

THE FINANCIAL SECTOR CONDUCT AUTHORITY

CASE NO:01/2019

In the matter between:

FINANCIAL SECTOR CONDUCT AUTHORITY

and

**PRIME COLLECTIVE INVESTMENT SCHEMES MANAGEMENT COMPANY (RF) (PTY)
LTD**

ORDER INTERMS OF SECTION 167 OF THE FINANCIAL SECTOR REGULATION ACT NO.9 OF 2017

Introduction

1. The Financial Sector Conduct Authority (FSCA) is a juristic person established in terms of section 56 of the Financial Sector Regulation Act, No.9 of 2017 (the FSR Act). The office of the FSCA is situated at Riverwalk Office Park, Block B, 41 Matroosberg Road, Ashlea Gardens.
2. The functions of the FSCA are *inter alia* to regulate and supervise the conduct of financial institutions in accordance with the financial sector laws.

The Facts

3. Prime Collective Investment Schemes Management Company (RF) (Pty) Ltd (Prime) is a company duly incorporated and registered in accordance with the laws of the Republic of South Africa, bearing registration number 2005/01798/07. Prime's registered



address is 1st Floor, Building B, Hurlingham Office Park, 59 Woodlands Ave, Hurlingham Manor, Sandton.

4. Prime was at all relevant times registered as a collective investment scheme manager in terms of the Collective Investment Schemes Control Act 45 of 2002 (Act).
5. At all relevant times Prime had established a co-named portfolio with 10X Investments (Pty) Ltd (10X) described as the 10X Prime High Equity Fund (the Fund). 10X was also Prime's authorised agent.
6. During the period 01 February 2018 until 14 November 2018 Prime contravened section 106(a) of the Act read with paragraph 5(3)(j) of Board Notice 92 in Government Gazette 37895 of 8 August 2014 in that:
 - 6.1.10X in marketing and advertising the financial products it offered, made a statement and disseminated information on its website to the effect that the Fund provides a return of 11.3% over a 10 year period. This statement or information contained in the advert was inaccurate and therefore false or misleading in the following respects:
 - 6.1.1. The performance of the Fund since its inception in December 2015 was 4% in the first year and 6.1% in the second year.
 - 6.1.2. The 11.3% return related to the 10X High Equity Fund being a retirement product of 10X.
 - 6.2. This statement or information was likely to induce other persons to deal in a participatory interest of the Fund.
 - 6.3. Prime, as the manager responsible for the Fund and the Fund's compliance with the Act, failed to ensure that the advert was not inaccurate or misleading and/or failed to ensure that the advert was not designed in way that would give rise to a misunderstanding.



Factors Taken Into Account In Determining The Penalty

7. The FSCA took the following mitigating factors into consideration in this matter:

7.1. Prime accepted responsibility for its actions for having contravened the aforesaid provisions.

7.2. Prime co-operated with the FSCA and admitted to the contravention, thereby saving the resources and time of the FSCA.

7.3. Prime has implemented appropriate measures to prevent such contravention occurring in the future.

8. The FSCA has taken the following aggravating factors into consideration in this matter:

8.1. The contravention occurred over a period of approximately nine months.

8.2. The contravention was of a serious nature.

The Penalty

9. The FSCA hereby imposes an administrative penalty of R30 000 (thirty thousand rand), inclusive of costs on Prime, to be paid within 14 working days from the date of this order.

10. Further Take note that:

10.1. If Prime fails to pay the administrative penalty within the period prescribed by this order, in terms of section 169 of the Act, interest, at the rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), will be payable in respect of any unpaid portion of administrative penalty until it is fully paid.



10.2. Failure to comply with this order and notice will result in the provisions of section 170 of the FSR Act being invoked, which reads as follows:

“(1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if:-

(a) the amount payable in terms of the order has not been paid as required by the order; and

(b) either:-

(i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal’s decision, has been lodged by the end of the period for making such applications; or

(ii) if such an application has been made, proceedings on the application have been finally disposed of.

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.”

10.3. In terms of section 230 of the FSR Act a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal (the Tribunal). An application for reconsideration must be made –

(a) in accordance with the Tribunal rules; and

(b) within the time periods set out in section 230(2) of the FSR Act.

You may contact the secretary of the Tribunal at (012) 428 8012 or per electronic mail at LEG.Tribunal@fsca.co.za.

Signed at Pretoria on the 18 day of **February 2019**.


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Mr J A BOYD

FOR THE FINANCIAL CONDUCT AUTHORITY.