



FSCA FM NOTICE 9 OF 2020

FINANCIAL MARKETS ACT, 2012 (ACT NO. 19 OF 2012)

EXEMPTION OF IG MARKETS SOUTH AFRICA LIMITED FROM REGULATION 2(1)(a) OF THE REGULATIONS UNDER THE FINANCIAL MARKETS ACT, 2012 READ WITH SECTIONS 5 AND 6(8)(a) OF THE FINANCIAL MARKETS ACT, 2012

The Financial Sector Conduct Authority, under section 6(3)(m) of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA) read with section 281(3) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) exempted IG Markets South Africa Limited (South Africa branch) from Regulation 2(1)(a) of the Regulations under the FMA read with sections 5 and 6(8)(a) of the FMA to the extent set out in the schedule.

OLANO MAKHUBELA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY
Date of publication: 24 December 2020

SCHEDULE

EXEMPTION OF IG MARKETS SOUTH AFRICA LIMITED FROM REGULATION 2(1)(a) OF THE REGULATIONS UNDER THE FINANCIAL MARKETS ACT, 2012 READ WITH SECTIONS 5 AND 6(8)(a) OF THE FINANCIAL MARKETS ACT, 2012

1. Definitions

In this Schedule “**the Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), “**the FMA**” means the Financial Markets Act, 2012 (Act No. 19 of 2012), and the “**FMA Regulations**” means the Financial Markets Act Regulations published under Government Notice R98 in Government Gazette 41433 of 9 February 2018, and any word or expression to which a meaning is assigned in the Act, the FMA or the FMA Regulations bears, subject to context, the meaning so assigned to it unless a different meaning is assigned elsewhere in this Schedule.

2. Applicable Legislation

- (1) In terms of Regulation 2(1) of the FMA Regulations, a person may not-
 - (a) act as an OTC derivative provider; or
 - (b) advertise or hold itself out as an OTC derivative provider;unless authorised by the Authority in terms of section 6(8) of the FMA.
- (2) Section 6(3)(m) of the FMA provides that the Authority may exempt, for a specified period which may be renewed, any person or category of persons from the provisions of a section of the FMA if the Authority is satisfied that—
 - (a) the granting of the exemption will not—
 - (i) conflict with the public interest; or
 - (ii) frustrate the achievement of the objects of the FMA; and
 - (b) the application of the section will cause the applicant or clients of the applicant financial or other hardship or prejudice.
- (3) Section 281(4) of the Act requires that where the Authority grants an exemption in terms of a financial sector law, the requirements of section 281(3) must be met and such exemption must be published. The FMA is a financial sector law as defined in section 1(1) read with Schedule 1 of the Act.

3. Extent of the Exemption

- (1) On 14 June 2019, IG Markets South Africa Limited (South Africa branch) (IG Markets) lodged an application for a licence to operate as an over the counter derivative provider (ODP), which application has been declined.

- (2) IG Markets was allowed to continue conducting ODP business pending the finalisation of its application in accordance with the transitional arrangements in terms of Regulation 43 of the FMA Regulations.
- (3) As a result of the decision by the Authority to decline IG Markets' application for a licence to operate as an ODP, IG Markets has confirmed its intention to bring an application for reconsideration by the Tribunal of the decision to decline the ODP licence application, including any further consideration of the matter by the Authority in the event of the Tribunal remitting the matter to the Authority as contemplated in section 234(1)(a) of the Act.
- (4) Pending the finalisation of the application referred to in subparagraph (3), pursuant to section 6(3)(m) of the FMA and subject to the conditions below, the Authority exempts IG Markets from Regulation 2(1)(a) of the FMA Regulations read with sections 5 and 6(8)(a) of the FMA.
- (5) The exemption is granted subject to the following conditions:
 - (a) IG Markets must make application for reconsideration of the decision within the time period specified in section 230 of the Act. This exemption will lapse if the application is not made within the specified period.
 - (b) IG Markets must cease all marketing activities for its products and may not solicit, engage or conduct new ODP business with new clients.
 - (c) IG Markets must provide the Authority with a list of its existing clients by not later than close of business on 24 December 2020.
 - (d) IG Markets may continue to service and conduct ODP business with existing clients provided that IGM must without delay and not later than 9 January 2021 inform all its existing client that it will be rendering services under this exemption.
 - (e) IG Markets must provide proof to the Authority of its communication to all existing clients by no later than 13 January 2021.
 - (f) IG Markets is required to disclose to the Authority, on a weekly basis, the levels of unhedged residual risk, if any, in its client portfolio(s).
 - (g) IG Markets is required to disclose to the Authority, on a weekly basis, the average trading exposure on both a gross and net basis and the levels of capital that it reserves against the exposures created.

4. Amendment and withdrawal of Exemption

- (1) This Exemption is subject to amendment and withdrawal thereof by the Authority by notice on the website of the Authority.
- (2) The Authority may reconsider this exemption once clarity regarding the outcome of the Tribunal decision in 3(3) above has been obtained.

5. Short title and commencement

This Notice is called the Exemption of IG Markets South Africa Limited (South Africa branch) from Regulation 2(1)(a) of the FMA, 2020.