



**NOTICE REGARDING THE PUBLICATION OF DRAFT FSCA CONDUCT STANDARD [-] of 2020 (CIS) - GOVERNANCE, FIT AND PROPER AND OTHER REQUIREMENTS FOR MANAGERS OF COLLECTIVE INVESTMENT SCHEMES**

**COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, 2002**

**FINANCIAL SECTOR REGULATION ACT, 2017**

The Financial Sector Conduct Authority (FSCA) invites, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), submissions on the draft Conduct Standard on Governance, Fit and Proper and Other Requirements for Managers of Collective Investment Schemes to be made in terms of section 106(1)(a) read with sections 106(2) and (3) and 108 of the FSR Act, as per the Schedule below.

The draft Conduct Standard, together with a statement supporting the draft Conduct Standard is available on the FSCA's website at <https://www.fsca.co.za>.

Submission on the draft Conduct Standard must, using the submission template available on the FSCA's website, be submitted in writing on or before **15 February 2021** to the Authority at [FSCA.RFDStandards@fsca.co.za](mailto:FSCA.RFDStandards@fsca.co.za).

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## SCHEDULE

### DRAFT FSCA CONDUCT STANDARD [-] OF 2020 (CIS)

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## CHAPTER 1

### DEFINITIONS AND GENERAL PRINCIPLES

#### 1. Definitions

In this Schedule “**the Act**” means the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it, and -

“**board**” means the board of directors of a manager;

“**complaint**” means an expression of dissatisfaction by a person relating to a product or service provided by the manager, or to an agreement with the manager in respect of its products or services, which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a query, that—

- (a) the manager or its service provider has contravened or failed to comply with an agreement, a law, a rule or code of conduct which is binding on the manager or to which it subscribes;
- (b) the manager or its service provider’s maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or
- (c) the manager or its service provider has treated the person unfairly;

“**complainant**” means a person that submits a complaint and includes -

- (a) an investor or an investor’s successor in title;
- (b) beneficiary or the beneficiary’s successor in title;
- (c) person that pays a premium in respect of an investment;
- (d) member;
- (e) a potential investor whose dissatisfaction relates to the application, approach, solicitation or advertising or marketing material,

who has a direct interest in the agreement, investment or service to which the complaint relates, or a person acting on behalf of a person referred to in paragraphs (a) to (e);

“**independent director**” is a non-executive director who -

- (a) is not a representative of a significant owner who has the ability to control or significantly influence management or the board;
- (b) does not have a direct or indirect interest in the manager, holding company or subsidiary in a consolidated group within the company, which exceeds 5% of the group’s total number of shares in issue;
- (c) does not have a direct or indirect interest in the manager which is less than 5% of the group’s total number of shares in issue, but is material to his/her personal wealth;
- (d) has not been employed by the manager, holding company or a subsidiary in a consolidated group which the manager is part of in any executive capacity, or appointed as the designated auditor or partner in the group’s external audit firm, or senior legal advisor, for the preceding three financial years;
- (e) is not a member of the immediate family, as defined in the Companies Act, of an individual who is, or has during the preceding three financial years, been employed by the manager or the group in an executive capacity;
- (f) is not a professional adviser to the manager, holding company or the consolidated group, other than a director;

- (g) is free from any business or other contractual relationship which could create an impression of an existence of a perceived or real conflict of interest that may influence or interfere materially with the individual's capacity to act in an independent manner; or
- (h) does not receive remuneration contingent upon the performance of the holding company, subsidiary or consolidated group;

**“key person”** has the meaning assigned to such term in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

**“non-executive director”** means an individual who is not involved in the day-to-day management of the manager or has not been so involved at any time during the preceding 12 months;

**“official website”** means the website of the Authority;

**“management”** means persons, other than directors, who make or participate in making decisions that -

- (a) affect the whole or a substantial part of the business of the manager; or
- (b) have the capacity to affect significantly the financial standing of the manager; and

**“significant owner”** has the meaning assigned to such term in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017); and

**“website”** has the meaning ascribed to it in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

## **2. General principles**

- (1) A manager must at all times conduct its business in a way that –
  - (a) protects the interests of investors;
  - (b) promotes the fair treatment of investors; and
  - (c) supports trust and confidence in the collective investment schemes industry.
- (2) When fulfilling its obligations in subparagraph (1), a manager must—
  - (a) conduct its business with integrity and transparency;
  - (b) conduct its business honestly, fairly, with due skill, care and diligence;
  - (c) identify and promote a corporate culture that takes into account ethics and aims to ensure that the fair treatment of investors is central to the values and corporate culture of the manager;
  - (d) organise and control its affairs responsibly and effectively;
  - (e) maintain adequate financial and other resources; and
  - (f) deal with the Authority in an open and cooperative manner.
- (3) A manager must have and maintain appropriate policies and procedures to ensure the fair treatment of its investors and potential investors. The fair treatment of investors and potential investors encompasses achieving at least the following outcomes:

- (a) Treating investors and potential investors fairly is central to the corporate culture of the manager;
- (b) portfolios are designed, marketed and sold to meet the needs of identified types, kinds or categories of investors and are targeted accordingly;
- (c) investors and potential investors are provided with clear information and kept appropriately informed before, during and after point of sale;
- (d) all financial services providers or employees used by the manager to give advice-
  - (i) are appropriately qualified and skilled to give advice;
  - (ii) take account of investor circumstances when providing advice; and
  - (iii) have sufficient knowledge of the relevant portfolios that they recommend to investors;
- (e) the portfolios (including portfolio performance) of the manager meet the expectations of the investors as they have been led to believe;
- (f) the service of the manager is of an acceptable standard and what investors have been led to expect; and
- (g) investors do not face unreasonable post-sale barriers, including to switch to other portfolios or to redeem their investments, or to make a complaint.

