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BY-LAWS of the  
SOUTH AFRICAN INSTITUTE OF STOCKBROKERS

**ANNEXURE B**



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## BY-LAW 1: GENERAL PROVISIONS

### 1.1 *Definitions*

1.1.1 In these By-Laws, unless inconsistent with the context:

- 1.1.1.1 the Constitution - means the constitution of the South African Institute of Stockbrokers, as amended from time to time;
- 1.1.1.2 the Council - means the council for the time being of the Institute and appointed in terms of the Constitution;
- 1.1.1.3 the General Meeting - means a general meeting or an annual general meeting of the members;
- 1.1.1.4 the Institute - means the South African Institute of Stockbrokers;
- 1.1.1.5 Exchange – means an exchange as defined in terms of the Financial Markets Act, Act 19 of 2012, as amended, or any legislation replacing the Financial Markets Act.
- 1.1.1.6 The Financial Markets Industry or Financial Markets - means any regulated person or entity as defined in the Financial Markets Act, Act 19 of 2012 as amended, all exchanges, members of such exchanges, central securities depositories, trade repositories, clearing houses, participants, authorised users, clearing members and all other corporate entities involved in the development, marketing, trading and administration of financial markets products, including collective investments, and financial market security services as determined by the Financial Services Board or any other competent regulatory authority from time to time.
- 1.1.1.7 Member - means any person (natural or juristic) admitted as a member of the Institute in any one or more of the membership categories as defined in the Constitution and/or By-Laws of the Institute.
- 1.1.1.8 Member in good standing – means a member of the Institute who has complied with all obligations imposed on him by virtue of the Constitution, By Laws and Code of Conduct of the Institute from time to time, and who does not have an adverse finding entered against his



name by the Investigation and Disciplinary Committees of the Institute whereby his privileges as member of the Institute has been suspended.

- 1.1.1.9 Financial Markets Professionals - means Stockbrokers and all other categories of individual members who satisfy the requirements set by the Council in this regard from time to time.
  - 1.1.1.10 Stockbroker – means a person who complies with the requirements set by the Institute from time to time for this membership category and/or designation and who is a member in good standing of the Institute.
  - 1.1.1.11 Month - means a month commencing on the first day of the month;
  - 1.1.1.12 Day - shall mean a calendar day.
  - 1.1.1.13 Officer - means an executive staff member appointed by the Council and designated as such;
  - 1.1.1.14 the Republic - means the Republic of South Africa;
  - 1.1.1.15 the Secretariat - means the officers as appointed by the Council and employees of the Institute;
  - 1.1.1.16 Year - means a year commencing on 1 January.
- 1.1.2 Unless inconsistent with the context, reference to any particular gender shall include the other genders, words signifying the singular number include the plural and a natural person shall include a juristic person (whether a corporate or unincorporated created entity) and vice versa.
- 1.1.3 Headings are for ease of reference only and shall not be used in the interpretation of the whole or any part of the By-Laws.
- 1.1.4 The By-Laws should be read together with the Constitution and Code of Conduct of the Institute and, should there be any conflict, the provisions of the Constitution shall prevail.
- 1.2 ***Election Of Council - Nominations***
- 1.2.1 The nomination of a person for appointment as a member of the Council at an annual



General Meeting shall:

- 1.2.1.1 be made on the form prescribed by the Council;
  - 1.2.1.2 be signed by a member of the Institute;
  - 1.2.1.3 shall be accompanied by the written consent of the applicant for membership of the Council; and
  - 1.2.1.4 shall be delivered to the office of the Institute at least 20 (twenty) days before the date fixed for the holding of the annual General Meeting in question. The Council may condone non-compliance with the abovementioned time period.
- 1.2.2 The Council shall meet at such times and at such places during its term of office as it may determine.
- 1.2.3 The Council shall cause proper minutes to be kept in separate bound minute book of
- 1.2.3.1 all meetings of the Council;
  - 1.2.3.2 all meetings of the executive committee (if appointed);
  - 1.2.3.3 all General Meetings and annual General Meetings of Members.

### 1.3 **Committees**

- 1.3.1 The Council may appoint committees to give effect to the various functions of the Institute and as the need arises.
- 1.3.2 One of the members of a committee may be designated by the Council as chairman of the committee. Should the Council not so designate a member as chairman or should the member so designated not be present or be unable to act at any particular meeting, the committee shall elect a chairman.
- 1.3.3 The Council may determine a quorum for meetings of a committee, and if not so determined, the quorum shall be fixed by the committee.
- 1.3.4 Any committee so formed shall comply with any instructions given by the Council and shall keep minutes of its meetings if so directed.

- 1.3.5 The Council may assign to a committee so established any of its powers as it may deem fit but it shall not be divested of any power which it may have assigned to a committee and it may amend or revoke any decision of such committee.
- 1.3.6 Unless the Council determined differently at the constitution of a committee or a decision is made to revoke or amend the mandate of a committee:
- 1.3.6.1 All committees of the Institute shall remain duly appointed and continue in the execution of their mandates notwithstanding any change in the membership of the Council from time to time.
  - 1.3.6.2 The committees shall have the right at any time to co-opt additional members, whether members of the Institute or otherwise, to the committee to fill any vacancy arising on the committee or whenever it deems such additional appointments necessary.
  - 1.3.6.3 The appointment of any person to fill any vacancy arising on the committee shall be subject to ratification by the Council: Provided that the refusal by the council to ratify such appointment shall not invalidate any action taken by such person, or any action or decision taken by the committee, in the period between the person's appointment and the refusal of the Council to ratify the appointment, unless the Council shall so direct.
  - 1.3.6.4 The committees shall have the authority to delegate, from time to time, part of their function to their individual members or any third party in the furtherance of its mandate.
  - 1.3.6.5 The committees shall be entitled to appoint or contract any person to the committee on a case by case basis in order to assist and/or advise the members of the committee in the execution of its mandate.
  - 1.3.6.6 The committees shall determine their own schedule for meetings having regard to the case load to be considered.
  - 1.3.6.7 The committees may meet in person or via electronic communication and it shall be competent for a committee to make a decision by way of round robin email or electronic communication. Notwithstanding

the above, a resolution signed by all members of a committee shall have the same force and effect as a resolution taken at a duly constituted meeting of the committee.

