# STATEMENT OF NEED AND IMPACT OF THE DRAFT CONDUCT STANDARD – REQUIREMENTS RELATING TO THE REPORTING AND DISCLOSURE OF SHORT SALES

**DATE OF ISSUE: 28 March 2025**

FSCA

Financial Sector
Conduct Authority

## 1 PURPOSE OF THE STATEMENT

1.1 The purpose of this statement is to explain the need for, the expected impact of and the intended operation of the draft Conduct Standard relating to the requirements for reporting and disclosure of short sales (draft Conduct Standard), to be made in terms of section 106(1), read with sections 106(2), 106(3) and 108(1) and (2) and of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act).

1.2 This statement is published in terms of section 98 of the FSR Act which requires that before a regulator makes a regulatory instrument, it must publish the following documents:
(a) A draft of the regulatory instrument;
(b) a statement explaining the need for and the intended operation of the regulatory instrument;
(c) a statement of the expected impact of the regulatory instrument; and
(d) a notice inviting submissions in relation to the regulatory instrument, stating where, how and by when submissions are to be made.

## 2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

### 2.1 Background

2.1.1 Currently, the regulatory framework in South Africa does not prescribe requirements for the reporting and disclosure of short sales.

2.1.2 The FSCA intends to close the regulatory gap created by the lack of a regulatory framework by developing a legal framework, the draft Conduct Standard, prescribing reporting and disclosure requirements consistent with international best practices. The framework would also ensure alignment of the South African regulatory framework with international standards.

2.1.3 In this regard, certain developments have taken place through two publications, which are discussed in more detail in paragraph 3.

### 2.2 Short sales and International Standard Setting Bodies and International Best Practice

2.2.1 During the 2008 global financial crisis, several countries implemented emergency measures in relation to short sales because of concerns that this activity was aggravating the downward spiral in share prices thereby posing a threat to individual financial institutions and wider financial stability. Various measures such as restricting short sales to temporarily banning short sales in certain sectors were taken. Other measures included introducing a requirement to flag every short sale on the exchange trading system and the reporting and disclosure of net short positions at certain thresholds.

2.2.2 Due to the financial crisis, IOSCO's Technical Committee set up a Task Force on Short Sales (Task Force). The purpose of the Task Force was to work on eliminating gaps in various regulatory approaches to naked short sales, including requirements and disclosure of short positions. In fulfilling its mandate, the Task Force developed high-level principles for the effective regulation of short sales which were documented in the June 2009 IOSCO Report on the regulation of short sales. Such principles were designed to assist regulators in their development of a regulatory regime for short sales in their jurisdictions.

2.2.3 The Task Force recommended that effective regulation of short sales comprises four requirements as outlined in Principle 37 of the IOSCO's principles of securities regulation. The requirements are as follows:

(a) Short sales should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets;
(b) Short sales should be subject to a reporting regime that provides timely information to the market or to market authorities;
(c) Short sales should be subject to an effective compliance and enforcement system. and
(d) Short sales regulation should allow appropriate exceptions/exemptions for certain types of transactions for efficient market functioning and development.

2.2.4 The Financial Sector Assessment Programme (FSAP) review, conducted by the International Monetary Fund (IMF) in 2014 and 2019, concluded that South Africa does not have a reporting and disclosure framework in place for short sales, thus failing to meet principle 37[1] of the objectives and principles of securities regulation issued by the International Organisation of Securities Commissions (IOSCO) in 2010.

### 2.3 Risks associated with short sales

2.3.1 The inherent risks associated with short sales cannot be ignored. Some of the identified risks associated with short sales are that short sales may be used in an abusive manner to drive down the price of securities to a distorted level, may contribute to disorderly markets (especially in extreme market conditions), and can otherwise have an adverse impact on financial stability in the following manner:

(a) *Market abuse*: The first regulatory concern relates to the way in which short sales may be used to contribute to market abuse. However, its ability to add incremental weight to a downtrend, or to support insider trading by those with adverse information about an issuer, clearly makes it a potentially useful tool for those who are intent on abusing a market. Short sales can be used abusively to create misleading signals about the real supply, or the correct valuation of a security. Behaviours designed to position prices, distort markets or mislead investors normally constitute market abuse;
(b) *Disorderly markets*: As mentioned above, short sales can convey a signal to the market that a firm is overvalued. If investors act appropriately on this signal, this may improve the accuracy of the valuation of the security in question. However, if investors overreact the price decline may be excessive. Such volatility reduces the ability of a firm to raise equity capital or to borrow money and makes it very difficult for banks to attract deposits;
(c) *Settlement risk*: Short sales may also raise regulatory concerns in the area of settlement. Naked short sales give rise to the risk that the seller is unable to deliver

[1] Committee on Payments and Market Infrastructures (CPMI) and Board of the International Organization of Securities Commissions, *Recovery of financial market infrastructures*, October 2014 (Revised July 2017). Available: https://www.bis.org/cpmi/publ/d162.pdf

securities to the buyer, i.e. there is the risk of settlement failure. This may impair the proper functioning of the market resulting in enhanced transaction costs and sub-optimal levels of trading.

### 2.4 Need for a regulatory framework in South Africa

2.4.1 The lack of a regulatory framework governing short sale practices exacerbates the risks referred to above.

2.4.2 In addition, in terms of the Financial Markets Act, 2012 (Act. No. 19 of 2012) ("FMA"), the FSCA must have regard to international supervisory standards when executing its regulatory mandate.

2.4.3 Introducing a regulatory framework that will ensure the transparency of covered short sale will have distinct benefits for the market and its users. Greater disclosure will help deter market abuse and reduce the risk of disorderly markets posed by short sales.

2.4.4 A regulatory framework will also provide early warning signs of a build-up of large short positions, thereby alerting the FSCA and Prudential Authority to potential market abuse or emerging systemic risk that will enable the two regulators to effectively monitor the market and take appropriate action where necessary. Public access to information on short sales will also provide informational benefits to the market, improving insight into market dynamics, aiding transparency, and making available important information to assist price discovery.[2]

2.4.5 Short sales are beneficial to the market in that they also contribute to market efficiency. Short sales play an important role in financial markets and are undertaken by a variety of market participants. They also contribute to efficient price discovery, increase market liquidity, and facilitate hedging and other risk management activities.

2.4.6 To reduce the identified risks, the proposed short sale transactional reporting and public disclosure regulatory framework will consist of a short sale transactional reporting and public disclosure framework as well as short sale positional reporting and public disclosure framework.

2.4.7 The proposals put forward in the draft Conduct Standard build on the Discussion Paper that was published for public comment. The submissions that were made on the Discussion Paper were taken into account when formulating the Conduct Standard. For further context, the issues raised during the public consultation process on the Discussion Paper and the FSCA's revised proposals are discussed in paragraph 3 below.

## 3 PREVIOUS CONSULTATION AND HOW THIS INFORMED A NEW APPROACH

### 3.1 Developments to date

3.1.1 On 20 November 2018, the FSCA published a "Discussion paper on the implementation of a short sale reporting and disclosure framework" (Discussion Paper) for public comment. The comment period was later extended until 15 January 2019.

3.1.2 The Discussion Paper was issued to solicit industry views on the FSCA's proposal to

[2] Price discovery is a method of determining the price for a specific commodity or security through basic supply and demand factors related to the market.

develop a short sale reporting and disclosure regulatory framework for South Africa. Numerous proposals from the industry were taken into account in the development of a draft Conduct Standard.

3.1.3 In March 2023, a draft Conduct Standard proposing requirements relating to the reporting and disclosure of short sale transactions (first draft Conduct Standard) were published for public comment. The first draft Conduct Standard was accompanied by a Statement that set out the need for, expected impact and intended operation of the draft Conduct Standard (the first Statement). The first Statement provided substantial detail on the inputs that were received on the Discussion Paper, and it is therefore important to read this Statement together with the first Statement.

3.1.4 As is evident from the discussion below, the draft Conduct Standard that forms the subject of this Statement (i.e. the second version of the draft Conduct Standard) depicts a significant change in approach when compared to the first draft Conduct Standard that was published for public consultation. As such, many of the comments received through the public consultation process on the first draft Conduct Standard is no longer relevant.

3.1.5 Below we highlight the most fundamental issues that gave rise to the different approach as reflected in the draft Conduct Standard and, where appropriate, we discuss certain comments received during the first consultation process that are still of relevance. In addition, **Annexure A** to this statement contains a detailed response matrix which sets out all comments received on the first draft Conduct Standard, together with the FSCA responses thereto.

### 3.2 Issues emanating from the first draft Conduct Standard

3.2.1 The first draft Conduct Standard proposed the introduction of a transactional reporting framework based on flagging of short sale orders on an exchange trading system ("transaction reporting"). The transaction reporting proposal essentially entailed that a client would inform an authorised user that a transaction relates to a short sale, and the authorised user must then put a marker or flag on each individual short sale[4] or short sale order, that an authorised user submits on an exchange for execution.

3.2.2 It was further proposed that the transaction reporting data will inform public disclosure of aggregated short sale transactional data, and in this regard, it was proposed that the implementation of a transactional disclosure framework with public disclosure taking place on the following day (T+1). It was proposed that daily volumes or number of securities that are short sold in the market (otherwise known as gross short sales), should be disclosed to the public by the exchange. Such a report will provide an indication of the proportion of trades in a particular listed security that are sold short, and the overall level of short sales that takes place on the market each day, aggregated across all authorised users.

3.2.3 Commentators raised substantial concerns with the proposed approached to reporting and disclosure of short sale data. One of the most fundamental concerns raised relates to requiring authorised users to report and flag short sale transactions. It was contended that this approach is impractical and unworkable as authorised users mainly executes a sales order and would not have insight as to whether the sale relates to a short sale transaction as this information is typically not shared with the authorised user (by the client). The authorised user will also not have any authority to compel the client to disclose this information. The same concerns are relevant insofar as it relates to authorised users reporting short sales positional data, with the added complication that many clients trade through multiple

authorised users and will be a significant challenge, if not impossible, for an authorised user to report an "open short sale position" if the client executed buy and sell orders (relating to a short sale) through multiple authorised users.

3.2.4 As was explained in the previous Statement that was published along the first draft Conduct Standard, although the FSCA agrees that the best approach would be to place the reporting obligation directly on clients, the problem is that the legislative framework is restrictive in this regard and does not enable the imposition of legal obligations on clients of authorised users. Therefore, legally speaking this approach is impermissible and an alternative approach will have to be explored.

3.2.5 As a result, following the public consultation process, the FSCA engaged targeted stakeholders to further unpack the practical concerns raised and to deliberate with these stakeholders to come up with a workable solution. Through the deliberations it was suggested that although not impossible, it is very unlikely that a client (local client especially) would manage its own share portfolio and neither an authorised user nor any other licensed financial services provider would have sight of that portfolio to know whether the client has a short position. Therefore, in most instances a financial institution (as defined) would have insight into whether a short sale is being executed, as that Financial Institution manages the client's portfolio on their behalf. In addition, financial institutions themselves also enter into short sale transactions as a principal. Lastly, the fact that positional reporting will be subject to thresholds also plays an important factor. It is likely that the threshold, even if set at a relatively low percentage of the issued shares, will still entail quite large short position. If so, the likelihood of there being a client with such a large short position and fitting the profile of not using a financial institution to hold or manage their portfolio, is quite small. Therefore, a view was expressed that imposing the short sale reporting obligations on financial institutions generally would go a long way in ensuring that most of the short sales activities are reported.

3.2.6 However, where it is a foreign client entering into a short sale, some problems may arise. Foreign clients often utilise foreign firms, as opposed to a local financial institution, to manage or hold the client's portfolio, even more so where a foreign client uses a foreign firm that does not make use of a local branch. Even if the foreign firm owns or has some other association with a local authorised user, that authorised user is typically only an execution agent for the foreign firm. The local authorised user will typically not know who the foreign firm's underlying clients are and they are unlikely to know whether the foreign firm holds a short position either for itself or on behalf of an underlying client. In a scenario where the short sale reporting obligations are placed on financial institutions as discussed above, it is therefore possible that short sales executed by foreign clients might occur undetected/unreported.

3.2.7 In summary, the FSCA supports the proposal to impose the short sale reporting obligations on financial institutions as this will go a long way in covering a substantial part the of local short sale activity through reporting. However, the FSCA also acknowledges that there are shortcomings associated with this approach, especially insofar as it relates to short sales activities executed in South Africa by foreign clients.

3.2.8 Another less fundamental concern that was raised is the fact that exchanges are expected to receive and publicly disclose short sales data. Many commentators submitted the responsibility to receive and publicly disclose short sales data should sit with the FSCA, and that this is also a common practice internationally. The FSCA remains of the view that it is not well placed to facilitate the receival and public disclosure of short sales data. However, the FSCA also acknowledges that this might pose a challenge for exchanges. Alternative options were therefore considered and the FSCA is of the view that the introduction of the

first licensed trade repository in South Africa presents an opportunity to utilise that framework to give effect to the public disclosure of short sale data. As such it is proposed that the obligation to receive short sale data and publicly disclose it, should be placed on a licensed trade repository.

