

FSCA COMMUNICATION 3 OF 2023 (RF)

Publication of FSCA RF Notice 5 of 2023 - Exemption of retirement funds from the conditions in Board Notice 75 of 2009, to qualify for an exemption from Section 28 of the Pension Funds Act, 1956

1. Purpose

The purpose of this Communication is to inform stakeholders that today the Financial Sector Conduct Authority (“the Authority”) published the final notice (“the exemption notice”), exempting certain funds, in terms section 281(1) of the Financial Sector Regulation Act, 2017, Act No. 9 of 2017 (“FSR Act”), from having to meet the conditions set out in paragraphs 9.2(a) and 9.2(b) of Board Notice 75 of 2009 (the Board Notice), under section 28(17) of the Pension Funds Act, 1956.

2. Background

2.1 On 2 November 2022 the Authority published a draft of the exemption notice alongside an explanatory communication (FSCA Communication 31 of 2022 (RF))¹ explaining the rationale informing the proposed exemption and inviting comment on the draft Notice by 14 December 2022. Only one stakeholder submitted comments, and no fundamental concerns or issues were raised with the granting of the proposed exemption or the conditions related thereto.

2.2 Minor drafting improvements and changes have been effected to the exemption notice which is published alongside this communication. The Authority has also responded directly to the commentator in more detail.

3. Confirmation on the procedure for application in accordance with Board Notice 75 of 2009 (Directive PF No.4) – use of Form D

The Authority confirms that that form D, as referred to in paragraph 9.3(a) of the Board Notice, will not be revised to reference a specific request to be exempted from paragraph 9.2(a) or 9.2(b). Any applicant fund ² that intends to rely on the exemption must, alongside form D, submit a cover letter confirming reliance on the exemption notice, together with a specific request to be exempted from paragraph 9.2(a) and/ or 9.2(b) in accordance with paragraph 2(a) of the exemption notice.

¹ Draft Notice and accompanying communication are available on the FSCA website under Regulatory Frameworks > Documents for Consultation > Retirement Funds at:
<https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Notice-Draft%20Exemption%20of%20funds%20and%20FSCA%20Communication%2031%20of%202022%20%28RF%29.zip>

² “applicant fund” means a fund that applied for an exemption from paragraph 9.2(a) or paragraph 9.2(b) of the Board Notice as prescribed in terms of section 28(17) of the PF Act;

4. Enquiries

For further information regarding this Communication and the exemption notice please contact the Retirement Funds Supervision Department of the FSCA by emailing Ms Wilma Mokupo at Wilma.Mokupo@fsca.co.za.



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