



FSCA COMMUNICATION 4 OF 2023 (CIS)

Exemption of Managers of Collective Investment Schemes from Certain Requirements of section 99(1) of CISCA

1. PURPOSE

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) published the following documents on its website on 08 February 2023:

- 1.1 FSCA CIS Notice 1 of 2023 - Exemption of CIS Managers of Collective Investment Schemes from Certain Requirements of section 99(1) of the Collective Investment Scheme Control Act, 2002 (Act No. 45 of 2002 (“CISCA”); and
- 1.2 Comments Matrix – Responses to comments received on the draft Exemption that was published for comment.

2. BACKGROUND AND CONTEXT

- 2.1 Section 99 of CISCA provides, amongst others, that a collective investment scheme (“CIS”) of two or more CIS portfolios may not be amalgamated without the prior consent of investors. In addition, the rights of the investors in a portfolio may not be ceded or transferred without the investors’ prior consent.
- 2.2 Various CIS managers and other stakeholders approached the FSCA for guidance, as this requirement was subject to differing interpretations by industry stakeholders. One interpretation was that only investors in the original portfolio are required to consent to an amalgamation, whilst investors in the targeted portfolio will simply receive information on the proposed amalgamation, thereby protecting their interests by enabling them to make an informed decision on their investment ie. to remain invested or to disinvest in the portfolio.
- 2.3 Further difficulties with the ballot requirement were that investors in the targeted portfolio are not usually responsive and would not vote. Hence to perform a ballot with such investors will result in a waste of funds and its outcome will be an unsuccessful ballot. A second ballot will thereafter be executed resulting in further expense incurred with no guarantee for success yet again.

- 2.4 In addressing these issues, the FSCA now exempts CIS managers from some of the requirements of section 99(1) of Cisca when funds are amalgamated, subject to certain conditions, as contemplated in section 2 (2) of FSCA CIS Notice 1 of 2023 - Exemption of CIS Managers of Collective Investment Schemes from Certain Requirements of section 99(1) of the Collective Investment Scheme Control Act, 2002.
- 2.5 In essence, the exemption aims to protect investors that are not balloted in a targeted portfolio, by providing these investors with an opportunity to object to such amalgamation.
- 2.6 Note that this Communication replaces FSCA Communication 4 of 2023, published on 8 February 2023.

3. ENQUIRIES

For more information regarding the Exemption and/or this Communication, please contact the Regulatory Frameworks Department of the Authority by emailing marius.dejongh@fsc.co.za or andile.mjadu@fsc.co.za.



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