



Financial Sector
Conduct Authority

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ENQUIRIES:	Mr. Mashuwa Mandavha	D. DIALING NO.:	
OUR REF:	Momentum Collective Investment (RF) (Pty) Ltd (Manco No:33)	E-MAIL:	Mashuwa.mandavha@fscs.co.za
DATE:	07 June 2021		

MR. MFUNDO XOKO
MOMENTUM COLLECTIVE INVESTMENT (RF) (PTY) LTD
268 WEST AVENUE
CENTURION
0046

Per email: mfundo.xoko@momentum.co.za

Dear Mr Xoko

NOTICE OF ADMINISTRATIVE SANCTION

1. The Financial Sector Conduct Authority (FSCA) is satisfied on available facts and information, in particular the factors mentioned in section 45C(2) of the FIC Act and representations received, that Momentum Collective Investments (RF)(Pty) Ltd (MCI), an Accountable Institution as envisaged in terms of item 5 of schedule 1 of the FIC Act, has failed to comply with the Financial Intelligence Centre Act, 38 of 2001 (FIC Act). Accordingly, the FSCA hereby issues this Administrative Sanction Notice (the Notice).

2. Nature of Non-compliance:

2.1. The FIC Act requires an Accountable Institution to apply a risk-based approach in accordance with its Risk Management and Compliance Programme (RMCP) when carrying out customer due diligence (CDD) measures (Section 21 of the FIC Act read in conjunction with section 42 of the Act and Guidance Note 7 issued by the Financial Intelligence Centre (Centre) on 2 October 2017). The risk-based approach guides Accountable Institutions in applying enhanced or simplified customer due diligence as required by section 42(2)(m) of the FIC Act.

2.2. MCI contravened section 21 of the FIC Act read with Part II of Guidance Note 7 for the following reasons:

2.2.1 MCI failed to risk rate 38 clients who were on-boarded from 02 April 2019 in line with its RMCP as sampled by the FSCA during the on-site inspection.

2.2.2 MCI failed to establish and verify the identity of the clients in the course of the business relationship and in accordance with its RMCP.

2.3 An Accountable Institution is required to report to the Centre all cash transactions exceeding R24 999.99 received by a client or paid to a client as soon as possible but not later than 2 days after becoming aware of it in terms of section 28 of the FIC Act read with Regulations 22B, 22C and 24(4) of the Money Laundering and Terrorist Financing Control Regulations, 2002 (the Regulations).

2.3.1 MCI contravened section 28 of the FIC Act read with regulations 22B, 22C and 24(4) of the Regulations for the following reasons:

2.3.2 MCI failed to report 419 cash transactions above the prescribed threshold to the Centre within the prescribed period. The cash transactions that were not reported amount to approximately R22 098 623.68 and date back to 01 December 2010.

3. Reasons for Imposing the administrative sanctions

3.1. The nature, duration, seriousness and extent of the non-compliance

3.1.1. The obligation to risk rate clients and to conduct CDD in accordance with the risk rating of clients became effective and enforceable on 2 October 2017. The FSCA, as a means to assist the transition to compliance with the obligations that were introduced by the FIC Amendment Act, permitted a transitional period whereby the sanctioning of non-compliance in respect of these provisions of the FIC Act was deferred until 1 April 2019. By 9 March 2020, when the FSCA conducted the inspection, MCI still did not comply with the provisions to risk rate clients and conduct CDD in terms of the RMCP.

3.1.2. The failure to risk rate clients and conduct customer identification and verification in accordance with the RMCP is a serious contravention. By not applying a risk-based approach to identifying and verifying clients this will lead to ineffective measures to prevent or combat money laundering and terrorist financing commensurate with the risks identified.

