

# Legal Conditions

August 2021

---

## Legal Conditions

Thank you for visiting our website. Please note that the use of Sygnia's website and its content is governed by a legal framework that regulates the relationship between Sygnia and its users and investors. Please familiarise yourself with the content below prior to using the website:

- Online terms and conditions of use
- Disclaimer
- Money laundering
- Terms relating to all e-mail communication.

### Online terms and conditions of use

The user/investor hereby acknowledges and agrees that by surfing, browsing or registering on the Sygnia website for the purposes of accessing information and details pertaining to Sygnia or any of its financial products and services, the user/investor is deemed to have both read and agreed to all the terms and conditions contained therein, our privacy and security policy and the disclaimers.

Sygnia does not warrant in any way that information and materials available on this site are appropriate for use in all jurisdictions available on the web, or that transactions, securities, products, instruments or services offered on this site are available or indeed appropriate for sale or use in all jurisdictions, or by all investors or other potential clients. Those who access this site do so at their own initiative and are therefore responsible for compliance with applicable local laws and regulations.

Please familiarise yourself with the content below prior to using the website.

## Acceptance of online terms and conditions

Online terms and conditions of use come into effect when you access our website for the first time, and they constitute a binding legal agreement between Sygnia and yourself. The current version of these terms and conditions will govern our respective rights and obligations each time you access this site, and, unless otherwise stated in the current version, all previous versions shall be superseded by the current version.

Sygnia reserves the right to amend the online terms and conditions at any time. By accessing our site you are automatically bound to the version of the conditions published on the site at the time of your visit to this site. You agree to review the current version each time you access the site.

## Accuracy of information

Whilst every effort has been made to ensure the accuracy of information contained on this website, Sygnia, its directors or employees provide no representation or warranty, express or implied, regarding the accuracy, completeness or correctness of information contained in this website.

The information and content accessible through this site are provided by Sygnia as general information about the company and its products and services. We do not guarantee the suitability or potential value of any information or particular investment source. Any information in this website is not intended, nor does it constitute, financial, tax, legal, investment or other advice.

Before making any decision or taking any action regarding your finances, you should consult a qualified financial advisor. Nothing contained in any service or any other content on our website constitutes a solicitation, recommendation, endorsement or offer by Sygnia but shall merely be deemed to be an invitation to do business with us.

# Legal Conditions

---

## Privacy and security

Sygnia respects your rights to privacy, as well as the confidentiality of any information you disclose to us, and consequently undertakes not to sell or exchange personal information with any third party outside of the Sygnia group of companies for any purpose whatsoever. However, Sygnia reserves the right to disclose or report personal information in limited circumstances where it is believed in good faith that disclosure is required under law (included but not limited to a violation or suspected violation of the Prevention of Organised Crime Act or the Financial Intelligence Centre Act), to cooperate with regulators or law enforcement authorities, to perform necessary credit checks or collect or report debts owed to Sygnia, to protect its rights or property or to disclose information on reasonable request by the unit trust fund in which the investor has invested.

Sygnia limits the gathering and use of personal information to that which is deemed necessary to administer its business and to deliver an efficient service to the investor and uses the information consistent with the purpose for which it was originally requested.

More details are available under the Privacy and Security Policy section.

## Online services and registration

Some of our online services, as well as access to certain information, are subject to specific registration procedures and approvals, which we may accept or reject at our sole discretion. These online services may be governed by separate terms and conditions specified within the sections of the website where the online services are provided. In the event of conflict between conditions, the provisions of the online service terms and conditions will apply.

## Third party information and hyperlinks

We may use the services of third-party service providers to supply information on the site. We have no control over this information and make no representations or warranties of any nature whatsoever as to its accuracy, appropriateness or correctness. You agree that such information is provided “as is”, and we will not be directly or indirectly liable for any damages that may arise from your reliance on it.

All quotes, news, market information or data shown on the site by way of live information feeds are delayed by at least 15 minutes unless otherwise stated. You should always select the “refresh” or similar page update function on your Internet browser to ensure that the information you are viewing is the most current.

There may also be hyperlinks or automatic links from the Sygnia website to third party websites, and we do not accept any responsibility nor any liability for the content, services, products or any advice offered on such websites. The fact that we provide a particular link does not necessarily mean that we endorse, authorise or sponsor that website, nor that we are affiliated with such website’s owners or sponsors.

