FSCA

Financial Sector
Conduct Authority

CONSULTATION REPORT

26 June 2020

PROPOSED AMENDMENTS TO THE GENERAL CODE OF CONDUCT[1] AND SHORT-TERM DEPOSITS CODE OF CONDUCT[2]

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

(ACT NO. 37 OF 2002)

1. Definitions

In this consultation report –

"Authority" means the Financial Sector Conduct Authority;

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

"GCOC" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

"Short-term Deposits Code of Conduct" Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2004.

2. Background and Purpose

2.1 On 1 November 2017, the then Registrar of Financial Services Providers published proposed amendments to the GCOC and Short-term Deposits Code of Conduct (proposed amendments) for public comment.

[1] General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003.
[2] Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposits Business, 2004.

2.2 The comments received have been considered and the proposed amendments have been revised to the extent deemed necessary and appropriate in the context of the comments received.

2.3 Section 1B of the FAIS Act provides that a Code of Conduct drafted under section 15 is a regulatory instrument.

2.4 As the proposed amendments constitute regulatory instruments, the process for making regulatory instruments as set out in Chapter 7 of the Financial Sector Regulation Act must be applied when giving effect to proposed amendments.

2.5 As part of this process, section 104(1) and (2) of the Financial Sector Regulation Act provides that with each regulatory instrument, the Authority making the regulatory instrument must publish a consultation report which includes a general account of the issues raised in the submissions made during the consultation, and a response to the issues raised in the submissions.

2.6 The purpose of this document is to provide a report on the consultation undertaken during the amendment of the GCOC and Short-term Deposits Code of Conduct.

3. Summary of consultation process

3.1 On 1 November 2017, the following document was published for public comment: "*Invitation to comment on proposed amendments to the General Code of Conduct for Authorised FSPs and Representatives and Specific Code of Conduct for Authorised FSPs and Representatives conducting Short-term Deposits Business*". The document included the proposed amendments.

3.2 Sixteen (16) commentators submitted comments on the proposed amendments with a total of 192 individual comments.

3.3 In general, commentators did not raise any fundamental concerns with the proposed amendments. Several issues were, however, raised with various requirements contained in the proposed amendments. The Authority agreed with many of the issues raised and the proposed amendments were revised to accommodate these concerns. In some instances, the Authority did not agree with the concerns or comments raised.

3.4 Table 1 to this report sets out all the comments that were received on the proposed amendments, together with the Authority's responses to each comment.

3.5 In addition, the proposed amendments were submitted to Parliament in terms of section 103(1) of the Financial Sector Regulation Act on 18 February 2020 to the National Council of Provinces (NCoP) and the National Assembly on 10 March 2020.

TABLE 1

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED AMENDMENTS TO THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003 AND THE SPECIFIC CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES CONDUCTING SHORT-TERM DEPOSITS BUSINESS, 2004

[Proposed amendments published for comment on 1 November 2017]

LIST OF COMMENTATORS			
1.	Professional Provident Society Insurance Company Limited (PPS)	9.	MMI Group Ltd
2.	ASISA	10.	Moonstone Compliance
3.	BASA	11.	The South African Insurance Association (SAIA)
4.	Clientèle Life Assurance Company Ltd and Clientèle General Insurance Ltd	12.	Masthead (Pty) Ltd
5.	Financial Planning Institute of Southern Africa (FPI)	13.	PSG
6.	Philippa Stratten – Assistant Director, Legal & Compliance : Rothschild Global Advisory	14.	Financial Intermediaries Association of Southern Africa (FIA)
7.	SDK Compliance Consultants	15.	Free Market Foundation (FMF)
8.	Amity Wealth	16.	Direct Marketing Association of South Africa

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
CLAUSE 2 – AMENDMENT OF SECTION 1(1) OF THE GENERAL CODE					
1.	3	clause 2(a) of the proposed amendment section 1(1) of the General Code "advertisement"	(a) We recommend that the phrase "in relation to a provider" be retained as the FAIS Act applies only to a financial service provider. (b) We recommend that the phrase "which is intended to create public interest in the business" is deleted as the business activities in a financial conglomerate are many and FAIS only applies to the provision of certain financial products and services.	(a) The revised definition of advertisement covers a wide range of activities resulting in future application of the Code to matters not regulated by FAIS. (b) There is a need to differentiate generic brand advertising from FAIS financial services and product advertising. The phrase "which is intended to create public interest in the business", causes concern as this may, for example, include branded stationary, bumper stickers, corporate charity sponsorships etc.	**Comment (a):** Noted. **Comment (b):** Disagree. The definition is intended to extend to an advertisement relating to the business, financial services, financial products or related services of a provider and therefore any advertisement that intends to create public interest in the business (including so-called "brand awareness" advertising) of the provider should be captured. Where an advertisement makes no reference to any actual financial product, financial service or related services of the provider, but only to its business in general terms, many of the detailed requirements of section 14 will not be applicable.
2.	16	clause 2(a) of the proposed amendment section 1(1) of the General Code "advertisement"		Is very widely framed. In terms of direct marketing strategies, non-branded campaigns are often used to generate leads or interest. By way of example a provider may send an SMS or generic messages on media platforms such as "*Are you interested in Accident cover? Reply Yes if you want more information*". Messaging can often be a call to action and NOT an advertisement. If the prospective client responds positively, he/she will contact the provider or be contacted, at which point the actual marketing occurs. In light of the above it is imperative that the proposed definition (and consequentially section14)	Disagree. See response to item 1 above. Please also refer to section 10 of the Financial Sector Regulation Act, 2017 (FSR Act) that provides that the Consumer Protection Act does not apply to, or in relation to a function, act, transaction, financial product or financial service that is subject to, *inter alia*, a financial sector law and which is regulated by the Authority in terms of a financial sector law. The FAIS Act is a

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				be amended to exclude this type of messaging. As these messages that do not mention a specific product, providers, premium or benefits they should be excluded from the definition, and accordingly from the onerous disclosure requirements associated with advertising. The proposed definition may result in any expression – including general brand awareness marketing - by a provider being regarded as an advertisement. The phrase "*which is intended to create public interest in the business*" could include, for example, branded promotional clothing such as t-shirts, caps and stickers etc. There is a need to differentiate between general "*brand awareness*" advertising as compared to advertisements pertaining to specific financial products or services. The scope of the legislation should apply to the latter only. It is submitted that brand awareness advertising should not fall within the scope of the proposed definition. To this end there are regulatory bodies that oversee advertising in general, including the Advertising Standards Authority of South Africa. In addition, it should be noted that the definition of Advertisement is not aligned with the definition of Advertisement in the Consumer Protection Act ("**the CPA**"). It is submitted that consistent legislative definitions will simplify matters and create certainty in interpretation and application. In the circumstances we urge the FSB to align the definition to that in the CPA.	financial sector law for purposes of the FSR Act.
3.	3	clause 2(c) of the proposed amendment		i. This clause is noted. Our understanding from RDR papers is that this would apply in the context of "comparison" and "aggregator" service providers	**Comment (i):** This definition relates to the requirements in section 14(10) that deal with comparative marketing. It applies to all providers that publish

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 1(1) of the General Code "comparative"		ii. Indirect comparisons may be difficult to justify, and may be unintentional. iii. We understand the need not to partake in comparisons across competitors, but this definition should be expanded to include what is meant by indirect comparisons. In the current position, the use of the word might have unintended consequences on a provider comparing products and/or services.	comparative advertisements and not only to "comparison" or "aggregator" providers. **Comment (ii):** The purpose of the comparative marketing requirements is to ensure that comparisons are, *inter alia*, fair, accurate, current, and complete and are based on similar characteristics. **Comment (iii):** Disagree, the ordinary grammatical meaning of "indirect" will apply.
4.	9	clause 2(c) of the proposed amendment section 1(1) of the General Code "comparative"		'Comparative' in this instance refers only to comparative marketing and ties in with the definition of "Puffery" which we suggest should also be referenced at this juncture.	Disagree. Not all comparative advertisements will necessarily include puffery.
5.	15	clause 2(c) of the proposed amendment section 1(1) of the General Code "comparative"	We submit that this definition would be clearer if it stated instead — **"comparative"** means directly or indirectly comparative between providers or financial products, financial services or related services of one or more providers or product suppliers.		Disagree. The wording is sufficiently clear.
6.	7	clause 2(d) of the proposed amendment		Many Intermediaries will deal with some clients who call in be means of telephone only. This would not be the majority of their business and they are not Direct Marketers/ Please can we have clarity as to whether "Direct Marketing" applies to those	Any financial services rendered in the manner set out in the definition of "direct marketing" would fall within the ambit of that definition, regardless of whether this is not the manner in

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 1(1) of the General Code "direct marketing"		intermediaries who use telephone or electronic or digital communication only is the intended definition of "Direct Marketing" as opposed to these who only communicate to a small percentage of their clients in this manner.	which the majority of the provider's business is conducted. This is however not a new position and is not affected by the amendments to the definition.
7.	15	clause 2(d) of the proposed amendment section 1(1) of the General Code "direct marketing"		We submit that it is misleading, and mere jargon, to refer to the rendering of financial services as "marketing", as the Code currently does and which the amendment will leave untouched. We also submit that it is inaccurate and likewise jargon to describe an interaction by way of telephone, media insert, direct mail or electronic means as "Direct", without mentioning face-to-face dealing which is in truth direct, and indeed more "direct" than the ways mentioned, which are actually indirect. It is unclear why the word "Direct" is dignified with a capital letter.	The term "direct marketing" is a generally accepted and understood term both nationally (see, for example, the Consumer Protection Act) and internationally. However, we acknowledge that the content of the definition could be improved as per the suggestion. Further consideration will therefore be given to content of the definition in future developments. Agree to signify the term without a capital letter. ✎ See amendment.
8.	16	clause 2(d) of the proposed amendment section 1(1) of the General Code "direct marketing"		The definition is not aligned with the definition of Direct Marketing in the Consumer Protection Act (the CPA). It is submitted that consistent legislative definitions will simplify matters and create certainty in interpretation and application. In the circumstances we urge the FSB to align the definition to that in the CPA.	See response to item 2 above.
9.	9	clause 2(f) of the proposed amendment section 1(1) of the General Code subparagraph (c) of the definition		As this is proposed as an explicit exclusion from the definition of "financial interest" we're concerned that without any further guidelines or limitations could open the door to exploitation within the industry insofar as it relates to independence of these measured entities and the protection of client interests in an unfettered best advice model.	Disagree. The exclusion is appropriately limited to what may be received (qualifying enterprise development contribution) who may receive it (qualifying beneficiary entity) and who may provide it (a measured entity).

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		of "financial interest"			
10.	2	clause 2(i) of the proposed amendment section 1(1) of the General Code "loyalty benefit"	**'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~~ **use** 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~~ **using** any related services offered by that provider, product supplier or their associates;";	The references to "utilise" and "utilising" should be replaced with "use" and "using" to ensure consistency with the language in the General Code of Conduct.	As stated in the Explanatory Memorandum, the intention is to ensure alignment, where practicable, with similar requirements in other laws administered by the Authority. The words referred to by the commentator are used in similar definitions in the Policyholder Protection Rules issued under the Long-term Insurance Act and Short-term Insurance Act. Further consideration will be given to the comment when requirements are further aligned under the COFI Bill framework.
11.	3	clause 2(i) of the proposed amendment section 1(1) of the General Code		i. There is an overlap between the Consumer Protection Act's regulation of loyalty benefits and programmes. ii. We request the Regulator to ensure that the applicable sections are compatible across both the CPA and the FAIS Act.	**Comments (i) and (ii):** Please refer to section 10 of the Financial Sector Regulation Act, 2017 (FSR Act) that provides that the Consumer Protection Act does not apply to, or in relation to a function, act, transaction, financial product or financial service that is

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		"loyalty benefit"		iii. We request clarity on the impact on staff/external parties who market the programme to clients. This question is not only posed from a bank's perspective but the industry that provides loyalty programmes.	subject to, *inter alia*, a financial sector law and which is regulated by the Authority in terms of a financial sector law. The FAIS Act is a financial sector law for purposes of the FSR Act. Therefore, to the extent that a loyalty benefit relates to a financial product or service, the Consumer Protection Act will not apply. The only potential overlap is where a loyalty benefit relates to a related service of a FSP. In this regard please take note that the proposed amendments applicable to loyalty benefits are restricted to advertising of such benefits, whilst the Consumer Protection Act goes much further than only advertising. Notwithstanding, in our opinion there is no inconsistencies between the proposed amendments and the Consumer Protection Act provisions. **Comment (iii):** Staff of a provider act on behalf of a provider and therefore the provider must comply with the relevant requirements where a staff member acts on its behalf. With regards to external parties advertising on behalf of a provider, please refer to section 14(2)(d).
12.	4	clause 2(i) of the proposed amendment section 1(1) of the General Code "loyalty benefit"	*"means any benefit* **[(including a so-called cash- or premium-back bonus)]** *that is directly or indirectly provided or made available to a client…"*	We propose that the inserted words "**(including a so-called cash- or premium-back bonus)**" be included to align directly with the definition contained in the Policyholder Protection Rules published on 15 December 2017 ("PPR").	Agree. ✎ See amendment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
13.	15	clause 2(i) of the proposed amendment section 1(1) of the General Code "loyalty benefit"	The intent of paragraphs *(c)* and *(d)* in this definition would be clearer if they were to state instead: *(c)* the client **agreeing to purchase, or invest in, an increase in** any benefit to be provided under a financial product; or *(d)* the client **agreeing to purchase, or invest in,** any other financial product or benefit or **pay for** any related services offered by that provider, product supplier or their associates.		Disagree. The purpose of the definition is to define what constitutes a loyalty benefit and not whether the client agrees thereto.
14.	16	clause 2(i) of the proposed amendment section 1(1) of the General Code "loyalty benefit"		We do not understand this definition to apply to a non-underwritten benefit in a 'bundled product', where insurance and non-insurance benefits are provided as a single bundle of indivisible benefits (and the non-underwritten benefit is not contingent on the underwritten benefit – i.e. the use or operation of the underwritten benefit is available to the customer by virtue of the customer having purchased the bundled product. The customer's ability to access the non-financial benefit in the bundle is in no way contingent on the financial product, and vice-versa). If the above is not accepted, then it is submitted that the proposed definition will result in the FSB's jurisdiction being extended to include non-financial products. This will overlap with other authorities that exist to regulate non-financial goods and services causing confusion for both consumers and FSP's in the process.	In terms of the definition a benefit will only constitute a loyalty benefit if that benefit is- (a) 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; and (b) the benefit is wholly or partially contingent on any of the factors listed in paragraphs (a) to (d) of the definition. Therefore, if the "non-underwritten benefit" is not contingent on any of the factors referred to in (b) above, it will not be a loyalty benefit for purposes of the FAIS Act.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
15.	7	clause 2(i) & (j) of the proposed amendment section 1(1) of the General Code "loyalty benefit" and "no-claim bonus"		An insurer may take cognisance of a new clients' claims history and allow them discount on the quoted premium by means of a "no claims bonus". This is not a "loyalty benefit" but a discount in recognition of the new clients risk profile. This is also not an "inducement" as the new client would get similar underwriting recognition at other Insurers as well as a risk underwriting factor. Please may a distinction be made regarding this	Please note that "no-claim bonus" is defined separately. Also, please note that the use of the term "no-claim bonus" is in any case always used in conjunction with the term "loyalty benefit", so in practice this distinction is purely academic.
16.	11	clauses 2(c), (i) and (j) of the proposed amendments section 1(1) of the General Code "comparative" "loyalty benefit" "no-claim bonus"		The word "indirect" is included in the definitions of "comparative", "loyalty benefit" and "no-claim bonus". We recommend that "indirect" be clarified or defined in all these definitions where it is referred to so as provide certainty as to the Registrar's intention in this regard.	Disagree. The ordinary grammatical meaning of the word will apply.
17.	3	clause 2(k) of the proposed amendment section 1(1) of the General Code "plain language"		It is our submission that it is not necessary to define "plain language" – the common dictionary definition should prevail. However, should this view not prevail, it is recommended that this definition be aligned to other existing legislation and legal precedent The National Credit Act (section 64) and CPA (section 22) provide a definition of plain language. These provisions have also been interpreted by the High Court in the matter of SBSA v Dlamini.	Disagree. The intention is to align terms across financial sector laws. The proposed definition therefore aligns with the definition of "plain language" as contained in the LTIA and STIA PPRs.
18.	12	clause 2(k) of the proposed amendment		While we support information being provided to customers in plain language and understand the purpose of introducing this definition, we have some concerns about how this is being done. We assume that "*factually established*" means that this would	The concept of "reasonably assumed level of knowledge" is not a new concept. Providers are currently required, *inter alia*, in terms of –

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 1(1) of the General Code "plain language"		have been objectively assessed. What is not clear is what a "*reasonably assumed level of knowledge*" is and how this would be established, particularly in relation to "*average persons*". We are concerned that, given the breadth of the definition, it enables customers to "plead ignorance" or claim lack of understanding without the advisors being able to reasonably defend themselves against such claims. Therefore, we would like to understand what the Regulator would expect an advisor to do to make a reasonable assumption.	• section 3(1)(a)(iii) of the General Code of Conduct to ensure that the representations made and information provided to a client is adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or reasonably assumed level of knowledge of the client; and • section 13(1)(f) to ensure that they are able to assess whether it is appropriate to offer or provide a client a financial service or product taking into account, inter alia, the client's capacity to understand the features and complexity of the service or product. The Authority has not prescribed how the provider must make the assessment. It is for the provider to decide, given the particular circumstances of each case, what method of assessment will be most appropriate. An assessment could include asking relevant questions, gaining information about the profession, education, financial literacy and investment experience of an average person in a particular target market.
19.	16	clause 2(k) of the proposed amendment		Given that the definition is very broad, it will create uncertainty as to whether a document is in fact written in plain language or not.	Disagree. See section 3 of the General Code of Conduct that currently requires of providers to provide information that is factually correct, in plain language, avoids uncertainty or confusion and that is not

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 1(1) of the General Code "plain language"			misleading. See also response to item 18 above.
20.	15	clause 2(l) of the proposed amendment Section 1(1) of the General Code "puffery"	We recommend that the definition simply state that— "**puffery**" means an exaggerated opinion of quality.	This definition is not accurate: The mere fact that a value judgment or a subjective assessment of quality is "based solely on the opinion of the evaluator" would not make it "puffery", even if "there is no pre-established measure or standard": A value judgment or subjective assessment of quality based solely on opinion might nevertheless be accurate. Even if a judgment or assessment is wrong, and even if there is no pre-established measure or standard, this does not mean that the judgment or assessment is puffery. The judgment or assessment might well be an understatement of quality. Accurately, "puffery" (or puffing) is recommendation in extravagant terms, advertising with exaggerated or inflated praise (*Shorter Oxford English Dictionary* svv "puff" and "puffery" (and see "laudation" and "commendation"); a salesperson's exaggerated opinion of quality (*Black's Law Dictionary* 6 ed sv "puffing").	Disagree. The definition, read with the relevant context in which the definition is used, largely aligns with the ARB's Code of Advertising Practice use of the term. The intention is also to align to the requirements contained in the PPRs.
21.	5	clause 2(l) of the proposed amendment Section 1(1) of the General Code "replace or replacement"	Deleting the words **"… with the purpose of achieving the same or similar needs or objectives …"**	The definitions states to **"… with the purpose of achieving the same or similar needs or objectives …".** An interpretation of this is that a replacement does not take place if a product is terminated or varied that does **not** achieve similar objectives. For instance, a short-term insurance policy does not achieve the same objectives of a long-term insurance policy. Therefore, terminating a short-term policy in order to afford a long-term policy does not constitute a replacement.	The definition requires that, in order to constitute a replacement, the transaction concerned must meet <u>one or more</u> of the following criteria: • it must have the purpose of achieving the same or similar needs or objectives of the client; • it must be in anticipation of effecting the substitution or variation; or

