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DATE:	02 June 2025		

Mr Barend Francois Meyer

Trustee

Opes Trust

228 Canary Street

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Centurion

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By email: [admin@opestrust.co.za](mailto:admin@opestrust.co.za)

Dear Sir

## NOTICE OF ADMINISTRATIVE SANCTION

### 1. NOTICE

- 1.1. The Financial Sector Conduct Authority (FSCA) is satisfied that Opes Trust, an authorised financial services provider (FSP) and an accountable institution as envisaged in item 12 of schedule 1 to the Financial Intelligence Centre Act No.38 of 2001 (the FIC Act), has failed to comply with the FIC Act. Accordingly, the FSCA hereby issues this Administrative Sanction Notice (the Notice).
- 1.2. The non-compliances were identified in an inspection conducted by the FSCA on Opes Trust in terms of section 45B of the FIC Act, for which the final report was issued on 20 August 2024.

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#### Executive Committee:

Commissioner: U. Kamlana | Deputy Commissioners: A. Ludin | K. Gibson | F. Badat

## **2. NATURE OF THE NON-COMPLIANCE**

### **2.1. Risk Management and Compliance Programme**

2.1.1. In terms of section 42(1) of the FIC Act, an accountable institution must develop, document, maintain and implement a programme for anti-money laundering, counter terrorist financing and proliferation financing risk management and compliance.

2.1.2. In preparation for the inspection, Opes Trust provided the FSCA with a copy of its Risk Management and Compliance Programme (RMCP) approved on 17 November 2023. Upon assessing the RMCP, it was found that Opes Trust was implementing an RMCP that had not been updated in line with the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 which amended the FIC Act.

2.1.3. Section 42(2) of the FIC Act states that, "A risk management and compliance programme must-

(a) Enable the accountable institution to-

(i) Identify;

(ii) Assess;

(iii) Monitor;

(iv) risk Mitigate; and

(v) Manage,

the that the provision by the accountable institution of new and existing products or services may involve or facilitate money laundering activities (ML), the financing of terrorist and related activities (TF) or proliferation financing activities (PF);"

2.1.4. Section 42(2) of the FIC Act continues to set out what minimum information an accountable institution must provide for in the RMCP.

2.1.5. The findings of the aforementioned inspection revealed that Opes Trust contravened the following sections of the FIC Act for the following reasons:

2.1.5.1. Non-compliance with section 42(2)(a) of the FIC Act in that Opes Trust's RMCP does not enable the institution to identify, assess, monitor, mitigate and manage its ML/TF risks. The RMCP is a mere copy of the FIC Act and does not set out the policies and processes to comply with the requirements of the FIC Act. In addition, the RMCP does not provide for Opes Trust's ML/TF/PF risk assessment in order to understand and mitigate its ML/TF/PF risks as explained in Guidance Note 7 issued by the Financial Intelligence Centre on 2 October 2017. Opes Trust still follows a rule-based approach where it obtains copies of identity documents of clients, regardless of any money laundering or terrorist financing risks, in order to identify and verify them.

An analysis of the sampled client files indicated that Opes Trust failed to provide evidence of risk rating its clients for ML/TF/PF risk. The non-compliance constitutes 100% (45 out of 45) of the sampled clients.

2.1.5.2. Section 42(2)(b) of the FIC Act states that "the RMCP must enable the accountable institution to provide for the manner in which it will determine if a person is-

- i. a prospective client in the process of establishing a business relationship or entering into a single transaction with the institution; or
- ii. a client who has established a business relationship or entered into a single transaction";

The RMCP does not set out a process for the determination of a prospective and existing client.

2.1.5.3. Section 42(2)(d) read with section 21 of the FIC Act states that "the RMCP must enable the accountable institution to provide for the manner in which and the processes by which the establishment and verification of the identity of persons whom the accountable institution must identify is performed by the institution".

The RMCP does not indicate when and how the Opes Trust will establish and verify the identity of other persons acting on behalf of the client and their authority.

- 2.1.5.4. Section 42(2)(e) of the FIC Act states that “the RMCP must enable the accountable institution to provide the manner in which the institution determines whether future transactions that will be performed in the course of the business relationship are consistent with the institution’s knowledge of a prospective client”.

The RMCP does not provide for the manner in which Opes Trust will comply with this provision of the Act.