## 4 SUMMARY OF THE DRAFT CONDUCT STANDARD

4.1 Below is a summary of the new draft Conduct Standard that reflects the new approach as discussed in paragraph 3.

*Reporting of open short sale positions*

4.2 Because of all the practical concerns raised (as discussed in paragraph 3), and especially the practical challenges that comes with the introduction of transactional reporting requirements and the lack of empowering provisions that would allow the FSCA to impose transactional reporting requirements directly on client, the FSCA has decided to adopt a phased in approach in introducing a short sale reporting and disclosure framework.

4.3 As a first phase, the focus will only be on positional reporting of short sales data, meaning that short sale transaction reporting will be removed from the Conduct Standard. The FSCA will continue focusing on finding an appropriate and workable solution for transactional reporting of short sale transactions but are of the view that such a solution does not currently exist. One potential solution would be to amend primary legislation to empower the FSCA to set short sale transactional requirements directly on clients. In this regard, the FSCA will likely put forward proposals as part of the review of the Financial Markets Act, which is currently underway.

4.4 The obligation to report positional data will be placed on financial institutions that conduct short sale activities, the latter comprising engaging in a short sale as principal or arranging, intermediating or executing a short sale on behalf of an investor.

4.5 The requirement is that a financial institution that conducts a short sale activity in respect of a security must on every day that the short sale related to the security constitutes an open short sale position,[3] report certain information to a licensed trade repository, unless the open short sale position in respect of that security is below the determined threshold. Note that the draft Conduct Standard itself does not contain the actual threshold, the threshold will be determined separately under the Conduct Standard and will be subject to further consultation.

4.6 We note that there might be instances where a financial institution that arranged, intermediated or executed a short sale on behalf of an investor does not have the necessary information in its possession to determine whether an open short sale position exists (especially e.g. authorised users). To accommodate these situations an exception has been provided for which entails that if a financial institution does not have the necessary information, it must take appropriate steps, as are reasonably practical, to try and obtain the necessary information and, if despite doing so, it is unable to obtain the necessary information, the reporting obligation will fall away.

4.7 The information that must be reported if an open short sale position exists include the following:

[3] An open short is where a security is sold as part of a short sale and, as at the end of T+3, the security has not been bought back. A short sale will therefore constitute an open short sale position as at T + 4, meaning that reporting is triggered on T + 4.

1. Each open short sale position in respect of the security,[4] accompanied by the following information:
   - the day on which the security was sold; and
   - the type of security that was sold.
2. The total number of open short sale positions in respect of the security.[5]

*Public disclosure of short sale positions*

4.8 Once positional data has been reported to the trade repository, the trade repository will be required to aggregate all open short position data received and publicly disclose on its website, one day after receipt of such information, the following information per security, unless the open short positions in respect of that security are below the determined threshold:

- The total number of open short positions in such security aggregated across all financial institutions; and
- The total number of open short positions in such security aggregated across all financial institutions expressed as a percentage of issued shares.

4.9 Similar to the threshold applicable to positional reporting, the draft Conduct Standard itself does not contain the actual threshold and this will be determined separately under the Conduct Standard and will be subject to further consultation.

*Uncovered/naked short sales*

4.10 The prohibition on uncovered short sales (also known as naked short sales) has been retained.

## 5 STATEMENT OF IMPACT OF THE DRAFT CONDUCT STANDARD

5.1 It is envisaged that reporting and disclosure surrounding short selling activities will –

(a) indicate the level of short selling in a particular security;
(b) explain certain share price movements;
(c) provide an early signal that individual securities may be overvalued;
(d) indicate the proportion of sales in an individual security that will need to be reversed by new purchases (to cover the short seller's settlement obligations);
(e) enhance investors' willingness to participate in the market by removing uncertainty surrounding the level of short selling; and
(f) deter market abuse or reduce the opportunities for market abuse, by enabling the FSCA to better identify instances of market manipulation.

5.2 Enhanced transparency of short sales has informational benefits for the market which would outweigh the associated costs. It would help deter and constrain particularly aggressive large-scale short sales which may threaten the maintenance of orderly markets or pose the risk of market abuse and provide early warning signs of a build-up of large, short sales, thereby alerting regulators to potentially abusive behaviour and enabling them to monitor and take action more effectively.

5.3 Facilitating access to information on short sales would provide informational benefits to the market, improving insight into market dynamics and making available important information to assist price discovery.

[4] For the sake of clarity, this includes any open short sale position where the financial institution acted as principal or where it arranged, intermediated or executed the short sale on behalf of an investor.
[5] I.e. the combined total of every open short sale position referred to in 1.

5.4 Positional reporting provides the most accurate information to the market about the amount of bearish sentiment in a listed security at any time. Changes in the overall short position may provide a signal to other investors that the security is either under or overvalued. Consistent with the objectives of the disclosure framework, this will assist in promoting pricing efficiency in the market and enhance market transparency and efficiency.

5.5 The draft Conduct Standard is therefore envisaged to reduce risk in the short selling environment and contribute to market transparency.

5.6 Further the Conduct Standard will ensure alignment with international best practice such as IOSCO and compliance with the FSAP recommendations, which will serve as signal to both local and foreign investors that South Africa is a jurisdiction that complies with international standards and international recommendations, making it a trusted market.

5.7 In terms of the regulatory costs associated with transactional and positional reporting, it is acknowledged that there will be cost implications. However, in the FSCA's view the proposed approach, especially when compared to the approach reflected in the first draft Conduct Standard, will have much less of an impact. Financial institutions should be able to establish reporting mechanisms without having to make substantial changes to e.g. systems. The majority of costs that will have to be incurred as a result of the draft Conduct Standard will also likely entail once-off costs to develop internal systems or controls for reporting. In addition, the thresholds that will be determine for reporting purposes will also alleviate some of the reporting obligations.

5.8 The proposed framework should also result in a cost-effective method of reporting and disclosure because it enables the utilisation of existing infrastructure and communication channels. If disclosure provides a deterrent to significant aggressive short selling, then the benefits in reducing the risk of disorderly markets and the potential for market abuse would flow from the constraints on the scale and timing of short sales.

5.9 Notwithstanding the above, the FSCA welcomes any further submissions on expected cost implications associated with the introduction of the proposed positional reporting and public disclosure framework.

## 6 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

6.1 The proposed requirements prescribed in the draft Conduct Standard are consistent with the objective of the FSR Act, the respective objectives of the FSCA, and specifically the mandate of the FSCA to maintain a transparent, efficient and stable financial system that functions in the interests of financial customers and supports balanced and sustainable economic growth.

6.2 The proposed requirements in the draft Conduct Standard will apply to all listed securities and will be limited to covered short sale only, noting that uncovered short sales will be prohibited.

6.3 The Conduct Standard will be made after the process prescribed in the FSR Act has been concluded. Financial institutions will be required to comply with the Conduct Standard within a period of 12 months of publication.

6.4 Following the implementation of the Conduct Standard, the FSCA will assess and evaluate

the effectiveness of the Conduct Standard on a continuous basis as part of its regulatory and supervisory responsibility to ensure that any unintended consequences of the Conduct Standard affecting the industry are adequately addressed.

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## ANNEXURE A

## RESPONSE MATRIX

## DRAFT CONDUCT STANDARD: REQUIREMENTS RELATING TO THE REPORTING AND DISCLOSURE OF SHORT SALES

| # | Commentators | Acronym |
|---|---|---|
| 1. | ABSA BANK Limited | **ABSA** |
| 2. | Fairtree | **Fairtree** |
| 3. | Johannesburg Stock Exchange | **JSE** |
| 4. | J.P Morgan Equities South Africa | **J.P Morgan** |
| 5. | Nedbank CIB / Nedgroup Securities (Pty) Ltd | **Nedbank CIB** |
| 6. | Nedbank Wealth - Nedgroup Private Wealth Stockbrokers (Pty) Ltd | **Nedbank Wealth** |
| 7. | Standard Bank SBG Securities | **Standard Bank** |
| 8. | South African Institute of Stockbrokers | **SAIS** |

| SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD | | | | |
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| **No** | **Entity** | **CLAUSE** | **Issue/Comment/Recommendation** | **FSCA Response** |
| | **1. DEFINITION** | | | |
| 1. | **JSE** | **"at the time of sale"** | This definition is ambiguous as it seems to simultaneously refer to both the time at which a sale transaction is concluded and the time that an order to sell is submitted. We recommend that "at the time of sale" or 'point of sale' is differentiated from "at time of order", as not all orders will result in a transaction. In any event, the term "at the time of sale" is not used elsewhere in the proposed Standard. | Definition removed. See revised definition of "short sale" which attempts to provide more clarity. |
| 2. | **SAIS** | **at the time of sale" -** means at point of sale when an offer for sale is placed**;** | "At the time of sale" would infer at the time of trade matching and execution. However, when reading the definition in conjunction with the document, it is not clear if this is in fact actually at the time of placing a sales **order** (the order entry) or if it is at the time at which the **order** entered into the market is matched i.e. the execution of the order that results in the sales transaction. | See response directly above. |
| 3. | **Fairtree** | "at the time of sale" | This definition is not used in the conduct standard. Is the intention that this definition must be used in clause 5(1)(b)?<br><br>*"(b) the authorised user requests the following information from the seller at the time of sale:…"* | See response directly above. |

| SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD | | | | |
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| **No** | **Entity** | **CLAUSE** | **Issue/Comment/Recommendation** | **FSCA Response** |
| 4. | **JSE** | **"short sale"** | The definition refers to a transaction. We recommend that the term 'short position' is also defined, as it is used frequently in the proposed Standard.<br>The definition of a 'short position' should include the manner in which a short position is determined, taking into account the relevant arrangements and circumstances that result in a person 'owning' or not 'owning' a security (noting that a borrowing agreement does not result in a person 'owning' a security). In this regard, and for the purpose of the definitions of 'short sale' and 'short position', it may be important to define or otherwise clarify what it means to 'own' a security in the context of the Standard. A person can 'own' a security without being in possession of it at the time of sale (e.g. have purchased it but not yet received it from the seller, lent it out, etc), and the persons to whom the Standard will apply need certainty as to when a sale or position will be regarded as being 'short' in order to correctly interpret and apply the Standard. | Agree – 'open short position' definition added. |

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| 5. | **SAIS** | | The definition of a **short sale** needs to be expanded as well as "clearing" defined.<br>Clarity is required on the following:<br>- Does this only cover and refer to listed equities?<br>- Does this include ETF's and warrants?<br>- Does this include on market derivatives and bonds?<br>- The market is far more sophisticated than just pure listed short selling of equities on market. Therefore, would market making and facilitation be considered as a short sale, or would these types of trades be exempted?<br>- Would one define selling the underlying equity against the purchase of a future as a short sale?<br>- Does this include index arbitrage transactions, hedges of Contracts for Difference (CFD), derivative, collar strategy and the like?<br>The definition must be clearly defined and expanded as required to ensure the correct outcomes are achieved and understood in line with the document standards.<br>"Point of sale" must also be defined and clarified. As indicated above, clarity is required on whether it means *at the time of placing the order* or whether it means *at the time of the execution of transaction.* This has a major impact on the entire outcome of the paper.<br>The Statement supporting the Draft Conduct Standard speaks to the term "short sale", which would appear to include both *naked and covered short sales*. The restriction contained in the Draft Conduct Standard essentially prohibits short sales where no lending agreement exists. Therefore, ***naked short sales are <u>not allowed.</u>*** and the reporting and disclosure obligations only apply in respect of | 'Short sale' covers all listed securities. See revised approach reflected in the standard, which now defines 'short sales activities'. See comment above regarding the definition of "point of sale".<br><br>We note your comment which states that although naked short sales are prohibited in terms of the JSE Rules, these types of short selling positions do occur which could create settlement risk. In our view this supports an argument for having an outright prohibition in the Standard itself. |