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				If this is not the intention then we recommend removing the highlighted words. This would have the effect that replacing any financial product with any other financial product, regardless of needs or objectives, will be included in the definition.	• it must be as a consequence of effecting the substitution or termination. In the example, if terminating the short-term policy is done in anticipation of or as a consequence of substituting it with a long-term policy, then it will still constitute a replacement, even if the two policies are not intended to meet the same purpose.
22.	7	clause 2(l) of the proposed amendment Section 1(1) of the General Code "replace or replacement"		There is an industry norm that a policy issued within 4 months either way of a similar policy being cancelled is a "replacement" policy. From this definition I understand that a replacement can only be a policy which is issued pursuant to another, which is in existence at that time being cancelled. Is this correct? Example : if a client's policy were cancelled due to unpaids and the financing institution wanted to implement their own policy when they became aware of the cancellation the client could shop around for a cheaper premium and take their own policy. Would their own policy be a "replacement" even if the unpaid policy had been cancelled for more than a month?	No, this interpretation is not correct. The definition indicates that a replacement may occur "irrespective of the sequence of the occurrence of the transactions" and also does not limit the time period that should elapse between the transactions in order to constitute a replacement. The example provided will indeed constitute a replacement.
23.	9	clause 2(l) of the proposed amendment Section 1(1) of the General Code "replace or replacement"		'Replace or replacement' ito Sec 9(d) has been defined. However we feel that clarity is required when considering:- "with the purpose of achieving the same or similar needs or objectives " which implies that it relates only to like for like replacements and seems inconsistent with the extended definition of replacement and the definition of variation. We point out that at present replacements are comprehensively defined in not only the LTIA but also the ASISA code and FAIS. By adding a further definition or variation thereof (in the	See response to item 21 above. The proposed definition is largely aligned to the definition of "replacement" in Rule 19 of the Long-term Insurance PPRs, the only material differences being that the PPR definition is limited to certain long-term policies only. The FAIS definition is intended to be broader

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				absence of repeal) could severely impact on the ability of FSP's and product suppliers to meet their governance obligations in managing and reporting replacements if different interpretations of the "truth" exist. We ask that consistency be applied across the board. We further point out that there will at times be situations where a client will transact on his own volition (for whatever reason) without the express knowledge of the FSP - the wording, if read in isolation does not cater for self fulfilment by virtue of the fact that it resides in the GCOC - the FSP by consequence is then ultimately responsible even if said actions fall outside of the control of the FSP. We point out that RDR will also impact on replacements and remuneration but caution that any inconsistencies introduced at this point (even if deemed noble in intent) could in fact hamper and not aid the final implementation of RDR.	and cover replacements of all types of financial products. The ASISA standard does not define "replacement" but does define "replacement policy" and "termination event". To the extent that the effect of these ASISA definitions results in a difference between ASISA's understanding of what constitutes a replacement and the FAIS definition now proposed, it will be up to ASISA to determine the extent to which its Standard requires amendment to align with the regulatory position. Your comment that FAIS already defines "replacement" is not correct. The current proposed definition is the first time that the term is to be defined in the FAIS regulatory framework. Your comment regarding RDR implications is noted. One of the reasons for defining "replacement" is to facilitate the applicable RDR proposals. Note that the provisions of sections 8 and 9 of the Code, dealing with the provider's responsibilities in relation to replacements, only arise where the provider provides advice in relation to the replacement. Your concern regarding the situation where a replacement is effected by the client without the provider's knowledge is therefore unfounded, provided the

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
					provider has complied with the obligation in s.8(1)(e) to take reasonable steps to establish whether the transaction is a replacement. ✎ See amendment to section 8(1)(d) to ensure full alignment with the definition of "replacement" in the PPRs.
24.	13	clause 2(l) of the proposed amendment Section 1(1) of the General Code "replace or replacement"	"*means the action or process by the adviser or at the instance of the adviser of –*"	While we believe the proposed wording is satisfactory, we would like to point out two implications of the proposed phrase: "*with the purpose of achieving the same or similar needs or objectives of the client*". Where an adviser advises on the cancellation of a life policy in order to use the premium to fund a retirement annuity it clearly doesn't achieve the similar needs or objectives. If it is your intention that this shouldn't be a replacement, the current wording is acceptable. The phrase requires a specific purpose. This equates to a subjective test of the intent of the adviser and/or client. While we believe this should be the case, this could become difficult to prove for the Regulator. In addition, we would like to consider including a requirement that the adviser must have been part of the replacement. It does happen on the odd occasion that a new product is sold and the client shortly thereafter decides to cancel an existing product without the knowledge of the adviser. This should not impact the adviser.	See responses to items 21 and 23 above.
25.	14	clause 2(l) of the proposed amendment		The intended result "with the purpose of achieving the same or similar needs or objectives of the client" may not necessarily be achieved when life cover on a policy is no longer required on insistence of a client, but funding for savings or retirement	See response to items 21 and 23 above.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		Section 1(1) of the General Code "replace or replacement"		becomes a need. A current need would then be fulfilled but it will not be the same or similar as the previous need was. We are of the opinion that the relevant wording should be reconsidered to cater for such and other possible eventualities.	
26.	15	clause 2(l) of the proposed amendment Section 1(1) of the General Code "replace or replacement"	We recommend that the definition be replaced by the following: "**replace**" means substitute a financial product wholly or partly with another financial product with the purpose of achieving the same or substantially similar needs or objectives of the client and irrespective of the sequence of transactions, and "**replacement**" has a corresponding meaning.	This proposed definition is baffling, repetitive and unduly wordy. Paragraphs *(a)* and *(b)* are identical in meaning.	As stated in the Explanatory Memorandum, the intention is to ensure alignment, where practicable, with similar requirements in other laws administered by the Authority. The definition is similar to the definition in the Policyholder Protection Rules issued under the Long-term Insurance Act and Short-term Insurance Act. The commentator's comment will be considered as part of further alignment under COFI Bill framework.
27.	3	clauses 2(l) & 2(n) of the proposed amendment section 1(1) of the General Code "replace or replacement" read with "variation"	(i) We recommend that these specific clauses be deleted as the consensual contractual relationship with the client cannot become fully legislated. Instead principles relating to best practices regarding variation of products will be more appropriate and more closely aligned to a future market conduct risk-based approach.	(i) The definitions are very broad and include matters which are usually agreed to in contractual terms and in the contractual relationship between the parties. Not every single variation as contemplated here will require a "replacement advice" conversation with the client. Examples include: paragraph (d): "cessation of the product" / paragraph b: "a reduction in the premium….." / paragraph (d): the reduction or removal of any guarantee or benefit". Inclusion of these clauses will impede agility of business decision-making and ultimately will not benefit the customer.	**Comment (i):** Our supervisory experience has indicated that there is inconsistent interpretation as to which types of transactions constitute a replacement for FAIS purposes, and a clear indication of the types of actions that constitute a replacement is therefore necessary. The definition of "variation" must be read together with the definition of "replacement". Not all variations will trigger a replacement – the other elements of the definition of "replacement" would also need to be met.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			(ii) It is recommended that the definition be clarified so as to make clear that pure administrative staff who do not exercise judgement remain non-impacted by FAIS. (iii) It is recommended that the wording be clarified. Alternatively, it is recommended that the transfer of financial products to be ring-fenced to the class of business or types of financial products where products can be transferred in addition to substituted. (iv) We recommend that subparagraphs "h" and "j" should both be deleted in its entirety. (v) It is recommended that the word "achieving" be amended to "addressing", as per the final version of the PPR.	(ii) The definition could be construed as bringing a pure administrative function within the scope of an "intermediary service". Currently, non-FAIS impacted staff perform administrative functions. However, the definition implies that service agents might be required to be registered as FAIS representatives. In turn, FAIS impacted staff will be required to perform administrative functions which were previously performed by service staff. (iii) Paragraph (a) of the definition of "replace" refers to substituting a financial product, wholly or in part, with another financial product. Paragraph (i) of the definition of "variation" refers to any transfer from one financial product to another. It is therefore not clear what the difference is between substitution of financial products versus transfer from one product to another? If transfer and substitution have the same meaning, the definition of variation (used in the definition of replacement under paragraph (b)) also refers to the substitution of financial products which is already covered for under paragraph (a). (iv) In paragraph (h) "variation" includes: "the financial product becoming static because an option to update cover, benefits, premiums or other periodic investment amounts has not been exercised". Similarly in paragraph "j" variation includes failure to renew a short term insurance policy. Variation of products link to an obligation to generate replacement advice records. If a customer fails to exercise a product benefit or	**Comment (ii):** The provisions of sections 8 and 9 of the Code, dealing with the provider's responsibilities in relation to replacements, only arise where the provider provides advice in relation to the replacement. Your concern regarding the implications of the definition in relation to intermediary services is therefore unfounded and it is not necessary to provide the clarification requested. **Comment (iii):** The terms "transfer" and "substitution" do not have the same meaning. **Comment (iv):** As noted above, the definition of "variation" must be read together with the definition of "replacement". We agree that not all variations will trigger a replacement. We do not agree that subparagraphs (h) and (j) should be deleted. In addition, the provisions of sections 8 and 9 of the Code, dealing with the provider's responsibilities in relation to replacements, only arise where the provider provides advice in relation to the replacement. **Comment (v):** Agree. See amendment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				to renew a short-term insurance policy, no "replacement" can be applicable – as there is no second, alternate product that is being tabled, hence a replacement advice record scenario would not be applicable.	
28.	12	clauses 2(l) & 2(n) of the proposed amendment section 1(1) of the General Code "replace or replacement" read with "variation"		The definition of "*replace or replacement*" read together with the definition of "*variation*" is very wide and does not provide for any time limit. Given that the initial RDR Proposal OO sought to prohibit commission on replacements, we are concerned that this definition goes so wide and may have significant and/or unintended consequences for advisors if the Regulator goes ahead as initially proposed at some time in the future. Without knowing the outcome or intended outcome of that RDR proposal, it's difficult to comment further.	The definition intentionally does not include a time limit. If a replacement, as defined, is recommended, it is our view that appropriate replacement advice and disclosures should be provided, regardless of the time period between the transactions concerned. If or when future RDR proposals relating to remuneration for replacements are implemented, we will at that stage consider whether time limits are appropriate for those purposes.
29.	3	clause 2(l) of the proposed amendment section 1(1) of the General Code "service supplier"		We suggest that this is an overlap with the CPA. Should FAIS now extend to service supplier in this regard, this will require external providers to be included under FAIS. It is recommended that jurisdiction and scope be dealt with under CoFI.	The jurisdiction of the Authority has not been extended to "service suppliers" as no requirements have been placed on them. The requirements are placed on providers that make use of "service suppliers".
30.	16	clause 2(l) of the proposed amendment section 1(1) of the General Code "related service"		The wide scope of this definition may, unintentionally, result in firms which are not FSP's being brought under the scope of financial services regulation.	Disagree. The requirements only reference "related services" in relation to advertisements and complaints and the requirements are only imposed on a financial services provider.
31.	11	clause 2(l) of the proposed amendment		The definition of "service supplier" is very wide insofar as it includes references to activities that an authorised FSP can perform.	See response to items 29 and 30.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 1(1) of the General Code "service supplier"		The FAIS Act applies to FSP's, but when one considers the definition of "service supplier", it appears that the Act's application is now being extended to service suppliers. We request clarity on this definition.	
32.	2	clause 2(m) of the proposed amendment section 1(1) of the General Code "social media"	~~'**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;~~	The definition of "social media" should be deleted as it is not used in the proposed amendments to the General Code of Conduct.	Agree. ✎ See amendment.
33.	9	clause 2(m) of the proposed amendment section 1(1) of the General Code "social media"		We note that social 'Social media' has been specifically defined however there is no further reference to this definition in the rest of the GCOC. The purpose of the definition at this juncture is unclear.	Agree. ✎ See amendment.
34.	3	clause 2(n) of the proposed amendment section 1(1) of the General Code "variation"		We suggest that some of the listed actions as constituting a variation do not logically fit in, such as: "(c) making the financial product or investment paid-up" – If the financial product or investment has reached the end of its term and becomes paidup, how is that a variation? "(e) the application of the policy or investment value as premiums or other periodic investment amount payable in respect of a financial product" - If the client chooses to utilise the proceeds or a policy or investment toward another financial product, how is that a variation of the existing financial product?	The Authority acknowledges that potentially not all of the items listed are variations in terms of the ordinary grammatical meaning of the word. However, the purpose of the definition is to give the phrase a new or different meaning. Please also note that the intention is to align the wording in the FAIS General Code of Conduct with the definition of variation contained in the LTIA PPRs. The concept of making a product "paid-up" typically entails a decision by

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				"(j) a non-renewal of a short-term insurance policy" - If a short-term policy ends, perhaps because the cover is no longer required, how is that a variation? We recommend that the definition be reviewed to provide more clarity on the aspects raised.	the client to cease contributing to an investment in circumstances where they would have had the option to continue contributing. Paragraph (e) refers to the situation where, instead of continuing to contribute to a financial product, the client elects to utilise that product's already accumulated value to fund further contributions. In the case of paragraph (j), if a policy ends because it is not required, then it would constitute a variation for purposes of the FAIS GCOC. However, please note that the definition of variation must be read in the context of replacements. Therefore, even if the non-renewal constitutes a variation but a new product is not purchased to substitute the non-renewed policy, the replacement requirements will not apply and the fact that the non-renewal constitutes a variation becomes purely academic.
35.	12	clause 2(n) of the proposed amendment section 1(1) of the General Code "variation" Subsection (g)	Delete subparagraph (g).	In respect of the definition of "*variation*", we submit that subsection (g), "*the cessation of the financial product*;" should be deleted since provision for "*termination …. of a financial product*" is already included in the definition of "*replace or replacement*".	Agree. See amendment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
36.	16	clause 2(n) of the proposed amendment section 1(1) of the General Code "variation" subsection (h)		It is not clear how a financial product becoming "*static*" is a variation.	The same principle as communicated under the response to item 34 above will apply equally here.
37.	12	clause 2(n) of the proposed amendment section 1(1) of the General Code "variation" subsection (i)	We submit that subsection (i) of the definition of "*variation"* should read, "*any transfer from or of one financial product to or into another financial product;"*.	The reason for this submission is to make it clear that where an existing financial product is transferred as is, into another financial product, it is included in the definition. For example, if a client with a stand-alone share portfolio agrees to transfer the portfolio, as is, into a life wrapper, this would be a transfer "of" the financial product "into" another. The way we read subsection (i) as currently proposed, we are concerned that this type of transaction may fall outside of the definition.	Agree. See amendment.
38.	7	clause 2(n) of the proposed amendment read with 2(e) section 1(1) of the General Code "variation" subsection (j)		It is accepted that the word "endorsement" is being used as an advertising action. However, the word "endorsement has been used for many years in the insurance industry as meaning a change to an existing policy of insurance. In the General Code the terms "enter into, vary or renew" are used to describe actions on a policy However in this definition – 2(n) (j) "vary" is described as "a non-renewal of a Short Term policy". This was understood in previous regulations to be a "termination" Please can the act of changing a policy have a consistent definition In actual daily transactions a change to a long or short term policy can be significant, requiring advice	We believe that it is clear from the wording of the definition of "endorsement" and the provisions where the term is used that it refers to an advertising practice. We therefore do not believe that there is a risk of confusion with the insurance term being referred to. The definition of "endorsement" is consistent across FAIS and the PPRs. See further amendment to the definition of "variation" to ensure further consistency across FAIS and the PPRs. We confirm that any advice to vary a financial product does fall within the scope of "advice" as defined in the

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				to the policyholder which could make a significant difference to a client's decision to add, remove, increase or decrease value. Examples: A client could add property or vehicles belonging to a family member who resides with them but in which the policyholder does not have an insurable interest. This would (and does) result in repudiation of any claim relating to that endorsement if the client had not been advised correctly or the policy not correctly endorsed Decreasing insured values can result in quantum disputes. Certain items added to a policy need to have competent advice provided to insure the item is placed under the correct cover and use. Adding a property to a policy which previously only had a vehicle insured is also a major change to a new property owner Previously it appeared as if assisting a client to endorse a product was not considered "advice" but "varying" a policy Please can there be clarity regarding the term used for the endorsement/variation of a policy as well as whether it is considered to be "advice" or "intermediary" services"	FAIS Act and will indeed give rise to the corresponding FAIS advice obligations. This has always been the case. See definition of advice in section 1(1) of the FAIS Act. However, this particular definition of "variation" in the FAIS General Code is linked to the definition of "replacement" and the specific obligations relating to replacements. We do not believe there is a need to confirm the relationship between a "variation" and "advice". Where a product variation is effected without any advice being provided, then it is clear that the advice related obligations do not arise, and it follows that the replacement related advice obligations also do not arise.
39.	11	clause 2(n) of the proposed amendment section 1(1) of the General Code "variation" subjection (j)		In item (j) of the definition of "variation", reference is made to the non-renewal of a short-term insurance policy. The non-renewal of a policy results in the expiration of said policy. It is unclear why the Registrar is of the view that a non-renewal constitutes a variation of the policy.	See response to item 34 above.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				We recommend that the definition of variation should exclude reference to the non-renewal of a short-term insurance policy.	
40.	16	clause 2(n) of the proposed amendment section 1(1) of the General Code "variation" subjection (j)		It is not clear why the "*non-renewal*" of a short-term insurance policy is considered a variation and not a termination.	See response to item 34 above.
41.	3	clause 2(n) of the proposed amendment section 1(1) of the General Code "white labelling"		We request the Regulator to ensure consistency and alignment with the definition of "white labelling" in the FAIS Act, CISCA & PPRs.	Noted. In our opinion the FAIS GCOC and PPRs definitions are largely aligned. Notwithstanding, a further refinement has been inserted. ✎ Alignment of the FAIS GCOC and PPRs frameworks with the CISCA framework insofar as it relates to white labelling / third party named portfolios will be considered as part of future developments.
42.	11	clause 2(n) of the proposed amendment section 1(1) of the General Code "white labelling"		The definition of white labelling in the PPR's reads as follows:- *"White labelling refers to marketing of or offering of a specific policy of an insurer under the brand of another person who is not the insurer in terms of an arrangement between the insurer and that other person"* For consistency and alignment, we recommend the alignment of the definition of white labelling in the General Code with the definition of white labelling in the PPR's.	See response directly above.
CLAUSE 3 – AMENDMENT OF SECTION 2 OF THE GENERAL CODE					

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
43.	4	clause 3 of the proposed amendments section 2 of the General Code		While we do not disagree with the amendment we believe that more can be done to protect the consumer. The first principle of the FPI Code of Ethics and Practice Standards states: ***"Client First** – Placing a client's interest first is a hallmark of professionalism and is a core value of any profession. It requires FPI members to act honestly ate all times and not place personal interest or advantage, in any form, before their clients' interests."* The guidance note states: • "FPI members are faced with many pressures: their client' needs; employers' expectations; the expectations of principals or franchisors and the like; and their own need to grow and maintain a successful and sustainable business. The client's interests must, however, be served above all these competing demands. • FPI members have an obligation to maintain an ethical practice, regardless of their manner of compensation and as such advise their clients based on what is in their best interest over and above of what is in the interest of the FPI member and/or another party." We believe that in this **Client First** principle is applied, rather than a **"Suitable product"** principle fewer negative client outcomes will occur. We therefore urge the Registrar to consider strengthening the standard of care that is due to clients.	The commentator's request is not fully understood. In terms of the section, a provider is required to act with due skill, care and diligence and in the interest of clients. The section addresses all the principles raised by the commentator as they are interlinked.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
44.	10	clause 3 of the proposed amendments section 2 of the General Code		We believe this amendment is going to be problematic in its application. The Registrar is exceeding its powers into the everyday lives of regulated persons outside of the scope of their authorisation. The regulator cannot be seen as the enforcer of ethics and morality of persons outside of their regulated authorisation. We also believe that the amendment, albeit well intentioned, will have unintended consequences. As an example, we can point to the existing confusion surrounding debarment of representatives. Commercial disputes between employers and employees in financial services are often problematic where restraint of trades is concerned. It is often the case that employers debar representatives based on breach of contract in this space in that the employers view failure to adhere to (often unreasonable restraints) as dishonesty on the part of the representative, and debar representatives on this ground. We are concerned that the proposed amendment is going to strengthen that view and lead to further abuse of debarments to settle personal scores.	Agree, proposed amendment removed.
45.	15	clause 3 of the proposed amendments section 2 of the General Code	It is respectfully submitted that the clause could state instead: A provider must, **[at all times render financial services]** for the purposes of ensuring that the clients being rendered financial services will be able to make informed decisions, and that their reasonable financial needs regarding	This proposed requirement that a provider must "at all times act" honestly, etc, is too wide. It would require a provider to act honestly, fairly and with due skill etc, when playing golf or tennis. The clause is unduly ambitious, and goes beyond powers conferred on the Registrar. The Registrar does not have the power to prescribe a conduct provision that a provider must "at all times act" honestly and fairly, etc.	See response to item 44 above.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			financial products will be appropriately and suitably satisfied, act honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.	Her powers are restricted to prescribing that a provider must act honestly and fairly etc, for the purposes of ensuring that the clients being rendered financial services will be able to make informed decisions, and that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied (Financial Advisory and Intermediary Services Act s 16(1)(a)).	
46.	16	clause 3 of the proposed amendments section 2 of the General Code		Removal of reference to "*financial services*" expands the jurisdiction of the FSB. Financial service providers (**FSPs**) don't necessarily only render financial services. Direct marketers may, for example, market both financial and non-financial products. Insofar as non-financial products are concerned, direct marketers are regulated by other authorities. Extending the FSB's jurisdiction may result in confusion as well as arbitrage.	See response to item 44 above.
CLAUSE 4 – AMENDMENT OF SECTION 3 OF THE GENERAL CODE					
47.	2	section 3(3) Not part of FSB proposals	A provider may not disclose any confidential information acquired or obtained from a client or, subject to section 4(1), a product supplier in regard to such client or supplier, unless**, subject to section 3(2),** the ~~**written**~~ consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.	Many FSPs have systems and procedures in place to record verbal consent which could readily be reducible to writing. Given that section 3(2) of the General Code of Conduct places a specific duty on an FSP to have appropriate procedures and systems in place to record verbal and written communications and to deal with those records in a specified manner, ASISA members suggest that section 3(3) of the General Code should be amended to provide for both written and verbal consent subject to section 3(2).	As this did not form part of the proposed amendments, the comment will be considered as part of future amendments.
48.	3	clause 4 of the proposed amendment		We request the Regulator to consider the following: i) the practical implication of meeting these conditions in institutions where marketing is	Please note that paragraph (c) has been collapse into paragraph (b).