- 1.3.6.8 A document purporting to be an extract of the minutes of meeting of any committee, duly signed by the chairperson of such committee at the time, shall constitute *prima facie* evidence and/or proof of the content / resolution so certified.

#### 1.4 **Amendment Of By-Laws**

- 1.4.1 The Council may, from time to time, amend any of these By-Laws as provided in the Constitution.

### **BY-LAW 2: MEMBERSHIP**

#### 2.1 **Application for Membership**

- 2.1.1 Application for membership of the Institute shall be made to the Council in a form prescribed by the Council. Each applicant shall:

2.1.1.1 pay the application fee, entrance fee, and the subscription for the current Year as determined by the Council from time to time;

2.1.1.2 certify in the prescribed form that the information given by him therein is true and correct in every detail;

2.1.1.3 undertake in the event of his admission to observe the provisions of the Constitution and the By-Laws and Code of Conduct framed thereunder from time to time in force;

2.1.1.4 satisfy the Council in such manner as it may require at the date of his application that he is a fit and proper person and qualified for admission to membership of the Institute.

2.1.1.5 The failure by an applicant to make full and proper disclosure in the prescribed admission form could constitute improper conduct and may lead to referral to the Investigation and Disciplinary Committee.

#### 2.2 **General Criteria for Membership**

- 2.2.1 Subject to the specific criteria set by the Council for membership in terms of each



membership category and/or sub-category from time to time, qualification for admission to membership or associate membership of the Institute shall be the following:

- 2.2.1.1 that except to the extent that he has been exempted therefrom by the Council, the applicant has passed the prescribed examinations;
  - 2.2.1.2 that the applicant is a fit and proper person to be a member of the Institute;
  - 2.2.1.3 that the applicant has not been expelled from any Exchange or other financial market worldwide;
  - 2.2.1.4 That the applicant has not been found guilty of, or been removed from an office of trust, or had his membership of another professional body terminated by reason of any conduct involving an element of dishonesty.
  - 2.2.1.5 that the applicant shall comply with such criteria as the Council in its discretion may determine from time to time.
- 2.2.2 Notwithstanding the above, the Council may in their sole discretion accept or reject new members to the Institute and/or admit a person to full or provisional membership of the Institute on such additional terms and conditions as the Council may determine.
- 2.2.3 Prior membership of the Institute shall not automatically qualify an applicant for renewed membership of the Institute.

### 2.3 *Specific Criteria for Membership and the Use of Designations*

- 2.3.1 The specific criteria for admission to the category Stockbroker (Practising) are the following:
  - 2.3.1.1 The applicant must be in possession of a Bachelor of Commerce (honours) degree, or the Post Graduate Diploma in Financial Markets (University of Johannesburg) or a SAIS approved NQF Level 8 qualification or must have applied for the recognition of prior learning (RPL) according to the SAIS RPL Policy and Procedures; and



- 2.3.1.2 The applicant must have passed or must have been exempted from all the examinations that make up the Stockbroker Board examinations; and
- 2.3.1.3 The applicant must have a minimum of three years' continuous work experience in the Financial Markets Industry as defined in the SAIS Constitution and must still be employed in the Financial Markets Industry.
- 2.3.2 An applicant who has been admitted as a member in the membership category Stockbroker (Practising) may use the designation Certified Stockbroker (SA) and the abbreviation CSb(SA).
- 2.3.3 The specific criteria for admission to the membership category Non-Practising Stockbroker are the following:
  - 2.3.3.1 The applicant must be in possession of a Bachelor of Commerce (honours) degree, or the Post Graduate Diploma in Financial Markets (University of Johannesburg) or a SAIS approved NQF Level 8 qualification or must have applied for the recognition of prior learning (RPL) according to the SAIS RPL Policy and Procedures; and
  - 2.3.3.2 The applicant must have passed or must have been exempted from all the examinations that make up the Stockbroker examinations.
  - 2.3.3.3 The applicant may not be working in the Financial Markets Industry as defined in the SAIS Constitution.
- 2.3.4 An applicant who has been admitted as a member in the membership category Stockbroker (Non-Practising) may use the designation Certified Stockbroker (SA) (Non- Practising) and the abbreviation CSb(SA) (Non-Practising).
- 2.3.5 A member may apply to change from membership Stockbroker (Practising) to Stockbroker (Non-Practising) if the member retires or no longer works in the Financial Markets Industry.
- 2.3.6 A member may apply to change from membership Stockbroker (Non-Practising) to membership Stockbroker (Practising) if he has worked in the Financial Markets Industry for a period of three years and returns to employment in the Financial Markets Industry after an interruption. A member who applies for re-instatement to



the category Stockbroker (Practising) may be required to re-write some of the Stockbroker Board Examinations.