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| **No** | **Entity** | **CLAUSE** | **Issue/Comment/Recommendation** | **FSCA Response** |
| | | | covered short sales. In this regard it must be noted that naked short sales are already prohibited in terms of the JSE Rule15.<br>Although naked short sales are prohibited in terms of the JSE Rules, these types of short selling positions do occur which could create settlement risk. For example, selling across local and international markets where shares need to move across registers and MISDdeal transactions both from authorised users and clients' perspective.<br>It is therefore imperative that all these different types of transactions are clearly defined and understood, so as to make informed decisions as to whether or not they are included or exempted from been considered as a short sale.<br>As naked sales are already prohibited, the SAIS would also like to focus on the fact that the exchanges offer a guaranteed settlement process, or at the very least offer a settlement assurance process with a full failed trade procedure within SA financial markets. Therefore selling short would, in reality, present a very limited threat to the SA market in terms of settlement risk. | |

| SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD | | | | |
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| **No** | **Entity** | **CLAUSE** | **Issue/Comment/Recommendation** | **FSCA Response** |
| 6. | **Standard Bank** | **"short sale"** | The term "security" is defined broadly to include a wide array of investments, such as stocks, bonds, notes, debentures, limited partnership interests, oil and gas interests, and investment contracts. A 'security' can refer to a range of listed and unlisted financial instruments. For purposes of this Conduct Standard, we suggest including the word 'equity' before 'security' to avoid interepretation errors. | Disagree. Unclear why the scope should be limited. |
| 7. | **JSE** | **"Local Operating Unit (LOU)"** | This definition is not used elsewhere in the proposed Standard. We recommend that it is deleted. | The definition has been removed as the term is no longer used. |

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| 8. | SAIS | **"Flagging"** | It should be noted that the flagging and reporting of "covered" short selling is technically made even more difficult as all short positions are settled with the aid of securities lending arrangements.<br><br>This definition needs to be separated into two distinct definitions. One that defines action from the time the order is placed and the second to the time the order is matched and executed. As these are two different actions and work streams, they must be separated to make provision for the different and individual processes and outcomes.<br><br>An authorised user may possibly be able to flag an order at the time of placing the order when trading on their own behalf. This could be done, provided systems could be changed to accommodate such flagging. However, the JSE Millennium trading system is an international system and would not be able to be changed in a short timeframe to accommodate authorised users' orders.<br><br>An authorised users would not be able to flag an order once received from a client or once the client has placed the order, irrespective of whether it is placed via DMA (direct market access) or via the normal order routing process. When an order is placed via "FIX" order routing, by a client, the authorised user cannot change any of the salient features of that order. The authorised users can manage and trade the order in different shapes and sizes and can amend the price, only if it is favourable to the client, *if* the client has placed the order with a price limit.<br><br>Consequently, the client is the *only* party who can flag the order, at the time of placing the order, that could lead to it being a short sale if executed. | The definition has been removed as the term is no longer used. |

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| | | | The authorised users do not contact each client on receipt of every order and therefore it would be unrealistic to think the authorised user could check with the client whether or not each *sell* order is a potential short sale. Again, the confirmation could only be flagged by the client placing the order.<br><br>It is also important to note that volume of daily transaction that these effects which could be in the hundreds of thousands. | |
| 9. | **SAIS** | **"seller"** | This definition needs to be expanded to include "…persons acting on behalf of another person and accounts, not only for in/for their own capacity as well as authorised users own accounts. | The definition has been removed as the term is no longer used. |
| 10. | **Fairtree** | **"seller"** | The definition does not address a scanario where the seller acts as agent for a principal.<br><br>Proposed wording:<br><br>*"seller" in relation to a short sale means a person who engages an authorised user to make the sale on the person's behalf or, where a person acts as agent, on behalf of a principal, or an authorised user who makes the sale on its own behalf;"*<br><br>Motivation: Investment managers may engage an authorised user to make a sale on behalf of an underlying fund. | The definition has been removed as the term is no longer used. |
| 11. | **JSE** | 2 | For the many reasons that wearticulate in our comments below, the Standard issued in terms of the Financial Sector Regulation Act (FSR | See revised approach reflected in the Standard. In summary: |

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| | | | Act) should not only apply to authorised users and exchanges. From a practical perspective, authorised users cannot reasonably be expected to prevent all their clients (particularly institutional clients) from executing naked short sales, or be expected to obtain short sale and short position information from all their clients (particularly institutional clients, who trade through multiple authorised users). The short sale activity of all persons who engage in such activity needs to be effectively regulated, and this naturally includes the clients of authorised users. Similarly, all persons who take short positions need to appropriately disclose their short positions, and this naturally also includes clients of authorised users. But by virtue of the proposed regulatory provisions being implemented through a Standard issued in terms of the FSR Act, which, in the context of short selling, can only be applied to financial institutions, the proposed framework imposes no regulation on clients, who probably engage in most of the short sale activity in our markets and hold most of the short positions. Instead, the Standard seeks to indirectly regulate the short selling activity of clients and require them to disclose their short positions by imposing the regulatory burden solely on authorised users, who, in most cases, do not initiate short sale transactions by clients, and do not hold or, in most cases, have no knowledge of, client short positions.<br>To the best of our knowledge, the short sale regulatory frameworks in almost all (if not all) other jurisdictions recognise that obligations and restrictions have to be imposed on the persons who execute short sales and take short positions in listed securities, in order to achieve the objectives of enhanced transparency and reduction of | • Transactional reporting requirements have been removed.<br>• Positional reporting requirements now apply to all financial institutions that engages in 'short sales activities', as defined.<br>• We note that this will still include authorised users. However, an exception has been provided for- i.e. if the financial institution does not have the relevant information, reporting is not required.<br><br>Also refer to the revised Statement of Need and Impact.<br><br>In our view the alternative approach adopted will address most of the concerns raised. |

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| | | | settlement risk without imposing an undue burden on affected market participants. The proposed framework in the Standard, with its heavy reliance on the role of the authorised users, is impractical, unworkable, and seemingly out-of-line with the frameworks in other jurisdictions, who have had many years experience in applying short sale regulations in their markets.<br><br>The approach in the proposed Standard seems to stem from the the fact that a Standard cannot be imposed on entities who are not directly regulated under the FSR Act or the FMA; in this case, the clients of authorised users who may execute short sales and take short positions in listed securities. Even if is this is so, this problem cannot be resolved by imposing the necessary obligations solely on authorised users, as a means of indirectly imposing the provisions of the Standard on clients. This is an inappropriate form of 'regulation by proxy' that is seemingly only being implemented to overcome a perceived gap in the legislation in relation to the application of regulatory standards to clients of authorised users, and not because it is the most appropriate and effective approach.<br><br>In our view, a possible solution to this problem could be found in the provisions of the FMA, and we wonder whether the FSCA has considered imposing the short sale restrictions and reporting obligations through a directive issued in terms of section 6(4) of the FMA. The provisions of section 6(4) are of a wide ambit, and may provide the solution to the challenges associated with limiting the application of the requirements to authorised users and exchanges. This is especially so given that the proposed Standard, in its current | |

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| | | | form, with its narrow application, is, in some instances, incapable of being complied with.<br><br>We are strongly of the view that a short sale regulatory framework can only be effective if it incorporates concomitant obligations on the clients of authorised users who participate in short selling activity. If this cannot be achieved under the current legislative framework, then we are of the view that the necessary legislative amendments will need to be made to provide the FSCA with the necessary powers to issue a regulatory instrument that will apply to all the relevant market participants, including clients. The regulators in other jurisdictions all seem to be vested with the necessary powers that have enabled them to implement short sale frameworks that are broad and appropriate in their application.<br><br>The proposed application to all 'listed securities' is too broad. It is unclear whether the FSCA intends the proposed Standard to be applied to all listed securities, including bonds, derivatives, structured notes, warrants, exchange traded funds, exchange traded notes etc. We strongly recommend that the proposed Standard specifies the types of listed securities that the Standard applies to. With reference to our comments on the 2018 Discussion Paper, we recommend that the application of the Standard is limited to shares in companies listed on an exchange (at least initially), as it is in respect of these securities that the most regulatory and transparency benefits can be derived. There is little benefit to be derived – at significant effort to the market – from applying the Standard to the other types of securities. If, in time, a material need arises to include other securities, consideration can be given to including them in the application of the Standard in future. | |

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| 12. | **SAIS** | 2 | As this Draft Conduct Standard applies to authorised users and exchanges, in relation to a short sale of listed securities executed on an exchange. The SAIS would once again like to highlight that it is opposed to flagging and reporting of short sales being the responsibility of authorised users and exchanges. This is not a practicable and workable solution as reiterated above.<br>The financial markets participants are of the strong opinion that the reporting and disclosure can only be done by the client. It would be totally impractical and onerous to expect authorised users to obtain the relevant information from clients before executing transactions on their behalf. It would be equally impractical and onerous to expect the exchange to collate and publish the position reports, as required in the Draft Conduct Standard, on net open short positions as there is no verifiable data to validate.<br>The SAIS is not in agreement there is no existing legislative framework and that the FSCA has no legal obligations over authorised users' clients. The SAIS maintains that the primary legislation should be included and form part of either the Financial Sector Regulation Act (FSR Act) or/and the Conduct of Financial Institutions (COFI) Bill and as such the FSCA will them have jurisdiction to require clients to report the information required.<br>The SAIS would also assume that although there is a contractual relationship between the exchanges and their authorised users, to abide by the rules of the exchanges, that the exchanges would have no enforcement powers or jurisdiction over the authorised users' clients. The exchanges would also need to go through a process of changing their rule books to enable such a regulatory change over | See response to item 11.<br>In addition, as we explain in the Statement of Need and Impact, we do not have "legislative reach" over clients of authorised users, but we are in the process of engaging National Treasury as part of the Financial Markets Act Review, and we are requesting that our powers be expanded in such a way that it would allow us to place short sales reporting obligations on clients directly. For this reason, the roll out of a short sales framework will occur in different phases. |

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| | | | its members. This, however, would still not give the exchanges any powers over the authorised users' clients. It therefore still remains an unworkable expectation.<br>It is also improbable that the authorised users' clients would notify the authorised users before placing orders of potential short sales or have any legal stance over their clients, should their clients not flag or report short sales. In addition, there is no process or procedure whereby an authorised user could identify the net open sales positions on behalf of "non-controlled" clients, in order to report to the exchanges to enable them to publish relevant data. As this data would be wholly unverifiable and irrelevant.<br>The SAIS would like to echo that the definition of listed securities, as per the FMA, refers to multiple different products. The SAIS has to reiterate that the FSCA would need to clearly define what a short sale is and what products should be included (see 1.2 above). It is important to understand exactly what instruments and transactions the Draft Conduct Standard refers to and covers.<br>The SAIS agrees that there is certainly some benefits to the market, with respect to the rule regarding position data reporting. This would be on condition that it can only be reported by the Financial Institution (FI) or the client, directly to FSCA. It would, in turn, be the FSCA's responsibility to publicly report and not the exchanges.<br>Again, we must restate that the industry **does not** believe that the financial market is anywhere close to the flagging of short sale orders and transactional reporting. | |

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| | | | **3.RESTRICTIONS** | |
| 13 | **JSE** | 3 | We commend the FSCA for including a provision in the proposed Standard that prohibits the execution of naked short sales.<br>However, with reference to our general comment # below, the restriction should apply to all users of an exchange (i.e., authorised users and the clients of authorised users). Authorised users cannot reasonably be expected to prevent clients from executing short sales when, in many cases (particularly for institutional clients), they have no direct knowledge as to whether a client 'owns' the securities or not. The restriction on executing naked short sales must therefore also apply to clients directly.<br>The restriction is too narrow as it refers only to a securities lending arrangement, as an acceptable means of covering a sale, and does not recognise the circumstances where the seller, at the point of sale, has entered into a transaction or arrangement that will result in the seller becoming the owner of the securities on or before the settlement date of the sale. These other arrangements or circumstances could include:<br>• The seller has executed a derivative transaction (listed or unlisted) that will mature/be exercised on or before the settlement date of the sale;<br>• The seller owns a depository receipt that will be cancelled on or before the settlement date of the sale;<br>• A corporate action, whereby the seller will become the owner of the securities on or before the settlement date of the sale (e.g., rights offer take-up, or unbundling).<br>We note that the 2018 Discussion Paper stated: 'Exemptions from reporting will apply to primary dealers and market makers. Market makers and primary dealers will be exempted from both position and transaction reporting'. However, no exemptions are provided for in the proposed Standard. We strongly recommend that, in alignment | Noted. As communicated previously, we do not have legal authority to impose obligations directly on clients. However, see our response at item 12.<br><br>The wording of the prohibition on uncovered/naked sales aligns to the EU wording. Please consider the revised wording and Conduct Standard.<br><br>With regards to your comment pertaining to market makers, it is unclear what is being proposed. It is suggested that you include a specific recommendation on this through the second round of public publication process. |