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 3(4) of the General Code		standardised from a practical and cost perspective. ii) the practical implication of the additional requirement to confirm where products are not regulated – is this only required in disclosures or all marketing material. Cost implications, limitations on the characters on different platforms that can be used for marketing must be considered as it will not be practical for FSP's to implement. Alternatively, we request that only (b) remains as both 'b' and 'c' talks to the same requirements.	See amendment. Please also note, as explained in the Explanatory memorandum, the specific requirement referenced in this provision is already indirectly a requirement as there is an existing general requirement that information provided to clients must be factually correct and not confusing. In addition, a provider that indicates, implies or creates the impression that it is authorised or regulated by the Authority whilst it knows or ought to know that this is not the case will be acting in contravention of section 3(1) of the General Code and section 8(9) of the FAIS Act. Providers, therefore, must already have systems and procedures in place to ensure that they do not provide or publish false, misleading or incorrect information.
49.	11	clause 4 of the proposed amendment section 3(4) of the General Code		In many institutions, marketing is often standardised across a broad range of products and/or services provided by that institution. As a result, advertisements may bundle/refer to many products together (in one advert). Often times, this is done from a practical and cost perspective especially where large advertising platforms are concerned. The Registrar should consider the practical implications of this requirement.	See response to item 48.
50.	12	clause 4 of the proposed amendment		We welcome the inclusion of this subsection into the General Code as billions of rands have been lost by clients through the likes of Sharemax and Leaderguard investments. We believe that this should go further, to require a provider to explain	Noted.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 3(4) of the General Code		the risks and consequences of doing business in matters that are not regulated and to include these in bold warnings.	
51.	16	clause 4 of the proposed amendment section 3(4) of the General Code		4 (a) provides sufficient clarity for the provider in terms of conduct required when rendering financial services. 4 (c) is overly prescriptive in that it effectively requires that the FSP who has taken steps to clarify which products are FSB regulated must go a step further and clarify the distinction in the negative. This additional requirement is overly onerous and is not aligned with the outcomes-based approach that this legislation is seeking to promote. Subsection 4(a) provides sufficient guidance to accommodate the requirement that products that fall under the FSB and /or Registrar are identified.	See response to comment number 48 above.
52.	10	clause 4 of the proposed amendment section 3(4)(a) of the General Code		We believe "**A Provider**" should be substituted with "**No person**" as the prohibition against implying authorisation when none exists should extend to all persons and not only FSPs.	Disagree. The Code of Conduct only applies to authorised FSPs, their key individuals and representatives. Also see section 8(9) of the FAIS Act that extends to all persons.
53.	2	clause 4 of the proposed amendment section 3(4)(c) of the General Code	A provider – (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 **the** Registrar nor the Financial Services Board.	Grammatical error.	Noted. However, paragraph (c) has been deleted.
54.	2		~~A provider may not describe itself or the financial services~~	The proposed insertion of section 3(5) is premature. The FSB did not provide any rationale for the	We do not agree that the insertion of section 3(5) is premature. The

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		clause 4 of the proposed amendment section 3(5) of the General Code	~~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.~~	proposed insertion and recent communication during FSB Seminars is inconsistent with the proposed amendment. In November 2017, the FSB presented an RDR Update and indicated that a further consultation paper will be published end 2017/early 2018 confirming the previously communicated two-tier adviser categorisation model and requesting input on, among others, conditions for being able to describe advice as "independent". The proposed insertion of section 3(5) should be deleted until the criteria for independence is finalised through the RDR consultations. Focused consultation around ownership and other criteria for "independence" is still to take place as part of the RDR consultations. At the end of November 2017 at the Insurance Regulatory Seminars, the FSB presented an RDR Update and indicated that a further consultation paper will be published end 2017/early 2018 confirming the previously communicated two-tier adviser categorisation model and requesting input on, among others, conditions for being able to describe advice as "independent". The FSB's invitation to comment on the proposed amendments to the General Code of Conduct does not contain any information on the proposed amendment. ASISA members strongly suggest that the proposed insertion of section 3(5) should be deleted until the criteria for independence is finalised through the RDR consultations. As it is proposed, section 3(5) will for example mean that an FSP that owns one share in a product supplier (direct ownership interest) or one participatory interest in a collective investment scheme that owns shares in a product supplier (indirect ownership interest) may not describe itself as independent, irrespective of	comment appears to regard "RDR consultations" as a separate process from the current process of consultation on the FAIS General Code amendments. The FSCA and former FSB have consistently communicated that RDR reforms will be affected in a phased manner, including through amendments to existing regulatory instruments. The current consultation on General Code amendments, to the extent that the amendments related to RDR proposals, should therefore be regarded as "RDR consultations", with the proposed section 3(5) forming part of such RDR consultation. We acknowledge that it was previously communicated that consultation on criteria for the designation "independent" would take place together with consultation on adviser categorisation matters. The FSB / FSCA has however previously communicated that the use of the term "independent" would not be regarded as a separate adviser licensing category but purely a matter of designation. The FSCA is therefore of the view that there is no reason why consultation regarding such designation needs to be deferred until adviser categorisation matters are consulted on. There is no dependency between the use of the "independent" designation and the future adviser categorisation model. We therefore

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				whether or not the ownership interest causes a conflict of interest. This is unreasonable.	took the decision that the current General Code amendment process is an appropriate opportunity to introduce criteria for such designation. However, the Authority recognises the concern raised in respect of the example provided. As a result the provision has been limited to only prohibit the use of the term independent in the context of ownership arrangements, where a significant owner relationship (as described in section 157(1) and (2) of the FSR Act) exists between the FSP and a product provider. In our opinion section 157 of the FSR Act's reference to "the ability to control or influence materially the business or strategy of the financial institution" is in particular relevant in the context of what the draft amendment was trying to achieve and will suffice pending further monitoring of market practices and potential further limitations in future. See amendment.
55.	3	clause 4 of the proposed amendment section 3(5) of the General Code		i. If reliance is based on RDR principles, the independence requirement should be covered under COFI, alternatively if it is included, is there a requirement for an FSP to disclose to the clients that they are / are not independent? ii. Where an FSP is not independent we request the Regulator to clarify the process to follow under FAIS.	It is unclear why there is a view that criteria for use of the designation "independent" by advisers should be covered only under the future COFI Act. The proposed section 3(5) stipulates the circumstances in which the term "independent" may not be used to describe a provider or its services. It is

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				iii. Please clarity the use of the word of indirect in the context of independent as we are unsure on the application.	not clear what further "process to be followed under FAIS" is required to be clarified.
56.	5	clause 4 of the proposed amendment section 3(5) of the General Code	Under section 5 (i) we would add the words **"…other than as an ordinary financial customer**" at the end.	Our initial proposals under RDR regarding the use of the term independent are again proposed for ease of purpose: Use of the Term "Independent" FPI concurs with the questionable use of the term "independent" as it relates to "independent financial adviser" and is defined in insurance laws. As stated on page 15 of the discussion documents, the ordinary meaning of independent should lead a consumer to assume that the adviser is "free of influence or control of another, self-reliant, or without allegiance or affiliation." FPI encourages financial services legislation that uses the term independent to position a financial intermediary in the context of the general understanding of the term, rather than the current situation that misleads consumers into thinking a multi-tied agent/representative (with obligations to multiple product manufacturers or distributors) is somehow independent of the influence of those product suppliers. Our understanding is that the title of the individual financial adviser should reflect the relationship to product providers. Our proposal would therefore be to have only two types of adviser • Agent/Tied Agent - The reality of the situation is that a tied adviser operates as an agent for the product provider, who is the principal. The rights and obligations of agency law are well established and we feel that this term would accurately describe the relationship of vicarious liability. Care should	See responses to items 54 and 55. We note your general comments on use of the term "independent". Your additional comments regarding adviser categorisation matters and associated terminology will be considered in the course of consultation on adviser categorisation related proposals. With regards to your comments on ownership, please response to item 54 above. We also confirm that the intention is not to include ordinary customer relationships within the scope of "ownership interest" for this purpose.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				be taken in the so-called franchise model, whereby a franchise operates under separately registered company, but is not an FSP in its own right. The employees of the franchise are representatives under the license of the product supplier. Under this model the consumer should clearly be made aware that the franchise is in fact a tied agent. • Financial Adviser - Our understanding of the proposals is that there is a concern that there are varying levels of independence and that the term independent financial adviser may not be appropriate in all circumstances. Our proposal is therefore to drop the use of the word independent and use Financial Adviser for anyone who is not a tied agent. We believe that the proposed changes to the disclosure requirements, that of disclosing the contracts held and the percentage of business paced with various product suppliers, will enable a consumer to determine the level of independence **Initial Comments on Ownership** There is a direct or indirect ownership or other financial interest in the adviser by the product supplier. With regards to ownership we do not see this as a clear indicator of influence in the absence of one of the other criteria. For instance, where a financial adviser firm is part owned by a product provider but there are no targets or restrictions on where business can be placed, ownership does not influence independence. So, while ownership may influence independence the other criteria are more important.	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				Comments on current proposal A strict interpretation of the current proposal would mean that even if ownership is through retail unit trust then the advisor would not be independent Under section 5 (i) we would add the words **"…other than as an ordinary financial customer**" at the end. This would prevent the situation where merely holding ownership though a Unit Trust fund would render the adviser non-independent	
57.	9	clause 4 of the proposed amendment section 3(5) of the General Code		With reference to "any direct or indirect ownership interest exists", we disagree with the regulators view that ownership determines independence - on a technical basis:- Section 3 (5) (ii) provides that a provider may call him/herself as "independent" if no direct or indirect arrangement or relationship exists between the provider and product supplier in respect of whose products such provider renders financial services that constitutes conflict of interest. The definition of "Conflict of interest" includes "…any relationship with a third party." The definition of "Third party" means, amongst others, "a product supplier." However, a provider has to have some relationship with a product supplier to render financial services. Thus the question is whether anybody can be "independent" according to the provision. If we follow the proposal the concept of a multi tied FSP would then need to be reintroduced into RDR as clearly an FSP who is owned but not tied to a product provider would not fall into either a tied or independent definition. We believe that the conflict of interest guidelines are clear enough to facilitate the management and mitigation of any such risks.	See responses to items 54, 55 and 56.
58.	13	clause 4 of the proposed amendment		We understand the principle behind the principle of independence. At present the definition will affect any provider holding shares in a listed provider. This should be excluded. We would also submit that the	We do not agree that the question of independence should be addressed only at the representative level. Where a risk of influence as a result of

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 3(5) of the General Code		shareholding of the provider doesn't impact the representative. For this reason we believe the question of independence should be addressed at representative level.	ownership relationships exists at provider level, it is equally likely that such potential influence could flow through to the representative level. Also see responses to items 54, 55 and 56.
59.	7	clause 4 of the proposed amendment section 3(5)(ii) of the General Code		In many cases an intermediary provides policy administration services to ensure timeous and accurate issuing and/or amendments to a product in the interests of a policyholder. The intermediary may receive remuneration in the form of an outsourcing fee from several insurers for this service. These services are in many cases provided simply to ensure that the service is efficient and accurate. Where the service is being provided in the interests of the client and being remunerated by several insurers so that there is a selection of insurers available and the interest of the client are actually being better serviced by such services would the intermediary still be considered as not being independent?	We have previously communicated that additional remuneration (outside of mere commission) impedes independence. The intention was therefore that such relationships are included in the scope of this requirement. An amendment has been made to provide clarity to that any remunerated services, including binders and outsourced arrangements constitute a conflict. See amendment to (5)(ii) and (iii).
60.	10	clause 4 of the proposed amendment section 3(5)(ii) of the General Code		Clarity is required as to whether this would extend to a situation where a FSP holds a Non-Mandated Intermediary Binder Agreement with an Insurer? Although these relationships create an inherent conflict, they are specifically allowed for in the LTIA and STIA.	See response to item 59.
61.	11	clause 4 of the proposed amendment section 3(5)(ii) of the General Code		The concept of "independence" includes a "direct and indirect arrangement". Clarity is sought as to the types of direct and indirect arrangements that are contemplated by the Registrar in this regard.	See responses to items 54, 55 and 56. The proposed section 3(5) stipulates the circumstances in which the term "independent" may not be used to describe a provider or its services. It is not clear what further "process that

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				Further guidance is also requested with regards to the process that must be followed where the provider is not independent.	must be followed" is required to be clarified.
62.	15	clause 4 of the proposed amendment section 3(5)(ii) of the General Code		This is unduly vague: It does not indicate, with reasonable certainty, the arrangements or relationships between a provider and supplier "that would constitute a conflict of interest". There must be at least two interests before there can be a conflict thereof. Despite that, the Code refers incorrectly to a conflict of "interest" (in the singular). The Act on the other hand refers correctly to conflicting "interests" (in the plural). Financial Advisory and Intermediary Services Act s 16(1)(d). Arrangements or relationships commonly well exist between a provider and a supplier of products in respect of which the provider renders financial services. For example, a provider might regularly sell insurance policies of a particular supplier. The Code states that providers may receive commission from insurers. For example. General Code s 3A(1)(a)(i). The Long-term Insurance Act stipulates that no consideration shall be offered by a long-term insurer, or accepted by any person, for rendering services referred to in that regulations under that Act, other than commission or remuneration contemplated in those regulations: Long-term Insurance Act 52 of 1998 s 49. (An amendment, not relevant, is pending: Insurance Act 18 of 2017 s 72 read with Sched 1.) The Long-term Insurance Act's regulations stipulate that no consideration shall be provided to or accepted by an independent intermediary for rendering services as intermediary, other than	See responses to items 54, 55 and 56. See also definition of "conflict of interest" that uses to the singular.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				commission in monetary form, and the total commission payable in respect of the policy shall not exceed the maximum prescribed. Regulations under Long-term Insurance Act (Govt Notice R1492 of 27 Nov 1998) regs 3.2 and 3.4. The Code already stipulates that a provider must furnish the client with particulars of— Any contractual relationship with the relevant supplier, and whether the provider has contractual relationships with other suppliers; Any conditions or restrictions imposed by the supplier regarding the types of products or services that may be provided or rendered by the provider; That the provider (if applicable)— holds *more than ten percent* of the product supplier's shares or has any equivalent substantial financial interest in the supplier; received *more than 30 percent* of total commission during the preceding 12 months from the product supplier (General Code s 4(1)(b)(i), (c), and (d)(i) and (ii)). (This gives rise to the question whether a conflict of interests would exist if a provider — (holds *some percentage* of a product supplier's shares (but *less than ten percent*); or (received *a substantial percentage* of his commission from one supplier in the preceding 12 months (but *less than 30 percent*)?) The Code does not define any particular contractual relationship, condition or restriction, shareholding or commission percentage (or any other, whether smaller or larger in ambit) as a conflict of interests.	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				The Code defines a conflict of interests in merely general terms (Code s 1(1) svv "conflict of interest"): **"conflict of interest"** means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client— *(a)* influence the objective performance of his, her or its obligations to that client; or *(b)* prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client, including, but not limited to— (i) a financial interest; (ii) an ownership interest; (iii) any relationship with a third party. (This definition also raises questions: (What is an interest that may "influence" objective performance of obligations? (When would a conflict of interests "prevent" a provider from rendering unbiased and fair service or acting in the interests of clients? (Would a provider's interest in receiving commission constitute a conflict of interests?) It is concluded that the proposed clause (that a provider may not describe itself or its services as independent if an arrangement or relationship exists between it and a supplier of products regarding which it renders services that "would constitute a conflict of interest") is unduly vague and liable to be struck down by the courts, and should be deleted. The concerns which might be behind the draft clause appear to be addressed already by the existing provisions of the Code that—	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				A provider must avoid, and where this is not possible mitigate, any conflict of interest between it and a client (General Code s 3(1)(b)); A provider must disclose to a client any conflict of interest in respect of that client, including— Any ownership or financial interest (Other than an immaterial financial interest) that the provider may be or become eligible for (General Code s 3(1)(c)(i)(bb)); and The nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict (General Code s 3(1)(c)(i)(cc)); and The service must be executed with due regard to the interests of the client, which must be accorded appropriate priority over any interests of the provider (General Code s 3(1)(d)).	
CLAUSE 5 – AMENDMENT OF SECTION 3A OF THE GENERAL CODE					
63.	2	clause 5(a) of the proposed amendment section 3A(1)(a)(iii), (iv) and (v) of the General Code	A provider or its representatives may only receive or offer the following financial interest from or to a third party - (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~~	To be able to offer or receive fees referred to in section 3A(1)(a)(iv), an FSP will have to review client agreements to ensure compliance with the more detailed requirements. From a practical perspective therefore, FSPs will not be able to comply with the requirements on the date of the publication of the amendments to the General Code of Conduct. As client agreements are generally reviewed annually, ASISA members propose that the amendment to section 3A(1)(a)(iv) should become effective 12 months from the date of the publication of the amendment. In respect of new client agreements, ASISA propose a 6 month period to allow FSPs to implement the more detailed requirement.	See transitional arrangements. A 6 month implementation period has been provided for.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			~~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~~;		

