



FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

DATE: 1 NOVEMBER 2017

INVITATION TO COMMENT ON PROPOSED AMENDMENTS TO THE GENERAL CODE OF CONDUCT FOR AUTHORISED FSPs AND REPRESENTATIVES AND THE SPECIFIC CODE OF CONDUCT FOR AUTHORISED FSPs AND REPRESENTATIVES CONDUCTING SHORT-TERM DEPOSITS BUSINESS

1. INTRODUCTION

The Registrar of Financial Services Providers (“Registrar”) has published the following for public comment on the official web site of the Financial Services Board (“FSB”):

- (a) proposed amendments to the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (the General Code); and
- (b) proposed amendments to the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2004 (the Short-term Deposit Code).

2. CONSULTATION PROCESS

- 2.1. Interested parties are invited to submit written submission on the proposed amendments to **FAIS.Consultation@fsb.co.za** by **28 February 2018**.
- 2.2. All information (including name and address details) contained in submissions will be made available to the public on the FSB’s official web site.
- 2.3. Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details.
- 2.4. For accessibility reasons, please email submission in a Word format. An additional PDF version may also be submitted.

3. CLOSING DATE FOR SUBMISSIONS

The closing date for submissions is **28 February 2018**. No submission received after that date will be considered.

4. PURPOSE OF PROPOSED AMENDMENTS TO GENERAL CODE OF CONDUCT (SCHEDULE A)

4.1. Enterprise development contributions (Definition of ‘financial interest’)

The proposed amendment allows qualifying beneficiaries as contemplated in the Financial Services Sector Code to receive enterprise development contributions. Currently those beneficiaries are prohibited under the conflict of interest requirements from accepting such contributions. The requirement seeks to promote and facilitate transformation within the financial services industry.

4.2. Definition for ‘replacement’

The proposed definition clarifies which types of transactions (including variations) in respect of financial products constitute a replacement. The term ‘variation’ is also defined for purposes of the aforementioned definition to clarify which types of variations constitute a replacement.

4.3. Requirement to act honestly at all times (Section 2)

The requirement in section 2 is extended from only being applicable to a provider when rendering financial services to when a provider acts. Although broadly phrased, the requirement is limited by the context, the purpose and objective of the Code and the Act as a whole.

4.4. Referencing of authorisation status (Section 3)

The Registrar proposes the addition of specific requirements relating to the referencing by a provider of its licence or the fact that it is regulated by the FSB in respect of business for which it is not licensed or regulated. It is not a new requirement in that the aforementioned is already indirectly regulated through the general requirement that representations made or information provided to clients must be factually correct and may not be misleading or confusing. The amendment is proposed in response to a number of matters investigated by the Registrar where members of the public were placed under the false impression that a provider’s authorisation extended to activities not regulated by the FSB.

4.5. RDR related amendments (sections 3A, 7 and 8)

The FSB published its Retail Distribution Review (“RDR”) in November 2014, proposing a number of reforms to the regulatory framework for financial advice and distribution on financial products. A number of subsequent discussion documents have been published providing the FSB’s updated views on certain of these RDR proposals. The Registrar proposes certain amendments to the General Code to give effect to a number of these RDR proposals. Note that the RDR proposals are being implemented in a phased manner, with certain proposals

being introduced through existing regulatory instruments – such as the General Code – while others will be introduced through future instruments as the legislative framework for the Twin Peaks model of regulation evolves.

Enhanced requirements regarding intermediary remuneration

In line with aspects of RDR Proposals HH to KK and in preparation for more detailed RDR standards regarding advice fees, the Registrar proposes enhanced disclosure requirements regarding intermediary remuneration to ensure clients fully understand and agree to fees payable and the services they can expect in exchange for those fees. The current requirement that certain financial interests must be reasonably commensurate with the service being rendered has been expanded to clarify what “reasonably commensurate” entails and to align with both RDR intermediary remuneration principles and proposed amendments to the Regulations to the Long-term and Short-term Insurance Acts in relation to certain types of intermediary remuneration.

Financial interests offered by a provider to its representatives

The General Code currently provides that a provider may not offer financial interests to its representatives for giving preference to the quantity of business secured for the provider “to the exclusion of” the quality of service rendered to clients. Supervisory experience has shown that this requirement is inconsistently interpreted and that many providers are not able to demonstrate what particle measures they have in place to achieve and monitor compliance with the requirement. Amendments are therefore proposed to clarify the Registrar’s expectations in this regard, including the adoption of measurable indicators of the quality of client treatment and compliance with the FAIS Act. This requirement also seeks to support RDR proposal RR, in terms of which the playing fields between incentives for tied and non-tied advice in the insurance sector are to be made more level by strengthening the principle of “Equivalence of Reward”.

Suitability of advice to clients transacting to provide benefits to underlying natural persons

In line with RDR Proposal C, an amendment is proposed to require providers who render advice to pension funds, medical schemes, friendly societies, employers or other entities providing benefits to underlying members, employees or other natural persons to consider the reasonably identified needs and circumstances of those persons.

Suitability of advice in case of legal or contractual limitations

The General Code (section 8(1)(c)) currently requires identification of a suitable financial product or products “subject to the limitations imposed on the provider under the Act or any contractual arrangement”. The Registrar recognises that such limitations apply to many distribution models to various degrees and that, provided the client fully understands and

accepts such limitations, then they do not compromise the suitability of the advice provided. Supervisory experience has however shown that, in cases where a provider is legally or contractually limited in relation to the range of products or product suppliers it can offer, the risk of the provider seeking to recommend a potentially unsuitable product in order to “make a sale” is increased. Although such a recommendation would already constitute a contravention of the General Code, an amendment is proposed to avoid any doubt as to the Registrar’s expectations in such situations, by clarifying that where the provider is not able to identify a suitable product, the provider must not recommend a product and must advise the client accordingly.

Clarification that suitability analysis may be tailored to specific circumstances of the client interaction

The Registrar proposes amendments to provide further clarity on the extent to which the depth of information required to be taken into account when performing a suitability analysis before providing advice, may vary depending on the extent of the client’s specific needs and objectives – either as explicitly agreed with the client or as may be reasonably ascertained from surrounding circumstances. This amendment should be seen in the context of RDR Proposal B. Proposal B initially proposed that a framework should be developed for so-called “low advice” distribution models, being models where advice is provided but a full suitability analysis is not required. Based on very mixed comment received, the FSB subsequently advised that two options are being considered: (i) that no formal recognition of a “low advice” model is required and that the FSB should instead clarify that the existing FAIS suitability analysis requirements are sufficiently flexible and scalable to apply in such models; or (ii) to proceed with the development of “simplified advice” standards to apply in specific situations. After further deliberation, the FSB has decided that option (i) above is the preferred approach. The amendments to section 8 of the General Code are proposed in light of this decision. The Registrar will also provide supporting guidance in this regard in due course.

4.6. Format of record of advice (section 9)

An amendment is proposed to enable the Registrar, where appropriate, to prescribe the format and the matters to be addressed in the record of advice. The Registrar is of the view that a prescribed format, in certain circumstances, will improve the quality of the record of advice, will improve compliance and may reduce costs for FSPs.