2.3.7 The specific criteria for admission to the membership category Financial Markets Practitioner are the following:

2.3.7.1 The applicant must have passed the External Summative Assessment for the Occupational Certificate: Financial Markets Practitioner (NQF Level 7).

2.3.8 Financial Markets Practitioners may use the designation Certified Financial Markets Practitioner SA and the abbreviation CFMP(SA).

2.3.9 Applications for change in membership status must be made in writing and must be accompanied by proof of compliance with the requirements for the status for which applied.

## 2.4 *Rights, Privileges and Duties of Members*

2.4.1 Provided that the Member remain in Good Standing and complies with all his obligations of membership of the Institute, the Member:

2.4.1.1 May participate in and vote at meetings of the Institute;

2.4.1.2 Shall have access to SAIS events at discounted prices as determined by the Council from time to time;

2.4.1.3 May have access to Sais member services as determined by the Council from time to time;

2.4.1.4 Shall be allowed to use the designations conferred by SAIS with regard to the Member's membership category and to write the relevant abbreviations after their names.

2.4.2 Members are required to adhere to the Constitution, Code of Conduct, By-Laws and policies and procedures of the Institute.

2.4.3 Members are responsible to retain contact with the Institute, to familiarise themselves with announcements made by the Institute on its website and to inform the Institute of any change in their details as captured in the Institute's membership system.



## 2.5 **Cancellation of Membership**

- 2.5.1 The Council may decline to accept the renewal of a Member's membership by giving the Member written notice to such effect.
- 2.5.2 The member may cancel his membership by giving the Institute 30 days written notice to such effect and *vice versa*.
- 2.5.3 Notwithstanding the above, the Council may summarily cancel the membership of any Member who subsequent to his admission to membership:
- 2.5.3.1 Has been expelled from any Exchange or other financial market worldwide;
  - 2.5.3.2 Has been found guilty of, or been removed from an office of trust, or had his membership of another professional body terminated by reason of any conduct involving an element of dishonesty.
  - 2.5.3.3 Fails to comply with any directive or ruling by the investigative or disciplinary structures of the institute.
  - 2.5.3.4 Fails to comply with any of the obligations of membership for longer than 3 (three) months.
  - 2.5.3.5 On recommendation of any of the investigative or disciplinary structures of the Institute.
- 2.5.4 The Council may in its discretion order the cancellation of the membership of any Member whose estate is provisionally or finally sequestrated and in the event of a Member who is a corporate entity is liquidated or placed under judicial management, whether provisionally or finally or who enters into an arrangement with his creditors subsequent to his admission to membership; provided however that before doing so the Council shall afford such Member an opportunity to satisfy the Council that there were exceptional circumstances relating to the sequestration/liquidation or arrangement which would justify the Council's not exercising its discretion to order the cancellation of his membership; provided further that the Council may delegate its powers under this By-Law to the disciplinary structure of the Institute.
- 2.5.5 Where the Council is of the view that the conduct of a Member (whether

professionally or private), is of such a nature as may harm the reputation and standing of the Institute and/or its members and/or the financial markets profession, the Council may provide for the suspension of membership of such Member together with a referral to either the Investigation and Prosecuting Committee or the Disciplinary Committee of the Institute for an enquiry as to whether the Member's membership should be terminated or any other appropriate sanction. The committee may lift the suspension of the Member's membership on such terms and conditions as the Committee may determine. The committee may further provide for any additional and/or alternative relief.

2.5.6 A record of all persons removed from membership shall be maintained by the Council.

2.5.7 A person whose membership has been cancelled in terms of the By-Laws may apply for his readmission as a Member after the expiry of a period of 10 (ten) years reckoned from the date of such cancellation: provided however that the Council may on the recommendation of any of the investigative and/or disciplinary structures of the Institute reduce this period in any particular case where it considers that it would be just and equitable to do so.

2.5.8 The Council shall report any cancellation of membership to members and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

2.5.9 Should the effective date of cancellation fall after the date of automatic renewal of the Member's annual membership, the full amount of the annual membership fee for the new membership cycle shall remain due and payable to the Institute.

2.5.10 Whatever the basis of cancellation of membership, whether by notice, disciplinary ruling or whatever other reason, the Member shall not be entitled to any refund or proportional refund of any membership fee and/or levies with regard to any period between the renewal of annual membership and payment of the annual membership fee and date of cancellation of membership of the Institute.

## 2.6 *Fees, Subscriptions and Levies*

2.6.1 Each member of the Institute shall pay an annual subscription at such time and of such amount and on such conditions as may from time to time be determined by the Council.

- 2.6.2 If there are different categories of membership, the amount of the annual subscription in respect of any category of membership will be the amount applicable to that category on 1 March of the year in question, irrespective of any change in the category of membership during the year.
- 2.6.3 Unless, and until otherwise so determined, membership shall renew automatically and the annual subscription shall be due on the first day of March in each year and shall be payable during that month.
- 2.6.4 Any notice of resignation of membership should be received by the Institute before automatic renewal of membership failing which the full amount of the annual subscription shall remain due and payable.
- 2.6.5 Any member admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.
- 2.6.6 On admission to the Institute an entrance fee shall be payable of such amount as may from time to time be determined by the Council.
- 2.6.7 The application fees, entrance fee and the subscription shall not be refundable but the Council may in its discretion remit in whole or in part the subscription and/or entrance fee of a member under special circumstances which in its opinion warrant such remission.
- 2.6.8 The Council may from time to time call upon members for payment of a contribution or contributions in the form of a special levy, for the purpose of meeting expenses which it may incur in the interests and/or furtherance of the objects of the Institute. Such a levy shall be approved by way of ordinary resolution of members where after it shall be due and payable to the Institute on demand.
- 2.6.9 Any member whose annual subscription has not been received within 3 (three) months after it became due may be required to pay such penalty as may be determined by the Council from time to time. The Council shall from time to time publish the penalties payable under this By-Law.
- 2.6.10 Should a member fail to effect payment before the expiration of 4 (four) months from the date when any amount became due under these By-Laws, he shall, ipso facto, cease to be a member; provided that:

