

FSCA COMMUNICATION 17 OF 2025 (FM)

Publication of draft Conduct Standard – Requirements relating to securities financing transactions

1. Purpose

The purpose of this Communication is to inform stakeholders that today the Financial Sector Conduct Authority (FSCA) has published the following documents for public consultation:

- Draft FSCA Conduct Standard [--] of 2025 (FM) – Requirements relating to securities financing transactions;
- Statement of Need and Impact of the Conduct Standard – Requirements relating to securities financing transactions; and
- Comments template for the Conduct Standard – Requirements relating to securities financing transactions.

2. Background and context

2.1 Security financing transactions (SFTs) are used for the temporary transfer of securities against cash and can typically exist in any one of the following forms:

- (a) repurchase and reverse repurchase transactions (repos);
- (b) securities lending and securities borrowing; and
- (c) a margin lending transaction.

2.2 Although certain financial sector laws may regulate aspects pertaining to SFTs, a holistic framework to regulate the entering into and intermediation of SFTs does not currently exist. Over a number of years, the FSCA has been working on two regulatory framework interventions focused on SFTs, which are applicable to the financial markets and pension funds environments.

2.3 In 2016 and 2017 the then Financial Services Board (FSB) engaged a research consultant to conclude technical research in respect of SFTs to unpack SFT practices and risks in the South African market. The research covered, amongst other things, –

- a general overview of SFTs and SFT participants and a landscape exercise of the South African SFT market and practices;
- researching international best practices and developments in respect of the regulation of SFTs;
- unpacking the risks associated with SFTs;
- whether there is a need for policy intervention in the South African SFT market.

2.4 Following the research, in 2017 the former Registrar of Securities Services of the FSB published a draft Code of Conduct for Participants entering into SFTs in terms of the Financial Markets Act, 2012 (Act No. 19 of 2012) (FMA) for public comment. Comments were received and considered and targeted engagements were held with the South African Securities Lending Association (SASLA) and the Banking Association of South Africa (BASA)

- 2.5 A particular concern was raised at that stage regarding whether SFTs fall within the ambit of the definition of ‘securities services’ in the FMA, which raises jurisdictional concerns, and this led to the FSB reconsidering how to most effectively regulate SFT related activities.
- 2.6 In January 2017, the then Registrar of Pension Funds published a draft Notice on Regulation 28 prescribing conditions for securities lending for pension funds (draft Notice) for public consultation.
- 2.7 In October 2020, the FSCA published a second version of the draft Notice for public consultation in the form of a draft Conduct Standard – Conditions for securities lending for pension funds (Securities Lending Conduct Standard).
- 2.8 The Securities Lending Conduct Standard was published in the context of Regulation 28(6), which provides that pension funds may engage in securities lending, and which enables the FSCA to prescribe conditions in respect thereof. Pension fund assets represent a significant portion of investable assets of financial institutions and such assets form a large base of the securities lending in the financial industry. The Securities Lending Conduct Standard was therefore deemed necessary to balance the benefits of securities lending with the possible risks.
- 2.9 Whilst the above regulatory interventions were being developed, a significant change occurred in the financial sector legal architecture. In March 2018, the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) commenced. The FSR Act, amongst other things, established the FSCA, expanded the scope of regulation with an extended definition of financial services and provided the FSCA with broad powers to make conduct standards in respect of financial institutions. The establishment of the FSCA resulted in the reprioritisation of various focus areas and activities, including the draft Conduct Standard.
- 2.10 The regulatory framework interventions focused on securities financing transactions formed part of the reprioritisation process. At the time the FSCA considered how best to prioritise these developments. In addition, the FSCA acknowledged that there is significant overlap between the two developments and that further work had to be done in an attempt to try and harmonise the approach to avoid duplication, misalignment, regulatory arbitrage, and the like.
- 2.11 The FSCA’s 2022¹ and 2023² Regulation Plans highlighted that although the FSCA has not lost sight of SFTs, it is not enjoying the highest priority, but it will remain on the FSCA’s radar. It was also highlighted that the framework pertaining to SFTs are to some extent dependent on other broader developments³ and decisions on whether and how to progress the SFT work will be made as and when there is greater clarity surrounding the broader developments. Further, it explained that work in relation to the Securities Lending Conduct Standard has been placed on hold pending the finalisation of the broader work focused on securities financing transactions.
- 2.12 More recently, the FSCA’s 2024⁴ Regulation Plan highlighted that SFTs are now enjoying a higher priority and that a draft Conduct Standard is envisaged to be published for public consultation within the April 2024 – March 2025 business year. It was also highlighted that the Securities Lending Conduct Standard project might be resuscitated in due course.

¹ Covering the period 1 April 2022 – 31 March 2025.

² Covering the period 1 April 2023 – 31 March 2026.

³ Such as the Financial Markets Review.

⁴ Covering the period 1 April 2024 – 31 March 2027.

- 2.13 Instead of imposing detailed requirements that address each and every risk scenario, the requirements in the draft Conduct Standard are positioned at a higher, more principles-based level. Therefore, in addressing the identified risks, the draft Conduct Standard reflects a strong focus on ensuring that SFT participants' have the necessary governance, risk management and internal control frameworks in place to manage many of these identified risks.
- 2.14 The risks identified and the need for regulating SFTs are discussed in detail in the Statement of Need and Impact supporting the draft Conduct Standard.

3. INVITATION TO COMMENT ON DRAFT CONDUCT STANDARD AND ENQUIRIES

- 3.1 The documents referred to in paragraph 1 are available on the FSCA's website at www.fsca.co.za.
- 3.2 Interested parties are invited to submit, in writing, comments on the draft Conduct Standard and supporting documents, using the comments template published alongside the draft Conduct Standard, on or before **17 October 2025** - via email to FSCA.RFDStandards@fsca.co.za.
- 3.3 For more information regarding the Conduct Standard and/or this Communication please contact the Regulatory Framework Department of the FSCA at tshifhiwa.mavhuthugu@fsca.co.za.



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