## **CHAPTER 2**

### **CORPORATE GOVERNANCE AND CULTURE**

#### **3. Obligations of the board**

- (1) The board of a manager is accountable for compliance with the requirements of this Conduct Standard.
- (2) The board of a manager -
  - (a) must endorse and is ultimately responsible for the governance and corporate culture within the manager;
  - (b) must endorse and is ultimately responsible for the establishment, implementation, subsequent reviews of, and continued internal compliance with, governance arrangements within the manager; and
  - (c) must ensure that the identified corporate culture and governance arrangements are appropriately embedded in the manager.

#### **4. Governance arrangements**

- (1) A manager must adopt, document, implement, and monitor the effectiveness of, governance arrangements (which includes policies and procedures) that are reasonably necessary to ensure adherence to the requirements in this Conduct Standard.
- (2) The governance arrangements referred to in subparagraph (1) must at least –

- (a) promote accountability of directors and key persons;
- (b) be approved by and be subject to the oversight of the board of the manager;
- (c) ensure that key persons possess the necessary skills, knowledge and expertise to fulfil their functions, and perform those functions fairly, and with integrity, honesty, and due skill, care and diligence;
- (d) provide for mechanisms to identify and, where appropriate, remove persons whose conduct materially increases the risk of the manager not complying with this conduct standard;
- (e) be proportionate to the nature, size, scale and complexity of the risks and business of, and activities performed by, the manager;
- (f) demonstrate how the manager will comply with this conduct standard;
- (g) address, as a minimum -
  - (i) roles, responsibilities and duties of the board and key persons;
  - (ii) record keeping, including to ensure that it maintains proper records in accordance with section 4(4)(b) of the Act;
  - (iii) communication with the Authority;
  - (iv) management processes and responsibilities, and financial and system procedures to ensure that the manager is able to report in terms of the applicable accounting requirements;
  - (v) risk and compliance management, and
  - (vi) internal control structures and procedures to ensure it provides for, amongst others -
    - (aa) management and monitoring of the relevant system or systems in use;
    - (bb) segregation of duties and roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective;
    - (cc) appropriate documentation relating to business processes, policies and controls, and technical requirements;
    - (dd) system application testing;
    - (ee) disaster recovery and back-up procedures on electronic data;
    - (ff) appropriate training for all staff regarding the requirements of relevant legislation; and
    - (gg) a business continuity plan;
  - (vi) arrangements relating to conflicts of interest.

## **5. Board composition and directors**

- (1) A manager must have a board comprised of a minimum of four directors, and -
  - (a) half of the directors must be non-executive directors;
  - (b) the majority of the non-executive directors must be independent directors; and
  - (c) at least one of the directors must be an executive director.
- (2) The total number of directors to be appointed by a manager must be determined in the founding documents of the manager.

- (3) Any person appointed as an executive director of the board of a manager must be a resident of the Republic of South Africa.
- (4) An application for approval of a director as referred to in section 42 of the Act must be submitted to the Authority in the form and manner determined by the Authority by notice on the official website Act.
- (5) A manager must obtain prior written approval, in the manner and form determined by the Authority, for any change in the composition of the board.
- (6) A manager must inform the Authority within 30 days of the resignation or termination of appointment of a director, with reasons for such resignation or termination provided by the director affected, in the manner and form determined by the Authority by notice on the official website.
- (7) A manager must review the composition of its board at least annually to ensure compliance with this Conduct Standard.

## **6. Trustee or Custodian**

- (1) An application for registration of a trustee and/or custodian as referred to in sections 68(2) and 69 of the Act must be submitted to the Authority in the form and manner determined by the Authority by notice on the official website, and must contain the requisite documents demonstrating that the trustee meets the requirements of section 69 of the Act.
- (2) A manager must satisfy itself that a trustee or custodian appointed by the manager -
  - (a) is competent, to perform the functions as described in the Act;
  - (b) has the ability and capacity to perform its functions; and
  - (c) has adequate resources, systems, processes and procedures to perform the functions of a trustee or custodian effectively.

## **CHAPTER 3**

### **FIT AND PROPER REQUIREMENTS**

#### **7. Fit and proper requirements**

- (1) The fit and proper requirements for managers and related persons are –
  - (a) personal character qualities of honesty, integrity and good standing, as set out in paragraph 8; and
  - (b) competence, as set out on paragraph 9.

#### **8. Honesty, integrity and good standing**

- (1) A key person of a manager and related person must be a person who is -
  - (a) honest and has integrity; and
  - (b) of good standing.



