

FSCA COMMUNICATION 43 OF 2020 (CIS)

Exemption of managers of collective investment schemes from section 44(2) and (3) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2000) (CISCA)

1. PURPOSE

The purpose of this Communication is to inform stakeholders that today a general exemption (the exemption) relating to section 44(2) and (3) of the CISCA was published on the Financial Sector Conduct Authority's (FSCA) website.

2. BACKGROUND AND CONTENT OF EXEMPTION

- 2.1 Section 44(2) of the CISCA provides that when a manager is unable to determine a market price for a security, whether listed on an exchange or not, for the purposes of a collective investment scheme in securities, a fair market price for such security must, at the request of such manager, be determined by a stockbroker who is a member of a licensed exchange.
- 2.2 Further, section 44(3) of CISCA provides that if a manager does not agree with the price determined by the stockbroker, it must refer the matter to the committee of the exchange concerned, which thereupon must determine the fair market price for such security.
- 2.3 The term 'stockbroker' is not defined in CISCA. It has also become evident to the FSCA that stockbrokers are mostly unwilling to price a security due to, amongst other reasons, conflicts of interest that may arise because of such pricing. An acceptable practice in the collective investment schemes (CIS) industry is to make use of an appropriately skilled person acceptable to both the trustee and the manager or an independent verifier other than a "stockbroker".
- 2.4 In light of this, the requirements contained in section 44(2) and (3) of CISCA have to a large extent not been capable of application in the CIS industry. As a result, this exemption is aimed at exempting managers from the requirements of section 44(2) and (3) of the Act, but at the same time ensuring that, for the purposes of a collective investment scheme in securities, and whether listed on an exchange or not, a fair market price for such security is determined by a person requested by the manager, and who is acceptable to the trustee, or a verifier, taking into account all available information.
- 2.5 The FSCA previously published a draft *Conduct Standard on Net Asset Valuation Calculation and Pricing for Collective Investment Scheme Portfolios*

(the draft Conduct Standard) for public comment. The draft Conduct Standard was also subject to various industry specific engagements and was submitted to Parliament on 13 November 2019 as required in terms of section 103 of the Financial Sector Regulation Act, 2017 (FSR Act). The draft Conduct Standard contained, amongst others, content relating to section 44(2) and (3) of Cisca which was necessary due to the reasons specified in paragraphs 2.2 to 2.4 above.

- 2.6 However, shortly before finalising the Conduct Standard it was recognised that the content relating to section 44(2) and (3) of Cisca is not appropriately placed in the draft Conduct Standard as it could be viewed as contradicting section 44(2) and (3) of Cisca. As a result, the relevant provisions were removed from the draft Conduct Standard and have rather been incorporated into the general exemption.
- 2.7 The content of the provisions relating to section 44(2) and (3) of Cisca that were contained in the draft Conduct Standard, which has already been consulted on, therefore formed the basis of the general exemption. For this reason, no further consultation on the exemption was undertaken.
- 2.8 Further, the nature and purpose of this general exemption is such that it complements the effective application of the Conduct standard.
- 2.9 The FSCA is satisfied that the exemption is in the public interest and does not impede the objectives of Cisca.

3. CONTACT

- 3.1 The exemption which was published today together with this Communication, is issued in terms of section 22 of Cisca read with section 281(3) of the FSR Act and is available on the FSCA's website.
- 3.2 For further information regarding this Communication please contact the Regulatory Framework Department of the FSCA by emailing Marius De Jongh at Marius.DeJongh@fsca.co.za.



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