FISA

THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA

Code of Ethics and of Professional and Responsible Conduct

Statement of Ethical Principles

As professionals in the fiduciary industry in Southern Africa, we undertake to uphold the following principles in all our business actions and relationships, while accepting that our conduct in our personal actions and relationships should similarly reflect these same principles to support our commitment thereto.

We believe that our commitment to ethical, professional and responsible conduct is built on a commitment to two broad principles: **Integrity** and **Diligence**.

Integrity requires complete honesty, fairness, objectivity, independence of thought and behaviour and an avoidance of, or, if unavoidable and appropriate, proper behaviour with regard to conflicts of interest.

Diligence requires knowledge, competence, confidentiality and personal financial stability.

Every member of the Fiduciary Institute of Southern Africa is bound by and is committed to uphold these principles in general and through adherence to the specific provisions of this code. This is the cornerstone of all our dealings with our clients, each other, our employers, all levels of government and the South African public at large.

Code of Conduct

Definitions

In this Code the following words shall have the following meanings without derogating from the ordinary meanings of such words unless such ordinary meanings are in conflict with the meanings below:

"Client" means any juristic person, any natural person, alive or deceased, or a trust with whom the member has entered, enters, or is about to enter, into a business relationship

in which the member will supply fiduciary services to such person, such person's deceased estate and any person or trust with a legitimate interest in such deceased estate, or a trust, in the member's capacity as a fiduciary professional for the member's own account or in the scope of his/her employment with a fiduciary services provider;

"Member" means a person who has satisfied, and continues to satisfy, the requirements for membership in accordance with the relevant Regulations, who has been admitted to membership of the Institute, and whose membership has not been suspended or terminated, and "Member of the Institute" shall have a corresponding meaning, whilst recognising that the Institute retains the right to institute disciplinary action against any person for breaches of this Code while the person was a member as defined;

"Employer" means any natural or juristic person or trust that employs natural persons in an employer/employee relationship;

"Fiduciary professional" means any natural person who has satisfied the knowledge and experience requirements to be recognised as such and is rendering fiduciary services for own account or is employed by a juristic person or a trust to render fiduciary services;

"Fiduciary services" means any service in connection with the accumulation and/or disposition of the wealth of the consumer of the service, in which the service provider assists the consumer with planning and documenting instructions to the service provider, or another party, to act in the best interests of a party or parties identified or identifiable in the instructions, which instructions the service provider or other party then executes with the utmost good faith.

"Fiduciary services provider" means any person or trust who renders fiduciary services;

"Institute" means the Fiduciary Institute of Southern Africa;

"Person" means any natural or juristic person;

1. Integrity

Members should take cognisance of the fact that clients and other interested parties will always expect them to be totally honest, fair and trustworthy to the

extent that it should not be necessary for anyone to verify with another independent party, anything a member says or does.

Difference of opinion is always possible, but in the true spirit of integrity any member should not do or say anything unless he/she truly believes that and will in similar circumstances do or say at least the same with regard to his/her own affairs.

Members owe a solemn duty to uphold the integrity and honour of the fiduciary profession and to encourage and foster respect for it through their conduct.

1.1. Honesty

1.1.1. A member shall not, directly or indirectly, transfer to or receive in his personal account any funds, moneys, investments or other financial assets of any description, which are the property or in the possession of a client. The only exception to this provision is a fee to which the member is entitled in accordance with legislation or an agreement with a client.

1.1.2. A member shall not receive or take possession of any other property of a client in any other capacity apart from the fulfilment of the member's duties as a fiduciary professional.

1.1.3. A member shall not communicate knowingly in any way to any client, employer or other party with a legitimate interest in the duties of the member, anything which is not, to the best of the member's knowledge and belief, the whole truth.

1.1.4. A member shall not refrain knowingly from communicating any information to any client, employer or other party with a legitimate interest in such information, in circumstances where a duty exists to communicate such information to such party, or where such information will have a material influence on decisions that such party is to take with regard to matters that fall within the scope of the member's role as a fiduciary professional. Exceptions, although not an exhaustive list, to this paragraph are:

1.1.4.1. No member is required to waive his/her common law right to silence in circumstances where he/she may incriminate him/herself by supplying the information;

1.1.4.2. No member is required to supply information in circumstances where to do so will be in breach of any other requirement of this code, in the absence of a legal duty to supply such information.

1.1.5. A member shall not cause any misleading advertising or promotional activity about his/her or his/her employer's business to be published or conducted.

1.2. Fairness

1.2.1. A member shall always be completely fair in any comparison of services, or products, or fees charged:

1.2.1.1. by the member or his/her employer, and

1.2.1.2. any other supplier of such services or products.

1.2.2. A member who becomes aware of unfair actions by any other member shall bring the matter to the attention of the relevant structures of the Institute.

1.2.3. In any instance where a client or other party communicates allegations to a member about behaviour by another member which may be in breach of this code, the member to whom such communication is addressed shall:

1.2.3.1. Notify the party who communicates the allegations that it is inappropriate for the member to react without having heard the other side (the *audi alteram partem* rule of natural justice); and

1.2.3.2. Point out to such party that allegations of such a nature should be communicated to the relevant structures of the Institute; and

1.2.3.3. Offer to assist such party to communicate the allegations to the relevant structures of the Institute.

1.3. Objectivity

1.3.1. A member shall not give any opinion in connection with any matter relating to such member's duties to any client or other interested party without taking all reasonable steps to remove any unwarranted bias in favour of the member or his/her employer, or against any other member or other party or institution. This does not preclude any member from communicating information that is factually correct and relevant to the situation.

