

**NOTICE OF 2011**  
**FINANCIAL SERVICES BOARD**  
**FINANCIAL MARKETS ACT OF 2011**  
**CODE OF CONDUCT FOR AUTHORISED USERS**

Under section 75(1) of the Financial Markets Act, 2011 (Act No. \_\_\_\_ of 2011), I, Dube Phineas Tshidi, Registrar of Securities Services hereby prescribe the Code of Conduct as set out in the Schedule, with which authorised users must comply.

**D P TSHIDI**

**REGISTRAR OF SECURITIES SERVICES**

**SCHEDULE**

**Code of Conduct for Authorised Users**

**1. Definitions, construction and application**

(1) In this Code “**the Act**” means the Financial Markets Act, 2011 (Act No. \_\_\_\_ of 2011), and a word or expression to which a meaning has been assigned in the Act bears that meaning, and, unless the context indicates otherwise –

“**advertisement**”, in relation to an authorised user, means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media effected by an authorised user, which communication is directed to the general public, or any section thereof, or to any client, and is intended to call attention to, or to market or promote, the securities services offered by an authorised user, and which does not purport to provide detailed information about such services; and “**advertising**” has a corresponding meaning;

“**internal controls**” means those internal controls established in order to provide reasonable assurance of –

(a) the safeguarding of assets against unauthorised use or disposition; and

(b) the maintenance of proper accounting records and the reliability of financial information used within the business or for publication;

**“professional client”**, in relation to an authorised user, means –

(a) another authorised user;

(b) a bank;

(c) a long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;

(d) a person outside the Republic who –

(i) as a regular feature of the person’s business, renders a service similar to a “securities service” as defined in section 1 of the Act or conducts the business of a bank or a business referred to in paragraph (c); and

(ii) is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business referred to in paragraph (d)(i) by a foreign regulator with functions similar to those of the Registrar of Securities Services, the Registrar of Banks or the Registrar of Long-Term or Short-Term Insurance;

(e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the authorised user that the market value of the assets managed by the person will exceed R1 billion at all times during the rendering of securities services to the person;

(f) any other person included in the definition of ‘client’ in section 1 of the Act, who has confirmed to the satisfaction of the authorised user that the person will have assets of which the net asset value will exceed R20 million at all times during the rendering of securities services to the person, but who is not –

(i) a natural person;

(ii) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);

(iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No.131 of 1998).

(2) This Code is supplementary to the Act and exchange rules and must be construed in conjunction with the Act and such rules.

(3) This Code is binding on authorised users, their officers and employees and clients. For the purposes of this Code a reference to an authorised user includes a reference to an officer and employee of an authorised user.

## **2. General duties of authorised users**

(1) An authorised user must –

- (a) at all times render securities services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the securities services industry;
- (b) at all times exercise independent professional judgment;
- (c) conduct him- or herself in such a manner and implement such actions to further the objects of the Act; and
- (d) maintain knowledge of and comply with all applicable laws, rules and regulations governing his or her activities.

(2) No authorised user may engage in any conduct likely to bring the securities services industry into disrepute.

## **3. Furnishing of advice**

(1) An authorised user must, before advising a client -

- (a) take reasonable steps to seek from the client information about the client's financial situation, investment experience, particular needs and objectives in connection with the securities service required, to enable the authorised user to provide the client with sound advice;
- (b) conduct an analysis, based on the information obtained, for the purpose of advising the client;
- (c) identify the securities that will suit the client's risk profile and financial needs, subject to any contractual arrangement.

(2) An authorised user must take reasonable steps to ensure that the client understands the advice and the risks involved and that the client is in a position to make an informed decision.

## **4. Disclosure to clients**

(1) When an authorised user renders a securities service, representations made and information provided to a client by the authorised user -

- (a) must be factually correct;
- (b) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
- (c) must be adequate and appropriate in the circumstances of the particular securities service, taking into account the factually established or reasonably assumed level of knowledge of the client;

- (d) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;
- (e) may be provided orally and must, if the client so requests, be confirmed in writing within a reasonable time after such request;
- (f) must, if provided in writing or by means of standard forms, be in a clear and readable print size, spacing and format;
- (g) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
- (h) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant securities service renders it necessary, in which case a disclosure of the changes to the client must be made without delay.