- (2) In determining whether a person complies with subparagraph (1), the Authority may refer to any relevant and reliable information in the possession of the Authority or that is brought to the attention of the Authority by any person.
- (3) Without limiting the generality of subparagraphs (1) and (2), the presence of any of the following factors constitutes *prima facie* evidence that a person does not meet the requirements in terms of subparagraph (1): If that person-
- (a) has been found guilty (and that conviction has not been expunged) in any criminal proceedings or liable in any civil proceedings by a court under any law in any jurisdiction of-
    - (i) an offence under a law relating to the regulation or supervision of a financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) or a corresponding offence under the law of a foreign country;
    - (ii) theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty, breach of fiduciary duty, dishonourable or unprofessional conduct; or
    - (iii) an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992) or Parts 1 to 4, or section 17, 20 or 21, of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence under the law of a foreign country;
  - (b) has been convicted (and that conviction has not been expunged) of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, where the penalty imposed for the offence was or may be imprisonment without the option of a fine, or a significant fine;
  - (c) has accepted civil liability for, or has been the subject of a civil judgment in respect of, theft, fraud, forgery, uttering a forged document, perjury or any conduct involving dishonesty, breach of fiduciary duty, misrepresentation, or negligent, dishonourable and unprofessional conduct;
  - (d) has been the subject of frequent or material preventative, remedial or enforcement actions by the Authority or a regulatory authority;
  - (e) has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation, dishonesty, breach of fiduciary duty or business conduct;
  - (f) has breached a fiduciary duty;
  - (g) has been suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) under any law or any action to achieve one of the aforementioned outcomes has been instituted against the person;
  - (h) has been refused a registration, approval, authorisation or licence to carry out a trade, business or profession, or has had that registration, approval, authorisation or licence suspended, revoked, withdrawn or terminated by a regulatory authority;

- (i) has been denied registration or membership of any professional body or has had that registration or membership revoked, withdrawn or terminated by a professional body because of matters relating to honesty, integrity, or business conduct;
  - (j) has been disciplined, reprimanded, disqualified, or removed in relation to matters relating to honesty, integrity, incompetence or business conduct by a –
    - (i) professional body; or
    - (ii) regulatory authority, or any action to achieve one of the aforementioned outcomes has been instituted against the person;
  - (k) has knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, the Authority or a regulatory authority;
  - (l) has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards;
  - (m) has been found to be not fit and proper by the Authority or a regulatory authority in any previous assessments of fitness and propriety and the reasons for being found not fit and proper have not been remedied;
  - (n) has been involved or is involved as a director, trustee, member, partner, controlling significant owner or managing executive, or is concerned in the management, of a business that has been –
    - (i) the subject of any matter referred to in subparagraphs (a), (b), (c), (d), (f), (h), (j)(ii), (k), (l), (m), or (o); or
    - (ii) placed in liquidation or business rescue; while that person has been connected with that organisation or within one year of that connection; or
  - (o) has failed to disclose information required to be disclosed in terms of the Act, including a failure to disclose information in accordance with this paragraph.
- (4) A manager must obtain prior written approval for the appointment of key persons, in the manner and form determined by the Authority, by notice on the official website.
  - (5) A key person must, in his or her application to the Authority, be candid and accurate and must of his or her own accord disclose all facts or information at his or her disposal or which may be accessible to the applicant and which may be relevant for purposes of a decision by the Authority whether the applicant complies with subparagraph (1).
  - (6) A key person of a manager must ensure that all information provided in support of the application referred to in subparagraph (4), including the application forms completed by the proposed key persons is true and accurate.

## **9. Competence**

- (1) A manager must have key persons with adequate, appropriate and relevant skills, knowledge and expertise in relation to collective investment schemes.

- (2) A manager must ensure that there are persons with sufficient experience and expertise in the areas of collective investment schemes, risk management, compliance, legal and accounting amongst its management and directors.
- (3) In determining whether there is sufficient expertise and experience as referred to in subparagraph (2), the Authority must have regard to, amongst others, the following matters:
  - (a) The past experience or expertise of the relevant individual(s);
  - (b) the skills and experience to operate and manage, where applicable, the activities of the manager; and
  - (c) the technical knowledge and ability to perform prescribed duties for which a person has been engaged, including relevant professional qualifications and membership of relevant professional organisations.
- (4) A manager must, when considering a person for appointment as a director, satisfy itself that -
  - (a) the proposed director will be in a position to fulfil his or her duties to the manager; and
  - (b) any other commitments that the proposed director may have will not interfere with or impair that proposed director's ability to perform his or her duties.
- (5) In considering a person for appointment as a member of management, the manager must satisfy itself that, in relation to the duties such person must perform, such person has -
  - (a) satisfactory educational qualifications;
  - (b) relevant skills and knowledge;
  - (c) adequate practical experience in the administration of a collective investment scheme;
  - (d) adequate experience in the making of investments; and
  - (e) adequate practical experience in the administration, management or oversight of a financial services business.

## **CHAPTER 4**

### **RISK AND COMPLIANCE MANAGEMENT**

#### **10. Risk management**

- (1) A manager must conduct its business in a manner that ensures proper management of risk by establishing a risk management framework relevant to the business.
- (2) A manager must have a detailed risk management strategy and plan in place that is appropriate to the nature, scale and complexity of its business, which provides for, including but not limited to, business risks, regulatory compliance risks, financial risks and operational risks.

- (3) A manager must for as long as it remains registered ensure that it performs a periodic evaluation of its risk management strategy and plan to ensure proper management of risk.
- (4) The evaluation referred to in subparagraph (3) must be performed at least once annually.
- (5) A manager must at all times have and effectively employ resources, procedures and appropriate technological systems that can reasonably be expected to eliminate the risk that investors may suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions, and to protect the interests of investors.

