



FSCA

Financial Sector
Conduct Authority

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**THE CONDUCT OF FINANCIAL
INSTITUTIONS BILL AND
THE FSCA'S NEW APPROACH**

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**EDITOR:** Tembisa Marele

The signing into law of the Financial Sector Regulation Act ('the FSR Act') paved way for the next phase of legislation reformation, commencing with the recent release of the Conduct of Financial Institutions (COFI) Bill for public comment.

Aimed at strengthening how financial services providers and are regulated, the Bill outlines what customers and key industry players can expect from financial institutions and how the legal framework that governs the conduct of financial institutions will be streamlined. By giving legislative effect to the overall improvement of market conduct and customer protection, the Bill will also focus on the implementation of the 'Treating Customers Fairly' (TCF) principles.

With the above in mind, we have themed this edition of the Bulletin around the COFI Bill to give you a better sense of what it contains.

On page 4 you will find our lead story which gives a broad overview of the regulatory and supervisory approach that the FSCA will take as we discharge our new mandate.

It's been important for us to change along with the industry and gear ourselves up to deal with both current and future financial innovations. As such we have made a number of structural changes within the FSCA to help us to broaden our operational scope.

As always, there is plenty more in store for you, and we look forward to receiving more of your insights.

Tembisa Marele

THE CONDUCT OF FINANCIAL INSTITUTIONS BILL AND THE FSCA'S NEW APPROACH

BY LEANNE JACKSON, LEGAL ADVISOR, FSCA

The Conduct of Financial Institutions (COFI) Bill is the result of a number of years of collaboration and consultation among industry participants on the back of the signing into law of the FSRA. It is born from the need to address and prevent poor outcomes for financial customers and outlines what customers can expect of financial institutions. The Bill further seeks to streamline the legal framework for the regulation of the conduct of financial institutions. 'The COFI Bill has also been informed by the 'treating customers fairly' (TCF) principles, which were introduced in 2011,' says National Treasury.

Key to note from the National Treasury explanatory paper that accompanied the COFI Bill is that the Bill consolidates conduct aspects of most of the different pieces of current sectoral legislation into a single piece of legislation, which will be overseen by the FSCA. This creates a new 'best of breed' law that is a better fit for the financial sector as it operates today than the current fragmented framework. It should, however, be noted that a few specific other pieces of sectoral legislation that are not conduct-related will remain in force, particularly those containing financial soundness requirements overseen by the Prudential Authority.

The Bill should be read in conjunction with the regulatory strategy to give it more context. According to the FSCA's regulatory strategy, the regulatory and supervisory approach of the conduct regulator seeks to achieve the following:

- Adopting a set of guiding principles, including (among others) being pre-emptive, proactive, risk-based, proportional, intensive, intrusive, transparent, and outcomes-focused;
- Embedding TCF outcomes in regulatory and supervisory frameworks;
- Developing conduct standards that combine principles and rules in a way best designed to achieve the desired fair outcomes for customers – not relying only on rules and 'box ticking';
- Moving the FSCA's organisation design from an 'industry silo' structure to an activity-based structure (with cross-cutting licensing, supervisory and enforcement functions);
- Building capacity for the FSCA's new functions, which include overseeing banks, payment service providers, aspects of credit, and financial conglomerates; and



"The **COFI Bill** will provide the regulatory flexibility necessary to respond to changes within the dynamic financial sector and provide the regulator with the opportunity to support **new financial institutions, products and services.**"

- Using the new FSR Act toolkit to strengthen regulatory, supervisory and enforcement processes – including customer redress.

This approach will be used to drive the FSCA's dedicated focus on the following strategic priorities:

- Building the new organisation – new structures, new functions and new skills;
- An inclusive and transformed financial sector, with a focus on the FSCA's role in supporting and monitoring the effectiveness of industry commitments to their transformation goals under the Financial Sector Code;
- A robust regulatory framework that supports TCF and works towards the overarching conduct framework under the COFI Bill;
- Informed financial customers through our consumer education mandate (the FSCA now has the power to set standards for industry education initiatives);
- Strengthening the efficiency and integrity of our financial markets, with comprehensive financial markets reviews already in progress; and

- Adopting a coordinated approach towards financial sector technology advances (FinTech) by collaborating with the Prudential Authority, SARB, other regulators and the FinTech sector to understand new ways of doing business and disruptive technologies.

The COFI Bill will provide the regulatory flexibility necessary to respond to changes within the dynamic financial sector and provide the regulator with the opportunity to support new financial institutions, products and services. This support for new entrants includes both non-traditional FinTech offerings and black-owned businesses. . FinTech offerings that demonstrate opportunities for improved financial inclusion in particular will be supported.

The COFI Bill, as a holistic, comprehensive and consistent legal framework for market conduct regulation of all financial institutions, which supports innovation and transformation, will empower the FSCA to promote improved financial sector conduct and fairer outcomes for more financially resilient South Africans.

REGULATORY FOCUS



REPORT BY THE FSCA ON THE STATUS OF VARIOUS MARKET ABUSE INVESTIGATIONS

The FSCA is mandated to investigate and, in appropriate instances, take enforcement action in cases of financial market abuse on the financial markets. Three kinds of market abuse are prohibited in South Africa, namely insider trading, market manipulation (prohibited trading practices) and false reporting relating to the affairs of a public company. Our investigation procedures include interviews under oath, acquiring documentary evidence and obtaining assistance from foreign regulators.

In matters of insider trading, the FSCA may order the alleged offender to pay an amount equal to the profit made or the losses avoided because of the offending transactions, and a penalty of up to three times such amount. These funds are distributed, after recovery of costs, to persons who may have been prejudiced by the offending transactions. In addition, the FSCA may impose a range of administrative sanctions on the alleged offenders.