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
64.	5	clause 5(a) & (b) of the proposed amendment section 3A(1)(a)(iii), (iv) & (v) section 3A(1)(b)		We are in agreement with the principles laid out is section **5 (a)** and **5(b).**	Noted.
65.	16	clause 5(a) of the proposed amendment section 3A(1)(a)(iii) of the General Code		We confirm our understanding that the removal of ***[if those fees are reasonably commensurate to a service being rendered]*** is due to the work being done with the RDR proposals and that existing fee arrangements will remain until there is clarity for the low advice / 'sales execution only model'.	Disagree. The reference to "reasonably commensurate to the service being rendered" has been moved to section 3A(1)(d) as per the proposed amendments. However, the omission of a reference to subparagraph (1)(a)(iii) in (1)(d) was an oversight. See amendment to 3A(1)(d).
66.	12	clause 5(a) of the proposed amendment section 3A(1)(a)(iv) of the General Code		We have no concerns about the substitution of (iv)(aa) providing that our reading is correct, that an advisor can receive both fees and commissions as long as these are not for the same activity.	The provisions do contemplate that a provider may receive all the forms of remuneration referred to in section 3A(1)(a), provided all other applicable provisions of the General Code are also complied with. Please note however that these provisions must also be read with any applicable remuneration provisions under the Long-term and Short-term Insurance Acts and the Medical Schemes Act. The FAIS General Code provisions should not be read as permitting any forms of remuneration that are not permitted under those Acts.
67.	16	clause 5(a) of the proposed amendment		We confirm our understanding that the removal of ***[if those fees are reasonably commensurate to a service being rendered]*** is due to the work being done with the RDR proposals and that existing fee	See response to item 65.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 3A(1)(a)(v) of the General Code		arrangements will remain until there is clarity for the low advice / 'sales execution only model'.	
68.	15	clause 5(b) of the proposed amendment section 3A(1)(b)(i)		This "fair outcomes" criterion for judging a representative's performance, appears to goes beyond a provider's specific duty stipulated in the Code that, when a provider (and a representative)(In the Code, unless the context indicates otherwise, a "provider" means an authorised financial services provider, and includes a representative. General Code s 1(1) sv "provider") renders a financial service, it must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider (General Code s 3(1)(d)). This criterion impliedly incentivises representatives (but not the provider itself) to "deliver" undefined "fair outcomes for clients". It is submitted that this clause is unduly vague, in not indicating with reasonable certainty what sort of things would constitute "fair outcomes for clients". The clause, if adopted, would be liable to be struck down by the courts, in not indicating with reasonable certainty what is required. The Act requires only that the Code should oblige a provider to "treat" clients fairly in a situation of conflicting interests (Financial Advisory and Intermediary Services Act s 16(1)(d)). This clause (that a provider may not offer a financial interest to a representative without giving due	Disagree. The concept of fair outcomes for clients is essentially already captured as a duty under section 2 of the General Code that provides that a provider must act honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry. In addition, in terms of the Fit and Proper Requirements a provider must have a governance framework that provides for fair treatment of clients.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				regard to delivery of "fair outcomes" for clients) should therefore be deleted. (The same applies to the clause which would insert a paragraph to the effect that a provider or its representatives may only receive fees as specified if the payment thereof does not impede the "delivery of fair outcomes" to clients.)(Amendment cl 5(e) inserting Code s 3A(1)(d)(iv)).	
69.	2	clause 5(c) of the proposed amendment section 3A(1)(bA) of the General Code	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.	It is suggested that the proposed amendment should only become effective 6 months from the date of its publication to afford FSPs the opportunity to review and amend procedures and processes to ensure compliance with the more detailed requirements.	See response to item 63.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
70.	3	clause 5(c) of the proposed amendment section 3A(1)(bA) (i) and (ii) of the General Code	We suggest the change of the word "compliance levels" to "conduct measures" in subsection (1)(b)(ii).	We request consideration of the following for both subsection (1)(b) i and ii: i. This will require change in system and processes within the FSP. We submit that it will require a staggered implementation period to comply and request a period of at least one year from the date of publication. ii. Not providing a staggered timeline will result in institutions place to meet the specific requirements in this section.	**General comment:** See amendment, criteria have been slightly altered. **Comment I and ii:** See response to item 63.
71.	5	clause 5(c) of the proposed amendment section 3A(1)(bA) of the General Code		Our understanding of the introduction of b(A) is that a representatives' remuneration should be paid according to a balance scorecard approach with indicators other than just production, such as positive client reviews and outcomes. FPI supports this.	Noted. We agree that a "balanced scorecard" performance and remuneration approach could be utilised to meet the requirements of this provision.
72.	11	clause 5(c) of the proposed amendment section 3A(1)(bA) of the General Code		Extensive system and process changes will have to be effected in order to comply with the requirement. A period of one year from date of publication of the General Code in the Government Gazette within which to comply is hereby requested	See response to item 63.
73.	5	clause 5(e) of the proposed amendment section 3A(1)(d) of the General Code		We believe that tying the financial interests to the "cost of performing the service" may be counterproductive. Firstly, any business owner will try and contain costs. Thus, if costs are reduced, then the fee charged to a client will need to be reduced. There is not incentive for a business to cut costs as they would then need to cut revenue as well	See response directly above.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				Secondly many practices have a cross subsidisation model whereby larger clients may be charged a higher fee, in order toAgre allow the practice to serve smaller clients, and even establish a pro bono programme. We believe that such a provision may cause adviser to rather focus on the larger clients, and thus create and advice gap. **The FPI Code of Ethics has the following Principles on remuneration:** *"Members may be remunerated based on a fee or commission, or both. Irrespective of the remuneration charged, the judgment of reasonableness of remuneration will be based on fairness and what is equitable in the circumstances for both the client and FPI member".* *"Excessive commissions, inequitable to industry/service or product norms, offered by product or service providers should be critically questioned and investigated by members before promoting or recommending such products and/or services."* *"In determining what constitutes a fair and equitable remuneration, members consider the value of the professional service to the client, the usual charge for similar services by other similar professionals, and any special circumstances deemed material in the particular circumstances and agreeing on acceptable remuneration is a matter for negotiation between the professional and the client".* *"Members do not advise a client to undertake any action that would merely generate remuneration for the member without any benefit to the client".*	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				We believe that those principles empower the client to decide what they are prepared to pay for the service that is delivered without impeding innovation in client charging. Having these principles coupled with the client first principle would add for customer protection.	
74.	12	clause 5(e) of the proposed amendment section 3A(1)(d) of the General Code		As the proposed amendment (d)(i) reads, it would include situations where an FSP charges a client for doing work, and we are not clear whether this was intended by the Regulator. Since such types of transaction do not appear to be excluded, we fail to understand why the financial interest received or offered by a provider or its representatives should be "*reasonably commensurate with the actual cost of performing the service*". Also, since this word was specifically excluded under the changes to section 3A of the Code, we don't see the need to keep it in here. What is reasonably commensurate for one person may not be so for another. Therefore, if this requirement of "reasonably commensurate" is retained, we question how this will be policed and in the event of a dispute, who will decide what is or is not reasonably commensurate? We believe that where there is agreement between a provider and its client, irrespective of the actual cost, then the fee should be acceptable if the client has been clearly informed of what service will be received in return for the agreed fee. Similar to a person being willing to pay a premium for the services of a surgeon with the best reputation, irrespective of the actual cost the surgeon may incur in providing the medical service to the person, we believe that where a client is willing to pay more for the services of an advisor, that this should be allowed irrespective of the cost of delivering such a service. In addition, in our opinion if an advisor is only allowed to charge a fee commensurate with the	See response to item 73.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				actual cost of providing a service, it will make it difficult for an advisor to run a sustainable business which would not serve the objective as set out in National Treasury's "Red Book".	
75.	6	clause 5(e) of the proposed amendment section 3A(1)(d)(i) of the General Code		This wording appears to exclude the possibility of making a profit, or working at risk, as the fee needs to be reasonably commensurate with the cost of providing the service. If I understand this proposal correctly, it could have the effect of putting corporate finance advisory service providers out of business. This type of service provider does not earn any other form of income. Their fees are high by comparison with other financial advisers but their clients are well able to negotiate the fees and the fees are well earned. In many instances, the fees are success based only, with the result that no income is earned for months or years until the transaction is successfully concluded, or no fee is earned if the transaction does not proceed.	See response to item 73.
76.	8	clause 5(e) of the proposed amendment section 3A(1)(d)(i)		We respectfully submit that the requirement that certain financial interests must be reasonably commensurate with the service being rendered does not consider the advice risk associated with those services. In our view, intermediary remuneration should not be limited to services only, but it should also consider the onerous nature of advice.	See response to item 73.
77.	13	clause 5(e) of the proposed amendment section 3A(1)(d)(i)		We believe that reasonable and commensurate should not be required as a measurement for several reasons. The reasons for this are: • The cost for providers to verify that the fees are reasonable and commensurate will be substantial and result in an increase in costs rather than a reduction thereof; • The adviser who can reduce his costs the most effectively will now be required to reduce his fees to be in line with his actual costs. • Such a requirement will stifle development in	Disagree that reasonably commensurate should not be a criterion. With regards to the actual cost of providing a service, see response to item 73.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				advice and servicing systems as a successful implementation will result in a drop in turnover. • Most offices run a cross-subsidisation structure where higher margins on larger clients subsidise the cost of managing the smaller clients. It is submitted that the clients on whom a better margin is achieved is in a stronger position to negotiate their fees and less asset-rich clients are benefitting. Requiring fees to be reasonable and commensurate may very well create an advice gap. • We believe that a clearer disclosure of fees in an easy comparable structure will improve competition and this will reduce fees to a reasonable and commensurate level. Existing development in the automated advice space will for example be a strong driver in the reduction of these fees.	
78.	14	clause 5(e) of the proposed amendment section 3A(1)(d)(i)		the wording "reasonably commensurate with the actual cost of …" can be misinterpreted. Are we correct in saying that FSPs that have effective controls and systems in place for betterment of services to clients, with lower actual costs, will still be able to negotiate a fee that recognizes their efficiencies and rewards them accordingly, as opposed to FSPs with lesser and more costly processes, that can pass on the actual, higher cost to the client?	See response to item 73.
79.	12	clause 5(e) of the proposed amendment section 3A(1)(d)(iii) of the General Code		In respect of (d)(iii), we would like to understand what measure the Regulator would expect of a provider to effectively mitigate a conflict, whether actual or potential. It is our view that adequate disclosure in "plain language" (as proposed in the definitions) to put a client in a position to make an informed decision, is surely enough to effectively mitigate the conflict.	This is not a new requirement. See section 3(1)(b) that requires a provider to avoid and only where it is not possible, to mitigate any conflict of interest. In terms of 3(1)(c) a provider must further disclose to a client the measures taken to avoid or mitigate the conflict of interest. Disclosure of the conflict alone is thus not sufficient.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
80.	2	clause 5(f) of the proposed amendment section 3A(2)(b)(ii) of the General Code	A conflict of interest management policy must – (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);".	A conflict of interest management policy must, in terms of section 3(2)(c) of the General Code of Conduct be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider. It is suggested that the proposed amendment should only become effective 9 months from the date of its publication so that FSPs can review and amend the conflict of interest management policy and submit it to the board or governing body for adoption to ensure compliance with the more detailed requirements. The 9 month period will cover two board meetings (boards usually meet quarterly).	See response to item 63.
CLAUSE 6 – AMENDMENT OF SECTION 4 OF THE GENERAL CODE					
81.	2	clause 6(a) of the proposed amendment section 4(4) of the General Code	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~~ **may** not make inaccurate, unfair or unsubstantiated criticisms of any financial service, financial product, product supplier, provider or representative.	Spelling error.	See correction.
82.	12	clause 6(a) of the proposed amendment	The first word in the fourth sentence should read "may" instead of "my".	We agree that a comparison should not be able to be made unless the differing characteristics of each are made clear. We further believe that where providers do make a comparison, they should be qualified to make such comparison. This however, comes with some practical challenges. For	See correction. Please note that this is an existing requirement (the only change being the inclusion of the words "Subject to subsection (5)") and

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 4(4) of the General Code		example, in providing advice to a client and taking into consideration the requirement for a provider to inform a client of the financial implications, costs and consequences of replacing one financial product with another, does this mean that an advisor can only provide this information to a client if the advisor has completed product specific training on both the replaced and replacement product? In such cases, we would expect product suppliers to be willing to provide information to FSPs/advisors on request so that they can discharge their obligations. Further, we would hope that product suppliers do not limit the provision of such financial product information to FSPs with whom they have broking agreements.	therefore no new requirements are being proposed.
83.	3	clause 6(b) of the proposed amendment section 4(5) of the General Code		i. We recommend the removal of sub-section 5 because the reference to section 14(10) applies to comparative marketing and those requirements cannot be practically implemented for this section. ii. Also, sub-section 4 allows for an FSP to demonstrate that the comparisons are not inaccurate, unfair or unsubstantiated criticisms; etc. and appears to the meet the intention of subsection 5.	Disagree. The factors listed in section 14(10) have equal application to the comparison referred to in this section. It must further be applied with the necessary changes.
84.	11	clause 6(b) of the proposed amendment section 4(5) of the General Code		Section 14(10) applies to comparative marketing and cannot be practically applied in section 4(5). We recommend that a separate section specific to section 4(5) should be drafted to provide clarity as to which requirements relating to comparisons whilst dealing with a client are applicable.	See response to item 83.
CLAUSE 7 – AMENDMENT OF SECTION 7 OF THE GENERAL CODE					
85.	16	clause 7 of the proposed amendments		Direct marketing is differentiated in the definitions section of the General Code, however is not distinguished from traditional FSP's insofar as the disclosure requirements are concerned (proposed section 7). This comment also applies elsewhere in	We do not agree that more extensive disclosures regarding the financial service being rendered are required where advice is provided than in non-advice distribution models. In both

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 7 of the General Code – general comment		the General Code where reference to direct marketers has been removed. Direct marketing plays an instrumental role in achieving Treasury's objective of improving access to financial services cost effectively. Many direct marketers follow a sales execution (no advice) model, as contemplated in the RDR. We are of the view that the General Code needs to cater for this specific distribution method to avoid unnecessary complexity in relation to the marketing and administration of simple financial products. We suggest, that a distinction is drawn between advice and sales execution only (low / non-advice) models for disclosure purposes. There should be a recognition that the need for additional disclosures is necessary where advice is being given (to ensure policyholder protection) and that less onerous disclosure requirements should apply to the marketing of products in non-advice models.	instances, the client needs to be placed in a position to make an informed decision, and the disclosures required by section 7 are therefore necessary.
86.	3	clause 7(b) of the proposed amendments section 7(1)(c) of the General Code	The phrase "full and appropriate information" be replaced with "key information". "prior to the conclusion of any transaction" should read "in good time"	i. While we support that the customer must be suitably informed before a transaction concludes, this needs to be balanced with the need for financial inclusion of customers, cost implications and the impact on the client experience. ii. The requirement to have all disclosures made prior to the conclusion of any transaction can create a barrier to the financial inclusion of clients/members of the public who are unable to afford the costs associated with obtaining financial product through face to face interactions with an adviser. These individuals rely on non-face to face mediums such as ATMs, mobile apps, SMSs, USSD products and services.	i. Noted. ii. Agree. The explicit requirement to disclose all information prior to contracting has been removed. iii. Noted. iv. to viii: See response under ii. above. Notwithstanding the above, we believe that the current requirement stating "at the earliest reasonable opportunity" would in the vast majority of instances be prior to concluding the transaction, and if the information is provided after the conclusion of the contract a provider would need to have a good argument justifying why in that

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				iii. Due consideration also needs to be given to the customer's chosen methods of consumerism which include the increased popularity of non-face to face sales channels. Customers expect a seamless client experience in such instances. iv. If all product information must be disclosed beforehand, the duration of a telesales call will become lengthy and cause customer frustration. This approach does not support easy access to financial services. v. The requirement that all relevant product disclosures be made prior to the conclusion of any transaction gives rise to practical challenges. For example, some investment financial products have features which relate to forecasts and illustrations and it would be difficult to provide the disclosures in detail telephonically prior to the conclusion of the transaction. vi. We would recommend that the phrase "full and appropriate information" be replaced with "key information". vii. This then affords the FSP the discretion to provide key information that will enable the customer to make the correct decisions before contracting. viii. Furthermore, it should align to the final version of the PPR which now states "in good time" as opposed to "prior to the conclusion of any transaction"	instance the earliest reasonable opportunity was only after conclusion of the contract.
87.	3	clause 7(b) of the proposed amendments		The concept of a "needs analysis template" is supported.	The comment relates to the amendments to section 9 and not section 7.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 7 of the General Code		We recommend that such a template be reviewed and consulted on prior to it being finalised.	However, we confirm that any proposed template will be subject to consultation.
88.	10	clause 7(b) of the proposed amendments section 7(1)(c) of the General Code		Clarity is required on the regulator's view of when a transaction is completed. We would submit it is only concluded once offer and acceptance has taken place.	Ordinary legal contractual principles would apply to determine when a transaction is concluded. Note that this language has previously been used in section 15(3) of the Code.
89.	16	clause 7(b) of the proposed amendments section 7(1)(c) of the General Code		The removal of **[at the earliest reasonable opportunity]** and the insertion of the words "*prior to the conclusion of any transaction*" in paragraph (v) of subsection 1(c) is unduly prescriptive insofar as the information which must be made available to clients is concerned. If a provider is, for example, unable to provide the full extent of the required disclosure due to limitations associated with the distribution channel (such as, limited number of characters on the platform, telemarketing conversations becoming too long or where at the point of sale the customer does not have the opportunity to record the details), it would be more appropriate to provide the information required at the earliest reasonable opportunity after inception of the transaction. We submit that the existing disclosure requirements are more than adequate to ensure the fair treatment of customers.	See response to item 86.
90.	2	section 7(1)(c)(iv) and (xiv) of the General Code	Subject to the provisions of this Code, a provider ~~other than a direct marketer,~~ must – (c) in particular, ~~at the earliest reasonable opportunity~~ prior to the conclusion of any	It will be a significant practical challenge for advisers in the low income market to provide premium projections for up to 20 years prior to the conclusion of any transaction as opposed to the current requirement of providing the information at the earliest reasonable opportunity. Advisors in this market are generally not equipped with the technology that feeds into the live systems of	See response to item 86 above. A direct marketer is currently required, in the case of an insurance product in respect of which provision is made for increase of premiums, to provide abbreviated disclosures of such contractual increase. It does not materially differ from the requirement

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			transaction, provide, where applicable, full and appropriate information of the following: (iv) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and~~, subject to subparagraph (xiv),~~ any anticipated or contractual escalations, increases or additions; ~~(xiv) in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five~~	insurers. Many business models are paper based. Similarly, it is impractical for a direct marketer to provide premium projections on a telephone call prior to the conclusion of a transaction. Rule 11.4.2(e) of the PPR requires an insurer to provide a policyholder with certain information in respect of premiums before a policy is entered into. Where a product provides for premium increases, an insurer is not required to provide premium projections for up to 20 years prior to the conclusion of any transaction. There is also no requirement to provide projections after the policy is entered into. In the case of an insurance product, it is submitted that a requirement for an FSP to provide information on premiums cannot be more onerous than a similar requirement applicable to an insurer. In view of the above, it is proposed that subparagraph (xiv) must be deleted together with the reference thereto in subparagraph (iv)."	in section 7(1)(c)(xiv) that requires disclosure of the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			~~years and thereafter on a five year basis but not exceeding twenty years;~~		
91.	2	clause 7(c) of the proposed amendments sections 7(1)(c)(v) of the General Code	Subject to the provisions of this Code, a provider ~~other than a direct marketer,~~ must – (c) in particular, ~~at the earliest reasonable opportunity~~ <u>prior to the conclusion of any transaction</u>, provide, where applicable, full and appropriate information of the following: (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~~ <u>–</u> <u>*(aa)* the amount, frequency and payment</u>	FSPs will have to review and amend their processes and procedures and client agreements in order to comply with the more detailed requirements. ASISA members suggest a transitional period of 12 months from the publication of the amended requirements as client agreements are generally reviewed annually. The proposed transitional period is aligned to the 12 month transitional period applicable to Rule 11 (Disclosures) of the PPR.	Please note that the PPR requirements have now already taken effect. We do not agree that a transitional period of 12 months is required to implement this requirement and are of the opinion that a 6 month period would be sufficient. See transitional provisions. Please note that reference to "prior to the conclusion of any transaction" has been removed.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			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;		
92.	11	clause 7(c) of the proposed amendments		Rule 11.4.2 (g) of the Policyholder Protection Rules (PPR's) states that:- "*concise details of any significant exclusions or limitations, which information must be provided prominently as contemplated in rule 10.1"*	It seems that the comment relates to 7(1)(c)(vii) that provides that a provider must disclose concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses,