4.7. Advertising, Marketing and Complaints Management Requirements (sections, 14, 16 – 19)

Alignment

4.7.1. One of the FSB’s priorities is to align similar requirements across the laws administered by the FSB. Requirements relating to advertising, marketing and

complaints management were identified as requirements that would benefit from alignment. A cross cutting sectoral review was conducted that highlighted the misalignment of those requirements across the different sectors in the financial services industry and the inadequacy of the requirements in ensuring good outcomes for customers.

- 4.7.2. On 15 December 2017, the Registrar of Long-term- and Short-term Insurance (“Registrar or Insurance”) published for public comment the first draft of the proposed amendments to the Policyholder Protection Rules (“Rules”). The amendments included proposed amendments to the requirements relating to advertising, marketing and complaints management. A second draft of the Rules was published for public comment on 1 September 2017. The Registrar of Insurance informed by the comments received, revised the second draft of the Rules.
- 4.7.3. The proposed amendments to the advertising, marketing and complaints management requirements in the General Code of Conduct are aligned, where feasible, to the revised second draft of the Rules.

Inadequacy of current requirements

- 4.7.4. Consumers are influenced by advertisements for financial products and financial services when making financial decisions and seeking financial services. Therefore, it is of paramount importance that advertisements are clear, accurate and give balanced messages when promoting financial products and financial services.
- 4.7.5. Advertisements that do not fairly represent the financial product or its key features and risks, or the nature and scope of the financial service, can be misleading and create unrealistic expectations that may lead to poor financial decisions and poor customer outcomes.
- 4.7.6. The Registrar is of the view that the current advertising and marketing requirements do not adequately address or ensure good outcomes for customers. The proposed amendments seek to raise the standards applicable to the advertising and marketing activities by financial services providers (FSPs) to ensure clients are not subjected to aggressive, misleading or unwanted marketing and are able to make informed decisions.
- 4.7.7. Consumers of financial services are further entitled to complain and seek resolution from financial services providers. The proposed requirements seek to ensure that the complaints process is straightforward, transparent and fair to consumers of financial

services. They also seek to align complaints management and record keeping requirements with the desired outcomes of the Treating Customers Fairly framework.

4.8. Forecasts, illustrations, hypothetical data or projected benefits and past performance data (new section 7A)

The Code of Conduct currently only regulates the use of forecasts, illustrations, hypothetical data or projected benefits (prospective financial information) and past performance data when used in advertisements. Given the inherent risks in the use of prospective financial information and performance data the Registrar proposes that the requirements regarding the use of such information in advertisements be extended to the use of that information by providers when rendering financial services. Some additional requirements are proposed that provide for when prospective financial information and past performance data may be used and what should be disclosed.

4.9. Direct marketing (Sections 7, 8 and 15)

Definition of 'direct marketing'

4.9.1. In line with the FSB's stated objective in paragraph 4.5.1 the definition of 'direct marketing' is aligned to that proposed in the Rules.

Advice & Disclosures

4.9.2. The proposed amendments relating to direct marketing remove the current distinction regarding the level of disclosure required by a provider that provides financial services to clients in person, as opposed to a provider providing financial services through another medium. The Registrar is of the view that no good rationale exists to justify the distinction and that the removal thereof will result in better outcomes for clients and a more level playing field between distribution models.

4.9.3. The Registrar further proposes to clarify that "earliest reasonable opportunity" referred to in section 7 means 'prior to the conclusion of a transaction'. The purpose of the disclosures and information referred to in section 7 is to enable a client to make a meaningful and informed decision - receiving the information post the transaction defeats the purpose of the disclosure. Direct marketers are currently required to provide information similar to that in section 7 to clients prior to the conclusion of any transaction. The proposed requirement further aligns with the Rules.

Furnishing of information to clients in writing

4.9.4. Section 7 is amended to require a provider, in line with similar requirements in sections 4, 5 and 15, to furnish, in writing, the information referred to in that section to a client at the earliest reasonable opportunity after the conclusion of a transaction to the extent that the information has not already been provided to a client in writing.

4.9.5. It is important to note that in terms of the Electronic Communications and Transactions Act, 2002 (ECTA), a requirement in law that a document or information must be in writing is met if the document or information is in the form of a data message and accessible in a manner usable for subsequent reference. Therefore, a provider may provide the information to a client in the form of a data message as defined in the ECTA.

5. PURPOSE OF AMENDMENTS TO SHORT-TERM DEPOSIT CODE (SCHEDULE B)

The purpose of the proposed amendments is to align the provisions relating to advertising, marketing and complaints management to the requirements in the General Code.



CD da Silva
Deputy Registrar of Financial Services Providers
1 November 2017

SCHEDULE A

Interpretation

1. In this schedule, "General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, published in Board Notice No. 80 of 2003, as amended.

Amendment of section 1(1) of the General Code

2. Section 1(1) of the General Code is hereby amended by-
 - (a) the substitution for the definition "advertisement" of the following definition:
"advertisement" [in relation to a provider] means any[written, printed, electronic or oral] communication [(including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such person, which is intended merely to call attention to the marketing or promotion of financial services offered by such person, and which does not purport to provide detailed information regarding any such financial services; and 'advertising' or 'advertises' has a corresponding meaning] published through any medium and in any form, by itself or together with any other communication, which is intended to create public interest in the business, financial services, financial products or related services of a provider, or to persuade the public (or a part thereof) to transact in respect of a financial product, financial service or related service in any manner, but which does not purport to provide detailed information to or for a specific client regarding a specific financial product, financial service or related service;";
 - (b) the substitution for the definition of "company" of the following definition:
"company" [means a company under the Companies Act, 1973 (Act 61 of 1973)] has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);";
 - (c) the insertion after the definition of "company" of the following definition:
"comparative" refers to a direct or indirect comparison between providers or between financial products, financial services or related services of one or more provider or product supplier;";
 - (d) the substitution for the definition of "direct marketing" of the following definition:
"Direct marketing", means the rendering of financial services by way of telephone, internet, digital application platform, media insert, direct or electronic mail [, or electronic mail], but excludes [excluding] the publication of an advertisement; [any such means which are advertisements not containing transaction requirements.];"
 - (e) the insertion after the definition of "distribution channel" of the following definition:
"endorsements" refer to public statements declaring the virtues of a financial product, financial service or related service of a provider or recommending the entering into of a financial product, financial service or related service;";
 - (f) the insertion after paragraph (b) of the definition of "financial interest" of the following paragraph:
"(c) a recognised qualifying enterprise development contribution to a qualifying beneficiary by a provider that is a measured entity;";
 - (g) the insertion after the definition of "financial interest" of the following definition:

“FSC” means the Financial Sector Code published in terms of the Broad-Based Black Economic Empowerment Act, (Act 53 of 2003), as amended from time to time;”;

