

LINKED INVESTMENT SERVICE PROVIDERS ASSOCIATION

Note – *Given the work of integrating the codes of the former trade associations, during October 2010 chapters 2, 6, 7 and 11 of the LISPA Code of Conduct have been removed as they no longer apply here.*

CODE OF CONDUCT AND PRACTICE

This code of conduct has been developed by the Linked Investment Service Provider's Association ("LISPA") and the terms have been subscribed to by its members to determine a standard of professional conduct by its members in the conduct of their business.

1. GENERAL CONDUCT

Linked Investment Service providers ("LISPs") undertake to:

- 1.1 act honestly and fairly, and with due skill, care and diligence, in the best interests of clients and with a view to maintaining the integrity of the financial services industry;
- 1.2 have and employ effectively the resources and procedures necessary for the proper performance of professional activities;
- 1.3 make adequate disclosure of relevant material information, including disclosure of actual or potential own interests, in relation to dealings with clients;
- 1.4 act with circumspection and treat clients fairly in a situation of conflicting interests;
- 1.5 comply with all applicable statutory or common law requirements applicable to the conduct of business;

- 1.6 provide such documents and information about the affairs of the LISP to the Registrar of Financial Services Providers as they may in writing reasonably request.

2. INITIAL INVESTMENT (*now removed as this chapter no longer applies here*)

3. DISCLOSURE

- 3.1. LISPs support an environment of complete transparency and disclosure and will use their best endeavours to ensure that all fees and charges are fully disclosed to investors and financial advisers. The Financial Advisers and Intermediary Services Act ("FAIS") currently requires all FSP's to disclose fees, commissions and charges that may be incurred for services rendered. This places an obligation on financial service providers, including intermediaries and LISPs.
- 3.2. In the context of business placed with LISPs, there are essentially three layers of charges that are incurred. This includes the LISP's fees, the financial adviser or advice fee and asset manager fees.
- 3.3. LISPs must ensure that all LISP and intermediary fees are separately, explicitly disclosed on application forms, new business quotations, contracts and investor statements. Mere disclosure of a total gross fee is not adequate.
- 3.4. All initial charges levied by the underlying investment fund (collective investments and life assurance portfolios) must be disclosed on new business quotations, contracts and investor statements.
- 3.5. With effect from 30 June 2008 the Total Expense Ratios (calculated in accordance with the requirements of the ACI) of underlying collective investments must be disclosed on new business quotations, investment confirmations and investor statements, or the Reduction in Yield of the investment (calculated in accordance with the requirements of the Life Offices Association) must be shown.
- 3.6. The disclosure requirements in 3.3, 3.4 and 3.5 also apply *mututis mutandis* to business conducted, and reporting done, via the internet or another electronic medium.
- 3.7. If a LISP receives platform fees from asset managers relating to investments done via the LISP, that fact must be disclosed on application forms. For the purposes of this code "platform fees" means payments made by a product supplier to an administrative

financial services provider for, *inter alia*, the distribution and/or marketing cost savings represented by the distribution opportunity presented by the platform. It may be a flat Rand amount or a volume-based percentage of assets held on the platform.

4. INTERMEDIARIES

Where a LISP uses the services of intermediaries the LISP shall provide up to date marketing material to intermediaries, and shall endeavour to ensure that intermediaries have a thorough understanding of the products offered by the LISP.

5. INVESTOR REPORTING

- 5.1. LISP's are required to send detailed investor statements to clients at least quarterly, unless a regulatory exemption allows a lesser frequency.
- 5.2. Statements must reflect all fees levied against the client's investment, whether they are service fees levied by the LISP, intermediary fees or fees levied by the Collective Investment Scheme management company or similar entity.
- 5.3. In the case of "All-in" collective investment scheme fee classes, the fees levied in respect of the LISP, intermediary and management company must be shown separately.
- 5.4. LISP fees and amounts paid to the intermediary must be set out in monetary terms. It is acceptable for CIS and similar fees to be disclosed in percentage terms, using the Total Expense Ratio where available.
- 5.5. Where delays in processing transactions are incurred, the client shall be entitled to receive, in writing if requested, a full account of the reasons for the delays and what steps are being taken to remedy the situation.

6. TERMINATING *(now removed as this chapter no longer applies here)*

7. DISTRIBUTIONS *(now removed as this chapter no longer applies here)*

8. CONFIDENTIALITY OF INFORMATION

Information received by a LISP regarding a client or intermediary shall not be used or disclosed by the LISP in any circumstances, other than in general terms for statistical purposes and in the normal course of servicing the client,

or under a subpoena or court order, unless the consent of the client or intermediary , as the case may be, is first obtained.

9. PROFESSIONAL INDEMNITY COVER

LISPs shall take out and maintain adequate professional indemnity cover.