## Third party information and hyperlinks

We may use the services of third-party service providers to supply information on the site. We have no control over this information and make no representations or warranties of any nature whatsoever as to its accuracy, appropriateness or correctness. You agree that such information is provided “as is”, and we will not be directly or indirectly liable for any damages that may arise from your reliance on it.

All quotes, news, market information or data shown on the site by way of live information feeds are delayed by at least 15 minutes unless otherwise stated. You should always select the “refresh” or similar page update function on your Internet browser to ensure that the information you are viewing is the most current.

There may also be hyperlinks or automatic links from the Sygnia website to third party websites, and we do not accept any responsibility nor any liability for the content, services, products or any advice offered on such websites. The fact that we provide a particular link does not necessarily mean that we endorse, authorise or sponsor that website, nor that we are affiliated with such website’s owners or sponsors.

# Legal Conditions

---

## Permission to set up hyperlinks

No person is allowed to establish a hyperlink, frame, metatag or similar reference, whether electronically or otherwise (collectively referred to as linking), to this site or any subsidiary pages before receiving Sygnia's prior written approval, which may be withheld or granted at our sole discretion.

No person is entitled to send search-software (crawlers) to retrieve information from the website for reproduction or processing, in any manner or form, without our prior written consent.

An application for linking must be submitted to [info@sygnia.co.za](mailto:info@sygnia.co.za). If you do not receive an explicit written response from us within five business days of your request, please consider your request as having been rejected.

Breach of these conditions entitles us to take legal action without prior notice to you, and you agree to reimburse all costs associated with such legal action.

## Copyright and intellectual property laws

In using the website you acknowledge that all information and material displayed on the Sygnia website, including but not limited to logos, graphics, multimedia items and research papers, is confidential, is protected by copyright and other intellectual property laws and is restricted to utilisation for information purposes only. Any unauthorised copying, reproduction, transmission, distribution, dissemination, sale, publication or exploitation of the displayed material would constitute an infringement of the protection afforded by law and is therefore prohibited in any form whatsoever.

All logos and trademarks shown on this site are our registered and unregistered trademarks or those of third parties. Nothing on this site should be construed as granting any license or right to use any trademark without our prior written permission and/or that of third parties, as the case may be. You may not, without our prior written permission, use our intellectual property or that of third parties for any other purposes.

An application to use our intellectual property must be submitted in writing to [info@sygnia.co.za](mailto:info@sygnia.co.za). If you do not receive an explicit written response from us within five business days of your request, please consider your request as having been rejected.

## Restriction on the use of the website

In particular, you may not:

- reproduce, modify or create derivative works from; publish, distribute, transmit or display; or license or transfer any of the contents on the website, unless you have our prior written permission;
- decompile, reverse engineer or disassemble the website, a linked web site, or software;
- post on or transmit to the website content of an unlawful nature, for example: (a) content that is threatening, libellous, defamatory, obscene, scandalous, inflammatory, pornographic or profane; or (b) that could damage our image or ability to do business;
- use the website in a manner that could damage, disable, overburden or impair any Sygnia server or network connected to any Sygnia server or interfere with any other party's use of the website; or gain unauthorised access to information from the website, a Sygnia server or a network connected to a Sygnia server – through hacking, password mining or any other means.

# Legal Conditions

---

## Hardware and software requirements

You are required to use and maintain hardware and software of sufficient quality and performance capability and to use only the latest versions of Microsoft Internet Explorer and Netscape browsers. Your failure to use these browsers may result in a higher security risk and/or cause some or all of the functionality of the site not to operate properly or at all, and Sygnia shall not be held liable in this regard.

Software, if any, made available for download on or via our site is governed by license conditions that establish a legal relationship with the licensor. You indemnify us against any breach of these license conditions. We give no warranty and make no representation, whether express or implied, as to the quality or fitness for purpose of the use of such software.

## Limitation on virus protection

No warranty, whether express or implied, is given that any files, downloads or applications available via this site are free of viruses, trojans, bombs, time-locks or any other data or code that has the ability to corrupt or affect the operation of your computer, database, network or other information system.

## User ID and passwords

If you subscribe to a service or product provided by us on the website whereby you choose a personal user ID and/or password, you remain entirely responsible for:

- maintaining the confidentiality of your user ID and/or password;
- all activities that occur in your account, either with or without your knowledge;
- notifying us immediately of any unauthorised use of your user ID and/or password or any other breach of security; and
- losses incurred by us or another party due to someone else using your user ID and/or password.

## Electronic transmission of information

Information transmitted via the Internet, including e-mail, is susceptible to unlawful access or monitoring. Users/investors shall bear all risk of transmitting such information in this manner and under no circumstances will African Harvest be liable for any loss, harm or damage suffered by them as a result thereof. Sygnia reserves the right to request independent verification of any information transmitted via the website or e-mail.

All e-mail communication from Sygnia is governed by legal conditions as set out in Terms Relating to e-Mail Communication.

## Termination, suspension and limitation

We may modify, suspend or discontinue the site, whether temporarily or permanently, without notice. We may also impose limits or conditions on the right to certain services, features or functions, and we may restrict access to parts of or all of the services on the site.

## Warranty limitations

We do not warrant that the site or online services will be error-free or will meet any particular criteria of accuracy, completeness or reliability of information, performance or quality.

We expressly disclaim all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security and accuracy.

# Legal Conditions

---

## Legal capacity to enter agreements

You hereby warrant that you have the required legal capacity to enter into and be bound by contractual terms – minors must be assisted by their legal guardians when reading these conditions. If you are unsure whether you have the legal capacity to enter into agreements, contact someone able to provide you with this information before you continue using this site.

## Disclaimer and limitation of liability

The website and the online services are provided “as is”, and Sygnia makes no express or implied representations or warranties with regard thereto. Without limiting the generality of the foregoing:

- Sygnia does not warrant that the website or online services will be error-free or will meet any particular criteria of accuracy, completeness or reliability of information, performance or quality.
- Sygnia expressly disclaims all implied warranties, including, without limitation, warranties of merchantability, title, fitness for a particular purpose, non-infringement, compatibility, security and accuracy.

Sygnia, any company in the Sygnia group, its shareholders, agents, consultants and employees will not be liable for any damages whatsoever relating to the use of the website, the online services or the information contained therein including, without limitation, any direct, indirect, special, incidental, consequential or punitive damages, whether arising out of contract, statute, delict or otherwise.

Without derogating from the generality of the above, we will not be liable for:

- Any interruption, malfunction, downtime or other failure of the site or online services, our system, databases or any of its components, for whatever reason;
- Any loss or damage arising from your orders, investment decisions, purchases or disposal of goods and services, including financial instrument(s) or currency, from third parties, based on the information provided on this site;
- Any loss or damage with regard to customer data or other data directly or indirectly caused by malfunction of our system, third party systems, power failures, unlawful access to or theft of data, computer viruses or destructive code on our system or third party systems; programming defects or negligence on our part;
- Any interruption, malfunction, downtime or other failure of goods or services provided by third parties, including, without limitation, third party systems such as the public switched telecommunication service providers, internet service providers, electricity suppliers, local authorities and certification authorities;
- Any event of vis major or any other event over which we have no direct control.

## Dispute resolution

All transactions and interactions conducted by the medium of this website, whether in whole or in part, shall be subject to the laws of the Republic of South Africa, and any disputes relating to the above shall be submitted to and decided by arbitration.

You accept that:

- The arbitration shall be held with only the parties and their representatives present thereat at the offices of the
- Arbitration Foundation of Southern Africa, Cape Town, Western Cape Province, South Africa.
- The arbitration shall be governed by the Rules of the Arbitration Foundation of Southern Africa, in terms of South
- African law, and shall be heard by an arbitrator or arbitrators appointed by the Foundation.

# Legal Conditions

---

- The arbitrator shall have the fullest and freest discretion with regard to the proceedings, save that s/he shall be obliged to give her/his award in writing fully supported by reasons. Her/His award shall be final and binding on the parties to the dispute, save that a party shall be entitled to apply to the High Court of South Africa to set aside the award in regard to questions of law or in the event of manifest or clerical error.
- Either party shall be entitled to have the award made an order of court of competent jurisdiction.
- The parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- The arbitrator shall have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.

No alternative dispute resolution code is applicable to transactions and interactions conducted by the medium of this website, unless otherwise determined from time to time, in which case such dispute resolution codes are to be made electronically accessible to the user.

## Jurisdiction

All use of the website, transactions and interactions conducted through the medium of this website, whether in whole or in part, shall be subject to South African law and only South African courts shall have jurisdiction to hear disputes arising therefrom or from these conditions.

## Breach and cancellation

Any breach by you of any nature whatsoever of these express or implied online terms and conditions shall entitle Sygnia to immediately terminate the delivery of service to you without prior notice and without prejudice to Sygnia's other rights in terms of these conditions, common law or statute.

We further reserve the right to:

- refuse further access to the website if we are unable to verify or authenticate any of the information you provide to us, or we believe that you are conducting activities that are illegal, abusive, may challenge the integrity of the website or damage Sygnia in any way;
- refer any breach to the police if such breach constitutes a crime; and
- claim damages for all loss and damage we suffer, and expenses we incur, as a result of a breach.

## Address for Legal Notification Purposes

Our address for any legal notice is:

7th Floor, The Foundry  
Cardiff Street, Green Point  
Cape Town, South Africa  
8001

# Legal Conditions

---

## Prevailing law

The conditions and terms of use shall be governed and construed in accordance with the law of the Republic of South Africa without reference to any conflict of law provisions.

## General provisions

The headings of the clauses in the conditions are provided for convenience and ease of reference only and will not be used to interpret, modify or amplify the terms of the conditions.

Where any dates or times need to be calculated in terms of the conditions, the international standard time: GMT plus two hours shall be used.

No failure or delay by us to exercise any of our rights will be construed as a waiver of any such right, whether this is done expressly or implied, nor will it affect the validity of any part of these conditions or prejudice our right to take subsequent action against you.

If any of these terms, conditions or provisions are held to be invalid, unlawful or unenforceable, the term, condition or provision will be deleted from the remaining terms, conditions and provisions, which will continue to be valid to the full extent permitted by law.

Should you have any questions or require further clarity with respect to anything contained in these terms and conditions, please email us at [info@sygnia.co.za](mailto:info@sygnia.co.za) and we will respond to you as soon as possible.

## Disclaimer

Information contained on the website is updated on a regular basis, but due to its nature may quickly become outdated. Users are therefore cautioned to independently verify the correctness of information contained on the website.

Sygnia accepts no liability of any sort resulting from reliance being placed upon outdated information contained on the website by any user or other person.

Whilst every effort is made to represent accurate financial and technical information on an ongoing basis, inadvertent errors and typographical inaccuracies may occur.

Information, laws, rules and regulations may also change from time to time. Information contained on the website is therefore made available without any express or implied representation or warranty whatsoever. Any warranty implied by law is hereby excluded except to the extent that such exclusion would be unlawful.

Sygnia disclaims liability for any expenses incurred or any damage (whether direct or consequential), claims or costs sustained by users arising from use of the service or from reliance being placed upon any information, links or representations provided through the website.

# Legal Conditions

---

## Money laundering

Sygnia is required to verify the identity of and to obtain certain information from prospective investors within parameters aimed at the prevention of money laundering. Investors may be required to produce a copy of a duly certified identification document, together with copies of recent bank statements or cancelled cheques and such other documents that Sygnia may from time to time require. Sygnia will not process any transactions until such time as it has received and is satisfied with all the information and documentation required to verify the investor's identity.

Additional documentation required at the outset includes (but is not limited to):

- Individuals: an original certified copy of the front page of the investor's ID document plus a copy of a utility bill;
- Company: an original certified copy of the Director's resolution authorising the investment and nominating (a) person/s to sign all documents on behalf of the Company, together with an original sample signature of the nominated person/s and an original certified copy of the signatory's/signatories' ID and an original certified copy of the Company's Certificate of Incorporation;
- Close Corporation ("CC"): an original certified copy of the members' resolution authorising the investment and nominating (a) person/s to sign all documents on behalf of the CC, together with an original sample signature of the nominated person/s, an original certified copy of the signatory's/signatories' ID and an original certified copy of the CK1, approved by the Registrar of CCs;
- Trust: an original certified copy of a resolution authorising the investment by the board of trustees and nominating (a) person/s to sign all documents on behalf of the Trust, together with an original sample signature of the nominated person/s, an original certified copy of the signatory's/signatories' ID, an original certified copy of the Letter of Authority with specimen signature of all the Trustees and original, certified copies of IDs of the Trustees;
- Partnership: an original letter from the partners on a letterhead, authorising the investment and nominating (a) person/s to sign all documents on behalf of the Partnership, together with an original sample signature of the nominated person/s and original certified copies of the signatory's/signatories' ID

## Terms relating to all e-mail communication

The following terms and conditions relate to all e-mail communication sent on behalf of Sygnia. Please familiarise yourself with these.

- The contents of this e-mail and any accompanying documentation are confidential, and any use thereof, in whatever form, by anyone other than the addressee is strictly prohibited. If you have received it by mistake, kindly inform us of such mistake, as well as deleting it from your system; you should not copy the message or disclose its contents to anyone.
- The content of this email and any accompanying documentation relating to Sygnia Investment Holdings (Pty) Ltd and its subsidiaries ("Sygnia") are owned by Sygnia and are protected by copyright and other intellectual property laws. All rights not expressly granted are reserved.
- E-mail is an informal method of communication and is subject to possible corruption and interception. Sygnia cannot assure that the integrity of this communication has been maintained, or that it is free of errors, viruses, interception, tampering or interference. Sygnia therefore disclaims liability or legal responsibility for the contents of this electronic message, its non-delivery or incorrect delivery for whatever reason, its effect on electronic devices or its transmission in an unencrypted medium.
- Any views or opinions expressed in this message are those of the individual sender and do not create obligations on or represent any commitment by Sygnia, except where the sender specifically states it to be the view or opinion of Sygnia.
- Sygnia reserves the right to monitor, review and disclose all information transmitted or received by employees via email. Employees do not have any privacy right in the creation of, sending of, receipt of or storage of information (e.g. email messages, internet pages) on the systems of Sygnia.
- This e-mail and any accompanying documentation are to be interpreted and implemented in accordance with the laws of the Republic of South Africa.
- Any dispute which arises in regard to the interpretation of, or the carrying into effect of, any of the parties' rights and obligations arising from this e-mail or accompanying documentation, shall be submitted to and be referred for decision by a single arbitrator, to be agreed upon between the parties, or, in default of agreement for fourteen days, to be appointed at the request of either party, in accordance with, and subject to, the provisions of the Arbitration Act 42 of 1965, as amended.



# Legal Conditions

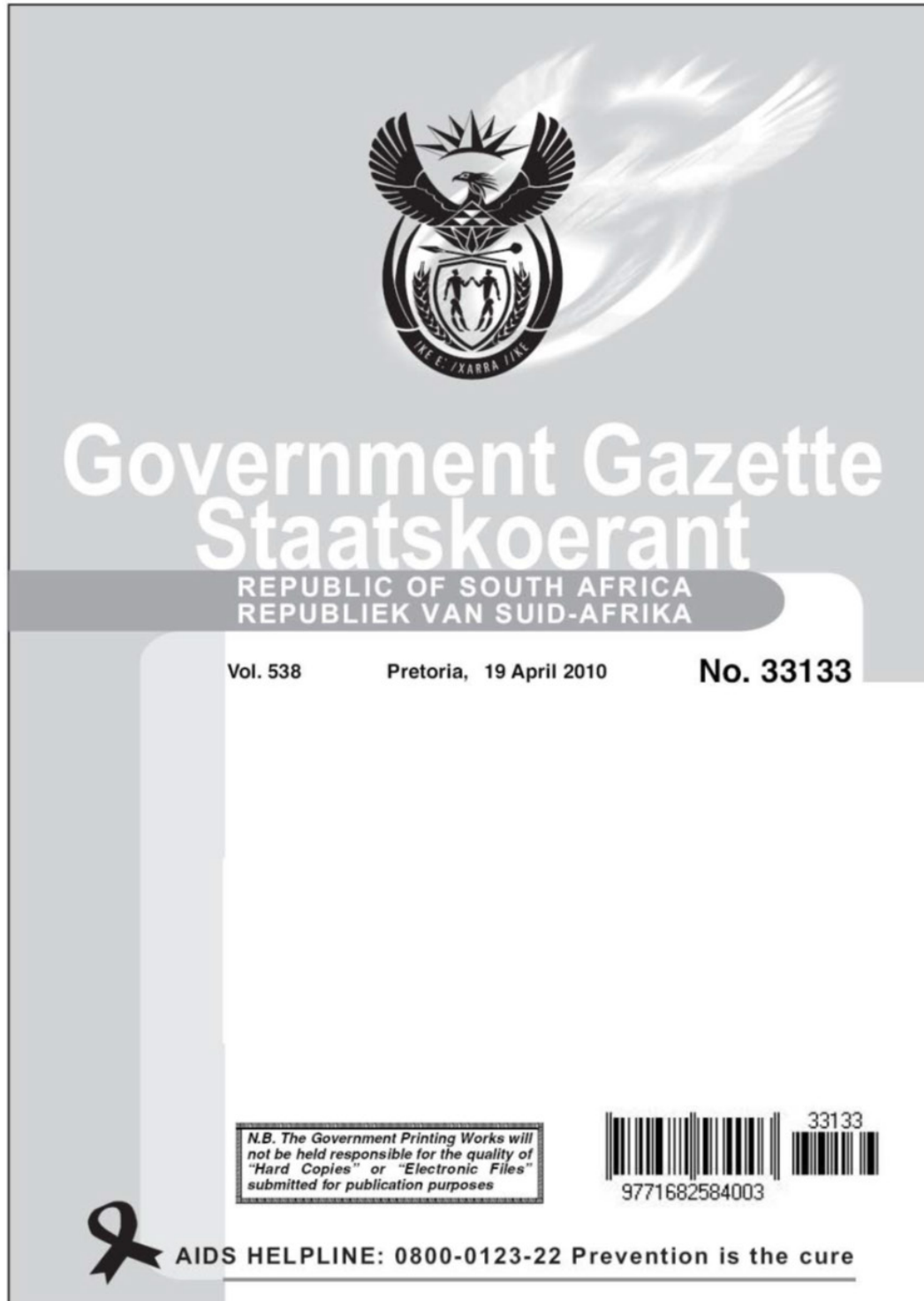
---

- Nothing contained in this email constitutes a solicitation, recommendation, endorsement or offer by Sygnia, but shall merely be deemed to be an invitation to do business with us.
- By communicating with us through electronic means, you consent to receive communications electronically and agree that all agreements, notices, disclosures and all other communications transmitted by electronic means satisfy any legal requirement, including but not limited to the requirement that such communication should be “in writing”.

For further information please contact the Compliance Officer at [info@sygnia.co.za](mailto:info@sygnia.co.za)

# Legal Conditions

---



G10-042732—A

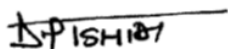
33133—1

NOTICE 58 OF 2010

**FINANCIAL SERVICES BOARD**

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002:  
AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR  
AUTHORISED FINANCIAL SERVICES PROVIDERS AND  
REPRESENTATIVES**

I, **DUBE PHINEAS TSHIDI**, the Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Service Providers and representative bodies of the financial services industry, and client and consumer bodies determined by the Advisory Committee, hereby, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), amend the General Code of Conduct for Authorised Financial Services Providers and Representatives published in Board Notice No. 80 of 2003, *Gazette* 25299 of 8 August 2003, as set out in the schedule.



**DP Tshidi,**  
*Registrar of Financial Services Providers*

## SCHEDULE

### Definitions

1. In this schedule, "General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003 and amended by Board Notice No. 43 of 2008.

### Amendment of section 1 of the General Code:

2. Section 1 of the General Code is hereby amended by -
  - (a) the insertion in subsection (1) after the definition of "advertisement" of the following definitions:  
"associate" -
    - (a) in relation to a natural person, means -
      - (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
      - (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;
      - (iii) a parent or stepparent of that person;
      - (iv) a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
      - (v) a person who is the spouse, life partner or civil union partner of a person referred to in subparagraphs (ii) to (iv);
      - (vi) a person who is in a commercial partnership with that person;
    - (b) in relation to a juristic person -
      - (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
      - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
      - (iii) which is not a company or a close corporation as referred to in subparagraphs (i) or (ii), means another juristic person

which would have been a subsidiary or holding company of the first-mentioned juristic person -

- (aa) had such first-mentioned juristic person been a company; or
- (bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
- (iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;
- (c) in relation to any person -
  - (i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph;
  - (ii) includes any trust controlled or administered by that person.

**“company”** means a company under the Companies Act, 1973 (Act No. 61 of 1973);

**“conflict of interest”** means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, -

- (a) influence the objective performance of his, her or its obligations to that client; or
- (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client,

including, but not limited to -

- (i) a financial interest;
  - (ii) an ownership interest;
  - (iii) any relationship with a third party;”;
- (b) by the insertion in subsection (1) after the definition of “direct marketer” of the following definitions:
- “distribution channel”** means -
- (a) any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in

terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client;

- (b) any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;
- (c) any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

**“fair value”** has the meaning assigned to it in the financial reporting standards adopted or issued under the Companies Act, 1973 (Act No. 61 of 1973);

**“financial interest”** means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than –

- (a) an ownership interest;
- (b) training, that is not exclusively available to a selected group of providers or representatives, on –
  - (i) products and legal matters relating to those products;
  - (ii) general financial and industry information;
  - (iii) specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;

**“holding company”** means a holding company as defined in section 1(4) of the Companies Act, 1973 (Act No. 61 of 1973);

**“immaterial financial interest”** means any financial interest with a determinable monetary value, the aggregate of which does not exceed R 1 000 in any calendar year from the same third party in that calendar year received by –

- (a) a provider who is a sole proprietor; or
- (b) a representative for that representative's direct benefit;

- (c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;";
- (c) the insertion in subsection (1) after the definition of "provider" of the following definitions:
  - ""**ownership interest**" means -
    - (a) any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or an proprietary interest held as an approved nominee on behalf of another person; and
    - (b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;
  - "**subsidiary**" means a subsidiary as defined in section 1(3) of the Companies Act, 1973 (Act No. 61 of 1973);
  - third party**" means -
    - (a) a product supplier;
    - (b) another provider;
    - (c) an associate of a product supplier or a provider;
    - (d) a distribution channel;
    - (e) any person who in terms of an agreement or arrangement with a person referred to in paragraphs (a) to (d) above provides a financial interest to a provider or its representatives".

**Amendment of section 3 of the General Code:**

3. Section 3 of the General Code is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:
  - "(b) a provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;
  - (c) a provider or a representative must, in writing, at the earliest reasonable opportunity –
    - (i) disclose to a client any conflict of interest in respect of that client, including –
      - (aa) the measures taken, in accordance with the conflict of interest management policy of the provider referred to in section 3A(2), to avoid or mitigate the conflict;



- (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
- (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and
- (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed.”.

#### **Insertion of section 3A in the General Code**

4. The following section is hereby inserted after section 3 of the General Code:

#### **“3A. Financial interest and conflict of interest management policy**

- (1)(a) A provider or its representatives may only receive or offer the following financial interest from or to a third party –
- (i) commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
  - (i) commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);
  - (iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;
  - (iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if those fees –
    - (aa) are specifically agreed to by a client in writing; and
    - (bb) may be stopped at the discretion of that client;
  - (v) fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered;
  - (vi) subject to any other law, an immaterial financial interest; and



- (vii) a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.
  - (b) A provider may not offer any financial interest to a representative of that provider for -
    - (i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
    - (ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
    - (iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.
  - (c) For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to section 3A(1)(b), in respect of its representatives.
- (2)(a) Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.
- (b) A conflict of interest management policy must –
- (i) provide for the management of conflicts of interest as defined in section 1, and -
    - (aa) mechanisms for the identification of conflicts of interest;
    - (bb) 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;
    - (cc) measures for the disclosure of conflicts of interest;
    - (dd) processes, procedures and internal controls to facilitate compliance with the policy; and
    - (ee) consequences of non-compliance with the policy by the provider's employees and representatives; and

- (ii) specify the type of and the basis on which a representative will qualify for a financial interest that the provider will offer a representative and motivate how that financial interest complies with section 3A(1)(b);
  - (iii) include a list of all its associates;
  - (v) include the names of any third parties in which the provider hold an ownership interest;
  - (vi) include the names of any third parties that holds an ownership interest in the provider; and
  - (vii) include the nature and extent of the ownership interest referred to in subparagraph (v) and (vi); and
  - (viii) be drafted in an easily comprehensible form and manner.
- (c) A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.
- (d) A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.
- (e) A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
- (f) A provider must publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.
- (3) A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.
- (4)(a) A compliance officer or, where the provider need not, in terms of the Act, have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.
- (b) The report referred to in paragraph (a) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

---

**Short title and commencement**

5. (1) This Notice is called the General Code of Conduct for Authorised Financial Services Providers and Representatives Amendment Notice, 2010.
- (2) This Notice comes into operation on the date of publication thereof in the *Gazette*.
- (3) Despite subsection (2), –
- (a) the amendments to section 3 of the General Code, takes effect three months after the date on which this Notice takes effect;
  - (b) the insertion of section 3A(1)(a) and (c), and section 3A(3) in the General Code takes effect six months after the date on which this Notice takes effect; and
  - (c) the insertion of section 3A(1)(b) and section 3A(2) in the General Code takes effect twelve months after the date on which this Notice takes effect.
- (4) Until section 3A(2) takes effect section 3(1)(c)(i)(aa) must be read as follows:
- “(aa) the measures taken, to avoid or mitigate the conflict;”.
-