1.3.2. A member shall not refrain from communicating information that is factually correct and relevant to the situation and which the member should reasonably foresee may have a material influence on a decision to be taken by any client or other interested party, solely because it may cast a negative light on the member or his/her employer.

1.4. Independence of thought and behaviour

1.4.1. A member shall always evaluate all facts and circumstances with regard to the affairs of a client with the best interests of the client as the determining influence. Such evaluation shall be done independently and may not be unduly influenced by any existing policy adopted by the member or his/her employer which may be detrimental to, or not in the best interests of, the client.

1.4.2. The requirement in 1.4.1 shall not be interpreted to mean that a member may not make use of any service or product which the member or his/her employer supplies in fulfilling his/her fiduciary duty towards the client, provided that the client will, all factors taken into account, be in a comparable or better position than if such service or product had not been made use of.

1.5. Conflicts of interest

1.5.1. A member shall conduct all professional affairs in a manner that avoids any conflict of interest, or any appearance of a conflict of interest. Whilst the

Institute cannot prescribe to members how they should arrange their personal lives, it is recommended that members extend this principle to their personal affairs.

1.5.2. A member shall take all reasonable steps to foresee possible areas and scenarios where a conflict of interest could arise.

1.5.3. A member shall not use any information that is not publicly available to invest in any venture that is or may be a client, borrower, or supplier of the member or his/her employer, or is in any other business relationship with the member or his/her employer, or share such information with any party that is or may be connected to the member or his/her employer, unless it is legally permissible to do so.

1.5.4. A member shall, immediately when he/she becomes aware of a conflict or potential conflict of interest, notify all interested parties of his/her interest in the matter that leads to the conflict or potential conflict of interest. This paragraph shall not be interpreted in such a way that it removes any member's right to consult his/her employer before making the existence of the conflict or potential conflict of interest known to interested parties.

1.5.5. A member who is in the employ of another person or institution shall not secretly act in competition with such employer.

2. Diligence

Members owe it to their profession and themselves to display the highest levels of diligence in all their actions by:

- Ensuring that they possess the necessary knowledge in any given situation or identifying when and to what extent they need to enlist the assistance of specialists in any field;
- Taking all appropriate and reasonable steps to ascertain all the relevant facts and circumstances of the matter at hand, applying their minds appropriately to the facts

and circumstances of the matter at hand, and acting accordingly in the best interests of the client;

- Displaying a total commitment to the confidential treatment of all information obtained as a result of their actions in connection with the affairs of their clients and taking all reasonable steps to ensure the confidentiality of all such information;
- Doing everything necessary to ensure their personal financial stability.

2.1. Knowledge

2.1.1. A member shall take all steps necessary to ensure that he/she possesses the level of knowledge and skill required from a person in a fiduciary capacity.

2.1.2. A member shall, once it becomes clear that he/she lacks knowledge or skills demanded by changing circumstances in any field of the fiduciary capacity in which the member is acting at the time, take all the necessary steps to:

2.1.2.1. acquire the necessary knowledge or skills; or

2.1.2.2. acquire the services of a specialist in the particular field in good time.

2.1.3. A member should promote the continual development of the body of knowledge particular to the fiduciary industry by making use of the structures of the Institute and by communicating case studies to other members and contributing to publications whenever possible.

2.2. Competence

2.2.1. A member shall at all times apply his/her mind appropriately to all problems, questions and decisions faced with in the course of performing his/her duties.

2.2.2. A member shall take all reasonable steps to gather all relevant information to base any decision on or to solve any problem with regard to the affairs of a client.

2.2.3. A member shall, after gathering the relevant information and applying his/her mind, act in the best interests of the client to the best of the member's ability, bearing in mind the requirements of par 2.1.2 of this Code.

2.2.4. A member shall, at all times, keep the client fully informed of all actions taken in the course of ,and all developments with regard to the professional relationship with the client.

2.3. Confidentiality

2.3.1. A member shall not reveal any information about the affairs of a client to anybody not legally entitled to such information.

2.3.2. A member shall take all reasonable precautions to ensure that no information about the affairs of a client is revealed to anybody not legally entitled to such information.

2.3.3. A member shall not reveal or make use of any information about the affairs of any party to any business relationship with a client, or any information about the affairs of his/her employer or any client or supplier of his /her employer, without the express consent of the party involved, unless such information is already a matter of public record.

2.4. Personal financial stability

2.4.1. A member shall avoid any activity that will cause or may create the impression of personal financial instability such as, but not limited to, excessive gambling, excessive indebtedness or excessive speculation.

2.4.2. A member shall avoid personal debts to anybody who may have an influence on any decisions the member has to take in the course of his/her duties.

2.4.3. A member shall not allow his/her debts and liabilities to exceed his/her assets, and shall avoid any situation where he/she:

2.4.3.1. Could be declared insolvent; or

2.4.3.2. Has to surrender his/her estate for the benefit of creditors; or

2.4.3.3. Has to make an offer of compromise to creditors; or

2.4.3.4. Is served with a judgement for an unpaid debt.

2.4.4. A member shall not allow the debts and liabilities of any juristic person or trust, in which he/she is involved in a governance capacity, to exceed the assets of such body without immediately:

2.4.4.1. Taking steps to bring the matter to the attention of the other members, directors or trustees of the juristic person or trust, as the case may be, and demand that the matter be addressed as a matter of urgency and in the best interests of all interested parties; or

2.4.4.2. In the event that the member is the only member, director or trustee of the juristic person or trust, as the case may be, take immediate steps to address the matter appropriately and in the best interests of all interested parties.

3. The public image of the fiduciary profession

A member shall not do anything to bring the fiduciary profession into disrepute.

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Approved by Council on _____

Chairperson _____