

FINANCIAL SECTOR REGULATION ACT, 2017 PENSION FUNDS ACT, 1956

NOTICE REGARDING THE PUBLICATION OF DRAFT CONDUCT STANDARD [-] OF 2025 (FM) - REQUIREMENTS RELATING TO SECURITIES FINANCING TRANSACTIONS

The Financial Sector Conduct Authority (FSCA) hereby invites, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), submissions on draft Conduct Standard - Requirements relating to securities financing transactions, to be made in terms of section 106(1) read with sections 106(2)(a), 106(3)(a) and 108 (1) and (2) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and regulation 28(6) of the Regulations in terms of section 36 of the Pension Funds Act, 1956 (Act No. 24 of 1956), as per the Schedule below.

The draft conduct standard, together with a statement supporting the draft conduct standard, is available on the FSCA's website.

Submissions on the draft conduct standard must be submitted in writing, using the submission template available on the FSCA's website, on or before **17 October** 2025 to the FSCA at FSCA.RFDStandards@fsca.co.za.

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FINANCIAL SECTOR CONDUCT AUTHORITY

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SCHEDULE

CONDUCT STANDARD [-] OF 2025 (FM)

REQUIREMENTS RELATING TO SECURITIES FINANCING TRANSACTIONS

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1. Definitions

In this Schedule, "the Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) and "the Financial Markets Act" means the Financial Markets Act, 2012 (Act No. 19 of 2012) and any word or expression to which a meaning has been assigned in the Act or the Financial Markets Act bears the meaning so assigned to it, and unless the context otherwise indicates-

"Authority" means the Financial Sector Conduct Authority as defined in section 1 of the Act;

"counterparty" means the opposite contracting party in a security financing transaction;

"equivalent securities" means securities that are of the same issuer, part of the same issue and nominal value:

"financial institution" means a financial institution licensed under a financial sector law;

"global master repurchase agreement" means a -

- (a) 1995 Global Master Repurchase Agreement published by the Public Securities Association and the International Securities Market Association.
- (b) 2000 TBMA/ISMA Global Master Repurchase Agreement published by the Bond Market Association and the International Securities Market Association ;
- (c) 2011 Global Master Repurchase Agreement published by the Securities Industry and Financial Markets Association and the International Capital Market Association;
- (d) any new version of an agreement referred to in paragraphs (a) to (c);
- (e) any other standardised, bilateral master agreement that governs the relationship between the parties to a repurchase transaction published by an internationally recognised financial industry association, which the Authority determines by publication on its website, and which meets any condition reflected in such determination;

"global master securities lending agreement" means -

- (a) a 2000 Global Master Securities Lending Agreement or 2010 Global Master Securities Lending Agreement as published by the International Securities Lending Association,
- (b) any new version of a Global Master Securities Lending Agreement published by the International Securities Lending Association; or
- (c) any other a standardised, bilateral master agreement that governs the relationship between the parties to a securities lending and borrowing transaction published by an internationally recognised financial industry association, which the Authority determines by publication on its website, and which meets any condition reflected in such determination;

"intermediates" or "intermediation" means any act that -

- (a) results in an SFTP entering into, or offering to enter into, a securities financing transaction; or
- (b) is aimed at managing, administering or maintaining a securities financing transaction or matters related thereto;

"intermediating SFTP" means an SFTP that intermediates a securities financing transaction;

"LEI" means a legal entity identifier which is a 20-character, alpha-numeric code that uniquely identifies the counterparties to the financial transactions, that is applied in accordance with ISO 17442:2012 Financial Services - Legal Entity Identifier, as issued by International Organisation for Standardisation;

"margin lending agreement" means an agreement that governs the relationship between the parties to a margin lending transaction;

"margin lending transaction" means a loan that is secured by collateral in the form of securities:

"principal" means a person that acts as a contracting party to a security financing transaction;

"marked-to-market" means the revaluing of the securities in securities financing transaction;

"outright transfer" refers to the method of mitigating credit exposure which a financial institution would have against a counterparty to which it has lent its securities by requiring the counterparty to transfer of ownership to the fund of a collateral asset that is of an equal or of a greater value than the securities lent, provided that –