- 2.6.10.1 If any complaint has been received or any enquiry is pending against such member, including an enquiry into the provisional or final sequestration/liquidation or any arrangement which he has made with his creditors, or if the estate of such member has been sequestrated, whether provisionally or finally, or such member has made an arrangement with his creditors but no enquiry is yet pending, then he shall remain subject to the jurisdiction of the Institute.
- 2.6.10.2 He shall nevertheless remain liable to pay the amount of such year's subscription and any other arrear subscriptions or other contributions or charges due by him to the Institute;
- 2.6.10.3 The Council shall have power in its discretion to suspend the operation of this By-Law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.
- 2.6.11 The Council may in its discretion reinstate any member whose membership has ceased in terms of these By-Laws and may in such case dispense with a new application for membership and/or payment of an entrance fee but may impose a reinstatement fee of an amount to be determined by the Council from time to time.
- 2.6.12 In the event of non-payment by a Member of any amount that may fall due to the Institute, the Institute shall be entitled to:
- 2.6.12.1 Suspend and/or cancel the Member's membership and/or the privileges and rights of membership accruing thereto;
- 2.6.12.2 List the Member and the particulars of non-payment with any Credit Rating Agency or Bureau; and
- 2.6.12.3 Hand the Member/account over for collection.

## 2.7 ***Resignation and Readmission***

- 2.7.1 Any member who has paid all his dues and subscriptions and is otherwise in good standing may resign his membership by sending to the Council 1 (one) month's written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Council; provided always that:
- 2.7.1.1 if any complaint has been received or an enquiry is pending against such member in respect of his professional conduct, or in respect of

the sequestration/liquidation, whether provisionally or finally or his having entered into an agreement with his creditors, such resignation need not be accepted but his membership may be suspended until such complaint or enquiry has been finally dealt with by the Council;

2.7.1.2 the members shall remain subject to the jurisdiction of the Institute's Investigative and Disciplinary structures notwithstanding resignation.

2.7.1.3 if no such complaint has been received and no enquiry is pending, the resignation shall be accepted by the Council;

2.7.2 A member whose membership has been suspended in terms of By-Law 2.6 shall not enjoy the benefits of membership.

2.7.3 No resignation once tendered by any member may be withdrawn without the consent of the Council first having been obtained.

2.7.4 Any person who has resigned his membership shall be entitled to apply for readmission on such conditions as may be determined by the Council.

## 2.8 *Certificates of Membership*

2.8.1 All certificates of membership of the Institute shall be made in the form from time to time prescribed by the Council and shall be and remain the property of the Institute.

2.8.2 Every member shall be entitled to receive from the Institute a certificate of membership but, in the event of suspension or removal or cessation of membership for any reason such certificate shall be returned to the Institute or the Institute's

nominated agent at the Member's cost.

## 2.9 *Legal Process and Costs*

2.9.1 In the event that the Institute has to proceed with legal process against a Member, or to defend against legal process instituted by a Member, for whatever reason, without limitation:

2.9.1.1 As a result of the Member's failure to comply with his obligations as Member of the Institute;

2.9.1.2 To protect any interest or right of the Institute or its members;

2.9.1.3 To recover any amount, cost, levy or fine relating to Membership or any disciplinary process or investigation by the Institute;

2.9.1.4 To enforce or defend any award or judgement by the Institute's disciplinary structures;

the Institute shall be entitled to recover from the Member all legal fees, costs and expenses incurred by the Institute and its representatives, on a scale as between attorney and own client, including, but not limited to, that of Counsel and any fees for tracing agents and experts and to secure the attendance of witnesses, notwithstanding whether formal action had been commenced with or not.

2.9.2 The Institute shall be entitled to recover all expenses incurred by the Institute and its representatives, on a scale as between attorney and own client, including, but not limited to, collection commission of 15% on all instalments paid by the Member towards liquidation of any arrear amount.

2.9.3 Interests shall be levied on any amount due to the Institute at 15,5% per year, or such maximum interest rate as provided for by the National Credit Act, whichever is the highest, compounded monthly and calculated from date of service of summons to date of final payment.

## **BY-LAW 3: DISCIPLINE OF MEMBERS**

### 3.1 *Objective*

3.1.1 This By-Law establishes and directs the investigative and disciplinary structures of the Institute regarding the appropriate legal disciplinary process in order to ensure that members accused of misconduct by clients, the public or other professional or



legislative or controlling bodies, receive a fair hearing in accordance with the constitutional values of an open and democratic society and the principles of natural justice.