- (h) the substitution for the definition “holding company” of the following definition:
“holding company’ [means a holding company as defined in section 1(4) of the Companies Act, 1973 (Act 61 of 1973)] has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);”;
- (i) the insertion after the definition of “immaterial financial interest” of the following definition:
“loyalty benefit’ means any benefit that is directly or indirectly provided or made available to a client by a provider or a product supplier or an associate of the provider or product supplier, which benefit is wholly or partially contingent upon –
(a) the financial product with that provider or product supplier remaining in place;
(b) the client continuing to utilise a financial service of that provider or product supplier ;
(c) the client increasing any benefit to be provided under a financial product; or
(d) the client entering into any other financial product or benefit or utilising any related services offered by that provider, product supplier or their associates;”;
- (j) the insertion after the definition of “immaterial financial interest” of the following definitions:
“measured entity’ has the meaning contemplated in the FSC insofar it relates to a recognised qualifying enterprise development contribution;”; and
“no-claim bonus’ means any benefit that is directly or indirectly provided or made available to a client by a product supplier in the event that the client does not claim or does not make a certain claim under a financial product within a specified period of time;”;
- (k) the insertion after the definition of “new entrant” of the following definition:
“plain language’ means communication that-
(a) is clear and easy to understand;
(b) avoids uncertainty or confusion; and
(c) is adequate and appropriate in the circumstances,
taking into account the factually established or reasonably assumed level of knowledge of the person or average persons at whom the communication is targeted;”;
- (l) the insertion after the definition of “provider” of the following definitions:
“publish” means –
(a) to make generally known;
(b) to make a public announcement of;
(c) to disseminate to the public; or
(d) to produce or release for distribution;
and “publication” has a corresponding meaning;”;
“puffery’ means any value judgments or subjective assessments of quality based solely on the opinion of the evaluator and where there is no pre-established measure or standard;”;
“qualifying beneficiaries’ has the meaning contemplated in the FSC insofar as it relates to a recognised qualifying enterprise development contribution;”;
“recognised qualifying enterprise development contribution’ has the meaning contemplated in the FSC;”;

“replace or replacement” means the action or process of-
(a) substituting a financial product, wholly or in part, with another financial product; or
(b) the termination or variation of a financial product and the purchase, entering into, investment in or variation of another financial product, with the purpose of achieving the same or similar needs or objectives of the client or in anticipation of, or as a consequence of, effecting the substitution or variation, irrespective of the sequence of the occurrence of the transactions;”;

“related service” means any service or benefit provided or made available by a product supplier or a provider or any associate of that product supplier or provider, together with, or in connection with, any financial product, financial service or benefit in respect of that financial product or financial service, and includes a loyalty benefit and a no-claim bonus;”; and

“service supplier” means any person (whether or not that person is the agent of the provider), other than a representative, with whom a provider has an arrangement relating to the marketing, distribution, administration or provision of financial products, financial services or related services;”;

(m) the insertion after the definition of “sign-on bonus” of the following definition:
“social media” means websites, applications and other digital platforms that enable users to create and share content or participate in social networking and includes social and professional networks, forums, image and video-sharing platforms;”; and

(n) the insertion after the definition of “transaction requirement” of the following definitions:
“variation” includes:
(a) an acceleration of the contractual retirement date or other date on which benefits become available;
(b) a reduction in the premium or other periodic investment amount payable in respect of a financial product;
(c) making the financial product or investment paid-up;
(d) the cessation of premiums or other periodic investment amount;
(e) the application of the policy or investment value as premiums or other periodic investment amount payable in respect of a financial product;
(f) the reduction or removal of any guarantee or benefit in respect of a financial product;
(g) the cessation of the financial product;
(h) the financial product becoming static because an option to update cover, benefits, premiums or other periodic investment amounts has not been exercised;
(i) any transfer from one financial product to another financial product;
(j) a non-renewal of a short-term insurance policy;”; and

“white labelling” refers to the marketing of, or offering of, a specific financial product of a product supplier wholly or partially under the brand of another person who is not the product supplier or under the brand of both the product supplier and one or more other persons, in terms of an arrangement between the product supplier and that other person;”.

Amendment of section 2 of the General Code

3. Section 2 of the General Code is hereby amended by the substitution of the following section:
“A provider must at all times [**render financial services**] act honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.”.

Amendment of section 3 of the General Code

4. Section 3 of the General Code is hereby amended by the insertion after subsection (3) of the following subsections:

“(4) A provider -

- (a) may not indicate or imply that it is authorised, regulated or otherwise supervised by the Registrar or the Financial Services Board in respect of business for which it is not so authorised, regulated or supervised;
- (b) may not in any manner refer to its authorisation in any advertisement relating to products or services that are not financial products or financial services in respect of which it is authorised, in such a manner as to create the impression that its authorisation extends to such products and services;
- (c) that names the Registrar or Financial Services Board as its regulator and refers to matters not regulated by the Registrar or Financial Services Board must make it clear that those matters are regulated by neither Registrar nor the Financial Services Board.

(5) A provider may not describe itself or the financial services it renders as being “independent” if –

- (i) any direct or indirect ownership interest exists between the provider and any product supplier in respect of whose products the provider renders financial services; or
- (ii) any direct or indirect arrangement or relationship exists between the provider and any product supplier in respect of whose products the provider renders financial services that constitutes a conflict of interest.”.

Amendment of section 3A of the General Code

5. Section 3A of the General Code is hereby amended by -

(a) the substitution of paragraphs (iii), (iv) and (v) of subsection (1)(a) of the following paragraphs:

- “(iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), **[if those fees are reasonably commensurate to a service being rendered]**;
- (iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if **[those fees]** -
 - (aa) the amount, frequency, payment method and recipient of those fees and details of the services that are to be provided by the provider or its representatives in exchange for the fees are specifically agreed to by a client in writing; and
 - (bb) those fees may be stopped at the discretion of that client;
- (v) fees or remuneration for the rendering of a service to a third party **[,which fees or remuneration are reasonable commensurate to the service being rendered]**; “

(b) the substitution of paragraph (b) of subsection (1) of the following paragraph:

- “(b) A provider may not offer any financial interest to a representative of that provider **[for]** -
 - (i) that is determined with reference **[giving preference]** to the quantity of business secured for the provider without also giving due regard to the **[exclusion of the quality of the service rendered to]** delivery of fair outcomes for clients; or
 - (ii) for giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
 - (iii) for giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.”;

(c) the insertion after paragraph (b) of subsection (1) of the following paragraph:

“(bA) For purposes of subsection (1)(b)(i), a provider must be able to demonstrate that the determination of and entitlement to the financial interest -
(i) takes into account measurable indicators of the quality of treatment of clients and the quality of the representative’s compliance with this Act; and
(ii) is dependent on agreed minimum client treatment and compliance levels as agreed between the provider and the representative being achieved;
and that sufficient weight is attached to such indicators to materially mitigate the risk of the representative giving preference to the quantity of business secured for the provider over the fair treatment of clients.”;

(d) the substitution of paragraph (c) of subsection (1) of the following paragraph:

“(c) For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to sections 3A(1)(b) and 3A(1)(bA), in respect of its representatives.”;

(e) the insertion after paragraph (c) of subsection (1) of the following paragraph:

“(d) A provider or its representatives may only receive or offer the financial interests referred to in subsections (a)(iv) and (v) if -
(i) those financial interests are reasonably commensurate with the actual cost of performing the service to which they relate, taking into account the nature of the service and the resources, skills and competencies reasonably required to perform it;
(ii) the payment of those financial interests does not result in the provider or representative being remunerated more than once for performing a similar service;
(iii) any actual or potential conflicts between the interests of clients and the interests of the person receiving the financial interests are effectively mitigated; and
(iv) the payment of those financial interests does not impede the delivery of fair outcomes to clients.”; and

(f) the substitution of paragraph (b)(ii) of subsection (2) of the following paragraph:

“(ii) specify the type of financial interest that the provider will offer a representative and the basis on which a representative will be entitled to such a financial interest and motivate how that financial interest complies with sections 3A(1)(b) and 3A(1)(bA);”.

