The Importance of Irish Funds to the South African Market

22 September 2020

irish funds

Moderator: **Gayle Bowen,** Pinsent Masons)

Presentation: **Diketso Mashigo,** FSCA

Annelize Slabbert, FSCA

Tiva Mbhenyani, FSCA

Panellists:

Niki Giles, Prescient Fund Services

Richard Lain, JP Morgan, South Africa

Ronan Cremin, Maples Group

- 10.00am (Ireland) 11.00am (South Africa) - **Presentation: Registering Foreign Funds into South Africa – s65 licensing regime**
- 10.15am (Ireland) 11.15am (South Africa) **Panel Discussion: Why Ireland for South African funds? Registering under the s65 licence regime and an overview of the key work of the Irish Funds South African Distribution Working Group.**
- 10.30am (Ireland) 11.30am (South Africa) **Q & A**

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IDA Ireland · J.P.Morgan · KPMG · Matheson · pwc · RBC Investor & Treasury Services · STATE STREET

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Financial Sector
Conduct Authority

FSCA CONSIDERATIONS OF UCITS FUNDS MARKETING INTO SOUTH AFRICA

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South Africa legislation: BN 257 of 2015

- SA legislation allows for the Authority to categorize any scheme, approved for marketing its products in SA, for purpose of identifying provisions of the CIS Control Act, applicable to the category of collective investment scheme available in SA.

- The categories in SA which may be relevant for the discussion is the *CIS in securities* vs *CIS in Hedge Funds*.

- CIS in Hedge Funds allows for either Retail Investor Hedge Funds or Qualified Investor Hedge Funds.

- Retail Investor Hedge Funds are similar to those UCITS schemes using expanded investment powers (see next slide for examples).

- Allowing the expanded powers into UCITS (or any other foreign scheme) categorized as a CIS in Securities will create unwelcome arbitrage for local industry as local CIS are not permitted expanded powers.

Expanded investment powers - FDIs

- Expanded investment powers are mainly the use of FDIs where:
  - More exotic and complex levels of derivatives permitted in some UCITS.
  - Extensive use of FDIs
  - FDIs used to drive the investment strategy
  - 110-10, 130–30 **funds** or a ratio up to 150/50 funds
  - Regardless if leveraged or not
  - There may be other examples of complex debt instruments
- CIS in securities in SA
  - CIS in securities in SA are not permitted to use FDIs extensively or for investment purposes, to drive the portfolio's investment strategy & no long/short strategies etc. SA only permits use of FDIs where exposure is covered with direct assets or cash like whereas UCITS allows for non-direct matching cover and set-off.
  - CIS in securities only permitted to use of FDIs for efficient portfolio management.
  - Complex derivatives etc in South Africa is permitted under SA Retail Hedge Funds and will be categorized as such.

Guidance Note 2A

Expanded investment powers are mainly the use of FDIs where:

- FDIs which may result in the losses exceeding the Net Asset Valuation (NAV) of the portfolio (leverage of the fund);
- FDI for purposes other than hedging or efficient portfolio management such as for (a) investment purposes; and/or (b) to follow an active investment strategy; and/or (c) furtherance of the investment objective or strategy; and/or (d) to actively manage the investment policy or objective; and/or (e) to obtain or manage exposure to the market or to specific asset classes (including the use of total return swaps);
- FDI or structures/strategies which are considered to be complex or exotic in its composition;
- An investment strategy which is associated with hedge funds, including but not limited to long/short strategies, market neutral strategies, fixed income arbitrage strategies, option strategies or statistical arbitrage;
- Hedge fund index funds;
- Net short positions;
- Complex debt instruments;
- Synthetic instruments including synthetic ETFs;
- Structured products where any of the above is possible;
- Investment in other collective investment schemes that include any of the above activities.

UCITS Prospectus vs the Risk Management Process

- In some instances the UCITS investment strategies as determined in the Scheme Particulars allows expanded powers, however, the RMP is more conservative, as the relevant strategy is not implemented yet & for instance whereby it is allowed to use the Commitment Approach to calculate exposure

- This can create problems as the UCITS can change both its RMP & method to calculate leverage at any time.

- Although Commitment Approach are used in some instances (where the scheme particulars use expanded powers) and the fund do not leverage, the investment strategy that may be followed is similar to SA Retail Hedge Funds, we will not be able to categorise this as CIS in securities.

- SA cannot accept a foreign schemes' RMP as a basis for our categorization of such foreign schemes as these can be amended at any time.

- Undertakings by the Operator of the scheme that it will not use expanded investment powers, although Scheme Particulars provide for it, will not suffice.

THANK YOU

FSCA

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