### 3.2 **Definitions:**

- 3.2.1 When any number of days is prescribed, that number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 3.2.2 If any phrase or term is defined within a particular clause, other than the definition clause, that phrase or term shall bear the meaning ascribed to it wherever it is used in this By-Law, unless the context expressly indicates a contrary intention.
- 3.2.3 The use of the word 'including' followed by specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of the general wording or the specific example(s) used in this By-Law.
- 3.2.4 Unless otherwise defined or clearly inconsistent with the context of any paragraph of this By-Law:
- 3.2.4.1 "Member" shall be read to include any applicant for membership, admitted member of the institute (whether corporate or individual), affiliate member and student member of the Institute.
- 3.2.4.2 "Professional Negligence" and/or "Professional Incompetence" means the performance of professional work, whether as a principal, employee, director or as an individual, in a negligent manner and/or incompetently to such an extent or on such a number of occasions as to fall short of the professional standards reasonably expected of a member.
- 3.2.4.3 "Professional Misconduct" includes, but is not limited to, any act, default or omission, whether in the course of professional work, or not, that is likely to bring discredit on the person concerned and/or the Institute and/or the financial markets profession and/or members, or any failure to meet the professional standards and/or standard of conduct to be expected of a member.

### 3.3 *Scope of Application*

- 3.3.1 This By-Law shall apply to all members of the Institute.
- 3.3.2 A member who ceases to be a member of the Institute, for whatever reason, shall remain subject to the jurisdiction of the Institute and the provisions of this By-Law with regard to any act, default or omission which occurred while that person was a member of the Institute.
- 3.3.3 The following acts, including failing to act, and practices, whether of commission or of omission, upon the part of any member, or employee under supervision of the member, shall constitute a punishable offence if found guilty thereof by the Disciplinary Structures established, as provided for in this By-law:
- 3.3.3.1 Contravening any provision of the Constitution of the Institute;
  - 3.3.3.2 Contravening any provision of the By-Laws of the Institute;
  - 3.3.3.3 Contravening any of the provisions of the Code of Conduct of the Institute;
  - 3.3.3.4 Professional Negligence and/or Professional Misconduct;
  - 3.3.3.5 Conduct by the member, whether in his personal or professional capacity, that may have the effect of bringing the reputation of the Institute and/or its members and/or the financial market profession into disrepute;
  - 3.3.3.6 Any adverse finding by any court, government or other statutory body or by another professional body or disciplinary or regulatory committee or authorised individual against the member;
  - 3.3.3.7 Where a member is convicted in any country of an offence having in its criteria an element of dishonesty and/or fraud; and
  - 3.3.3.8 Where a member has been disqualified in the Republic of South Africa, or elsewhere, from acting as a director except as a result of insolvency.
- 3.3.4 Liability to investigation and disciplinary action shall further arise in respect of any act, default or omission of a member which occurred prior to admission to membership of the Institute, but only in respect of any such act, default or omission that was not

fully disclosed to the Institute in the member's application for admission to membership.

### 3.4 *Establishment of Disciplinary Structures*

3.4.1 Subject to the authority of the Council to revoke any appointment, the Council shall from time to time appoint the following committees / disciplinary structures:

3.4.1.1 An Investigation and Prosecuting Committee, consisting of two (2) members of the Institute plus one (1) attorney or advocate who shall act as chairperson of the committee: Provided, that nothing shall preclude the Council from appointing additional members to the committee as the Council may determine.

3.4.1.2 A Disciplinary Committee, consisting of an admitted advocate or attorney with at least ten years' experience in practice who shall act as chairperson of the committee: Provided, that nothing shall preclude the Council from appointing additional members to the committee as the Council may determine.

3.4.1.3 An Appeals Committee, consisting of an admitted advocate or attorney with at least ten years' experience in practice who shall act as chairperson of the committee: Provided, that nothing shall preclude the Council from appointing additional members to the committee as the Council may determine.

3.4.2 Where more than one attorney or advocate is appointed to a committee, they shall agree on the position of chairperson and failing such agreement the chairperson shall be determined according to seniority in practice.

3.4.3 The investigation, disciplinary and appeals committees appointed in terms of this By-Law shall remain in office and function indefinitely until the appointment of their successors. If at that date either of the committees still has before it for investigation or hearing an uncompleted case or appeal, those members who comprise that committee shall continue to act as such for the purpose of completing that case or appeal only.

3.4.4 The committees shall have the right at any time to co-opt additional members, whether members of the Institute or otherwise, to the committee to fill any vacancy arising on the committee or whenever it deems such additional appointments necessary.

- 3.4.5 The appointment of any person to fill any vacancy arising on the committee shall be subject to ratification by the Council: Provided that the refusal by the council to ratify such appointment shall not invalidate any action taken by such person, or any action or decision taken by the committee, in the period between the person's appointment and the refusal of the Council to ratify the appointment, unless the Council so directs.
- 3.4.6 Where more than one person has been appointed to a committee, two members of the committee, whether present in person or by way of electronic communication, shall constitute a quorum for purposes of conducting the business of the committee.
- 3.4.7 The committees shall have the authority to delegate, from time to time, part of their function to their individual members or any third party in the furtherance of its mandate.
- 3.4.8 The committees shall be entitled to appoint or contract any person to the committee on a case-by-case basis in order to assist and/or advise the members of the committee in the execution of its mandate.
- 3.4.9 The committees shall determine their own schedule for meetings having regard to the case load to be considered. The committee may meet in person or via electronic communication and it shall be competent for a committee with more than one member to make a decision by way of round robin email or electronic communication. Notwithstanding the above, a resolution signed by all the members of a committee shall have the same force and effect as a resolution taken at a duly constituted meeting of the committee.
- 3.4.10 The committees shall have the authority to revise, rescind or vary their orders, whether on own volition or on application by any interested party.
- 3.4.11 The committees shall have full authority to determine their own rules and conduct in the execution of their mandate. This may be done on a general basis or on a case-by-case basis in the discretion of the committee.
- 3.4.12 In the absence of any determination as set out above, regard shall be had to the provisions of the Uniform Rules of the High Court of South Africa with regard to civil litigation as far as any process or interlocutory relief is concerned, adapted as necessary for a disciplinary framework.
- 3.4.13 Without in any way limiting the generality of the above, the committees shall have all the authority to carry out its functions and duties set out in this By-Law without fear

and favour.

