FSCA

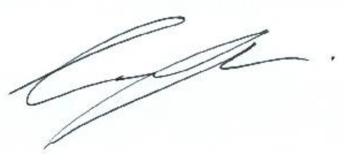
Financial Sector
Conduct Authority

FSCA CIS NOTICE 2 OF 2020

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

EXEMPTION OF MANAGERS OF COLLECTIVE INVESTMENT SCHEMES FROM CERTAIN REQUIREMENTS RELATING TO THE ADMINISTRATION OF PORTFOLIOS AS REQUIRED BY THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

The Financial Sector Conduct Authority, under section 22 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), read with section 281(3)(b) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), hereby exempts managers of collective investment schemes from complying with certain requirements relating to the administration of portfolios as set out in Schedule 1, read with section 97(1) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), to the extent set out in the Schedule.



CD DA SILVA
FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY

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SCHEDULE

1. Definitions

In this Schedule, **"the Act"** means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it unless a different meaning is assigned elsewhere in this Notice; and –

"COVID-19" means the Novel Coronavirus (2019-nCov) which is an infectious disease caused by a virus, and was declared a global pandemic by the WHO during the year 2020;

"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); and

"manager" means a manager registered under section 42 of the Act to administer collective investments schemes in securities.

2. Background and purpose

(1) The spread of COVID-19 is having an increasingly significant impact on the global economy and has also placed the local economy under immense strain. The South African financial market is currently experiencing significant volatility in the domestic bond market, and listed property markets and this has impacted on liquidity in certain portfolios. Current provisions in the Act to deal with illiquidity in portfolios might not be applicable in current circumstances, and the Authority believes it appropriate to provide managers with additional measures in order to manage portfolios in the best interest of all investors and the market as a whole.

(2) As part of its workplan for the 2020/2021 year relating to the review and enhancement of the regulatory frameworks overseen by the FSCA and ensuring alignment with international standards, the FSCA will be considering how it can amend current legislation to allow for managers to suspend the creation, issue, sale and repurchase of the participatory interests in a portfolio under exceptional liquidity risk and/or in stressed market conditions. The aim of such an intervention would be to manage runs on portfolios in the interest of investors and financial stability.

(3) The suspension of creation, issue, sale and repurchase of participatory interests is a tool that is internationally accepted and subscribed to by the International Organization of Securities Commissions for all its members, and the Financial Stability Board. The

suspension of repurchases is therefore a well-considered and required tool that should be enabled in the South African regulatory framework.

(4) Section 2(1) of the Act requires managers to administer collective investment schemes honestly and fairly, with skill, care and diligence and in the interest of investors and the collective investment scheme industry. Section 4(4)(a) of Act imposes a positive duty on managers to organise and control a collective investment scheme in a responsible manner. The deed is the agreement between a manager and a trustee or custodian, or the document of incorporation whereby a collective investment scheme is established and in terms of which it is administered. Section 97(1) of the Act requires that every deed must set out the requirements for the administration of a portfolio. Managers must administer each portfolio under its administration in accordance with the provisions of that portfolio's deed. Schedule 1 sets out the minimum requirements that must be contained in the deed.

(5) In terms of section 97(1) read with Schedule 1, item 1, the deed must contain provisions regarding, among others, the following matters:

(a) Item 1(c): the frequency of calculation of selling and repurchase prices of participatory interests and the point in time at which such calculations will be performed on a specific day, which point will be referred to as the valuation point;

(b) Item 1(e); the manner in which and a point in time at which the valuation point will be applied either to the creation, sale, repurchase or cancellation of a participatory interest.

(6) In respect of the repurchase of participatory interests in a portfolio of a collective investment scheme in securities, a deed must provide for:

(a) the duty imposed on a manager to repurchase any number of participatory interests offered to it;

(b) for the purposes of subitem (a) and subject to subitem (d), the manager must determine a point in time by when repurchase requests must be received for the purpose of determining which valuation point will be utilised for the pricing calculation;

(c) the time determined in terms of subitem (b) may not be changed unless 30 days' prior written notice has been given to investors.

