



**COMPLAINTS RESOLUTION PROCEDURE OF X-CHEQUER FUND
MANAGEMENT (PTY) LTD (“XFM”)**

FSP: 31388

2006/025637/07

Revised: July 2019

1. PURPOSE OF THIS DOCUMENT

- 1.1. XFM is a licensed Financial Services Provider with the authority to render advisory and/ or intermediary and/ or discretionary financial services to clients in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002 (“the FAIS Act”).
- 1.2. XFM is committed to principles of transparency, accountability and fairness, and to the establishment and maintenance of procedures for the effective internal resolution of complaints.
- 1.3. In terms of the FAIS Act we have a duty to offer our clients a Complaints Resolution Procedure, which will enable our clients to exercise their rights as provided for in the Act.

2. RULES FOR HANDLING A COMPLAINT

- 2.1. XFM must:
 - 2.1.1. Request that any client who has a complaint against XFM lodge such a complaint in writing;
 - 2.1.2. Maintain a record of such a complaint for a period of five years;
 - 2.1.3. Handle complaints from clients in a timely and fair manner;
 - 2.1.4. Take steps to investigate and respond promptly to such complaints; and
 - 2.1.5. Where such a complaint is not resolved to the client’s satisfaction, advise the client of any further steps which may be available to the client in terms of the FAIS Act or any other law.

3. CLIENT’S PROCEDURE FOR LODGING A COMPLAINT

- 3.1. If a client feels that any representative of XFM provided them with financial services that do not comply with the FAIS Act or if they suffered financial losses because of negligent or intentional error, the client is entitled to lodge a complaint.
- 3.2. To lodge a complaint the client must send their complaint in writing to info@xfm.co.za, with the following information -
 - 3.2.1. Client name, surname and contact details;
 - 3.2.2. A complete description of the complaint;
 - 3.2.3. The name of the representative that rendered financial services to the client;

- 3.2.4. The name of the representative that provided the client with services which resulted in the client suffering a financial loss;
- 3.2.5. The date on which the matter occurred;
- 3.2.6. All the supporting documentation relating to the client's complaint;
- 3.2.7. Preferred method of communication i.e. fax, email or post.

3.3. **XFM PROCEDURE FOR RECEIVING A COMPLAINT**

- 3.4. As soon as XFM receives the complaint, we will acknowledge receipt thereof in writing and provide the particulars of the person who is dealing with the complaint. We will investigate the complaint to ensure that it is resolved within thirty (30) working days from receipt thereof.
- 3.5. If we are unable to resolve the client's complaint within thirty (30) working days, or unable to resolve the complaint to the client's satisfaction, the client has the right to refer the complaint to the Office of the Ombud for Financial Service Provider ("the Ombud") appointed specifically for this purpose.

- 3.1. The contact details of the Ombud are as follows:

PO Box 74571

Lynwood Ridge

0040

Telephone: 012 762 5000 / 012 470 9080

Fax: 012 348 3447 / 012 470 9097 / 086 764 1422

Email: enquiries@faisombud.co.za

4. **TYPE OF COMPLAINTS JUSTICIABLE BY THE OMBUD**

- 4.1. For a client complaint to be submitted to the Ombud -
 - 4.1.1. the complaint must fall within the ambit of the FAIS Act and the rules of the Ombud as listed hereunder;
 - 4.1.1.1. the person against whom the complaint is made must be subject to the provisions of the FAIS Act (hereafter referred to as "the respondent");

- 4.1.1.2. the act or omission complained of must have occurred at a time when these rules were in force; and
 - 4.1.1.3. the respondent must have failed to address the complaint satisfactorily within six weeks of receiving a notice of the complaint from the Ombud;
 - 4.1.1.4. A client may seek any relief relating to the subject matter of the complaint, but a complaint constituting a claim for a monetary award, must relate to the redress of financial prejudice or damage suffered or likely to be suffered by the client;
 - 4.1.1.5. The complaint must not constitute a monetary claim of more than R800 000.00 for a specific incident of financial prejudice or damage, unless the respondent has agreed in writing to this limitation being exceeded, or the client has abandoned the amount which is in excess of R800 000.00;
- 4.1.2. The Ombud may also entertain a complaint relating to a financial service rendered by a person not authorised as a financial services provider or by a person acting on behalf of such person;
 - 4.1.3. When the Ombud receives a referral from the FAIS Commissioner, the Ombud must in writing notify the client concerned and the client must inform the Ombud whether he/she wishes to pursue the complaint in accordance with the provisions of Part I of Chapter VI of the FAIS Act.
 - 4.1.4. The complaint must not relate to the investment performance of a financial product which is the subject of the complaint, unless such performance was guaranteed expressly or implicitly, or such performance appears to the Ombud to be so deficient as to raise a *prima facie* presumption of misrepresentation, negligence or maladministration on the part of the person against whom the complaint is brought, or that person's representative.

