1. PURPOSE

The purpose of this guidance notice, which is published by the Financial Sector Conduct Authority (“the Authority”) in terms of section 141 of the Financial Sector Regulation Act, 2017 (No. 9 of 2017) (“the FSR Act”), is to provide guidance on the application of section 93 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) (“CISCA”).

2. DEFINITIONS AND BACKGROUND

2.1 In this Guidance Notice, “CISCA” means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which meaning is assigned in CISCA bears that meaning, unless the context otherwise indicates.

2.2 Section 93 of CISCA determines which costs and charges may be deducted from a portfolio. Since the promulgation of CISCA, various new products have been introduced into the market. As a result, new products such as Exchange Traded Funds (“ETFs”) and Hedge Funds have introduced new costs and charges that require specific consideration.

2.3 Consequently, various stakeholders are unsure as to whether certain related costs and charges are permitted deductions, as contemplated in section 93 of CISCA. With this context, this Guidance Notice attempts to provide more insight into the approach that the Authority follows when applying section 93 of CISCA.

3. APPLICATION OF SECTION 93 OF CISCA

3.1 Section 93(1) of CISCA provides that the following amounts may be deducted from a portfolio:

(a) charges payable on the buying or selling of assets for the portfolio such as brokerage, marketable securities tax, value-added tax or stamp duties;

(b) auditor’s fees, bank charges, trustee and custodian fees and other levies or taxes;
(c) share creation fees payable to the Registrar of Companies for the creation of authorised capital or, in the case of a collective investment scheme in property, the costs incurred in the creation and issue of participatory interests;

(d) the agreed and disclosed service charges of the manager; and

(e) any costs incurred as a result of a collective investment scheme in property being listed on an exchange.

3.2 In addition, section 93(2) provides that amounts other than those referred to above may not be deducted by a manager from a portfolio, unless determined by the Authority.

3.3 The general principle that the Authority adopts in applying section 93, is that where a cost or charge is necessary for the operation of a collective investment scheme ("CIS") portfolio as a self-standing entity, i.e. necessary for the existence of the portfolio for purposes as defined and described in CISCA, then such cost or charge may be deductible from the portfolio. In addition, the Authority also considers the interest and treatment of investors, and where it is either not reasonable for investors to bear the costs, or investors should not reasonably expect to bear the cost, it should be excluded.

3.4 However, it is not always clear whether the deduction of a specific fee or cost is permissible in terms of section 93. Below, the Authority provides guidance on certain costs or fees that it views as being inherently part of the permissible deductibles referred to in section 93(1), and certain costs or fees that it views as not being permissible in terms of section 93(1).

3.5 The Authority interprets the following specific charges as falling within the scope of section 93(1), meaning that such charges may be deducted by a manager from a portfolio:

<table>
<thead>
<tr>
<th>No.</th>
<th>COSTS / CHARGE</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>Costs and fees associated with the listing of an ETF is a permissible deduction in terms of section 93(1)(a), as it forms part of buying and selling assets.</td>
</tr>
<tr>
<td>2.</td>
<td>Legal entity identifier (&quot;LEI&quot;) charges for trading in derivatives is a permissible deduction in terms of section 93(1)(a), as it forms part of buying and selling assets.</td>
</tr>
<tr>
<td>3.</td>
<td>Costs and fees associated with auditing a CIS and its portfolios is a permissible deduction in terms of section 93(1)(b), as it is part of the auditor's fees i.e. an audit required in terms of sections 73 and 74 of CISCA only.</td>
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<tr>
<td>4.</td>
<td>Additional charges and fees as per the supplemental deed approved by the Authority, such as service charges and performance fees, are permissible in terms of section 93(1)(d), as it is viewed as agreed charges of the manager.</td>
</tr>
<tr>
<td>5.</td>
<td>Tax consultant or intermediation fees, only where the cost deductible fully complies with section 93(1)(a) in that it is an absolute required expense for buying and selling of portfolio assets, i.e. where a manager will not be able to buy or sell the assets without the tax consultant/intermediary services and therefore the commensurate fees.</td>
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</tbody>
</table>

3.6 The Authority, however, interprets the following specific charges or fees, for example, as falling outside the scope of section 93(1), meaning that such charges may not be deducted by a manager from a portfolio:
No. | COSTS / CHARGE
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1. | Costs or charges that cannot clearly be reconciled with section 93 of CISCA.
2. | Costs of listing (listing fees and legal costs), other than listing fees for an ETF and other distribution related costs, including marketing / advertising (incl. distribution and sales costs associated with marketing of CIS portfolios).
3. | Costs of appointing an auditor to perform any other function not related to auditing and drafting of financial statements for the CIS and its portfolios. In other words, functions that are not required in terms of section 73 and 74 of CISCA, for example ballot audit fees and audit liaison fees.
4. | Costs for the claiming and receipt of foreign taxes withheld and due to the portfolio.
5. | Costs for all applications pertaining to portfolios that are made to the FSCA, and related costs, such as legal fees.
6. | Tax consultation fees to facilitate the collection of income and payment of expenses in the local markets where assets are traded.
7. | Audit liaison fees (work done by the administrator in supporting the auditor compile information for the audit), which do not fall under section 73 and 74 of CISCA.
8. | Bank charges / fees to guarantee overdraft facilities i.e. a "commitment fee" that continues to be a charged against the portfolio for a "guaranteed facility". (The bank charges for an overdraft and the interest thereon remain permissible subject to the relevant legislation).

Whilst there may in some instances be circumstances by which some of these fees could be considered deductible, the Authority does not find basis for interpretation of section 93 to view these costs as permissible deductions. However, the Authority is amenable to receive proposals for future legislative amendments to permit such costs as deductible, provided such fall within the demarcation principles of the Authority.

4. **CONCLUSION**

4.1 The Authority will apply the above in supervising and enforcing section 93 of CISCA.

4.2 The Authority will monitor growing developments in the industry and assess to what extent it is necessary to provide further guidance in respect of the application of section 93, and / or publish a determination to allow for the deduction of additional specific costs or fees.

ASTRID LUDIN
DEPUTY COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY

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