for any deal done or which could be done on behalf of the scheme.
4. The prospectus shall include the address at which the register of participants in the scheme can be inspected and, unless the trustee is the person responsible for registering participants, the name and address of such person.
5. The prospectus shall include the name and address of the auditor of the scheme.
6. With respect to the trust deed of the scheme, the prospectus shall include the following particulars—
- (a) the name of the scheme;
 - (b) its registration number issued by the Registrar;
 - (c) the class of scheme in which it was registered pursuant to section 4 of the Collective Investment Schemes (Internal Schemes) Regulations, 1998;
 - (d) in the case of a fund of funds, the classes of scheme in which the fund may invest;

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

- (c) in the case of an umbrella fund, the class of scheme to which each investment portfolio of the fund would belong if each such portfolio were registered as a scheme.
- 7. The prospectus shall specify the date on which the scheme was registered or, in the case of a scheme operating as an internal scheme before the date of commencement of Part IV of the Collective Investment Schemes Act, 1997, the date on which the scheme was established.
- 8. The prospectus shall include sufficient information for a participant to ascertain—
 - (a) the objective of the scheme, the manager's policy for achieving that objective, a statement of the manager's policy if it is not envisaged that the resources of the scheme shall be fully invested at all times and, if the manager proposes to hedge against either price or currency fluctuations, a statement as to how this is to be effected and what types of transactions are likely to be entered into;
 - (b) the general nature of the scheme's portfolio and any intended specialisation with regard to economic sectors, geographical areas, and types of investment or property;
 - (c) a description of the types of property which may be included in the scheme and any limitations on the extent to which the scheme may invest in such property, specifying whether such limitations are tighter than those required by the Act and regulations made under it;
 - (d) whether the manager may enter into any transactions for the purposes of efficient portfolio management; and
 - (e) a statement of the borrowing powers exercisable under the scheme.
- 9. In the case of a scheme which can invest in other schemes, the prospectus shall specify the extent to which the property of the scheme may be invested in schemes which are managed by the manager or an associate of the manager.
- 10. The prospectus shall describe the circumstances in which the scheme may be wound up, the procedure to be followed in a winding-up and what the rights of the participants will be in a winding-up.
- 11. The prospectus shall specify the principal accounting period of the scheme and, if there are interim accounting periods, what they are.
- 12. In the case of a prospectus issued at the launch of a scheme, the prospectus shall specify the initial price of its units, and the period of the initial offer, if any.
- 13. The prospectus shall describe what voting rights are exercisable at meetings of participants.

14. The prospectus shall describe the characteristics of the scheme itself, including any risk it may reasonably be regarded as presenting for prudent investors of moderate means, and anything else which may be regarded as relevant to enable persons advising customers to comply with the regulations, in particular, if, in the interests of providing a higher income it is agreed by the manager and trustee that all or part of the periodic charge is to be treated as a capital charge, the prospectus shall disclose that fact and the fact that this may constrain capital growth.
15. The prospectus shall state how frequently and at what time or times the property of the scheme will be valued for the purpose of determining the prices at which units in the scheme may be purchased from or redeemed by the manager, and describe the circumstances in which the such units may be specially valued.
16. If the price at which units may be purchased from the manager includes a preliminary charge by the manager, the prospectus shall specify—
 - (a) the maximum amount of that charge, expressed either as a fixed amount or as a percentage of the creation price of those units, as permitted by the trust deed of the scheme;
 - (b) the prevailing amount of that charge where it is below the maximum amount and, where notice has been given before the issue of the prospectus to existing participants of the manager's intention to increase the prevailing amount, particulars of that increase and when it will take effect;
 - (c) where notice has been given before the issue of the prospectus to existing participants of an intention to propose an increase in the maximum amount of that charge at a meeting of participants, the particulars of that proposal.
17. If a periodic charge is leviable, the prospectus shall specify—
 - (a) the maximum amount of that charge, expressed as an annual percentage of the value of the property of the scheme, as permitted by the trust deed;
 - (b) the prevailing amount of that charge where it is below the maximum amount and, where notice has been given before the issue of the prospectus to existing participants of the manager's intention to increase the prevailing amount, particulars of that increase and when it will take effect;
 - (c) the actual or maximum amount of such charge which may be treated as a capital charge where the manager and trustee have agreed that all or part of such charge is to be so treated;
 - (d) where notice has been given before the issue of the prospectus to existing participants of an intention to propose an increase in the

