

Securities (Investment Managers Code of Practice) Rules, 2022

IT is hereby notified that the Minister of Finance and Economic Development has, in terms of section 118 (6) of the Securities and Exchange Act [Chapter 24:25] approved the Code of practice made by the Chief Executive Officer in consultation with licenced investment managers in terms of section 21 of the Asset Management Act [Chapter 24:26] and in terms of section 42 of the Collective Investment Schemes Act [Chapter 24:19]

1. These rules may be cited as the Securities (Investment Managers Code of Practice) Rules, 2022.

SCHEDULE (section 2)

SECURITIES (INVESTMENT MANAGERS CODE OF PRACTICE) RULES, 2022

Part 1

PRELIMINARY

Interpretation

In this code

“Acts” means —

- (a) the Securities and Exchange Act [Chapter 24:25]
- (b) Asset Management Act [Chapter 24:26]
- (c) Collective Schemes Act [Chapter 24:19]
- (d) Money Laundering and Proceeds of Crime Act [Chapter 9:24]

“AML/CFT/PF” means Anti -Money Laundering, Counter Financing of Terrorism and Proliferation Financing.

“Beneficial owner” has the meaning given to it in the Money Laundering and Proceeds of Crime Act [Chapter 9:24].

“Close relative” in relation to any person means—

- (a) a spouse.
- (b) a child, or stepchild.

(c) parent or stepparent.

(d) siblings; and

(e) the spouse of any of the persons mentioned in paragraph (b); (c) or (d)

“Compliance officer” means a person approved as such by the Commission.

“Composite” means an aggregation of one or more portfolios (segregated accounts and/or pooled funds) managed according to a similar investment mandate, strategy, or objective.

“Code” means this code.

“Exchange approved negotiated price” means a price approved by a registered securities exchange.

“Family member” or “associate”, in relation to the investment manager, means either of the following, as may be appropriate to the context-

(a) any member of the investment manager’s family, that is, the investment manager’s spouse, children, son-in-law or daughter-in-law or any other close relative.

(b) any friend of the investment manager, being a person with whom the securities investment manager interacts socially on a regular basis and includes a cohabitant.

(c) any person the nature of whose social, business, or other association with the securities investment manager may, in certain contexts, be regarded by a fair-minded person as promotive of potential conflict between the securities investment manager’s private interests and investment management duties.

“Financial statements”, mean any of the following-

(a) the statement of comprehensive income (inclusive of what is commonly referred to as a profit and loss account or income and expenditure account).

(b) the statement of financial position, generally known as the balance sheet.

(c) audited or unaudited monthly, quarterly or annual financial accounts.

(d) any other statement that may be prescribed under the Companies and Other Business Entities Act [Chapter 24:31] or the Public Accountants and Auditors Act [Chapter 27:12] in relation to companies.

“Inside information” has the same meaning given to it in the Securities and Exchange Act [Chapter 24:25]

“Investment Manager” means

(a) a holder of a securities investment management licence in terms of the Securities and Exchange Act [Chapter 24:25 or

(b) a person licensed as a manager in terms of the Collective Investment Schemes Act [Chapter 24:19].

“Investment mandate” means a contract or agreement signed between the investment manager and their client which defines the services to be rendered.

“Investment management” shall have the same meaning assigned to it in or under subsections 1 of Section 2 of the Asset Management Act [Chapter 24:26] and Securities and Exchange Act [Chapter 24:25]

“Market manipulation” means the distortion of securities prices or values or artificially inflate trading volumes with the intention to deceive persons or entities that rely on information in the market.

“Principal Officer” means Chief Executive Officer, or Chief Accounting Officer or a Company Secretary and such other officer as may be designated by the Investment Manager.

“Portfolio” means the total holdings of securities belonging to a client

“association” means any association representing the interests of investment managers.

Purpose of Code

2. The purpose of this code of practice is to regulate the proper conduct of investment managers as between themselves in relation to their clients and clients’ funds.

Scope of Code

3. (1) This Code—
 - (a) shall be binding to Board of Directors, Senior Management, officers, and employees of investment managers.
 - (b) The Code sets forth-minimum standards for conduct of investment managers.
- (2.) Policies and procedures for every investment manager must be aligned with the provisions of this Code.

