FSCA

Financial Sector
Conduct Authority

FINANCIAL SECTOR REGULATION ACT, 2017

NOTICE REGARDING THE PUBLICATION OF DRAFT CONDUCT STANDARD [-] OF 2023 (FM) - REQUIREMENTS RELATING TO THE REPORTING AND DISCLOSURE OF SHORT SALES

The Financial Sector Conduct Authority (FSCA), in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), hereby invites submissions on the draft Conduct Standard – Requirements relating to the reporting and disclosure of short sales (draft Conduct Standard) to be made in terms of section 106(1) read with sections 106(2) and (3), and 108(1) and (2) of the FSR Act, 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 May 2023** to the FSCA at FSCA.RFDStandards@fsca.co.za.

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COMMISSIONER (ACTING)
FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: 31 March 2023

SCHEDULE

CONDUCT STANDARD [-] of 2023 (FM)

REQUIREMENTS RELATING TO THE REPORTING AND DISCLOSURE OF A SHORT SALES

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CHAPTER 1

Definitions and application

1. Definitions

In this schedule **"the 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 shall bear the meaning so assigned to it, and, unless the context otherwise indicates-

"at the time of sale" means at point of sale when an offer for sale is placed;

"short sale" means the sale of a listed security which the seller does not own at the point of sale, and in terms of which the seller has the obligation to buy back the security at some point in the future;

"flagging" in relation to an authorised user, means when an authorised user indicates by way of marking short sale of the trading system, before or when executing a transaction;

"issued share capital" in relation to a company, means the total of ordinary and any preference shares issued by the company but does not include convertible debt securities;

"legal entity identifier (LEI)" means a 20-character, alpha-numeric code that uniquely identifies the counterparties to the financial transactions, the international standard for the LEI is outlined in ISO 17442:2012 Financial Services-Legal Entity Identifier;

"Local Operating Unit (LOU)" means the utilities accredited by the Global LEI Foundation under the Regulatory Oversight Committee's oversight, to provide LEIs and other services to registrants;

"seller" in relation to a short sale means a person who engages an authorised user to make the sale on the person's behalf or an authorised user who makes the sale on its own behalf;

"securities lending arrangements" means an arrangement under which-

(a) one entity (the lender) agrees to,
  (i) deliver particular securities, managed investment products or other financial products to another entity (the borrower) or to an entity nominated by the borrower;
  (ii) vest title in those products in the entity to which they are delivered; and

(b) the borrower agrees to, after the lender fulfills the obligations indicated in paragraph (a) of this definition,
  (i) deliver the products (or equivalent products) to the lender or to an entity nominated by the lender; and
  (ii) vest title in those products (or those equivalent products) in the entity to which they are delivered;

"T" means transaction date;

"T+1" means transaction date plus one day; and

"T+3" means transaction date plus three days.

2. Application of the Conduct Standard

This Conduct Standard applies to authorised users and exchanges in relation to a short sale of listed securities executed on an exchange.

CHAPTER 2

Restrictions and general obligations

3. Restrictions

An authorised user may not execute a transaction relating to a short sale unless the execution of the sale is subject to a satisfactory securities lending arrangement which provides for an equivalent amount of securities being available for settlement on settlement date.

4. General obligations

An authorised user who facilitates a short sale on an exchange must act in good faith and do so by acting transparently, with integrity, honestly, fairly, and with due skill, care and diligence.

CHAPTER 3

Short sale reporting

5. Short sale transaction flagging and reporting

(1) An authorised user may not execute a short sale on behalf of a seller on an exchange unless –

(a) the authorised user has, before making the sale, confirmed with the seller of the security that the requested sale is a short sale;

(b) the authorised user requests the following information from the seller when the order is placed:

(i) a description of the International Securities Identification Number (ISIN) number of the security;
(ii) the name of the issuer of the security; and
(iii) the number of securities that the seller will vest in the buyer under the securities lending arrangement; and

(c) the authorised user flags the transaction on the trading system, when executing the sale, as constituting a short sale.

(2) An authorised user must, when flagging a short sale in accordance with paragraph 1(c), use a unique identifier, which will take the form of a legal entity identifier (LEI) issued by a Local Operating Unit to the authorised user.

(3) If an authorised user executes a short sale for its own account –

(a) after the start of a trading day but before 7 pm, the authorised user must provide the information listed in subparagraph (1)(b) to the exchange by 9 am the next trading day; and

(b) after 7 pm on a trading day but before the start of the next trading day, the authorised user must provide the information listed in subparagraph 1(b) to the exchange by 9 am on the second trading day.

(4) If an authorised user receives the information listed in subparagraph (1)(b) –

(a) after the start of the trading day but before 7 pm, the authorised user must provide such information to the exchange on or before 9 am on the next trading day after the information was provided; and

(b) after 7 pm on a trading day but before the start of the next trading day, the authorised user must provide such information to the exchange on or before 9 am on the second trading day after the information was provided.

(5) An authorised user must exhaust all options, as may be deemed reasonable, to identify short sales in which its client is the seller, including when an authorised user aggregates orders from several clients. An authorised user must identify those short sales in its transaction report.

6. Short sale position reporting

(1) An authorised user must on T+3 report the following short sale positional data in respect of a particular listed security, aggregated for all its clients, to the relevant exchange, unless the open positions in respect of that security are below the determined thresholds:

(a) all short positions created on T in respect of that security that are still open as at T+3;

(b) all short positions in respect of that security that were created before T, and which are still open as at T+3; and

(c) the total short positions in respect of that security comprising subparagraph (a) + (b).

(2) The Authority may by notice on its website determine thresholds relating to reporting of positional data as referred to in subparagraph (1).

CHAPTER 4

Public disclosure of short sales transactions and positions

7. Public disclosure of short sale transaction data

An exchange must aggregate all short sale transactional data as flagged on the trading system in accordance with paragraph 5(1)(c) for each trading day and publicly disclose the following information on T+1 on its website:

(a) per security, the volume of short sales that were traded on the exchange in respect of that security on a particular day, aggregated across all authorised users; and

(b) per security, the volume of short sales that were traded on the exchange in respect of that security on a particular day, aggregated across all authorised users, expressed as a percentage of issued shares.

8. Public disclosure of significant net short positions

(1) An exchange must aggregate all short sale positional data as received from authorised users in terms of paragraph 7 and publicly disclose on its website one day after receipt of such information the following information per security, unless the open positions in respect of that security are below the determined thresholds:

(a) the total number of open short positions in such security aggregated across all authorised users; and

(b) the total number of open short positions in such security aggregated across all authorised users expressed as a percentage of issued shares.

(2) The Authority may by notice on its website determine thresholds relating to public disclosure of positional data as referred to in subparagraph (1).

CHAPTER 5

Short title and commencement

9. Short title and commencement

This Conduct Standard is called the Requirements relating to the Reporting and Disclosure of a Short Sales, 2023 and Comes into effect 6 months after the date of publication.