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| | | | with international short selling regimes, provision is made in the Standard for appropriate exemptions from the restrictions, to avoid undue and unnecessary burdens being placed on liquidity providers who are not taking a view on the future price of a security. As an example, the Australian framework allows for exemptions from the restriction on naked short selling for, inter alia, market makers and client facilitation brokers, provided satisfactory arrangements are made to ensure that the relevant quantity of securities are available for settlement on settlement day. Market making and facilitation trading by authorised users are important forms of liquidity provision, and this activity will be significantly impacted if the authorised user is obliged to have a securities lending arrangement in place at the time of sale. A market maker or client facilitation broker is unlikely to be short on settlement day for the quantity of each short sale, by virtue of how they run their market making and facilitation books, and this is recognised in other jurisdictions in their exemptions for these entities from having to have securities lending arrangements in place at the time of sale. | |
| 14 | **SAIS** | 3 | The statement supporting the Draft Conduct Standard speaks to "naked" short sales and "covered" short sales. These two definitions however do not form part of the definitions in the Draft Conduct Standard.<br>The statement supporting the Draft Conduct Standard speaks to the term "short sale" and it would appear to include both naked and covered short sales. The restriction contained in the Draft Conduct Standard essentially prohibits short sales where no lending agreement exists. Therefore, naked short sales are not allowed, and the reporting and disclosure obligations only apply in respect of covered short sales. In this regard it must be noted that naked short sales are already prohibited in terms of the JSE Rule15. | The terms naked and uncovered short sales is used interchangeable. However, see revised wording which now makes is clearer. With regards to the rest of your comments, it is not clear what is being recommended. It is suggested that you include specific recommendations on these issues through the second round of public publication process. |

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| | | | Although naked short sales are prohibited in terms of the JSE Rules, these types of short selling positions do occur which could create settlement risk. For example, selling across local and international markets where shares need to move across registers, MISDdeal transactions both from authorised users and clients' perspective. These types of transactions should be clearly defined and understood.<br><br>As naked sales are already prohibited, the SAIS would also like to focus on the fact that the exchanges offer a guaranteed settlement process, or at the very least offer a settlement assurance process with a full failed trade procedure within SA financial markets. Therefore selling short would, in reality, present a very limited threat to the SA market in terms of settlement risk.<br><br>It should be noted that the flagging and reporting of "covered" short selling is technically made even more difficult as all short positions are settled with the aid of securities lending arrangements. This should more clearly defined in the code to ensure that there is a good understanding of the processes and practical guidance provided. | |
| | | **CLAUSE** | **4.GENERAL OBLIGATIONS** | |
| 15. | **JSE** | 4 | With reference to our comment 4 above (Application of the Standard), the general obligations should apply to all users of an exchange (i.e., authorised users and the clients of authorised users). | See comments at item 12 regarding our 'legislative reach' over clients of authorised users. |
| 16. | **SAIS** | 4 | The SAIS would be in full agreement that authorised users who "knowingly" facilitate a short sale on an exchange must act in good faith and do so by acting transparently, with integrity, honestly, fairly and with due skill, care and diligence. However, as authorised users, | See response at item 11. |

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| | | | the industry is of the opinion that this is not possible, in the current SA financial markets environment. The authorised users have no way of knowing that they are facilitating a short sale. The SAIS and industry are of the opinion that authorised users should, at all stages, when transacting on the financial markets, act in good faith. Good faith is executed by acting transparently, with integrity, honestly, fairly and with due skill, care and diligence. | |
| | | **CLAUSE** | **5. Short Sale Transaction Flagging and Reporting** | |
| 17. | **JSE** | 5(1)(a) and 1(b)(iii) | 1(a) We do not support authorised users being made solely responsible for determining whether a sale by a client is a short sale. If no concomitant obligation is placed on clients to disclose this information to the authorised user, the authorised user will be obliged to request a confirmation from their clients as to whether the client is executing a sale or a short sale, for every sale transaction. In high volume and fast paced markets, where most orders are submitted to authorised users electronically, and are often generated by algorithms (particularly in relation to institutional client orders), authorised users have no opportunity to intervene and request their clients to confirm whether each selling order is a short sale order or not. Obtaining this confirmation from clients would, in most cases, require significant systems enhancements on both the authorised users' side and the clients' side, to enable clients to flag short sale orders when they submit orders electronically to an authorised user, and enable authorised users to consume and process that data. Even if such systems enhancements were to be made by all authorised users and their affected clients, the authorised users would have to accept whatever status (short or not) is attached to a sale order, because the authorised user would have no means of being able to question the assigned status. The confirmation contemplated in sub-paragraph 1(a) could, in practice, be no more than an acceptance by the authorised user of whatever information | See response at items 11 and 12. |

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| | | | is provided by the client. It would, in most cases, not be an active request for confirmation.<br><br>(b) Careful consideration needs to be given to the systems and cost impact on authorised users and their clients (both local and foreign) of requiring authorised users to confirm whether every sale order is a short sale order or not. In particular, the requirements that foreign institutional investors are subject to in the other jurisdictions that they trade in, and whether their systems are designed to accommodate the flagging of short sale orders, should be taken into account. Even if the obligation to confirm whether a sale order is a short sale order or not is imposed only on the authorised users, and not on their clients, the implication of this obligation is that clients will have to make the necessary arrangements (including system specifications) to provide the information to the authorised users, failing which the authorised users will be incapable of meeting their obligation to obtain the necessary confirmation. Indirectly imposing these requirements on clients could have unforeseen and harmful consequences on the attractiveness of the South African financial markets to investors. As an example, the EU and the UK, being a source of much of South Africa's foreign investment flows, do not impose requirements for investors trading on a trading venue to provide information on short sale orders and short sale transactions to members of the trading venue, for such information to be provided to the trading venue by the members. Investors in those markets have therefore presumably not made the necessary arrangements to flag short sale orders and identify short sale transactions at the time of order entry and trade execution.<br>(c) The same considerations apply to the requirement for authorised users to request clients executing short sales to provide the number of securities that they will vest in the buyer under a securities lending | |

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| | | | arrangement, at the time that the order is placed. The number of securities that have been procured under a securities lending arrangement will be yet another piece of data that authorised users will need to collect from their clients. Clients will need to make arrangements to identify this information and submit it to the authorised user for every short sale order. Given that a short seller does not enter into a securities borrowing arrangement per order, but instead enters into a borrowing arrangement for the total quantity of securities that they intend to sell short, the short seller is likely, in practice, to simply (and automatically) duplicate the quantity of the order as being the quantity that they have borrowed, when they provide this data to the authorised user. Therefore, any additional information provided to the authorised user in relation to the quantity of securities borrowed is likely to be of no additional value. Furthermore, if a client has not borrowed the requisite quantity of securities at the time of placing a short sale order, there is a high probability that they will not inform the authorised user of that fact, particularly if there is no restriction imposed on the client, in terms of the Standard, from executing naked short sales, and no obligation imposed on clients to make honest and accurate disclosures to authorised users regarding their short sale activities and their securities borrowing arrangements. | |
| 18. | **SAIS** | 5(1)(a) | As indicated previously, the SAIS, authorised users and financial market participants strongly oppose the overall requirement and the need for a standard that places total reliance and responsibility on the authorised users flagging orders received from their clients, on receipt of the order, before placing the orders into the market. This is generally an automated process and part of an end-to-end straight through processing (STP) in certain instances.<br>It is also improbable that the authorised users' clients would notify the authorised users before placing orders of potential short sales or | See responses at items 11 and 12, and responses to other similar comments made above. |

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| | | | have any legal stance over their clients should their clients not flag or report short sales. This entire process would have to be manual and would most certainly have a negative impact on the markets.<br>Additionally, there is great confusion around what constitutes a short sale, what products and securities are included and the processes and procedures around how this is possible. The SAIS is of the opinion that this is unworkable as well as impractical, having multiple unintended consequences. It is highly probably that there will be a negative effect on the market, further driving investment and liquidity away from the SA markets. This code is therefore not good for SA financial markets and will serve as a great inhibitor to growth.<br>As previously noted the SAIS and the industry strongly disagree and are opposed to these conduct standards specifically placing reliance on authorised users and exchanges. Again, the SAIS firmly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good and growth of the SA markets.<br>As industry, there is agreement that transparency in the short sales environment will have distinct benefits for the market and its users. Greater disclosure will help deter market abuse and reduce the risk of disorderly markets posed by short sales. However, industry is not of the opinion that these requirements will achieve the desired outcomes of transparency and clarity for which the regulator is looking. It will only create confusion, as what is suggested is not feasible, and if implemented requires large system and technological changes. These requirements would not only be for authorised users and exchanges but would be impact the entire eco system of clients both local and foreign and administrators. The market participants believe that the costs and the efforts required to implement and maintain the suggested short sale identification, flagging and reporting will be exorbitant, far exceeding the benefit anticipated. | |

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| | | | There is also much confusion with respect to the following definitions:<br>- "short sale";<br>- "at time of sale";<br>- "flagging"; and<br>- "seller"<br>These need to be clearly defined and clarified in detail.<br>There needs to be a greater understanding of the process of when an order is placed and when the execution of transactions takes place. One process that defines action from the time the order is placed and the second process, to the time the order is matched and executed. As these are two different actions and work streams, the need to be separated to make provision for the different and individual processes and outcomes.<br>An authorised user may possibly be able to flag an order at the time of placing the order when trading on their own behalf. This could be done, provided systems are changed to accommodate such flagging. However, the JSE Millennium trading system is an international system and would not be able to be changed in a short timeframe to accommodate members' orders. | |
| 19. | **Standard Bank** | 5(1)(a) | The expectation for an authorised user to ask the client prior to trade execution to disclose if a trade is a short sale is operationally impractical. The client may resist flagging the trade or may even forget to flag the transaction. This potentially creates unnnecessary administration on the authorised users side and may drive clients to trade in other markets. In the statement supporting the Conduct Standard, the FSCA indicated that they have explored legislation in other jurisdictions such as Australia or Hong Kong. We suggest a phased in implementation approach to enable authorised users and investors to become accustomed to the imminent regulatory developments. This could be achieved by starting off by adopting the Hong Kong model which is more appropriate given the size of the | See responses to items 11 and 12. |

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| | | | South African market, and progressively incorporating the other aspects of the proposed regulations. | |
| 20. | **Nedbank CIB** | 5(1)(a) | The Financial Markets Act defines "securities" as both listed and unlisted instruments, however this section refers to "on an exchange" – there must therefore be a definition added to this Conduct Standard making it clear if this is to refer to only listed equities.<br>Alternatively, "securities" should not be mentioned in the Conduct Standard, which should rather refer to "listed securities" only.<br><br>This states that "before making a sale" a transaction must be confirmed as a short sale.<br>Whilst DMA, as alluded to in the FSCA statement supporting this draft, could be changed to include a short sale flag by the JSE, this is not the case with other trading applications such as FIX, which are not owned by the broking members. This is also the case with other trading platforms. | Agree, see amended to 'short sale' which now refers to a listed security.<br><br>See revised definition of 'short sale' which now refers to 'at the point of placing the sales order', |
| 21. | **SAIS** | 5(1)(b)(i), (ii) & (iii) | (i) All this information is received via FIX or via clients' order entry systems.<br>(ii) All this information is received via FIX or via clients' order entry systems.<br>(iii) This is not possible as the trading system does not have this functionality and would require a substantial system change, not only for the authorised users, exchanges, and clients, but also for administrators and custodians.<br><br>It is essential to understand that all non-controlled clients can trade simultaneously through multiple brokers and the authorised users would have no sight over the FI's overall trades and position keeping, custody and financial position of account.<br>An understanding is needed with respect to settlement process and the netting process of executed transactions, as a seller does not | Requirement has been removed. |

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| | | | necessarily settle directly with the buyer or with the authorised users. The seller settles via the STRATE settlement cycle and therefore the authorised users would never have sight of the settlement process for these transactions. The authorised users would only see if transactions executed are committed by the clients' custodian/prime brokers. | |
| 22. | **Nedbank Wealth** | 5(1)(b)(i) | A client does not usually provide the trader with the ISIN number, but rather with the share and the number of securities to trade. The ISIN number is contained in the trading and administrative systems and would be automatically recorded based on the share traded when the order is placed. It is therefore not necessary to include it as part of the information to be obtained from the seller. | Requirement has been removed. |
| 23. | **Nedbank CIB** | 5(1)(b)(i)<br><br>5(1)(b)(ii)<br><br>5(1)(b)(iii) | This is superfluous as the ISIN numbers are already in the trading systems.<br><br>This is superfluous as you cannot trade without the share code, which is the shortened version of the name of the issuer of the security.<br><br>It has already been made clear in Clause 3 that the lending arrangement must provide for an amount of securities equivalent to the short sale amount, therefore that same amount must surely vest in the buyer. | Requirement has been removed. |
| 24. | **JSE** | 5(1)(c) | (a) We do not support short sale transaction reporting as provided for in the proposed Standard because we remain of the view (as expressed in our response to the 2018 Discussion Paper) that whilst it may provide some value to the market and the regulators from a transparency point of view, it will impose a cost and administrative burden on the affected market participants that far outweighs the value. | See response to item 11. |