PART II

PRINCIPLES OF ETHICAL AND PROFESSIONAL CONDUCT

Ethical Conduct

4. Investment Managers —
 - (a) must always act with integrity, competence, and in an ethical manner when dealing with the public, clients, prospective clients, employers, employees, and fellow investment managers.
 - (b) shall ensure that every employee including a Board Member, principal officer, management, and compliance officer, of the company attends such seminars as may be required by the Commission to acquaint such board member, principal officer, management, and compliance officer with developments in capital markets or regulatory issues or any other developments which, in the Commission’s opinion, have a significant impact on the carrying on of performance of their functions.
 - (c) shall use reasonable care and exercise independent professional judgment.
 - (d) shall at all times put the interests of the clients ahead of those of the investment manager, board member, principal officer, management, compliance officer or employee.

- (e) shall maintain knowledge of and comply with all applicable laws, rules, regulations, directives, circulars, rules of their association, notices of any, regulatory organization, domestic or foreign law enforcement authority, licensing agency, or professional association governing the Investment manager's professional activities.
- (f) shall not knowingly participate or assist in any violation of such laws, rules, regulations directives, circulars, and notices.

Professional Misconduct

- 5. Investment managers—
 - (a) shall not engage in any activity involving dishonesty, fraud, deceit, misrepresentation, or commit any other act that reflects adversely on their professional reputation, integrity, and competence.
 - (b) are prohibited from copying or using, in substantially the same form as the original, material prepared by someone else without acknowledging and identifying the source of such material.
 - (c) shall not use or lend the prestige of the investment management office to advance his or her private business or those of any of his or her family members or associates.
 - (d) may speak publicly on non-financial and investment matters or participate in civil, political, cultural, religious, educational, or charitable activities, so long, however, as such activities do not detract from dignity of the investment manager or interfere with his or her performance.

Independence and Objectivity

- 6. The investment managers shall-
 - (a) use reasonable care and judgment to achieve and maintain independence and objectivity in making investment recommendations or taking investment actions.
 - (b) not offer, solicit, or accept any gift, benefit, compensation, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with the performance of the investment manager's duties that reasonably could be expected to compromise their own or another's independence and objectivity.
 - (c) where the investment manager is aware that any of his or her family members or associates has received or accepted any gift, bequest, loan or favour in relation to any transaction, the investment manager shall, at the earliest opportunity after he or she becomes so aware, require the investment manager to disclose that fact to the other party or parties to the transaction.
 - (d) May receive such honorarium as may be appropriate for participating or undertaking any activity, so long as such honorarium cannot reasonably be perceived, by fair-minded persons as-intended to influence the investment manager in the performance of his or her investment management duties; or otherwise giving rise to an appearance of partiality

PART III

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Compliance and Support

7. (1) Principal officers shall—
 - (a) exercise reasonable supervision over their officers and employees to prevent any violation of applicable statutes, regulations, directives, guidelines, circulars or provisions of the Code of Practice and Rules of their association.
 - (b) To enable the compliance officer to efficiently and independently carry out his or her duties, the Principal Officer concerned shall ensure that—
 - (i) the compliance has the necessary authority, independence, resources and expertise and access to all relevant information.
 - (ii) they are not involved in the performance of the services and activities that they monitor.
 - (iii) the method for determining their remuneration does not compromise their objectivity and is not likely to do so, and
 - (iv) they regularly convey to all employees that adherence to compliance policies and procedures is crucial and that anyone who violates them will be held liable. The principal officer shall require that the Compliance officer ensures that all employees acknowledge that they have received a copy of the Code (as well as any subsequent amendments), that they understand and agree to comply with it, and that they will report any suspected violations of the Code to the Principal Officer.
- (2) A Compliance Officer of an investment manager shall in addition to prescribed functions implement the following:
 - (a) overseeing and ensuring overall compliance with regulatory guidelines on AML/CFT/PF.
 - (b) developing appropriate compliance management arrangements across the full range of AML/CFT/PF areas.
 - (c) monitoring and regularly assessing the adequacy and effectiveness of the AML/CFT/PF policies, procedures, and measures.
 - (d) train management and employees on compliance matters at least once a year,
 - (e) conducting self -evaluation of the investment manager’s compliance practices.
 - (f) document and act expeditiously to address any compliance breaches and take appropriate disciplinary action on their own authority, independent of management as warranted. If the compliance officer is unable to resolve any breaches on their own, they should sequentially seek the assistance of internal legal counsel, senior management, or board of directors.
 - (g) The compliance officer shall, on a quarterly basis, report violations and other issues related to the Code to senior management, board of directors or similar oversight body.