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		sections 7(1)(c)(v) of the General Code		The amendment in the General Code have not been aligned with this Rule in the in the PPR's. The result of this inconsistency is that insurers who are also Financial Service Providers will be subject to two separate disclosure standards. We recommend the alignment of the General Code with the PPR's.	restrictions or circumstances in which benefits will not be provided. All of the information is necessary for a client to make an informed decision. In our opinion 7(1)(c)(vii) is largely aligned to Rule 11.4.2(g).
93.	3	clause 7(c) of the proposed amendments section 7(1)(c)(v)(bb) of the General Code		This will require change in system and processes within the FSP. We submit that it will require a staggered implementation period to comply and request a period of at least one year from the date of publication.	See transitional provisions. Six month transitional period provided for.
94.	9	clause 7(c) of the proposed amendments section 7(1)(c)(v)(bb) of the General Code		We strongly agree with the proposal and ask for clarity as to the content the regulator would want included in the anticipated contract / SLA so as to ensure a richer experience re the obligations between both parties.	Noted. Additional guidance on the content of the required agreement will be considered, although the intention would not be to prescribe the format and content.
95.	3	clause 7(c) of the proposed amendments section 7(1)(c)(v)(cc) of the General Code		Please reconsider whether this is necessary due to duplication with other existing sub-sections within section 7 that were not amended or removed.	It is not clear what duplication is referred to.
96.	16	clause 7(d) of the proposed amendments		The provisions of sub-section 3A, when read with sub-section 1(c), leads one to the interpretation that the provision of the information specified in (1)(c) is not mandatory prior to the conclusion of the transaction.	Please note that the reference to "prior to the conclusion of any transaction" has been removed.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 7(3A) of the General Code		In addition to the above, "*conclusion of the transaction*" may be capable of different interpretations, which can lead to uncertainty and differences in the application of the Code amongst FSP's. In this regard, does "*prior to the conclusion of any transaction*" mean: • Prior to the client communicating a decision to accept the product? • After acceptance of a product but prior to banking details being captured for debit order purposes? Or At any time prior to the conclusion of the telephone call?	
CLAUSE 9 – AMENDMENT OF SECTION 8 OF THE GENERAL CODE					
97.	8	clause 9 of the proposed amendments section 8 of the General Code – suitability of advice		The proposed amendments to section 8 of the Code are welcomed. With respect to the Regulator, it never made sense to distinguish between a provider and a direct marketer as far as obtaining personal information, conducting an analysis, and suitability were concerned. This created an uneven playing field between providers and direct marketers, which can now be rectified. The proposed amendments to section 8(1)(a) makes a lot of sense and provide sound direction to providers when obtaining client information, conducting an analysis, and offering appropriate advice. However, one of the subjects that remains a serious concern is the risk profile issue. Although it is clear in the proposed amendments that the risk profile of the client must be established, and the product must be appropriate to the client's risk profile and financial needs, neither risk nor risk profile is defined or quantified. We respectfully submit that, if the term risk, or risk profile, remains unclear, it leads to "puffery", as so well defined in the proposed	Noted. The Authority does not intend to define the concept of "risk profile" or to prescribe any specific requirements relating thereto through these amendments. However, the commentator's comments will be considered during future refinement of the legislative framework. If necessary, an option is also to issue guidance regarding what the Authority views as a risk profile.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				amendments. We still maintain that the current evaluation of risk and risk profile lead to value judgements and subjective assessments of quality, based solely on the opinion of the evaluator, because there is no pre-established measure or standard. We notice that, on the one hand the Regulator, where appropriate, wants to prescribe the format and the matters to be addressed in the record of advice, but on the other hand remains silent on the issue of risk profile. It is understood that there is much confusion amongst providers about the format and content of the record of advice as prescribed in the code, and guidance from the regulator should be welcomed. However, we respectfully submit that there is as much confusion and interpretation, if not more, pertaining to the issue of risk and risk profiling.	
98.	13	clause 9 of the proposed amendments section 8 of the General Code – suitability analysis		We support the changes to paragraph 8. The intention to mould the suitability analysis around the stated needs of the client and thereby allowing a lower level of advice is advisable when agreed to by the client. We do however feel that the paragraph is open to different interpretations and therefore welcome the intent to issue a guidance note on this matter.	Noted
99.	16	clause 9 of the proposed amendments section 8 of the General Code		The extensive list of proposed requirements does not take account of non / low- advice (sales execution) models often utilised by direct marketing FSP's. Notwithstanding this comment, we assume that as the amendments to this section specifically apply to the giving of advice, that the provisions will accordingly not be applicable in sales execution models.	We confirm that section 8 of the Code only applies where advice is provided. Please note that the Act does not provide for a concept of "low-advice".
100.	3	clause 9 of the proposed amendments		The amendments to the General Code do not address if a record of advice must be generated when automated advice is provided digitally.	Disagree. The requirements relating to advice in the General Code apply equally to advice that is provided face-to-face or advice that is provided

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 8 of the General Code read with the definition of "automated advice" in the FAIS fit and proper Board Notice 194 of 2017 read with Section 38(a)(vi)		The fit and proper Board Notice requires monitoring and review of the advice algorithms at an FSP level – which is correct. We recommend that this section be amended to make clear that a record of advice is not required in instances where automated advice is provided.	through an electronic medium (automated advice). Therefore, a record of advice must be provided to a client irrespective of the medium though which the advice is provided.
101.	3	clause 9(a) of the proposed amendment section 8(1) of the General Code	We recommend that the clause be amended to read as follows: "A provider other than a direct marketer, must prior to providing a client with advice……"	i. This amendment does not take cognisance that not every sales intervention includes "advice". The FAIS Act does not define different types of advice and the discussion paper has noted that there is no intention to in future introduce definitions of "low advice", etc. ii. This amendment makes the assumption that a direct marketer is providing advice to a client during the telesales call, whereas the current practical approach is that the representative is offering only intermediary services and factual product information using a script. iii. The requirement to introduce a record of advice into this scenario will be artificial and onerous and does not take cognisance that FAIS provides for intermediary services and/or advice to be provided to a customer. The clients risk profile and needs in such a customer base is usually pre-evaluated and targeted sales interventions are then made to such pre-scored/pre-evaluated customers. A needs analysis in this instance is not applicable.	Section 8 of the Code only applies where advice is provided. Please see the wording of s.8(1) which makes this clear.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
102.	12	clause 9(a) of the proposed amendment section 8(1) of the General Code		We welcome this amendment as we support the levelling of the playing fields and ensuring that all FSPs are required to meet the same requirements when providing advice to clients.	Noted.
103.	9	clause 9(b) of the proposed amendments section 8(1)(a) and of the General Code		(a) We feel it necessary to state that we are comfortable with the approach insofar as it relates to a 'Risk Profile' of a client provided that it remains profile related and NOT risk appetite related. It may also be necessary to firm up on the definition as the term RISK, is used in so many different applications and contexts within the industry that the true intent may be lost in interpretation from a client perspective. (b) (iii): We agree with the intention of this section however when taking a large scheme or fund into consideration the practicality of this requirement becomes virtually impossible. Clarity is required as to what would be considered reasonable when considering the provision of bulk advice. As an example - would an FNA and ROA be required for each member and if so, to what extent? FSB reasoning - 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.	**Comment (a):** See response to item 97. **Comment (b):** The intention of section 8(1)(a)(iii) is not that the needs of every individual member must be considered separately, but rather the reasonably identified needs of the member / employee base collectively. See amendment to clarify the above.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
104.	1	clause 9(b) of the proposed amendments section 8(1)(a)(i) of the General Code		Clarity is required on the section – In our understanding the interpretation of the highlighted text could be; • The client's ability to afford the premium (bear the cost). • The client's ability being to bear the risk of a loss within the product. For example, if there are underlying investment instruments linked to the product, can the client bear the risk of losses (how much can he bear). • The client's ability to bear the risk of not meeting their financial goals, e.g. being invested too conservatively (in cash) running the risk of inflation eroding the investment. What is does this statement mean/relate to? What does the FSB mean with affordability of the risk the products pose? Does it relate to the underlying investments of the product or does it relate to the policyholder not meeting their retirement savings? If they are too conservative they will never reach their retirement goals, for example if they are very conservative and only want to invest in cash, inflation will eat up all their savings.	Section 8(1)(a)(i) would, depending on the nature of the transaction in question, potentially cover all of the factors mentioned.
105.	1	clause 9(b) of the proposed amendments section 8(1)(a)(i) of the General Code	-	-	-
106.	3	clause 9(b) of the proposed amendments section 8(1)(a)(ii)		i. With regards to 9(b)(a)(iii) – It will prove cumbersome to evidence the determination of the reasonably identified needs and circumstances of all underlying members, employees of the client.	**Comment (i) to (iv):** See response to item 103.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		and (iii) of the General Code		ii. An employer in such instances generally contracts on behalf of the members, and the arrangement is contractually agreed between the parties in the employment relationship. iii. While we support the objectives of the Registrar in relation to underlying members / clients of pension funds and medical schemes, an alternative mechanism needs to be introduced to address this issue. iv. As an example, a FAIS needs analysis document per individual underlying member is not going to solve for trustee mismanagement of pension funds. v. Financial needs must be considered as part of the advisory process. The client's ability to afford a premium has never been included (also see the requirements under the NCA). This will not apply in instances where only an intermediary service is rendered as the requirements of this section doesn't apply to intermediary services. By implication, is a needs analysis and client's ability to pay the premiums required irrespective of whether advice is rendered? If this is the intention, the heading of the section should be amended. vi. This will require change in system and processes within the FSP. We submit that it will require a staggered implementation period to comply and request a period of at least one year from the date of publication. vii. We recommend that the amendments align to the PPR which requires reasonably practicable measures to be followed.	**Comment (v):** Section 8 of the Code only applies where advice is provided. **Comment (vi):** See delayed effective date of the amendments. **Comment (vii):** Disagree. Please note that as this relates to the advice process, the PPRs are not an appropriate benchmark with which to align this requirement. The PPRs apply to insurers and it is reasonable to only require that they implement reasonable practicable measures where it relates to members and the advice process, as they are not the primary provider of advice. However, the FAIS GCOC applies to the actual persons providing the advice and therefore merely taking "reasonable practicable measures" in the context of the advice process where the FSP is providing advice would not be sufficient. We do not believe that the requirement that the adviser must take into account the "reasonably identified collective needs and circumstances of members" is unreasonable.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
107.	12	clause 9(b) of the proposed amendments section 8(1)(a)(iii) of the General Code		In respect of (a)(iii), while in principle we do not object to ensuring that the needs of the underlying natural persons are considered, we believe that this requirement is too onerous, especially if the intention is that this be applied one-on-one at the individual employee or member level. We are not entirely clear what the Regulator is trying to achieve and believe that practically it would be very difficult to implement. In practice, when group schemes are put in place, they are often agreed between advisor/consultant and management of the employer. For example, we don't see that it would be practical for an advisor to identify the needs and circumstances of each employee of a company employing 1,000 people. We are also not sure what is meant by "*reasonably identified*" and question whether this means making a calculated assumption at a group level. We fail to see how an advisor could make such assumption for each individual employee.	See response to item 103.
108.	14	clause 9(b) of the proposed amendments section 8(1)(a)(iii) of the General Code	We would suggest that consideration be given to including the words "where appropriate" at the end of section 8(1)(a)(iii).	While we appreciate the intent of the inclusion of the requirement that individual needs are considered when proposing a group scheme, we are concerned that in practice these schemes are put together with a view to benefitting the members of the group as a whole and there may be limited scope to address individual needs without adversely affecting some general conditions. As this means that the somewhat subjective word "reasonable" would have to be interpreted rather widely, we would suggest that consideration be given to including the words "where appropriate" at the end of section 8(1)(a)(iii).	See response to item 103.
109.	4	clause 9(c) of the proposed amendments	*"…will be appropriate to the client's risk profile and needs, the provider must…"*	We propose that the word "financial" should be removed. A client's needs can be wider than merely financial needs. Refer to 8(1)(a) where a client's "needs and objectives, financial situation, risk profile and financial product knowledge and experience" must be considered. The "financial need" is not the	Agree. See amendment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 8(1)(cA) of the General Code	We propose that section 8(1)(cA) should rather read as follow: *"…will be appropriate to the client's* **[needs and objectives, financial situation, risk profile and financial product knowledge and experience]***, the provider must…"*	only need to consider when rendering advice in relation to insurance products. We propose that the wording in 8(1)(cA) should be wider as indicated. We submit that the proposed wording is wide enough to include financial needs (through the words "financial situation") but also includes other important factors such as objectives needs (including insurance needs) and product knowledge.	
110.	12	clause 9(c) of the proposed amendments section 8(1)(cA) of the General Code		We are not certain of the practical application of the requirement of (cA) and how it will be policed. Without understanding the rationale for inserting this specific provision (ie. what is the evil that we are trying to stamp out), we believe it is unnecessary because section 8(1)(c) of the General Code already requires that a financial product is identified which is appropriate to the needs of the client. We also submit that where advisors are limited by licence and contractual agreements, they would only know the range of products for which they are authorised or allowed to deal in, and this would form part of their disclosure to clients. On a philosophical level, advisors who have limited authorisation will not know anything better and therefore how could they be expected to know that a different type of financial product may be better suited to the client? We submit that if they offer the most suitable product within the range that they can and they provide clear information about how the product works, the benefits and the drawbacks so that clients can make informed decisions, then the advisors will have discharged their duties.	Please see the rationale for this provision as explained in Part 4 of the Invitation to Comment on the proposed amendments (published on 1 November 2017) under the heading *"Suitability of advice in case of legal or contractual limitations".* The proposed section 8(1)(cA) does not require the provider to identify a product that is "better suited" to the client's risk profile and financial needs. It deals with the situation where the provider is not able to identify a product that is appropriate to such needs and profile.
111.	14	clause 9(c) of the proposed amendments		A provider may not always be able to identify a financial product or products that may be more appropriate to the client's risk profile or financial	The proposed section 8(1)(cA) does not require the provider to identify a product that is "more appropriate" to