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| | | | (b) Notwithstanding the fact that the JSE's trading system and other supporting systems do not provide for the flagging of short sale orders or transactions, as we stated in our response to the 2018 Discussion Paper, it is unclear whether it is required that an authorised user must flag a short sale transaction (after the fact), or whether an authorised user must flag a short sale order that may or may not result in a short sale transaction.<br>(c ) No provision has been made for partial short sale orders and transactions. It would be inefficient and uneconomical for authorised users (and their clients) to place two sell orders into the trading system for the same security, to differentiate between a sale and a short sale. To comply with the proposed Standard, it is likely that an authorised user would flag a sell order as a short sale order even if it results in a partial short sale, resulting in inaccurate reported data.<br>(d) We note that the Standard states: 'The flagging of short sales by an authorised user on an exchange trading system provides market authorities, investors and companies with real time information of short sales, including intra-day activity, which may particularly be useful in a fast-moving market.' Although not specified in the proposed Standard, this implies the disclosure of flagged short sale orders and/or short sale transactions on the trading system, and the real time disclosure of this short selling activity in the data disseminated by the relevant exchange. We are strongly opposed to this type of data being disclosed to the public on a real time basis,<br>as it will negatively affect market effectiveness, price formation and market liquidity. | |
| 25. | **SAIS** | 5(1)(c) | As per the above, the SAIS strongly disagrees and is opposed to the Draft Conduct Standard specifically placing reliance on authorised users. The opinion held is that these requirements are not fit for purpose and are not feasible in the SA financial markets. Again, the SAIS strongly suggests that there be a collaborative and | See response at item 11. Transactional reporting requirements have been removed. |

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| | | | proactive approach to finding the best outcomes that will be suitable for the good of the SA markets.<br>There is also much confusion with respect to the following definitions:<br>- "short sale";<br>- "at time of sale";<br>- "flagging"; and<br>- "seller"<br>These need to be clearly defined and clarified in detail.<br>There needs to be a greater understanding of the process of when an order is placed and when the execution of transactions takes place. One process that defines action from the time the order is placed and the second process, to the time the order is matched and executed. As these are two different actions and work streams, the need to be separated to make provision for the different and individual processes and outcomes.<br>An authorised user may possibly be able to flag an order at the time of placing the order when trading on their own behalf. This could be done, provided systems could be changed to accommodate such flagging. However, the JSE Millennium trading system is an international system and would not be able to be changed in a short timeframe to accommodate members' orders.<br>It is imperative to understand when flagging takes place and by who. The client sends the orders electronically and therefore the responsibility should lie with the client. The authorised user receives the order, cannot change the "structure" of the order and therefore would not be able to flag it on receipt of the order from the client.<br>Orders are placed in different shapes, sizes and with different pricing. Flagging would therefore need to be done before the "original" order was sent to market to trade. Once the order has | |

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| | | | been matched, the authorised user would also not be able to change the structure of the order. It is therefore not possible for the authorised users to flag orders or trades after they have been executed. | |
| 26. | **Nedbank Wealth** | 5(1)(c) | All trading platforms would have to be updated to be able to flag the transactions as a short sales and back end administrative systems would have to be updated to record this flag. This requires significant development spend. In our opinion the cost to the market to implement the flagging and reporting of short sales far outweighs the benefits. | Transactional reporting requirements have been removed. |
| 27. | **Nedbank CIB** | 5(1)(c) | If the authorised user must flag on the system that this is a short sale, which system are we referring to, given the use of DMA, FIX etc.?<br><br>The authorised user cannot flag the short sale on those systems, that would have to be done by the client/counterparty of the authorised user themselves as they have direct access to book the transaction on those systems. We would therefore suggest that the onus for reporting a short sale should be for the client and not the authorised user.<br><br>Will there be a penalty for the authorised dealer if the seller does not disclose? | Transactional reporting requirements have been removed. |
| 28. | **ABSA** | 5(1)(c) | 1. **Accuracy of reporting:**<br>Authorised users, as leading brokers, would need to outlay a substantial amount of time and man-power to ensure the accurate reporting of client short sale trades, including the correct identification of the securities involved, the quantity of shares sold | Transactional reporting requirements have been removed. |

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| | | | short, and the timing of the trades. In the Draft Conduct Standard, it is stipulated that any errors or discrepancies in the reporting can lead to regulatory non-compliance and potential penalties. This will therefore need a project manager, a process flow and clearly defined roles and responsibilities across multiple teams. In order to reflect the short sale trades in South Africa accurately, the regulator would need to provide all members with much clearer guidance on when and how to report short sale trades and the various scenarios applicable. This can be complex from a trading perspective as all clients would need to make changes to their order entry systems to subsequently flag short sales vs sells (current tags).<br><br>Please clarify how the JSE / FSCA would verify that the data published is accurate from all members. Where the data is later identified to be incorrect by a member, please confirm how the subsequent correction of the historical data should be handled.<br><br>This section states that an authorised user may not execute a short sale on behalf of a seller on an exchange unless the authorised user flags the transaction on "the trading system" as a short sale. It is not clear which "trading system" is being referred to here. Please clarify if this is the trading system of the authorised user, or that of the exchange. | |
| 29. | **JSE** | 5(2) | Even if the JSE's trading system and supporting systems were adapted to provide for a LEI field, we fail to understand the purpose of the authorised user flagging short sale transactions with its own LEI. This information would be of limited use for market surveillance and investigative purposes.<br>Is it instead intended that the authorised user must – | Requirement has been removed. |

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| | | | • flag short sale transactions with the LEI of its clients; and<br>• procure a LEI for all its clients and the underlying clients on whose behalf institutional clients are acting, at its own cost? | |
| 30. | **SAIS** | 5(2) | It should be noted that this process cannot be implemented before a viable solution is found for authorised users to flag short sale transactions. All necessary systems would need to be enhanced to allow for orders to be sent down with the Legal Entity Identifier (LEI) as the process presently does not necessarily cater for this.<br><br>Clarity and guidance is required around whether the LEI relates to the authorised user LEI or to the underlying clients LEI. Clarity and guidance is also required as to whether it would be needed for the FI's underlying clients. The follow questions are raised:<br><br>- When the authorised user trades for all their **controlled accounts** (both discretionary and non-discretionary), whose LEI would need to be flagged on the order? One needs to bear in mind that orders sent to market are generally sent as bulk orders, on behalf of multiple clients and therefore no LEI would be sent on the order.<br>- When the authorised user receives orders for **non-controlled accounts**, whose LEI would need to be flagged on the order? One needs to bear in mind that orders sent to market are generally sent as bulk orders, on behalf of multiple clients and therefore no LEI would be sent on the order, per client. In addition, if one could receive the LEI, this would be the LEI of the "Parent" Company, the Holding | Transactional reporting requirements have been removed. Also see response at item 11. |

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| | | | Accountable institution and would not be per client, to which the FI will be allocating.<br>- Should the LEI be required per underlying client, there is a concern that this will result in a considerable cost effort and maintenance, as the LEI numbers need to be renewed and paid for annually. It will take time for all clients to obtain a LEI. Thus this cost will be paid for directly by the underlying client. Furthermore, the question is raised as to whether the LEI number will need to be completed at the level of the institutional clients' underlying client i.e. will the pension fund, collective investment scheme etc of the asset manager need to obtain the LEI as well?<br>This will be an additional data point for authorised users to collect, store in their systems and then report to the exchange. Authorised users will need to amend their systems and processes to be able to collect, validate and store such data. This will require system enhancement prioritisation against an existing priority list, which should be considered from a cost and implementation timeline perspective. | |
| 31. | **Fairtree** | 5(2) | Clause 5(2) states that an authorised user must, when flagging a short sale, use its own LEI.<br><br>Paragraph 3.4.2 of the statement supporting the draft conduct standard suggests that the client's LEI will be used when reporting to the exchange. | Transactional reporting requirements have been removed. |

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| | | | The FSCA to confirm that the LEI under which the transactional data will be reported to the exchange will be that of the authorised user and not that of the client. This will ensure data reported to the exchange remains anonymous with regards to client names.<br><br>The FSCA to clarify if an LEI will be required or not for the transactional data that clients will report to the authorised user.<br><br>If the LEI of the client will be used for reporting the transactional data, and in the event that the client acts as agent on behalf of a principal (such that the principal is the counterparty to a short sale), will the LEI under which the transactional data will be reported to the exchange be that of the agent or that of the principal? | |
| 32 | **JSE** | 5(3) | It is unreasonable to expect an authorised user, who may have thousands of clients, to procure a LEI for each of its clients and, if applicable, their underlying clients, at a cost to register an LEI of R 2,200, renewable at a cost of R1,225 plus Vat annually.<br>Furthermore, no clarity is provided regarding the LEI requirements in respect of a natural person.<br><br>These sub-paragraphs appear to have been sourced from the Australian framework regulating short selling, but the times referred to are not applicable to the South African market. There is no trading on South African exchanges after 7:00 pm but before the start of the next trading day. All trades in listed securities are concluded during the so-called trading day, either through the exchange's order book or reported to the exchange's trading system. Once the trading day commences for a particular market, as stipulated in the relevant exchange rules, all trades executed on or reported to an exchange's trading system are deemed to be part of that day's trading. | Transactional reporting requirements have been removed. |

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| 33. | **SAIS** | 5(3)(a) | Unfortunately, this clause would appear to be an extract taken from the ASX short sale paper. It is not fit for purpose or workable in the SA market. In addition, it does not particularly make much logical sense.<br>As orders can be placed and executed on different days, clarity is again needed. The question is raised as to whether flagging take place at order entry or only when an order is traded and executed. There are very different processes that would not be followed:<br><br>a) The trading system on trading day - T - would start early but new orders could only be placed on the market from 08h30, when the market opens for orders.<br>b) Clarity is required on the deadline by when authorised user would have to provide the required information required. It is unclear why the deadline of 19h00 (7pm) has been stipulated as the JSE Equity trading system's last transactions can only be booked up to 18h15.<br>c) Again clarity would be needed with respect to what listed securities this would include, for example equities, bonds, derivatives etc...as all systems have different times that the systems would be open for trading.<br>d) The industry has voiced confusion with the statement:<br>if authorised users executes a short sell:<br>o after the start of a trading day<br>o But before 7pm<br>o Must provide the information to the exchange by 9 am the next trading day<br><br>The question is raised as to how the authorised users could actually do this and on what systems this would take place as it would not | Transactional reporting requirements have been removed. |

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| | | | seem to be from the trading system. This does not make sense and given our trading sessions times this is absolutely not practical. | |
| 34. | **Nedbank Wealth** | 5(3) | The times make little sense in the context of the trading times of the local exchanges as the exchange is not open for trading after 5pm. | Transactional reporting requirements have been removed. |
| 35. | **Standard Bank** | 5(3) | The prescribed timelines of 7pm to 9am are too stringent as authorised users have processes that they run between those timelines such as allocations and trade amendments. This will require an additional operational report which might require authorised users to either enhance their systems or increase their head count. This imposes additional costs that authorised users might not be able to absorb. It should be noted that the exchange trading systems close at 5pm and that post-trade systems automatically close at 7pm. Teams responsible for post-trade allocations are responsible for operational work between these hours and in most cases do not have the capacity to take on the proposed additional responsibilities. We suggest consideration of a timeline extension to 7pm-10:30am which will be more achievable. | Transactional reporting requirements have been removed. |
| 36. | **ABSA** | 5(3) | The Draft Conduct Standard provides that authorised users are required to report short sale trades within the specified timeframes set by regulatory bodies. Meeting these deadlines is going to be challenging, especially for brokers dealing with a large volume of trades or operating across different markets and jurisdictions. Authorised users process hundreds of thousands of transactions on a daily basis. In turn, international clients have numerous clients, whom the authorised users are not privy to. In many cases, these clients may have shares to sell but, due to complexities in the process of converting the line from another jurisdiction into SA, they may require the authorised user to step in on T+2 to cover. In a scenario where a short sale has not been reported, given that the client had the shares on T, but on T+3, if still open, would be a short | Transactional reporting requirements have been removed. |

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| | | | sale, raises a discrepancy. This would result in inaccurate data being reported.<br>Authorised users, as Brokers, would now need to reconcile the short sale trades reported by clients with the actual trades executed on the multiple platforms we support. This process involves cross-checking trade details, verifying positions, and resolving any discrepancies before 9am the next business day. If errors are picked up, it can be extremely time-consuming and resource-intensive, particularly for brokers handling significant trading volumes. Given that there is a severe declining number of listed shares in South Africa (a reduction of over 25% in the past few years and now roughly just over 300 instruments), this complexity of short sale reporting on so few shares will result in many firms internally deciding to no longer trade in South Africa. This will lead to lower volumes trading in South Africa, with the market becoming unattractive due to the onerous regulation making the SA market too complex to trade in.<br><br>Identifying short sale transactions: Short sale reporting requires accurate identification of transactions involving the sale ofsecurities that the seller does not currently own. Identifying these specific trades can be challenging, especially in complex trading environments with multiple participants, high-frequency trading, and sophisticated trading strategies.<br><br>While brokers will have an obligation to report short sale trades, there is also a duty to protect client confidentiality and sensitive information. Balancing the need for transparency with maintaining client privacy can be a challenge, requiring robust data security measures and adherence to relevant privacy regulations. Even though this would be an aggregated view, we are concerned that we would we need client permission to share partial details of their | |

