



FSCA COMMUNICATION 5 OF 2024 (CIS)

Exemption of Managers of Collective Investment Schemes from Certain Requirements of BN 52

1. PURPOSE

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) published on its website today, FSCA CIS Notice 2 of 2024 - Exemption of CIS Managers of Collective Investment Schemes from Certain Requirements of BN 52.

2. BACKGROUND AND CONTEXT

- 2.1 On 25 February 2015, the Minister of Finance declared, under section 65 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002)¹ (the Act), the business of a hedge fund to be a collective investment scheme to which the prescribed provisions of the Collective Investment Schemes Control Act apply (the Declaration).
- 2.2 In addition, on 6 March 2015, the then Registrar of Collective Investment Schemes determined, under sections 42, 90(2) and (4) and 114(4)(b) of the Act, requirements for hedge funds through Board Notice 52 of 2015 as published in *Government Gazette* No. 38540 on 6 March 2015 (BN 52).
- 2.3 BN 52 does not currently specifically accommodate feeder funds with specific applicable requirements. Feeder retail hedge funds are essentially collective investment schemes that invest in another offshore hedge fund. Retail hedge funds are currently subject to the condition that such funds are limited in terms of Table 5 of BN 52 to invest a maximum of 75% in any one portfolio, and this would effectively also equally apply to a feeder retail hedge fund.
- 2.4 The purpose of the 75% limit is to provide in general for a limit of any ‘standard’ hedge fund investing in other hedge funds. When the 75% limit was determined, feeder retail hedge funds were not specifically contemplated in its application. The FSCA has since noted that the aforementioned 75% restriction has been a source of challenge for certain retail hedge funds wishing to establish feeder funds. This is so as BN 52 creates a restriction that inhibits a feeder retail hedge fund from investing 100% in a single offshore hedge fund. Further, the FSCA has received numerous requests from CIS managers for an exemption as a result of this challenge.

¹ As per *Government Gazette* number 38503 published in Government Notice 141 of 25 February 2015.

- 2.5 The FSCA did not envisage that BN52 would exclude the establishment of a feeder retail hedge fund as a portfolio style or type and that the limit would have the effect of prohibiting it. It is acknowledged that feeder funds are an industry norm internationally and should be available in the spectrum of portfolio offerings.
- 2.6 Consequently, the FSCA is intending to close this gap by exempting managers of retail hedge funds from complying with the 75% exposure limit as set out under BN 52, insofar as it relates to feeder retail hedge funds. This exemption is deemed to be beneficial to investors and in the interest of the public as collective investment feeder funds are a normal existing product style that provides domestic investors access to foreign CIS funds. Creating an enabling environment for feeder retail hedge funds will therefore further expand investor options in the of feeder funds context. It will also enable managers to broaden their investment offerings.

3. **EQUIRIES**

For more information regarding the Exemption and/or this Communication, please contact the Regulatory Frameworks Department of the Authority by emailing Nkateko.Dau@fsc.co.za or Annelize.slabbert@fsc.co.za.



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