Market abuse transgressions are criminal offences in terms of the Financial Markets Act No. 19 of 2012 ('the FMA'). The Director of Public Prosecutions may institute criminal action against any person suspected of a market abuse transgression. It is not the function of the FSCA to institute criminal prosecutions, but it would provide all information necessary to assist the Director of Public Prosecutions.

Since 1999, the FSCA and its predecessors, the Directorate of Market Abuse and the Insider Trading Directorate, have investigated a total of 421 cases. A total of 307 cases were closed because there was either no evidence or insufficient evidence existed to indicate that the FMA (or the now repealed Insider Trading Act and Securities Services Act) had been contravened. In 91 cases the FSCA/DMA decided to proceed with enforcement action. The penalties imposed on offenders to date amount to approximately R138 million.

The FSCA's investigations into share trading patterns and complaints should not be construed as an indication that any violation of a law has occurred, or as a reflection upon any person, entity or security. The FSCA has the responsibility to investigate these matters in an impartial and objective manner. If no evidence of wrongdoing is uncovered, the investigations are closed.

Below is a list detailing the status of insider trading and prohibited trading practices investigations. It should be noted that these investigations are not into the affairs of the companies listed but into trading in their shares on the stock exchange.

POSSIBLE INSIDER TRADING CASES

SECURITY	JSE CODE	PERIOD INVESTIGATED	CASE STATUS
1. Capitec Bank Holdings Limited	CPI	2018-01 – 2018-02	Ongoing
2. Dis-Chem Pharmacies Limited	DCP	2017 – 12	Ongoing
3. EOH Holdings Limited	EOH	2017-11 – 2017-12	Ongoing
4. Esor Limited	ESR	2018-07 – 2018-08	Ongoing
5. Fortress Income Fund Limited	FORT	2017 – 2018	Closed
6. Greenbay Properties Limited	GRP	2017 – 2018	Ongoing
7. Murray & Roberts Holdings Limited	MUR	2018-03	Ongoing
8. Nepi Rockcastle PLC	NRT	2017 – 2018	Closed
9. Resilient REIT Limited	RES	2017 – 2018	Closed
10. Steinhoff International Holdings N.V.	SNH	2017-11 – 2017-12	Ongoing
11. Steinhoff International Holdings N.V.	SNH	2017-12	Ongoing
12. Times Media Group Limited	TMG	2014-02 – 2014-03	Ongoing
13. WG Wearne Limited	WEA	2017-09	Ongoing
14. Wheat Futures Contracts	WEAT	2017-04 – 2017-05	Ongoing
15. Steinhoff International Holdings N.V.	SNH	2017-12	Ongoing

POSSIBLE PROHIBITED TRADING PRACTICES (MARKET MANIPULATION) CASES

SECURITY	JSE CODE	PERIOD INVESTIGATED	CASE STATUS
1. 15 June 2016 ALSI Futures Contract	15June16 ALSI	2016-04	Ongoing
2. African Equity Empowerment Investments Limited	AEE	2018	Ongoing
3. Atlatsa Resources Corporation	ATL	2018-10	Ongoing
4. AYO Technology Solutions Limited	AYO	2018-05 – 2018-06	Ongoing
5. Capitec Bank Holdings	CPI	2018-01 – 2018-02	Ongoing
6. Fortress Income Fund Limited	FORT	2017 – 2018	Ongoing
7. Greenbay Properties Limited	GRP	2017 – 2018	Ongoing
8. Nepi Rockcastle PLC	NRT	2017 – 2018	Ongoing
9. Oakbay Resources and Energy Limited	ORL	2014-11 – 2015-04	Ongoing
10. Premier Fishing Brands Limited	PFB	2018	Ongoing
11. Resilient REIT Limited	RES	2018-01	Ongoing
12. Resilient REIT Limited	RES	2017 – 2018	Ongoing
13. Trustco Group Limited	TTO	2017-12 – 2018-02	Ongoing
14. Trustco Group Limited	TTO	2018-06	Ongoing



REGULATORY FOCUS

POSSIBLE FALSE OR MISLEADING REPORTING CASES

Below is a list detailing the status of possible false or misleading reporting investigations.

Security	JSE code	Publication	Case status
1. Capitec Bank Holdings	CPI	2018-01 – 2018-02	Ongoing
2. Lewis Group Limited	LEW	2015-01 – 2016-10	Ongoing
3. Nepi Rockcastle PLC	NRT	2017 – 2018	Ongoing
4. Resilient REIT Limited	RES	2018-01	Ongoing
5. Resilient REIT Limited	RES	2017 – 2018	Ongoing
6. Steinhoff International Holdings N.V.	SNH	2015, 2016 & 2017	Ongoing
7. Steinhoff International Holdings N.V.	SNH	2017-12	Ongoing

Investigations are terminated once it becomes evident that no evidence or insufficient evidence has been obtained to warrant administrative action. In the event of further evidence arising at any stage after a decision has been taken to terminate an investigation, it will be re-opened.

NOTES:

The FSCA has decided to provide more detail on the cases mentioned below due to the extent of public interest and their impact on the market.

Resilient REIT Limited, Fortress Income Fund Limited, NEPI Rockcastle PLC, Greenbay Properties Limited (now known as Lighthouse Capital Limited)

The FSCA has decided to close three insider trading cases pursued under section 78 of the FMA, namely Resilient (Resilient REIT Limited), Nepi Rockcastle (Nepi Rockcastle Limited) and Fortress (Fortress REIT Limited). These investigations focused on the following announcements:

- Resilient and Fortress – SENS announcement dated 7 March 2018 relating to inter alia the unwinding of the cross-shareholding between Resilient REIT Limited and Fortress
- Resilient – SENS announcement dated 22 August 2017 relating to a book build by Resilient
- Nepi Rockcastle – SENS announcement dated 3 October 2017 relating to a book build by Nepi Rockcastle.

