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FINANCE & BANKING ALERT

IN THIS ISSUE

MORE TIME TO COMMENT: THE SECURITIES FINANCING CODE OF CONDUCT

The Registrar of Securities Services has proposed a new code of conduct which participants in the securities financing market (Code of Conduct) will need to adhere to in future. The Code of Conduct has been released in draft form under the auspices of the Financial Markets Act, 2012.

MORE TIME TO COMMENT: THE SECURITIES FINANCING CODE OF CONDUCT

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The Registrar of Securities Services has proposed a new code of conduct which participants in the securities financing market (Code of Conduct) will need to adhere to in future. The Code of Conduct has been released in draft form under the auspices of the Financial Markets Act, 2012 (FMA).

Initially, the deadline for comments on the Code of Conduct was set for 20 November 2017. However, the regulators have decided to extend the deadline to 31 December 2017 to allow parties involved in Securities Financing Transactions (SFTs), more of an opportunity to digest the new requirements and collate their submissions in respect of the first draft.

The subordinate regulations which apply to the trading of over-the-counter derivatives (also published under the auspices of the FMA) will therefore not be the only regulations affecting the securities market.

What is covered?

SFTs are defined as any transactions where securities are used to borrow cash, or vice versa, including the following:

- a repurchase transaction;
- securities lending and securities borrowing; and
- margin trading transactions.

Repurchase Transactions

The Code of Conduct therefore covers repurchase transactions, defined as a sale of a quantity of a particular security with a commitment by the seller to buy the same or equivalent securities back at a specified price and at a designated date in future on demand for their original value, plus a return on the use of the cash.

Securities Lending Transactions

Securities lending (a practice also governed by the Code of Conduct) is defined as the lending of securities from an investor's portfolio to meet the temporary needs of another party in terms of which the borrower agrees to return identical securities to the lender in future, to deliver collateral of value in excess of the loan and to pay the lender a fee.

Margin Trading

The last leg of the definition of an "SFT" relates to margin trading which is limited to a transaction where a financial institution pays a percentage of the market value of purchased securities (which have been purchased for its client) in accordance with the legal agreement governing the relationship between the parties.

Key principles

In short, the Code of Conduct will be binding on all parties involved in SFTs (including officers, employees and clients) and requires *inter alia*:

- prudent practices and standards of market conduct;
- disclosure of whether parties to an SFT are acting as principal or agent;
- that parties understand and are mindful of the tax regulations applicable to SFTs under the Income Tax Act, 1952;

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CONTINUED

Participants in the securities financing market have until 31 December 2017 to submit their comments.



- that the accounting treatment of SFTs is in accordance with prescribed financial accounting standards;
- that all SFTs must be arranged through or concluded with authorised financial institutions (which are subject to regulatory oversight);
- the principles of Treating Customers Fairly to be adhered to;
- any outsourcing of key functions to remain subject to the ultimate responsibility of the SFT of the participant; and
- open and co-operative engagement between parties in the SFT market and the Financial Sector Conduct Authority (FSCA), particularly with regards to any non-compliance with the Code of Conduct or material operational failure relating to any party.

Who is covered?

Any person or institution involved in an SFT is considered a "party" for purposes of the Code of Conduct.

What to be aware of

Parties involved in SFTs must consider the new obligations imposed on lending agents. Lending agents include a company duly registered as a market maker, custodian, licensed dealing member or other

market participant who acts as a principal intermediary or an agent intermediary through whom a lender will deposit securities for lending and the borrower will borrow securities.

New requirements will be imposed in respect of the minimum requirements to be considered in a contractual agreement governing an SFT (such as the Global Master Securities Lending Agreement, Master Repurchase Agreement or Margin Trading Agreement).

The Code of Conduct also prescribes minimum requirements applicable to custody arrangements, risk management, systems and controls as well as margin and collateral requirements applicable to SFTs.

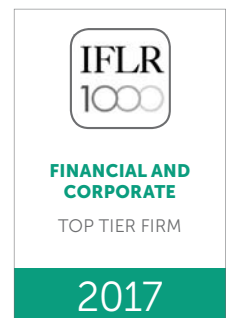
The Code of Conduct also refers to a new reporting obligation imposed on parties or lending agents to report details of SFTs to a licensed or recognised trade repository.

Time to comment

Participants in the securities financing market have until 31 December 2017 to submit their comments. A copy of the Code of Conduct can be found at the following link:

<https://www.fsb.co.za/Departments/capitalMarkets/Pages/Documents-for-Consultation.aspx#>

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