## **11. Liquidity Risk Management**

A manager must –

- (a) establish an effective liquidity risk management process that is compliant with the Act and liquidity requirements;
- (b) set appropriate liquidity thresholds which are proportionate to the redemption obligations, liabilities and potential liabilities of the portfolio;
- (c) carefully determine a suitable dealing frequency for participatory interests;
- (d) ensure that the dealing arrangements are appropriate for its investment strategy and underlying assets throughout the entire life cycle of the portfolio, starting at the design phase of such portfolio;
- (e) ensure that liquidity risk and its liquidity risk management process are effectively disclosed to investors;
- (f) be able to incorporate relevant data and factors into the liquidity risk management process in order to create a robust and holistic view of the possible risks;
- (g) conduct ongoing liquidity assessments in different scenarios, which could include portfolio level stress testing in line with regulatory guidance;
- (h) ensure that it will have access to, or can effectively estimate, relevant information for liquidity management;
- (i) put in place and periodically test contingency plans with an aim to ensure that any applicable liquidity management tools can be used where necessary, and if being activated, can be exercised in a prompt and orderly manner;
- (j) consider the implementation of additional liquidity management tools to the extent allowed by the Act and regulations, in order to protect investors from unfair treatment, amongst other things, or prevent the portfolio from diverging significantly from its investment strategy;
- (k) disclose its liquidity risk and its liquidity risk management process to investors and prospective investors;
- (l) ensure that its liquidity risk management process is supported by strong and effective governance;

- (m) effectively perform and maintain its liquidity risk management process;
- (n) regularly access the liquidity of the assets held in the portfolio;
- (o) integrate liquidity management in investment decisions; and
- (p) ensure that its liquidity risk management process facilitates the ability of the responsible entity to identify an emerging liquidity shortage before it occurs.

## **12. Compliance Function**

- (1) A manager must establish, implement and maintain a permanent and effective compliance function separate from its investment management function to ensure ongoing compliance with the Act.
- (2) A manager must at all times ensure that its compliance function -
  - (a) will be able to operate independently and objectively from the other operations of the manager;
  - (b) has adequate resources available to ensure proper compliance monitoring of the collective investment scheme's business; and
  - (c) has a compliance strategy, including a compliance monitoring plan in place.
- (3) A manager must appoint and at all times have a head of a compliance function who is responsible for ensuring compliance with regulatory requirements under the Act and who has direct access to the board of directors without interference.
- (4) A manager may not appoint any of its directors as the head of the compliance function.
- (5) The head of the compliance function and any person appointed in the compliance function must have the necessary compliance and collective investment schemes experience, skills as well as competence to enable him or her to perform his or her functions properly.
- (6) The manager must, on request by the Authority, be able to provide in writing information demonstrating –
  - (a) how the head of the compliance function or any person appointed in the compliance function gained appropriate knowledge of the Act; and
  - (b) how it has complied with the requirements in this paragraph.

## **CHAPTER 5**

### **APPLICATION FOR APPROVAL OF AUDITOR AND AUDIT COMMITTEE**

#### **13. Application for approval of auditor**

An application for approval of the appointment of an auditor as referred to in section 73(3) of the Act must be submitted to the Authority in the form and manner determined by the Authority by notice on the official website.

#### **14. Establishment of an Audit Committee**

- (1) Subject to subparagraphs (2) and (8), a manager must establish an audit committee to assist the board to evaluate and satisfy itself regarding -
  - (a) the integrity and ability of the management it has appointed; and
  - (b) the adequacy and efficiency of internal financial and other controls, accounting practices, information and reporting systems and auditing process.
- (2) Where a manager is part of a group of companies that has an audit committee for the group of companies, a manager may make use of existing group's audit committee.
- (3) An audit committee of a manager must carry out the necessary examinations and verifications and must report its findings on a regular basis to the board.
- (4) An audit committee of a manager must function effectively as part of the overall control process and must have appropriate authority and credibility in relation to the manager.
- (5) Subject to the provisions of subparagraphs (6) and (7), the board of a manager must appoint at least three of its members to serve as members of the audit committee.
- (6) The functions of the audit committee are to-
  - (a) assist the board in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied by a manager in the day-to-day administration of its business;
  - (b) facilitate and promote communication regarding the matters referred to in item (a) or any other related matter between the board and the executive officers of, the external auditor for, and the employee charged with the internal auditing of the transactions of the manager; and
  - (c) introduce such measures as in the audit committee's opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the manager.
- (7) The audit committee may be comprised of persons who may be employees of the manager. The majority of such members must not be persons employed by the manager.
- (8) The board of a manager does not have to appoint an audit committee if the member is a member of a group of companies in respect of which group annual financial statements are required to be made out in terms of section 288(1) of the Companies Act, 2008 (Act No.71 of 2008), provided an audit committee has been appointed for the holding company in that group and such audit committee has assumed the responsibilities of an audit committee in respect of all the subsidiaries in that group.
- (9) A manager must within 30 days from the date of registration as a manager inform the Authority whether it has established an audit committee which is in operation and if an audit committee is –
  - (a) in operation, submit to the Authority in summary form, details of the composition, responsibilities and operations thereof;

- (b) not in operation, indicate the steps contemplated for the implementation thereof and the proposed operative date when the details of its composition, responsibilities and operations will be submitted to the Authority.