The FSCA has closed a case pursued under section 80 of the FMA involving one of a number of allegations of possible price manipulation relating to Greenbay Properties Limited's share price. The investigations into the other allegations of price manipulation remain ongoing.





Our Vision

To ensure an efficient financial sector where **customers are informed and treated fairly** ●

CHANGE

MEET THE FSCA DIVISIONAL EXECUTIVES

FSCA Commissioner, Mr Abel Sithole is pleased to announce the appointment of the following Divisional Executives to the leadership team of the FSCA, with effect from 1 February 2019, in terms of section (62) (1) (a) of the Financial Sector Regulation Act (FSRA).



MS FELICITY MABASO

Divisional Executive: Licencing and Business Centre



MS CAROLINE DA SILVA

Divisional Executive: Regulatory Policy



MS FARZANA BADAT

Divisional Executive: Conduct of Business



MR JURGEN BOYD

Divisional Executive: Market Integrity Supervision



MR OLANO MAKHUBELA

Divisional Executive: Retirement Fund Supervision



MR MARIUS DU TOIT

Divisional Executive: Specialist Support



MR PAUL KEKANA

Divisional Executive: Chief Financial Officer



MS PHOKENG MOGASE

Divisional Executive: Chief Information Officer



MR JABULANE HLAETHOA

Divisional Executive: Corporate Centre



MR BRANDON TOPHAM

Divisional Executive: Investigations and Enforcement

SHOULD RETIREMENT FUNDS INVEST IN SOEs?



**BY ANNE-MARIE D'ALTON
CEO, BATSETA COUNCIL OF RETIREMENT FUNDS FOR
SOUTH AFRICA**

While Government continues to do its best to uproot corruption in state-owned entities (SOEs), curbing the ravaging effects of corruption will require far more than the mere removal of those who have been found guilty of it. Maladministration, poor governance and the controversial concept of state capture have led to many SOEs facing deep financial difficulty.

There is no doubt about the importance of SOEs in the South African economy. They have a direct impact on the country's overall growth and development as well as on the daily lives of ordinary South Africans, from ensuring that the lights are on in every household to enabling people to travel from home to work or school and allowing us to engage with each other using telecommunications infrastructure. Seeing South Africa's SOEs fail is having far-reaching consequences for all of South Africa, including members of retirement funds.

Business Day recently reported that financial institutions may approach the Constitutional Court if the South African government forces pension funds to invest in bankrupt state-owned enterprises. This is in response to a proposal in the ANC election manifesto that the government will investigate the introduction of prescribed assets for financial institutions.

The concept of prescribed assets requires pension funds to invest a set amount of their funds in instruments such as government or parastatal bonds. One way that this can be done is through the amendment of Regulation 28 in the Pension Fund Act by prescribing that a certain percentage of retirement fund investment must be allocated to government or parastatal bonds.

The idea of pension funds funding ailing SOEs (while not set in stone) can be seen as imposing an indirect tax on the pension savings of large parts of the middle class and the employed working class.

According to Isaac Ramputa, chairperson of the Batseta Council of Retirement Funds for South Africa, 'In South Africa, discussions of using pension fund money for various national interests continue to unfold, but the problem is these discussions do not include the asset owners (the retirement funds themselves), which in my opinion are the most important stakeholders of all.'

Mr Ramputa went on to say that in the retirement funding space, principal officers and trustees have a fiduciary duty to ensure that members retire securely. This means that these professionals have to make decisions that will ensure the best possible returns for their members. Imposing prescribed assets in effect undermines the fiduciary roles of principal officers and trustees.

Retirement funds are structured differently from other funds. In the defined-benefit (DB) fund, the employers guarantee a specific retirement benefit outcome for each member, while in the defined-contribution (DC) fund, the employees are the funders of the plan. The size of the fund also matters. In South Africa, the top 100 funds represent 80% of the total assets under management (AUM). Fund types differ, and so do their approaches to investments. This has to be taken into consideration even before the idea of prescribed assets comes up.

According to Mr Ramputa, 'Conversations regarding pension funds cannot be held in the absence of asset owners, consultation in this regard is thus very important. It is not the first time that the issue of prescribed assets comes up and while it is still an idea at this point, it is important that government does not only impose new laws on asset managers but engages asset owners to understand our challenges better.'



Our Mission

To ensure a fair and stable financial market, where consumers are informed and protected, **and where those that jeopardise the financial well-being of consumers are held accountable** ●

A FINTECH TAKE ON THE CONDUCT OF FINANCIAL INSTITUTIONS BILL

BY TERESA SETTAS, SESHREE GOVENDER, AN ASSOCIATE AT WEBBER WENTZEL AND SPECIALIST IN FINANCIAL SERVICES REGULATION

The draft Conduct of Financial Institutions Bill was recently published. Once enacted, it may become one of the first pieces of legislation that explicitly seeks to develop Fintech regulation in South Africa. Comments on the COFI Bill close on 1 April 2019. Set out below are the key issues for industry stakeholders to take note of.

The COFI Bill represents the culmination of industry reviews, discussions and proposed frameworks emanating from the need for an extensive reform of the market conduct regulatory framework applicable to the South African financial services sector.

The COFI Bill is rooted in the financial service sector's shift toward the Twin Peaks regulatory model, initiated by the commencement of the Financial Sector Regulation Act ('the FSR Act'). The adoption of the Twin Peaks framework has established two distinct pillars of regulation, the PA and the FSCA, both of which have focused mandates to manage prudential and market conduct risks, respectively. Since the enactment of the FSR Act, a number of strides have been made on the prudential regulatory side of the Twin Peaks isle, and with the promulgation of the COFI Bill, the

fundamental market conduct tread has commenced.

