PRESS RELEASE

THE REGULATION OF HEDGE FUNDS IN SOUTH AFRICA

A proposed framework issued by the National Treasury and Financial Services Board

National Treasury ("Treasury") and the Financial Services Board ("FSB") hereby release, for public comment, a proposed framework for the regulation of hedge funds in South Africa.

Following the Global Financial Crisis in 2008, the G20 has committed itself to enhanced and expanded scope of regulation and oversight over private pools of capital, including hedge funds. There is a general view that hedge funds did not cause the financial crisis, but could have played a role in exacerbating it.

South Africa is continuously assessing its financial regulatory architecture, with the aim of strengthening it. This assessment will also entail the need to regulate certain unregulated financial services and products, to support and enhance financial stability, transparency and investor protection. A properly regulated financial sector also improves investor confidence, both locally and internationally.

The South African hedge funds industry is relatively new and small in size, estimated at R31 billion, compared to US$ 2 trillion for the global hedge fund industry. Entities that invest in hedge funds are pension funds, long-term insurers, qualified investors and Funds of Hedge Funds (these are funds that invest in hedge funds rather than investing directly in the underlying shares, bonds, or other securities). Currently, hedge funds in South Africa are not regulated, but the conduct of their managers is already regulated through the Financial Advisory and Intermediary Services Act, No 37 of 2002 ("FAIS Act").

The framework proposes that the regulatory framework for hedge funds be housed within the existing Collective Investment Schemes Control Act, No 45 of 2002 ("CISCA") as a declared scheme by the Minister of Finance in accordance with section 63 of CISCA and subsequently through the creation of a separate chapter for hedge funds within CISCA.

This framework proposes two types of hedge funds, *viz.*, Restricted and Retail Hedge Funds.

Restricted Hedge Funds will not be allowed to market themselves to or solicit funds from the general public. They will, instead, be limited to private arrangements amongst qualified investors, and they will not be subject to the entire strict regulations under CISCA. They will have to disclose amongst others, the number of clients and details of their counterparties, and will have to lodge annual returns to the Registrar to assess their levels of leverage.

The second type of hedge funds, *viz.*, **Retail Hedge Funds**, will be able to market themselves to and solicit funds from the general public. Ordinary retail investors will be able to invest in them. The Retail Hedge Funds will be subject to appropriate CISCA regulations to ensure adequate investor protection. There will be rules governing the types of assets these funds could invest in and limits on the level of leverage permitted.

Retail Hedge Fund managers will be subject to prudential regulation that reflects the risks they take and the funds will be required to have capital requirements as determined by the Registrar under the Act. In Retail Hedge Funds, an investor should be able to liquidate his investment in 14 days.

Both types of hedge funds will be subject to some common regulatory standards, like registering and reporting, to ensure transparency and the effective monitoring of any systemic risk build up.

To manage risks, funds will need to have a risk management programme which sets out the types of derivatives the fund will use, the risks associated with the derivatives and how those will be managed. All hedge fund managers must be required to submit to an independent valuation of assets of the fund.

The proposed framework is available on the National Treasury and Financial Services Board websites, www.treasury.gov.za and www.fsb.co.za, respectively.

Comments can be submitted by **15 November 2012** to:

The Chief Director of Financial Investments and Savings, Olano Makhubela, Private Bag X115, Pretoria, 0001; or per facsimile to (012) 315 5206; or per email to Hedge.Funds@treasury.gov.za

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