



## **FSCA COMMUNICATION 10 OF 2022 (CIS)**

### **Exemption of Managers of Hedge Funds from certain Requirements in Notice 778 of 2011**

#### **1. PURPOSE**

The purpose of this Communication is to inform stakeholders that today the Financial Sector Conduct Authority ("FSCA") published, in terms of section 22 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) ("CISCA"), read with section 281(3)(b) of the Financial Sector Regulation Act, 2017 (No. 9 of 2017) ("the FSR Act"), the Exemption of Managers of Hedge Funds from certain Requirements in Notice 778 of 2011.

#### **2. BACKGROUND**

- 2.1 Paragraph 12(1) of the Notice on Determination of the Limits and Conditions for Third Party Named Portfolios of Collective Investment Schemes, published under Notice 778 of 2011 in Government *Gazette* No. 34719 on 4 November 2011 ("Notice 778"), provides that the assets under management of a third party named portfolio may not be less than R50 million after a period of 3 years from the date of approval of the name of the portfolio.
- 2.2 Section 12(2) further sets out procedures that a manager must follow where it is clear that there will not be compliance with paragraph 12(1) upon the expiry of the 3-year period.
- 2.3 The main purpose of paragraph 12 of Notice 778 was to protect the interest of investors against the consequences of non-viable third-party portfolios. This investor protection mechanism continues to serve its purpose.
- 2.4 Hedge funds were declared to be a portfolio of a CIS in 2015. This had the effect that Notice 778 also became applicable to hedge funds. However, the full implementation of Notice 778 should be viewed in the context of CIS in hedge funds as it predates the regularisation of hedge funds in South Africa.
- 2.5 Given the smaller size of the South African hedge funds industry, particularly the smaller size of some hedge fund portfolios, it is expected that the full implementation of paragraph 12 of Notice 778 would not only decrease the number of available investment options for retail investors and qualified investors, such as pension funds, but it would also negate the intention for the regularisation of the hedge funds industry which, amongst others, relates to the need to promote financial market development.

- 2.6 Hedge funds are often smaller portfolios than other types of CISs, established for various, specific reasons, and could sometimes invest over shorter periods of time to make use of specific market opportunities, whereafter the assets are liquidated and reinvested. In this light, the FSCA recognises that the threshold prescribed in paragraph 12 of Notice 778 is not practical for hedge funds.
- 2.7 Accordingly, the FSCA is of the view that it is in the public interest to exempt managers of hedge funds from the requirement set out in paragraph 12(1), and consequently also paragraph 12(2) of Notice 778, with a view to promote financial markets, market entry and market participation.

### **3. AVAILABILITY OF INFORMATION AND ENQUIRIES**

- 3.1 The Exemption is available on the FSCA's website at [www.fsca.co.za](http://www.fsca.co.za).
- 3.2 For more information regarding the Exemption and/or this Communication, please contact the Regulatory Frameworks Department of the Authority at [marianne.vanrooyen@fsca.co.za](mailto:marianne.vanrooyen@fsca.co.za).



**KATHERINE GIBSON  
DEPUTY COMMISSIONER  
FINANCIAL SECTOR CONDUCT AUTHORITY**

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