While primarily predicated on objectives aligned with the fair treatment of customers, the COFI Bill is cognisant of the need for market conduct regulation to go beyond the mere fair treatment of customers. Accordingly, the legislative objectives underpinning the COFI Bill are similarly aimed at promoting financial inclusion, transformation and competition, among others. In particular, the COFI Bill seeks 'to promote innovation and the development of and investment in innovative technologies, processes and practices', which may serve as a core objective to which the development of Fintech regulation may be anchored.

In terms of the risk- and activity-based regulatory framework, proposed by the COFI Bill, this fundamental objective impacts not only the overall regulatory approach of the Bill but also the manner in which regulatory compliance will be assessed and the way in which the FSCA will implement and enforce the provisions of the Bill once it comes into force.

As the objectives of the COFI Bill may serve as the proposed first

step in developing a South African Fintech regulatory environment, this fundamental objective to promote the development and investment in innovative technologies raises an important question in the Fintech regulatory debate – what does a South African Fintech regulatory objective look like within a legislative context?

The COFI Bill proposes that the development of Fintech regulation in South Africa will be premised, primarily, on the apparent need to 'promote innovative technologies' within the sector. This need arises out of the concern that the labyrinth of financial services regulation may inadvertently restrict or prevent the development, investment or deployment of technology in the industry. However, in an activity-based regulatory regime, as proposed by the Bill, connecting the Fintech regulatory objective to the promotion of 'innovative technologies', in and of itself, may create superfluous Fintech regulation.

The mere utilisation of technology (innovative or otherwise) in providing traditional financial products and services in a manner that still ascribes to the current regulatory definition and industry understanding of such products



FINTECH

FINANCIAL TECHNOLOGY

and services does not necessarily warrant a regulatory eye or room for compliance flexibility. In the proposed provisions of the COFI Bill, it will be the actual activity related to providing financial products and services, as defined and recognised in the COFI Bill, that will be subjected to the reformed market conduct regulatory regime – irrespective of the kind of technology utilised in conducting the regulated activity.

The financial services sector, like any other industry, is not immutable to the effects of technological innovation. The number of distribution business models within the industry is currently digitised, and in 2017, the fit and proper requirements promulgated under the Financial Advisory and Intermediary Services Act ('the FAIS Act') introduced the concept of 'automated advice'. The innovative capability of technology does not, generally, introduce a level of risk into the financial services industry that is significant enough to require the development of a regulatory framework that has a particular focus on the impact of technology. However, the same may not necessarily be said of the disruptive capability of technology, specifically when employed in this somewhat crystallised industry.

Disruptive technology is not generally developed with the primary intention of innovating financial products and services in a manner that still aligns with the current incumbent industry model. Instead, disruptive technology has the ability to reform the fundamental commercial and legal structure of particular financial products and services in its entirety. Technologies such as distributed ledgers, smart contracts and digital identities may not be easily confined to the current definition and understanding of 'financial products' or an activity in rendering a 'financial service'.

In an activity-based regulatory regime as proposed under the COFI Bill, a legislative objective that promotes the development of innovative technology, as opposed to disruptive technology, runs the risk of affording regulatory flexibility to technological developments that would not necessarily have been subject to any significant regulatory constraints – while inadvertently hindering the development of disruptive technology or ultimately excluding an emerging financial services micro-sector that has the potential to introduce significant risk to the industry as a whole.

While the COFI Bill is in its initial draft stages and thus may change prior to its promulgation, it

nevertheless represents a cardinal direction for the development of Fintech regulation in South Africa. However, in determining the legislative objective that will form the foundation upon which a Fintech regulatory environment will be built, it is important for the proposed legislation to acknowledge that not all technology is created equal. As affirmed in the 2018 Fintech Programme media statement as well as the published Regulatory Strategy of the FSCA, the types of Fintech that should be the subject of regulation are 'technologies applied to financial services with the potential to disrupt current business models, applications, processes or products'. As such, it is critical for any proposed Fintech regulatory objective to be focused on the extent to which the relevant technology has a disruptive effect on the current structure of the industry, rather than the ability of technology to further entrench traditional constructs of financial products and services through innovative means.

Disclaimer: This article was sourced from My Pressportal and may be accessed using the link below:

<https://www.pressportal.co.za/business-and-economy/story/17068/a-fintech-take-on-the-conduct-of-financial-institutions-bill.html>



Our Values

Agility

Camaraderie

Diligence

Fairness

Integrity

Perseverance ●



CONSUMER PROTECTION

FINANCIAL SECTOR CONDUCT AND CONSUMER PROTECTION – GETTING THE REGULATION RIGHT

BY PATRICK CAIRNS

A ten-line love letter to customers? The Bill will replace the 'treating customers fairly' (TCF) regime and seeks to provide clear standards while giving the regulator the power to enforce them.

Dr Andy Schmulow, a senior lecturer at the University of Wollongong in Australia and a senior advisor at local management consulting firm DB & Associates, is a member of the expert panel advising National Treasury on COFI. He believes that the need for this type of regulatory regime has been well established.

'We have understood clearly that failures in prudential regulation can very quickly become a crisis, but we now also understand that market misconduct and consumer abuse can also become a crisis,' Schmulow says. 'The global financial crisis began with the sub-prime disaster, which was market misconduct and consumer abuse writ large.'

Separating prudential regulation and conduct regulation is therefore, in his opinion, a logical step.

'Protecting consumers and upholding prudential regulation are antithetical,' Schmulow believes. 'You can do one, or you can do the other, but you can't do both. We learned that for regulators who had been mega regulators, who had tried to do both, one of those imperatives had always won the day.'

For example, it is in the interests of consumers to promote competition. That should encourage a conduct authority to issue more banking licenses. A prudential authority would, however, more likely do the opposite since smaller, more weakly capitalised banks could be a threat to systemic stability.

'So you have to separate the two and make them equally powerful,' Schmulow argues. 'You have to give them jurisdiction so that they can do their job.'

THE FAILURE OF SELF-REGULATION

Significantly, it has also become apparent that the industry cannot be left to regulate itself. 'You have to provide a regulatory framework for regulating conduct, and you can't abrogate that responsibility to individual entities,' Schmulow says.

