



# **SOUTH AFRICAN INSTITUTE OF STOCKBROKERS DISCIPLINARY POLICY AND PROCEDURE**

## **1. Introduction**

- 1.1. Members of the South African Institute of Stockbrokers (SAIS), which includes all categories of membership, are bound by the Code of Conduct, the By-Laws and the Constitution of the SAIS. Members are obligated and have a duty to uphold the integrity, good standing and reputation of the SAIS. Members must refrain from any conduct that discredits the profession and brings the SAIS into disrepute. Regardless of the category of membership, members must have regard for the Code of Conduct, the By-Laws and the Constitution of the SAIS, irrespective of their field of activity, their employment or any other professional memberships they may hold.
- 1.2. The implementation of this Disciplinary Policy and Procedure is essential for the efficient running of the SAIS and the upholding of its guiding principles.
- 1.3. Any sanctions imposed on Members who are found guilty of misconduct are designed to uphold the guiding principles of the SAIS, namely:
  - Protect the public,
  - Maintain public confidence in the profession, and
  - Uphold proper standards of conduct in the profession.
- 1.4. This Disciplinary Policy and Procedure is intended to ensure that Members have knowledge of the disciplinary procedure and the action which may be taken by the SAIS, should a Member be found guilty of misconduct.
- 1.5. Any sanctions imposed on Members who are found guilty of misconduct will be levied in accordance with this Disciplinary Policy. The range of sanctions that may be imposed include:
  - Caution;
  - Reprimand;
  - Severe reprimand;
  - Fine;
  - Conditional membership;
  - Suspension of membership; and/or
  - Termination of membership.
- 1.6. The severity of the sanction will depend upon the circumstances of each case.
- 1.7. The member may also have to pay part or all of the costs of the proceedings (although this is not a sanction).
- 1.8. It must be kept in mind that the processes applied by the regulators in the profession take precedence.
- 1.9. Any other member or member of the public may lodge a complaint against a SAIS Member. The complaint process is detailed in section 4 below.

- 1.10 Every Member has the right to be represented by an attorney during disciplinary proceedings before the Disciplinary Committee and the Appeals Committee.
- 1.11 Any references to the word “day” shall mean a working day and shall exclude public holidays, Saturdays and Sundays. When any particular number of days is prescribed for the doing of any act, or for any other purpose, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Saturday, Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Saturday, Sunday or public holiday.

## **2. The Regulatory Function of the SAIS**

- 2.1. The SAIS only acts as an arbiter of members’ conduct in so far as it contravenes the Code of Conduct, the By-Laws or the Constitution of the SAIS.
- 2.2. The SAIS exercises the function of a disciplinary body and not that of a court of law. Sanctions that are imposed are aimed at regulating the conduct of a member and SAIS will not entertain claims for damages suffered by a complainant as a result of the professional negligence of a member.

## **3. The Disciplinary Procedure**

- 3.1. The disciplinary procedure is based on a three-tiered structure comprising the following committees:
- Investigation and Prosecution Committee,
  - Disciplinary Committee, and
  - Appeals Committee.

### *3.2 The Investigation and Prosecution Committee (IPC)*

The Investigation and Prosecution Committee consists of two members of the SAIS and an independent attorney who acts as the chairperson of the IPC. The IPC determines its own process and is mandated to take note of and investigate all alleged offences, acts of misconduct and breaches by Members falling under the jurisdiction of the SAIS. The IPC has the authority to gather and order the production of all relevant information, records, books, documents (regardless of form or format) and statements under oath, as well as to conduct professional evaluations and practice visits. The IPC is convened as necessary and depending on case load.

### *3.3 The Disciplinary Committee (DC)*

3.3.1. The Disciplinary Committee consists of either a retired judge of the High Court; Senior Counsel; an attorney with right of appearance in the High Court, or an advocate, with at least ten years’ experience in practice.