### 3.5 **Mandates**

#### Investigation and Prosecuting Committee:

3.5.1 The Investigation and Prosecution Committee ('IPC') is mandated to *inter alia*:

- 3.5.1.1 Take note of and investigate all alleged offences, acts of misconduct and breaches by members and affiliates falling under the jurisdiction of the Institute providing that the complaint is lodged with the Institute within six months from the time when it arose.
- 3.5.1.2 Where a complaint falls outside the six-month time period referred to above, the committee shall have the discretion, but not the obligation, to elect to proceed with the investigation and finalisation of the complaint.
- 3.5.1.3 The Investigation and Prosecuting Committee shall not be obligated to proceed with the investigation and consideration of any matter falling under the jurisdiction of another professional entity and/or exchange and/or the Financial Intelligence Centre or other authority exercising jurisdiction over the member or the conduct of the member.
- 3.5.1.4 Notwithstanding the above, the committee shall have the discretion to commence with the investigation and consideration of any alleged offences, acts of misconduct and breaches by members and affiliates falling under the jurisdiction of the Institute whether a formal complaint has been received by the committee or not;
- 3.5.1.5 Gather and order the production of all relevant information, records, books, documents (regardless of its form or format) and statements under oath in order to develop a prima facie position as to the alleged misconduct or offence, as well as conducting professional evaluations, if deemed necessary;
- 3.5.1.6 Require any member, or employee of a member or other person to appear before the committee and to give evidence or to produce any documents as may be relevant to the matter under consideration by the committee.

- 3.5.1.7 Dismiss a complaint, alleged misconduct and/or offence, taking into account all the facts and the evidence gathered and its investigation;
  - 3.5.1.8 Make any order it deems appropriate given the circumstances of the matter such as suspension and/or termination of membership, an admonishment, reprimand or severe reprimand and/or fixed monetary penalty, together with such further terms as the committee may deem appropriate.
  - 3.5.1.9 Refer, prepare and present a matter for prosecution in front of the Disciplinary Committee. This will typically take place where the committee cannot make a determination on the documents/evidence in front of it or where a material dispute of fact exists on the papers which the committee cannot resolve.
  - 3.5.1.10 Appoint any of its members to act as prosecutor before the Disciplinary Committee;
  - 3.5.1.11 Reduce agreements, recommendations and referrals to the Council and/or the Disciplinary Committee to writing in a clear and concise format;
  - 3.5.1.12 Facilitate a process of mediation and/or alternative dispute resolution to the extent that it may be relevant to the functioning of the committee or deemed to be in the best interest of the parties;
- 3.5.2 Without in any manner limiting the discretion of the Investigation and Prosecuting Committee to determine its own process:
- 3.5.2.1 The process in front of the Investigation and Prosecuting Committee shall be inquisitorial in nature. As such the members of the committee shall be allowed to take a more involved approach in the proceedings as would ordinarily be allowed or expected in formal adversarial proceedings. Such participation by the members of the committee shall not constitute grounds for review.
  - 3.5.2.2 The committee shall not be bound to the strict rules of evidence and shall be guided by the principles of fairness and natural justice.
  - 3.5.2.3 Unless the Investigation and Prosecuting Committee should determine

differently, the process in front of the committee shall be on affidavit, supplemented by oral and additional evidence as the committee may allow as necessary for the consideration of a matter.

- 3.5.2.4 Appeals from the Investigation and Prosecuting Committee shall be to the Appeals Committee.

Disciplinary Committee:

3.5.3 The Disciplinary Committee is mandated to act as the independent disciplinary board of the Institute with regard to referrals of matters and/or complaints referred to it by the Investigation and Prosecuting Committee.

3.5.4 The Disciplinary Committee ('DC') is mandated to, *inter alia*:

3.5.4.1 Take note of and investigate all alleged offences, acts of misconduct and breaches by members and affiliates falling under the jurisdiction of the Institute referred to it by the Investigation and Prosecuting Committee;

3.5.4.2 Require any member, or employee of the member or other person to appear before the committee and to give evidence or to produce any documents as may be relevant to the matter under consideration by the committee;

3.5.4.3 Dismiss a complaint, alleged misconduct and/or offence;

3.5.4.4 Make any order it deems appropriate given the circumstances of the matter such as suspension and/or termination of membership, an admonishment, reprimand or severe reprimand and/or fixed monetary penalty, together with such further terms as the committee may deem appropriate.

3.5.5 Where an appeal lies from the Investigation and Prosecution Committee, the Disciplinary Committee may function as the Appeals Committee in respect of such appeal.

3.5.6 Without in any manner limiting the discretion of the Disciplinary Committee to determine its own process:

3.5.6.1 The process in front of the Disciplinary Committee shall be inquisitorial in nature. As such the members of the committee shall be allowed to

take a more involved approach in the proceedings as would ordinarily be allowed or expected in formal adversarial proceedings. Such participation by the members of the committee shall not constitute grounds for review.

3.5.6.2 The committee shall not be bound to the strict rules of evidence and shall be guided by the principles of fairness and natural justice.