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| | | | trading considering that this may clearly show the direction of a seller or sellers in the market via the member. Requiring this consent will be a further deterrent for clients to engage in short selling with us.<br><br>Adequate technological infrastructure is crucial for brokers to efficiently capture, process, and report client short sale trades in SA. However, maintaining robust systems capable of handling large volumes of trade data and integrating with regulatory reporting platforms can be a significant technical challenge and be extremely costly. As a broker, we invest in advanced reporting systems and ensure compatibility with evolving regulatory requirements. However, this cost associated with creating these reporting processes is of very little benefit and overkill in a market like South Africa. This is going to lead to only a few members (large South African banks) being able to support trading in South Africa which will severely reduce the benefits of a robust short sale market. It will further inhibit the building of an inclusive market for emerging and BEE owned businesses. | |
| 37. | **SAIS** | 5(b) | Please see response/s above. In addition, it should be added that there is great confusion regarding section 2 (b) (above) and what reporting is expected on T+2. The authorised users would assume that this is for trades that are corrected or only booked on T+1 backdated to T by the member. Should this be correct, it will need to be clarified and better defined. | Transactional reporting requirements have been removed. |
| 38. | **Nedbank Wealth** | 5(b) | The times make little sense in the context of the trading times of the local exchanges and business hours of authorised users, as neither the exchange is not open for trading after 5pm and the business hours of authorised users are usually until 5pm. | Transactional reporting requirements have been removed. |
| 39. | **Nedbank Wealth** | 5 | No provision is made for reporting short sales for which the information referred to in section (1)(b) is received on T+1 after the start of trading | Transactional reporting requirements have been removed. |

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| 40. | **Nedbank CIB** | 5 | The times make little sense in the context of the trading times of the local exchanges, particularly section 4(b) as the exchange is not open for trading after 5pm. | Transactional reporting requirements have been removed. |
| 41. | **Nedbank Wealth** | 5(a) | The requirement to report short sales execute the previous day by 9 am is not realistic as this would require authorised users to:<br>1)complete the review of the previous day's transactions to identify short sales,<br>2)contact the clients to confirm whether it was a true short sale and obtain details of the scrip lending arrangement which has been put in place, or whether it was traded in error and put a scrip lending agreement in place for the MISDdeal, and<br>3)report to the exchange all before 9 am. | Transactional reporting requirements have been removed. |
| 42. | **Nedbank Wealth** | 5(4)(b) | The times make little sense in the context of the business hours of authorised user as authorised users are not open for business after 7pm. | Transactional reporting requirements have been removed. |
| 43. | **SAIS** | 5(5) | Please see response/s above. In addition, it should be added that there is great uncertainty regarding section 2 (b) (above) and what reporting is expected on T+2. The authorised users would assume that this is for trades that are corrected or only booked on T+1 backdated to T by the member. Should this be correct, it will need to be clarified and better defined.<br>Points 3 and 4 of Section 5 (Short sale transaction flagging and reporting) need to be expanded and worked through as there is much confusion in this regard.<br>Points 3 and 4 of Section 5 (Short sale transaction flagging and reporting) need to be expanded and worked through as there is much confusion in this regard.<br>As per the above, it must be noted that the SAIS' members and industry strongly disagree and are opposed to these conduct standards specifically placing reliance on authorised users and | Transactional reporting requirements have been removed. |

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| | | | exchanges. Again, the SAIS firmly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good of the SA markets.<br>The market participants believe that the costs and the efforts required to implement and maintain the suggested short sale identification, flagging and reporting will be exorbitant, far exceeding the benefit anticipated. This is not possible as the trading system does not have this functionality and would require a substantial system change, not only for the authorised users, exchanges, and clients, but also for administrators and custodians.<br>This section essentially requires authorised users to establish whether every sell order is a short sell or not. In the non-controlled institutional and low touch/direct market access/algorithmic trading spaces, it is reiterated that this requirement would be impractical and arguably, end most of this activity, resulting in a reduction in liquidity on SA exchanges. Considering the current daily volume of the SA exchanges there is a concern with the practicality of this requirement and the SAIS strongly disagree with the implementation of such a requirement.<br>The SA exchanges have on the whole achieved successful settlement over a considerable time period without such a requirement. There is a concern with the time, effort and cost that such a requirement will introduce, which will ultimately increase the cost of trading in SA without a material improvement in the control environment.<br>Authorised users are not sure what options would need to be exhausted, what systems could be used or how this would at all be possible, especially for non-controlled clients, as the authorised users have not had sight or jurisdiction over the non-controlled clients' overall positions and custody accounts. It is essential to understand that all non-controlled clients can trade simultaneously | |

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| | | | through multiple brokers and the authorised users would have no sight over the FI's overall trades and position keeping, custody and financial position of account.<br>An understanding is needed around settlement process and the netting process of executed transactions. The seller does not necessarily settle directly with the buyer or with the authorised users but settles via the STRATE settlement cycle. Authorised users would therefore never have sight of how these transactions would be settled. The Authorised users would only see if transactions executed are committed to by the clients' custodian/prime brokers. The SAIS and industry participants therefore reiterate that this is not workable or practicable and may result in negative unintended outcomes. | |
| 44. | **Nedbank CIB** | 5(5) | "An authorised user must exhaust all options, as may be deemed reasonable" to identify short sales.<br><br>What options are the FSCA considering and what is/is not reasonable?<br><br>This requires an extensive technology development as the authorised dealer would need to build a database and reporting tool based on the conditions listed above.<br><br>We would like to understand how this is facilitated in international markets? Can the exchange not collate this data based on the flag that is input into the trading system? | Transactional reporting requirements have been removed. |
| | | **Clause 6** | **6. Short sale position reporting** | |
| 45. | **JSE** | 6(1) | Authorised users do not have sight of, or access to, their clients' securities positions (long or short), with the exception of the client | See response at item 11. |

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| | | | portfolios that are managed and administered by authorised users and are therefore unable to report clients' short positions to the exchange by virtue of any direct knowledge. Authorised users will instead have to rely on the completeness and accuracy of short sale position information provided by their clients.<br>The proposed approach to reporting of short sale positions is complicated, and probably rendered unworkable, by the fact that local and foreign financial institutions trade through multiple authorised users, and may trade through multiple exchanges, in accumulating and covering a short position. To avoid duplication of effort and duplication of reported data, the questions: (i) which authorised user is responsible for obtaining information on its clients' short positions when a client trades through multiple authorised users, and (ii) to which exchange should the authorised users report short positions (i.e. 'the relevant exchange'), would need to be addressed. We suspect that there is, in fact, no reasonable answer to these questions.<br>An institutional client cannot be expected to select a particular authorised user to whom it will report its short positions, when it trades through multiple authorised users, nor (as the Standard seemingly contemplates) can every authorised user that trades for institutional clients be expected to request short position information from each institutional client if most institutional clients trade through multiple authorised users. Given the fact that institutional clients conduct their trading activities across multiple authorised users, the obligation imposed on authorised users to obtain short position information from all their clients is simply not capable of being complied with.<br>A further consideration is that if each authorised user that trades on behalf of an institutional client has to request their client to provide them with details of their short positions in each security, the affected | |

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| | | | clients will have to report that information, daily, to every authorised user that they trade through. Each affected authorised user will then be required to report the information that they obtain to the relevant exchange. This is likely to lead to duplicate, incomplete and/or inaccurate information being gathered and published by the relevant exchange. There will be an expectation that the relevant exchange publishes accurate information on short positions on a daily basis, given the reliance that the market participants and the Authorities will place on the reported information. The JSE – as one of the relevant exchanges – will be very concerned about the risk of publishing inaccurate information, knowing that the approach to gathering the information from its authorised users will be inherently flawed and prone to error for the reasons mentioned above.<br>In addition to the fact that short positions accumulated and closed out by institutional clients cannot be attributed to a particular authorised user, they also cannot be attributed to a particular exchange, because an institutional client may build a short position and close it out incrementally on whichever exchange offers the best price at the time of each trade. Authorised users trading for their own account can equally build and close out short positions across exchanges. Therefore, which exchange will be deemed to be the one responsible for gathering and reporting accumulated short positions across all market participants?<br>As the proposed Standard does not apply to clients of authorised users, an authorised user would not be able to compel its clients to report their short positional data on a daily basis, and the clients would be under no obligation to provide the information to an authorised user. In an attempt to remedy this shortcoming, the Statement Supporting the Draft Conduct Standard, in a footnote, notes that "… the authorized user must contractually require the client to disclose such information. Non-disclosure by the client will | |

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| | | | then at least constitute a breach of contract." Aside from the considerable cost and administrative effort required for all authorised users to amend the contracts with all their clients, to make provision for the disclosure of short positions, the only recourse that an authorised user would have in the circumstances where a client fails to comply with the disclosure reporting requirements set out in the amended contract would be through the courts, at significant expense to the authorised user. And a contractual breach by a client would not absolve an authorised user of its responsibility to meet its reporting obligations in terms of the Standard. The contractual approach is therefore unworkable and untenable as a means of enabling authorised users to meet their reporting obligations .<br>Furthermore, we anticipate that institutional clients will be unwilling to disclose their aggregate short positions to one or more authorised users, as this information will often reveal a confidential trading strategy that the institution would want to safeguard. Institutional clients are likely to only be willing to disclose details of their short positions to a relevant regulator, as they do in other jurisdictions.<br>There is also a significant benefit in requiring short position holders to report their short positions to the FSCA, because the FSCA will thereby know the size of short positions held by each position holder. If the approach to the reporting of short positions in the proposed Standard is followed, it is only the authorised users who will know the size of clients' short positions, as the authorised users are only required to report aggregated information across all clients to the relevant exchange. Vesting the information on individual client short positions only in the authorised users is of little use to the exchanges or the FSCA from a market surveillance or investigation point of view. We therefore strongly recommend that the short position reporting obligation is placed on the holders of short positions, and that the reporting of short sale positions is made directly to the FSCA. | |

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| 46. | **SAIS** | 6(1) | It must be noted that the SAIS' members and industry strongly disagree and are opposed to these conduct standards specifically placing reliance on authorised users and exchanges. Again, the SAIS strongly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good of the SA markets prior to publishing these papers.<br>The market participants believe that the costs and the efforts required to implement and maintain the suggested short sale identification, flagging and reporting will be exorbitant, far exceeding the benefit anticipated. This is not possible as the trading system does not have this functionality and would require a substantial system change, not only for the authorised users, exchanges, and clients, but also for administrators and custodians.<br>Authorised users are not sure what processes would be needed and followed, what systems could be used or how this would at all be possible, especially for non-controlled clients, as the authorised users have not had sight, nor do they have jurisdiction over the non-controlled clients' overall positions and custody accounts. It is essential to understand that all non-controlled clients can trade simultaneously through multiple brokers and the authorised users would have no sight over the FI's overall trades and position keeping, custody and financial position of account. The authorised user would not know what orders or transactions the non-controlled client would have left or executed with other brokers and therefore would never be in a position to be able to process reporting any open short sale positions on behalf of their clients. | See response at item 11. |
| 47. | **Fairtree** | 6(1) | In paragraph 3.6.3 of the statement supporting the draft conduct standard, it is proposed that positional data must be reported to the exchange "per client" and "across all clients". Clause 6(1), however, does not contain a requirement to report positional data per client. | See revised wording we used to capture the reporting of open positions. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |

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| | | | The FSCA to confirm that the intention is to place an obligation on the authorised user to report positional data on an aggregated basis and not per client to the exchange.<br>Request that clause 6(1) be amended to clearly reflect that an authorised user must report short sale positional data on a gross basis and not on a net basis.<br>Motivation: In the event that clients of an authorised user holds long positions that are open, the calculation of the total short positions on a net basis may reflect that the clients of the authorised user, on an aggregated basis, do not hold a short position or holds a reduced short position. E.g. if client A holds a 100 long position in a stock X and client B holds a 250 short position in stock X then the aggregated short position that should be reported to the exchange is 250 (and not 150, being 250 less 100). It is therefore more accurate to calculate the aggregate short positions on a gross basis.<br><br>Proposed wording:<br><br>"(1) An authorised user must on T+3 report the following positional data in respect of a particular listed security, aggregated for all its clients and calculated on a gross basis…"<br>Authorised users do not have suffient information to report this. The accounting records of short positions per client are maintained by prime brokers and custodians, which are in a better position to report this.<br>In addition, authorised users only have one side of the transaction information, that is when a short position is opened. Authorised users do not know when a short position is closed with a buy transaction, as this transaction is not specifically flagged. A client can also close a short position with a buy transaction executed through a different authorised user, in which case the initial | |