## CHAPTER 6

### FINANCIAL SOUNDNESS AND OPERATIONAL ABILITY

#### 15. Financial soundness of significant owners

- (1) A manager must ensure that its significant owner(s) is at all times financially sound.
- (2) For the purposes of subparagraph (1), a significant owner is not financially sound if such significant owner-
- (a) does not have adequate financing or future access to capital;
  - (b) is not able to or is likely to be able to meet any of his, her or its liabilities; or
  - (c) has been the subject of a civil judgment in respect of unpaid debts which debt remains unpaid or is the subject of any pending proceedings which may lead to such a judgment.

#### 16. Financial Soundness of Managers

A manager must at all times maintain its business in a financially sound position by-

- (a) maintaining assets that are sufficient to meet its liabilities; and
- (b) conducting its business to ensure that it is able to meet its liabilities and capital requirements, as prescribed.

#### 17. Operational ability

- (1) A manager is responsible for the operations of a collective investment scheme and must ensure that it has and maintain the necessary skills, resources and systems to operate the scheme effectively.
- (2) A manager must always ensure that it has in place –
- (a) appropriate systems and controls to enable it to meet its regulatory obligations; and
  - (b) general administration processing, accounting transactions and risk control measurements to ensure accurate, complete and timeous processing of data, information reporting and the assurance of data integrity.
- (3) A manager must -
- (a) have and maintain a principal office in the Republic;
  - (b) have adequate storage and filing systems for the safe-keeping of records, business communications and correspondence;

- (c) keep records, including records referred to in section 4(4)(b) of the Act, for a period of at least five years;
  - (d) have adequate access to communication facilities, including a full-time telephone or cell phone service;
  - (e) establish and maintain a public website; and
  - (f) establish written policies and procedures and implement and sustain the necessary systems to ensure full compliance with the FIC Act.
- (4) A manager must –
- (a) maintain administration systems to be used for the administration of the scheme;
  - (b) obtain annual confirmation from an independent auditor that its systems as referred to in subparagraph (a) are capable of administering the scheme effectively; and
  - (c) provide the annual confirmation referred to in item (b) to the Authority within three months of its annual financial year-end.
- (5) A manager must submit the report contemplated in subparagraph (4) –
- (a) in accordance with procedures and control objectives determined by the Authority by notice on the official website; or
  - (b) in the absence of a determination by the Authority, in accordance with procedures and control objectives agreed upon by the manager and the auditor.

## **CHAPTER 7**

### **APPROVAL AND AMENDMENT OF PORTFOLIOS**

#### **18. Approval of a Portfolio of a Collective Investment Scheme**

- (1) A manager may have any number of portfolios in its scheme and may only establish additional portfolios in a scheme by way of a supplemental deed submitted with the application to the Authority in terms of the Act.
- (2) Application for approval of an additional portfolio referred to in paragraph 19(1) must be submitted to the Authority in the form and manner determined by the Authority by notice on the official website for such approval.
- (3) A manager must ensure that a new portfolio is not similar to or conflicts with another portfolio of the manager.
- (4) The investment objective and the investment policy which include the type of the securities and the investment strategy of a new portfolio must be clearly stipulated in the supplemental deed.



- (5) A manager must demonstrate what testing has been carried out to verify the ability of the investment policy and strategy to achieve the objectives of the new portfolio.
- (6) The portfolio must distribute income at least once a year and adhere to the provision of the deed in this regard.
- (7) A manager must ensure that the name of a new portfolio -
  - (a) is transparent, not misleading or conflicts with the name of another portfolio;
  - (b) includes the name of the manager and the type of portfolio, unless it is an incubator portfolio; and
  - (c) is aligned to the investment objective, policy and strategy of the portfolio.
- (8) An application by the manager for approval of a portfolio must be in the form and manner determined by the Authority on the official website and include, amongst others, the following -
  - (a) motivation and reasons for the application for a new portfolio which demonstrate why the portfolio is considered appropriate to launch into the market; and
  - (b) a detailed five-year feasibility study in respect of the portfolio outlining the following-
    - (i) the target market and the suitability of the portfolio for the target market motivating how the manager considered the suitability of the typical investor profile and includes, but not limited to, an investor's attitude to risk and investment time horizon;
    - (ii) the controls put in place by the manager to ensure that the portfolio is marketed and sold to the intended target market;
    - (iii) how the portfolio will be distributed to the target market;
    - (iv) details of arrangements with third parties (distributors, platforms, etc.) to distribute the portfolio;
    - (d) the manager's strategic objective for the portfolio;
    - (v) whether the management of the portfolio includes or implies a benchmark; and
    - (vi) the financial viability of the portfolio indicating projected inflows and a detailed income and expense statement.
- (9) A manager must ensure that an application for a new portfolio contains the information requested in the application form and includes-
  - (a) a pro forma supplemental deed;
  - (b) auditor's report that the manager has got the required seed capital available to be invested;
  - (c) a letter from the administration system's provider confirming the ability of the system(s) to provide services for the additional portfolio;
  - (d) an application for approval of delegation of functions, where applicable; and
  - (e) the fees that will be charged by the manager and the method of the calculation of the fees;

- (f) the different classes of participatory interests to be provided at launch;
  - (g) whether the portfolio will be offered as a tax free investment; and
  - (h) the name of the investment manager.
- (10) Subject to subparagraph (11), a manager must ensure that it launches a portfolio within six months of the date of approval of the portfolio.
- (11) Where a manager is unable to launch the portfolio within the time period referred to in subparagraph (10), the manager must before expiry of the time period provide the Authority with reasons for the failure to launch and reasons why the approval of the portfolio should not be withdrawn, and if the Authority is -
- (a) satisfied with the reasons provided by the manager, it must launch the portfolio within the further period that may be determined by the Authority by notice to the manager; or
  - (b) not satisfied with the reasons provided to it, the manager must apply to deregister the portfolio by means of a supplemental deed for the cessation of the portfolio.
- (12) A manager-
- (a) must ensure that the assets included in each portfolio are protected from creditor claims; and
  - (b) may not permit the assets of one portfolio to be used to meet the liabilities of any other portfolio.
- (13) Any amendment to a provision of the portfolio as determined in its supplemental deed must be dealt with by means of completing and submitting the application form determined by the Authority by notice on the official website.