- (a) the financial institution and the counterparty agreed that in the event of a default, the obligation of the financial institution to return the collateral asset and the obligation of the counterparty to return the securities lent, will terminate;
- (b) the value of the securities lent by the financial institution to the counterparty and the value of the collateral assets transferred by the counterparty to the financial institution will be established; and
- (c) the values referred in item (b) will be netted against each other and the net amount, be it an amount payable by the financial institution to the counterparty or by the counterparty to the financial institution, as the case may be, will be settled in terms of a lending agreement;

"repurchase transaction" means a transaction in which one party sells securities to another party with a simultaneous agreement to repurchase the same or substantially similar securities at a future date and at a specified price;

"securities" means 'listed securities' as defined in the Financial Markets Act;

"securities financing transaction" encompasses various financial arrangements where securities are temporarily transferred from one party to another, in exchange for other securities, with an agreement to return them at a later date and includes a -

- (a) repurchase and reverse repurchase transaction;
- (b) securities lending transaction; and
- (c) margin lending transaction; and

"securities financing transaction participant" or "SFTP" means a financial institution who

- (a) participates in a securities financing transaction as a contracting party; or
- (b) intermediates a securities financing transaction, including acting as the agent of a person that is a contracting party to the securities financing transaction;

"securities lending transaction" means an arrangement in which the owner of a security temporarily transfers or borrows the security to another party, with an agreement that the borrower will return the equivalent securities at a later date;

"UPI" means a unique identifier or code used to classify and identify securities asset classes provided by a trade repository or as identified by the two contracting parties; and

"UTI" means a unique identifier or code used to track and identify individual trades or transactions provided by a trade repository or as identified by the two contracting parties.

2. Application

This Conduct Standard applies to financial institutions that are securities financing transaction participants.

3. General obligations and oversight over securities financial transactions

- (1) When acting as an SFTP, an SFTP must
 - (a) adopt prudent practices and act with honesty, integrity, transparency, fairness and due skill, care and diligence;
 - (b) avoid, and if avoidance is not reasonably possible, mitigate, manage and disclose any conflict of interest between itself and a counterparty, other relevant SFTP and any other person that has an interest in securities financing transaction the SFTP participates in or intermediates;
 - (c) ensure that security financing transactions are executed at fair market prices; and
 - (d) avoid excessive leveraging through securities financing transactions.
- (2) The governing body of an SFTP must establish appropriate and effective governance, risk management and internal control frameworks to oversee the responsible participation and intermediation (as relevant) of securities financing transactions, including avoiding and mitigation risks associated with participating in and intermediating (as relevant) securities financing transactions.
- (3) The governance, risk management and internal control frameworks referred to in subsection (2) must, among other things, include the following:
 - (a) Systems and resources: Adequate systems and resources for the operation of the financial institution's activity as an SFTP;
 - (b) Compliance risk: Adequate internal controls, policies and procedures to ensure that the SFTP complies with the applicable laws and regulations;
 - (c) Counterparty credit risk: Criteria for assessing counterparty reputation and creditworthiness and setting credit limits in respect of each SFTP and incidental