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| | | | authorised user will continue to incorrectly report the short position as it will be unaware of the buy transaction.<br>In paragraph 3.3.3 of the statement supporting the draft conduct standard, it is proposed that authorised users obtain the relevant information from clients to calculate the net position. This is not practical for thousands of clients to report all positions to authorised users in a timely and automated manner. | |
| 48. | **J.P. Morgan** | 6(1) | Authorised users do not have the data on the positions of its clients referred to in Clause 6(1), only information on the actual orders that are placed with it by the authorised users' clients. These orders are already required to be reported per Clause 5.<br>The information required in Clause 6 will only be available directly from clients or their custodians, and as such we request that this requirement be removed from authorised users. | See response at item 11 (especially the scope of institutions now covered and the exception that has been provided for). |
| 49. | **Nedbank CIB** | 6(1) | Any purchase order executed in the underlying security after T can be attributed to either Section (1)(a) or Section (1)(b) respectively in the determination of a net open position as at T+3.<br>Does the regulator have a preferred method of allocation such as FIFO/LIFO in order to ensure consistent allocation and aggregation of data across reporting?<br>The issue with the reporting of a short position on T+3, becomes complicated due to the fact that the transaction at a particular user is closed on settlement (i.e. the client has to deliver the shares covering that short sale in order for it to settle, however the authorised user has no way of knowing if the client now owes those shares to another party from whom the shares were initially borrowed – therefore the client may still be short the shares, but the position at the authorised user is now closed). This is the key difference in our mark compared to foreign markets – we do not have the ability to roll settlements | See response at item 11 and the revised standard which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |

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| | | | whereas they do. This results in reporting on foreign markets being quite different to the local markets with regards to the reporting of short positions specifically. | |
| 50. | **JSE** | 6(1)(a)- (c ) | It is unclear whether an authorised user is required to report in terms of sub-paragraphs 1(a) to (c) separately, or whether the details provided in sub-paragraphs 1(a) to (c) are included merely to clarify what should be reported in aggregate. We note that the information required in these sub-paragraphs will be aggregated by the relevant exchange, in terms of paragraph 8, and not published separately. Notwithstanding our comments in opposition to short position reporting by authorised users instead of by short position holders, we suggest that sub-paragraph 1 be amended to read as follows:<br>An authorised user must on T+3 report all short sale positional data as at T+3 in respect of a particular listed security, aggregated for all its clients and its own account, to the relevant exchange, unless the open short positions in respect of that security are below the determined thresholds. | See response at item 11 and the revised standard which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |
| 51. | **SAIS** | 6(1) (a)- (c ) | As the FI is able to trade through multiple brokers, the FI would have no reason to report the “open” shorts sale positions, as they may have executed the same securities through multiple members and not one member. Therefore no authorised users would be in a position to see the overall position.<br>Authorised users are not sure what processes would be needed and followed, what systems could be used or how this would at all be possible, especially for non-controlled clients, as the authorised users have not had sight, nor do they have jurisdiction over the non-controlled clients’ overall positions and custody accounts. It is essential to understand that all non-controlled clients can trade simultaneously through multiple brokers and the authorised users would have no sight over the FI’s overall trades and position keeping, custody and financial position of account. The authorised user would | See response at item 11 and the revised standard which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |

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| | | | not know what orders or transactions the non-controlled client would have left or executed with other brokers and therefore would never be in a position to be able to process reporting any open short sale positions on behalf of their clients.<br>It must be noted that the SAIS' members and industry strongly disagree and are opposed to these conduct standards specifically placing reliance on authorised users and exchanges. Again, the SAIS strongly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good of the SA markets prior to publishing these papers.<br>The market participants believe that the costs and the efforts required to implement and maintain the suggested short sale identification, flagging and reporting will be exorbitant, far exceeding the benefit anticipated. This is not possible as the trading system does not have this functionality and would require a substantial system change, not only for the authorised users, exchanges, and clients, but also for administrators and custodians.<br>Authorised users are not sure what processes would be needed and followed, what systems could be used or how this would at all be possible, especially for non-controlled clients, as the authorised users have not had sight, nor do they have jurisdiction over the non-controlled clients' overall positions and custody accounts. It is essential to understand that all non-controlled clients can trade simultaneously through multiple brokers and the authorised users would have no sight over the FI's overall trades and position keeping, custody and financial position of account. The authorised user would not know what orders or transactions the non-controlled client would have left or executed with other brokers and therefore would never be in a position to be able to process reporting any open short sale positions on behalf of their clients. | |

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| 52. | **Nedbank CIB** | 6(1)(a) | "all short positions created on T in respect of that security that are still open as at T+3;" – as T+3 is settlement day, theoretically no positions should be open at the end of that day for shares that settled on the day. The question is therefore whether reporting for that day is expected before or after settlement. | See response at item 11 and the revised standard (especially the definitions) which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |
| 53. | **Nedbank CIB** | 6(1)(b) | all short positions in respect of that security that were created before T, and which are still open as at T+3;" – it should be made clear as to whether this means roll-over trades and corrected trades, but this would then result in the same trade being reported twice – it would not be a new position. | See response at item 11 and the revised standard (especially the definitions) which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |
| 53. | **Nedbank CIB** | 6(1)(c ) | "the total short positions in respect of that security comprising subparagraph (a) + (b)." Again there needs to be clarity on what we are looking at – pre or post settlement? And again, this does not consider trades that are re-booked (such as MISDdeals). | See response at item 11 and the revised standard (especially the definitions) which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |
| 54. | **SAIS** | 6(2) | An understanding is needed of the trading and settlement process and the netting process of executed transactions, as a seller does not necessarily settle directly with the buyer or with the authorised users but settles via the STRATE settlement cycle.<br>Therefore the authorised users would never have sight of how these transactions would be settled. The authorised users would only see if transactions executed are committed to by the clients' custodian/prime brokers. The authorised user would never know what transactions and especially not all short positions created on T and in respect of that security, would still be open as at T+3.<br>As naked short sales are not allowed and only transactions for covered short sales are allowed, as per JSE Rules, the authorised | See response at item 11 and the revised standard which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |

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| | | | user would not know what transactions are still open and have not been bought back by the non-controlled client. The authorised user would therefore never be in a position to be able to know what was unsettled. Consequently, his type of reporting is not possible and impractical in the current environment.<br>The SAIS is not sure what is meant by:<br>6.b) "….all short positions in respect of that security that were created before T"<br>Clarity is sought from the regulators.<br>The SAIS and industry reiterate that this is not workable or practical and do not believe that the results will achieve the intended outcomes. Again, the SAIS strongly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good of the SA markets. | |
| 55. | **Standard Bank** | 6(2) | We suggest that the FSCA consider determining the thresholds before finalising the draft Conduct Standard. | We will attempt to finalise the thresholds at the same time that the Standard becomes effective. |
| | | | 7.Public disclosure of short sale transaction data | |
| 56. | **SAIS** | 7 | As per the above, it must be noted that the SAIS' members and industry strongly disagree and are opposed to these conduct standards specifically placing reliance on authorised users and exchanges. The financial market participants are of the opinion that this is unworkable as well as impractical, having multiple unintended consequences. It is highly probably that there will be a negative effect on the market, further driving investment and liquidity in the SA Market away. This is ultimately bad for SA economic growth and the SA financial markets.<br>The market participants believe that the costs and the efforts required to implement and maintain the suggested short sale | See response at item 11 and the revised standard which reflects a different approach. Please advise (through the second round of public consultation) whether this wording resolves your concerns. |

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| | | | identification, flagging and reporting will be exorbitant, far exceeding the benefit anticipated. This process is not possible as the trading system does not have this functionality and would need substantial system changes not only for the authorised users, exchanges and clients but also for their administrators and custodians.<br><br>Authorised users are not sure what processes would be needed and followed, what systems could be used or how this would at all be possible, especially for non-controlled clients, as the authorised users have had not sight of, nor have jurisdiction over the non-controlled clients' overall positions and custody accounts.<br>It is essential to understand that all non-controlled clients can trade simultaneously through multiple brokers and the authorised users would not have had sight of the FIs overall trades and position keeping; custody and financial position of account.<br>The broker would not know what orders or transactions the non-controlled client would have left or executed with other brokers and therefore would never be in a position to be able to process reporting any open short sale positions on behalf of their clients.<br>An understanding is needed of the trading and settlement process and the netting process of executed transactions, as a seller does not necessarily settle directly with the buyer or with the authorised users but settles via the STRATE settlement cycle. Therefore the authorised users would never have sight of how these transactions would be settled. The authorised users would only see if transactions executed are committed to by the clients' custodian/prime brokers. The authorised user would never know what transactions and especially not all short positions created on T and in respect of that security, would still be open as at T+3.<br>As naked short sales are not allowed and only transactions for covered short sales are allowed, as per JSE Rules, the authorised | |

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| | | | user would not know what transactions are still open and have not been bought back by the non-controlled client. The authorised user would therefore never be in a position to be able to know what was unsettled. Consequently, his type of reporting is not possible in the current environment.<br>Due to authorised users not being able to get the required information and therefore unable to verify such information, it would therefore also not be possible for the exchange to get this information, verify such information, to then aggregate the information and be able to publish such information.<br>It would be exceptionally risky and reckless for exchanges to publish data publicly that cannot be verified. This could create false and MISDleading information in addition to being irrelevant and of no value. This could be construed as deceptive, possibly creating a false market on this incorrect data which is absolutely counterintuitive to what this paper is trying to achieve.<br><br>Again, the SAIS strongly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good of the SA markets. | |
| 57. | **Standard Bank** | 7 | By T+1 most trades are committed to, and the data would have been outdated by then for institutional investors. It is therefore important that more detail is provided with regards to the age of the data and what purpose it is intended to achieve for the benefit of non-professional investors. | Comment noted. However, unclear what you are proposing in terms of amendments to the Standard. |
| | | 8 | 8. Public disclosure of significant net short positions | |
| 58. | **JSE** | 8(1) | (a) As per our comment in respect of paragraph 6, we recommend that the FSCA publicly disclose aggregate net short sale positions, that should be reported to the FSCA, and that the exchanges should not be responsible for the public disclosure. The proposed approach in the Standard to gathering short position information from short | We remain of the view that the FSCA is not best placed to receive and publish this data. However, we acknowledge the challenges that exist with placing the obligation on the exchange. As such, we have changed the |

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| | | | position holders, via the authorised users and the exchanges, is impractical and unworkable.Short position information should be disclosed to, and published by, the FSCA, as is the case in other jurisdictions.<br><br>(b)Incorrect cross-reference to paragraph 7. Should be paragraph 6. | Standard to impose the public disclosure obligation on the trade repository. In our view a trade repository is best placed as a central point to receive this data, especially given the expanded scope of who will report open positions. |
| 59. | **SAIS** | 8 | The SAIS once again reiterates that this is unimplementable for the reasons stipulated above.<br>Without good collaboration and open discussion we cannot as a financial community achieve objectives that will benefit the SA economy and SA financial markets in the best and most practical way. Private sector and regulator relationships are key to attain these goals. | Comment noted. |
| 60. | **Standard Bank** | 8 | The obligation to publish this falls on the two exchanges in South Africa. However, the publication of information on both exchanges might cause some confusion and the regulator would need to determine how consolidated information could be made public in a consolidated manner. | See response at item 58. Placing the obligation a trade repository should resolve your concern. |
| | | 9 | 9. Short title and commencement | |
| 61. | **JSE** | 9 | A six-month period is insufficient time for the exchanges, authorised users and clients to make the necessary changes to multiple systems and processes to comply with the Standard. Subject to the provisions of the final Standard, and therefore what obligations will be imposed, either directly or indirectly, on exchanges, authorised<br>users and clients, we recommend that the commencement date is set at a minimum of 24 months after publication of the Conduct | See response at item 11 and the revised standard which reflects a different approach. In addition, the transitional period has been extended to 12 months. |

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| | | | Standard. An earlier commencement date is likely to be possible if a materially different approach is adopted in the Standard to short sale transaction and position reporting, as we are recommending. | |
| 62. | **SAIS** | 9 | The SAIS would strongly suggest that the Draft Conduct Standard cannot be effected, and certainly not within six months from the date of publication. The SAIS strongly reiterates that the Draft Conduct Standard, as currently published is not able to be effectively and fairly implemented.<br>Again, the SAIS strongly suggests that there be collaborative and proactive approach to finding the best outcomes that will be suitable for the good of the SA markets. | See response directly above. |
| 63. | **J.P.Morgan** | 9 | We request that the Conduct Standard come into effect at least 12 months after publication of the final Standard to allow for sufficient system development and testing across the market | See response directly above. |
| 64. | **Standard Bank** | 9 | We request that consideration be made to revising this timeline. We are of the view that the proposed 6 months will not be long enough to accommodate operational adaptation. We suggest consideration to extend this to between 12 to 24 months which would allow sufficient time for members to adapt and make changes to their internal IT systems. | See response directly above. |
| | | | **SECTION C -GENERAL COMMENTS** | |
| 65. | **JSE** | | The JSE welcomes the opportunity to comment on the proposed Standard. While we are supportive of a framework that improves transparency, market integrity and investor information, we are the view that the cost to comply with the proposed Standard will significantly outweigh the benefits. The reporting and disclosure burden imposed on authorised users and exchanges is unrealistic and unworkable.<br>We note that in the almost five-year period since the publication of the 2018 Discussion Paper, the FSCA has had limited engagement | Noted. See revised approach as explained in the Statement of Need and Impact. |