## **19. Amendment of a portfolio**

- (1) Where application is being made for the amendment of a deed in relation to a portfolio in terms of section 98 of the Act, the applicant must provide the information requested in the application form for such approval.
- (2) A manager must, when amending a portfolio, ensure the interests of investors are protected and if required obtain the consent of the investors in the manner determined in the deed.
- (3) A manager must communicate a decision to amend a portfolio to the relevant investors in the portfolio in a manner agreed with the Authority.
- (4) A manager must, when amending a portfolio, offer investors the choice to redeem without charging management charges relating to such redemption and provide the possible taxation consequences of such redemption.
- (5) The manager must ensure that it takes into account all the relevant principles determined for considering an additional portfolio.

## **CHAPTER 8**

## CONFLICTS OF INTEREST AND COMPLAINTS MANAGEMENT

### 20. Conflicts of Interest

- (1) A manager must have and maintain an effective conflict of interest policy which is appropriate to the size, nature, scale and complexity of its business and such policy must seek to prevent, identify, eliminate, manage or disclose any actual or potential conflict of interest between the manager's interests and the interests of investors.
- (2) Criteria for identification of conflicts of interest must include the following -
  - (a) for purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a scheme or portfolio, managers must take into account, by way of minimum criteria, the question of whether the manager or a relevant person, or a person directly or indirectly linked by way of control to the manager, is in any of the following situations, whether as a result of providing portfolio management activities or otherwise:
    - (i) The manager or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the scheme or portfolio;
    - (ii) the manager or that person has an interest in the outcome of a service or an activity provided to the scheme or portfolio or another client or of a transaction carried out on behalf of the scheme or portfolio or another client, which is distinct from the scheme or portfolio interest in the outcome;
    - (iii) the manager or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the scheme or portfolio;
    - (iv) the manager or that person receives or will receive from a person other than the scheme an inducement in relation to portfolio management activities provided to the scheme or portfolio, in the form of monies, goods or services, other than the standard commission or fee for that service.
- (3) A conflict of interest policy must include -
  - (a) mechanisms for the identification of conflicts of interest;
  - (b) the circumstances which constitute or may give rise to a conflict of interest;
  - (c) measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;
  - (d) measures for the disclosure of conflicts of interest;
  - (e) processes, procedures and controls to facilitate compliance with the policy;
  - (f) consequences of non-compliance with the policy;
  - (g) where the manager is a member of a group, any circumstances of which the manager is or should be aware of which may give rise to conflict of interest resulting from the structure and business activities of other members of the group.

- (4) The procedures and the measures followed by a manager to manage conflicts of interest must be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the manager and of the group to which it belongs and to the materiality of the risk of damage to the interests of investors.
- (5) The procedures and the measures to be adopted by a manager to manage conflicts of interest must, where necessary and appropriate for the manager to ensure the requisite degree of independence, include the following:
  - (a) Effective procedures to prevent or control the exchange of information between relevant persons engaged in portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more investors;
  - (b) separate supervision of relevant persons whose principal functions involve carrying out portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the manager;
  - (c) removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out portfolio management activities;
  - (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate portfolio management activities where such involvement may impair the proper management of conflicts of interest.
- (6) A manager must keep and regularly update a record of the types of portfolio management activities undertaken by or on behalf of the manager in which a conflict of interest entailing a material risk of damage to the interests of one or more portfolio or other clients has arisen or, in the case of an ongoing portfolio management activity, may arise.
- (7) Where the organisational or administrative arrangements made by a manager for the management of conflict of interest are not sufficient to ensure with reasonable confidence that risks of damage to the interests of the scheme or portfolio or of its investors will be prevented, the management or other competent internal body of the manager must be promptly informed in order for them to take any necessary decision to ensure that the manager acts in the best interests of the scheme and its investors.
- (8) A manager must report situations referred to in subparagraph (7) to investors through any appropriate durable medium and give reasons for its decision.
- (9) A manager must at all times ensure that all its employees, delegated persons and other representatives are aware of its conflict of interest policy and the manager must provide for appropriate training in this regard.
- (10) A manager must continuously monitor compliance with, and annually review, its conflict of interest policy.

- (11) A manager must report to the Authority on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest policy.
- (12) In the event of any inconsistency between the provisions of this paragraph and any other provision made under the Act or the Financial Sector Regulation Act, 2017 (Act No.9 of 2017), and to the extent that it is impossible to apply or comply with both such provisions concurrently due to the inconsistency, the provision made under the Act or the FSR Act prevails.