- 2.1.5.5. Section 42(2)(f) of the FIC Act states that “the RMCP must enable the accountable institution to provide the manner in which and the processes by which the institution conducts additional due diligence measures in respect of legal persons, trust and partnerships”.

The RMCP does not provide for the manner in which Opes Trust will comply with this requirement of the Act.

- 2.1.5.6. Section 42(2)(g) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which and the processes by which ongoing due diligence and account monitoring in respect of business relationships is conducted by the institution”.

The RMCP does not specify when Opes Trust will conduct ongoing due diligence in respect of a business relationship. The RMCP also does not specify when or how ongoing account monitoring will be conducted.

- 2.1.5.7. Section 42(2)(h) of the FIC Act states that “the RMCP must enable the accountable institution to provide the manner in which complex

or unusually large transactions or patterns of transactions with no apparent business or lawful purpose are examined”.

The RMCP does not outline the exact process as to how Opes Trust will examine complex or unusually large transactions or patterns of transactions with no apparent business or lawful purpose.

- 2.1.5.8. Section 42(2)(i) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which and the process by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information and when reporting suspicious and unusual transactions in accordance with section 21D”.

The RMCP does not provide for this requirement.

- 2.1.5.9. Section 42(2)(j) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which and the processes by which it will perform the customer due diligence requirements in accordance with sections 21, 21A, 21B and 21C when, during the course of a business relationship, the institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29 of the FIC Act”.

The RMCP does not provide for this requirement.

- 2.1.5.10. Section 42(2)(k) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which the AI will terminate an existing business relationship as contemplated in section 21E”.

The RMCP does not provide for this requirement.

- 2.1.5.11. Section 42(2)(l) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which and the processes by which the AI determines whether a prospective

client or an existing client is a foreign or a domestic politically exposed person or a prominent influential person”.

The RMCP does not provide for this requirement.

2.1.5.12. In addition, upon analysis of the sampled client files, there was no evidence found that indicated that Opes Trust took measures to establish whether any of its clients are foreign politically exposed persons, domestic politically exposed persons, or prominent influential persons. Moreover, Opes Trust did not take measures to establish whether any of its clients were a family member or known close associate of a foreign or domestic politically exposed person or a prominent influential person. The non-compliance constitutes 100% (45 out of 45) of the sampled client files.

2.1.5.13. Section 42(2)(m) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which and the processes by which the AI conducts enhanced due diligence for higher-risk single transactions and business relationships and when simplified customer due diligence might be permitted in the institution”.

The RMCP does not provide for this requirement.

2.1.5.14. Section 42(2)(o) and (p) of the FIC Act state that “the RMCP must enable the accountable institution to determine when a transaction or activity is reportable to the Financial Intelligence Centre (FIC) and provide for the processes for reporting such information to the FIC”.

Opes Trust’s RMCP does not provide for how it will determine if a transaction as outlined in sections 28, 28A and 29 is reportable or the process of submitting such a report to the FIC. The following reports have to be submitted to the FIC:

- Cash Threshold Report (CTR) in terms of section 28 of the FIC Act.
- Suspicious and Unusual Transaction Report (STR) in terms of section 29(1) of the FIC Act.
- Suspicious Activity Report (SAR) in terms of section 29(1) of the FIC Act.
- Terrorist Financing Activity Report (TFAR) in terms of section 29(1) of the FIC Act.
- Terrorist Financing Transaction Report (TFTR) in terms of section 29(1) of the FIC Act.
- Terrorist Property Report (TPR) in terms of section 28A of the FIC Act.

2.1.5.15. Section 42(2)(q) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which-

- (i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries, or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under this Act;
- (ii) the institution will determine if the host country of a foreign branch, subsidiary or other operation permits the implementation of measures required under this Act;
- (iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in subparagraph (ii) does not permit the implementation of measures required under this Act; and
- (iv) taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required under the FIC Act”.

The RMCP is silent in this regard as it does not state whether Opes Trust have branches, subsidiaries, or other operations in the Republic.

- 2.1.5.16. Section 42(2)(qA) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the manner in which and the processes by which group-wide programmes of an accountable institution for all its branches and majority-owned subsidiaries situated in the Republic is implemented so as to enable the institution to-
- (i) comply with its obligations under this Act;
  - (ii) exchange information with its branches or subsidiaries relating to the customer due diligence requirements in terms of this Act;
  - (iii) exchange information with its branches or subsidiaries relating to the analysis of transactions or activities which the institution suspects to be suspicious or unusual as contemplated in section 29; and
  - (iv) have adequate safeguards to protect the confidentiality of information exchanged in accordance with this paragraph and FIC Act”.