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

- maximum amount of that charge at a meeting of participants, the particulars of that proposal;
- (e) how and at what interval that charge is leviable.
18. If other charges and expenses are recoverable, the prospectus shall specify—
- (a) whether the trustee is to be remunerated out of the property of the scheme;
- (b) whether the trustee is to be reimbursed out of the property of the scheme expenses incurred in performing any of the duties of the trustee and, if so, for what duties;
- (c) the nature of any other payments which may lawfully be made out of the property of the scheme, and how their amount will be determined.
19. The prospectus shall—
- (a) specify the annual income distribution or allocation date, and, if any, the interim income distribution or allocation dates;
- (b) where grouping for equalisation is permitted by the trust deed, explain the meaning of this term and specify what the grouping periods are.
20. With respect to the issue and redemption of units in a scheme, the prospectus shall specify—
- (a) the dealing days and times in the dealing day on which the manager will be available to receive requests for the issue and redemption of units;
- (b) the procedures for effecting the issue and redemption of units, the settlement of such transactions and how a participant to whom no certificate of title to units has been issued may produce evidence otherwise of title to his units;
- (c) the amount of the following minima, where they apply—
- (i) the number of units which any one participant may hold;
- (ii) the value of units which any one participant may hold;
- (iii) the number of units which may be the subject of any one purchase or redemption;
- (iv) the value of units which may be the subject of any one purchase or redemption;
- (d) the circumstances in which the redemption of units may be suspended;
- (e) where and when the most recent issue and redemption prices of units will be published;
- (f) the investment exchanges, if any, on which units in the scheme are listed or dealt;
- (g) details of provisions for *in specie* redemption of units.

S.I. 173 of 1998

21. The prospectus shall specify the pricing basis for the issue and redemption of units.
22. The prospectus shall specify—
 - (a) when the annual and half-yearly reports of the scheme will be published;
 - (b) the address at which copies of the most recent annual and half-yearly reports of the scheme may be inspected or obtained;
 - (c) the extent to which and the circumstances in which—
 - (i) the scheme is liable to pay or suffer tax on any appreciation in the value of the scheme or on the income of the property of the scheme; and
 - (ii) deductions by way of withholding tax may be made from distributions of income to participants and from payments made to participants on redemption of units.
23. The prospectus shall include a statement of the year-on-year performance of the units in the scheme and of the total value of the scheme on each anniversary of the initial issue of units of the scheme for a period of at least five years or since such initial issue, whichever is the shorter period.
24. The prospectus shall include the forecast, or the preceding year's actual, total expense ratio, being the ratio of all expenses to the value of the property of the scheme on an average basis.
25. The prospectus shall include any other information which—
 - (a) investors and their advisers would reasonably require and reasonably expect to find in the prospectus, for the purposes of making an informed judgment about the merits of participating in the scheme and the extent of the risks accepted by so participating; and
 - (b) is within the knowledge of the manager is capable of obtaining by making reasonable inquiries.
26. The prospectus shall, where the scheme is a fund of funds, disclose the anticipated charges, if any, which a participant may bear as a result of the scheme's participation in other schemes.
27. The prospectus shall, where the scheme is an umbrella fund, specify—
 - (a) how an exchange of rights or units in one part of the scheme for rights or units in another part of the scheme may be treated for tax purposes;
 - (b) what arrangements are made in the trust deed for charges in the case of an exchange of units between investment portfolios in the scheme, including the maximum amount of the charge and any number of exchanges that will be permitted free of charge;

Collective Investment Schemes (Advertising of Internal Schemes)
Regulations, 1998.

- (c) the general features of the scheme and such of those features peculiar to each investment portfolio of the scheme.
28. The prospectus shall, where the scheme is a restricted internal scheme, include the statements referred to in section 4 (1) (i).