VERBATIM

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ISSUE 36

FSCA GUIDANCE AND EXEMPTION NOTICES AND APPOINTMENTS AT THE FSCA

A. FSCA - GUIDANCE NOTICE 1 OF 2019: DEFAULT REGULATIONS AND CLOSING FUNDS – EXEMPTION

FSCA EXEMPTION

Subject to conditions, the Financial Sector Conduct Authority ("FSCA") has exempted all funds that have **applied for cancellation of registration** (under section 27(1) of the Pension Funds Act) from compliance with the default regulations.

CONDITIONS FOR THE EXEMPTION TO APPLY

It is very important to note that a fund has to comply with **all three conditions** below before the exemption applies to it.

The conditions are that the retirement fund:

1. does not have members, assets, liabilities or litigation pending;
2. has applied for cancellation of registration under section 27(1) of the Pension Funds Act in accordance with the format set out in Information Circular 2 of 2017 and that the FSCA has received the application on or before 28 February 2019; and
3. its registration is cancelled by 1 March 2021.

Note especially that the application for deregistration has to be in **on or before 28 February 2019** or else the exemption **will not apply** to the fund.

LIST OF FUNDS THAT HAVE APPLIED FOR DE-REGISTRATION

The FSCA's Guidance Notice contains a **list of funds** that have applied for deregistration. Please make sure you check that your closing fund(s), where application has been made, appears on the list. If it does not, you should contact the FSCA as soon as possible.

B. FSCA - PFA Notice 2 of 2019

This Notice was issued by Olano Makhubela at the FSCA on 20 February 2019. We think that, notwithstanding its name, it is a Guidance Notice.

Regulation 39 to the Pension Funds Act requires boards of certain funds to set up a preferred annuity strategy for the fund. This Regulation becomes effective on 1 March 2019.

This Notice exempts all retirement funds from having to comply with Regulation 39(3)(a) to the Pension Funds Act. This Regulation provides mostly for living annuities within an annuity strategy.

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Regulation 39(3)(a) provides, in relation to an annuity strategy, that:

- the annuity strategy may include living annuities;
- living annuities may be paid directly from the fund, through a fund owned policy or sourced from an external provider (insurer);
- the investment choice must be limited to four investment portfolios;
- living annuity portfolios must be compliant with Regulation 28 (asset spreading requirements);
- living annuity portfolios must be compliant with Regulation 37 (default investment portfolio requirements); and
- drawdown levels must be compliant with the prescribed standards.

Funds that intend to include living annuities in their annuity strategy have been exempted from the requirements set out above. However, the FSCA did not want to exempt funds from all the requirements of Regulation 39(3)(A) and, thus, it has added some of the requirements back as conditions for exemption.

Thus, the exemption is granted subject to the fund complying with the following conditions:

1) the investment choice for living annuities is still subject to a maximum of four portfolios;
2) the living annuity portfolios must be compliant with Regulation 28 and 37; and
3) until the drawdown levels for living annuities in an annuity strategy are prescribed, the board has to exercise its fiduciary duties and decide what maximum drawdown rates will be allowed. The permissible drawdown rates can never exceed those prescribed for living annuities (in the Income Tax Act) outside the annuity strategy. The board must take into account the nature of the fund and circumstances of the membership.

The FSCA issued a draft conduct standard in November 2018. This draft has not yet been finalised. This draft set out a number of key requirements related to living annuities in an annuity strategy, including the maximum drawdown rates, measuring of sustainability and communication.

Boards should note that the maximum drawdown rates set out in the draft are lower than for living annuities outside an annuity strategy. We suggest that boards apply their minds to the draft conduct standards and condition 3 above, among other factors, and then make an informed decision about the maximum drawdown levels that will be applied. This decision should be properly minuted and communicated.

Note well: this exemption only applies **until the FSCA publishes its final conduct standards** dealing with living annuities in a preferred annuity strategy.

C. FSCA – exemptions granted from the requirement to have a board consisting of four board members and member's right to elect 50% of board members

As we know the FSCA has the power to exempt (on an ongoing basis) certain funds, such as umbrella funds, from the requirement to have four board members or the right of member's to elect 50% of board members. The FSCA has exempted certain funds from these requirements and this exemption notice sets out which funds have been given exemption. No doubt, we will see more exemption notices like this as more funds obtain exemption.

D. 1 FEBRUARY 2019 APPOINTMENTS AT THE FSCA

Recent appointments made at the FSCA, as at 1 February 2019, by Mr Sithole are:

Mr Brandon Topham –
Divisional Executive for Investigations and Enforcement

Ms Felicity Mabaso -
Divisional Executive for Licensing and Business Centre

Mr Jabulane Hlalethoa -
Divisional Executive for the Corporate Centre

Ms Farzana Badat -
Divisional Executive for Conduct of Business Supervision

Mr Olano Makhubela -
Divisional Executive of Retirement Funds Supervision

Ms Phokeng Mogase -
Chief Information Officer