- counterparty, appropriate monitoring of credit exposure and mitigation of credit exposure;
- (d) Operational risk: Robust operational procedures and controls to ensure accurate trade processing, settlement, reconciliation, and effective record keeping;
- (e) *Market risk*: Adequate systems and procedures to monitor and manage the risk relating to the fluctuations in the value of the borrowed securities or collateral;
- (f) Liquidity risk: Adequate systems and procedures to monitor and manage liquidity risk emanating from security financing transactions;
- (g) Collateral management: Adequate internal controls, policies and procedures to ensure appropriate and effective collateral management, including
 - (i) keeping sufficient records of collateral;
 - (ii) the valuation of collateral,
 - (iii) the timely receipt and return of collateral,
 - (iv) the appointment of custodians that have the necessary systems and controls in place for segregation of collateral received and held; and
 - (v) the responsible re-use of collateral, including limiting re-use of collateral to minimise risk to any part involved in the SFT and establishing mechanisms to ensure collateral is not re-used unless appropriate disclosure have been made to affected parties;
- (h) Margin maintenance: If securities financing transactions are subject to margining, adequate human resources and systems to ensure timely and adequate maintenance of margin;
- (i) Exposure risk: Measures to effectively and continuously assess and monitor its exposure to other SFTP's and counterparties, and minimise the risks of such exposures, including implementing counterparty exposure limits to prevent excessive concentration risk;
- (j) *Policies and procedures:* Appropriate documented and approved policies and procedures, including in respect of the following:
 - Clear guidelines and internal rules regarding the utilisation of securities financing transactions and the SFTP's agreed practices in respect of securities financing transactions;
 - (ii) types of securities that may be subject to securities financing transactions;
 - (iii) overall and individual limits applicable to securities financing transactions;
 - (iv) general creditworthiness criteria used in establishing its list of approved SFTP's as well as its criteria for entering into securities financing transactions with counterparties;
 - (v) the monitoring of securities financing transactions; and
 - (vi) the quantity and quality of the collateral held in respect of securities financing transactions.
- (4) The governing body of an SFTP must at least annually review its governance, risk management and internal control frameworks referred to in subsection (2), including the policies and procedures referred to in subsection (3)(j), to ensure it remains appropriate and effective.
- (5) The governing body of an SFTP must continuously monitor and verify at appropriate intervals that
 - (a) it has followed the internal procedures and standards established in determining the quality of other SFTP's and incidental counterparties with which it has entered into securities financing transactions;
 - (b) the securities accepted as collateral are consistent with the agreements and policies of the SFTP;

- (c) the securities financing transactions are within the limits as determined by the SFTP in its policies and risk management procedures; and
- (d) the securities subject to securities financing transactions exists, the value placed on the securities is reasonable and that securities held as collateral exceeds or is equal to the minimum collateral required.

4. Disclosure, confidentiality and record keeping

Disclosure

- (1) An SFTP must disclose all relevant information pertaining to its securities financing transactions to counterparties, other relevant SFTPs, investors and any other person that has an interest in the securities financing transaction that the SFTP participates in or intermediates.¹
- (2) An SFTP must act transparently and in good faith when making disclosures referred to in this section, including in deciding when to make disclosures and what disclosures to make.
- (3) Disclosure made by an SFTP as referred to in this section, including any communication, must be clear, fair and not misleading.
- (4) An intermediating SFTP that acts as an agent of a person that is a contracting party to the securities financing transaction² must disclose to the counterparty to that transaction and, where appropriate, any other party involved in the transaction in whatever form, that
 - (a) it is acting on behalf of a principal and that it is not a contracting party to the relevant securities financing transaction; and
 - (b) the counterparty is not exposed to the creditworthiness of the intermediating SFTP, but to the creditworthiness of the principal. Provided that if the intermediating SFTP guarantees the obligations of the principal in relation to the financing transaction, the SFTP must disclose this to the counterparty.

Confidentiality

- (5) An SFTP may not disclose any confidential information obtained from another SFTP or counterparty in relation to securities financing transactions, except where
 - (a) the relevant person to whom the confidential information relates has given consent:
 - (b) disclosure is required or permitted in terms of a law or a court order;
 - (c) disclosure is necessary to carry out the functions of the relevant SFTP or in the course of performing duties under any law; or
 - (d) disclosure is required for the purposes of legal proceedings.

Record keeping

- (6) An SFTP must maintain records of all agreements, documents and statements which govern and are related to securities financing transactions in which they participated in any way.
- (7) Without limiting the generality of subsection (6), an SFTP must retain –

¹ Specifically including fees, charges, and profit-sharing arrangements to clients.

² I.e. if the SFTP itself is not a contracting party.

- (a) the particulars of the securities underlying each securities financing transaction in which it is participating;
- (b) particulars of the collateral that was initially provided in respect of each securities financing transaction;
- (c) any particulars about margining (if any) and the frequency of the margining; and
- (d) any fees or rates payable to it by a counterparty or any other SFTP, including fees or rates payable by any person on behalf of a counterparty or other SFTP.
- (8) Records referred to in this section must be kept for a minimum period of five years.