3.5.7 Appeals from the Disciplinary Committee shall be to the Appeals Committee.

#### Appeals Committee:

3.5.8 The Appeals Committee is mandated to consider any appeals referred to it by the Investigation and Prosecuting Committee or the Disciplinary Committee or in terms of which leave to appeal was granted by the Appeals Committee.

3.5.9 The Appeals Committee ('AC') is mandated to, *inter alia*:

3.5.9.1 Require any member, or employee of the member or other person to appear before the committee and to give evidence or to produce any documents as may be relevant to the matter under consideration by the committee;

3.5.9.2 Consider any appeal referred to it from the Investigation and Prosecuting Committee or the Disciplinary Committee and/or to grant leave to appeal, and in general, to make any order it deems appropriate given the circumstances including, without limitation, referring the matter to the Investigation and Prosecuting Committee and/or the Disciplinary Committee and/or to substitute its own order in the place thereof.

3.5.10 Without in any manner limiting the discretion of the Appeals Committee to determine its own process:

3.5.10.1 Appeals shall be dealt with on the face of the record of the proceedings in front of the Investigation and Prosecuting Committee or the Disciplinary Committee. New and/or further evidence and/or argument shall only be allowed in the discretion of the Appeals Committee.

3.5.10.2 Where applicable, the process in front of the Appeals Committee shall be inquisitorial in nature. As such the members of the committee shall be allowed to take a more involved approach in the proceedings as



would ordinarily be allowed or expected in formal adversarial proceedings. Such participation by the members of the committee shall not constitute grounds for review.

- 3.5.10.3 The committee shall not be bound to the strict rules of evidence and shall be guided by the principles of fairness and natural justice.

### 3.6 *Evaluation of Misconduct and Sanctions*

3.6.1 In determining any sanction to be imposed, the Disciplinary Structures may take into account any factor which the committee considers to be relevant to the consideration of the matter at hand, such as:

- 3.6.1.1 The sanction must fit the offence committed;
- 3.6.1.2 The gravity or seriousness of the breach, including the duration of the breach;
- 3.6.1.3 Mitigating and aggravating circumstances in relation to the case;
- 3.6.1.4 The personal circumstances of the accused (e.g. financial position) and any other personal mitigation advanced;
- 3.6.1.5 Any character and/or other references adduced in support of the member;
- 3.6.1.6 The facts and arguments presented;
- 3.6.1.7 The probability of effectively changing the future conduct of the member;
- 3.6.1.8 The offence history of the individual, including any non-compliant warnings issued by the Investigation and Prosecution Committee, with resulting harsher sanction for repeat offences;
- 3.6.1.9 Whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
- 3.6.1.10 Whether the acts or omissions have amounted to or involved dishonesty;

- 3.6.1.11 Any misconduct to which the member has pleaded guilty or have been found guilty of before a similar disciplinary hearing or court of law with competent jurisdiction in South Africa or abroad in any other jurisdiction; and
- 3.6.1.12 The interests of the accused against the need for public protection, having regard to the public interest, as well as maintaining public confidence in the profession and maintaining proper standards of conduct.
- 3.6.2 Sanctions must aim at effectively changing the behaviour of members. Without in any way limiting the discretion of the committees to impose whatever sanctions may be deemed applicable having regard to the nature of the misconduct, the following sanctions may be applied:
- 3.6.2.1 Admonishment: An admonishment may be appropriate where the conduct is at the lower end of the spectrum but highlight the fact that the behaviour was unacceptable.
- 3.6.2.2 Reprimand: A reprimand is appropriate where the conduct is of a minor nature and there is no continuing risk to the public or third parties. There is evidence of the accused's understanding and appreciation of the conduct found proved.
- 3.6.2.3 Severe Reprimand: A severe reprimand is appropriate where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced confirming that there is no continuing risk to the public or third parties, and there is evidence of the member's understanding and appreciation of the conduct found proved.
- 3.6.2.4 Expulsion/Removal/Termination of membership: Expulsion/Removal from the member register is appropriate where such sanction is the only means of protecting the public and /or third parties, and/or the conduct is so serious as to undermine confidence in the Institute, its members and/or the Financial Markets Profession if the accused were to remain on the register.

A member shall not be entitled to any refund or proportional refund of any membership fee and/or levies with regard to any period between

the renewal of annual membership and payment of the annual membership fee and date of termination or suspension of membership of the Institute.

- 3.6.2.5 Fine: The Disciplinary Structures may impose a fine, payable to the complainant and/or the Institute, as the only sanction, or combine a fine with an additional sanction.

### 3.7 **Administrative Provisions, Evidence and Process**

#### Notices:

- 3.7.1 All notices to the member shall be in writing and shall either be delivered to the member, in which case it shall be deemed to have been received when delivered, or sent by telefax or email in which event it shall be deemed to have been received when sent, unless the contrary is proved.
- 3.7.2 It is recorded that, in terms of the Constitution of the Institute, the telefax number and/or email address as entered into the database of the Institute by the member shall serve as the member's *domicilium citandi et executandi* for purposes of exchange of all notices, communication or legal process.

#### Private Hearing:

- 3.7.3 The disciplinary proceedings of the Disciplinary Structures of the Institute shall be conducted in private: Provided, that any committee may on application by any interested party determine that the proceeding (or any part of the proceedings) in front of such committee shall be public.

#### Representation:

- 3.7.4 Where a member is required to appear in front of any of the Disciplinary Structures of the Institute, the members shall be entitled to be represented by a fellow member of the Institute.
- 3.7.5 Legal representation may be allowed by the respective committees on application and on such conditions as the committee may determine.