'The only time that industry self-regulation will work is if it rests on very strong foundations – that if you don't obey the law, we will send you to jail. Take that away and industry self-regulation becomes intellectually dishonest and theoretically bankrupt.'

Before the financial crisis, the dominant thinking was that the financial services industry would be naturally self-regulating. The argument was that the market itself would impose the ultimate control on behaviour. Entities would understand that it was in their own long-term self-interest to act in the best interests of their customers and



protect the sustainability of financial markets.

However, the experience of 2007 and 2008 has shown that long-term thinking is easily overridden by the possibility of short-term gains.

COFI seeks to solve this by providing clear, customer-centric standards for the industry. It also gives the conduct regulator the power to enforce them, making it distinctly different to the TCF regime that it will replace.

'TCF is a subjective framework, so you are asked to evaluate yourself,' explains Schmulow. 'But COFI is an objective standard, which the regulator can enforce.'

REGULATORY BURDEN

A concern among some commentators is that COFI will further increase the already sizeable compliance requirements placed on financial services companies. This not only distracts them from what they should be doing but creates barriers to entry, since the cost of compliance is so high.

Schmulow, however, believes that Cofi actually does the opposite.

'Those consequences are the consequences that come from a prescriptive, rules-based regulatory regime, where highly prescriptive rules have unintended consequences,' he argues. 'That kind of regulatory paradigm doesn't ever get slimmed down, only ever fattened out. You get more rules, and more granular, compliance tasks. That is not the regulatory paradigm being introduced here,' he adds. 'COFI is a principles-based and outcomes-determined regulatory paradigm. It is conceivable that you could slim that down to ten lines on one piece of paper.'

What is critical for industry players to understand is that this requires them to think very differently about compliance. It is no longer about checking things off a list.

'Rather, you need to ask what are all the different ways in which we can be customer focused?' says Schmulow. 'Let's have a deep, probing, intelligent reflection about all the different places where there is a risk that we could be distracted from that aim.'

For instance, in the development of products, are firms coming up with new offerings just to make more money, or is there an identifiable customer need that can be met? Are products designed in a way that is fair and transparent, or are fees and charges being hidden?

'There are leading examples of companies that have gone through the pain of weaning themselves off flogging products, have become much more customer-focused, and have been well rewarded by the market,' Schmulow says.

'So this is not the end of entrepreneurial capitalism. What it is, is an understanding that the financial system is more of a linchpin than any other industry in not only ensuring a healthy and vibrant economy, but that the wealth in that economy is fairly distributed.'

Disclaimer: This article was sourced from Moneyweb and may be accessed using the link below:

<https://www.moneyweb.co.za/mymoney/10-lines-on-a-piece-of-paper/>



TCF IS KEY

BY JONATHAN FAURIE – FA NEWS

Over the past two years, the Financial Services Conduct Authority (FSCA) has increased its efforts to ensure that insurers and financial advisers adhere to the six outcomes that are stipulated by 'treating customers fairly' (TCF).

While many insurers and financial advisers have been studiously adhering to these outcomes, there is some concern that there are areas of ambiguity when it comes to TCF implementation within the retirement industry.

As part of its efforts to improve its communication with insurers and financial advisers, the FSCA discussed this topic in its latest FSCA Bulletin. The implications for the industry are extensive, so we have highlighted a few key points.

MEETING SPECIFIC NEEDS

TCF Outcome 2 points out that products and services marketed and sold in the retail market need to be designed to meet the needs of identified customer groups and are targeted accordingly.

Retirement fund products and services should be developed and administered to meet the needs and expectations of members and former members of the retirement fund, who include:

- beneficiaries of members or former members of the retirement fund;
- nominees or dependants of members or former members of the retirement fund;

- employers participating in the retirement fund; and
- spouses or former spouses of members or former members of a retirement fund.

'This is to achieve the goal of providing appropriate retirement income for members. Boards should not be influenced or induced by current or potential providers of financial products and services, which may result in the products and services purchased by the fund being inappropriate or not offering value for money for the retirement fund, its members and beneficiaries,' says Olano Makhubela, Divisional Executive for Retirement Funds at the FSCA.

Complaints and service call data must be considered in assessing the suitability of the products, investments or services provided to members and/or beneficiaries. Bundling of products and services, or excessive incentives to funds, may lead to inappropriate or unnecessary products or services.

APPROPRIATE RISK PROFILING

An additional part of Outcome 2 points out that the Board must ensure that the retirement products provided by the fund are appropriate after considering the needs and risk profile of the members and beneficiaries.

The board must also understand and monitor the risks of the retirement fund products/investments offered by the fund. It must further ensure that members and beneficiaries

have enough information to make an informed decision in selecting investments and other options offered by a fund.

'Surveys on the needs of members and beneficiaries must be done to ensure that the services provided meet the needs of the members and beneficiaries, and should not be conducted by consultants and intermediaries, who may tend to design retirement products that will be to the benefit of the consultant / service provider, giving rise to a conflict of interest,' says Makhubela.

ADVICE IS KEY

According to Outcome 4, where customers receive advice, the advice must be suitable and take their circumstances into account. Where boards and/or members of retirement funds receive advice, the advice must also be suitable and take account of their respective circumstances.

'Boards must at least ensure that the intermediaries appointed are, where applicable, appropriately licensed, understand the products and have enough expertise as well as ensure that they understand the risks of products and receive enough information on the possible risks involved before taking a decision,' says Makhubela.

Boards must verify whether the adviser will receive any incentives from the service provider for selling a specific product and whether there are similar products on the market with which the product in question can be compared.



Further, boards must ensure that the product is suitable for the needs of the fund and its members.

MINIMAL BARRIERS PLEASE

According to TCF Outcome 6, customers must not face unreasonable post-sale barriers to change products, switch providers, submit claims or make a complaint.

