

FSCA COMMUNICATION 11 OF 2021 (CIS)

NOTICE OF PUBLICATION: DRAFT EXEMPTION OF MANAGERS OF COLLECTIVE INVESTMENT SCHEMES FROM CERTAIN REQUIREMENTS OF BOARD NOTICE 92 OF 2014

1. PURPOSE

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

- 1.1 Notice of publication - Draft Exemption of Managers of Collective Investment Schemes (CIS Managers) from certain Requirements in Board Notice 92 of 2014 (draft Exemption); and
- 1.2 Comments Template for Draft Exemption.

2. BACKGROUND AND CONTEXT

- 2.1 Paragraph 18(1), read with paragraph 18(3), of the Notice on Advertising, Marketing and Information Disclosure Requirements for Collective Investment Schemes, published under Board Notice 92 of 2014 in Government *Gazette* No. 37895 on 8 August 2014 (BN 92) requires that a manager must obtain a signed application form or a contract from an investor. However, BN 92 is silent on the format or form that such signature must adopt when contracting through electronic means.
- 2.2 Section 13(1) of the Electronic Communications and Transactions Act, 2002 (Act No. 52 of 2002) (ECTA) provides that where the signature of a person is required by law and such law does not specify the type of signature, the requirement in relation to a data message is met only if an advanced electronic signature is used.
- 2.3 Therefore, as BN 92 is silent in this regard, when a CIS manager provides an investor with the opportunity to complete and submit an application form or contract electronically on an online platform, that investor must sign the application form or contract by using an advanced electronic signature ("AES"), as defined in the ECTA.
- 2.4 It has come to the attention of the FSCA that, due to the technicalities relating to AES as set out in the ECTA, it may often be difficult for CIS Managers to comply with the AES requirements in the abovementioned circumstances. Even though the Main Deeds of CIS managers have provisions that govern electronic transactions between the CIS manager and the investor, the terms of the Main Deed will not override the requirements set out in the ECTA.
- 2.5 Electronic transacting supports easier access for customers and is, as a result, supportive of financial inclusion. Accordingly, the FSCA is of the view that it would be in the public interest not to require CIS managers to apply an AES when transacting electronically. As such, the FSCA is proposing to exempt CIS Managers from paragraph 18(1), read with paragraph 18(3), of BN 92 when receiving electronic applications from investors, to the extent that the signature of the investor is required to be an AES.

- 2.6 It should be noted that the CIS managers are not exempted from having to obtain the investor's signature completely, but are exempted only to the extent that an AES must be obtained.
- 2.7 Conditions have been imposed in the exemption to ensure that both the CIS managers and the investors are afforded the necessary protection and that the exemption will not prejudice the achievement of the objects of CISCA.

3. INVITATION TO COMMENT ON DRAFT EXEMPTION NOTICE

- 3.1 The documents referred to in paragraph 1 are available on the FSCA's website at www.fsca.co.za.
- 3.2 Interested parties are invited to submit comments on the draft Exemption Notice on the Comments Template published herewith, in Word format, on or before **30 June 2021** to FSCA.RFDstandards@fsca.co.za.

4. CONTACT

For further information regarding this Communication please contact the Regulatory Framework Department of the FSCA by emailing Marianne van Rooyen at marianne.vanrooyen@fsca.co.za.



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