#### Joinder of cases:

- 3.7.6 The committees shall be entitled to hear more than one case against a member at the same time.

#### Joinder of members:

- 3.7.7 The committees may also hear cases against more than one member at the same

time if the committee considers it appropriate to do so.

Absence of member:

3.7.8 The committees may proceed to hear and finalise any matter and/or proceedings in the absence of a member. Provided: that the committee is satisfied that the member received due and proper notice of such matter and/or proceedings.

Burden of proof:

3.7.9 Except as otherwise directed by the committee, the party making allegation of fact shall bear the *onus* of proving such allegations.

3.7.10 The standard of proof shall be on a balance of probabilities.

Evidence:

3.7.11 The committees shall not be bound by the strict rules of evidence.

3.7.12 The committees may receive oral, documentary or any other evidence of any fact or matter which appears to be relevant to the consideration of the matter at hand.

3.7.13 Copies of documents may be used and shall be accepted to be what they purport to be without necessarily constituting an admission of the contents thereof. Provided: that the committee may at any time request a party to provide the original of any document for inspection.

3.7.14 Any affidavits filed in front of the Investigation and Prosecuting Committee shall automatically be entered into the record as oral evidence in front of the Disciplinary Committee.

3.7.15 The findings of fact and certification of judgment and/or conviction of any court or other disciplinary or statutory or professional body, whether in South Africa or abroad, shall constitute conclusive proof of the facts and/or judgment and/or conviction so found.

3.7.16 The committees shall be entitled to allow the admission of evidence adduced by any party that was not previously disclosed to the other party if the parties consent thereto or the admission of such evidence is necessary to ensure fairness of the proceedings and outweighs any prejudice to the party who has not previously seen such evidence and there are good reasons as to why the evidence was not previously disclosed.

3.7.17 The committee may allow the transcript of any other proceedings (whether legal, quasi-legal or administrative) into evidence. Provided that: in considering the evidentiary weight of such evidence, the committee shall have regard to whether the nature of the proceedings giving rise to the record and whether the evidence had been subjected to cross-examination and testing.

Recordings:

3.7.18 The proceedings in front of any committee may be recorded.

3.8 ***Reporting of Disciplinary Actions***

3.8.1 All findings and decisions of the investigation, disciplinary and appeals committees shall take effect when made.

3.8.2 Where the investigation, disciplinary or appeals committee has imposed a penalty on a member or former member the relevant committee shall direct that there be publication of the name of the member or former member, including referral to other professional bodies, exchanges and/or statutory or other bodies having jurisdiction over the member, unless the committee concerned is of the view that exceptional circumstances exist which would justify its not so directing.

3.8.3 If the committee directs that publication of the name of the member or former member is to take place, it may also in its discretion direct that the name of his firm be published, as well as a brief description of the improper conduct and the penalty

imposed, in such manner and to such persons as the committee shall decide.

### **3.9 *Payments Due to the Institute***

3.9.1 All fines and penalties are calculated exclusive of VAT and shall be payable to the Institute unless otherwise directed by the relevant committee in its judgment.

3.9.2 Should the member fail to pay any amount due as referred to above within the stipulated period, the member shall forfeit all rights and privileges of membership for the duration of such default.

3.9.3 Notwithstanding the above, the member shall remain liable for payment of the full outstanding amount due to the Institute.

3.9.4 In the event of non-payment by the member of any amount that may fall due to the Institute, that the Institute shall be entitled to:

3.9.4.1 Suspend and/or terminated his membership and any or all of the privileges and rights of membership accruing thereto, and/or

3.9.4.2 List the member and particulars of the no-payment with any Credit Rating Agency or Bureau, and/or

3.9.4.3 Hand the account over for collection.

### **3.10 *Costs and Enforcement of Judgments***

3.10.1 When judgment is granted against a member, the Institute shall be entitled to recover from the member all costs and expenses incurred by the Institute in investigating and considering the matter including, but not limited to:

3.10.1.1 All costs incurred in the receipt, consideration and initial investigation of the complaint.

3.10.1.2 All costs and expenses incurred in convening any committee to consider a matter including, but not limited to, costs of reservation of venues, refreshments, travel and accommodation of members of the disciplinary structures in order to attend at the disciplinary proceeding and any postponements thereof and recording and transcription of the proceedings

3.10.1.3 Travelling and accommodation of witnesses in order to attend at the disciplinary proceeding and/or any postponements thereof.

- 3.10.1.4 Awards made to witnesses or compensation payable to witnesses in lieu of loss of earnings and/or income and/or travel and/or accommodation occasioned by such witness attending the disciplinary proceeding at the request of the Institute.
- 3.10.1.5 Preparation of bundles and other evidence and all other costs incurred in order to proceed with and finalise the disciplinary proceeding.
- 3.10.1.6 All costs and expenses incurred in enforcing any judgment by the disciplinary structures of the Institute.
- 3.10.2 Any judgment made by any committee of the disciplinary structure of the Institute shall be enforceable in a court of law. Any interested party, whether it is the Institute, the member or the complainant, shall be entitled to approach any court of appropriate jurisdiction in order to have the judgment made an order of court.
- 3.10.3 A copy of any judgment and/or document and/or record and/or transcription certified and signed by the chairperson of the committee, shall constitute conclusive proof of the content thereof.
- 3.10.4 Any legal costs incurred by the Institute shall be recoverable on a scale as between attorney and own client, including, but not limited to, cost of counsel, securing attendance of witnesses, expert witnesses, sheriff, tracing agents, transcripts and preparation of records, and having regard to the full expenses and liability assumed by the Institute.