Retirement funds and members should not face unreasonable barriers to submit a claim, make a complaint, change products or switch providers where the rules of a fund allow for such choices.


Boards must establish and implement an effective complaints management process. The complaints management process must not frustrate complainants due to insufficient resources or ineffective processes.

‘The FSCA has allocated the trustee toolkit as a mandatory programme for trustees, ensuring that trustees have the necessary skills to manage member funds. It will also continue to adopt a consultative approach to TCF implementation,’ says Makhubela.

Disclaimer:

This article was sourced from FA News and may be accessed using the link below:

<https://www.fanews.co.za/article/compliance-regulatory/2/financial-sector-conduct-authority-fsca-was-fsb/1059/fsca-warns-of-tcfs-importance/26047>



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THE FSCA WARNS THE PUBLIC TO ACT WITH CAUTION WHEN DEALING WITH THE FOLLOWING ENTITIES:

PRESTIGE WEALTH

It has been brought to the attention of the FSCA that Prestige Wealth rendered investment advice and intermediary services to the public through its representatives without the necessary authorisation, involving financial services related to the Qualifying Recognised Overseas Pension Schemes (QROPS). This concerns the transfer of UK pension benefits to off-shore investment schemes and trusts situated in foreign jurisdictions. Prestige Wealth applied for a Financial Services Provider (FSP) license with the FSCA but then withdrew their application. It was then discovered through an investigation that the entity had unlawfully displayed their temporary application registration number as an authorised FSP number.

The Financial Markets Authority of New Zealand published a warning with reference to the same entity after it was brought to the attention of FMA that Prestige Wealth Solutions and its associates were offering financial services to New Zealand residents via unsolicited telephone calls. Prestige Wealth Solutions is also not registered as a financial service provider in New Zealand and is therefore not permitted to provide financial services to New Zealand residents.

OPTIONPLUS500 (PTY) LTD

The FSCA's is of the view that OptionPlus500 (Pty) Ltd is conducting unregistered business and providing advisory and intermediary services without the necessary authorisation. The FSCA received information that a person called Maggie Brand was purporting to act for a company called OptionPlus500 (Pty) Ltd. Maggie Brand and her associates from OptionPlus500 (Pty) Ltd claim to be affiliated with Plus500AU Proprietary Limited FSP No. 47546. Brand and her associates request money from members of the public and state that they will provide them with the services rendered by Plus500AU (Pty) Ltd. It has been confirmed by Plus500AU (Pty) Ltd that no connection exists between them and the said individuals.

WIG MARKETS

The FSCA received information that there is a company called Wig Markets which was operating through the website wigmarkets.com. The company falsely claims on its website that it is regulated by the Financial Services Board (the predecessor to the FSCA). Wig Markets is not a registered financial services provider and has not been authorised by either the Financial Services Board or the FSCA to provide financial services. The FSCA is of the view that the entity is conducting unregistered business and providing advisory and intermediary services without the necessary authorisation.

EMAIL PURPORTING TO BE FROM THE SARB

There is an email that is currently circulating, purporting to be from the SARB but originating from the address williamsmartins4040@gmail.com. It contains a message that there are funds in the custody of the Reserve Bank and encourages the recipient to contact Mr Keita Ahmed from the FSCA to avoid losing the funds. This correspondence is fraudulent and does not originate from either the SARB or the FSCA. Mr Keita Ahmed is in no way affiliated with the FSCA.

The FSCA again reminds consumers who wish to conduct financial services with an institution or a person to check with the FSCA beforehand on either its TOLL-FREE NUMBER (0800 110 443) or its website www.fsc.co.za whether or not such institution or person is authorised to render financial services.



ENFORCEMENT SANCTIONS

STANLIB COLLECTIVE INVESTMENT SCHEMES (RF) (PTY) LIMITED

The FSCA has taken enforcement action against STANLIB for their contravention of paragraph 1(i) of Schedule 1 to CISCA. STANLIB is a registered manager in accordance with the CISCA. During an on-site visit conducted by the FSCA's predecessor, the Financial Services Board, it was found that STANLIB's minimum disclosure documents (MDDs) relating to the portfolios listed below ('the portfolios') disclosed the levying of a performance fee, whilst the supplemental deeds of the portfolios did not provide for such a fee to be charged:

- STANLIB Multi-Manager SA Equity Fund;
- STANLIB Multi-Manager Bond Fund;
- STANLIB Multi-Manager Balanced Fund;
- STANLIB Multi-Manager Defensive Balanced Fund;
- STANLIB Multi-Manager Real Return Fund; and
- STANLIB Multi-Manager Absolute Income Fund.

It is not permissible for a manager to charge performance fees that are not stipulated and provided for in the supplemental deeds of the portfolios concerned.

- Based on the above, STANLIB provided an enforceable undertaking to the FSCA as contemplated in section 151 of the Financial Sector Regulation Act, Act No. 9 of 2017 ('the FSRA') to:
- Repay the performance fees levied by STANLIB in respect of each of the affected portfolios for the period 1 January 2011 to 30 June 2018;
- Communicate with all the investors in the affected portfolios, informing them of the details of the breach and the remedial action to be undertaken by STANLIB; and
- Review its internal control environment and take the necessary action to strengthen it to avoid an occurrence of this nature.

ENFORCEMENT SANCTIONS

PRIME CIS (RF) (PTY) LTD

The FSCA imposed an administrative penalty of R30 000 on Prime Collective Investment Schemes Management Company Prime CIS (RF) (Pty) Ltd for contravening section 106(a) of the Collective Investment Schemes Act, Act No. 45 of 2002 (CISCA).