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| | | | with the JSE and authorised users in respect of the proposed framework. We believe that this lack of engagement with important stakeholders may have contributed to the Standard being fundamentally flawed in many respects. In formulating the proposed Standard, after considering all the comments on the Discussion Paper, if the FSCA formed the view that the legislation does not empower the FSCA to impose any restrictions or obligations on clients of authorised users, who are responsible for most short selling activity, we believe the FSCA should have discussed the implications of this view with the affected stakeholders. Responding to the perceived legislative gap by simply placing the burden of compliance solely on authorised users and exchanges has resulted in an impractical and unworkable framework, and the stakeholders could have provided this feedback at the outset. Similarly, many of our comments and those of authorised users (through the SAIS) on the 2018 Discussion Paper have seemingly not been taken into account in formulating the proposed Standard. Discussions with the relevant stakeholders on comments that they submitted on the 2018 Discussion Paper could have raised the awareness of the impact of the introduction of short sale regulatory provisions on market participants, and perhaps avoided the formulation of proposals in the Standard that are likely to have a signifcant negative impact on many market participants.<br>The JSE and, presumably, a number of market participants have gone to significant effort in formulating responses to the proposed Standard, because the introduction of a short selling framework will be an important development for the South African financial markets, and we have a collective interest in ensuring that the framework is appropriate and achieves the necessary objectives. We strongly urge the FSCA to convene a workshop with affected stakeholders to | |

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| | | | discuss the comments on the proposed Standard before a revised Standard is published.<br>We note that in drafting the proposed Standard, the FSCA seems to have adopted many features of the Australian reporting and disclosure requirements for short selling, including short sale transaction reporting. One major deviation from the Australian regime is that the Australian regulations require short position reporting to the regulator and not to authorised users. While we generally support alignment to international standards and practices, we are of the view that an alignment to the European Union Short Selling Regulation (EU SSR) is more appropriate for the South African market, particularly as the majority of foreign investors in our market are EU or UK based and would be more familiar with a similar regime. In this regard, the EU SSR does not impose transaction reporting at the point of sale, and market participants in that region are therefore unlikely to have made the necessary arrangements to facilitate that form of reporting. As with the Australian requirements, the EU SSR provides for the reporting of short positions to the regulator by the short position holders. | |
| 66. | **SAIS** | | The SAIS understands the comments with regard to risks and benefits however current equity exchange rules within SA stipulate guaranteed settlement, that is, all transactions are settled within a specified settlement period (T+3). This places the full onus and responsibility on the authorised user to ensure settlement takes place on settlement day. This would imply that no naked short selling is allowed. In addition, all shorts have to be covered by settling these securities within the stipulated time period.<br>Market abuse and disorderly markets cannot be directly linked. We do however believe that the publishing of “false” or MISDleading information with the intention of selling “short” could be responsible | Noted. See revised approach as explained in the Statement of Need and Impact. |

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| | | | for some forms of market abuse and MISDconduct within the markets.<br>The SAIS is of the opinion that short selling is more likely to have a positive effect, i.e. increasing liquidity. The largest risk in short selling, in our opinion, is the recall of loaned securities and volatility and price fluctuations as a result of short squeezes<br><br>The SAIS does not agree with the flagging of short sales transactions by authorised users at the time of the transaction. The fact that current SA exchanges prevent naked short selling and require authorised users to have the securities in place for short selling, will negatively impact the market resulting in the cost to the market outweighing the benefits<br><br>Members consulted with their offshore associated/subsidiaries and would like to highlight the following:<br>MiFID - whilst MiFID requires that client short sales are reported, MiFID does allow an “Undisclosed” option to cater for when a client has not told the EU equivalent of an authorised user whether a sale will result in a short sale.<br><br>Further, the feedback received from offshore members is that clients hardly ever tell their authorised users whether a sale is a short sale, which has resulted in the “undisclosed” option being used for all client sales in their authorised user reports. Therefore negating in value of such reporting of client short sale having had little or no transparency benefit and had not achieve the requisite outcomes as desire.<br>The so-called Edinburgh Reforms is an initiative by the UK regulators to reform their regulatory framework to be more practical and includes a plan to revise the short selling regulations which the | |

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| | | | regulators and the market participants do not appear to support, as they have been overly burdensome with limited benefit.<br>We anticipate a similar experience in SA. Please refer to the consultation document which was released in December 2022, which asks many questions including whether short selling should be regulated as the UK regulators reconsider short selling regulations - Short Selling Regulation Review - Call for Evidence (document attached)<br>Market maker / liquidity provider exemption – the UK short sale regulations allow for market participants to apply for an exemption – we understand that many of their authorised users have applied for this to allow them to facilitate trades effectively with clients. If we follow a similar approach then the authorised users wouldn't need to report connected short sales. | |
| 67. | ABSA | | Reporting of short sales should be limited to the equity market.<br>The aim of the Conduct Standard is to meet the requirements of Principle 37 of the IOSCO Principles on the Objectives and Principles of Securities Regulations. IOSCO published the Methodology for Assessing Implementation of the Objectives and Principles of Securities Regulation. The sections on short selling in this document reference the equity market only (See pages 248 and 252 of the IOSCO Methodology document). The intention seems to be to regulate the inherent risks in equity markets in relation to short selling.<br>Therefore we suggest that the Conduct Standard be limited to equity markets and not apply to the short selling of all securities generally. The application to all securities generally is significantly more difficult to implement under the Conduct Standard and in any event goes beyond the requirements of the IOSCO principles. | Disagree that the scope should be limited to equities as such an approach will provide a fragmented/limited view of the short sales market. With regards to the rest of your comment, see revised approach as explained in the Statement of Need and Impact. In our view the revised approach will mitigate many of the risks you explain in your comment. However, please advise (through the second round of public consultation) whether or not you agree. |

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| | | | Adequate technological infrastructure is crucial for brokers to efficiently capture, process, and report client short sale trades in SA. However, maintaining robust systems capable of handling large volumes of trade data and integrating with regulatory reporting platforms can be a significant technical challenge and be extremely costly. As a broker, we invest in advanced reporting systems and ensure compatibility with evolving regulatory requirements. However, this cost associated with creating these reporting processes is of very little benefit and overkill in a market like South Africa. This is going to lead to only a few members (large South African banks) being able to support trading in South Africa which will severely reduce the benefits of a robust short sale market. It will further inhibit the building of an inclusive market for emerging and BEE owned businesses.<br><br>A core benefit of short selling is that it provides liquidity, meaning enough sellers and buyers, to markets. It further reduces volatility when short sellers trade in the opposite direction of price movements. Our biggest concern is that the Draft Conduct Standard will severely reduce the liquidity in the market given that there is already a severe declining number of listed shares in South Africa as opposed to markets in Australia and other countries. As mentioned above, there has been a reduction of listed shares of over 25% in the past few years, resulting in the availability of roughly just over 300 instruments. The now added complexity of short sale reporting on so few shares will result in many firms deciding to no longer trade in South Africa. | |
| 68. | **Nedbank CIB** | | **(1) Veracity of reporting**<br>Unless there is a legislative requirement for clients to report short sales, the veracity of the figures reported will always be under | 1. See responses to item 11 and 13 above, especially the responses relating to placing the reporting obligation on clients. |

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| | | | question – if there is no sanction for not declaring a short sale, the level of compliance may be lower than it should be. The legislative requirement could be added under either FSRA or COFI .<br><br>**(2) Market makers**<br><br>Market makers are authorised users that provide trading services for investors in an effort to keep financial markets liquid. The vast majority of market makers work on behalf of large institutions due to the size of securities needed to facilitate the volume of purchases and sales. Given the part they play in the markets, they should be exempted from this legislation.<br><br>**(3) Looking at overseas regulation as a model**<br><br>It should be noted that in the United Kingdom, the authorities are again looking into short sale reporting as it is not working as expected or envisaged. It must further be borne in mind that overseas exchanges were not subject to the same requirements as those of the JSE, i.e. that short sales must be covered. Their situation was thus very different to the local position. The most important difference between local and overseas markets is that the local market does not allow for rolling settlement and this makes a significant difference to how our market operates – you cannot forever roll a short position – it must be settled on T+3 or completely cancelled and re-booked.<br><br>**4) Failed trades, MISDdeals**<br>The mechanics of how trades which are re-booked, or MISDdeals are to be reported will have to be investigated and clarified. | 2. Your response provides insufficient reasons for justifying the exclusion of market makers. We suggest that you elaborate on your reasons why they should be excluded through the second round of public consultation.<br>3. Noted.<br>4. Noted. What exactly you are proposing in terms of amendments to the Standard is, however, not clear.<br>5. Your view is noted.<br>6. Comment unclear as the proposal is not that the JSE must enforce requirements. The JSE was simply required to aggregate and report the information submitted to it. Notwithstanding, as above, the obligation to publicly disclose aggregated open short positions is now placed on a trade repository.<br>7. See response at item 65. |

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| | | | **(5) Build-up of positions and market abuse**<br><br>A build up of short positions is only dangerous to a market if the positions taken exceed the number of shares in issue, which should not be the case locally as the JSE Rules require that all short sale positions be covered. Whilst short sales could be used to drive the price of a share downwards, it could be argued this is equally possible to do without having to resort to a short sale. Using short sales to commit market abuse is equally risky for the seller.<br><br>**(6) Enforceability**<br><br>We would question the ability of the JSE to enforce reporting requirements, particularly in respect to clients of authorised users. This can only be enforced through primary legislation.<br><br>**(7) Transitional period**<br><br>In the FSCA supporting statement provided with this document, it is noted that obligations are placed on members regarding the operation of an OEA, which includes governance requirements. We refer to previous comments made with regards to the transitional period – if the FSCA is suggesting that the Rules be amended to include the requirements that clients of authorised users must report short sales on any OEA, a transition period of 6 months seems somewhat unrealistic just in this regard. The FSCA has not included in their statement any comment on other systems such as the FIX system, which will also require amendments. The FSCA has reversed their decision on reporting on short sales themselves – perhaps due to the realisation of the amount of work and time it would | |

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| | | | take to develop such a system, however, expects both the exchanges and all authorised users to develop such systems within a 6-month period. Given that "due consideration" must also be given to the proposal of market thresholds the timeframe becomes ever less attainable as the calculation of thresholds would be another and more complex item which would have to be added to any reporting system due to the analytics involved. | |
| 69. | **Nedbank Wealth** | | **Veracity of reporting**<br><br>The veracity of the figures reported will always be under question as the data is not independently verifiable.<br><br>**Looking at overseas regulation as a model**<br><br>It should be noted that in the United Kingdom, the authorities are again looking into short sale reporting as it is not working as expected or envisaged. It must further be borne in mind that overseas exchanges are not subject to the same requirements as those of the JSE, i.e., that short sales must be covered.<br>Their situation is therefore very different to the local position and the necessity to report then becomes a requirement in order for the market to be aware of the build-up of large uncovered short positions which could negatively impact the share price.<br><br>**Failed trades, MISDdeals**<br>The mechanics of how MISDdeals and trades which are re-booked are to be reported will have to be investigated and clarified. | See response at item 68, which addresses most if not all of these comments. |

| SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD | | | | |
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| | | | **Build-up of positions and market abuse**<br>A build up of short positions is only dangerous to a market if the positions taken exceed the number of shares in issue, which should not be the case locally as the JSE Rules require that all short sale positions be covered. Whilst short sales could be used to drive the price of a share downwards, it could be argued this is equally possible to do without having to resort to a short sale. Using short sales to commit market abuse is equally risky for the seller.<br><br>**Enforceability**<br>We would question the ability of the JSE to enforce reporting requirements, particularly in respect to clients of authorised users. This can only be enforced through primary legislation.<br><br>**Transitional period**<br><br>In the FSCA supporting statement it is noted that obligations are placed on members regarding the operation of an OEA, which includes governance requirements. We refer to previous comments made with regards to the transitional period – if the FSCA is suggesting that the JSE Rules be amended to include the requirements that clients of authorised users must report short sales on any OEA, a transition period of 6 months seems unrealistic just in this regard.<br>The FSCA has reversed their decision on reporting on short sales themselves – perhaps due to the realisation of the amount of work and time it would take to develop such a system, however, expects both the exchanges and all authorised users to develop such systems within a 6-month period. Given that “due consideration” | |

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