

FINANCIAL SERVICES BOARD

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CISCA CIRCULAR NO. 19 TO MANAGERS AND TRUSTEES OF COLLECTIVE INVESTMENT SCHEMES IN SECURITIES, INCLUDING EXCHANGE TRADED FUNDS

The Registrar has noted the following matters and hereby provides guidance to address concerns raised by industry:

1. Asset Management Fees as Fixed Costs and Accounting Standard

These matters relate to items 9 and 11 of Circular No. 17:

Following discussions between the FSB and industry subsequent to the issue of Circular No. 17, joint workgroups have been established between the FSB and ASISA to consider these matters in more detail with the intention of revising the capital adequacy requirements for managers, as well as to establish an appropriate accounting standard for the financial reporting of collective investment scheme (CIS) portfolios in South Africa.

Consequently, please be advised that these matters as reflected in Circular No. 17 are suspended and no further action will be required from managers until the outcome of the abovementioned processes. A manager's own financial statements will however still be required to comply with International Financial Reporting Standards (IFRS).

2. Treatment of Special Dividends for ETF's

It has been brought to the attention of the Registrar that different managers of FSB registered Exchange Traded Funds (ETFs) are treating the taxation of special dividends differently, i.e. either as taxable income or as capital. The Registrar was requested to provide guidance on this matter.

Managers are reminded that this is a tax matter and are referred to the amendments made in April 2012 to section 64F(k) which reads:

"64F. Exemption from tax in respect of dividends other than dividends *in specie*.—
(1) Any dividend is exempt from the dividends tax to the extent that it does not consist of a dividend *in specie* if the beneficial owner is—
(a)(j)
(k) a portfolio of a collective investment scheme in securities;"

ETF's are currently regulated under the Act as CIS in securities.

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4. NewGold Platinum ETF

The FSB has been approached by industry, trustees and the issuer of the NewGold Platinum ETF to provide clarity on its permissibility as a security in terms of Board Notice 80 of 2012 ("BN 80").

Having considered, *inter alia*, the offering prospectus and the market making agreement, our conclusion is that the instrument that is acquired by an investor is a debenture supported by Absa Bank as market maker, against its balance sheet. The value of the debenture is determined by the performance of the price of the underlying assets, namely platinum bullion, held in custody by Barclays Bank in London, in an allocated account (for the ETF), and the debenture "tracks" a recognised platinum value. The issuer of the debenture is a listed ETF that is not registered as a CIS. Although delivery in specie is an option for qualifying investors, there is no obligation for any investor to take delivery of platinum.

Whilst paragraph 3(14)(a) of BN 80 prohibits investing in an ETF that does not own securities ordinarily permitted, other provisions permit investment in securities that track the value of commodities. Further, the intention of this provision is to ensure that the portfolio does not become directly exposed to a non-permissible security. In the current matter, this is not at issue as the debenture tracks the value of platinum only.

The Registrar is therefore satisfied that the conditions under BN 80 make sufficient provision for the inclusion of this product in CIS portfolios.

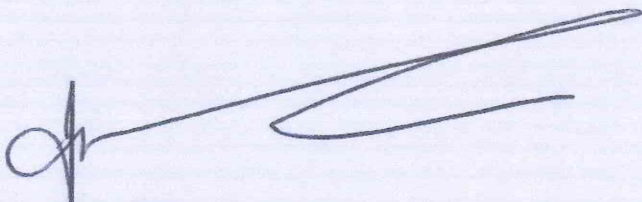
Please be advised that as the debt exposure of this instrument is directly to Absa Bank the exposure to the NewGold Platinum ETF must be included in the overall exposure permitted for Absa Bank.

However, given that

1. it was always the intention of the Regulator to limit investment into commodity value instruments to 10% of the portfolio, as is evidenced at the time when the gold valued instruments were limited to 10% of the portfolio (as per paragraph 3(13)), and
2. the fact that Regulation 28 to the Pension Funds Act limits investments in commodities by pension funds to 10%,

from a prudential perspective, a portfolio should therefore not be exposed to more than 10% of both such gold and platinum-based products together or individually.

The Registrar will in due course give effect to this prudentially sound limit by amending BN 80 to limit investment in instruments based on the value of commodities to a total maximum investment of 10%.



J A BOYD
REGISTRAR OF COLLECTIVE INVESTMENT SCHEMES