The RMCP is silent in this regard as it does not state whether Opes Trust have branches, subsidiaries, or other operations in the Republic.

- 2.1.5.17. Section 42(2)(r) of the FIC Act states that “the RMCP must enable the accountable institution to provide for the processes for the institution to implement its Risk Management Compliance Programme”.

The RMCP does not provide for this requirement.

- 2.1.5.18. Section 42(2)(s) of the FIC Act states that “the RMCP must enable the accountable institution to provide for any prescribed matter”.

Opes Trust’s RMCP is silent on how it will comply with the provisions of section 26B of the FIC Act relating to prohibitions of



persons and entities identified by the Security Council of the United Nations in that Opes Trust's RMCP does not provide processes in relation to the manner in which it will freeze the property related to a sanctioned person and/or entity.

2.1.5.19. Section 42(2A) of the FIC Act states that "an accountable institution must indicate in its Risk Management and Compliance Programme if any paragraph of subsection (2) is not applicable to that accountable institution and the reason why it is not applicable".

The RMCP does not indicate whether any subsections of section 42(2) of the FIC Act are not applicable to Opes Trust.

## **2.2. Suspicious and unusual transactions**

2.2.1. Section 29(1) of the FIC Act requires Opes Trust to submit suspicious and/or unusual transaction reports to the FIC.

2.2.2. A suspicious and/or unusual transaction report must contain all the details as outlined in regulation 23A of the Money Laundering and Terrorist Financing Control Regulations (the Regulations).

2.2.3. In terms of Guidance Note 4B, accountable institutions are required to ensure that STRs are successfully processed and that any failures/rejections are remediated accordingly. On 2 June 2023, the FSCA requested information from the FIC regarding registration and reporting information in respect of Opes Trust. The FIC responded on 7 July 2023; and according to the feedback, Opes Trust attempted to submit one suspicious and/or unusual activity report. The report was not successfully submitted to the FIC in that all the information as required by regulation 23A of the Regulations was not provided. Opes Trust failed to remediate the report rejected by the FIC. This failure to remediate the rejection was brought to the attention of Mr Meyer in the draft inspection report (issued on 7 May 2024) and again in the final inspection report (issued on 20 August 2024). On 28 June 2024, in response to the draft report, Mr Meyer stated that he did not receive communication from the FIC and therefore did

not take any action regarding the rejected report. Mr Meyer did not address this finding when the final inspection report was issued to him.

2.2.4. Accordingly, Opes Trust failed to successfully submit a suspicious and unusual transaction report successfully to the FIC in contravention of section 29(1) of the FIC Act and/or failed to complete all the details in the report as required by regulation 23A of the Regulations.

## **2.3. Customer due diligence**

2.3.1. In terms of section 21(1) of the FIC Act, “when an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establishing that business relationship and in accordance with its Risk Management and Compliance Programme—

- (a) establish and verify the identity of the client;
- (b) if the client is acting on behalf of another person, establish and verify—
  - (i) the identity of that other person; and
  - (ii) the client’s authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
- (c) if another person is acting on behalf of the client, establish and verify—
  - (i) the identity of that other person; and
  - (ii) that other person’s authority to act on behalf of the client.”

2.3.2. According to section 21A, “when an accountable institution engages with a prospective client to establish a business relationship as contemplated in section 21, the institution must, in addition to the steps required under section 21 and in accordance with its Risk Management and Compliance Programme, obtain information to reasonably enable the accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the institution’s knowledge of that prospective client, including information describing-

- (a) the nature of the business relationship concerned;
- (b) the intended purpose of the business relationship concerned; and

(c) the source of the funds which that prospective client expects to use in concluding transactions in the course of the business relationship concerned”.

2.3.3. Pursuant to section 21C(1) of the FIC Act, “an accountable institution must, in accordance with its Risk Management and Compliance Programme, conduct ongoing due diligence in respect of a business relationship which includes—

(a) monitoring of transactions undertaken throughout the course of the relationship, including, where necessary—

(i) the source of funds, to ensure that the transactions are consistent with the accountable institution’s knowledge of the client and the client’s business and risk profile; and

(ii) the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent business or lawful purpose; and

(b) keeping information obtained for the purpose of establishing and verifying the identities of clients pursuant to sections 21, 21A and 21B of this Act, up to date.”

2.3.4. According to section 21F of the FIC Act, “if an accountable institution determines in accordance with its Risk Management and Compliance Programme that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a foreign politically exposed person, the institution must—

(a) obtain senior management approval for establishing the business relationship;

(b) take reasonable measures to establish the source of wealth and source of funds of the client; and

(c) conduct enhanced ongoing monitoring of the business relationship.”

2.3.5. Pursuant to section 21G of the FIC Act, “if an accountable institution determines that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a domestic politically exposed person or a prominent influential person and that, in accordance with its Risk Management and Compliance Programme, the prospective business relationship entails higher risk, the institution must—

- (a) obtain senior management approval for establishing the business relationship;
- (b) take reasonable measures to establish the source of wealth and source of funds of the client; and
- (c) conduct enhanced ongoing monitoring of the business relationship.”

2.3.6. In terms of section 21H of the FIC Act, “(1) sections 21F and 21G apply to immediate family members and known close associates of a foreign or domestic politically exposed person or a prominent influential person, as the case may be.

(2) For the purposes of subsection (1), an immediate family member includes—

- (a) the spouse, civil partner, or life partner;
- (b) the previous spouse, civil partner, or life partner, if applicable;
- (c) children and step children and their spouse, civil partner, or life partner;
- (d) parents; and
- (e) sibling and step sibling and their spouse, civil partner, or life partner.”

2.3.7. During the aforementioned inspection, and upon analysis of the sampled client files, it was found that the accountable institution failed to comply with the aforementioned provisions for the reasons set out below:

2.3.7.1. Opes Trust failed to verify the identity of 3 out of 45 of the sampled clients in contravention of section 21(1)(a) of the FIC Act.

2.3.7.2. An analysis of the sampled client files indicated that Opes Trust failed to obtain information describing the nature of the business relationship in relation to 29 out of 45 of the sampled clients in contravention of section 21A(a) of the FIC Act.

2.3.7.3. Opes Trust failed to obtain information about the client’s purpose and intention for the business relationship in respect of 29 out of 45 of the sampled clients in contravention of section 21A(b) of the FIC Act.

2.3.7.4. Opes Trust failed to obtain information describing the source of funds which clients expect to use in concluding transactions in the course of business relationship in respect of 42 out of 45 of the sampled clients in contravention of section 21A(c) of the FIC Act.

- 2.3.7.5. Opes Trust failed to conduct ongoing due diligence in respect of 45 out of 45 of the sampled clients in contravention of section 21C of the FIC Act.
- 2.3.7.6. Upon analysis of the sampled client files, there was no evidence found that indicated that Opes Trust took measures to establish whether any of its clients are foreign politically exposed persons, domestic politically exposed persons, or prominent influential persons. Moreover, Opes Trust did not take measures to establish whether any of its clients were family members or known close associates of a foreign or domestic politically exposed person or a prominent influential person in respect of 45 out of 45 of the sampled client files in contravention of section 21F to 21G of the FIC Act.

## 2.4. **Governance**

- 2.4.1. In terms of section 42A(3) of the FIC Act, the person or persons exercising the highest level of authority in an accountable institution which is not a legal person must ensure compliance by the employees of the institution with the provisions of the FIC Act and its RMCP, insofar as the functions of those employees relate to the obligations of the institution.
- 2.4.2. In terms of section 42A(4) of the FIC Act, an accountable institution which is not a legal person, except for an accountable institution which is a sole practitioner, must appoint a person or persons with sufficient competence to assist the person or persons exercising the highest level of authority in the accountable institution in discharging their obligation under subsection (3).
- 2.4.3. Opes Trust is a business trust, and the trustees consist of Barend Francois Meyer (trustee, compliance officer, senior manager, KI & representative), Timothy Meyer, and Nolia Meyer.
- 2.4.4. Mr Barend Francois Meyer is the senior manager and appointed compliance officer but does not have sufficient competence to ensure effective compliance with the requirements of the FIC Act. Mr Meyer failed to ensure that the RMCP was implemented during the course and scope of conducting

business with clients. This led to Opes Trust failing to comply with the provisions of its own RMCP. In addition, Mr Meyer failed to ensure that the RMCP was reviewed and updated following the coming into operation of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022, which amended the FIC Act. Furthermore, during the inspection Mr Meyer indicated that he did not train Opes Trust's employees on the FIC Act and the RMCP as required by section 43 of the FIC Act.

## **2.5. Targeted financial sanctions**

2.5.1. In terms of section 28A read with section 26A – 26C of the FIC Act and Guidance Note 7, an accountable institution is required to scrutinise (screen) client information to determine whether their clients are listed in terms of section 25 of Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (POCDATARA) and listed by the Security Council of the United Nations, as contemplated in a notice referred to in section 26A (1) of the FIC Act.

2.5.2. The findings of the aforementioned inspection revealed that Opes Trust contravened section 28A read with section 26B of the FIC Act, in that Opes Trust failed to scrutinise (screen) its clients against any sanction lists (UN1267 and the TFS list). This represents a 100% failure (45 out of 45 of the sampled clients).

## **3. REASONS FOR IMPOSING THE ADMINISTRATIVE SANCTION**

3.1. Opes Trust's non-compliance as detailed above is a serious violation of the provisions of the FIC Act.

3.1.1. By understanding and managing money laundering and terrorist financing risks, as illustrated in RMCPs, accountable institutions not only protect and maintain the integrity of their business but also contribute to the integrity of the South African financial system.

- 3.1.2. The importance of a risk-based approach is underscored by the fact that this is the very first recommendation of the Financial Action Task Force. Non-compliance with section 42(1) and (2) of the FIC Act is not a minor issue. It breaches one of the core principles of the FIC Act, i.e. a risk-based approach to all the compliance elements of the FIC Act.
- 3.1.3. Customer due diligence is one of the most important provisions of the FIC Act. A proper understanding of who your client is, plays a critical role in identifying any suspicious transactions and activities in which the client may be involved.
- 3.1.4. It is important also that accountable institutions note that the board of directors, senior management or the person with the highest level of authority is ultimately responsible for ensuring that the institution maintains an effective internal AML/CFT control structure through a RMCP as well as ensuring that the institution's policies, procedures and processes are designed to limit and control risks of money laundering and terrorist financing and are fully consistent with the law and that staff adhere to them.
- 3.1.5. The screening of clients is also important in that a client may appear on a targeted financial sanctions list and accountable institutions are then required to take certain action against that client. If no screening is done, the accountable institution would not know if they have a client on the targeted financial sanctions list.
- 3.2. The sanction to be imposed must be effective, proportionate, and dissuasive.
- 3.3. On 12 December 2024, Opes Trust responded to the notice of intention to sanction which was issued on 21 November 2024. Opes Trust provided the FSCA with an amended copy of the RMCP, client files, together with its response letter. Upon assessing the RMCP and the client files, we noted the following:
- 3.3.1. The amended RMCP makes provision for the identification of Opes Trust's ML/TF/PF risks, assessment of the identified risks, and outlines monitoring and mitigation measures for these risks. The analysis of the business risk assessment is ongoing.

- 3.3.2. The amended RMCP provides for the manner in which Opes Trust will determine if a person is-
- (i) a prospective client in the process of establishing a business relationship or entering into a single transaction with the institution; or
  - (ii) a client who has established a business relationship or entered into a single transaction;
- 3.3.3. The amended RMCP does not holistically provide for the manner in which and the processes by which, Opes Trust will establish and verify the identity of persons whom it must identify in that the RMCP does not provide for the manner in which Opes Trust will establish and verify the identity of the following persons: beneficial owner, trust founder, trustees and beneficiaries. In addition, the amended RMCP does not provide the manner in which Opes Trust will establish and verify the identity of any other person authorised to act on behalf of the client.
- 3.3.4. The amended RMCP does not provide the manner in which and the processes by which Opes Trust will conduct additional due diligence measures in respect of legal persons, trusts and partnerships with consideration of the definition of beneficial ownership.
- 3.3.5. The amended RMCP does not provide for the manner in which Opes Trust will confirm information relating to a client when it has doubts about the veracity of previously obtained information and when reporting suspicious and unusual transactions in accordance with section 21D of the FIC Act.
- 3.3.6. The amended RMCP does not provide the manner in which and the processes by which Opes Trust will perform customer due diligence requirements in accordance with sections 21, 21A, 21B and 21C of the FIC Act when, during the course of a business relationship, Opes Trust suspects that a transaction or activity is suspicious or unusual as contemplated in section 29 of the FIC Act.
- 3.3.7. The amended RMCP provides for the manner in which Opes Trust will terminate an existing business relationship as contemplated in section 21E of the FIC Act.



- 3.3.8. The amended RMCP provides for the processes in which Opes Trust will identify and report CTR and STR to the FIC.
- 3.3.9. The amended RMCP does not provide for the processes to identify and report the following transactions and activities to the FIC:
- 3.3.9.1. SAR
  - 3.3.9.2. TFTR
  - 3.3.9.3. TFAR
- 3.3.10. Opes Trust provided the FSCA with a Lemonaide report (Lemonaide is a service provider for conducting Customer Due Diligence) to evidence client risk rating, ongoing due diligence, and screening (politically exposed persons and sanction screening) of 40 out of 45 sampled client files. Opes Trust did not provide evidence of client risk rating, ongoing due diligence and screening (politically exposed persons and sanction screening) in respect of 5 out of 45 outstanding sampled client files.
- 3.3.11. In its representation, Opes Trust states that it is committed to improving its RMCP and ensuring full compliance with all provisions of the FIC Act going forward. Furthermore, Opes Trust asserts that the proposed administrative penalty would have a significant impact on its operations and ability to effectively serve its clients; thus, the penalty should not be imposed.
- 3.3.12. Opes Trust did not provide evidence of remediating the suspicious and/or unusual activity report, which was not successfully reported to the FIC.
- 3.4. The FSCA has noted that Opes Trust has the propensity to not comply with the provisions of the FIC Act. According to the records of the FSCA, Opes Trust was previously inspected by the FSCA on 24 and 25 January 2022. It was found that the institution did not have an RMCP in place which provided for the manner in which and process by which the institution will comply with the requirements of section 42(1) and (2) of the FIC Act.

The FSCA provided feedback to Opes Trust on 29 March 2022, detailing the inspection non-compliance findings. Opes Trust was afforded an opportunity to remediate the non-compliance and in response to the feedback, Opes Trust submitted an RMCP in remediation.

However, when the FSCA conducted a follow-up inspection on 28 and 29 February 2024, it was found that, although an RMCP is now in place, it was defective in material ways in that it did not comply with the requirements of section 42(1) and/or (2) of the FIC Act, including other relevant requirements addressed above.

- 3.5. Opes Trust indicates that it had remediated all the non-compliance findings of the 2022 inspection and that it complied with the provisions of the FIC Act, as acknowledged by the FSCA. It must, however, be noted that the 2022 inspection was limited in scope and as a result of no RMCP in place, the FSCA could not test all compliance requirements.
- 3.6. Opes Trust has co-operated with the FSCA during the inspection.

#### 4. **PARTICULARS OF THE ADMINISTRATIVE SANCTION**

- 4.1. In terms of section 45C(1), read with sections 45C(3)(b)(c) and (e), and 45C(6)(a) of the FIC Act, the FSCA hereby imposes the following administrative sanction on Opes Trust:
  - 4.1.1. A directive to amend the RMCP to be compliant with the requirements set out in sections 42(2)(d), 42(2)(f), 42(2)(i), 42(2)(j), and 42(2)(o and p) of the FIC Act. Opes Trust is directed to provide the approved amended RMCP on or before **01 July 2025**.
    - 4.1.1.1. The amended RMCP of Opes Trust must be approved by the highest level of authority and implemented in terms of its provisions.
    - 4.1.1.2. Risk rate clients at onboarding and ensure that Opes Trust retains evidence thereof.
    - 4.1.1.3. Conduct customer due diligence in line with the risk rating of the clients and the RMCP at onboarding.
    - 4.1.1.4. Screen all clients at onboarding against the relevant lists of the Security Council of the United Nations at onboarding, when the TFS List is updated and in accordance with the amended RMCP and the FIC Act. Opes Trust must also retain evidence thereof.

- 4.1.1.5. Determine if clients are foreign politically exposed persons, domestic politically exposed persons, prominent influential persons, or a family member or known close associate of a foreign or domestic politically exposed person or a prominent influential person at onboarding. Opes Trust must also retain evidence thereof.
- 4.1.1.6. Conduct ongoing due diligence on its clients in accordance with the client risk profile and the amended RMCP. Opes Trust must also retain evidence thereof.
- 4.1.1.7. Provide outstanding evidence of client risk rating, ongoing due diligence, and screening (Political exposed person and sanction screening).
- 4.1.1.8. Report (or remediate) the identified suspicious and/or unusual transaction by completing all the fields on the goAML system.
- 4.1.2. A financial penalty of R200 000 for non-compliance with section 42(1) and 42(2) of the FIC Act.
- 4.1.3. A reprimand for non-compliance with section 42A of the FIC Act.
- 4.1.4. A financial penalty of R200 000 for non-compliance with section 21(1), 21A, 21C(1), 21F–H of the FIC Act.
- 4.1.5. A financial penalty of R100 000 for non-compliance with section 28A read with section 26B of the FIC Act.
- 4.1.6. A reprimand for non-compliance with section 29 of the FIC Act and/or regulation 23A of the Regulations.
- 4.2. Opes Trust is directed to pay the R250 000 of the financial penalty on or before **01 July 2025**.
- 4.3. The payment of the remaining R250 000 of the total financial penalty is hereby suspended for a period of 2 years from the date of this Administrative Sanction, on condition that Opes Trust complies with the directive issued in paragraph 4.1.1 above and remains fully compliant with sections 42(1) and (2), and section 28A read with section 26 of the FIC Act.

4.4. Should Opes Trust be found to be non-compliant with provisions of the FIC Act detailed on paragraph 4.1.1. above, within the 2 years suspension period, the suspended penalty of R250 000 becomes immediately payable.

4.5. The financial penalty is payable via electronic fund transfer to:

Account Name : NRF – FIC Act Sanctions

Account Holder : National Treasury

Account Number : 80552749

Bank : South African Reserve Bank

Code : 910145

Reference : FIC Sanction – Opes Trust

4.6. Proof of payment must be submitted to the FSCA, to Mrs Stella Nekhaguma at [stella.nekhaguma@fsca.co.za](mailto:stella.nekhaguma@fsca.co.za).

## 5. RIGHT OF APPEAL

5.1. In terms of section 45D of the FIC Act, read with Regulation 27C of the Regulations promulgated in terms of GN R1595 in GG 24176 of 20 December 2002 as amended, Opes Trust may lodge an appeal within 30 days, from the date of receipt of the Notice. The notice of appeal and proof of payment of the mandatory appeal fee must be:-

5.1.1. hand delivered or sent via e-mail to:

The Secretary: The FIC Act Appeal Board

Byls Bridge Office Park, Building 11

13 Candela Street

Highveld Extension

Centurion; or

E-mail: [AppealBoardSecretariat@fic.gov.za](mailto:AppealBoardSecretariat@fic.gov.za)

cc [Frans.Nyundu@fic.gov.za](mailto:Frans.Nyundu@fic.gov.za)

5.1.2. sent via electronic mail to:

The HOD: Office of General Counsel

FSCA

Attention: Mr S Rossouw ([Stefanus.Rossouw@fsca.co.za](mailto:Stefanus.Rossouw@fsca.co.za))

5.2. The Secretary of the FIC Act Appeal Board may be contacted at [AppealBoardSecretariat@fic.gov.za](mailto:AppealBoardSecretariat@fic.gov.za) and telephonically at (012) 641-6243 should Opes Trust require further information regarding the appeal process. Details of the appeal process can also be found on the FIC's website at [www.fic.gov.za](http://www.fic.gov.za).

## **6. FAILURE TO COMPLY WITH THE ADMINISTRATIVE SANCTION**

6.1. In terms of section 45(C)(7)(b) of the FIC Act, should Opes Trust fail to pay the prescribed financial penalty in accordance with this notice and an appeal has not been lodged within the prescribed period, the FSCA may forthwith file with the clerk or registrar of a competent court a certified copy of this notice, which shall thereupon have the effect of a civil judgement lawfully given in that court in favour of the FSCA.

## **7. PUBLICATION OF SANCTION**

7.1. The FSCA will make public the decision and the nature of the sanction imposed in terms of section 45C(11) of the FIC Act.

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', is written over a horizontal line.

**Unathi Kamlana**

**Commissioner**

**Financial Sector Conduct Authority**