

**ENFORCEABLE UNDERTAKING IN TERMS OF SECTION 151 OF THE
FINANCIAL SECTOR REGULATION ACT 9 OF 2017**

Entered into between:

THE FINANCIAL SECTOR CONDUCT AUTHORITY

and

STANLIB COLLECTIVE INVESTMENT (RF)(PTY) LIMITED

**ENFORCEABLE UNDERTAKING IN TERMS OF SECTION 151 OF THE
FINANCIAL SECTOR REGULATION ACT, No. 9 OF 2017**

1. PARTIES AND SIGNATORIES

- 1.1 Mr Jurgen Boyd, in his capacity as the Divisional Executive: Market Integrity of the Financial Sector Conduct Authority ("the FSCA"), acts on behalf of the FSCA.
- 1.2 Stanlib Collective Investment (RF)(PTY) Limited ("STANLIB"), a company incorporated in terms of the company laws of South Africa with registration number 1969/003468/07 and which has its principal place of business at 17 Melrose Boulevard, Melrose Arch, Johannesburg is herein represented by Mr Derrick Msibi, the Chief Executive Officer of STANLIB, who warrants that he is duly authorised by STANLIB to provide this undertaking on its behalf.

2. WHEREAS

2.1 STANLIB is a registered Manager in accordance with the Collective Investment Schemes Control Act, 45 of 2002 ("CISCA").

2.2 The FSCA, pursuant to an on-site visit, found that STANLIB contravened Paragraph 1(i) of Schedule 1 to the CISCA (read with S 97 of the CISCA).

2.3 It is agreed between the parties that the following facts are relevant to the contravention:

2.3.1 During an on-site visit conducted by the FSCA's predecessor, the Financial Services Board on 23 and 24 March 2017, it was found that STANLIB's Minimum Disclosure Documents ("MDD's") relating to the portfolios listed below disclosed the levying of a performance fee, whilst the supplemental deeds of the portfolios did not provide for such a fee to be charged, nor did it disclose the method of calculating such a performance fee:

- STANLIB Multi-manager SA Equity Fund**
- STANLIB Multi-manager Bond Fund**
- STANLIB Multi-manager Balanced Fund**
- STANLIB Multi-manager Defensive Balanced Fund**
- STANLIB Multi-manager Real Return Fund**
- STANLIB Multi-manager Absolute Income Fund ("the portfolios").**

2.3.2 Upon this breach being brought to STANLIB's attention, STANLIB conducted an internal investigation to ascertain the exact details and extent of the contravention.

2.3.4 STANLIB conceded that it did indeed levy performance fees on the portfolios.

- 2.3.5 STANLIB undertook to calculate the amount of the performance fees that accrued to STANLIB from the portfolios, from 1 January 2011 to 30 June 2018, and to have the calculations verified by an external auditor. This exercise was completed on 19 October 2018.
- 2.3.6 STANLIB lodged applications for the amendment of the supplemental deeds of its portfolios in order to provide for the levying of performance fees and the method of calculating such fees. This application was approved by the FSCA on the 18th of October 2018.
- 2.4 The FSCA, in considering the facts of this matter invited STANLIB to provide an enforceable undertaking to address the breach, which STANLIB agreed to.
- 2.5 Based on the above, STANLIB provides an undertaking to the FSCA as contemplated in section 151 of the Financial Sector Regulation Act, No 9 of 2017 ("FSRA"), as set out in paragraph 3 of this document.

3. THE UNDERTAKING:

STANLIB undertakes:

- 3.1.1 to repay the performance fees levied by STANLIB in respect of each of the affected portfolios for the period 1 January 2011 to 30 June 2018;
- 3.1.2 to communicate with all the investors of the affected portfolios informing them of the details of the breach and the remedial action to be undertaken by STANLIB;
- 3.1.3 to review its internal control environment and implement the following as a matter of on-going remediation:
- 3.1.3.1 wholesale review of all deeds and/or supplemental deeds to avoid a recurrence of this nature;
- 3.1.3.2 all Portfolio Management agreements, especially in the multi-manager business, to be signed off by its Central

Legal and Compliance department prior to engaging the relevant third parties;

3.1.3.3 supplemental deeds will be reviewed prior to fees being loaded onto STANLIB's system; and

3.1.3.4 enhanced engagements with the Trustees to ensure collective management of all matters contained in the deeds and / or supplemental deeds in relation to fees.

3.2 STANLIB's undertaking as set out in this paragraph is accepted by the FSCA.

3.3 STANLIB chooses the address mentioned in paragraph 1.2 above as its *domicilium citandi et executandi*

Signed at PRETORIA on 11/12/2019 on behalf of the Financial Sector Conduct Authority.



J BOYD

Financial Sector Conduct Authority

Block B, Riverwalk Office Park

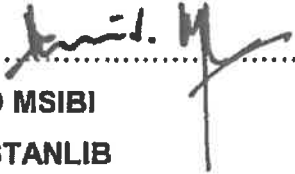
41 Matroosberg Road

Ashlea Gardens ext. 6

Pretoria

0081

Signed at Melrose Arch on 07. DECEMBER 2017 on behalf
of STANLIB.


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D MSIBI

STANLIB

17 Melrose Boulevard,

Melrose Arch,

2196

E mail: Njabulo.Duma@stanlib.com

ADMINISTRATIVE PENALTY IN TERMS OF SECTION 167 (1)(a) of the FSRA

4. In addition to accepting the enforceable undertaking the FSCA has decided to also impose an administrative penalty as contemplated in section 167(1)(a) of the FSRA on STANLIB for the above mentioned contravention.

4.1 THE MITIGATING FACTORS

- 4.1.1 The FSCA took into account the following mitigating factors in determining the penalty:

- a. STANLIB accepted responsibility for the contravention.
- b. STANLIB has been co-operative in its engagement with the FSCA in this matter as from the initial discovery of the contravention during the on-site inspection.
- c. The performance fees that were charged, despite the contravention, were disclosed to investors in the MDD's which supports STANLIB's submission that it was not its intention to mislead investors.
- d. STANLIB is giving an undertaking that redress will be provided to the affected investors.
- e. STANLIB has not incurred any previous administrative penalties for a similar contravention of the CISCA.

4.2 THE AGGRAVATING FACTORS

- 4.2.1 The FSCA took into account the following aggravating factors in determining the penalty:

- a. STANLIB's contravention occurred due to a lack of oversight in its operations.
- b. It is not permissible for a Manager to charge performance fees that are not stipulated and provided for in the supplemental deeds of the portfolios concerned.
- c. The contravention occurred over a period of approximately 7 years.
- d. The FSCA views this as a serious contravention.
- e. The total amount of fees charged over this time period and the benefit to the manager at the cost (detriment) of the investors.

5. THE PENALTY

5.1 In light of the above, the FSCA hereby imposes an administrative penalty of R 500 000.00 (five hundred thousand rand) inclusive of costs on STANLIB, to be paid within 14 working days from the date of this order. STANLIB accepts the imposition of this penalty.

5.2 Failure to comply with this order will result in the provisions of section 170 of the FSRA 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."*


5.3 In terms of section 230 of the FSRA a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal (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 FSRA.

STANLIB 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 11 day of December
_____ 2018.


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Mr J A BOYD

FOR THE FINANCIAL CONDUCT AUTHORITY.