(2) An authorised user –

- (a) must disclose full and accurate information about the fees and any other charges that may be levied on clients;
- (b) must provide best advice taking into account the desires and circumstances of a particular client, and may not advise clients with the sole purpose of maximising the income of the authorised user;
- (c) may not disclose any confidential information acquired or obtained from a client about such client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required to further the objects of the Act or is required under any law;
- (d) must act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner;
- (e) must advise a client in advance of any restrictions or limitations that may affect the access of that client to his or her funds or securities;
- (f) must provide a general explanation of the nature and material terms and risks of a relevant transaction to a client, so as to enable the client to make an informed decision; and
- (g) must disclose to the client the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the client.

## **5. Record-keeping**

- (1) An authorised user must maintain proper, complete, accurate and secure records.
- (2) (a) An authorised user must have appropriate procedures and systems in place to store and retrieve in a manner safe from destruction a record of all –
  - (i) instructions relating to a securities service rendered to a client, including verbal instructions given by the client to the authorised user; and
  - (ii) documentation relating to the contractual arrangement between the authorised user and the client.
- (b) Records may be kept in electronic or voice recorded format.
- (c) Authorised users need not keep the records themselves but must be capable of making such records available for inspection within seven days.
- (d) A record referred to in 5(2)(a)(i) must be kept for a period of at least six months after the instruction has been given. A record referred to in 5(2)(a)(ii) must be kept for a period of at least five years after the contractual relationship has been terminated.

## **6. Inducements**

- (1) An authorised user must take reasonable steps to ensure that it and any person acting on its behalf does not offer, give, solicit or accept any incentive, remuneration, consideration, commission, fee or brokerage (“valuable consideration”) as an inducement if it is likely to conflict with any duty that the authorised user owes to its clients in respect of securities services provided to those clients or any duty that the recipient of the inducement owes to its clients.
- (2) Without limiting the generality of 6(1), any valuable consideration offered, given, solicited or accepted as an inducement by an authorised user or any person acting on its behalf, in terms of an agreement with a third party or a client which relates to the provision of securities services by the authorised user to one or more clients, and which does not directly relate to, and assist in the provision of, such services to such clients or does not otherwise directly benefit the clients of the recipient of such valuable consideration, shall constitute an inducement prohibited in terms of 6(1).
- (3) An authorised user who, in terms of an agreement with a third party, directly or indirectly accepts any valuable consideration as an inducement in respect of a securities service rendered to a client, or for which the authorised user may become eligible, must disclose to the client in writing before the rendering of such service, the existence of the agreement, the nature, extent, value and frequency of receipt of such valuable consideration to the extent that such information is known prior to the rendering of the service, and the identity of the other person providing or offering the valuable consideration.

## **7. Advertisements**

- (1) Advertising material of an authorised user -

- (a) must provide accurate, complete and unambiguous information about any security or security service;
- (b) must emphasise the risk of loss and uncertainty of future results;
- (c) must discern fact from opinion; and
- (d) may not be comparative in relation to another authorised user.

(2) An advertisement by an authorised user –

- (a) may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
- (b) must, if it contains –
  - (i) performance data (including awards and rankings), include references to their source and date;
  - (ii) illustrations, forecasts or hypothetical data –
    - (aa) contain support in the form of clearly stated basic assumptions (including, but not limited to, any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
    - (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
    - (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
  - (iii) a warning statement about risks involved in buying or selling a security, prominently render or display such statement; and
  - (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
- (c) must, if the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

## **8. Safekeeping and separation of funds and assets**

(1) An authorised user must provide for -

- (a) the necessary resources and functionality to ensure that clients are able to contact the authorised user easily and timely;
- (b) the separation and identification of the assets of a client and the assets of the authorized user; and

(c) the proper accounting for the assets of each client.

(2) An authorised user may not utilise the assets of clients to finance its business activities.

(3) An authorised user may not lend, either to itself or to others, securities of the account of any client, which are eligible to be pledged or loaned, unless the authorised user has obtained a prior written authorisation permitting the lending of such securities from the client.

## **9. Client statements**

(1) An authorised user must provide to a client a written statement which complies with this Code of Conduct.

(2) Statements shall be provided to clients –

(a) at regular intervals which may not exceed three months, unless the client consents in writing not to receive the statements because they are able to access the information made available by the authorised user through electronic means, such as the internet, on a continuous basis;

(b) at such intervals of less than three months as the client requests, although the authorised user shall not be obliged to provide statements more frequently than monthly;

(c) monthly if the client's portfolio as managed by the authorised user includes any open positions in listed derivative instruments; or

(d) at such intervals as may be agreed between the authorised user and a professional client.