- 3.1.3. Conducting CDD is important as it is the basis for identifying potential suspicious and/or unusual transactions.
- 3.1.4. During the inspection and interviews MCI management indicated that all clients that were on-boarded from 02 April 2019 were risk rated. However, after the walkthrough test and client sampling engagement with MCI the FSCA found this not to be the case.
- 3.1.5. From the clients sampled by the FSCA, MCI failed to risk rate all of them i.e. 100% failure.
- 3.1.6. The failure to submit cash threshold reports (CTRs) to the Centre is a serious contravention. CTRs are one of the factors the Centre takes into account to identify proceeds of crime or potential money laundering or terrorist financing. The failure to submit CTRs would therefore lead to an ineffective system to identify and combat money laundering and the financing of terrorism.
- 3.1.7. Although there was not a total failure to submit CTRs to the Centre, the failure to identify and report all cash threshold transactions is still substantial in that 419 CTRs to the value of approximately R22 098 623.68 were not submitted.
- 3.1.8. The failure to submit CTRs started in December 2010 and was only identified by MCI during 2017. In 2018 the Momentum Metropolitan Group started a formal investigation into this failure. The first time MCI reported the failure to the FSCA was during the inspection in March 2020. The duration of non-compliance is therefore extremely long.
- 3.1.9. The fact that MCI did not conduct any audit on their cash threshold reporting system from 2010 to 2017 points to a lack of governance and accountability by the management of MCI.
- 3.1.10. In coming to its decision, the FSCA also took into account the Notice published by it on 25 April 2019 and Public Compliance Communication 46 issued by the Centre on 30 March 2020 on the implementation of the amendments to the FIC Act.

3.2. Remedial steps taken by MCI

- 3.2.1. MCI has since risk-rated 32 of the 38 clients as mentioned above.
- 3.2.2. MCI has since frozen 6 of the 38 clients as a mitigating measure while it embarks on a process to obtain CDD information.
- 3.2.3. MCI conducted a detailed audit on their cash threshold reporting system.
- 3.2.4. Subsequent to the inspection, MCI submitted reports to the Centre and FSCA regarding the reporting failure.

3.2.5. MCI indicates that they have implemented measures to prevent a reoccurrence of the failure to report cash threshold transactions.

3.3. Other factors

3.3.1. FSCA has no record of a previous non-compliance with any law by MCI.

3.3.2. During the inspection, MCI was transparent and forthcoming about the historic inadequacies of its CTR difficulties.

4. Particulars of the administrative sanctions:

4.1. In terms of section 45C(1) read with section 45C(3)(e) of the FIC Act, the FSCA imposes the following financial penalties on MCI:

4.1.1. A financial penalty of R1 900 000 for non-compliance with section 21 of the FIC Act read with Part II of the Guidance Note 7.

4.1.2. A financial penalty of R4 400 000 for non-compliance with section 28 of the FIC Act read with regulations 22B, 22C and 24(4) of the Regulations.

4.2. MCI is directed to pay the financial penalty of **R6 300 000** on or before **06 July 2021**.

4.3. The financial penalty is payable via electronic fund transfer to:

Account Name	:	NRF – FIC Act Sanctions
Account Holder	:	National Treasury
Account Number	:	80552749
Bank	:	South African Reserve Bank
Code	:	910145
Reference	:	FIC Sanction – Momentum Collective Inv/2020

4.4. Proof of payment must be submitted to the FSCA at mashuwa.mandavha@fsca.co.za and copy charl.geel@fsca.co.za.

5. Right of appeal:

5.1. In terms of section 45D of the FIC Act, read with Regulation 27C of the Regulations promulgated in terms of GN R1595 in GG 24176 of 20 December 2002 as amended, MCI may lodge an appeal within 30 days, from the date of receipt of the Notice. The notice of appeal and proof of payment of the mandatory appeal fee must be:-

5.1.1. hand delivered to:

The Secretary: The FIC Act Appeal Board
Byls Bridge Office Park, Building 11
13 Candela Street
Highveld Extension
Centurion

5.1.2. sent via electronic mail to:

The HOD: Office of General Counsel
FSCA
Attention: Stefaus Rossouw(Stefanus.Rossouw@fsc.co.za) or Charl Geel (Charl.geel@fsc.co.za)

5.2. Mr Gcinikhaya Dudeni, Secretary of the FIC Act Appeal Board, may be contacted at Gcinikhaya.dudeni@fic.gov.za and telephonically at (012) 641-6241 / 082 437 6371 should MCI require further information regarding the appeal process. Details of the appeal process can also be found on the FIC's website at www.fic.gov.za.

6. Failure to comply with the administrative sanction

6.1. In terms of section 45(C)(7)(b) of the FIC Act, should MCI fail to pay the prescribed financial penalty in accordance with this notice and an appeal has not been lodged within the prescribed period, the FSCA may forthwith file with the clerk or registrar of a competent court a certified copy of this notice, which shall thereupon have the effect of a civil judgement lawfully given in that court in favour of the FSCA.

7. Publication of sanction:

7.1. The FSCA will make public the decision and the nature of the sanction imposed in terms of section 45C(11) of the FIC Act.

Yours faithfully

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke.

K.S. DIKOKWE

FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY