STATEMENT SUPPORTING THE DRAFT CONDUCT STANDARD - ADVERTISING, MARKETING AND INFORMATION DISCLOSURE REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES

FSCA

Financial Sector
Conduct Authority

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 - Advertising, Marketing and Information Disclosure Requirements for 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 Financial Sector Conduct Authority (FSCA) is intending to make the draft Conduct Standard pursuant to sections 114(3) and 90(4), read with section 114(4)(b) of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) (CISCA), and sections 106(1)(a), read with 106(2)(b) of the FSR Act. These sections empower the FSCA to make conduct standards necessary to achieve the objectives of the FSR Act and relevant financial sector laws, including CISCA. In this context the FSCA is empowered to make requirements relating to advertising and marketing of CIS and its portfolios and the disclosure of information to investors in collective investment schemes.

2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

2.1 Fairness to investors requires that they are able to evaluate the suitability of a portfolio as an investment. Further, investors must be protected from deceptive, misleading unfair and/or fraudulent conduct through advertising and marketing material.

2.2 Board Notice 92 of 2014 (BN92), which was published in 2014, currently deals with matters pertaining to advertising, marketing and disclosures of a collective investment scheme (CIS) and its portfolios. Since then significant work has been done in the local and international spheres which has had an impact on the practical implementation of BN92.

2.3 In addition, several International Organisation of Securities Commissions (IOSCO) reports have noted the following best practices which needed inclusion in local regulations to ensure that South African customers are better informed and protected:

- 2.3.1 specific to Money Market Funds but relevant to all CIS portfolios, enhanced disclosures to emphasise the absence of a capital guarantee and liquidity constraints during stressed periods;[1]
- 2.3.2 investors should receive effective disclosures pertaining to the liquidity risks and risk management process associated with their CIS portfolio of choice;[2]
- 2.3.3 investors should receive effective Point of Sale disclosures;[3] and
- 2.3.4 better disclosures and information pertaining to Environmental, Social and Governance matters.[4]

2.4 Following engagements with the local CIS industry it has also been brought to the FSCA's attention that certain matters noted in BN92 can be better defined and stated more clearly. This was achieved through an official consultation process and two workshops with the Association of Savings and Investments South Africa.

2.5 As a result of all of these developments, it was decided that BN92 should be reviewed and updated to reflect international best practices which have developed in the preceding years.

[1] IOSCO Final Report: Policy Recommendations for Money Market Funds: Recommendation 13 & 14.
[2] IOSCO Final Report: Recommendations for Liquidity Risk Management for Collective Investment Schemes: Recommendation 7.
[3] The Joint Forum: Point of Sale disclosure in the insurance, banking and securities sectors, April 2014.
[4] IOSCO Final Report: Sustainable finance in emerging markets and the role of securities regulators: Recommendation 3.

3 SUMMARY OF THE DRAFT CONDUCT STANDARD

3.1 The objective of the draft Conduct Standard is mainly to ensure that:

- investors are treated fairly by ensuring that clear information is made available to them prior to signing any contracts and on a regular basis thereafter to ensure that investors are kept appropriately informed at all times;
- investors are treated fairly by clearly setting the minimum requirements which all products are marketed to customers; and
- the FSCA comply with international standards set out by the IOSCO.

3.2 The draft Conduct Standard sets out principles and rules-based requirements for CIS managers and their authorised agents in respect of disclosures and advertising pertaining to the CIS Managers and their portfolios.

3.3 The draft Conduct Standard places an obligation on CIS Managers to provide certain minimum disclosures which complies with predefined requirements, to existing and potential investors.

3.4 The draft Conduct Standard contains requirements applicable to:

- advertising;
- general disclosures;
- a Minimum Disclosure Document;
- Application Forms;
- Prospectuses;
- comparisons, rankings and ratings;
- the publication of the total expense ratio; and
- the publication of performance information.

3.5 The draft Conduct Standard further sets out requirements pertaining to record keeping and the lodgement of all required documentation, advertisements and disclosures which are produced.

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 to better reflect international best practice and the supervisory experience pertaining to disclosures gained since 2014.

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, 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 2014.

5 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

5.1 The draft Conduct Standard applies to all CIS Managers and the CIS's and portfolios which they manage in terms of the CISCA.

5.2 The draft Conduct Standard is consistent with the objectives of the FSR Act, and specifically the mandate of the FSCA to protect financial customers by promoting the fair treatment of financial customers (including investors) by financial institutions. It is expected that the draft Conduct Standard will lead to more effective disclosure in the CIS industry which will result in enhanced investor protection, in line with the FSCA's mandate.

5.3 The draft Conduct Standard is intended to come into operation 6 months from the date of final publication.

6 WAY FORWARD

6.1 The draft Conduct Standard is published in terms of section 98(2) of the FSR Act for public comment. Comments are due to the FSCA on or before **4 December 2020.** All submissions must be submitted via email to **FSCA.RFDStandards@fsca.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.[5]

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@fsca.co.za** or **Marius.deJongh@fsca.co.za**.

[5] Assuming no material changes to the draft Conduct Standard is required necessitating another round of public consultation.