(3) A client statement must contain such information as is reasonably necessary to enable the client to –

(a) produce a set of financial statements;

(b) determine the composition of the securities comprising the portfolio held by the authorised user or for which the authorised user is accountable to the client and the changes thereto over the reporting period, if applicable; and

(c) determine the market value of the securities comprising the portfolio held by the authorised user or for which the authorised user is accountable to the client and the changes therein over the reporting period, if applicable.

(4) To provide the client with the information necessary for it to review the operation of its account and make appropriate investment decisions, a client statement must contain at least the following information:

(a) the quantity, description and market value of each investment comprising the portfolio held by the authorised user or for which the authorised user is accountable to the client, at the reporting date;

- (b) the amount of funds held by the authorised user or which has been invested by the authorised user on behalf of the client and for which the authorised user is accountable to the client, at the reporting date;
- (c) if any of the securities are reflected in a foreign currency, the relevant currency exchange rate at the reporting date must be reflected;
- (d) securities purchased or sold during the reporting period;
- (e) receipts and payments of funds during the reporting period;
- (f) details of income earned and expenditure incurred during the reporting period;
- (g) non-cash transactions during the reporting period, including non-cash components of corporate actions and option expiries;
- (h) securities transferred into and out of the portfolio during the reporting period;
- (i) identification of those securities which at the reporting date were loaned to any third party but for which the authorised user is still accountable to the client;
- (j) the quantity, description and market value of any securities, or the amount of funds, held as collateral by the authorised user on behalf of the client in respect of any loans made by the client;
- (k) identification of those securities or funds which at the reporting date were utilised to secure loans to the client or borrowings made on behalf of the client;
- (l) identification of those securities or funds which at the reporting date were utilised as margin in respect of open positions in any financial product;
- (m) in respect of investments in listed derivative instruments, a description of the underlying financial product, index, commodity or thing, the expiry month and in the case of options, the exercise or strike price; and
- (n) if the statement reflects any securities or funds which are not held by the authorized user and for which the authorised user is not accountable to the client, it should clearly indicate that fact in relation to such securities or funds.

(5) The information referred to in subparagraph (4) may be provided to the client in separate statements either during the reporting period or as at the reporting date.

(6) A client statement must be provided either to the client or to an agent or third party nominated by the client in writing.

## **10. Internal control and risk management**

(1) An authorised user must employ the resources, procedures and technological systems necessary for the effective conduct of its business.



(2) The system of internal control employed by the authorised user must be designed to ensure that –

- (a) the relevant business can be carried on in an orderly and efficient manner;
- (b) financial and other information used or provided by the authorised user is reliable;
- (c) all transactions and financial commitments entered into are recorded and are within the scope of authority of the authorised user or the officer or employee acting on behalf of the authorised user;
- (d) there are procedures to safeguard the assets of the authorised user and assets belonging to any other person for which the authorised user is accountable, and to control liabilities; and
- (e) there are measures, so far as is reasonably practicable, to minimize the risk of loss to the authorised user or the clients of the authorised user from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the authorised user or the management of the authorised user.

(3) An authorised user must as far as is reasonable adopt sound risk management principles and procedures.

(4) The principles and procedures of risk management must be designed to ensure that the records of the authorised user are maintained in such a manner as to promptly disclose financial and business information that will enable the authorised user or the management of the authorized user to –

- (a) identify, quantify, control and manage the risk exposures of the authorised user;
- (b) make timely and informed business decisions;
- (c) monitor the performance and all aspects of the business of the authorised user;
- (d) monitor the capital of the authorised user to ensure compliance with the capital adequacy requirements imposed in terms of the rules of the applicable self-regulatory organisation.

(5) An authorised user must be able to describe and demonstrate the objectives and operation of such systems, principles and procedures referred to in paragraphs (1) to (4) above to its auditor, the applicable self-regulatory organisation and the registrar.

## **11. Guarantees and insurance cover**

An authorised user must, if, and to the extent required by the exchange, maintain appropriate guarantees or professional indemnity or fidelity insurance cover to mitigate the risks inherent in his or her business and to which clients are exposed.

## **12. Waiver of rights**

An authorised user may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of this Code, or recognise, accept or act on any such waiver by the client, and any such waiver is void.

### **13. Exemption**

An authorised user is exempted from complying with the requirements of paragraphs 3, 4(2)(b) and 4(2)(f) of this Code when dealing with a professional client.

### **14. Commencement**

This Notice comes into operation on the date on which the Act comes into operation.