Risk-management function

8. (1) Every investment manager shall—
 - (a) adopt such risk management approach as is directed by the Commission.
 - (b) establish and maintain effective risk-management policies and procedures which—
 - i. identify the risks relating to activities, processes, and systems; and
 - ii. where appropriate, set the level of tolerable risk; and
 - (c) adopt effective measures to manage the risks relating to activities, processes, and systems, considering their level of risk tolerance.
 - (d) once every year, carry out institutional risk assessment (including prudential and ML/TF/PF) in accordance with guidelines issued by the Commission from time to time.
 - (e) shall comply with the minimum capital requirements as stipulated by the Commission from time to time.
- (2) When appropriate and proportionate in view of the nature, scale and complexity of the investments manager's business and the nature and range of the services and activities undertaken in the course of that business, the risk-management function established by an investment manager in terms of subrule (1) shall be so organised as to operate independently.

Accounts and audit

9. (1) Every investment manager shall maintain separate client accounts, with each account having its own account number distinguishable from the investment manager's proprietary accounts.
- (2) Clients' investments or disinvestments and all the credits or debits to the account of the client such as interest, dividend, bonus, or any other beneficial interest received on the investments, if any, shall be properly accounted for and details thereof shall be properly reflected in the clients' account.
- (3) The taxes deducted at source as required under the provisions of the national tax laws shall be recorded in the portfolio account.
- (4) The books of accounts shall be audited annually by a qualified auditor registered in terms of the Public Accountant and Auditors Act [*Chapter 27:12*]. The audited accounts shall be submitted to the Commission within 3 months of close of investment manager's accounting period.
- (5) The trust accounts held by the investment manager shall be audited annually by an independent Auditor registered in terms of the Public Accountant and Auditors Act [*Chapter 27:12*] and a copy of the certificate issued by the Auditor shall be given to the client and submitted to the Commission within 3 months of close of the investment manager's accounting period.

- (6) The client may appoint a registered Auditor at his/her cost to audit the books of accounts of the investment manager relating to his/her transactions and the investment manager shall co-operate with such Auditor in course of the audit.
- (7) Every investment manager shall take steps to rectify within a reasonable period the deficiencies identified in an internal or external audit management report.

Human and Technological Resources

10. Every investment manager must—

- (a) employ adequate human and technological resources to thoroughly analyze, administer, implement and monitor investment decisions and actions.
- (b) ensure that there are adequate internal controls in place to prevent fraudulent behavior.
- (c) ensure adequate protection of client assets
- (d) deliver to clients the actual services they claim to offer.
- (e) design incentives and remuneration structures of management, employees, agents and third parties in a way that fosters responsible business practices, taking into account not only financial performance but also client fairness and satisfaction indicators.
- (f) Shall be liable and responsible for any outsourced work.

Maintenance and submission of books of accounts, records, and other records

11. Every investment manager shall—

- (a) keep and maintain all records pertaining to its operations which may be in electronic form, for a period of not less than 10 years, including but not limited to: -
 - (i) a copy of the financial statements for each accounting period.
 - (ii) documents used in arriving at investment activities, research, investment decisions and reasons for these investment decisions.
 - (iii) investment Policy Mandates for all current and former clients.
 - (iv) investment statements for all the current and former clients.
 - (v) Know Your Clients (KYC) documents for all the clients.
 - (vi) policies and procedure manuals.
 - (vii) All correspondences with clients.
 - (viii) copies of other compliance-related records that support and substantiate the implementation of the Code and related policies and procedures, as well as records of any violations and resulting actions taken, and
 - (ix) Copies of advertisements issued by the investment manager.
- (b) keep a register, in which they are required to record particulars relating to securities in which they or their directors, officers, employees, associates or partners hold and interest.
- (c) maximize client portfolio value by seeking best execution for all client transactions.
- (d) where necessary and in the interest of the client take adequate steps for registration of clients' securities and for claiming and receiving dividends, interest payments and other rights accruing to the client. The securities manager shall also take necessary action for

conversion of securities and subscription/renunciation of/or rights in accordance with the clients' instruction.