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 8(1)(cA) of the General Code		needs than those which the provider is able to offer, merely because the provider may not be aware of the existence of such other appropriate product or products. This will result in the requirements of this paragraph not being complied with, although unintendedly. It cannot reasonably be expected of all providers to be aware of all the products and their derivatives available in the market that may be more appropriate.	the client's risk profile and financial needs. It deals with the situation where the provider is not able to identify a product that is appropriate to such needs and profile.
112.	3	clause 9(d) of the proposed amendments section 8(4) of the General Code		This section seems to create a safety net for not having to fully comply with section 8(4)(a). It is also not clear what the intention of section 8(4)(b) is, as it reads now. The focus should instead be on instances where clients did not want an analysis to be conducted or where clients did not want factors to be considered, where providers should then point out that risk, which is already covered under section 8(4)(c). It is recommended that the intention and purpose behind section 8(4)(b) in relation to section 8(4)(c) be clarified?	Section 8(4)(b) applies specifically to cases where any of the scenarios in section 8(4)(a) are applicable. Section 8(4)(c) has broader application and is not limited only to the scenarios in section 8(4)(a). Section 8(4)(c) could therefore also be applicable where a comprehensive needs analysis was conducted.
113.	9	clause 9(d) of the proposed amendments section 8(4) of the General Code		No comment further than as indicated below that we await the guidance from the regulator on the existing FAIS suitability analysis requirements. FSB reasoning - 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	Noted.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				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."	
114.	3	clause 9(d) of the proposed amendments section 8(4)(a)(i) of the General Code		i. This section could have unintended consequences for the rendering of intermediary services which is rendered based on knowing the client's specific need or objective (the focused request) and then the features and benefits of all products that meet that need are provided to the client with the client then having to decide themselves which product suits their needs. ii. It is recommended that it be made clear that this scenario in the intermediary services context does not need to comply with S 8. iii. This will require change in system and processes within the FSP. We submit that it will require a staggered implementation period to	Section 8 of the Code only applies where advice is provided. Please see the wording of s.8(1) which makes this clear.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				comply and request a period of at least one year from the date of publication.	
115.	4	clause 9(d) of the proposed amendments section 8(4)(a)(i) & (ii) of the General Code	*"…will be appropriate to the client's risk profile and needs, the provider must…"* We propose that section 8(1)(cA) should rather read as follow: *"…will be appropriate to the client's* **[needs and objectives, financial situation, risk profile and financial product knowledge and experience]***, the provider must…"*	We propose that the word "financial" should be removed. A client's needs can be wider than merely financial needs. Refer to 8(1)(a) where a client's "needs and objectives, financial situation, risk profile and financial product knowledge and experience" must be considered. The "financial need" is not the only need to consider when rendering advice in relation to insurance products. We propose that the wording in 8(1)(cA) should be wider as indicated. We submit that the proposed wording is wide enough to include financial needs (through the words "financial situation") but also includes other important factors such as objectives needs (including insurance needs) and product knowledge.	See response to item 109.
116.	2	clause 9(d) of the proposed amendments section 8(4)(a)(iii) and (iv) of the General Code	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 - (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 ~~spesific~~ **specific**	Spelling error and incorrect numbering.	See correction.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			financial needs of the client; ~~(iii)~~(iv) the fact that the client has explicitly declined to provide any information requested by the provider.		
117.	12	clause 9(d) of the proposed amendments section 8(4) of the General Code	The fourth word, "*spesific*" in the last sentence of (4)(a)(iii) should be "*specific*" and that the numbering of the last paragraph should be corrected to (iv).		See correction.
118.	3	clause 9(d) of the proposed amendment section 8(4)(a)(iii) of the General Code	correct the spelling of the word "specific" to "specific"		See correction.
119.	7	clause 9(d) of the proposed amendment section 8(4)(a)(iii) of the General Code	Spelling of the second word "Spesific" to be corrected		See correction.
120.	4	clause 9(d) of the proposed amendment section 8(4)(b)of the General Code		We have noted the clarification given by the Registrar in relation to "earliest reasonable opportunity" being prior to the "conclusion of a transaction". Clarity is sought on what the Registrar deems as "conclusion of a transaction". Clarity is specifically sought in the space of direct marketing and if the Registrar is of the opinion that the required	See response to item 96.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				disclosures contained in 8(4)(b)(i-ii) must be provided to a client telephonically (thus be incorporated into relevant scripts) or if it may be sent to a client in writing after conclusion of the sales call but prior to conclusion of the transaction.	
CLAUSE 10 – AMENDMENT OF SECTION 9 OF THE GENERAL CODE					
121.	3	clause 10 of the proposed amendment Section 9 of the General Code		Recommend a staggered period of 1 year from date of publication.	Disagree. Unclear why transitional requirements are necessary. The amendment in paragraph (a) merely empowers the Authority to prescribe the format of the record of advice. The requirement in paragraph (b) is essentially already a requirement in terms of section 15(4) of the Code of Conduct and the intention is that this amendment will replace section 15(4) (which is repealed through the Notice).
122.	5	clause 10 of the proposed amendment Section 9 of the General Code		We are of the opinion that Section 9(1) of the General code is very clear as to the matters that must be addressed in the record of advice. We would also caution the Registrar against prescribing a format in which the record of advice must be provided. We see two potential problems where this is done: 1) The Record of Advice becomes a tick box exercise and any defence when there is a poor client outcome could be "But I gave the information in the format that the law requires 2) Many advisers have excellent processes, financial plans and records of advice that far exceed the legislative requirements. By prescribing a format such innovation and client experience will be curtailed as the adviser will need to "comply" with the prescribed format.	The Authority agrees with the concerns raised that standardising the record of advice format in general will create the risk of making it a tick-box exercise. The intention is not to determine a template that fits all but to determine different templates depending on the type of provider, activity, product, etc.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				We understand that this requirement may be to assist meet the replacement requirements in the Policyholder Protection Rules. We would rather that the Registrar provides a guidance note to assist with understanding than a prescribed format in order to avoid the aforementioned.	
123.	3	clause 10(a) of the proposed amendment section 9(1A) of the General code		In the event that a template is going to be provided or what should be included in terms of this section, we request an implementation period to be provided as there will be System and process enhancements required.	Agree.
124.	4	clause 10(a) of the proposed amendment section 9(1A) of the General code		Confirmation is sought in relation to the prescribed format. Will insurers be allowed to incorporate the format into existing platforms to align with the corporate identity of the insurer? We propose that the content be determined by the Registrar but that insurers be allowed to incorporate the set wording into a customisable format. Confirmation is also sought on where the prescribed format will be published.	It depends on the format to be prescribed. The Authority will consider the comment when it decides to determine a format, and the format will be consulted on. The prescribed format will be published on the FSCA's website.
125.	8	clause 10(a) of the proposed amendment section 9(1A) of the General code		Again, it is understood that there is much confusion amongst providers about the format and content of the record of advice as prescribed in the code, and guidance from the regulator should be welcomed.	Noted.
126.	9	clause 10(a) of the proposed amendment section 9(1A) of the General code		We strongly agree with the proposal as it will aid the advice process but it should be noted that this could move the industry back to the "tick box" approach if meaningful oversight and supervision is not applied.	See response to item 122.
127.	11	clause 10(a) of the proposed amendment		Extensive system and process changes will have to be effected in order to comply with the requirement.	Noted.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 9(1A) of the General code		A period of one year from date of publication of the General Code in the Government Gazette within which to comply is hereby requested.	
128.	12	clause 10(a) of the proposed amendment section 9(1A) of the General code		We understand that regulation is/should be a combination of principles and rules, but we submit that this seems to be an inappropriate shift to more rules. Section 9 of the General Code already provides for what must be included in a record of advice and we, therefore submit that by allowing the Registrar to prescribe the format and the matters to be addressed, this would de-personalise the advice given. It would, in our view, lead to more commoditised records of advice that are simply applied in a tick-box manner, something the Registrar has been at pains to move away from. We recommend that this would be more effectively dealt with by way of Guidance Notes.	See response to item 122.
129.	13	clause 10(a) of the proposed amendment section 9(1A) of the General code		We support the intention to prescribe the format and content of the recorded advice to ensure a higher level of compliance and to reduce costs. Our recent due diligence visit to Australia did however show that a too prescriptive structure could result in higher costs, less certainty and a reduction in the actual protection of the consumer. Caution should therefore be exercised on the level of prescription intended.	Noted. See also response to item 122.
130.	15	clause 10(a) of the proposed amendment section 9(1A) of the General code	It is submitted that this proposed clause (authorising the Registrar to determine the matters to be addressed in the record of advice) should be deleted.	This is redundant and confusing: The Code already determines the matters to be addressed in a record of advice: The Code's provision dealing with records of advice stipulates that a provider must maintain a record of the advice furnished to a client, which record must reflect the basis on which the advice was given, and in particular— *(a)* a brief summary of the information and material on which the advice was based; *(b)* the financial products which were considered;	See response to item 122.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				(c) the financial product or products recommended with an explanation of why the product or products selected is or are likely to satisfy the client's identified needs and objectives; and *(d)* where the financial product or products recommended is a replacement product— *(aa)* the comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product; and *(bb)* the reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product. (General Code s 9(1)(a), (b), (c), (d)(aa) and (bb). Such record of advice is only required to be maintained where, to the knowledge of the provider, a transaction or contract in respect of a financial product is concluded by or on behalf of the client as a result of the advice furnished to the client. General Code s 9(1) proviso.)	
131.	16	clause 10(a) of the proposed amendment section 9(1A) of the General code		The ability of the Registrar to determine "*the format of and matters to be addressed in the record of advice*" is very broad. When exercising its discretion, the Registrar must be cognisant of the implications, including financial, for FSP's of having to develop and implement any changes.	See response under item 122.
132.	11	clause 10(b) of the proposed amendment section 9(2) of the General code		No indications of timing have been provided for in the amendment. What are the Registrar's expectations of timing with regards to this amendment?	No transitional requirements will be provided. See response to item 121.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
133.	16	clause 10(b) of the proposed amendment section 9(2) of the General code		In direct marketing the requirement that a record of advice be provided to the client in writing is impractical and will lead to direct marketers incurring additional cost which, in all likelihood, will be passed through to the client. This will adversely impact the ability of direct marketers to market and deliver financial products to clients cost effectively. In telemarketing a copy of the call is kept and can be provided on request. We accordingly propose that direct marketing be excluded from this requirement.	Section 15(4) requires of a direct marketer to provide a client (where appropriate) with a record of advice as contemplated in section 9(1)(a) to (d) in writing. In addition, a direct marketer is required to record all telephone conversations with clients. However, records of advice furnished to a client telephonically need not be reduced to writing but a copy of the voicelogged record must be provided. The requirement for a record of advice only applies where advice is provided.
CLAUSE 11 – AMENDMENT OF SECTION 14 OF THE GENERAL CODE					
134.	4	clause 11 of the proposed amendments section 14 of the General Code – general comment		All definitions and principles should be aligned to that contained in PPR.	The definitions have been aligned as far as possible. However, there are differences given the wider ambit of the FAIS Act.
135.	11	clause 11 of the proposed amendments section 14 of the General Code – general comment		One of our members is of the view that the new section is overly prescriptive and recommends that the Registrar should consider a more principle based approach to requirements relating to advertisements.	See rationale for the amendments set out under paragraph 4.7 of the Invitation to Comment Document published on 1 November 2017. The framework will be further consolidated and refined under the COFI Bill framework.
136.	3	clause 11 of the proposed amendments section 14(1)(c) of the General Code	We recommend that the provisions only apply to future adverts and that the phrase "regardless of whether the advertisement was also previously published prior to this section taking effect" be deleted.	i. This provision implies that the Code will have retrospective application and that advertisements which have already been produced and published will also be subject to it. ii. This provision will therefore impact rights and obligations which already came into operation and existence before the amendments were made.	Disagree. The provision does not apply retrospectively. It only applies to advertisements published **on or after the date** on which the section takes effect.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
137.	2	clause 11 of the proposed amendments section 14(2)(a) of the General Code	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 **or a person of appropriate seniority to whom the provider has delegated the authority**.	The requirement in respect of advertisements to be approved by a key individual must be aligned with Rule 10.3.1 of the Insurance Policyholder Protection Rules (PPR). For practical reasons, an FSP should be able to delegate the authority to a person with appropriate seniority. The FSP remains accountable and must ensure that the delegated person complies with applicable legislation. ASISA members strongly suggest that the proposed requirement must be aligned with Rule 10.3.1 of the PPR. For practical reasons, an FSP should be able to delegate the authority to a person with appropriate seniority. A key individual manages and oversees the rendering of financial services. Advertising is not a financial service. Generally, in larger organisations, authority in respect of advertising is assigned to Heads of Marketing in terms of a governance framework approved by the board of directors. The FSP remains accountable and must ensure that the delegated person complies with applicable legislation.	Agree. See amendment.
138.	4	clause 11 of the proposed amendments section 14(2)(a) of the General Code	"A provider…must have documented processes and procedures for the approval of advertisements by a key individual **[or a person of appropriate seniority to whom the key individual has deligated the responsibility]**"	We strongly propose that the wording be amended to allow for the key individual to delegate the authority to sign off advertisements to a person of appropriate seniority. In this regard we propose that similar wording be used as that incorporated into Rule 19.2.4 of the PPR.	See response to item 137.
139.	11	clause 11 of the proposed amendments section 14(2)(a) of the General Code		Rule 10.3.1 of the PPR's states that:- *"An insurer must have documented processes and procedures for the approval of advertisements by a managing executive or a person of appropriate seniority to whom the managing executive has delegated the approval"*	See response to item 137.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				This Rule allows for the delegation of the approval of advertisements. Key individuals are senior managers in business whose role is to oversee and manage the business. They are not specifically involved in the day to day operational processes. For consistency, we recommend that the Registrar should allow for the delegation of the approval of Advertisements in the General Code.	
140.	12	clause 11 of the proposed amendments section 14(2)(a) of the General Code		**General principles** In 14(2)(a) we welcome the exclusion of a provider that is a natural person from having to meet this requirement. As a point of clarity, we assume that this is because it does not make sense for a provider that is a natural person to "sign off" their own decision. We submit that if this is the reasoning, a provider that only has one person linked to the licence would be in a similar position and should similarly be 'exempted', for example a close corporation or private company with one Key Individual/Representative?	Disagree. The dispensation only applies to an FSP that is a sole proprietor. Different considerations apply to a juristic entity. The dispensation is further in line with the principle adopted by the FSCA to ensure that legislation is proportionate.
141.	3	clause 11 of the proposed amendments section 14(2) of the General Code	i. It is recommended that sign-off be required by a governance committee "or by appropriately delegated/appointed persons". It is impractical for the KI to sign off on every advertisement. Accountability rests with the KI, and if FSPs demonstrate that the KI has effective oversight and remains	i. The requirement for a KI signing off on the advertisements, and others including puffery, endorsements and first version review, becomes onerous due to the volume of campaigns and does not take cognisance that a product approval committee and not single individuals (such as a KI) are accountable to ensure due governance around advertisements. ii. As an advert is directed to the general public, it is not feasible to expect that an FSP will be in a position to "notify all persons who it knows to have relied on the advertisement".	**Comment (i):** See response to item 137. **Comment (ii):** Disagree. The limitation in the requirement is appropriate to address the concern. **Comment (iii) and (iv):** Noted. The Authority does not believe that the requirements exclude the use of electronic advertising methods. The requirements further align with similar provisions in the Insurance Policyholder Protection Rules. In

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			accountable, that should address the risk that the regulator is concerned with. ii. We recommend that this clause be deleted. iii. It is recommended that the advertising disclosure requirements be reconsidered so that it still serves the same purpose but in a manner in which it can be disclosed during the rendering of the financial service ie. during the telephone call. iv. Same recommendation as in (iii) above.	iii. The advertising requirements are very onerous and should cognisance that not all of the prescribed information can be disclosed due to space, time and character limitations, especially when omni channels are used such as: data message delivered by multimedia messaging service (MMS). Legislation and regulation should not be so rigid as to exclude viable electronic advertising/marketing methods. iv. It is noted that these changes are recorded directly from the LTI/STI PPRs. Some disclosure requirements will be practically difficult to implement due to marketing space constraints alternatively they are better suited during the sales conversation. An example is provided below: Insurer X en sends an SMS stating: "Get Funeral Cover from R35 pm." If the Insurer is required to comply with the premium requirements under section 14(3)(c)(ii) they would need to include the following: "premium guaranteed for 1 year". This may send a negative message, having the opposite effect and is not per se a definite (as the Insurer may decide not to review the premiums the next year?).	addition, consumers are influenced by advertisements when making financial decision and seeking financial services. It is, therefore, of paramount importance that advertisements are clear, accurate and give balanced messages when promoting financial products and financial services. If they do not fairly represent the product or its key features and risks it can be misleading and create unrealistic expectations that may lead to poor financial decisions and poor customer outcomes. The new requirements, inter alia, seek to ensure that clients are not subjected to aggressive, misleading or unwanted marketing and are able to make informed decisions.
142.	11	clause 11 of the proposed amendments section 14(2)(d)(ii) of the General Code	We recommend that "or ought reasonably to be aware" be removed.	The requirement that providers "ought reasonably to be aware" of advertisement where the person producing the advertisement is not acting on behalf of the provider is not practical. Advertisements are flighted on different mediums/platforms.	Disagree. The general principles applicable to the concept "ought reasonably to be aware" will apply.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				It would be challenging for providers to monitor all these platforms so as to comply with the requirement.	
143.	11	clause 11 of the proposed amendments section 14(2)(e)(iii) of the General Code	We recommend the removal of the requirement that providers must notify any person who it knows to have relied on the advertisement.	▪ Different platforms/mediums are used for advertisements. Large scale mediums such as Television and Radio are examples of some the platforms used to advertise. ▪ We are of the view that it will not be practically possible to accurately determine which audience relied on the advertisement. Therefore, its practical implementation is problematic ▪ A potential risk from an advertisement would be mitigated during the application process when questions arise with regards to the product of service advertised. ▪ Alternatively, the Registrar is requested to give further guidance on this requirement and to particularly expand on the form of notification that would suffice in order to meet this requirement.	Disagree. See response to item 141. In addition, the proposed clause does not require a FSP to determine which audience relied on the advertisement, it merely requires the FSP to act where it is aware of someone that relied on the advertisement.
144.	12	clause 11 of the proposed amendments section 14(3)(c) of the General Code		We suggest that the requirement in 14(3)(c) be extended to also require an advertisement that refers to premiums or other periodic investments to disclose when the premium or ongoing level of the premium or investment value or bonus is dependent on the client meeting certain behaviour requirements. For example, if premium increases on a policy or costs on an investment are dependent on maintaining levels on a loyalty scheme (eg. level of spend on a credit card, number of related products held, minimum attendance of gym, or driving in a certain manner etc) these dependencies should be clearly spelt out.	Noted. Will be considered whether this situation is covered under the proposed amendments and if not, the commentator's response will be considered during further future refinements to the legislative framework.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
145.	15	clause 11 of the proposed amendments section 14(3)(i) read with section 14(1)(a) of the General Code		The proposed clause is confusing, in stating that an advertisement must not be constructed to lead a client to false conclusions he "might reasonably rely on". Instead of referring to advertisements being "constructed", it would be more appropriate to refer to advertisements as being "framed". This seems to imply that a client can reasonably rely on false conclusions. It is submitted that the clause might be less confusing if it were to state: *An advertisement must not contain a misrepresentation that misleads a client and induces him or her to transact in respect of a financial product or financial service to his or her financial detriment.* Other proposed clauses overlap with this clause and deal with the same subject-matter, i.e.: Amendment cl 11 inserting Code s 14(3)(a)(i), (ii) and (iii); (j)(i), (ii) and (iii); (l); (o)(bb) and (cc); and (5)(c). One proposed amendment refers in error to "policyholders". Amendment cl 11 inserting Code s 14(3)(j). Consideration should be given to whether they are necessary.	The provisions align with a similar requirement in the Insurance PPRs.
146.	2	clause 11 of the proposed amendments	For the purposes of (i), a provider must when constructing an advertisement consider the conclusion likely to be made	The reference to "policyholders" must be replaced with a reference to "clients".	Agree. See amendment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 14(3)(j) of the General Code	by ~~policyholders~~ clients that are subject to the advertisement, and in doing so have regard to –		
147.	3	clause 11 of the proposed amendments section 14(3)(j) of the General Code	We suggest that the word "policyholders" be replaced with "clients".	Is this proposed amendment only in reference to insurance policies?	See response to item 146.
148.	12	clause 11 of the proposed amendments section 14(3)(j) of the General Code		As a point of clarity, we wish to enquire whether it was the Regulator's intention to limit the requirement in 14(3)(j) to policyholders (long-term and/or short-term) only since the previous paragraph (i) to which this paragraph refers, addresses "targeted client" which is broader than "policyholder". If not, we would suggest aligning this section to the previous one.	See response to item 146.
149.	2	clause 11 of the proposed amendments section 14(3)~~(o)~~ (p) of the General Code	An advertisement relating to a financial service must –	Incorrect numbering of subparagraph.	See correction.
150.	11	clause 11 of the proposed amendments section 14(3)(p)(aa) of the General Code		Clarity is sought with regards to the reference to "limitations" in (aa) as it is unclear what limitations should be disclosed with regards to an advertisement relating to financial service. It is not clear if this requirement includes industry standard limitations or if this requirement refers only to non-industry standard limitations.	The normal grammatical meaning of the term will apply and an FSP must consider whether any limitations exist relating to the extent of the financial service and range of products on which the financial service is based.
151.	2	clause 11 of the proposed amendments	(b) An advertisement must not use the group or parent company name or the name of any	For the sake of clarity, the following wording is suggested to replace subsections (b) and (c): (b) An advertisement must not	See amendment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 14(5)(b) and (c) of the General Code	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.	(i) use the group or parent company name or the name of any other associate of a product supplier or provider, or (ii) use the name of another person, with the effect of - (iii) creating an 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, (iv) misleading or deceiving as to the true identity of the provider or product supplier, or (v) creating 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.	
152.	16	clause 11 of the proposed amendments sections 14(5)(d) and 14(14)(c) of the General Code		We submit that it should not be necessary for the insurer's name to be equal in prominence to the name of the white label as this could create confusion. It also dilutes the purpose of white labelling. While we agree that it is important for a customer to know who they can hold accountable for the performance of the product, provided the identity of the insurer is legibly disclosed in advertisements, brochures or similar communications, this should be sufficient to meet	Disagree. Numerous examples over a protracted period have shown that it is common practice that the product supplier's name is disclosed in small font whilst the white label is disclosed prominently leading to confusion with customers as to who is actually underwriting or responsible for the product. It is because of these abusive

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				this objective. Added to this, the customer is informed of who the insurer is in all touch points with the customer including during marketing calls as well as other forms of communication.	practices that this requirement is necessary.
153.	3	clause 11 of the proposed amendments sections 14(7)(a) & (b) of the General Code		i. It is unclear if the KI sign off is required to be kept for a period of 5 years. ii. No guidance has been provided on version control, in the event of one campaign having many versions to it. iii. It is recommended that clarity be provided on whether the advert itself must be retained for 5 years or the KI/governance sign-off as well? iv. Guidance should also be provided on version control, in the event that one campaign has many versions to it.	The requirement is that *adequate records* of all advertisements must be kept for 5 years. We would strongly suggest that a Provider retains records of all matters relating to an advertisement (including proof of key person sign off). It is not clear why guidance is necessary, but if there is consistent misinterpretation or uncertainty in industry on the requirement the FSCA will consider issuing guidance.
154.	11	clause 11 of the proposed amendments section 14(7) of the General Code		▪ Clarity is sought as to whether this requirement will apply retrospectively. ▪ Where this is the case; extensive institution wide system enhancements will have to be made in order to comply with this requirement. ▪ A period of one year from date of publication of the General Code in the Government Gazette within which to comply is hereby requested.	The provision only applies to advertisements published on or after the date the section comes into effect.
155.	3	clause 11 of the proposed amendments section 14(9)(a) & (b) of the General Code	It is recommended that the wording be rephrased as follows: Where a provider or any person acting on its behalf uses electronic communications for an advertisement, it must allow the policyholder the opportunity to demand that the provider or other person	i. The GC interpretation appears to be misaligned to other legislation (CPA, POPIA and NCA) as regards marketing and advertising. ii. It should be kept in mind that advertising is directed at the general public while marketing is directed at a person or targeted persons. Thus, marketing can be blocked but advertising cannot be blocked. This discrepancy is evident throughout the amendment.	**Comment (i):** Noted. Alignment may not always be possible given the specific circumstances. **Comment (ii):** The provision is limited to specific mediums that are directed to particular customers using the customers' contact details. **Comment (iii):** The purpose of this section is not to regulate the processing of personal information.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			does not publish any further advertisements directly to the client through an electronic medium.	iii. POPIA states in section 3(2)(b) that: If any other legislation provides for conditions for the lawful processing of personal information that are more extensive than those set out in Chapter 3, the extensive conditions prevail. Chapter 3 of POPIA excludes electronic direct marketing practices which is regulated by section 69. iv. For this reason, it could be said that if there is a contradiction between POPIA and the GCOC, POPIA will prevail as the GCOC contradicts the way in which consumers must "opt-out" as per POPIA which could potentially cause confusion within the industry.	The purpose is to allow a client to refuse the publication of any further advertisements to that client using the mediums referred to therein. **Comment (iv):** See comment above.
156.	3	clause 11 of the proposed amendments section 14(9)(b) of the General Code		We request clarity on the fees charged by cellular providers, i.e. sms charges and airtime. Currently cellular service providers charge airtime for opt out messages This is an industry wide issue.	More clarity is required on the detail of what you are requesting and why the wording of the proposed requirement is problematic in the scenario you refer to.
157.	3	clause 11 of the proposed amendments section 14(10)(a)(i) of the General Code		We suggest that "independent person" be defined in the Code. Different legislation has different meaning of independence. The Companies Act interpretation is a person not employed by the company. The Banks Act refers to internal audit and compliance as independent.	Disagree. The ordinary grammatical meaning will apply.
158.	15	clause 11 of the proposed amendments section 14(11) of the General Code	It is submitted that the proposed clause should be deleted.	The Advertising Standards Authority states that it draws up its Code of Advertising Practice with the participation of representatives of the marketing communications industry (The Advertising Standards Authority of South Africa: Codes: Code of Advertising Practice- *http://www.asasa.org.za/codes/advertising-code-of-practice/*).	Disagree. The provision does not constitute a delegation.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				That body's current Code of Advertising Practice, in its general section relating to truthful presentation (Advertising Standards Authority, Code of Advertising Practice, Section ii – General principles, cl 4 (Presentation)), contains a provision (Among paragraphs dealing, respectively, with: Misleading claims, puffery, hyperbole, expert opinion, statistics and scientific information, headlines, and truthful presentation) relating to puffery, which states: *"4.2 2 Puffery* *Value judgments, matters of opinion or subjective assessments are permissible provided that:* *1. it is clear what is being expressed is an opinion;* *2. there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.* *The guiding principle is that puffery is true when an expression of opinion, but false when viewed as an expression of fact."* Advertising Standards Authority, Code of Advertising Practice, Section ii – General principles, cl 4 (Presentation) subclause 4.2 (Claims), para 2. Puffery. The proposed clause to be inserted in the Code (that advertisements which include puffery must be consistent with the puffery provisions in the code of advertising practice issued by the Advertising Standards Authority) is probably an impermissible delegation of the powers afforded the registrar to draft a code of conduct.	
159.	3	clause 11 of the proposed amendments		Loyalty benefits are regulated by the CPA. Requirements set out in the amendment should therefore be aligned to those set out in the CPA. It	Disagree. A loyalty benefit can, for example, be part and parcel of an insurance policy and would therefore

