



**STATEMENT SUPPORTING THE DRAFT CONDUCT
STANDARD ON GOVERNANCE, FIT AND PROPER AND
OTHER REQUIREMENTS FOR MANAGERS OF
COLLECTIVE INVESTMENT SCHEMES**



1 PURPOSE OF THE STATEMENT

- 1.1 The purpose of this document is to explain the need for, expected impact and intended operation of the draft Conduct Standard on Governance, Fit and Proper and Other Requirements for Managers of Collective Investment Schemes (draft Conduct Standard) as required by section 98(1)(a) of the Financial Sector Regulation, 2017 (Act No. 9 of 2017) (FSR Act).
- 1.2 The FSCA is intending to make this draft Conduct Standard pursuant to section 106(1)(a) of the FSRA. Section 106(1) empowers the FSCA to make conduct standards necessary to achieve the objectives of the FSRA and relevant financial sector laws, including CISCA. In this context the FSCA is empowered to make requirements relating fit and proper requirements for CIS managers.

2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

- 2.1 The concept of 'fit and proper' is central to investor protection and fair treatment of investors. In this regard it is important that requirements such as honesty and integrity, competence, financial soundness and operational ability must be central in the management and supervision of a CIS from the moment of registration. Similarly, once a CIS Manager has been registered, it is vital that there is ongoing compliance with the fit and proper requirements. Further, in terms of CISCA, a manager must carry out its obligations honestly, fairly, with due care, skill and diligence in the interest of investors and the CIS industry.
- 2.2 The current Board Notice 910 of 2010 (BN910) dealing with matters pertaining to fit and proper requirements of CIS managers and conditions was issued and gazetted on 21 September 2010. Since then significant local and international developments relating to fit and proper requirements has necessitated the review of Board Notice 910 of 2010.
- 2.3 Some of the developments include 'fit and proper requirements' that have been promulgated in other financial sector laws and subordinate legislations. In this light, and in order to mitigate regulatory arbitrage and inconsistencies, it is also necessary to align the 'fit and proper requirements' for CIS Managers with that contemplated in other financial sector laws.
- 2.4 In addition, over the years there have been a number of recommendations from the International Organisation of Securities Commissions (IOSCO) amongst others, regarding Liquidity Risk Management principles and Conflict of Interest requirements for CIS Managers.
- 2.5 As a result of the above-mentioned developments, it was decided that BN910 of 2010 should be reviewed and updated to reflect international best practices which have developed in the preceding years with regards to ongoing fit and proper requirement of CIS managers.

3 SUMMARY OF THE DRAFT CONDUCT STANDARD

- 3.1 The draft Conduct Standard sets out principles and fit and proper requirements that CIS managers must comply with on an ongoing basis.
- 3.2 In light of the fact that BN 910 dealt with both fit and proper and licensing requirements, the draft Conduct Standard demarcates between the fit and proper requirements and licensing requirements. Consequently, the licensing requirements will be provided for in a separate determination.
- 3.3 The draft Conduct Standard contains requirements relating to governance arrangements; obligations of the board; directors; competence; honesty, integrity and good standing; significant

owners; financial soundness; operational Ability; trustees and custodians; appointment of auditors; establishment of an audit committee; conflicts of interest and complaints management; risk management and liquidity risk management; portfolio applications and approval; winding up, amendment and amalgamation of a portfolio.

- 3.4 The composition of the board is determined in the draft Conduct Standard, together with the ratio of independent to executive directors
- 3.5 The draft Conduct Standard also includes the already existing treating customers fairly principles, outcomes and update the requirements taking into account international developments with regard to supervision of CIS managers. The fit and proper requirements for directors have been improved to ensure that each CIS manager appoints an executive director and to provide for clarity with regard to the meaning of an independent director.
- 3.6 The draft Conduct Standard also provides for an updated complaint resolution procedure, additional conflict of interest requirements, liquidity risk management requirements as well as guidelines and requirements for the termination of portfolios in terms of section 102 of the Act. The draft Conduct Standard also provide for the applications for amendments and amalgamations of portfolios.
- 3.7 The draft Conduct Standard further provides clarity to the existing requirements in respect of the confirmations required from the auditors pertaining to the administration systems to be used by the CIS manager, as well as the ongoing confirmations by the auditors in respect thereof. The requirement to establish an audit committee as previously contained in a Circular no 9 has now been included in the legislation.
- 3.8 The risk management framework has been improved to provide for a description of the framework.

4 STATEMENT OF IMPACT OF THE CONDUCT STANDARD

- 4.1 This draft Conduct Standard is representative of a process of updating an existing Board Notice 910 of 2010 to better reflect international best practice and the supervisory experience pertaining to CIS Managers gained since 2010. This draft Conduct Standard will lead to improve the efficiency of the supervision framework in the CIS industry which will result in enhanced investor protection, in line with the FSCA's mandate.
- 4.2 The FSCA acknowledges that there may be instances in which the implementation of the draft Conduct Standard could have some cost implication for CIS managers in aligning their business practices with the new requirements. However, in light of the fact that this is an update of an existing Board Notice and that risk management is an implied ongoing imperative for asset management, the potential cost implication is envisaged to be minimal as CIS managers have been implementing what is the vast majority of the draft Conduct Standard since 2010.

5 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

- 5.1 The draft Conduct Standard is consistent with the objectives of the FSRA, and specifically the mandate of the FSCA to protect financial customers by ensuring that persons who are registered as CIS Managers and CIS Managers are fit and proper and comply with operational requirements on an ongoing basis.
- 5.2 The draft Conduct Standard applies to all applicants as CIS Managers and management personnel and directors of CIS Managers.

- 5.3 The draft Conduct Standard is intended to come into operation on the date of final publication. However, a manager that was approved by the Authority prior to the publication of the Conduct Standard, must comply with the Conduct Standard within 6 months from the effective date of the Conduct Standard during which period the manager must continue to comply with Board Notice 910 of 2010.

6 WAY FORWARD

- 6.1 The draft Conduct Standard is published in terms of section 98(2) of the FSRA for public comment until **15 February 2021**. All submissions must be submitted via email to FSCA.RFDStandards@fsc.co.za.
- 6.2 After the public consultation process, the draft Conduct Standard will be submitted to Parliament for a period of at least 30 days while Parliament is in session.¹
- 6.3 For more information regarding the draft Conduct Standard and/or this statement please contact the Regulatory Framework Department of the FSCA at Andile.Mjadu@fsc.co.za or Marius.DeJongh@fsc.co.za.

¹ Assuming consideration of the comments do not result in significant changes to the Conduct Standard necessitating another round of public consultation.