3.3.2. The DC is a more formal forum for dealing with complaints referred to it by the IPC, either for the hearing of oral evidence or for consideration of more serious complaints that warrant the termination of a membership, together with such referrals to SARS and/or the Prosecuting Authorities as may be dictated by the facts of each individual case. The DC may also function as the Appeals Committee for the consideration of any appeals referred to it from the IPC.

3.3.3. The DC is convened, as necessary. It determines its own process as deemed relevant or necessary to the consideration of the matter. 3.3.4. The DC is not obliged to hear oral evidence on any matter and the complainant's (founding) affidavit, the member's answering affidavit and the complainant's replying affidavit, together with such additional documents as the IPC may refer to the DC will constitute the initial record before the DC. The DC may, in its sole and absolute discretion, elect to determine the matter based solely on the initial record or to call for oral evidence.

#### **3.4 The Appeals Committee (AC)**

3.4.1 The Appeals Committee is convened as necessary and is mandated to act as the Independent Disciplinary Appeals Committee for members found guilty of an offence and/or misconduct by the Disciplinary Committee (DC).

3.4.2 The AC shall consider an appeal based on the record (or the relevant parts thereof) of the proceedings of the DC. New evidence shall only be entertained at the discretion of the AC and then only in exceptional circumstances.

3.4.3 The AC may refer any matter back to the DC together with such instructions as it may deem fit. The AC may vary and/or substitute the order of the DC with any other order, as the AC may deem fit in the circumstances.

### **4. Lodging a Complaint**

4.1. The SAIS recognises that a balance needs to be maintained between the interests of the complainant and the interests of Members of the SAIS. On the one hand, the complainant requires a method of addressing unprofessional conduct on the part of a Member. On the other hand, the SAIS is mindful of the fact that in many instances, membership of a professional body may be an employment requirement and that suspension or termination of membership could negatively impact a Member's ability to earn an income.

4.2 In order to address this concern, as well as ensure that complaints are dealt with as effectively as possible, the SAIS subscribes to a formal disciplinary process that is modelled on the procedural requirements set forth in the rules of the High Court of South Africa, with the necessary modification to facilitate the disciplinary process. In order to lodge a complaint, the following steps need to be followed:-

#### **4.1.1. Determining Jurisdiction**

Stockbrokers and/or Financial Market Professionals are often subject to the Rules and Codes of Conduct of exchanges and/or regulatory and/or controlling bodies, each having concurrent jurisdiction with regards to any professional misconduct. 4.2.1.2. The SAIS will, in general, not consider a complaint where the conduct of the member relates to the alleged contravention of any of the Rules and/or Codes of Conduct of an exchange and/or regulatory and/or controlling body. In such instances, the relevant body carries primary jurisdiction and the complaint is to be lodged and dealt with according to the applicable Rules and Code(s) of Conduct regulating their disciplinary process. The SAIS may, however, take note of the

outcome of any disciplinary process and then determine whether any action should be instituted by the SAIS.

#### *4.2.2. Determining Membership*

4.2.2.1. The SAIS must ascertain whether the Stockbroker and/or Financial Market Professional against whom the complaint is to be lodged is in fact a Member of the SAIS. The SAIS will only be able to consider complaints against Members who are in good standing or who were in good standing with the SAIS at the time of the alleged misconduct.

4.2.2.2. This can be ascertained by directing a query to the membership department of the SAIS. Queries may be directed to [membership@sais.co.za](mailto:membership@sais.co.za). Please note that the membership department will only confirm membership and that no further particulars with regards to a Member will be provided.

4.2.2.3. Complaints that do not reference the member's membership number may be rejected or the consideration thereof delayed.

#### *4.2.3. Conduct Attributable to the Member*

Once the Stockbroker and/or Financial Market Professional has been accurately identified as a Member of the SAIS, it will be considered whether the conduct can, in fact, be attributed to the Member.