5. Outsourcing and intermediation of securities financing transactions

- (1) If an SFTP outsources or delegates any activity or duties in relation to a securities financing transaction to another person, or allows another SFTP to intermediate a securities financing transaction on its behalf, the SFTP must formalise such arrangement in writing, and the written agreement must stipulate, among other things:
 - (a) The activities, duties or intermediation functions to be performed;
 - (b) all fees or charges related to the activities, duties or intermediation functions; and
 - (c) what information should be reported or provided to the SFTP, including the intervals of reporting.
- (2) An intermediating SFPT may not enter into a securities financing transaction on behalf of
 - (a) another SFTP, unless the agreement referred to in subsection (1) provides the intermediating SFTP such authority;
 - (b) a counterparty that is not an SFTP,³ unless the intermediating SFTP has a written mandate from such counterparty to enter into the securities financing transaction.
- (3) An SFTP may not outsource or delegate any activity or duties in relation to a securities financing transaction to another person, or allow another SFTP to intermediate a securities financing transaction on its behalf, -
 - (a) if it is likely to materially increase risk to the SFTP; and
 - (b) unless it satisfies itself that such other person or intermediating SFTP has effective and appropriate governance, risk management and internal control frameworks, and the necessary experience, expertise, capacity and resources to perform such activities, duties or intermediation functions in a competent and responsible manner.
- (4) An SFTP referred to in subsection (3) must periodically monitor or assess whether it remains satisfied as to the matters referred to in that subsection.
- (5) If, at any stage, the SFTP is not satisfied as contemplated in subsection (3), the SFTP must either -
 - (a) ensure the identified shortcoming is rectified; or
 - (b) terminate the agreement.

6. Margin lending transactions

(1) An SFTP must, before entering into any margin lending transaction, enter into a margin lending agreement with the other party to the margin lending transaction, and must

³ I.e. a counterparty that is not a financial institution.

ensure that the margin lending agreement provides for the matters referred to in subsection (2) and is the only contract governing the lending transaction.

- (2) An agreement governing a margin lending transaction as referred to in subsection (1) must at a minimum, contain the following provisions:
 - (a) A description of the securities that will be used as collateral for purposes of the margin lending transaction;
 - (b) an indication whether the securities used as collateral will be pledged or outright transferred to the SFTP;
 - (c) if the securities are pledged to the SFTP, an indication that -
 - (i) the pledgor of the securities will remain entitled to the benefits associated with the securities pledged, including payments or settlements resulting from any corporate actions, as well as dividends or other income accrued or paid in respect of the relevant securities, and, if applicable, that the pledgor may exercise the voting rights attaching to the pledged securities;
 - (ii) where the borrower under the margin lending transaction defaults or becomes insolvent, the SFTP as pledgee may without a court order immediately enforce its rights against the pledgor in respect of the relevant pledged securities, which may include the immediate transfer of the securities and other rights, including voting rights, attached to the securities and the right of the SFTP to immediately dispose of the securities:
 - (d) if the securities are outright transferred to the SFTP, an indication that
 - (i) the transferor of the securities will not be entitled to the benefits associated with the transferred securities, and will not receive any payments or settlements resulting from any corporate actions, as well as dividends or other income accrued or paid in respect of the relevant securities, and, if applicable, that the transferor may not exercise the voting rights attaching to the transferred securities, provided however, if the SFTP and the transferor agree that the transferor will be compensated for the loss one or more of these benefits, the nature, extent and frequency of such compensation;
 - (ii) where the borrower under the margin lending transaction defaults or becomes insolvent, the SFTP as transferee may, without a court order, immediately dispose of the relevant transferred securities, if the SFTP has not already done so.
 - (e) a description of the process to be followed where the aggregate value of the securities pledged or transferred as collateral exceeds or falls below the agreed upon value of the collateral in relation to the value of the amount lent by the SFTP to the borrower;
 - (f) a statement of the fees or charges payable by the borrower to the SFTP under the margin lending transaction;
 - (g) the terms in respect of the re-acquisition of equivalent securities in the case of outright transfer of securities as collateral;
 - (h) in respect of term transactions, a statement of the period for which the securities will be used as collateral;
 - (i) a description of the arrangements in respect of corporate action entitlements in respect of the securities held as collateral;
 - (j) a description of the marking-to-market of the securities provided as collateral as well as the frequency on which such marking-to-market will be done;
 - (k) a clear description of how interest will be calculated in respect of the loans;
 - (I) a clear description of the obligations and responsibilities of the borrower for repayment of the loans;