## **21. Complaints Management**

- (1) A manager, must establish, maintain and operate an adequate and effective complaints management framework to ensure the effective resolution of complaints and the fair treatment of complainants that –
  - (a) is proportionate to the nature, scale and complexity of the manager's business and risks;
  - (b) is appropriate for the business model, policies, services, and clients of the manager;
  - (c) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants;
  - (d) does not impose unreasonable barriers to complainants; and
  - (e) must address and provide for, at least, the matters provided for in this paragraph.
- (2) A manager must regularly review its complaints management framework and document any changes thereto.
- (3) The complaints management framework must at least, provide for –
  - (a) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the manager;
  - (b) appropriate performance standards and remuneration and reward strategies for complaints management to ensure objectivity and impartiality;
  - (c) documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended;
  - (d) documented procedures which clearly define the escalation, decision-making, monitoring and oversight and review processes within the complaints management framework;
  - (e) appropriate complaint record keeping, monitoring and analysis of complaints, and reporting to the board of directors and any relevant committee of the board on –
    - (i) identified risks, trends and actions taken in response thereto; and
    - (ii) the effectiveness and outcomes of the complaints management framework;

- (f) appropriate communication with complainants and persons representing complainants on the complaints and the complaints processes and procedures;
  - (g) meeting requirements for reporting to the Authority and public reporting in accordance with this paragraph;
  - (h) a process for managing complaints relating to the manager's service providers, insofar as such complaints relate to services provided in connection with the manager's services or related services, which process must –
    - (i) enable the manager to reasonably satisfy itself that the manager's service providers have adequate complaints management processes in place to ensure fair treatment of complainants;
    - (ii) provide for monitoring and analysis by the manager of aggregated complaints data in relation to complaints received by its service providers and their outcomes;
    - (iii) include effective referral processes between the manager and its service providers for handling and monitoring complaints that are submitted directly to either of them and require referral to the other for resolution; and
    - (iv) include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint.
  - (j) regular monitoring of the complaints management framework generally.
- (4) The board of directors of a manager is –
- (a) responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the manager's complaints management framework; and
  - (b) any person that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must –
    - (i) be adequately trained;
    - (ii) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of customers, the subject matter of the complaints concerned and relevant legal and regulatory matters;
    - (iii) not be subject to a conflict of interest; and
    - (iv) be adequately empowered to make impartial decisions or recommendations.
- (5) A manager, must categorise reportable complaints in accordance with the following minimum categories –
- (a) complaints relating to the design of a financial product, financial service or related service, including the fees or other charges related to that financial product or financial service;
  - (b) complaints relating to information provided to clients;
  - (c) complaints relating to advice;
  - (d) complaints relating to financial product or financial service performance;
  - (e) complaints relating to a service to clients, including complaints relating to fees or investment contributions;

- (f) complaints relating to financial product accessibility, changes or switches, including complaints relating to redemptions of investments;
  - (g) complaints relating to complaints handling; and
  - (h) other complaints.
- (6) A manager must establish and maintain an appropriate internal complaints escalation and review process. Procedures within the complaints escalation and review process should not be overly complicated or impose unduly burdensome paperwork or other administrative requirements on complainants.
- (7) The complaints escalation and review process should -
- (a) follow a balanced approach, bearing in mind the legitimate interests of all parties involved including the fair treatment of complainants;
  - (b) provide for internal escalation of complex or unusual complaints at the instance of the initial complaint handler;
  - (c) provide for complainants to escalate complaints not resolved to their satisfaction; and
  - (d) be allocated to an impartial, senior functionary within the manager or appointed by the provider for managing the escalation or review process of the manager.
- (8) Where a complaint is upheld, any commitment by the manager to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.
- (9) Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any applicable escalation or review processes, including how to use them and any relevant time limits.
- (10) A manager must ensure accurate, efficient and secure recording of complaints and complaints-related information and the following must be recorded in respect of each reportable complaint-
- (a) all relevant details of the complainant and the subject matter of the complaint;
  - (b) copies of all relevant evidence, correspondence and decisions;
  - (c) the complaint categorisation as set out in subparagraph (5); and
  - (d) progress and status of the complaint, including whether such progress is within or outside any set timelines.
- (11) A manager must maintain the following data in relation to reportable complaints categorised in accordance with subparagraph (5) on an ongoing basis -
- (a) number of complaints received;

- (b) number of complaints upheld;
  - (c) number of rejected complaints and reasons for the rejection;
  - (d) number of complaints escalated by complainants to the internal complaints escalation process;
  - (e) number of complaints referred to an ombud and their outcome;
  - (f) number and amounts of compensation payments made;
  - (g) number and amounts of goodwill payments made; and
  - (h) total number of complaints outstanding.
- (12) Complaints information recorded in accordance with this subparagraph (11) must be scrutinised and analysed by the manager on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for its clients, and to prevent recurrences of poor outcomes and errors.
- (13) A manager must establish and maintain appropriate processes for reporting of the information in subparagraph (12) to its governing body or executive management.
- (14) A manager must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the manager's clients. A provider may not impose any charge for a complainant to make use of complaint processes and procedures.
- (15) A manager must ensure that –
- (a) all communications with a complainant must be in plain language.
  - (b) where feasible, provide clients with a single point of contact for submitting complaints.
  - (c) it discloses to a client –
    - (i) the type of information required from a complainant;
    - (ii) where, how and to whom a complaint and related information must be submitted;
    - (iii) expected turnaround times in relation to complaints; and
    - (iv) any other relevant responsibilities of a complainant.
- (16) A manager must within a reasonable time after receipt of a complaint acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including –
- (a) contact details of the person or department that will be handling the complaint;
  - (b) indicative and, where applicable, prescribed timelines for addressing the complaint;
  - (c) details of the internal complaints escalation and review process if the complainant is not satisfied with the outcome of a complaint;
  - (d) details of escalation of complaints to the office of a relevant ombud and any applicable timeline; and
  - (e) details of the duties of the provider and rights of the complainant as set out in the rules applicable to the relevant ombud.