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 14(13)(a) of the General Code		is recommended that the requirements relating to loyalty benefits, set out herein, be aligned to those set out in the CPA.	be subject to the FAIS Act- please refers to section 10(1)(a) of the Financial Sector Regulation Act which sets out the applicability of the CPA to a financial product regulated under a financial sector law.
160.	16	clause 11 of the proposed amendments section 14(13) of the General Code		Where the loyalty bonus is not optional it serves no purpose to disclose the cost of the benefit to the customer as a separate amount to the premium. This will only serve to confuse the customer. The importance of disclosures is to give clarity to a customer as to which part of the product is premium, fee etc. The cost of the loyalty bonus (especially a non-optional bonus) is included in the premium so would provide no further relevant information to the customer.	Strongly disagree. It is necessary for the client to understand what is the cost of the loyalty bonus as it is not free. Clients must be in a position to understand exactly what services they are paying for.
161.	11	clause 11 of the proposed amendments section 14(15)(c)(i)		▪ The subsection makes requires information on past performance to be provided in the "correct context". ▪ We recommend that "indirect" be clarified or defined so as provide certainty as to the Registrar's intention in this regard.	Noted.
CLAUSE 12 – AMENDMENT OF SECTION 15 OF THE GENERAL CODE					
162.	9	section 12(a) of the proposed amendments section 15(2), (3) & (4) of the General Code		Section 15 refers to direct marketing. Agree	Noted.
163.	3	section 12(c) of the proposed amendments section 15(6) of the General Code		i. This provision may pose practical problems especially in instances where a direct marketer provides intermediary functions or acts as a service supplier for a product supplier/FSP and where the FSP (ie. not direct marketer) sends out all customer communications?	**Comment (i):** We do not understand the concern as the amendment does not set a new requirement insofar it relates to the furnishing of the information to the client. Instead of submitting such information to the client within 30 days of the conclusion

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				ii. For example, a third-party call centre for an Insurer / FSP does not send out any customer communications, this is done by the FSP itself. iii. Furthermore, the Insurer would be reluctant to permit third party call centres to send out communications on behalf of the FSP as the costs related to the third-party service would increase. Recommendation i. It is recommended that provision be made to allow for arrangements to be made between the direct marketer regarding the posting of communication. Such arrangements may be contractually managed. ii. Alternatively, it is recommended that this section be limited to direct marketers who render financial services for product suppliers only.	of the transaction the provider must now submit it at the earliest reasonable opportunity after the transaction. Depending on the circumstances it could either be shorter or longer than 30 days. **Comment (ii):** The provision, correctly so, applies to both the representative and the FSP of that representative. It is for those two parties to decide who will be responsible for providing the information to the client and it is the responsibility of both to ensure that it was done. See also comment above. **Comment (iii):** See comment above.
CLAUSE 13 – AMENDMENT OF PART XI OF THE GENERAL CODE					
164.	13	section 13 of the proposed amendment Part XI of the General Code – general comment		We do not in this memorandum point out the vague or otherwise invalid provisions in these four proposed new sections. We restrict ourselves to pointing out that the proposed sections are *ultra vires* (beyond the powers of the Registrar), as we make clear.	We disagree that the provisions are *ultra vires.*
165.	13	section 13 of the proposed amendment Part XI of the General Code – General comment		We support the alignment of the complaints management process with the process created in the Policyholder Protection Rules.	Noted.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
166.	3	section 13 of the proposed amendment section 16 of the General Code – general comment		The amendments have various additional requirements that business would need more time to prepare to implement and guidance, such as expression of dissatisfaction, theme based complaints, tracking of certain types of complaints, root cause analysis, remediation, codified reporting, publicly displaying these reports for transparency, defined complaints framework, allocation of responsibility and escalation process. The business does have a well-defined Complaints Framework in place, however the amendments place a strain on the business to comply with the new requirements. The implementation date of 1 January 2019 is unreasonable given the array of amendments to be implemented. The amendments will place significant strain on the business to ensure compliance, especially in light of the limited time for implementation. It is recommended that the implementation timelines be revisited and extended to accommodate for a 24-month transitional period.	Noted. However, a 24 month period is excessive. Also, various specific requirements contained in Part XI can be implemented within a significantly shorter period. For this reason different transitional provisions will apply to the respective requirements. See transitional provisions.
167.	4	section 13 of the proposed amendment section 16 of the General Code – general comment		All definitions and principles should be aligned to that contained in PPR.	Noted. We have aligned them as far as possible.
168.	9	section 13 of the proposed amendment section 16 of the General Code – "client query"		On the understanding that any such request by any party other than the client/policyholder shall be generic in nature unless the client has expressly authorised the release of personal and or priviledged information to the enquiring party.	Noted.
169.	2	section 13 of the proposed amendment	**'complaint'** means an expression of dissatisfaction by a ~~**person**~~ **complainant** to	"Complainant" is defined. The reference to "person" should be replaced with a reference to "complainant".	Disagree. The term "complaint" is used in the definition of "complainant" and therefore if the definition of

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 16 of the General Code "complaint"	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**~~ **complainant** harm, prejudice, distress or substantial inconvenience; or (c) the provider or its service supplier's has treated the ~~**person**~~ **complainant** unfairly;		"complainant" is to be used in the definition of "complaint" it will result in a circular construction which will make it impossible to legally interpret the respective definitions.
170.	8	section 13 of the proposed amendment		The definition of complaint includes both the provider or its service supplier, which implies that the provider may also be held accountable for any	Disagree. The definition does not impose requirements.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
		section 16 of the General Code "complaint"		contravention of an agreement, a law, a rule, or a code of conduct which is binding on the provider or to which it subscribes, if the service is provided by the service supplier. We respectfully submit that this definition may unduly expose providers if it does not clarify we accountability lies. We are mindful that when it comes to the accountability of providers, the FAIS Ombud applies a very strict interpretation, which may ultimately lead to unfair outcomes against financial services providers.	
171.	15	section 13 of the proposed amendment Section 16 of the General Code "complainant" "complaint"		The proposed amendments propose inserting in the Code definitions of a "complainant" and a "complaint." The Act, however, already defines a "complainant" and a "complaint," in quite different terms. Financial Advisory and Intermediary Services Act s 1(1) svv "complainant", "complaint," as follows: **"complainant"** means, subject to section 26 (1)(*a*)(ii), a specific client who submits a complaint to the Ombud; **"complaint"** means, subject to section 26(1)(*a*)(iii), a specific complaint relating to a financial service rendered by a financial services provider or representative to the complainant on or after the date of commencement of this Act, and in which complaint it is alleged that the provider or representative— *(a)* has contravened or failed to comply with a provision of this Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage; *(b)* has wilfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or	The purpose of the definitions in the Act is to define complaints strictly speaking in the context of the FAIS Ombud. It therefore applies in a very specific context. The proposed definitions in the General Code relates to any complaints submitted to a FSP and should therefore have a wider application.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				(c) has treated the complainant unfairly.	
172.	2	section 13 of the proposed amendment section 16 of the General Code "compensation payment" and "goodwill payment"	We therefore propose that the words "where a provider accepts liability for having caused the loss concerned" be deleted from the definition of compensation payment and further that the words "where the provider does not accept liability for any financial loss to the complainant as a result of the matter complained about".	Although the distinction appears practicable on the face of it, the fact that the definition of "compensation payment" indicates that the provider would need to specifically have to accept liability for having caused a loss, will detract from providers being able to make a "without prejudice" offer to a complainant in order to settle a complaint where the claim is based on a quantified financial loss. Preventing providers from achieving a "without prejudice" settlement with a complainant will not encourage providers from entering into agreements to resolve complaints and will therefore inadvertently increase matters being lodged with the FAIS Ombud or proceeding to litigation. Achieving a "without prejudice" settlement is a well-recognised step in both pre-litigation and alternative dispute resolution processes. The proposed wording would significantly discourage providers from following such processes. It needs to be borne in mind that complaints may relate to claims that exceed the jurisdiction of the FAIS Ombud of R800 000 and specifically where a claim is in excess of this quantum or even in instances where the quantum is lower, the provider would face the prospect of further legal action if the offer is not accepted and would then be prejudiced if a "with prejudice" offer has already been made. Complaints are generally dealt with based on principles which include consideration of the facts, merits, the applicable law, Ombud precedents and also fairness and equity. Attempts to resolve a complaint based on these considerations may however prejudice a provider if a matter is further pursued in a court of law instead of through internal or recognised external alternative dispute resolution mechanisms and where a "with prejudice" offer needs to be made in terms of the General	Please refer to the definition of "goodwill payment". If a provider does not accept liability but it would like to resolve a complaint on the basis you describe this would constitute a goodwill payment.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
173.	15	section 13 of the proposed amendment Section 17 of the General Code		Those proposed four sections dealing with a "complaints management framework" are probably *ultra vires* (beyond the powers of the Registrar), for the following reasons: The Act's provision setting out principles of a code of conduct (s 16 of the Act (Principles of code of conduct) does not (whether expressly or impliedly) authorise the Registrar in a code of conduct to prescribe procedures for dealing with complaints. That provision describes the sort of duties which a code must oblige providers to comply with (s 16(1)(a)–(e) of the Act), and what a code of conduct must contain (s 16(2)(a)–(f) of the Act). The provision (s 16 of the Act (Principles of code of conduct)) does not authorise the Registrar to prescribe procedures for dealing with complaints which may arise if a provider breaches a code of conduct. Still less does it authorise the Registrar to prescribe complaints procedures if (as the proposed amendments say) a provider breaches "an agreement, a law, a rule […] which is binding on the provider or to which it subscribes" (Amendment cl 13 inserting Code s 16 (Definitions) sv "complaint" par (a)). In short, the Act does not authorise the Registrar in a code of conduct to prescribe procedures for dealing with complaints. Indeed, the Act stipulates (s 16 of the Act (Principles of code of conduct)) that the Financial Services Board (s 1(1) of the Act svv "Board", "Financial Services Board Act"). (not that the Registrar) may	Disagree. Please also note that the existing Part XI of the GCOC already prescribes requirements for handling of complaints. It was inappropriate however to restrict these processes to Ombud complaints only as all customer complaints should be fairly and appropriately dealt with. Further, section 16 of the Act provides that a code of conduct must contain provisions relating to any matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of the Act. The complaints management requirements are necessary for the better achievement of the objects of the Act. In addition, please note that section 26 as well as the Rules issued under that section relate to complaints in a very specific context, i.e. to set out the FAIS Ombuds jurisdiction. The requirements proposed under the FAIS GCOC relating to complaints and the FAIS Ombud requirements under section 26 relating to complaints therefore have two separate and very distinct purposes.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				make Rules regarding complaints, including the manner of submitting a complaint to the provider concerned, and the rights and duties of the provider on receipt of a complaint. The applicable provision of the Act (s 26 of the Act (Powers of Board)) states: **Powers of Board** **26.** (1) The Board may make Rules, including different rules in respect of different categories of complaints or investigations by the Ombud, regarding— (*a*) […] (iv) the rights of complainants in connection with complaints, including the manner of submitting a complaint to the authorised financial services provider or representative concerned; (v) the rights and duties of any such provider or representative on receipt of any complaint, particularly in connection with the furnishing of replies to the complainant; (vi) the rights of a complainant to submit a complaint to the Ombud where the complainant is not satisfied with any reply received from the provider or representative concerned; […]. The Ombud means the Ombud for Financial Services Providers appointed under the Act (s 1(1) of the Act sv "Ombud" read with s 21(1)). ***Board's Rules require referral to Ombud of complaints not resolved in six weeks*** The Board in 2003 made Rules regarding proceedings of the office of the Ombud (Bd Notice	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				81 of 8 Aug 2003, as amended by Bd Notice 100 of 29 Sep 2004. Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2003). The Board's Rules state: **Type of complaint justiciable by Ombud.**— **4.** *(a)* For a complaint to be submitted to the Office— […] (ii) the person against whom the complaint is made must be subject to the provisions of the Act (hereafter referred to as "the respondent"); […] (iv) the respondent must have failed to address the complaint satisfactorily within six weeks of its receipt. The Board's Rules also stipulate: **Rights and duties of respondent** **6.** *(a)* Where a complaint cannot within three weeks be addressed by the respondent, the respondent must as soon as reasonably possible after receipt of the complaint send to the complainant a written acknowledgment of the complaint with contact references of the respondent. *(b)* If within six weeks of receipt of a complaint the respondent has been unable to resolve the complaint to the satisfaction of the complainant, the respondent must inform the complainant that— (i) the complaint may be referred to the Office if the complainant wishes to pursue the matter; […] ***Registrar's amendments don't mention six-week limit***	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				The Registrar's proposed amendments to the Code regarding a "complaints management framework" are silent about the period of six weeks prescribed in the long-standing Rules of the Board for a provider to resolve a complaint. The Registrar's proposed amendments state only that a provider must (contradictorily) "within a reasonable time" after receipt of a complaint "promptly" inform a complainant of the process to be followed in handling it, including details of escalation of complaints to the office of "the relevant ombud" and "any applicable timeline", and details of the provider's duties and complainant's rights "as set out in "the rules applicable to the relevant ombud." - Amendment cl 13 inserting Code s 17(8)(f)(iv) and (v). The proposed amendments also state that a provider must have appropriate processes in place for engagement with "any relevant ombud" in relation to its complaints (Amendment cl 13 inserting Code s 18(1)(a)(i)); and must 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" (Amendment cl 13 inserting Code s 18(1)(b)(ii)). ***Registrar's amendments unduly elaborate, not authorised*** The Registrar's proposed amendments to the Code of Conduct regarding a "complaints management framework" are unduly elaborate, detailed and extensive, deal with a subject that the Registrar is not authorised to draft Codes about, and address matters which the Act envisages should be governed by the Rules made by the Board.	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				It is concluded that the "complaints management framework" is *ultra vires* the powers of the Registrar.	
174.	12	section 13 of the proposed amendment section 17(1)(a)(ii) of the General Code		In 17(1)(a)(ii) we assume that *"policies"* refers to business policies and not "insurance policies". If this is the case, to remove any ambiguity, we recommend that the word "business" be included so that it reads "*business policies*".	Correct. We disagree that it is necessary to amend the provision as suggested. The context in which the phrase is used is clear.
175.	3	section 13 of the proposed amendment section 17(2)(a)(viii) of the General Code		Clause 13 of the proposed amendment seeking to insert s17(2)(a)(viii), i.e. "meeting requirements for reporting to the Registrar and public reporting in accordance with this Part". Is it intended to publicly report on all complaints?	Not at this stage. Please see section 19 that deals with the reporting of complaints.
176.	2	section 13 of the proposed amendment section 17(4) of the General Code	~~An~~ A provider, excluding a representative, must categorise reportable complaints in accordance with the following minimum categories –	Grammatical error.	See amendment.
177.	3	section 13 of the proposed amendment section 17(4)(a), (b) & (c) of the General Code	i. We are concerned about practicalities of this section as an FSP would need to categorise the complaints only once a client has complained? The design of a product should be different to the fee. We propose that the categories be simplified as follows: a. Fee/Premium/Commission;	i. Section 17(4)(a)(v) refers to complaints relating to investment contribution collection or lapsing under service complaints – however the provision of these may misalign the statistics. ii. Complaints about premium collections and lapses often go together – customers dispute their debit orders which results in lapses – this is often attributed to lack of consumer education and not poor service. iii. Also, we have noted inconsistent reporting in relation to premium collection complaints where categorised under product design	Noted. The provision aligns with a similar provision in the PPRs.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
			b. Information (Advice and Intermediary services) received at point of sale, during sale and post- sale is incorrect; c. Post sale service is ineffective; d. Complaints handling in ineffective; e. Complaints about rejected insurance claims; and f. Split between banking and insurance ii. It is recommended that that lapses be included under product performance and that in those instances where more than one theme is included in a sub-section that these segregated. iii. We recommend that reporting on complaints on "financial product performance" be restricted to instances where there was fraudulent or gross negligence on the part of the representative.	instead of service, depending on the root cause of the complaint – e.g. the customer cannot choose a debit order day for credit life policy, which is product design versus debit order dispute which could be anything from sales, lack of customer education etc, service issue (e.g. system failure). iv. s17(4)(a)(iv), i.e. that a "reportable complaint" includes "complaints relating to financial product or financial service performance". The performance of a financial product is partially dependent on economic and political environment. FSPs cannot be held accountable for these factors, which are beyond their control	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
178.	2	section 13 of the proposed amendment section 17(5)(c)(iv) of the General Code	The complaints escalation and review process should - (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~~ **provider**.	The reference to "insurer" should be replaced with a reference to "provider".	See amendment.
179.	3	section 13 of the proposed amendment section 17(5)(c)(iv) of the General Code		In this provision reference is made to the "insurer". It is unsure whether it is the intention for escalation of complaints to be referred to the insurer or if the insurer should be replaced with the "provider"? Clarity is required around who the escalation should be made to. This may just be an error because of the correlation with the PPR?	See amendment.
180.	8	section 13 of the proposed amendment section 18 of the General Code		We fundamentally agree with the wording of section 18 of the Code, and strongly support the professional way providers should engage with the FAIS Ombud's Office. However, we respectfully submit that in certain cases the professional engagement by financial services providers may not help their cause. **Proposed amendment of section 27(4) of the FAIS** **Background** The Appeal Board of the FSB and the High Court of South Africa effectively confirmed that the FAIS Ombud does not have the authority to investigate whether the correct parties have been cited in a complaint. Effectively, if a complainant does not remember under which license the representative provided advice, the matter can only proceed against the parties that have been cited by the client. This means that where representatives provided	Noted. However, please note that the FSCA cannot make changes to the primary Act. This proposal must therefore be submitted to National Treasury.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				advice under another license in terms of a supervision agreement (even after the implementation of RDR) the FSP that may ultimately be responsible for the advice will not be cited correctly. Case study: Mr Cornelius Johannes Botha was a representative acting under his own license and under supervision of USSA in the Sharemax case. The Ombud's finding that USSA should have been cited as an FSP was overturned by the Appeal Board. [See paragraphs 13.6, 42 and 44 of Case number FAIS 00039/11-12/GP - the matter that served before the Ombud initially.] The Ombud specifically recognised that it came as no surprise that the complainant did not include USSA in her complaint. "She simply did not know that she could do this. In any event, section 27 (4) of the Act requires this office to inform all interested parties to the complaint". The High Court of South Africa disagreed with the Ombud and found that they can only investigate a complaint against the party that was named by the client. See paragraphs 15, 16, 17, 21, 23, 25, 26 and 27 of case number 46293/15 in the High Court of South Africa, GAUTENG Division, Pretoria. This decision will remain intact and will be used as a reference for future cases if something is not done about it. Judge Tuchten expressed sympathy for the Ombud's situation, but stated that it *"is the way of the legal world. Sometimes one simply has to wait for the right case to reach a Court with sufficient stature in the hierarchy of judicial authority to settle the matter"*. [See par 27] Unfortunately, it will take years to rectify this position if the Act is not amended to allow the FAIS Ombud to investigate the contractual capacity in which a Representative acted and ensure that the correct parties are cited as the respondents. If this situation	

<table>
<tr><th>Item</th><th>Commen-tator</th><th>CLAUSE</th><th>WORDING / PROPOSED WORDING</th><th>COMMENT</th><th>AUTHORITY'S RESPONSE</th></tr>
<tr><td></td><td></td><td></td><td></td><td>is not rectified, it could lead to unfair outcomes not only against representatives and FSPs, but it could also prejudice clients.
We propose the following addition to the Financial Advisory and Intermediary Services Act:
27. Receipt of complaints, prescription, jurisdiction and investigation
(4) The Ombud must not proceed to investigate a complaint officially received, unless the Ombud -
(a) is satisfied that the correct parties to the complaint have been cited</td><td></td></tr>
<tr><td colspan="6">CLAUSE 14 - SHORT TITLE AND COMMENCEMENT</td></tr>
<tr><td>181.</td><td>2</td><td>section 14 of the proposed amendments</td><td>This Notice is called the Amendment of the General Code of Conduct for Authorised FSPs and Representatives, 2017, and comes into operation <u>six months from the date of</u> <s>on</s> 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.
<table><tr><th>Provision of Notice</th><th>Effective D</th></tr><tr><td><u>Paragraph 5(a) (in respect of section 3A(1)(a) of the</u></td><td><u>Twelve mo from the da publication the</u></td></tr></table></td><td>An FSP should be afforded a reasonable opportunity to implement amendments to the General Code of Conduct. Business processes and procedures need to be assessed against the amended requirements. It is impossible to comply with amended requirements on the date of publication in the Government Gazette.