- (m) if applicable, a description of the process of netting of obligations in the case of a default of a borrower under a loan;
- (n) a description of the process to be followed by a borrower for the recalling and delivery of securities by the borrower as well as the provisions governing the substitution of the recalled securities with other eligible securities,
- (o) a description of the dispute resolution if there is any breach of the agreement or any default by a party to such agreement;
- (p) the law which will govern the agreement, and if applicable, any special provisions relating to jurisdiction of the courts and submission to jurisdiction in case where certain courts do not have jurisdiction over the parties;
- (q) if an option to terminate a loan early is provided, a description of the notice period for early termination of the loan as well as the consequences of such early termination; and
- (r) the information to be contained in a confirmation in whatever format of a margin lending transaction, which information must be adequate in accordance with reasonable business standards and business practice.

7. Repurchase Transactions

(1) An SFTP must, before entering into one or more repurchase transaction, enter into a global master repurchase agreement with the other party to the repurchase transaction, and must ensure that the global master repurchase agreement is the only contract governing the repurchase transaction.

8. Securities Lending Transactions

- (1) An SFTP must, before entering into one or more securities lending transaction, enter into a global master securities lending agreement with the other party to the securities lending transaction, and must ensure that the global master securities lending agreement is the only contract governing the lending transaction.
- (2) In addition to subsection (1), an agreement governing a securities lending transaction entered into by a pension fund as defined in section 9 must
 - (a) state that where the counterparty defaults or becomes insolvent, the pension fund's right of execution without a court order is reserved and should provide for the immediate transfer to the pension fund of the ownership and other rights, including voting rights, attached to any collateral; and
 - (b) set out the relevant conditions, parameters and processes (as applicable) in respect of -
 - (i) where the aggregate value of collateral exceeds or falls below the value of the securities lent; and
 - (ii) where the aggregate value of collateral exceeds or falls below the agreed upon value of the collateral in relation to the value of the securities lent.

9. Additional requirements for pension funds engaging in securities lending transactions

Definitions and application

(1) In this section –

"pension fund" means a 'fund' as defined in the Pension Funds Act;

"Pension Funds Act" means the Pension Funds Act, 1956 (Act No. 24 of 1956);

"Regulations under the Pension Funds Act" means the Regulations made in terms of section 36 of the Pension Funds Act, as published under Government Notice R98 in Government Gazette 162 of 26 January 1962 and amended by and amended from time to time:

"reporting period" has the meaning assigned to the term in the Regulations under the Pension Funds Act: and

(2) This section only applies to a pension fund that participate in a securities financing transaction as a contracting party.

General requirements

(3) A pension fund may only engage in a securities lending transaction as a lender if the securities lending transaction complies with the investment policy statement of the pension fund, the liquidity requirements of the pension fund, the principles set out in Regulation 28(2) of the Regulations under the Pension Funds Act and in accordance with the lending policies and procedures that are approved by the pension fund to provide additional income or fees for the benefit of the fund.

Securities lending transaction limits

(4) The aggregate value of all equity, money market and debt instruments that are the subject of a securities lending transaction may not at any time throughout the reporting period exceed the following:

Description	Maximum % of fair value of portfolio
Listed equities – top 25% of companies (by market cap) listed on an exchange as indicated in the Johannesburg Stock Exchange Limited Quarterly Review	75%
Other listed equities, including listed assets which reference a listed underlying asset or assets	50%
Debt – Government bonds	75%
Other listed debt instruments	50%
Money market instruments issued by a registered South African bank, including an Islamic liquidity management financial instrument	75%

Note: Where the pension fund has entered into a securities lending transaction and such listed equity delists during the reporting period, the pension fund must apply to the registrar for exemption in respect of the relevant transaction.

(5) For purposes of calculating the limits referred to in subsection (4), South African and foreign holdings must be calculated separately and not be aggregated in determining the limits.

Collateral

(6) The margin of collateral in excess of the fair value of the securities lent by a pension fund must at all times be appropriate and provide adequate protection against volatility

and liquidity concerns that may arise for securities lent and for securities held as collateral.

