



30 May 2008

The Secretary to Parliament
c/o Ms Akhona Makuzeni
Committee Section
Parliament of RSA
amakuzeni@parliament.gov.za

Dear Sir

CONSUMER PROTECTION BILL, 2008

We refer to the abovementioned Bill and welcome the opportunity to make comment.

We must declare from the onset that we support its objectives to render services as defined to consumers in an honest, equitable and transparent manner.

We note that the definition of "service" in section 1(c) of the Bill excludes services rendered to consumers subject to regulation by the Financial Advisory and Intermediary Services Act 37 of 2002, the Long Term Insurance Act 52 of 1998 and the Short Term Insurance Act 53 of 1998 (to be collectively referred to in this note as the Acts).

In our observation this is because the Acts have provisions comparable to those in the Bill and therefore sufficiently provide for consumer protection. If the services rendered in terms of the Acts were not excluded from the Bill's definition of 'service' there would be an unnecessary double regulation.

We submit that the Collective Investments Schemes Control Act 45 of 2002 ("CISCA") also has comparable provisions to those in the Bill and the Acts and that therefore services rendered by managers in terms of CISCA must be equally excluded from the definition of 'service' in terms of the Bill.

CISCA, *inter alia*, regulates the creation and sale to consumers participatory interests in collective investment schemes by the managers of the schemes.

There are two ways in which a CIS manager's products may reach consumers. The first is through intermediaries (such as brokers) who are governed by FAIS. As we have seen above services rendered in terms of FAIS are excluded from the definition 'service' in terms of the Bill.



The second one, which is of concern to us, is where the manager sells its participatory interest to the consumer directly. In terms of the Bill as it currently stands, such transactions would have to be subject to the provisions of the Bill.

In our view this would result in double regulation. In the following paragraphs we will show that CISCA contains sufficient consumer protections regulations comparable to those in the Bill and the Acts. We recommend an amendment to the definition of 'service' in the Bill that excludes services rendered in terms of CISCA.

Section 2 and 3 of CISCA provides as follows:

2. Principles for administration of collective investment scheme.—(1) *A manager must administer a collective investment scheme honestly and fairly, with skill, care and diligence and in the interest of investors and the collective investment scheme industry.*

(2) *The assets of an investor must be properly protected by application of the principle of segregation and identification.*

3. Disclosure of information.—*Before entering into a transaction with an investor—*

(a) *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*

(b) *information that the manager considers necessary to enable the investor to make an informed decision must be given to the investor timeously and in a comprehensible manner.*

Section 4 of CISCA provides that a manager must avoid conflict between the interests of the manager and the interests of an investor and promote investor education, either directly or through initiatives undertaken by an association.

FAIS and the Policyholder Protection Rules in terms of the Long and Short Term Insurance Acts contain similar provisions albeit with some guidelines to ensure uniformity amongst those governed by the Acts.

The idea is for the consumer to be given as much as possible all relevant information so as to be completely appraised of the service being offered including rights and obligations that arise as a result of purchasing the service.

The CISCA provisions referred to above achieve this result particularly when considered together with section 100, which provides as follows:

100. Contents of price list, advertisement, brochure and similar document.—(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 soliciting 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 expiry 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 specified in 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.

CISCA Notice 571 of 2003 exempts managers who are members of the Association of Collective Investments (ACI) from the provisions of section 100.

The ACI has comprehensive codes of practice that build on the provisions of CISCA to regulate the relationship between a manager and a consumer. We enclose copies of the Code of Advertising and Code of Investor Communication for your information.

On the basis of the foregoing, we are of the view that including services falling within the realm of regulation by CISCA in the definition of 'services' in terms of the Bill would amount to double regulation. We therefore suggest that section 1(c) be reworded as follows (our addition is in bold):

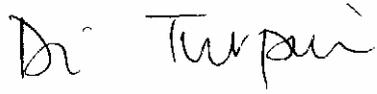
"Service includes but not limited to-

- (c) *any banking services or related or similar financial services, or undertaking, underwriting or assumption of any risk by one person on behalf of another except to the extent that any such service-*
 - (i) *constitutes advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act no.37 Of 2002);*
 - (ii) *is regulated in terms of the Long-term Insurance Act, 1998 (Act No52 of 1998), or the Short –term Insurance Act, 1998. (Act no.53 of 1998);*
 - (iii) is regulated in terms of the Collective Investment Schemes Act, 2002 (Act No.45 of 2002)...**

Should you wish to discuss any of the foregoing, please do not hesitate to contact us. We would appreciate an opportunity to make further representations should services rendered in terms of CISCA not be excluded from the definition of 'service' in terms of the Bill.

Yours faithfully

ASSOCIATION OF COLLECTIVE INVESTMENTS

A handwritten signature in black ink that reads "Di Turpin". The signature is written in a cursive, slightly slanted style.

DI TURPIN

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