



**NOTICE REGARDING THE PUBLICATION OF DRAFT AMENDMENT TO THE
DETERMINATION OF FIT AND PROPER REQUIREMENTS FOR FINANCIAL SERVICES
PROVIDERS (FAIS)**

FINANCIAL SECTOR REGULATION ACT, 2017

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

**AMENDMENT OF THE DETERMINATION OF FIT AND PROPER REQUIREMENTS FOR
FINANCIAL SERVICES PROVIDERS, 2017**

The Financial Sector Conduct Authority (Authority) hereby, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA), invites submissions on the draft Amendment to the Determination of Fit and Proper Requirements, 2017, in terms of section 106(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) and section 6A of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), as set out in the Schedule hereto.

The draft Amendment, together with a statement supporting the draft Amendment is available on the Authority's website at <https://www.fsca.co.za>.

Submissions on the Amendment Notice must, using the submission template attached as Annexure B, be submitted in writing on or before **19 February 2021** to the FSCA, at FSCA.RFDStandards@fsca.co.za. The submission template consists of two parts. Part B relates to comments on the drafting, substance and other details of the Amendment Notice and Part C relates to comments on the expected impact of the draft Amendment Notice.

A handwritten signature in blue ink, consisting of a large, stylized 'O' followed by a series of loops and a long horizontal stroke extending to the right.

OB MAKHUBELA

FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY

Date of Publication: 30 November 2020

SCHEDULE A

Interpretation

1. In this Schedule, "the Determination" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, published in Board Notice No. 194 of 2017.

Amendment of section 1 of the Determination

2. Section 1 of the Determination is hereby amended by -

- (a) the substitution for the definition "CPD activity" of the following definition:

"CPD activity" means an activity that is -

- (a) approved by a Professional Body or a foreign professional body that confirmed that the activity is verifiable; and
- (b) allocated an hour value or a part thereof by that Professional Body, and excludes -
 - (i) an activity performed towards a qualification; and
 - (ii) product specific training; and

- (b) the insertion after the definition "financial product" of the following definition:

"foreign professional body" means a foreign body with individual members practicing a profession or occupation, and which body maintains oversight of the knowledge, skills, conduct and practices of that profession or occupation."

Amendment of section 12 of the Determination

3. Section 12 of the Determination is hereby amended by the insertion after section 12 of the following section:

"12A The competence requirements relating to minimum qualifications, regulatory examinations and class of business training, contained in Parts 3, 4 and 5 of this Chapter, do not apply to a representative of a Category I FSP that is appointed only to perform the execution of sales in respect of a financial product provided that the representative has a Grade 12 National Certificate or an equivalent qualification."

Amendment of section 13 of the Determination

4. Section 13 of the Determination is hereby amended by the deletion of subsection (6).

Amendment of section 22 of the Determination

5. Subparagraph (ii) of paragraph (b) of section 22 of the Determination is hereby amended as follows:

"(ii) a representative of a Category I FSP that is appointed only to perform the execution of sales as referred to in section 12A. [provided that -

- (aa) the representative has a Grade 12 National Certificate or an equivalent qualification;**
- (bb) the execution of sales is performed –**
 - (aA) in accordance with a script approved by a key individual and the relevant governance structure of the FSP; and**
 - (aB) under the direct oversight of a key individual;**
- (cc) where the execution of sales is performed by telephone, all conversations with clients are recorded and the recordings are stored and retrievable;**
- (dd) the FSP has sufficient and adequate controls in place to ensure and to monitor that -**
 - (aA) the representative does not furnish clients with advice; and**
 - (aB) the sales practices and techniques employed by the representative are not misleading, false, inappropriate to the expected target clients or will not result in unfair outcomes for clients; and**
- (ee) the FSP on a regular basis -**
 - (aA) reviews the recordings referred to in (cc) and/or monitors the representatives, to ensure that they do not deviate from the script or supplement the script with content not approved as contemplated in (bb);**
 - (aB) reviews and monitors the adequacy and efficiency of its controls and quality assurance processes in relation to the execution of sales; and**
 - (aC) reviews the script for appropriateness and compliance with applicable legislation.]”.**

Amendment of section 24 of the Determination

6. Section 24 of the Determination is hereby amended by –

(a) the amendment of subparagraph (i) of paragraph (c) of subsection (2) as follows:

“(i) it must contain at least three modules/subjects that appear in, or are similar in subject matter to, the Appropriate Subject List in Table 1 in Annexure Two;” and

(b) the amendment of paragraph (d) of subsection (2) as follows:

“(d) in the case of a unit standards based qualification, the core and elective unit standards must relate to at least three modules/subjects that appear in, or are similar in subject matter to, the Appropriate Subject List in Table 1 in Annexure Two; and”.

