



**STATEMENT SUPPORTING THE PROPOSED
AMENDMENTS TO THE FIT AND PROPER
REQUIREMENTS FOR FINANCIAL SERVICES
PROVIDERS, 2017**

NOVEMBER 2020

1 BACKGROUND AND PURPOSE OF THE STATEMENT

1.1 In terms of section 98 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (Financial Sector Regulation Act), a financial sector regulator may not make a regulatory instrument unless it has published the following documents:

- (a) a draft of the regulatory instrument;
- (b) a statement explaining the need for and the intended operation of the regulatory instrument;
- (c) a statement of the expected impact of the regulatory instrument; and
- (d) a notice inviting submissions in relation to the regulatory instrument, stating where, how and by when submissions are to be made.

1.2 The FSR Act defines a regulatory instrument as each of the following: -

- (a) A prudential standard;*
- (b) a conduct standard;*
- (c) a joint standard;*
- (d) an Ombud Council rule;*
- (e) a determination of fees in terms of section 237(1)(a);*
- (f) an instrument identified as a regulatory instrument in a financial sector law; and*
- (g) an instrument amending or revoking an instrument referred to in paragraphs (a) to (f)".*

Sub-section (f) of this definition is relevant for this proposed amendment as section 1B of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS) determines that *for the purposes of the definition of "regulatory instrument" in section 1 of the Financial Sector Regulation Act, fit and proper requirements determined in terms of section 6A, codes of conduct drafted under section 15 and criteria and guidelines for the approval of compliance officers determined under section 17(2) are regulatory instruments.*

1.3 In fulfilment of the abovementioned requirements, the Financial Sector Conduct Authority (Authority) has prepared a statement of the need for, intended operation and expected impact of the proposed amendments to the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (proposed amendments).

2 STATEMENT OF NEED

2.1 The Determination of Fit and Proper Requirements for Financial Services Providers, 2017 (Determination), came into effect on 1 April 2018. It, amongst others, repealed the Determination of Fit and Proper Requirements for Financial Services Providers, 2008 (2008

Determination). The Determination was subsequently amended to ensure alignment with newly introduced insurance legislation.

2.2 In April 2018, the Determination introduced several new competence requirements and re-introduced the requirements of continuous professional development (CPD). The CPD requirements formed part of the 2008 Determination, but the effective date thereof was delayed by way of an exemption that was granted to the industry.

2.3 After the inception of the Determination, it came to the attention of the Authority that further amendments thereto were required, related to the introduction of the new requirements, which were addressed in the interim by the issuing of exemptions. It also became clear to the Authority that certain provisions of the Determination required clarification.

2.4 The main purpose of these amendments is to update the Determination in order to make provision for circumstances identified above, to limit the need for further exemptions, to update incorrect references and to ensure that the Determination is more easily understood and interpreted.

2.5 The proposed amendments include –

- (a) definition of “CPD”: The aim of the amendment is to clarify that this definition has the same meaning as the definition of “continuous professional development” in section 1(1) of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act). The further aim is to reiterate that the FAIS Act and the Determination must be read in conjunction with each other.
- (b) the definition of “CPD activity”: The purpose of the amendment is to update the Determination to incorporate the exemption that was granted to members of foreign professional bodies from the CPD requirements (FSCA FAIS Notice 35 of 2019). The effect of this amendment is therefore to extend this definition which is currently limited to activities accredited by professional bodies that are SAQA recognised to also include CPD activities recognised or approved by a foreign professional body.
- (c) the definition of “foreign professional body”: This is a consequential amendment of the amendment to the definition of “CPD activity”.
- (d) section 12A: The provision relating to execution of sales has been removed from section 22(b)(ii) and has been inserted into Part 1 of Chapter 3. This amendment seeks

to provide clarification as to the applicability of the relevant competence requirements in circumstances where only execution of sales is performed by representatives. The content of the provision has remained unchanged.

- (e) deletion of section 13(6): in order to align the requirements of section 13(5) with principle-based supervision, the Authority has deleted the requirement to prescribe the manner in which a financial services provider must comply with section 13(5).
- (f) section 22: in accordance with subparagraph (d) above, the provision relating to the performance of execution of sales has been deleted from this section. The requirements set out in section 22(b)(ii)(bb) has been moved to Chapter 5 dealing with Operational Ability.
- (g) section 24(2)(c) and (d): the Authority has encountered circumstances where subjects that are included in a qualification have a different name, but are the same as, or similar to, the subjects that appear on the Appropriate Subject List in Table 1 in Annexure Two of the Determination. As it is impossible to list all possible subjects, the amendment seeks to ensure that the Authority is empowered to recognise qualifications where the subject names differ from those listed in the Appropriate Subject List but are in nature the same or similar to the subjects so listed.
- (h) the aim of the amendment to sections 25 and 28 is to correct the cross-referencing to the newly inserted section 12A relating to the execution of sales.
- (i) The aim of the amendment to section 29 is to correct a technical error.
- (j) section 36A: as per subparagraph (f) above, this section inserts the requirements relating to execution of sales in Chapter 5, as the requirements directly relate to operational ability requirements. The content of the provision has remained unchanged.
- (k) Correction of a technical error in section 46, the intention was that the provision should refer to both subsections (i) and (ii).
- (l) sections 52(9) and (11A): The transitional provisions do not make provision for the circumstances as set out in the newly inserted section 11A. This amendment aims to do so.

- (m) Task 10 of Table 1 in Annexure 5: this amendment seeks to reduce the knowledge required in respect of the FIC Act and Money Laundering and Terrorist Financing control regulations for purposes of the regulatory examinations. The Authority is of the view that the knowledge, as indicated in the amendment, is sufficient.

2.5 The proposed amendments are intended to take effect early 2021.

3 STATEMENT OF IMPACT OF THE PROPOSED AMENDMENTS

- 3.1 The requirements relating to the alignment of terminology and incorporation of an existing exemptions as explained in paragraphs 2.1 to 2.5 above is expected to have very little to no impact on FSPs or their representatives as no new requirements are proposed.
- 3.2 Due to the nature of the amendments referred to in paragraph 2.4 which do not contain any material or significant amendments, the impact of these amendments on FSPs and their representatives is also expected to be minimal.

4. STATEMENT OF INTENDED OPERATION OF THE PROPOSED AMENDMENTS

- 4.1 The proposed amendments are intended to take effect early 2021 and need to take effect as soon as possible in order to provide clarity to industry on the application of the Fit and Proper Requirements.

5. WAY FORWARD

- 5.1 The proposed amendments are published in terms of section 98(2) of the FSRA for a period of 6 weeks for public comment, and comments are due to the Authority on or before **19 February 2021**. After careful consideration of all submissions received on the draft Amendment Notice, the Authority will make any necessary changes to the draft Amendment Notice and will either submit the updated Amendment Notice to Parliament for a period of at least 30 days while Parliament is in session or, depending on the materiality of any such changes, publish the Amendment Notice for another round of public comments.
- 5.2 Please note that this statement supporting the publication of the draft Amendment Notice may be updated to better reflect the expected impact of the draft amendments based on the submissions received under Section C of the comment template.