Investment Process and Actions

12. (1) In undertaking the investments on behalf of the clients, the investment manager-
 - (a) must deal fairly and objectively with all clients and prospective clients when disseminating investment recommendations and material changes in prior investment recommendations.
 - (b) shall accept or invest money from a client upon finalization of the investment mandate with the client.
 - (c) not lend securities held on behalf of clients to a third person without obtaining a written permission from client.
- (2) Prior to a client's selection of investment products, the investment manager shall-
 - a. use plain, simple language comprehensible to clients and explain key features of the range of investment products and services that the client is interested in so as to enable the client to arrive at an informed decision concerning the products and services.
 - b. inform the client of all charges, fees, penalties and any other financial liability or obligation which would be incurred arising from accessing the investment product or service.
 - c. request the client to provide, where applicable, all the information needed to verify whether or not the client is eligible for the investment product.
 - d. furnish the client with terms and conditions in a clear format and design such as easily readable font type, and
 - e. disclose the limitations and risks of the investment products.
- (3) An investment manager must use reasonable care and prudent judgment when managing client assets and shall not engage in practices designed to distort prices or artificially inflate trading volume with the intent to mislead market participants.
- (4) The purchase or sale of securities shall be done separately for each client except for aggregation of purchases or sales, where allocation shall be done on a *pro rata* basis and at weighted average price of the day's transactions. The investment manager shall not keep any open position in respect of allocation of sales or purchases effected in a day.
- (5) The investment manager shall always adhere to settlement market rules.
- (6) The money received by the investment manager from a client for an investment purpose shall be deployed to the clients' investments without delay for that purpose and money due and payable to a client shall be paid within the agreed time frame with the client.
- (7) Any transaction of purchase or sale including that between the investment manager's own accounts and client's accounts or between two clients' accounts shall be at the fair value or Exchange approved negotiated price.

- (8) The investment manager shall segregate each client's funds and portfolio of securities and surrender them to clients' appointed custodians for safekeeping.
- (9) The investment manager shall not register assets belonging to the client in their own name.
- (10) The investment manager must only take investment actions that are consistent with the stated objectives and constraints of a portfolio or funds and provide adequate disclosures and information so that clients can consider whether any proposed changes in the investment style or strategy meet their investment needs.
- (11) When investing on behalf of the client, the investment manager must evaluate and understand the client's investment objectives, risk tolerance, time horizon, liquidity needs, financial constraints, any unique circumstances, and any other relevant information that would affect the investment policy. The information must be recorded as necessary to reflect changed circumstances.
- (12) The investment manager shall not use his status as any other registered intermediary to unduly influence the investment decision of the clients while rendering securities investment management services.

Research Reports

13. (1) When producing and distributing research reports, the investment manager shall-
- (a) use reasonable judgement regarding the inclusion or exclusion of relevant factors.
 - (b) indicate the basic characteristics of the investment involved.
 - (c) distinguish between facts and opinions in the presentation of investment recommendations.
 - (d) disclose to clients and prospective clients the basic format and general principles of the investment process by which securities are selected and portfolios are constructed, and
 - (e) promptly disclose to clients and prospective clients any risks, limitations and changes that might significantly affect the processes in (d).

Advertising by Investment Manager

14. (1) An investment manager should ensure that all advertisements and marketing materials are authorized as required by the Commission before issue and, in any event, ensure that the marketing materials:
- (a) are not false, biased, misleading or deceptive.
 - (b) are clear, fair and present a balanced picture of the fund with adequate risk disclosures.
 - (c) contain information that is timely and consistent with the fund's offering document.

- (d) only contain performance claims that can be verified and
- (e) file a copy of the advertisement with the Commission at least five business days before issuing an advertisement, together with written notification of the date on which the advertisement is to be issued, the name and title of the individual who approved the advertisement on behalf of the investment manager and the date on which he or she approved it.