- (7) Subject to subsection (6), collateral for the securities lent by a pension fund must at all times comprise—
 - (a) cash or bank issued money market instruments equal to at least 105% of the fair value of the total securities lent; or
 - (b) debt instruments of which the fair value is equal to at least 110% of the fair value of the total securities lent; or
 - (c) equities of which the fair value is equal to at least 115% of the fair value of the total securities lent; or
 - (d) a combination of assets as per items (a), (b) and (c), on condition that the limits set will be applied in the same proportion as the total collateral held.
- (8) Collateral for the securities lent by a pension fund may only be affected through-
 - (a) a pledge or cession in security to the fund of the cash, money market instrument, debt instrument or equity ("collateral asset"); or
 - (b) an outright transfer of the collateral asset to the fund.
- (9) If a pension fund elects the outright transfer method referred to in subsection (9)(b), where the collateral
 - (a) is held in cash, it must be held in the name of the fund; or
 - (b) consists of money market instruments, debt instruments or equities, the money market instruments, debt instruments or equities must be held in the name of the fund, or by a nominee on behalf of the fund and must be clearly identified as collateral and tracked through a settlement central securities.

Counterparty limits

(10) For purposes of the 25 per cent limit referred to in Regulation 28(3)(h) and items 1.1 and 2.1 of Table 1 of the Regulations under the Pension Funds Act, the counterparty exposure arising as a result of a pension fund entering into a securities lending agreement with a registered South African bank must not be taken into account in respect of calculating such limit.

10. Right of recall and delivery of securities

- (1) An SFTP must, as relevant -
 - (a) familiarise itself with the procedures for recalling of securities as stipulated in the relevant legal agreements;
 - (b) have a clear understanding of the process to follow if recalled securities cannot be delivered;
 - (c) be aware of the procedures to be followed in the event of failed trades in any market in which the securities are traded; and
 - (d) have regard for the implications for its counterparty and should notify the relevant counterparty as soon as possible of its intention to recall the relevant securities.
- (2) Subject to the relevant legal agreements and subsection (3), any securities in respect of which a securities financing transaction has been entered into must be subject to an unqualified right of recall subject to the standard settlement cycle on the relevant exchange.

(3) A pension fund⁴ that engages in a securities lending transaction may agree in writing with the counterparty that a specified securities lending transaction will not be recalled prior to an agreed date unless the fund is required to do so as a result of liquidity constraints or investment decisions.

11. Reporting obligations

- (1) An SFTP must report details of all securities financing transactions which they have respectively concluded, including any modification or termination thereof, to a licenced trade repository no later than T+1 (the day following the transaction date).
- (2) A report contemplated in subsection (1) must contain holistic information regarding the SFT, including the following:
 - (a) Counterparty data, which provides for the identification of both parties involved in the SFT, including a LEI for entities and unique identifiers for individuals;
 - (b) detail of the security involved, which provide for a UPI;
 - (c) transaction details which provide for a UTI and the trade, settlement and termination date;
 - (d) loan and collateral data, including in respect of -
 - (i) loan data, the type of SFT, principal amount or quantity of securities on loan, maturity date or open term, interest rate (repo rate) or lending fee and currency of the transaction; and
 - (ii) collateral data, the type of collateral, collateral quality and market value, whether collateral is re-used or segregated and how proceeds of collateral are reinvested.
 - (e) information pertaining to collateral re-use, including the extent of re-use and counterparties involved in the re-use;
 - (f) reporting party information, including the identification of the entity responsible for reporting the transaction; and
 - (g) any other information determined by the Authority on its website.
- (3) The Authority may, by publication on its website, determine the format of reporting for purposes of this section and additional information that must be reported as contemplated in subsection (2)(g).

12. Short title, commencement and repeal

- (1) This Conduct Standard is called Requirements relating to securities financing transactions, 2025 and comes into effect 12 months after date of publication.
- (2) The following Board Notices are hereby repealed as at the effective date of this Conduct Standard:
 - (a) Board Notice No. 2 of 2012; and
 - (b) Board Notice No. 4 of 2012.

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⁴ As defined in section 9.