10. ADVERTISING

10.1 Language, statistics and graphics

When making reference to performance (of any nature) reference must be made to an independent and recognised industry benchmark or source. Furthermore the statement made must be relevant, fair and accurate. In the event of the reference being comparative in nature no reference to specific funds, companies or schemes should be made.

There must be no misleading statements or vagueness that causes confusion or results in perceptions and expectations that reasonable people would regard as being unrealistic.

10.2 Performance reporting / advertising

The principles adhered to by the Association of Collective Investments should be adhered to by LISPs. The regulations governing LISP products and services must be adhered to at all times

Projections of investment performance must be in line with industry standards in respect of the investment in question. The underlying principle is that consistency is important and clients and prospective clients should be in a position to compare like with like. For structured products that incorporate flexible underlying investment options, performance projections must be limited to industry or category performance averages over a three-year period. Future projections

must be based on these three-year averages and projected for no less than five years.

11. CONDUCT OF LISPS IN RELATION TO EACH OTHER *(Now removed as this chapter no longer applies here)*

12. PAYMENT OF REBATES TO INTERMEDIARIES

12.1. Where an amount is paid to a LISP by a particular collective investment scheme management company, the LISP shall not

12.1.1. pass all or part of such amount to any intermediary, or

12.1.2. effect any payment to an intermediary which payment is calculated by making reference directly or indirectly to such amount,

unless the payment to the intermediary is properly disclosed to clients as contemplated in sections 3 and 5.

12.2. Where the manager of a discretionary mandate is employed by or contracted to a LISP or any company or business unit within the same group as the LISP, the LISP shall ensure that such manager is not influenced in his/her asset selection by any platform fee agreement between the LISP and a collective investment scheme management company.

13. LISPA STANDARD: MANCO PRICING ERROR CORRECTIONS

With effect from 19 November 2003, where the management company of a Collective Investment Scheme corrects a unit pricing error, the process to be followed by LISPs shall be as set out in Annexure "A" attached.

14. LISPA PROCEDURES FOR BREACH OF THE CODE OF CONDUCT

Introduction

- 14.1. LISPA, via the Market Conduct Standing Committee, shall monitor and enforce compliance with the Code of Conduct
- 14.2. Member LISPs shall ensure that third parties responsible for marketing its products are aware of the Code of Conduct and adhere to the code. The LISP in question will therefore be held responsible for any breaches arising as a result of a third party's negligent or intentional non-adherence to the Code.

Instituting Disciplinary Proceedings

- 14.3. LISPA may institute proceedings against any member LISP who breaches the Code of Conduct.
- 14.4. The breach may come to LISPA's attention either as a result of its own monitoring responsibility or information, or a complaint received from another member, investor, institution or the public.
- 14.5. LISPA shall become the complainant in all disciplinary proceedings, regardless of whether the complaint was raised by another member or any other party.
- 14.6. Member LISPs are under an obligation to report any breach of this code by any other member LISP, providing clear details of the behaviour that resulted in a breach of the Code of Conduct

Adjudication of Complaint

- 14.7. Where a complaint is received LISPA shall acknowledge receipt of the complaint within a reasonable period and provide feedback to the reporter with details of the resolution.
- 14.8. If a complaint appears prima facie valid, LISPA shall

- 14.8.1. inform the alleged offender (Respondent) about the alleged offence/breached clause, and
- 14.8.2. require the Respondent to reply to the allegations, within five (5) working days (excluding weekends and public holidays).
- 14.9. Representations can be made to LISPA to vary any time limit set out in the Code.
- 14.10. Complaints which the Market Conduct Standing Committee in its reasonable opinion deems to be frivolous or invalid shall not be considered.
- 14.11. The Respondent may be requested to submit oral evidence, in addition to written comment. This shall be allowed at the discretion of LISPA and on such terms and conditions and within such time limits as may be determined by LISPA in its sole and absolute discretion.
- 14.12. No legal representation is permitted but legal opinion may be submitted in writing as part of written or oral submission.
- 14.13. LISPA may call for further comment from the individual or entity which lodged the complaint, to clarify any issues that may be raised by the Respondent in its reply.
- 14.14. LISPA shall within a reasonable period after receipt of comments (written or oral) from the Respondent and further comments from the individual or entity which lodged the complaint , if required, deliberate on the matter and issue a ruling

Right of Appeal

- 14.15. The Respondent may appeal the ruling issued by LISPA, within a period of five working days of LISPA having issued its written ruling. The appeal must be in writing and addressed to the LISPA Exco.
- 14.16. The appeal must set out in full the grounds for appeal, and be supported by full documentation on matters raised in the appeal.

14.17. The Exco shall consider the matter at the next Exco meeting and issue a ruling within ten (10) working days thereafter.