Performance Valuation and disclosure

- 15. (1) Every investment manager shall-
 - (a) ensure that any performance presentations made to the Commission, prospective and existing clients is accurate, relevant, timely, complete, consistent, and represents a full and fair view of the funds' performance.
 - (b) not make any statements, orally or in writing, that misrepresent the investment performance that he has accomplished or can reasonably be expected to achieve.
 - (c) give full disclosure of all factors pertaining to the performance, including appropriate benchmarks, performance calculation methodology shall be made to enable the recipients to make an independent assessment of the securities investment manager's skills and capabilities.
- (2) Where such historical performance figures are published or circulated to existing clients, prospective clients, regulators or the investing public, as composite performance aggregates-
 - (a) the numbers shall have been either computed using widely accepted valuation methods and techniques and verified by a competent, independent third party who is licensed by the Commission.
 - (b) basis for computing the performance must be expressly indicated with a statement that, such information is not necessarily indicative of future results and may not necessarily provide a basis for comparisons with other investments.
- (3) All advertisements containing information regarding performance, yield, return or any assets detail shall contain disclosures of all risk factors, making clear that securities investments are subject to market risks, and there can be no assurance of a similar return in future.
- (4) If any advertisement guarantees or assures any minimum rate of return or yield to prospective investors, resources to support such a guarantee shall also be indicated.
- (5) The investment managers shall use the performance presentation standards prescribed by the Association in consultation with the Commission from time to time.

Business Continuity Plan and Disaster Recovery

- 16. Every investment manager shall at a minimum have the following in place for disaster recovery purposes:
 - (a) an adequate off-site backup for all clients' information.

- (b) plans for settling, monitoring, and trading investments if the primary systems break down.
- (c) plans for contacting and communicating with clients during the period of extended system break down.
- (d) procedures for handling investment management issues including client accounts and inquiries in situations of global, national, regional, or local emergency or market disruption, and
- (e) ensure that employees and staff are knowledgeable about the disaster recovery plans and are specifically trained in areas of responsibility. Plans should be tested for effectiveness on a firm-wide basis at least once a year to promote employee understanding and identify any needed adjustments.

PART IV

INTERACTIONS WITH CLIENTS AND PROSPECTIVE CLIENTS

Client-Manager Relationship

17. The investment manager shall establish a contractual relationship with clients by way of an investment mandate. This mandate shall include but not limited to:
- (a) define the type of service being provided to the client.
 - (b) the extent of the discretion afforded to the investment Manager.
 - (c) types of assets the investment Manager may participate in,
 - (d) a termination clause detailing how the relationship may be ended, and
 - (e) any other legal boundaries the parties agree on.

Fiduciary Responsibilities

18. Investment manager shall use particular care in determining applicable fiduciary duty and shall comply with such duty as to those persons and interests to whom the duty is owed. Investment manager must act for the benefit of their clients and place their clients' interests before their own.

Fair Dealing

19. The Investment manager shall
- (a) deal fairly and objectively with all clients and prospective clients when disseminating investment recommendations and material changes in prior investment recommendations.
 - (b) deal fairly and objectively with all clients in taking investment action. Orders shall be based on a pre-determined allocation per client, and partial fulfillment of orders shall be allocated on a pro rata basis.

Priority of Transactions

20. (1) Transactions for clients shall have priority over transactions in securities or other investments of which an investment manager, or an officer or employee of the investment manager is a beneficial owner.
- (2) Transactions of an investment manager, or personal transactions of officers or employees of investment manager, must not adversely affect clients' interests.
- (3) If an investment manager makes a recommendation regarding the purchase or sale of a security or other investment, they shall give their clients adequate opportunity to act on the recommendation before acting on their own, or before officers or employees act on their own personal behalf.
- (4) An investment manager shall-
 - (a) exercise reasonable supervision to ensure compliance by their officers and employees.
 - (b) not dispose of an asset in which they have a beneficial interest to a client without informing the respective client of such beneficial interest.

Confidentiality

21. An investment manager shall preserve the confidentiality of all information including information communicated by past, current or prospective clients, unless the member receives information concerning illegal activities on the part of the client or prospective client.