Amendment of section 4 of the General Code

6. Section 4 of the General Code is hereby amended by –

(a) the substitution of subsection (4) of the following subsection:

“(4) Subject to subsection (5), [A] a provider, in dealing with a client may not compare different financial services, financial products, product suppliers, providers or representatives, unless the differing characteristics of each are made clear, and my not make inaccurate, unfair or unsubstantiated criticisms of any financial service, financial product, product supplier, provider or representative.”; and

(b) the insertion after subsection (4) of the following subsection:

“(5) The requirements in section 14(10) relating to the use of comparisons in advertisements apply with the necessary changes to comparisons referred to in subsection (4).”.

Amendment of section 7 of the General Code

7. Section 7 of the General Code is hereby amended by –

- (a) the substitution in subsection (1) of the words preceding paragraph (a) of the following words:
 “Subject to the provisions of this Code, a provider **[other than a direct marketer,]** must-“;
- (b) the substitution in subsection (1)(c) of the words preceding paragraph (i) of the following words:
 “in particular, **[at the earliest reasonable opportunity]** prior to the conclusion of any transaction, provide, where applicable, full and appropriate information of the following:”;
- (c) the substitution of paragraph (v) of subsection (1)(c) of the following paragraph:
 “(v) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including **[the manner of payment or discharge thereof, the frequency thereof, and the consequences of non-compliance]** -
(aa) the amount, frequency and payment method thereof;
(bb) details of the services that are to be provided by the provider or its representatives in exchange therefor; and
(cc) the client’s rights in relation to terminating those obligations and the consequences of terminating or failing to meet those obligations;”
which information should, wherever feasible, be included in a written agreement between the client and the provider;”; and
- (d) the insertion after subsection (3) of the following subsection:
“(3A) A provider must at the earliest reasonable opportunity after conclusion of a transaction provide the client with all information referred to in subsections (1), (2) and (3) in writing, to the extent that any such information has not already been provided to the client in writing.

Insertion of new section after section 7 of the General Code

8. The General Code is hereby amended by the insertion of the following section after section 7:

“7A Forecasts, illustrations, hypothetical data or projected benefits and past performance data

- (1) Subject to subsection (2) and (3), the requirements in section 14(15) relating to the use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in an advertisement apply with the necessary changes to a provider when making use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in the rendering of a financial service.
- (2) A provider may only make a statement regarding the past performance (including awards and rankings) of a financial product or financial service if –
 (a) the basis on which the performance is measured, is clearly stated and the presentation of the performance is accurate, fair and reasonable;
 (b) the statement is accompanied by a warning that past performance is not indicative of future performance; and
 (c) the past performance is relevant to the financial service being rendered.
- (3) A provider that uses forecasts, illustrations, hypothetical data or projections when rendering financial services must –
 (a) furnish the client with support for such forecasts, illustrations, data or projections in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
 (b) make it clear that they are not guaranteed and are provided for illustrative purposes only;
 (c) disclose, where the returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence; and

- (d) warn the client about risks involved in buying or selling a financial product based on a forecast, illustration, hypothetical data or projection.”.

Amendment of section 8 of the General Code

9. Section 8 of the General Code is hereby amended by-

- (a) the substitution in subsection (1) of the words preceding paragraph (a) of the following words:
“A provider **[other than a direct marketer,]** must prior to providing a client with advice—“;
- (b) the substitution of paragraph (a) in subsection (1) of the following paragraph:
“(a) **[take reasonable steps to seek from the client appropriate and available information regarding the client’s financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice]** obtain from the client such information regarding the client’s needs and objectives, financial situation, risk profile and financial product knowledge and experience as is necessary for the provider to provide the client with appropriate advice, which advice takes into account -
(i) the client’s ability to financially bear any costs or risks associated with the financial product;
(ii) the extent to which the client has the necessary experience and knowledge in order to understand the risks involved in the transaction;
and
(iii) where the client is a pension fund, medical scheme, friendly society, employer or other entity that is being advised on entering into a financial product or transaction aimed at providing benefits for its members, employees or other underlying natural persons, the reasonably identified needs and circumstances of such members, employees or other natural persons;”;
- (c) the insertion after paragraph (c) in subsection (1) of the following paragraph:
“(cA) where as a result of limitations referred to in paragraph (c) the provider is not able to identify a financial product or products that will be appropriate to the client’s risk profile and financial needs, the provider must make this clear to the client, decline to recommend a product or transaction and suggest to the client that they should seek advice from another appropriately authorised provider;”;
- (d) the substitution of subsection (4) of the following subsection:
“(4)(a) In performing the analysis referred to in subsection (1)(b) a provider may, in determining the extent of the client information necessary to provide appropriate advice, take into account -
(i) any specific objectives or financial needs of the client that the client has explicitly requested the provider to focus on, or not to focus on, in performing the analysis;
(ii) any specific objectives or financial needs of the client that the client and the provider have explicitly agreed to focus on or not to focus on in performing the analysis;
(iii) applicable surrounding circumstances that make it clear that the analysis can reasonably be expected by the client to focus only on specific objectives or specific financial needs of the client;
(iii) the fact that the client has explicitly declined to provide any information requested by the provider.
- (4)(b) Where an analysis referred to in subsection (1)(b) is performed in any of the circumstances referred to in subsection (4)(a), the provider must alert the client as soon as reasonably possible that -

- (i) there may be limitations on the appropriateness of the advice provided in light of such circumstances; and
- (ii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs, particularly any aspects of such objectives, situation or needs that were not considered in light of the aforementioned circumstances.

(4)(c) Where a client elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.”.

Amendment of section 9 of the General Code

10. Section 9 of the General Code is hereby amended by –

- (a) the insertion after subsection (1) of the following subsection:
“(1A) The Registrar may determine the format of and the matters to be addressed in the record of advice referred to in section 9(1).”; and
- (b) the substitution of subsection (2) of the following subsection
 “A provider[, **other than a direct marketer,**] must provide a client with a copy of the record contemplated in 9(1) in writing.”.

Amendment of section 14 of the General Code

11. Section 14 of the General Code is hereby amended by the substitution of that section of the following section:

“14 ADVERTISING

Application

- (1)(a) For purposes of this section, “client” includes the general public.
- (b) The principles, requirements and standards contained in this section apply regardless of the medium used to publish an advertisement.
- (c) This section applies to any advertisement published on or after the date on which this section takes effect, regardless of whether the advertisement was also previously published prior to this section taking effect.

General principles

- (2)(a) A provider, other than a provider that is a natural person and a representative, must have documented processes and procedures for the approval of advertisements by a key individual.
- (b) A provider must, prior to publishing an advertisement, take reasonable measures to ensure that the information provided in the advertisement is consistent with this section.
- (c) Where feasible, measures must provide for an objective review of an advertisement other than by the person that prepared or designed it.
- (d) Where an advertisement is produced or published by another person the provider must –
 - (i) where the person producing or publishing the advertisement is the provider's representative or is otherwise acting on behalf of the provider in relation to the advertisement, ensure that the advertisement is consistent with this section and have appropriate processes in place to ensure such consistency; and
 - (ii) where the person producing or publishing the advertisement is not acting on behalf of the provider in relation to the advertisement but the provider is aware or ought reasonably to be aware of the production or publication, take reasonable steps to mitigate the risk of the advertisement not being consistent with this rule.

