



**STATEMENT SUPPORTING THE PROPOSED
AMENDMENTS TO THE GENERAL CODE OF CONDUCT
FOR AUTHORISED FINANCIAL SERVICES PROVIDERS
AND REPRESENTATIVES, 2003**

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) (FSR), 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 General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (Code), was first published under Board Notice 80 of 2003. The Code was subsequently amended on multiple occasions to ensure the requirements stays current.
- 2.2 The proposed amendments are necessary to contribute to the fulfilment of the Authority's legislated objectives and is ultimately intended to promote the fair treatment and protection of financial customers.
- 2.3 The main purpose of the amendments is to update the Code in order to offer additional protection to financial customers, to align requirements relating to premium collection across short- and long-term insurance, to give effect to the RDR proposal with regards to the charging of advice fees from customers and to limit the need for a further exemption notice.
- 2.4 The proposed amendments include –
- (a) *RDR related amendment:* The FSCA 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. The Authority proposes certain amendments to the General Code to give effect to one of these proposals. In line with aspects of RDR *Proposal JJ: Standards for up-front and ongoing product advice fees* amendments are being proposed to set requirements which must be adhered to in order to charge such a fee.
 - (b) *Additional protection to financial customers:* The inclusion of an additional disclosure to customers where products other than financial products and services are sold, with the aim to ensure customers understand that they are not afforded protection under the FAIS Act for these other products or services.
 - (c) *Alignment of requirements relating to premium collection across short- and long-term insurance:* An amendment to the custody and financial products and fund requirements, to extend the current exclusion applicable to the collection of short-term insurance premiums to also apply to the collection of long-term insurance premiums. The purpose of the amendment is to align the requirements across short- and long-term insurance as the premium collection frameworks in the Regulations under both the Long- and Short-term Insurance Acts have also been aligned.

- (d) *Limiting the need for a further exemption:* An amendment to include a current exemption, in place since 2015 for Insurers, as a permanent exclusion for both Insurers and Banks as these entities are prudentially regulated the protection afforded by the requirement does not offer additional protection for the customer compared to the prudential requirements in place.

3 STATEMENT OF IMPACT OF THE PROPOSED AMENDMENTS

- 3.1 The alignment of requirements relating to premium collection across short- and long-term insurance and incorporation of an existing exemption as explained in paragraphs 2.4 above is expected to have little to no impact on FSPs or their representatives as no new requirements are proposed.
- 3.2 Due to the nature of the additional disclosure 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.

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.