(7) Due to the exceptional circumstances prevailing and the fact that the current Act does not allow for mechanisms or tools to deal with the current market conditions, the Authority has decided to grant an exemption to managers from complying with the requirements referred to in paragraphs (5) and (6). This exemption is aimed at mitigating the liquidity pressures that might be experienced by some collective investment scheme portfolios in the current environment which, unless action is taken, could pose risk to the

financial system. This exemption will allow managers to suspend the creation, issue, sale and repurchase of participatory interests in a portfolio, only in circumstances where a manager is unable to reasonably liquidate sufficient assets held by the particular portfolio, and in a manner that is not prejudicial to remaining investors, in order to meet its ordinary obligation to repurchase participatory interests in that portfolio when offered to it in terms of a daily valuation point. In addition, in terms of the conditions of the exemption any such suspension will be subject to prior consent by the manager's trustee/custodian. The manager must also inform the Authority of the trustee/custodian's consent prior to the suspension taking effect. Such prior consent by the trustee/custodian and notification to the Authority will ensure that additional oversight is exercised over the suspension process and that the necessary checks and balances exist to ensure that a manager does not abuse the exemption.

(8) The Authority is satisfied that the exemption meets the criteria set out in section 22 of the Act and section 281(1) of the Financial Sector Regulation Act.

3. Exemption and extent of exemption

A manager is hereby, subject to the conditions set out in paragraph 4, exempted from complying with the requirements contained in its deed in accordance with items 1(c), 1(e) and 2(a) of Schedule 1 relating to the creation, issue, sale and repurchase of participatory interests in a portfolio. Pursuant to the exemption, a manager may temporarily suspend the creation, issue, sale and repurchase of participatory interests in a portfolio, if due to the exceptional circumstances referred to in paragraph 2(1) of this Notice it is in the interest of investors in that portfolio.

4. Conditions of exemption

The exemption is subject to the following conditions:

(a) The trustee or custodian must provide prior consent to the manager to –

   (i) not comply with the requirements contained in the deed as provided for in the exemption referred to in paragraph 3; and

   (ii) temporarily suspend the creation, issue, sale and repurchase of participatory interests in a particular portfolio.

(b) The manager must inform the Authority of the consent referred to in paragraph 4(a) stating the reason for the suspension referred to paragraph 3 ("the suspension") prior to the suspension taking effect.

(c) The manager and the trustee or custodian must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of investors in the portfolio.

(d) When the creation, issue, sale and repurchase of participatory interests in a particular portfolio is suspended as referred to in paragraph 3, the manager must –

(i) without delay notify investors of the suspension;

(ii) provide each investor with the opportunity to withdraw the repurchase instruction not yet processed; and

(iii) as soon as practicable provide the Authority with written confirmation of the suspension and detailed reasons for it.

(e) The notification to investors contemplated in subparagraph *(d)* must –

(i) be clear, fair and not misleading;

(ii) particularly draw investors' attention to the exceptional circumstance which resulted in the suspension, the necessity and reasons for the suspension;

(iii) inform investors how to obtain the information set out in subparagraph *(f).*

(f) A manager must keep investors appropriately informed about the suspension by -

(i) publishing sufficient details about the suspension, including, if known, its likely duration; and

(ii) updating the information referred to in item (i) when appropriate, at least on its website.

(g) A manager must continue to perform valuation and pricing as far as it is reasonably and practically possible.

(h) A manager is not precluded from entering into arrangements to continue meeting standing income demands, including but not limited to annuity requirements, as and when reasonably and practically possible with sufficient available liquidity.

(i) The suspension of the creation, issue, sale and redemption of participatory interests must cease as soon as practicable after the exceptional circumstances referred to in paragraph 2(1) have ceased.

(j) The manager and the trustee or custodian must review the suspension as regularly as the exceptional circumstances dictate, but as a minimum every 48 hours.

(k) A manager must inform the Authority and the trustee or custodian as the case may be, of the lifting of the suspension and immediately after the lifting must confirm this in writing to the Authority.

5. Amendment and withdrawal of Exemption

This exemption is subject to-

(a) amendment thereof published by the Authority by notice on the website of the Authority; and

(b) withdrawal in a similar manner.

6. Short title and commencement

This Notice is called the Exemption of Managers of Collective Investment Schemes from Certain Requirements relating to the Administration of Portfolios (Suspension), 2020 and comes into operation on the date of publication thereof on the website of the Authority.