- (e) Where a provider becomes aware that an advertisement that relates to its business, financial services or related services, whether published by the provider or any other person, is not consistent with this section, the provider must –
 - (i) as soon as reasonably practicable correct or withdraw the advertisement; or
 - (ii) take reasonable steps to ensure that it is corrected or withdrawn; and
 - (iii) notify any persons who it knows to have relied on the advertisement.

Factually correct, balanced and not misleading

- (3)(a) Advertisements must –
 - (i) be factually correct, excluding aspects of an advertisement constituting puffery;
 - (ii) provide a balanced presentation of key information; and
 - (iii) must not be misleading.
- (b) An advertisement that references statistics, performance data, achievements or awards must disclose –
 - (i) the source and the date thereof; and
 - (ii) the identity of the grantor of an award and must make it clear if the award is granted by an associate of the provider or product supplier.
- (c) An advertisement that refers to premiums or other periodic investment amounts must –
 - (i) in the case where the premium or periodic investment amount will escalate automatically, indicate the escalation rate or basis; and
 - (ii) where the premium, in the case of an insurance policy, (with or without automatic escalations) is not guaranteed for the full term of the financial product but is subject to review after a period, indicate the period for which the premium is guaranteed.
- (d) Descriptions in an advertisement must not -
 - (i) give benefits or returns undue prominence compared with risks; and
 - (ii) exaggerate benefits or returns or create expectations regarding financial product or financial service performance or the performance of related services that the provider does not reasonably expect to achieve.
- (e) Descriptions in an advertisement, in respect of a specific financial product, financial service or related service, must include key limitations, exclusions, risks and charges, which must be clearly explained and must not be worded positively to imply a benefit.
- (f) References to a fee or cost must give a realistic impression of the overall level of fees or costs a person is likely to pay, including any indirect fees or costs.
- (g) Notwithstanding paragraph (e), but subject to all other requirements of this section, where a provider can demonstrate that, due to the nature of the medium used for the advertisement, it is not reasonably practicable for the information required in paragraph (e) to be fully included in the advertisement itself, the advertisement must indicate -
 - (i) that additional information on key limitations, exclusions, risks and charges related to the financial product, financial service or related service being advertised is available; and
 - (ii) where and how the additional information in (i) may be accessed.
- (h) The information referred to in paragraph (g) must be publicly available and readily accessible to the average client targeted by the advertisement.
- (i) An advertisement, when examined as a whole, must not be constructed in such a way as to lead the average targeted client to any false conclusions he or she might reasonably rely upon.
- (j) For the purposes of (i), a provider must when constructing an advertisement consider the conclusion likely to be made by policyholders that are subject to the advertisement, and in doing so have regard to –
 - (i) the literal meaning of the words;
 - (ii) impressions from nonverbal portions of the advertisement; and
 - (iii) materials and descriptions omitted from the advertisement.
- (k) An advertisement relating to a financial product that is targeted at a particular type or group of client must make this clear.
- (l) An advertisement must not obscure information.
- (m) Each piece of information in an advertisement must be prominent enough in accordance with subsection (14) and proximate enough to other information so as not to mislead the average targeted client.

- (n) An advertisement must not be designed to exaggerate the need for urgency which could encourage the average targeted client to make unduly hasty decisions.
- (o) Warnings, disclaimers and qualifications contained in an advertisement must –
 - (aa) not be inconsistent with other content in the advertisement; and
 - (bb) have sufficient prominence to effectively convey key information.
- (o) An advertisement relating to a financial service must –
 - (aa) disclose any relevant limitations on the extent of the financial service and the range of financial products on which the financial service is based;
 - (bb) not create a misleading impression about the nature and extent of a provider's skills, experience, knowledge and expertise insofar it relates to the financial service; and
 - (cc) not create a misleading impression about the cost of a financial service including that it is 'free' if the service is in fact paid for by the client directly or indirectly through other costs or charges.

Public interest

- (4) An advertisement must not disparage or make inaccurate, unfair or unsubstantiated criticisms about any financial product, financial service, product supplier or provider.

Identification of product supplier or provider

- (5)(a) An advertisement relating to a financial product or financial service must clearly and prominently in accordance with subsection (14) identify the product supplier or provider or both, as applicable.
- (b) An advertisement must not use the group or parent company name or the name of any other associate of a product supplier or provider to create the impression that any entity other than the product supplier or provider, as the case may be, is financially or otherwise liable in relation to a financial product or financial service.
- (c) An advertisement must not use the name of another person to mislead or deceive as to the true identity of the provider or product supplier or to create the impression that any person other than the provider or product supplier, as applicable, is financially or otherwise liable in relation to a financial product or financial service.
- (d) An advertisement relating to a financial product that is subject to a white labelling arrangement must clearly and prominently in accordance with subsection (14) identify the product supplier.

Appropriate language and medium

- (6)(a) An advertisement must use plain language.
- (b) Terms must be defined or explained if the average targeted client could not reasonably be expected to understand them.
- (c) A provider must consider the appropriateness of the medium to be used to publish any advertisement in relation to the complexity of the features of the financial product or financial service or other information being communicated.

Record keeping of advertisements

- (7)(a) A provider must keep adequate records of all advertisements.
- (b) All records referred to in subsection (7)(a) must be kept for a period of at least 5 years after publication.

Negative option marketing

- (8) A provider or any person acting on its behalf may not offer to enter into any agreement in respect of a financial product or financial service on the basis that the agreement will automatically come into existence unless the client explicitly declines the provider's offer to enter into agreement.

Unwanted direct advertising

- (9)(a) Where a provider or any person acting on its behalf uses a telephone or mobile phone call, voice or text message or other electronic communication for an advertisement, it must allow the client during that call or within a reasonable time after receiving the

message, the opportunity to demand that the provider or other person does not publish any further advertisements to the client through any of these mediums.

- (b) A provider or any person acting on its behalf may not charge a client a fee or allow a service supplier to charge a client any fee for making a demand in terms of paragraph (a).

Comparative marketing

- (10)(a) Where a survey or other financial product or financial service comparison informs a comparative advertisement, the survey or other product or service comparison –
- (i) must be undertaken by an independent person or, if it is not reasonably practicable that it is undertaken by an independent person, the advertisement must be so qualified;
 - (ii) must be conducted at regular intervals if relied on or referenced on an on-going basis;
 - (iii) must ensure that financial products, financial services or related services being compared have the same or similar characteristics;
 - (iv) must take account of comparable features across the financial product, financial service or related service offerings included in the sample to ensure that not only the price (e.g. the Rand value of premiums or investments) is being compared, but also the benefits provided under the financial products, financial services or related services concerned;
 - (v) in particular, in the case of comparisons between financial products that are insurance policies, must ensure that price comparisons are based on policies with equivalent terms and conditions, including insured events, cover levels, exclusions, waiting periods and other key features;
 - (vi) may not focus on the price of a financial product, financial service or related service to the exclusion of the suitability of the financial product, financial service or related services or its delivery on client expectations; and
 - (viii) must ensure that the information used in comparisons is current, complete and accurate.
- (b) The survey or other comparison source and date thereof must be referenced in the advertisement and the methodology applied must be publicly available and readily accessible to the public in an easily understandable format.