- (17) Complainants must be kept adequately informed of –
- (a) the progress of their complaint; and
  - (b) causes of any delay in the finalisation of a complaint and revised timelines; and the manager’s decision in response to the complaint.

## **CHAPTER 9**

### **AMALGAMATION AND WINDING UP OF PORTFOLIOS**

#### **22. Amalgamations of portfolios**

- (1) An application for amalgamation of investment schemes or portfolios as referred to in section 99 of the Act must be submitted to the Authority in the form and manner determined by the Authority by notice on the official website.
- (2) To the extent possible, a manager should only amalgamate portfolios with similar investment objectives, policies and risk profiles.
- (3) A manager that obtains approval of the Authority to amalgamate two or more collective investment schemes or portfolios must communicate the amalgamation to the relevant investors in the manner agreed with the Authority, and such investors must be given sufficient notice and the necessary information to enable them to make an informed decision in the voting process, including the available alternatives to the amalgamation and explain the impact of each to the investors.
- (4) When amalgamating two or more collective investment schemes or portfolios a manager must –
  - (a) offer investors the choice to redeem without charging management charges relating to such redemption and provide the possible taxation consequences of such redemption; and
  - (b) carry all the legal, advisory and administrative costs related to the amalgamation.
- (5) When amalgamating two or more collective investment schemes or portfolios a manager must ensure that the fair valuation of assets will apply and address and avoid conflicts of interest arising.

#### **23. Winding up of a portfolio**

- (1) An application for termination or winding-up of a portfolio as referred to in section 102 of the Act must be submitted to the Authority in the form and manner determined by the Authority by notice on the official website.
- (2) When a manager makes a decision to wind up a portfolio it should take into account the best interest of investors in the portfolio.
- (3) When winding up a portfolio, a manager must submit a termination plan for approval by the Authority setting out the steps to be taken during the termination process, taking into account the best interest of investors. The termination plan should contain information relating to the following key matters –

- (a) the rationale for such wind up;
  - (b) the estimation of the costs of the wind up and who will bear the costs;
  - (c) whether another entity will be appointed to affect the termination (e.g. a liquidator);
  - (d) the estimated duration of the termination process and how information will be communicated to investors throughout;
  - (e) investors dealing arrangements (including the necessity for suspension of subscriptions and redemptions if applicable);
  - (f) an indication of the asset valuation method (including illiquid or hard to value assets) of the portfolio; and
  - (g) the process for dealing with illiquid assets or addressing any windfall payments due to the portfolio and its investors after the portfolio is terminated.
- (4) The Authority may consider to -
- (a) suspend investor subscriptions and redemptions during the termination process with a view of protecting the interest of investors; and
  - (b) require the manager to make an application to court for the wind up, should it be deemed necessary in certain circumstance.
- (5) A manager must submit the approval of the investment committee of the portfolio and if no such committee exists, the trustee, custodian or other third party responsible for independent oversight must provide approval.
- (6) During the winding up process the manager must ensure that adequate information about the wind up is communicated to all investors in an appropriate and timely manner.
- (7) When winding up a portfolio a manager must ensure that the fair valuation of assets will apply and address or avoid conflicts of interest arising.
- (8) A portfolio may not be finally wound up until the auditor has confirmed to the Authority that all investors had received their final settlements and all debts of the portfolio had been settled.
- (9) The report contemplated in section in subparagraph (8) must be –
- (a) in accordance with procedures and control objectives determined by the Authority by notice on the official website; or
  - (b) in the absence of a determination by the Authority, in accordance with procedures and control objectives agreed upon by the manager and the auditor.

## **CHAPTER 10**

### **REPORTING**

#### **24. Reporting to the Authority**

- (1) A manager must, at the time of submitting its audited financial statements to the Authority, also submit to the Authority –
  - (a) a written statement signed by the chairperson/managing director of the manager, describing compliance/non-compliance with paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18(8), 20, 21 and 23(7) of this Conduct Standard; and
  - (b) the latest audited financial statements of its significant owner(s).
- (2) A manager must on an annual basis submit its risk evaluation reports to the Authority.

## **CHAPTER 11**

### **SHORT TITLE, COMMENCEMENT AND REPEAL**

#### **25. Repeal, commencement and short title**

- (1) This Conduct Standard is called Governance, Fit and Proper and Other Requirements for Managers of Collective Investment Schemes and takes effect on the date of publication.
- (2) Notwithstanding subparagraph (1), a manager that was approved by the Authority prior to the publication of this Conduct Standard, must comply with this Conduct Standard within 6 months from the effective date of this Conduct Standard during which period the manager must continue to comply with Board Notice 910 of 2010, as if it has not been repealed.
- (3) The following notices are hereby repealed:
  - (a) Board Notice 910 of 2010, as published in Government Gazette No. 33571 of 21 September 2010; and
  - (b) Board Notice 911 of 2010, as published in Government Gazette No. 33571 of 21 September 2010.