

FSRA DRAFT CONDUCT STANDARD NO. * OF 2018 (CISCA)

FINANCIAL SECTOR REGULATION ACT 9 OF 2017

**REQUIREMENTS FOR DELEGATION OF ADMINISTRATION FUNCTIONS BY A
MANAGER OF A COLLECTIVE INVESTMENT SCHEME IN TERMS OF SECTION 4(5) OF
THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT, NO. 45 OF 2002**

The Financial Sector Conduct Authority, hereby, under sections 106(1) and 106(3)(e) of the Financial Sector Regulation Act, 2017 (Act 9 of 2017), read with section 114(4)(b) of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), prescribes requirements for the delegation of administration functions by a manager of a collective investment scheme.

ABEL MOFFAT SITHOLE

FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: XX XXXX 2018

SCHEDULE

1 Definition –

In this Schedule, “the Act” means the Financial Sector Regulation Act, 2017 (Act 9 of 2017) and “the Cisca” means the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), and any word or expression to which a meaning is assigned in the Act or the Cisca bears the meaning so assigned to it, and unless the context indicates otherwise-

“Authority” means the Financial Sector Conduct Authority established under section 56 of the Act;

“delegation” means an arrangement of any form between a manager and another person, whether that person is supervised under any law or not, in terms of which that person performs a function, whether directly or by sub-delegation, which should otherwise be performed by the manager , with **“delegate”** and **“delegating”** having corresponding meanings;

“function” means any function included under the definition of administration;

“scheme” means a collective investment scheme as defined in the Cisca and, where applicable, includes a portfolio of a scheme.

2 Application

This Conduct Standard applies to a manager licensed in terms of the Cisca in respect of any–

- (a) delegation of a function to a delegated person; and
- (b) sub-delegation of a function by a delegated person.

3 General principles for delegation of functions

(1) A manager, that delegates a function, must have in place a delegation policy approved by its board of directors and related processes for assessing the risks involved with the delegation arrangement, which policy and related processes must be consistent with this Conduct Standard.

(2) Any act or omission by the delegated person in the performance of a function so delegated is regarded as having been an act or omission by the manager and its board of directors.

(3) A manager must, with due regard to the nature, scale, and complexity of the business of the manager, exercise due skill, care and diligence when considering the

delegation of a function and when entering into, managing and terminating a delegation arrangement.

(4) A manager may not delegate a function or any part of a function if–

- (a) the delegated person does not meet the requirements set out in this Conduct Standard and the CISCA; or
- (b) such delegation may–
 - (i) materially increase the risks to the manager or the scheme;
 - (ii) materially impair the quality of the governance framework of the manager;
 - (iii) impair the ability of the manager to manage its risks and meet its legal and regulatory obligations;
 - (iv) impede the ability of the Authority to monitor the manager's compliance with its regulatory obligations; and
 - (v) compromise the fair treatment of or continuous and satisfactory service to investors.

(5) A manager must, when delegating a function, identify, assess and manage any risks emanating from the delegation arrangement on an on-going basis, throughout the subsistence of the delegation arrangement.

(6) A manager must, prior to delegating any function, satisfy itself that the delegated person has the operational ability and capacity to perform the delegated functions effectively, reliably and professionally.

(7) A manager must, when delegating any function, avoid, and where this is not possible, mitigate, any conflicts between the interests of the manager, the interests of investors and the interests of the delegated person.

(8) Any arrangement for the provision of a function to a manager by the manager's controlling company, a subsidiary of the manager, or a related or inter-related party of the manager, is a delegation arrangement.

(9) Remuneration paid in respect of a delegation arrangement must be market related and commensurate with the actual function so delegated.

4 Prior approval of delegation of functions

(1) A manager must, submit an application for approval as contemplated in section 4(5)(a) of the CISCA to the Authority at least 30 days prior to the effective date of the delegation.

(2) The application for the approval of a delegation must include the following–

- (a) a clear and concise motivation for the delegation;
 - (b) a copy of the delegation policy referred to in section 3(1) of this Conduct Standard;
 - (c) proof that the manager notified the scheme's trustee or custodian as referred to in section 7 of this Conduct Standard;
 - (d) a copy of the due diligence report contemplated in section 6 of this Conduct Standard and proof that such report was submitted to the manager's board of directors;
 - (e) a copy of the agreement contemplated in section 8 of this Conduct Standard entered into between the manager and the delegated person;
 - (f) a report from the delegated person's external auditor providing assurance regarding the delegated person's system of internal controls in respect of the delegated function; and
 - (g) confirmation of whether the function or any part of the function will be further sub-delegated by the delegated person.
- (3) If the manager has obtained the approval of the Authority for the sub-delegation of a function by the delegated person, the function may only be sub-delegated one level further.

5 Delegation policy

A delegation policy must at a minimum provide for–

- (a) limits on the types and overall level of delegated functions and the extent to which functions may be delegated to the same person;
- (b) the selection process and criteria for entering into a delegation arrangement with a specific person;
- (c) guidance on the risks to be identified, assessed, monitored and managed in respect of the delegation arrangement, including to the risks described in Annexure A;
- (d) a process of internal review and approval prior to entering into any delegation arrangement;

- (e) a process of regular management review of any delegation arrangement, in particular to assess the ongoing impact of the delegation arrangement on the operational risk environment of the manager as well as on the delivery of fair outcomes to investors; and
- (f) a regular review period for the policy.