Puffery

- (11) Advertisements that include puffery must be consistent with the provisions relating to puffery in the Code of Advertising Practice issued by the Advertising Standards Authority of South Africa as amended from time to time.

Endorsements

- (12)(a) Testimonials and third person endorsements used in an advertisement –
- (i) must be the genuine opinion and actual experience of the person making the testimonial or endorsement and be properly attributed to such person;
 - (ii) must be based upon actual statements made for testimonial or endorsement purposes; and
 - (iii) may use a pseudonym instead of the real name of the person making the testimonial or endorsement, provided this is stated in the advertisement concerned.
- (b) If the person making the testimonial or endorsement, or their employer or principal or any associate, has any financial interest or relationship to the –
- (i) provider or any associate of the provider or person acting on behalf of the provider; or
 - (ii) product supplier or any associate of the product supplier or person acting on behalf of the product supplier where the advertisement relates to a financial product, or will or has been compensated for the endorsement by any person (other than through reimbursement of actual costs incurred by the person making the endorsement), this must be disclosed in the advertisement.
- (c) Any endorsement in an advertisement must clearly and prominently in accordance with subsection (14) state that the endorsement does not constitute financial advice.

Loyalty benefits or bonuses

- (13)(a) An advertisement that references a loyalty benefit (including so-called cash- or premium-back bonuses in relation to insurance policies) or no-claim bonus must not create the impression that such benefit or bonus is free and must adequately –
- (i) indicate if the loyalty benefit or no-claim bonus is optional or not; and
 - (ii) regardless of whether or not the loyalty benefit or no-claim bonus is optional, express the cost of the benefit or bonus including, where applicable, the impact that such cost has on the premium or investment amount, unless the impact is negligible; and
 - (iii) identify the grantor of the benefit or bonus.
- (b) For purposes of subsection (13)(a)–
- (i) the impact is deemed to be negligible if the cost of the loyalty benefit or no-claim bonus comprises less than 10% of the total premium or investment amount payable under a financial product.
 - (ii) where the impact of a loyalty benefit or no-claim bonus is not negligible and where the advertisement refers to the actual premium or investment amount payable –
 - (aa) the cost of the benefit or bonus must be shown as a percentage of that premium or investment amount; and
 - (bb) the provider must be able to demonstrate that the premium or investment amount and benefit cost used in the advertisement presents a true reflection of the cost impact for the average targeted client; and
 - (iii) where the impact of a loyalty benefit or no-claim bonus is not negligible and where the advertisement does not refer to the actual premium or investment amount payable, the average cost of the benefit or bonus as a percentage of premium or investment amount must be provided.
- (c) Where an advertisement highlights a loyalty benefit or no-claims bonus as a significant feature of a financial product or financial service and makes reference to a projected loyalty benefit value or no-claim bonus value that is payable on the expiry of a period in the future, it must also express the value of the projected benefit or bonus in present value terms, using reasonable assumptions about inflation.
- (d) An advertisement must clearly state whether the availability or extent of a loyalty benefit or no-claims bonus is contingent on future actions of the client or any factors not within the client's control.
- (e) An advertisement may not create the impression that the bonus or benefit is guaranteed or more likely to materialise than the provider or product supplier reasonably expects for the average targeted client.

Prominence

- (14)(a) In determining prominence, whenever information must be disclosed prominently as required by this section, consideration must, as appropriate, be given to –
- (i) the target audience of the advertisement;
 - (ii) the likely information needs of the average targeted client;
 - (iii) prominence in the context of the advertisement as a whole;
 - (iv) positioning of the text and audibility and speed of speech;
 - (v) the duration of displays of key information;
 - (vi) background;
 - (vii) colour; and
 - (viii) font size.
- (b) A statement or information in an advertisement is not regarded as being prominent if, amongst other things, the statement or information is –
- (i) obscured through the close proximity of promotional illustrations and/or additional text;
 - (ii) difficult to read due to the use of small font sizes, unclear type styles or the duration for which it is displayed;
 - (iii) likely to be overlooked due to its position;
 - (iv) superimposed across a coloured or patterned background which lessens its visual impact; or
 - (v) difficult to hear or understand due to the volume or speed at which speech is delivered.

- (c) Subject to paragraph (d), in an advertisement relating to a financial product that is subject to a white labelling arrangement, the name of the product supplier must be as frequently mentioned, as audible or as visible as that of the white label and, in respect of written media, must be at least the same font size as that of the white label.
- (d) Paragraph (c) does not apply to an advertisement relating to a financial product that is subject to a white labelling arrangement where –
 - (i) the white label arrangement is with a product supplier that is part of the same group of companies that the provider is part of;
 - (ii) the advertisement uses the brand of the product supplier; and
 - (iii) all requirements of subsection (5) and paragraphs (a) and (b) are complied with in relation to the identification of the product supplier.

Principles relating to forecasts, illustrations, hypothetical data or projected benefits and past performance data

- (15)(a) No projected benefits (including but not limited to future investment values and, in the case of insurance policies, maturity, income, death, disability or full or partial surrender benefits) may be included in advertisements, if the benefits depend on future unknown investment performance, unless used to demonstrate the benefits of savings generally.
- (b) Any reference to projected benefits, investment performance or returns must clearly reflect the effect that fees and costs may have on actual returns or benefits.
- (c) When past investment performance is provided for or referred to in an advertisement –
 - (i) all information must be accurate and must be provided in the correct context, and the provider must be able to substantiate all claims made; and
 - (ii) a statement must be included that past performance cannot be extrapolated into the future and is not an indication of future performance.
- (d) If tax advantages are referenced in an advertisement such advantages must be explained, and any key restrictions, penalties, and mitigating circumstances must be disclosed.
- (e) Any reference to guaranteed elements or features must indicate whether the guarantee is subject to any requirements and conditions and where disclosure of those requirements and conditions can be found.
- (f) Where a financial product comprises participatory interests in an underlying collective investment scheme referred to in the Collective Investment Schemes Control Act No. 45 of 2002, or where a financial product provides for investment of client's funds into collective investment scheme portfolios, any advertisement must, in addition to the applicable requirements of this subsection, comply with any determination of advertising and marketing requirements for collective investment schemes made under the Collective Investment Schemes Control Act No. 45 of 2002."

Amendment of section 15 of the General Code

12. Section 15 of the General Code is hereby amended by the –

- (a) deletion of subsections (2), (3) and (4);
- (b) the substitution of subsection (5) of the following subsection:

“(5) A direct marketer **[shall be obliged to] must** record all telephone conversations with clients in the course of direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings. **[Records of advice furnished to a client telephonically need not be reduced to writing but a copy of the relevant voicellogged records must be provided, on request, to the client or Registrar within a reasonable time.]**”;
- (c) the substitution of subsection (6) of the following subsection:

“(6) Notwithstanding the above **[or contrary provision in the code]**, a direct marketer must at the earliest reasonable opportunity after conclusion of a transaction provide, in writing, the client with all information referred to in sections [such of the information required to be provided to the client in terms of clauses] 4[,] and

5 [and 7] of this Code, to the extent that any such information has not already been provided to the client in writing [as has not yet been recorded or provided to the client in writing before the conclusion of any transaction, must be provided to the client in writing within 30 days thereafter].”; and

- (d) the insertion of the following subsection after subsection (6):
“(7) A provider must, on request of the client, make recordings of telephone discussions available to the client.”.

