Financial Sector
Conduct Authority

FSCA CIS Notice 1 of 2023

COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

EXEMPTION OF CIS MANAGERS FROM CERTAIN REQUIREMENTS OF SECTION 99(1) OF THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

The Financial Sector Conduct Authority ("Authority"), hereby under section 22 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), read with section 281(3) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), exempts managers of collective investment schemes from certain requirements of section 99(1) of such Act, to the extent set out in the Schedule.

KATHERINE GIBSON
DEPUTY COMMISSIONER
FINANCIAL SECTOR CONDUCT

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SCHEDULE

EXEMPTION OF CIS MANAGERS FROM CERTAIN REQUIREMENTS OF SECTION 99(1) OF THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002

1. Definitions

In this Schedule, **"the Act"** means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and any word or expression to which a meaning has been assigned in the Act has that meaning, unless the context otherwise indicates, and –

“targeted portfolio” in the context of an amalgamation of two or more collective investment schemes or two or more portfolios, means the collective investment scheme or portfolio to which another collective investment scheme or portfolio is intended to be transferred.

“transferring portfolio” in the context of an amalgamation of two or more collective investment schemes or two or more portfolios, means the collective investment scheme or portfolio that will be transferred to another collective investment scheme or portfolio.

2. Extent of the exemption and conditions

(1) A manager is exempted from having to obtain the prior consent of investors in a targeted portfolio, as required in terms of section 99(1)(a) of the Act, when amalgamating two or more collective investment schemes or two or more portfolios of a collective investment scheme.

(2) The exemption referred to in subparagraph (1) is subject to the following conditions:

(a) A manager must at the same time at which investors in a transferring portfolio are informed of a ballot for an amalgamation referred to in subparagraph (1), provide the targeted portfolio investors with a warning of the proposed amalgamation so that they may consider their options and have an opportunity to exercise their rights before the transfer is concluded;

(b) the warning referred to in item (a) must be transparent, in writing and provide appropriate and accurate information to the targeted portfolio’s investors concerning the expected impact of the amalgamation, to enable the investors to make an informed decision pertaining to the exercise of their rights;

(c) should investors holding a majority in value of participatory interests in the targeted portfolio object to the proposed amalgamation following the warning referred to in item (a), the manager –
(i) may not proceed with the amalgamation; and
(ii) must inform the Authority of the objection;

(d) the assets that are transferred as part of the amalgamation must be of similar type, quality and liquidity as the assets in the collective investment scheme or portfolio receiving the transferred assets. Alternatively, assets in liquid form must be transferred and re-invested within one month after the amalgamation, into the targeted fund;

(e) a manager of the targeted portfolio must develop a plan as to how any illiquid assets will be dealt with, including any necessary disclosures related thereto, and must ensure that in implementing the plan the fair treatment of investors is prioritised and not compromised; and

(f) trustees of the targeted portfolio must agree that the receipt of the assets held in the targeted portfolio as a result of the amalgamation is not likely to result in any material prejudice to the interest of investors in the targeted portfolio, and that such receipt is consistent with the objective of the targeted portfolio and can be effected without any breach of investment limits or the investment policy, subject to subparagraph 3(1)(b)(ii) of Board Notice 90 of 2014 in *Government Gazette No. 37895* on 8 August 2014, including the limit on borrowing powers.

3. Amendment and withdrawal of Exemption

This Exemption is subject to –

(1) amendment thereof by the Authority, by notice published on the website of the Authority; and

(2) withdrawal in a like manner.

4. Short title and commencement

This Notice is called the Exemption of Managers of Collective Investment Schemes from Certain Requirements of section 99(1) of the Act and comes into effect on the date of publication.