ASISA members respectfully submit that proposed amendments should generally not come into operation on the date of publication. The FSB often responds to questions on implementation dates that the changes were adequately communicated in advance during consultations and engagements. FSPs should however not be expected to employ resources to implement regulatory requirements prior to its final publication. Also, if current requirements are clarified by amendments, FSPs should be afforded an opportunity to review the changes against business processes and procedures to ensure continuing compliance.

Given that the date of the publication of the amendments is unknown, ASISA members are</td><td>See transitional provisions accommodating request.</td></tr>
</table>

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING		COMMENT	AUTHORITY'S RESPONSE
			General Code and client agreements entered into before the publication of this Notice)	Government Gazette	unable to assess whether the July 2018 and January 2019 compliance dates are achievable. Was it the Registrar's intention to provide a 6 month transitional period for the advertising requirements and 12 months for the requirements relating to a complaints management framework? Please also refer to the comments relating to transitional periods in respect of the amendments to sections 3A(1)(a)(iii), (iv) and (v), 3A(1)(bA), 3A(2)(b)(ii) and 7(1)(c)(v).	
			Paragraph 5(f) (in respect of section 3A(2) of the General Code	Nine months from the date of publication the Government Gazette		
			Paragraph 7(c) (in respect of section 7(1)(c)(v) of the General Code)	Twelve months from the date of publication in the Government Gazette		
			Paragraph 11 (in respect of section 14 of the General Code)	~~1 July 2018~~ Six months from the date of publication in the Government Gazette		
			Paragraph 13 (in respect of Part XI of the General Code)	~~1 January 2019~~ Twelve months from the date of publication in the Government Gazette		
182.	3	section 14 of the proposed amendments			The proposed implementation dates are not practical, in light of the internal changes that need to take place and related costs. Some of the changes include:	Disagree, 18 to 24 months is excessive. A transitional period of 6 months has been provided for.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				• The establishment and resourcing of internal departments. • System enhancements including the creation of business requirements, functional specifications, development time and testing provision. • Document templates will require review and updating prior to implementation. • Employee training will require review, updating and implementation. • New processes will be required to be developed, documented and implemented. Due to the extensive amendments, there will be a significant impact on operations. It is recommended that a transitional time period of 18 – 24 months be allowed for both these sections.	
183.	9	section 14 of the proposed amendments		We do not believe that the anticipated effective dates are reasonable due to the impact of processes and systems and request that the dates be deferred until 1 January 2019 and 1 July 2019 respectively.	A transitional period of 6 months has been provided for.
GENERAL COMMENTS					
184.	4			Overall we support the proposed amendments, with some suggested changes and/or requests for clarity on the rules as indicated.	Noted
185.	5			We are pleased to comment on the proposed changes to the General Code of Conduct for authorised FSP's and representative. In general, we are in agreement with the proposed changes and believe that it will lead to better customer outcomes. **About FPI** Financial Planning Institute of Southern Africa (FPI) a SAQA-recognised professional body is pleased to provide comments on The Financial Service Board's draft Board Notice 181. FPI, alongside 25 other countries is a member of the Financial Planning	Noted

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				Standards Board (FPSB), the global standards setting body for the financial planning profession. FPI's mission is to benefit the public by establishing, upholding and promoting professional standards in financial planning. FPI creates relevant professional standards so that: • The public can identify qualified, competent and ethical financial planners; • Practitioners can distinguish themselves as qualified, competent and ethical financial planning professionals; and • Consumers, regulators and other key stakeholders can have confidence in the financial planning profession and in financial planning professionals, and recognize the benefits financial planning offers to individuals and society. FPI interest is in protecting the public and fostering positive outcomes for consumers engaging financial intermediaries in an effort to improve their financial wellbeing. **Regulatory approach** FPI submits that the ***standards of professionalism*** for financial planners and advisers, the ***competency*** of individuals offering financial planning and the ***process*** financial planners use to engage clients and understand their goals, needs and objectives prior to the delivery of financial planning recommendations is paramount and a focus should be placed on this. The financial planning process consists of developing strategies to assist clients in managing their financial affairs to meet life goals, and can	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				involve reviewing all relevant aspects of a client's situation across a large breadth of financial planning activities (including inter-relationships among often conflicting objectives). While products play a key role in the implementation of a financial plan, financial planners only recommend products after a financial plan and/or financial planning strategies are in place and may refer their clients to other financial practitioners for those products. Additionally, a financial planner's recommended strategy for a client may not involve the need to purchase or sell financial products. We believe that the principle reasons a financial intermediary or firm provides a customer with an unsuitable product are: (a) a lack of knowledge of one's own abilities and obligations to the customer; (b) a lack of understanding of the client's goals, needs and objectives (and to a lesser extent risk tolerance); (c) a lack of knowledge of the product and its potential to impact the customer's financial situation adversely; or (d) the product seller's external obligations or motivation for personal gain (resulting in an unsustainable conflict of interest), which compromises the duty of care owed to the customer purchasing the product. The situations described in (a), (b) and (c) above speak to the practitioner's professionalism, competence, an understanding of his or her own abilities, obligations to the customer, and an understanding of the customer's needs and the products being sold.	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				The situation in (d) speaks to an insufficient duty of care afforded to the customer by those whose personal interests or external obligations conflict with public expectations and the customer's needs, which can be exacerbated by the absence, or by a limited form, of remuneration or other disclosures. FPI will respond to FSB's call for comment on the proposed amendments through the rubric of financial planning—a client-centric, process-driven professional practice that can help (re)build trust and restore consumer confidence in financial intermediaries, provide a suitable context for the distribution of products and ultimately support better outcomes for South Africans engaging the financial services marketplace.	
186.	10	General comment		Moonstone Compliance is a FSB approved compliance practice. We currently represent approximately 1600 financial services providers, the majority of which we represent, in our capacity as the providers' Section 17 Compliance Officer. Moonstone Compliance is independently owned and is in no way affiliated with any financial services provider or product supplier. We therefore consider ourselves to be ideally placed to provide objective comments on the proposed amendments to the General Code of Conduct. We welcome any new regulation and/or guidance note that seeks to achieve the ultimate goals of the FAIS Act i.e. the professionalisation of the industry and the regulation of financial services. Viewed as a whole we welcome the proposals. In our view it shows a recognition by the regulator's office that the industry has matured since 2004 and we are greatly encouraged with the qualification throughout that proportionality, complexity and	Noted

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				nature of the business of the FSP is considered in the application of the General Code of Conduct.	
187.	12	General Comment		**INTRODUCTION** The Masthead Financial Advisors Association ("the Association") is an association of ±5'000 independent financial advisors. What makes the members of Masthead independent is the fact that they work for themselves and they act under their own FSB issued licences. Independent financial advisors ("advisors") represent or are mandated to act for an authorised Financial Services Provider through which they provide advice and/or intermediary services to customers. A sizable percentage of the FSPs which form part of the Association are smaller in size and in some cases may consist only of an advisor and one or two staff members. We recognise and agree with the need to professionalise the financial services industry to ensure that customers can be confident that they are dealing with advisors who place the interests of their clients ahead of their own and are competent to render financial services in a professional way with skill and expertise. We therefore support legislation which furthers this objective providing that it is (1) easy to implement, (2) easy to administer once implemented, (3) cost effective for users, and (4) easy to access, broad-based. We are also mindful of the need for legislation to accommodate and support small businesses which are well positioned to provide financial services to the broader population. Masthead (Pty) Ltd is a registered compliance practice and delivers compliance services to ±1'700 FSPs who are members of the Masthead Financial Advisors Association. As such, our inputs/commentary in relation to the proposed	Noted

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				amendments to the General Code of Conduct comes from that of the IFA. **GENERAL COMMENTS** We are in favour of a proactive and pre-emptive approach to market conduct supervision where the intent is to shift from a compliance and rules-based approach to an outcomes-based approach. We also support any amendments that clarify how a principle should be applied to ensure it is aligned to the Regulator's expectation. Therefore, in general we are comfortable with the proposed amendments to the General Code but have provided comment on those sections where we believe further clarity is required or where we have some concerns.	
188.	13			We support most of the proposed changes as we believe it will ensure better client outcomes. The alignment between different pieces of legislation is also welcomed.	Noted
189.	14			We are supportive of the proposed amendments and their aim to ensure that clients experience fair outcomes for their identified needs. The FIA will communicate extensively with members when changes become effective. If necessary, we will host workshops to ensure that the amendments to the Code of Conduct are understood and implemented correctly.	Noted
190.	15			**Free Market Foundation** The Foundation is an independent public benefit organisation founded in 1975. The Foundation promotes and fosters the Rule of Law, personal liberty, an open society, and economic and press freedom. The Foundation's submissions briefly outline relevant Rule of Law principles, mention the need	Please see responses to specific comments raised above.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				for plain language, and refer to the Act's provisions about codes of conduct. The Republic is founded on the ***Rule of Law***. Implicit in the Rule of Law are the principles that laws should not be vague; officials exercising a power to make regulations should stay within the empowering provisions of the Act concerned (otherwise they act *ultra vires* and their conduct is invalid); and officials must not exceed powers conferred, so an official to whom power to make legislation is delegated should not delegate the power to another. The Codes of Conduct should be in ***plain language***. The General Code requires financial-services providers to communicate in plain language, avoid uncertainty and not be misleading. It is submitted that, in the same way, the Code itself and its amendments should also be in plain language, avoid uncertainty, and not be misleading. The Financial Advisory and Intermediary Services Act requires the Registrar to draft ***codes of conduct***, and lays down ***principles of codes of conduct***. A code of conduct must among other things contain provisions relating to disclosure of personal interests to clients, avoidance of false advertising and marketing, and control of incentives. As to the proposed amendments to the General Code, and dealing first with proposed ***definitions***, the definition of *"comparative"* is not ideal. The definition of *"direct marketing"* is misleading and inaccurate and contains jargon. The definition of *"loyalty benefit"* is not entirely clear. The definition of *"puffery"* is not accurate. The definition *"replace or*	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				replacement" is baffling, repetitive and unduly wordy. We suggest wording for all these. The proposed clause that a provider must "***at all times act honestly***" etc is unduly broad and vague. We suggest a narrower wording for greater precision. As to ***conflicts of interests***, the clause that a provider may not describe itself or services it renders as independent if an arrangement exists between it and a supplier for whose products the provider renders financial services "that would constitute a conflict of interest" is unduly vague and might be struck down for not indicating with reasonable certainty what is required. Existing Code provisions may suffice. The clause that a provider may not offer its representatives financial interests determined with reference to quantity of business secured, without also giving due regard to the delivery of ***fair outcomes*** for clients, is unduly vague and liable to be struck down in not indicating with reasonable certainty what sort of things would constitute fair outcomes. The Act requires only that, in a situation of conflicting interests, the Code should oblige providers to "treat" clients fairly. This clause, and the clause that a provider may only receive fees if payment thereof does not impede delivery of fair outcomes to clients, should both be deleted. The draft proposes inserting a clause that the Registrar may determine matters to be addressed in in ***records of advice to clients***. This is redundant. The Code itself already determines matters to be addressed in records of advice. The clause should be deleted.	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				The clause about ***advertisements leading to false conclusions***, that an advertisement must not lead the average targeted client or the public to false conclusions they might reasonably rely on, is not well stated, and we suggest clearer wording. Other proposed clauses overlap with this clause and deal with the same subject-matter, and consideration should be given to whether they are necessary. The clause that advertisements which include ***puffery*** must be consistent with the provisions relating to puffery in the Code of Advertising Practice issued by the Advertising Standards Authority is probably an impermissible delegation by the Registrar to that body of powers conferred on her to draft a code of conduct, and should be deleted. The proposed amendments that would insert in the Code a new part that would prescribe detailed provisions governing ***complaints management*** are in large part probably *ultra vires* (beyond the powers of the Registrar). The amendments propose inserting in the Code definitions of "complainant" and "complaint," although Act defines these words in quite different terms. The proposed amendments would also insert in the Code clauses which would require a provider to maintain a "complaints management framework" that meets numerous requirements. Those proposed clauses are probably *ultra vires*: The Act's provision setting out principles of codes of conduct does not authorise the Registrar in codes of conduct to prescribe procedures for dealing with complaints. The Act stipulates that the Financial Services Board (not the Registrar) may make Rules regarding the rights of complainants in connection with complaints, the	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				manner of submitting a complaint to the provider concerned, and the rights and duties of the provider on receipt of a complaint. The Board made Rules in 2003 which state that, for a complaint to be justiciable by the Ombud, the provider must have failed to address it satisfactorily in six weeks. The Registrar's proposed amendments do not expressly mention this six-week period prescribed in the Board's Rules. The Registrar's proposed amendments would require providers to maintain an unduly-elaborate complaints management framework for what ought to be a six-week-long procedure at best. It is concluded that these proposed "complaints management framework" clauses are *ultra vires*, and should be deleted, or at the very least substantially reduced but with insertion of more direct references to the Board's Rules. The proposed amendments to the ***Short-term Deposit Code of Conduct*** would require banks conducting short-term deposit business to comply with the General Code's provisions governing advertising and complaints management. Our submissions accordingly also apply to those proposed amendments to the Short-term Deposit Code, in so far as our submissions deal with advertisements leading to false conclusions, puffery and complaints management. **Rule of Law** The Rule of Law is a foundational value of our constitutional democracy - Constitution s 1; *Affordable Medicines Trust and others v Minister of Health and ano* 2005 (6) BCLR 529 (CC) par 108. It is a principle of the Rule of Law that laws should not be vague (The so-called doctrine of vagueness):	

				Laws must be written in a clear manner (*Affordable Medicines Trust and others v Minister of Health and ano* 2005 (6) BCLR 529 (CC) par 108), and indicate with reasonable certainty to those bound by them what is required so that they may regulate their conduct accordingly (*HTF Developers (Pty) Ltd v Minister of Environmental Affairs and Tourism and others* [2007] 4 All SA 1108 (SCA) par [9]). Another incident of the Rule of Law is the doctrine of legality, which entails that an official exercising power to make regulations or the like must comply with empowering provisions of the statute concerned (The common-law principle of *ultra vires* remains under the new constitutional order, underpinned (and supplemented where necessary) by a constitutional principle of legality, which in relation to legislation is implicit in the Constitution. *Fedsure Life Assurance Ltd and others v Greater Johannesburg Transitional Metropolitan Council and others* 1998 (12) BCLR 1458 (CC) pars [58], [59]). If she exceeds the powers conferred by empowering provisions, she acts *ultra vires* (beyond the powers (conferred)) and in breach of the doctrine (and thus in a manner inconsistent with the Constitution), and her conduct is invalid (*Affordable Medicines Trust and Others v Minister of Health of RSA and Another*, ibid, paras [48] – [50]). A core Rule of Law principle is that public officers must exercise powers conferred on them without exceeding the limits of those powers (Lord Bingham (then Senior Law Lord), "The Rule of Law" (Sir David Williams Lecture 2006, Centre for Public Law, Univ. of Cambridge), sixth sub-rule). A person to whom a power to make legislation is delegated may not delegate that power further (*delegatus delegare non potest - Hospital Association of S.A. Ltd v Minister of Health and ano; ER24 EMS (Pty) Ltd and ano v Minister of Health and ano; S A Private Practitioners Forum and others v Director-General of Health and*	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				others 2010 (10) BCLR 1047 (GNP) pars [67], [68]). Where the Legislature delegates powers to a subordinate authority, it intends that authority to exercise the powers and not delegate them to someone else (*Chairman of the Board on Tariffs and Trade and others v Teltron (Pty) Ltd* [1997] 1 All SA 387 (A) 394. Not every delegation of delegated powers is hit by the maxim *delegatus delegare non potest*, but only such delegations as are not, expressly or by necessary implication, authorised by the delegated powers. *Government of the Province of the Eastern Cape v Frontier Safaris (Pty) Ltd* [1997] 4 All SA 500 (A) 510). **Plain language** Amendments to the General Code should, we submit, be in plain language. The General Code itself requires providers to communicate in plain language. The Code states, "When a provider renders a financial service, representations made and information provided to a client by the provider…must be provided in plain language, avoid uncertainty or confusion and not be misleading" (General Code s 3(1)(a)(ii)). And the proposed amendments state, "All communications with a complainant must be in plain language". (Proposed amendments cl 13, to substitute General Code Part XI (Complaints management), cl 17(8)(c). The amendments would define "plain language" (proposed amendments cl 2(k), to amend General Code s 1 (Definitions, construction and application) by inserting in s 1(1) a definition of "plain language" as follows:	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				"**plain language**" means communication that— *(a)* is clear and easy to understand; *(b)* avoids uncertainty and 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.") In the same way, the Code and its amendments should also be in plain language, avoid uncertainty or confusion, and not be misleading. **Act's provisions regarding codes of conduct, and principles of codes of conduct** The Financial Advisory and Intermediary Services Act, 1980 ("the Act") provides that the registrar must, after consultation with representative bodies of the financial services industry and client and customer bodies, draft a code of conduct for financial services providers (s 15(1)(a) of the Act). The code must, after consultation, be published by notice in the *Gazette*, and, on any such publication, becomes binding on all authorised financial services providers and representatives referred to therein (s 15(1)(b) of the Act). Different codes of conduct may be drafted in respect of the rendering of a financial service to different categories of clients and of different categories of authorised financial services providers and their operations in different sectors of the financial	

				services industry, and different categories of representatives (s 15(2)(a) of the Act). A code of conduct must (s 15(2)(b) of the Act read with s 1(1) svv “financial product par (f) and Banks Act 94 of 1990 s 1(1) sv “deposit”) be drafted for the rendering of financial services in respect of deposits with a term not exceeding 12 months by a provider which is a bank (As defined in the Banks Act 94 of 1990), mutual bank (As defined in the Mutual Banks Act 124 of 1993) or co-operative bank (As defined in the Co-operative Banks Act 40 of 2007). Codes of conduct may be amended or replaced, in accordance with the procedure for drafting and publishing such codes (s 15(3) read with s 15(1)(a) and (b) of the Act). The Act lays down principles of codes of conduct (s 16 of the Act (Principles of code of conduct)): A code of conduct must be drafted in such a manner as to ensure that the clients being rendered financial services will be able to make informed decisions, that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied, and that for those purposes authorised financial services providers and their representatives are obliged by the provisions of such code to— *(a)* act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry; *(b)* have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities; *(c)* seek from clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required;	

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				(d) act with circumspection and treat clients fairly in a situation of conflicting interests; and *(e)* comply with all applicable statutory or common law requirements applicable to the conduct of business (s 16(1)(a)–(e) of the Act). A code of conduct must in particular contain provisions relating to— *(a)* the making of adequate disclosures of relevant material information, including disclosures of actual or potential own interests, in relation to dealings with clients; *(b)* adequate and appropriate record-keeping; *(c)* avoidance of fraudulent and misleading advertising, canvassing and marketing; *(d)* proper safe-keeping, separation and protection of funds and transaction documentation of clients; *(e)* where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the registrar in any particular case; *(eA)* the control or prohibition of incentives given or accepted by a provider; and *(f)* any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of the Act (s 16(2)(a)–(f) of the Act).	
191.	15	PROPOSED AMENDMENTS TO SHORT-TERM DEPOSIT CODE		The Registrar's proposed amendments to the Short-term Deposit Code of Conduct would require banks conducting short-term deposit business to comply with the provisions of the General Code of Conduct governing Advertising and Complaints. Our submissions accordingly also apply to the proposed amendments to the Short-term Deposit Code, in so far as our submissions deal with—	Noted.

Item	Commen-tator	CLAUSE	WORDING / PROPOSED WORDING	COMMENT	AUTHORITY'S RESPONSE
				Advertisements leading to false conclusions Puffery Complaints	
192.	16			It is, with respect, unfortunate that this General Code of Conduct has been published for comment after the Policyholder Protection Rules (PPRs) have been finalised. FSP's comprise a far wider category of firms than insurers and, to the extent that this Code has been aligned to the PPR's, we are concerned whether our commentary will be considered.	All comments received have been considered and where appropriate those comments have been incorporated into the provisions.

.