Amendment of Part XI of the General Code

13. Part XI of the General Code is hereby amended by the substitution of the following Part:

PART XI COMPLAINTS MANAGEMENT (ss 16 - 19)

16 DEFINITIONS

In this Part –

“**client query**” means a request to the provider or the provider’s service supplier by or on behalf of a client, for information regarding the provider’s financial products, financial services or related processes, or to carry out a transaction or action in relation to any such product or service;

“**complainant**” means a person who submits a complaint and includes a –

- (a) client;
- (b) person nominated as the person in respect of whom a product supplier should meet financial product benefits or that persons’ successor in title;
- (c) person whose life is insured under a financial product that is an insurance policy;
- (d) person that pays a premium or an investment amount in respect of a financial product;
- (e) member;
- (f) person whose dissatisfaction relates to the approach, solicitation marketing or advertising material or an advertisement in respect of a financial product, financial service or related service of the provider,

who has a direct interest in the agreement, financial product or financial service to which the complaint relates, or a person acting on behalf of a person referred to in (a) to (f);

“**complaint**” means an expression of dissatisfaction by a person to a provider or, to the knowledge of the provider, to the provider’s service supplier relating to a financial product or financial service provided or offered by that provider which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a client query, that –

- (a) the provider or its service supplier has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the provider or to which it subscribes;
- (b) the provider or its service supplier’s maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or
- (c) the provider or its service supplier’s has treated the person unfairly;

“**compensation payment**” means a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of a provider to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the provider’s contravention, non-compliance, action, failure to act, or unfair treatment forming the basis of the complaint, where the provider accepts liability for having caused the loss concerned, but excludes any –

- (a) goodwill payment;
- (b) payment contractually due to the complainant in terms of the financial product or financial service concerned; or

- (c) refund of an amount paid by or on behalf of the complainant to the provider where such payment was not contractually due;
and includes any interest on late payment of any amount referred to in (b) or (c);

“goodwill payment” means a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of a provider to a complainant as an expression of goodwill aimed at resolving a complaint, where the provider does not accept liability for any financial loss to the complainant as a result of the matter complained about;

“member” in relation to a complainant means a member of a -

- (a) pension fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act 52 of 1956);
- (b) friendly society as defined in section 1(1) of the Friendly Societies Act, 1956 (Act 25 of 1956);
- (c) medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998); or
- (d) group scheme as contemplated in the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act, 1998, and section 55 of the Short-term Insurance Act, 1998;

“rejected” in relation to a complaint means that a complaint has not been upheld and the provider regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint and includes complaints regarded by the provider as unjustified or invalid, or where the complainant does not accept or respond to the provider’s proposals to resolve the complaint;

“reportable complaint” means any complaint other than a complaint that has been –

- (a) upheld immediately by the person who initially received the complaint;
- (b) upheld within the provider’s ordinary processes for handling client queries in relation to the type of financial product or financial service complained about, provided that such process does not take more than five business days from the date the complaint is received; or
- (c) submitted to or brought to the attention of the provider in such a manner that the provider does not have a reasonable opportunity to record such details of the complaint as may be prescribed in relation to reportable complaints; and

“upheld” means that a complaint has been finalised wholly or partially in favour of the complainant and that –

- (a) the complainant has explicitly accepted that the matter is fully resolved; or
- (b) it is reasonable for the provider to assume that the complainant has so accepted; and
- (c) all undertakings made by the provider to resolve the complaint have been met or the complainant has explicitly indicated its satisfaction with any arrangements to ensure such undertakings will be met by the provider within a time acceptable to the complainant.

17 COMPLAINTS MANAGEMENT FRAMEWORK

Establishment of complaints management framework

- (1)(a) A provider, excluding a representative, must establish, maintain and operate an adequate and effective complaints management framework to ensure the effective resolution of complaints and the fair treatment of complainants that –
 - (i) is proportionate to the nature, scale and complexity of the provider’s business and risks;
 - (ii) is appropriate for the business model, policies, services, and clients of the provider;
 - (iii) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants;
 - (iv) does not impose unreasonable barriers to complainants; and
 - (v) must address and provide for, at least, the matters provided for in this Part.
- (b) A provider must regularly review its complaints management framework and document any changes thereto.

Requirements for complaints management framework

- (2)(a) The complaints management framework must at least, provide for –
- (i) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the provider;
 - (ii) appropriate performance standards and remuneration and reward strategies (internally and where any functions are outsourced) for complaints management to ensure objectivity and impartiality;
 - (iii) documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended;
 - (iv) documented procedures which clearly define the escalation, decision-making, monitoring and oversight and review processes within the complaints management framework;
 - (v) appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to executive management, the board of directors and any relevant committee of the board or in the absence of a board the governing body on –
 - (aa) identified risks, trends and actions taken in response thereto; and
 - (bb) the effectiveness and outcomes of the complaints management framework;
 - (vi) appropriate communication with complainants and persons representing complainants on the complaints and the complaints processes and procedures;
 - (vii) appropriate engagement between the provider and a relevant ombud;
 - (viii) meeting requirements for reporting to the Registrar and public reporting in accordance with this Part;
 - (ix) a process for managing complaints relating to the provider's representatives and service suppliers, insofar as such complaints relate to services provided in connection with the provider's financial products, financial services or related services, which process must –
 - (aa) enable the provider to reasonably satisfy itself that the representative or service supplier has adequate complaints management processes in place to ensure fair treatment of complainants;
 - (bb) provide for monitoring and analysis by the provider of aggregated complaints data in relation to complaints received by its representatives and service suppliers and their outcomes;
 - (cc) include effective referral processes between the provider and its representatives and service suppliers for handling and monitoring complaints that are submitted directly to either of them and require referral to the other for resolution; and
 - (dd) include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint; and
 - (x) regular monitoring of the complaints management framework generally.

Allocation of responsibilities

- (3)(a) The board of directors or in the absence of a board the governing body and key individuals of the provider, excluding a representative, is responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the provider's complaints management framework.
- (b) Any person that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must –
- (i) be adequately trained;
 - (ii) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of customers, the subject matter of the complaints concerned and relevant legal and regulatory matters;
 - (iii) not be subject to a conflict of interest; and
 - (iv) be adequately empowered to make impartial decisions or recommendations.

Categorisation of complaints

- (4)(a) An provider, excluding a representative, must categorise reportable complaints in accordance with the following minimum categories –
- (i) complaints relating to the design of a financial product, financial service or related service, including the fees, premiums or other charges related to that financial product or financial service;
 - (ii) complaints relating to information provided to clients;
 - (iii) complaints relating to advice;
 - (iv) complaints relating to financial product or financial service performance;
 - (v) complaints relating to service to clients, including complaints relating to premium or investment contribution collection or lapsing of a financial product ;
 - (vi) complaints relating to financial product accessibility, changes or switches, including complaints relating to redemptions of investments;
 - (vii) complaints relating to complaints handling;
 - (viii) complaints relating to insurance risk claims, including non-payment of claims; and
 - (ix) other complaints.
- (b) A provider must, in addition to the categorisation set out in paragraph (a), consider additional categories relevant to its chosen business model, financial products, financial services and client base that will support the effectiveness of its complaint management framework in managing conduct risks and effecting improved outcomes and processes for its clients.
- (c) A provider must categorise, record and report on reportable complaints by identifying the category contemplated in paragraphs (a) and (b) to which a complaint most closely relates and group complaints accordingly.