Misrepresentation

22. (1) An investment manager shall not-
 - (a) make or imply, orally or in writing, any assurances or guarantees regarding any investment except to communicate accurate information regarding the terms of the investment instrument and the issuer's obligations under the instrument.
 - (b) make any statements, orally or in writing, that misrepresent the services that they are capable of performing, their qualifications, or the qualifications of their officers and employees, their officers or employees' professional credentials, firm size and assets under management

Conflicts

23. The Investment manager shall-
 - (a) disclose to their clients and prospective clients all matters, including beneficial ownership of securities and other investments, that reasonably could be expected to impair the member's ability to make unbiased and objective recommendations.
 - (b) ensure that their officers and employees likewise disclose any such matters that could be expected to impair their abilities to make unbiased and objective recommendations. In so doing, an investment manager shall ensure that an updated register of securities and other investments that their officers and employees hold, be kept and updated as appropriate.
 - (c) ensure that their officers and employees inform, and seek clearance from, the Company's Compliance Officer prior to intended personal transactions.
 - (d) ensure that divisions of a company are properly segregated, or companies within a group of companies, where there exists the possibility for conflict of interest. In particular, information flows between securities dealers, corporate finance personnel, corporate banking personnel and investment management personnel must be rigorously controlled.

Reports to be furnished to the client

24. (1) The investment manager shall furnish on a periodic basis, but not a period exceeding three months, a report to the client, as agreed in the contract, and as and when required by the client and such report shall contain the following details-

- (a) the composition, description, quantity, value of each security held in the portfolio, cash balance and aggregate value of the portfolio as on the date of report.
 - (b) transactions undertaken during the period of report including date of transaction and details of purchases and sales.
 - (c) beneficial interest received during that period in respect of interest, dividend, bonus shares, rights issue shares and debentures.
 - (d) expenses incurred in managing the portfolio of the client, and
 - (e) any other metrics as agreed in the contract.
- (2) The investment manager must ensure that information relating to clients' assets is accurate, complete, and understandable and is presented in a format that communicates the information effectively.
- (3) On termination of the contract, the investment manager shall give a detailed statement of accounts to the client and settle the account with the client as agreed in the contract.

PART V

RELATIONSHIP WITH THE INVESTING PUBLIC

Misuse of Inside Information

25. (1) An investment manager -
- (a) shall not act, or cause others to act, on inside information that could affect the value of an investment and must ensure such information is not used as the basis of an investment decision or action.
 - (b) must adopt compliance procedures that establish information barriers and closely supervise internal communication, to prevent disclosure and misuse of inside information.

Market Manipulation & Price Distortion

26. The investment manager shall not engage in any of the following –

- (a) creation of false market in securities.
- (b) market manipulation of securities include but not limited to :

- (i) passing of price sensitive information to securities market intermediaries, family members, close relatives and associates which is prejudicial to the interests of the clients.
 - (ii) disseminating fake information for the purpose of influencing the price or value of a security or for any manipulative purpose.
 - (iii) simultaneously selling and buying the same security to create misleading, artificial trading activity in the security.
 - (iv) posting an order or a series of orders for a security that are not intended to be executed in order to create fake optimism or pessimism about a security.
 - (v) attempting to drive down a security's price by spreading false information, rumours, or otherwise damaging information in order to buy the security at a lower price.
 - (vi) artificially inflating the price of a security held through false, misleading, or exaggerated positive statements in order to profit from selling the security once the price has risen.
 - (vii) aggressively trading to force other traders to engage in disadvantageous trades for example, selling aggressively to push prices down with the hope of triggering stop-loss sell orders, and
 - (viii) an attempting to influence the price of a security by buying and selling it among themselves to create the appearance of substantial trading activity.
- (c) the practice of ganging up by licensed persons to push a security's price lower through short selling and spreading adverse rumours about the targeted company.
 - (d) attempting to boost the price of a security by buying the securities in the market with the intention of raising demand in order to profit from selling the security once the price rises.
 - (e) entering and immediately cancelling a large number of orders to buy or sell securities in an attempt to flood the market with quotes, causing other traders to lose time in processing them
 - (f) conspiring to set the price of a security rather than allowing the price to be determined through free market forces.
 - (g) making small trades at high prices during the final minutes of trading so as to give the impression that a security performed well.
 - (h) effecting a trade in a security that involves no change in its beneficial ownership with the intention of creating false liquidity in the security.
 - (i) Investment manager should not engage in practices designed to distort prices or artificially inflate trading volume with the intent to mislead market participants.

Offences and penalties

27.(1) An investment manager who commits a breach of this Code of Practice which is also a statutory offence in terms of the Acts shall be liable to the penalty prescribed in the relevant section of the Acts.

(2). Where an investment manager is in breach of its responsibilities or fails to comply with any requirement set out in this Code the Commission may, following an investigation undertake action in terms of section 105 of the Securities and Exchange Act [Chapter 24:25].