6 Due diligence

(1) A manager must, prior to entering into a delegation arrangement, conduct a proper due diligence in order to satisfy itself that–

- (a) the delegated person has appropriate professional indemnity cover;
- (b) the delegated person, together with the manager, would be able to implement and maintain an effective contingency plan for disaster recovery and periodic testing of back-up facilities in accordance with section 9 of this Conduct Standard, where it is necessary, having regard to the function that has been delegated;
- (c) the delegated person has the necessary capability and expertise to properly carry out the delegated function and to adequately manage any risks associated with the delegated function;
- (d) the delegated person has the appropriate governance and internal control framework to perform the functions effectively and in compliance with applicable legislation and/or regulatory requirements;
- (e) any possible termination or disruption of the delegation arrangement would not impede the ability of the manager to ensure continuous and satisfactory service to investors;
- (f) the manager would be able to identify possible concentration risk and where identified, could take steps to ensure that it has the capability and adequate capacity to meet all the requirements of the delegated functions, both during normal operations as well as unusual circumstances (for example, unusual market activity or physical disaster);
- (g) the delegated person is financially sound; and
- (h) the delegated person is able to effectively interact with the trustee to the extent that

the trustee needs to fulfil its obligations.

7 Trustee notification

A manager must notify the scheme's trustee or custodian in writing of the delegation of any function.

8 Agreement

(1) A manager must ensure that the rights and obligations of the manager and the delegated person are clearly documented in a written agreement which must, at a minimum, provide for—

- (a) a description of the functions to be delegated;
- (b) a detailed description of the rights, authorities, obligations and responsibilities of each of the parties;
- (c) limitations on the delegated person's ability to sub-delegate, and to the extent sub-delegating is permitted, the delegated person's obligations in connection with that sub-delegation;
- (d) remuneration arrangements, including all applicable fees and charges;
- (e) liability of the delegated person for unsatisfactory performance or any other breach of the agreement;
- (f) matters of indemnity;
- (g) a reasonable termination period that will allow the manager's contingency plans to be effectively executed;
- (h) the orderly termination of the agreement, which must address the transfer of information and exit strategies, without compromising the ability of the manager to ensure continuous and satisfactory service to investors;
- (i) where the delegated person is an authorised financial services provider, the agreement must be compliant with all applicable requirements of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002);
- (j) measures for the protection of personal information and compliance with the

Protection of Personal Information Act, 2013 (Act 4 of 2013); and

- (i) the conditions in terms of which the manager will regularly review the delegated person's performance and compliance with the written agreement, this Conduct Standard and the CISCA.

(2) A manager must–

- (a) regularly review the delegated person's performance and compliance with the written agreement, this Conduct Standard and the CISCA;
- (b) take appropriate action if it appears that the delegated person may not be performing effectively or may not be complying with the written agreement, this Conduct Standard and the CISCA;
- (c) have adequate contingency plans in place to ensure the continuous functioning of the business of the manager in the event that the written agreement is terminated or ineffective; and
- (d) notify the Authority of the termination of a delegation arrangement within seven days of such termination, including details of how the function will be performed subsequent to the termination of the delegation arrangement.

9 Disaster recovery and testing of facilities

- (1) A manager must take appropriate measures to determine that its delegated person-
 - (a) establishes and maintains a disaster recovery plan;
 - (b) performs an annual test of the effectiveness of the disaster recovery plan inclusive of tests on possible failure scenarios;
 - (c) performs a quarterly test of the effectiveness of the systems supporting the disaster recovery facilities; and
 - (d) takes appropriate remedial action based on the results from the annual and quarterly testing.

10 Access to Information

- (1) A manager must provide the Authority, the manager's external auditor and the scheme's trustee or custodian with access to any relevant information, including all records pertaining to the delegated function held by the delegated person.

(2) A manager must ensure that the Authority is able to promptly obtain from the manager or delegated person, upon request, any information concerning any relevant activity that is necessary to enable the Authority to carry out its functions in terms of the Act.

11 Short title, commencement and transitional arrangements

(1) This Conduct Standard is called Conduct Standard: Delegation of Administration functions by CIS Managers, 2018 and comes into effect on the date of publication.

(2) All delegation arrangements entered into by a manager that were approved by the Authority prior to the commencement date of this Conduct Standard, are deemed to comply with the requirements of this Conduct Standard.

(3) Notwithstanding sub-section (2), a manager must ensure compliance with the requirements applicable to a delegation arrangement as set out in this Conduct Standard within 12 months from the date of publication of this Conduct Standard.

Annexure A - GUIDANCE ON RISKS

This serves as guidance and is not an exhaustive list on the types of risks a manager would be required to identify, assess, monitor and manage in respect of any delegation arrangement:

Risk Type	
Conduct Risk:	The delegation arrangement must not compromise the delivery of fair outcomes to investors.
Contractual Risk:	The manager should be able to enforce the contract with the delegated person.
Strategic Risk:	The totality of the delegated person's activities should be consistent with the overall strategic goals of the manager and the manager should have the expertise to oversee, manage and monitor the delegated person.
Reputation Risk:	The delegated person's conduct should be consistent with the overall standards of the manager or the stated practices (ethical or otherwise) of the manager.
Compliance Risk:	The delegated person should comply with applicable legislation and agreed policies and have adequate compliance systems and controls in place.
Operational Risk:	1. The potential for technology failures, fraud or other errors should be minimised. 2. The manager should monitor and assess the uncertainty regarding the delegated person's ability to continue operating as a going concern (i.e. into the foreseeable future).
Exit Strategy Risk:	Appropriate exit strategies (termination clauses) should be in place.
Country Risk:	The political, social and legal climate should be appropriate where the delegated person is situated outside of South Africa.
Access Risk:	The manager, at all times, should have access to timely data and other information.
Concentration Risk:	The manager should not be over-reliant on a single delegated person. The delegated person should have the ability and capacity to perform the manager's functions even if the delegated person also performs similar functions to a significant number of other managers.