Complaints escalation and review process

- (5)(a) A provider, excluding a representative, must establish and maintain an appropriate internal complaints escalation and review process.
- (b) Procedures within the complaints escalation and review process should not be overly complicated, or impose unduly burdensome paperwork or other administrative requirements on complainants.
- (c) The complaints escalation and review process should -
- (i) follow a balanced approach, bearing in mind the legitimate interests of all parties involved including the fair treatment of complainants;
 - (ii) provide for internal escalation of complex or unusual complaints at the instance of the initial complaint handler;
 - (iii) provide for complainants to escalate complaints not resolved to their satisfaction; and
 - (iv) be allocated to an impartial, senior functionary within the provider or appointed by the provider for managing the escalation or review process of the insurer.

Decisions relating to complaints

- (6)(a) Where a complaint is upheld, any commitment by the provider to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.
- (b) Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any applicable escalation or review processes, including how to use them and any relevant time limits.

Record keeping, monitoring and analysis of complaints

- (7)(a) A provider must ensure accurate, efficient and secure recording of complaints and complaints-related information.
- (b) The following must be recorded in respect of each reportable complaint-
- (i) all relevant details of the complainant and the subject matter of the complaint;
 - (ii) copies of all relevant evidence, correspondence and decisions;
 - (iii) the complaint categorisation as set out in subsection (4); and
 - (iv) progress and status of the complaint, including whether such progress is within or outside any set timelines.

- (c) A provider must maintain the following data in relation to reportable complaints categorised in accordance with subsection (4) on an ongoing basis -
 - (i) number of complaints received;
 - (ii) number of complaints upheld;
 - (iii) number of rejected complaints and reasons for the rejection;
 - (iv) number of complaints escalated by complainants to the internal complaints escalation process;
 - (v) number of complaints referred to an ombud and their outcome;
 - (vi) number and amounts of compensation payments made;
 - (vii) number and amounts of goodwill payments made; and
 - (viii) total number of complaints outstanding.
- (d) Complaints information recorded in accordance with this subsection must be scrutinised and analysed by a provider on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for its clients, and to prevent recurrences of poor outcomes and errors.
- (e) A provider must establish and maintain appropriate processes for reporting of the information in subsection (7)(d) to its governing body or executive management.

Communication with complainants

- (8)(a) A provider must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the provider's clients.
- (b) A provider may not impose any charge for a complainant to make use of complaint processes and procedures.
- (c) All communications with a complainant must be in plain language.
- (d) A provider must, wherever feasible, provide clients with a single point of contact for submitting complaints.
- (e) A provider must disclose to a client –
 - (i) the type of information required from a complainant;
 - (ii) where, how and to whom a complaint and related information must be submitted;
 - (iii) expected turnaround times in relation to complaints; and
 - (iv) any other relevant responsibilities of a complainant.
- (f) A provider must within a reasonable time after receipt of a complaint acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including –
 - (i) contact details of the person or department that will be handling the complaint;
 - (ii) indicative and, where applicable, prescribed timelines for addressing the complaint;
 - (iii) details of the internal complaints escalation and review process if the complainant is not satisfied with the outcome of a complaint;
 - (iv) details of escalation of complaints to the office of a relevant ombud and any applicable timeline; and
 - (v) details of the duties of the provider and rights of the complainant as set out in the rules applicable to the relevant ombud.
- (g) Complainants must be kept adequately informed of –
 - (i) the progress of their complaint;
 - (ii) causes of any delay in the finalisation of a complaint and revised timelines; and
 - (iii) the provider's decision in response to the complaint.

18 ENGAGEMENT WITH OMBUD AND REPORTING

Engagement with ombud

- (1)(a) A provider must –
 - (i) have appropriate processes in place for engagement with any relevant ombud in relation to its complaints;
 - (ii) clearly and transparently communicate the availability and contact details of the relevant ombud services to complainants at all relevant stages of the relationship with a client, including at the start of the relationship and in relevant periodic communications;

- (iii) display and/or make available information regarding the availability and contact details of the relevant ombud services at the premises and/or on the web site of the provider;
 - (iv) maintain specific records and carry out specific analysis of complaints referred to them by the ombud and the outcomes of such complaints; and
 - (v) monitor determinations, publications and guidance issued by any relevant ombud with a view to identifying failings or risks in their own policies, services or practices.
- (b) A provider must –
- (i) maintain open and honest communication and co-operation between itself and any ombud with whom it deals; and
 - (ii) endeavour to resolve a complaint before a final determination or ruling is made by an ombud, or through its internal escalation process, without impeding or unduly delaying a complainant's access to an ombud.

19 REPORTING COMPLAINTS INFORMATION

A provider must have appropriate processes in place to ensure compliance with any prescribed requirements for reporting complaints information to any relevant designated authority or to the public as may be required by the Registrar.

Short title and Commencement

14. This Notice is called the Amendment of the General Code of Conduct for Authorised FSPs and Representatives, 2017, and comes into operation on publication in the Government Gazette, except those paragraphs of the Notice specified in the first column of the Table hereunder, which will take effect on the dates as indicated in the second column of the Table.

Provision of Notice	Effective Date
Paragraph 11 (in respect of section 14 of the General Code)	1 July 2018
Paragraph 13 (in respect of Part XI of the General Code)	1 January 2019

SCHEDULE B

Interpretation

1. In this schedule, “Short-term Deposit Code” means the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2004, published in Board Notice No. 102 of 2004, as amended.

Amendment of section 1 of the Short-term Deposit Code

2. Section 1 of the Short-term Deposit Code is amended by –
 - (a) the substitution in subsection (1) of the definition “advertisement” of the following definition:
“**advertisement**’ has the meaning assigned to it in section 1(1) of the General Code;”;
and
 - (b) the insertion of the following definition after the definition of “deposit”:
“**General Code**’ means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, published in Board Notice No. 80 of 2003, as amended”.

Amendment of section 6 of the Short-term Deposit Code

3. Section 6 of the Short-term Deposit Code is amended by –
 - (a) the substitution of the introductory paragraph before paragraph (a) for the following:
“(1) A provider must, subject to the provisions of this Code –”;
 - (b) the deletion of paragraph (f); and
 - (c) the insertion of the following subsection after paragraph (e):
“(2) A provider must comply with-
 - (a) section 14 of the General Code; and
 - (b) Part XI of the General Code.”.

Amendment of Parts IV and V of the Short-term Deposit Code

4. Parts IV and V of the Short-term Deposit Code is hereby amended by the deletion of those Parts.

Short title and Commencement

5. This Notice is called the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2017, and comes into operation on publication in the Government Gazette, except those paragraphs of the Notice specified in the first column of the Table hereunder, which will take effect on the dates as indicated in the second column of the Table.

Provision of Notice	Effective Date
Paragraph 3(a) and (c) [in respect of the introductory paragraph before paragraph (a) in section 6 and section 6(2)(a)]	1 July 2018
Paragraph 3(b) and (c) [in respect of section 6(1)(f) and 6(2)(b)]	1 January 2019