14.18. The Exco may call for further written or oral evidence to assist in issuing a ruling.

15. Penalties for breaches of the code

15.1. Should a member be found guilty of a breach of this code, one or more of the following penalties can be imposed:

15.1.1. A reprimand;

15.1.2. An instruction to cease and desist from a practice breaching the code;

15.1.3. An instruction to take appropriate corrective action to rectify the breach;

15.1.4. A fine of up to R50 000;

15.1.5. Suspension of membership for a period of up to 6 months; and

15.1.6. Termination of membership.

15.2. Termination of membership will not take effect until it has been ratified by the Exco. Until ratified by the Exco, it will be treated as a suspension.

15.3. Suspension of membership can be linked to conditions which, if met, will result in the suspension being lifted.

16. Publication of guilty findings

If a member is found guilty of a breach of the code, the Exco may

17.1 inform the FSB and provide it with such detail as it may reasonably require; and

17.2 issue a press release identifying the member concerned, stating the nature of the breach, the committee's finding, and the penalty imposed.

ANNEXURE A

LISPA STANDARD

DEALING WITH COLLECTIVE INVESTMENT SCHEME MANAGEMENT COMPANY PRICING CORRECTIONS

Purpose

From time to time management companies of collective investment schemes correct errors that have occurred in the pricing of their units. The management companies then make payments to clients to compensate them for the underpricing of the units in the affected funds. LISPs receive payments in respect of the affected funds, but because the LISP payment represents compensation in respect of clients whose monies have been bulked in the funds, the LISPs need to embark on a correction exercise to compensate their clients for the underpricing.

The purpose of this Standard is to guide LISPA members as how the LISP corrections should take place.

Legal Position

A LISP acts as agent for the unit holders that are the LISP's clients, issuing buy and sell transactions to management companies, paying over and collecting payments and proceeds to and from management companies on behalf of clients. At all times the units that are held by LISPs are the property of its clients, and monies that are paid to LISPs by management companies to compensate for pricing errors, are due to the LISP's clients, and not to the LISP itself.

The effect of the above is that LISPs have an obligation to utilise the management company payment to compensate their clients for the management company error.

However, it is acknowledged that LISPs may encounter several difficulties in attempting to do this. Clients may have disinvested, and the LISP may not be able to trace their whereabouts. The error may cover a period of several years, over which period the LISP's clients may have disinvested and switched into other units, so that to rectify the position can be hugely time consuming and costly, and in some cases out of all proportion to the compensation that is to be credited to the clients.

It is very important to note that notwithstanding this guide, the contractual and other legal rights of unit holders remain, and these rights could technically be enforced by unit holders for amounts which have been considered immaterial in terms of this document.

Association of Collective Investments: Standard

The Association of Collective Investments has produced a Standard which deals with valuation and administration errors and how Collective Investment Scheme management companies should deal with these errors, and from which Standard guidance has been sought in the production of this document.

Procedure for dealing with pricing corrections

1. Receipt of notification and payment in respect of a pricing error from a management company.
2. Determine the duration of the affected period.
3. Identify which LISP clients have been affected during the period, and in what amounts.
4. Calculate the proportionate allocation of the management company payment to each affected client.
5. Determine whether the amount to be paid to each client is material, i.e. more than R30.00. Where an amount due to a client is not material, no amount is to be paid to that client.
6. Prepare a project plan to communicate with affected clients and to pay out the correction amounts to them. This may be by way of a) effecting a payment directly to the client, or b) by opening a money market account in the records of the LISP in respect of each affected client (if such clients do not already have money market accounts with the LISP) and crediting the appropriate amount to such account or c) by way of a unit adjustment to the client's existing investment, thereby putting the client in the same position as if the error had never occurred.
7. Where affected clients are no longer clients of the LISP, reasonable efforts (that can be proved) must be made to contact and reimburse these former clients.
8. Ensure that appropriate staff are able to deal with queries correctly.

Monies in respect of corrections paid by management companies and not distributed to LISP clients

There are two situations where money paid to a LISP by a management company in respect of a pricing correction, will not be paid to the unit holder by the LISP.

The first is where the amount due to the client is less than R30.00 i.e. not material. The second is where the amount due to the client is material, but the client cannot be traced by the LISP after reasonable attempts have been made to do so.

These amounts are to be retained by the LISP in its trust banking account or the banking account of its independent custodian, for a period of one year, to give any clients or former clients the opportunity of claiming the amounts due to them. The amount must be separately identifiable in the accounts of the LISP or independent custodian. After the one year period has passed, the balance may be paid to the credit of the LISP.

Costs of rectifying errors

The costs of a correction exercise and tracing former clients can be considerable. To avoid disputes, LISPs should deal with the issue of whether or not they are to be compensated by the management company that made the error, in their service level agreements with the management companies.