Amendment of section 25 of the Determination

7. Section 25 of the Determination is hereby amended by the amendment of item (aa) of subparagraph (b)(ii) of the following item:

“(aa) perform the execution of sales, as referred to in section 12A, in respect of a Tier 1 financial product provided that the requirements in section ~~[22(b)(ii)]36A~~ are complied with; and/or”.

Amendment of section 28 of the Determination

8. Section 28 of the Determination is hereby amended by the amendment of subparagraph (i) of paragraph (b) of subsection (2) of the following subparagraph:

“(i) perform the execution of sales, as referred to in section 12A, in respect of a Tier 1 financial product provided that the requirements in section [Error! Reference source not found.(b)(ii)]36A are complied with; and/or”.

Amendment of section 29 of the Determination

9. Section 29 of the Determination is hereby amended by the amendment of paragraph (ii) of subsection (6) of the following:

“(ii) a recognised qualification provided a person is able to demonstrate that the content of the qualification meets the criteria referred to in subsection [(3)](4).”.

Amendment of section 36 of the Determination

10. Section 36 of the Determination is hereby amended by the insertion after section 36 of the following section:

“36A (1) Where a representative of a Category I FSP is appointed to perform the execution of sales in respect of any financial product, the execution of sales must be performed –

- (a) in accordance with a script approved by a key individual and the relevant governance structure of the FSP; and
- (b) under the direct oversight of a key individual;

(2) Where the execution of sales is performed by telephone, all conversations with clients are recorded and the recordings are stored and retrievable;

(3) The FSP must have sufficient and adequate controls in place to ensure and to monitor that the -

- (a) representative does not furnish clients with advice; and
- (b) sales practices and techniques employed by the representative are not misleading, false, inappropriate to the expected target clients or will not result in unfair outcomes for clients; and

(4) The FSP must also, on a regular basis -

- (a) review the recordings referred to in subparagraph (2) and/or monitor the representatives, to ensure that they do not deviate from the script or supplement the script with content not approved as contemplated in subparagraph (1)(a);
- (b) review and monitor the adequacy and efficiency of its controls and quality assurance processes in relation to the execution of sales; and
- (c) review the script for appropriateness and compliance with applicable legislation.”.

Amendment of section 46 of the Determination

11. Section 46 of the Determination is hereby amended by the amendment of subparagraph (iii) of paragraph (a) of subsection (1) as follows:

“(iii) a juristic representative of an FSPs referred to in subparagraphs (i) and (ii);”.

Amendment of section 52 of the Determination

12. Section 52 of the Determination is hereby amended by -

(a) the amendment of subsection (9) of the following subsection:

“(9) An FSP, key individual, other than a key individual of a Category I FSP, or representative, excluding a representative referred to in subparagraph (11A) and a representative working under supervision, authorised, approved or appointed prior to commencement of this Notice is deemed to have completed the class of business training contemplated in Part 5 of Chapter 3 in respect of the financial products for which they were so authorised, approved or appointed.”; and

(b) the insertion after subsection (11) of the following subsection:

“(11A) A person who –

- (a) was appointed as a representative prior to 31 December 2008 and did not comply with the competency requirements at that time;
- (b) ceased to render any financial services prior to 1 August 2018;
- (c) is appointed as representatives after 1 August 2018; and
- (d) complies with all other relevant competence requirements set out in Chapter 3,

has 12 months from the date that they are appointed as representatives to comply with the class of business training requirements set out in Part 5 of Chapter 3 for the financial products in respect of which they are appointed, whilst working under supervision in terms of the Exemption Notice of Services under Supervision.”.

Amendment of Annexure Five of the Determination

13. Annexure Five of the Determination is hereby amended by the amendment of the qualifying criteria for Task 10 of Table 1 of the following arrangement:

TABLE 1				
Task No	Task	QC	Qualifying Criteria	Knowledge (K) or Skill (S)
10	Manage and oversee the requirements of the FIC Act and Money Laundering and Terrorist Financing control regulations, as it applies to the FSP.	1	[Explain the requirements specific to an FSP prescribed by the FIC Act] Understand when an FSP is an <u>accountable institution as per item 12 of schedule 1 of the FIC Act</u>	K
		2	[Verify that all requirements for internal rules as required by the FIC Act are in place] Understand what is meant by a <u>Risk Management Compliance Program (RMCP) as required by the FIC Act</u>	S K
		3	[Verify that the FSP has processes in place to ensure compliance with the identification, verification, record-keeping and reporting obligations under the FIC Act.] Understand what the <u>requirements are for Cash Threshold</u>	S K

TABLE 1				
Task No	Task	QC	Qualifying Criteria	Knowledge (K) or Skill (S)
			<u>Reports and Suspicious and Unusual Transaction Reports as required by the FIC Act.</u>	
		4	[Check that there are processes in place to ensure that employees receive training in respect of, and are aware of, their obligation to report suspicious transactions]	S

Short title and commencement

14. This Notice is called the Amendment of the Determination of Fit and Proper Requirements, 2021, and comes into operation on date of publication.