Prime had established a co-named portfolio with 10X Investments (Pty) Ltd (10X), described as the 10X Prime High Equity Fund (the Fund). During the period 1 February 2018 to 14 November 2018, in advertising and marketing its financial products on its website 10X made a statement that the Fund was earning a ten-year performance return of 11.3% per year. This performance figure was inaccurate and misleading in that it related only to a retirement product offered by 10X. The performance of the fund since its inception in December 2015 had been 4% in the first year and 6.1% in the second year.

The FSCA was further of the opinion that Prime, being the manager responsible for the fund complying with CISCA, failed to ensure that the advert was not designed in a manner that would give rise to a misunderstanding, which had the potential to mislead and induce investors to deal in a participatory interest of the Fund.

The FSCA considered as an aggravating factor that Prime's conduct indicated a lack of oversight of the publications of its co-naming partner, which led to the contravention. In mitigation, the FSCA considered that Prime accepted responsibility for its actions, co-operated during the processes, rectified the contravention, and implemented measures to prevent such a contravention from occurring in the future.

NDLANGISA FUNERAL SERVICES

The FSCA welcomes the successful conviction of Ndlangisa Funeral Services for contravention of the Financial Advisory and Intermediary Services Act 37 of 2002. The erstwhile Financial Services Board (FSB) received information on 06 July 2017 that Ndlangisa Funeral Services ('Ndlangisa') was rendering financial services and collecting premiums from unsuspecting clients. This took place after Ndlangisa's license number 46397 had been withdrawn on 09 June 2017 for contravention of the FAIS Act. The matter was referred to the South African Police Service Commercial Crimes Unit (SAPSCCU) for further investigation of the rendering of unregistered financial services.



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FINANCIAL LITERACY

FUND EMPLOYS FINANCIAL LITERACY AS AN INSTRUMENT OF TRANSFORMATION

BY ALF JAMES – MAIL & GUARDIAN

Natal Joint Municipal Pension / KwaZulu-Natal Joint Municipal Provident Funds (NJMPF), a multi-award-winning fund, is constantly looking for ways to improve benefits and retirement outcomes for members by offering a retirement funding service that not only provides sustainable fund incomes and pension increases but also develops the financial acumen of members, according to Sam Camilleri, chief executive and principal officer at the NJMPF.

The NJMPF has adopted an adage of former president Nelson Mandela: 'Education is the most powerful weapon you can use to change the world'. The fund is using financial literacy to improve the low savings and financial literacy rates in South Africa. But Camilleri is quick to point out that financial literacy challenges are not unique to South Africa; they are an issue throughout the world: 'You can go to Australia, the UK or the US, stop someone in the street and ask them a few questions about their pension fund or if they understand the concept of compound interest and the chances are that they will not have ready answers, so it is a global problem that retirement funds need to help resolve.'

The NJMPF's financial literacy programme was introduced in 2014 as part of its communication strategy, as it is paramount that members understand their pension or provident fund, the importance of saving and what percentage of their salary they will retire on. Since then the fund has facilitated educational sessions during road shows at municipalities, workshops in its offices and pensioner indabas in town halls, covering the following financial literacy modules:

- Budgeting;
- The role of the Financial Sector Conduct Authority;
- The role of the Adjudicator;
- Inflation;
- Wills;
- The work of the National Credit Regulator and how it affects the person in the street;
- Net replacement ratios; and
- Tax tips from SARS and the role of SARS in the economy.

The aim of the NJMPF's financial literacy programme is to promote and improve financial awareness to assist all fund stakeholders when dealing with financial matters. Camilleri says education is a prerequisite for successful transformation, which is the reason that financial education is a necessary tool to address the savings shortcomings in the current South African landscape.

'Legislative and regulatory development as well as the wide range and sophistication of financial products are compelling the population to become financially literate, as individuals have to make more decisions regarding retirement and their financial wellbeing.

'Financial literacy is critical to consumers being able to save enough to provide an income that will sustain the same standard of living as they enjoyed during their working life. Studies have shown that the financially literate are far better prepared for retirement than people with low financial literacy.

'Basic financial literacy means being able to manage your salary and expenses, save, invest, be responsible with regard to incurring debt, and be prepared for unanticipated or emergency expenses.'

Camilleri contends that retirement funds have the opportunity and are duty bound to play an important role in members' and their dependants' financial literacy development.

'One of our key functions as retirement funds is to build awareness around retirement preparedness, saving, and investing. With South Africa's low rate of savings, it is crucial for retirement funds to contribute to the promotion of financial literacy among members and their spouses and children,' says Camilleri.

The NJMPF has partnered with a range of organisations such as the National Credit Regulator (NCR) on member road shows and pensioner indabas to develop financial knowledge among members, their families and the broader public.

According to Camilleri, 'The NCR assisted the NJMPF in promoting education and communication in the areas of debt control, understanding your credit status and combating excessive debt. The South African Revenue Services SARS have also partnered with us to explain their role in the economy and to explain the tax status of retirement fund contributions and benefits.

Camilleri goes on to say, 'The FCSA has assisted with budgeting, inflation and savings presentations. The Office of the Pension Fund Adjudicator has explained its role and the rights of members, and NJMPF's legal advisors have undertaken extensive work, free of charge, travelling to our road shows to explain the importance of having a will.' He says the fund has undertaken a research study with the purpose and aim of obtaining direct responses and feedback from members,

pensioners and employers about the NJMPF's financial literacy programme and the fund's overall stakeholder engagement and education.

'The research was conducted to find out what our members have grasped over the past four years and whether the programme offers value to our stakeholders. The research results will assist the NJMPF's planning and implementation of strategy, because the better our understanding is of our membership, the more value we are able to add through meeting the needs of stakeholders. The preliminary results of the research indicate that the NJMPF's financial literacy programme has been highly impactful,' says Camilleri.

The NJMPF has extended its financial literacy programme to children in the belief that introducing financial education to children in a fun and entertaining way will ultimately build inquiring minds. This is likely to encourage and create daily discussions and dialogue on financial issues and topics in households of the fund's stakeholders and influence a change in financial behaviour so that a culture of saving is created within the family. The NJMPF has access to children via parents who work for municipalities.