#### *4.2.4. Determination of Conduct*

4.2.4.1. It must be determined whether the conduct of the member is linked to a contravention of any of the provisions of the Code of Conduct and/or Disciplinary Rules and/or Standards of the SAIS or not. If not, the SAIS will not be able to consider the complaint as it will fall outside the scope of the responsibilities of the parties.

4.2.4.2. If the conduct of the member is linked to any contravention of the provisions of the Code of Conduct, a formal complaint must be made. Once the formal complaint has been received, the formal disciplinary process will follow.

#### *4.2.5. Drafting of the Founding Affidavit Setting Out the Merits of the Complaint*

4.2.5.1. In order to facilitate dealing with complaints in a structured manner, the SAIS's committees rely to a large extent on the format and principles that arise from the Uniform Rules of Practice of the High Courts of South Africa. The SAIS requires that all complaints must be made:

- Under oath;
- In writing; and
- In accordance with the guidelines set out by the disciplinary structures of the SAIS, from time to time.

## **5. Formal Requirements for Complaints:**

Please note that complaints that fail to comply with the set criteria will be rejected. The complaint must contain the following and be set out as follows:

- 5.1 The complaint must be in the form of an affidavit. An affidavit must be signed in front of a Commissioner of Oaths and conclude with a paragraph along the following lines:

*“I hereby certify that the deponent states that he/she understands the content of this affidavit, confirms the content as true and correct and has no objection to taking the oath, the provisions as set out in Government Notice Number R1648 of August 1977, as amended, have been complied with.”*
- 5.2. The content of the affidavit should be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct allegation. Sufficient particularity should be provided to enable the opposite party to reply thereto.
- 5.3. Where reference is made to external documents, copies of the documents should, as far as possible, be attached to the affidavit and consecutively identified e.g. Annexure “A”, Annexure “B”, etc. It must be kept in mind that there may be a request to produce the original documents for inspection during the proceedings.
- 5.4. Should a document to which reference is made be voluminous, the affidavit should indicate the specific areas which are referenced or reproduced in relevant annexures.
- 5.5. Once the affidavit and its annexures are complete, all pages must be numbered (Bates numbering). This will assist in working with the document and to monitor that essential pages are not inadvertently lost or misfiled during the process.
- 5.6. Sufficient contact particulars of the complainant must be provided to enable the SAIS to correspond with the complainant. At minimum, a cellular number and e-mail address are required. The preferred method of communication is by way of e-mail.

## **6. Submission of the Complaint**

The following documents are to be submitted to the SAIS:

- The Referral of Complaint and Undertaking by Complainant
- The duly deposed to affidavit setting out the merits of the complaint.

The complaint must be submitted to the SAIS in a non-editable format, via email to: [membership@sais.co.za](mailto:membership@sais.co.za).

## **7. Time Periods**

- 7.1. A complaint must be lodged with the SAIS, in accordance with the procedure set out herein, within 3 (three) years of the alleged misconduct taking place, failing which, the SAIS will not consider the complaint.
- 7.2. The relevant Member will have 5 (five) days from receipt by him/her of the complaint within which to indicate whether or not they intend to oppose any complaint made against him/her

and, thereafter, they will have a further period of 15 (fifteen) days within which to lodge their Answering Affidavit with the SAIS.

- 7.3. The Complainant will have a period of 10 (ten) days from receipt of the Answering Affidavit by him/her within which to lodge a Replying Affidavit, if any.
- 7.4. Should either party, upon receipt of any finding/outcome/order of the SAIS be aggrieved therewith, such party may lodge an appeal against such finding/outcome/order within 30 (thirty) days of the finding/outcome/order being received by him/her. Such appeal must be lodged in writing and must set out the grounds on which the appeal is made.
- 7.5. The other party must indicate whether or not they will be opposing the appeal within 10 (ten) days of receipt of the appeal by him/her.
- 7.6. Should a party fail to comply with any of the time periods prescribed in this Disciplinary Policy/Code and Procedure, they may seek condonation from the SAIS for such non-compliance, the granting of which shall be in the sole and absolute discretion of the SAIS.