5. **TRAINING**

For purposes of effective and fair resolution of complaints all relevant staff will receive adequate training, including imparting and ensuring full knowledge of the provisions of the FAIS Act, the Rules on Proceedings of the Office and the FAIS General Code of Conduct regarding the resolution of complaints.

6. **RIGHTS OF CLIENT IN CONNECTION WITH COMPLAINTS**

- 6.1. The client must qualify as such in terms of the FAIS Act and these Rules.
- 6.2. Before submitting a complaint to the Ombud, the client must endeavour to resolve the complaint with the respondent.

- 6.3. On submitting a complaint to the Ombud, the client must satisfy the Ombud of having endeavoured to resolve the complaint with the respondent, and must produce the final response (if any) of the respondent as well as the client's reasons for disagreeing with the final response.
- 6.4. A complaint must be submitted to the Ombud in writing or, in circumstances deemed appropriate, the Ombud may receive a complaint in any other manner which conveys the complaint in comprehensible form.
- 6.5. A complaint must, where necessary, be accompanied by available documentation in the client's possession.
- 6.6. The client must be advised by the Ombud of the respondent's response to the extent necessary for the client to react to such response and must, within two weeks, advise the Ombud of whether or not he/she wishes to proceed with the complaint.
- 6.7. After lodging a complaint with the Ombud, the client is entitled to submit further facts, information or documentation in connection with the complaint and must do so, to the extent possible, if requested by the Ombud.

7. **ADMINISTRATIVE AND PROCEDURAL MATTERS**

- 7.1. The Ombud may decline to investigate a complaint, or may suspend the investigation, when to the knowledge of the Ombud the client intends to proceed with or has already instituted litigation proceedings.
- 7.2. Information provided to the Ombud is confidential and may only be disclosed by the Ombud to the FAIS Commissioner or to another party to the complaint to the extent necessary to resolve the complaint, or where required under the FAIS Act or any other law.
- 7.3. The Ombud is not liable to be subpoenaed to give evidence on the subject of a complaint in any legal proceedings.
- 7.4. The Ombud may take such steps as deemed expedient to advise the public on the existence of the office of the Ombud, the procedure for submitting a complaint to the Ombud, or on any other aspect concerning the Ombud to facilitate the submission or disposal of complaints.

8. **APPEAL**

- 8.1. A party against whom the Ombud has made a determination may apply to the Ombud for leave to appeal against the determination.

- 8.2. Such application must be in writing, must be submitted to the Ombud within one month of the date of the determination, and must set out the grounds on which the application is made.
- 8.3. In weighing the application, the Ombud must consider the factors set out in section 28 (5) (b) of the Act and may request and consider submissions by any other party to the complaint concerning the merits of the application.
- 8.4. If the Ombud refuses leave to appeal, the applicant must be advised in writing and given reasons for such refusal.
- 8.5. Upon being informed of such refusal, the applicant may apply to the Financial Services Tribunal ("the Tribunal") to have the decision reconsidered.
- 8.6. An application referred to in 8.5 must -
 - 8.6.1. be made within thirty (30) days of receiving reasons for the Ombud's decision, if such reasons were requested; or
 - 8.6.2. in all other cases, be made within sixty (60) days of being notified of the Ombud's decision; and
 - 8.6.3. be made in writing;
 - 8.6.4. advise the Ombud in writing accordingly.
- 8.7. The application referred to in paragraph 8.5 must be submitted to the secretary of the Tribunal and must thereafter be dealt with as directed by the chairperson of the Tribunal.
- 8.8. On receipt of the written advice referred to in paragraph 8.5, the Ombud must transmit to the secretary of the Tribunal all the records concerning the complaint together with a copy of the determination and the Ombud's reasons therefor, and the Ombud's reasons for refusing leave to appeal.
- 8.9. If the Ombud grants leave to appeal, the applicant must be advised accordingly and the provisions of paragraph 8.7 apply with the necessary amendments, in which case the Ombud must also transmit the reasons for granting leave to appeal (if any).
- 8.10. When granting or refusing leave to appeal, the Ombud must advise the other party to the proceedings of the outcome of the application for leave to appeal.

- 8.11. If the Tribunal becomes seized with the appeal, the appeal must be dealt with in terms of the rules applicable to the Tribunal, with the necessary amendments, and, unless requested by the Tribunal, the Ombud shall not take part in the appeal proceedings and the appeal will continue between the parties to the complaint.
- 8.12. On receipt of the final decision of the Tribunal the Ombud must forward the decision to the clerk or commissioner of the court as contemplated in section 28 (4) of the FAIS Act.