'We have implemented some novel methods of bringing children into the decision-making equation of retirement funds and our financial literacy programme by incorporating them into the fund's communication programmes,' says Camilleri.

'Examples in our work sample include colouring-in competitions, word search quizzes and playing cards with financial literacy slogans. This initiative is also a way to keep members engaged and to become active participants in their retirement savings through the use of competitions and constant communication.

'The playing cards enhance stakeholder engagement and education through the application of game design elements and game principles to retirement savings and planning, which is a topic that most people are uninterested in and unaware of,' adds Camilleri.

This article was sourced from the Mail & Guardian and may be accessed using the link below:

<https://www.gate5.co.za/read/54449/qv/71725696/144758857/92901/p>



FSCA promotes **FAIR TREATMENT** of financial customers by financial institutions.



THE FSCA PARTICIPATES IN THE PENSIONS LAWYERS ASSOCIATION CONFERENCE 2019

BY RENEILWE MTHELEBOFU AND BONTLE MALULEKA, COMMUNICATION AND LANGUAGE SERVICES DEPARTMENT, FSCA

There have been significant changes in the retirement funds industry since the signing of the Financial Sector Regulation Act 2017 (FSR Act). This is evident from the publishing of guidance notes, strategy documents and draft conduct standards. These changes have led to many topical legal questions regarding the retirement funds industry. In an effort to provide thought-provoking high-quality analysis, the Pensions Lawyers Association recently invited experts in the industry, along with the FSCA, to participate in their 2019 conference.

With the recently published FSCA Regulatory Strategy as a natural point of departure, Naheem Essop, a Specialist Analyst in the FSCA's Retirement Funds Supervision Division (RFSD), spoke to delegates about the guiding principles outlined

in the Regulatory Strategy. The new legislative framework within which the FSCA operates presents it with an excellent opportunity to examine its overall approach to regulatory and supervisory work.

Both the FSR Act and the policy direction given by the National Treasury set out key principles that the FSCA must apply in carrying out its regulatory and supervisory functions. The FSCA is committed to an approach that is guided by being pre-emptive and proactive; risk-based and proportional; intensive and intrusive; transparent and consultative; outcomes-based; comprehensive and consistent; a credible deterrent; and aligned with applicable international standards.

'We are often asked about the meaning of some of these terms and how we intend to implement them. Regarding being pre-emptive and proactive, for example, the FSCA must be adequately equipped to pre-empt and proactively mitigate risks.

In this regard, we have enhanced our surveillance of retirement funds, as the FSR Act has enabled us to have far-reaching information-gathering power that we intend to use when identifying emerging risks,' said Essop.

Retirement funds can also expect the division to monitor Pension Funds Adjudicator determinations and assess where trends are emerging that are caused by systematic failures in that retirement fund. Media articles regarding negative conduct by retirement funds will also be receiving attention from the regulator.

'During the course of 2019, we also intend introducing a requirement for market conduct returns and governance returns that will make it compulsory for funds to submit returns on an annual basis. These returns will enable us to identify emerging risks and determine ways of mitigating such risks,' added Essop.



PENSION

Another tool that the FSCA will use in being pre-emptive and proactive is mystery shopping, which the Regulator has already started to implement. This is where an employee of the FSCA may approach a retirement fund or service provider in the role of a customer to understand first-hand what a typical customer experience would be in a specific scenario in relation to that retirement fund or service provider.

According to Essop, in respect of risks identified the division will adopt a fund-specific view which will be balanced with a thematic review of cross-cutting emerging risks identified. 'To mitigate risks in respect of a specific fund, we will consider issuing directives in order to be proactive in mitigating risks across the retirement funds sector. We may also issue guidance notices, interpretation rulings or conduct standards,' he said.

Unfortunately, as with many things, there are bound to be challenges, and the issue of exemption applications for default regulations is one such area for the FSCA. A large number of funds have applied for exemption from the default regulations. During the period from 1 September 2017 to 31 January 2019, the FSCA received approximately 90 exemption applications, and in the last month before the deadline, approximately

451 exemption applications were received. Of the 451 applications, 318 were received from 21 February 2019 to 28 February 2019, with 154 applications having been sent in on the last day, resulting in the online system crashing.

According to Essop, rule amendments to Default Regulations tell a similar story, but in greater proportions. Not only does this create a substantial backlog, but it brings into question what sort of contingency plans funds have in place in the event that the application is refused, as that would mean that they must immediately comply. 'Whilst we do acknowledge that it is our responsibility to process these applications, funds do share a responsibility to comply with the regulator and act in a manner that is reasonable by not waiting till the last moment to send in applications,' he said.

Another challenge faced by the FSCA involves instances where trustees, principal officers and service providers are still in breach of Directive 8. 'We intend becoming much stricter about enforcing Directive 8, and trustees who also happen to be attorneys must be aware that they are in breach of the directive if their law firm is providing services to the retirement fund that they are serving, and trustees that

are allowing such behaviour will be held equally liable,' he said.

He also proceeded to outline some of the RFSDs planned activities for the rest of 2019. The Division intends:

- Hosting workshops and an inaugural conference to be held at the CSIR convention centre on 12 September 2019 (free of charge);
- Issuing a conduct standard on good governance;
- Prescribing matters that require prescribing in terms of the relevant legislation;
- Establishing a formal retirement fund trustee qualification;
- Developing a code of conduct and training for section 26(2) trustees; and
- Reviewing all previously issued notices, directives and circulars.

Conference delegates, particularly pension fund lawyers, were encouraged to further acquaint themselves with the FSCA Regulatory Strategy in order to gain an understanding of how the regulator operates and view the activities or decisions taken by the division through the lens of what is presented in the strategy.



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