Financial Sector
Conduct Authority

INSURANCE (ST) NOTICE [-] OF 2020 – Exemption of Independent Intermediaries from Regulation 4.2(3) of the Regulations under the Short-Term Insurance Act, 1998 (Act No. 53 of 1998)

INSURANCE (LT) NOTICE [-] OF 2020 – Exemption of Independent Intermediaries from Regulation 8.2(2) of the Regulations under the Long-Term Insurance Act, 1998 (Act No. 52 of 1998)

Response to comments received through public consultation process

MARCH 2020

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SECTION A – LIST OF COMMENTATORS

No	Agency / Organisation	Contact person
1.	Masthead (Pty) Ltd (Masthead)	Nicky Nairn
2.	Associated Compliance Motor (Pty) Ltd (ACM)	Peter Veal
3.	Associated Compliance (Pty) Ltd (AC)	John Horsfall
4.	Financial Intermediaries Association of Southern Africa (FIA)	Samantha Williams
5.	Association for Savings & Investments SA (ASISA)	Anna Rosenberg
6.	VAPS Consultancy and Claassen Compliance Practice (VAPS & CCP)	Christo Claassen
7.	Nedbank Insurance (Nedbank)	Sli Gumede
8.	SDK Compliance Consultants (SDK)	Sue Liebenberg
9.	Moonstone Compliance and Risk Management (Moonstone)	Billy Seyffert
10.	Prestgroup (Pty) Ltd (Prestgroup)	Leonette Kruger
11.	KGA Life (KGA)	Rudi Kotze
12.	Bidvest Insurance Ltd (Bidvest)	Roy Stephen

No	Agency / Organisation	Contact person
13.	**Guardrisk Tailored Risk Solutions (Guardrisk)**	**Mqondisi Khumalo**
14.	**The South African Insurance Association (SAIA)**	**Tshepiso Moloto**
15.	**The Banking Association of South Africa (BASA)**	**Adri Grobler**

SECTION B – COMMENTS ON FSCA COMMUNCATION 9 OF 2019

No	Commentator	Paragraph of the communication	Issue/Comment/Recommendation	Responses
1.	SDK	2.4.2	Please could micro lenders be included as they are a strictly regulated business already and insurance is not their primary business. They deal with Long Term micro insurance only as security for the micro loan in the event of death, disability or retrenchment. The loan amounts are small – generally less than R10,000 and the terms average about 4 months.	In our opinion micro lenders would generally fall within the conditions set out in the exemption as the primary business of micro lenders is micro lending (not services as intermediary) and they enter into a credit agreement (another commercial agreement) with the policyholder.
2.	SDK	4.4 & 4.5	An exemption in terms of the General Code section (10)(1)(d)(i) would be of great relief as many of the retailers and micro lenders receive cash payments which include premiums during a month and the cash goes to the float although the premium is accounted for in the payment and reconciliation of the insurance premiums received in the monthly accounting. This means that many of them are in breach of the banking within one day rule.	Noted.

SECTION C - COMMENTS ON THE DRAFT EXEMPTION FROM COMPLIANCE WITH REGULATION 4.2(3) OF THE STIA REGULATIONS

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
1.	Prestgroup	2(1)	We agree with Paragraph 2(1) as we believe that with efficient operating systems, Independent Intermediaries are able to distinguish between premium collections as a single disbursement from other disbursements and are therefore able to show the financial trail of collection and payment of said premium.	Noted.
2.	VAPS & CCP	2(2)	The conditions as stipulated in the draft notice, in section 2(2), are clear and cover the scope of the exemption. What is unclear is whether this exemption is automatically by interpretation? In other words, do FSP's decide themselves whether the exemption applies, or are there some method of informing or confirming with FSCA that the FSP qualifies for the exemption? The parties feel that the exemption must be controlled to ensure that the interpretation is in line with FSCA's expectations.	The conditions to the exemption are drafted in such a manner that the exemption would only be applicable to an independent intermediary if, and for as long as, that intermediary complies with the conditions that exemption. It is the duty of that independent intermediary to establish whether there is compliance with the conditions of the exemption and the independent intermediary must be able to evidence to the Authority, if requested, that they comply with the conditions in the exemption.
3.	Prestgroup	2(2)(a), (b) & (c)	We agree with the mentioned conditions. This is especially the case within marine cargo insurance business space, where many other functions are performed and insurance premium is less than 1% of the total invoice value. It becomes impractical to issue two invoices, as the client only expects to pay one.	Noted.
4.	BASA	2(2)(a)	1. We are not clear why only certain intermediaries are exempted and it is our view that all independent intermediaries should be exempt from complying with S4.2(3) to ensure a levelled playing field in the industry. 2. To not allow all independent intermediaries, specifically those whose primary business is that of rendering independent intermediary services, to benefit from this exemption may result in escalating costs as they will need to ensure that they meet the requirements of S4.2(3). They may not be able to afford or sustain such additional costs.	Disagree. Please refer to the Background to the proposed exemption (paragraph 2) as set out in FSCA Communication 9 of 2019 (Insurance) (the Communication). Further, as mentioned in the Communication, the exemption is deemed necessary because, in the specific business models that are intended to be captured by the exemption, practicalities impede the strict application of the requirements. In particular, in these business models' premiums are collected together with monies payable in terms of another commercial agreement. Practically it is very burdensome, and results in

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			Recommendation: We recommend that all independent intermediaries be exempt, provided that the conditions are met. This will create the levelled playing field and mitigate the risk/s the FSCA seeks to address.	additional costs to the policyholder, if (for example) it is required that premiums be collected separately from the monies payable under the other commercial agreement (e.g. to require two separate debit orders). These same practical issues do not exist where an intermediary collects premium in isolation (e.g. where premiums are not collected together with another payment). In addition, extending the exemption to all independent intermediaries would negate the purpose of the introduction of these Regulations. For context as to why these requirements were introduced by National Treasury in the amendments to the Regulations, please see the supporting documentation published with the amendments to Regulations as available on the FSCA's website under *Home < Regulatory Frameworks < Notices < Insurer / Micro Insurer < 2018,* in the zip folder titled [Long-term Insurance Act No. 52 of 1998 and Short-term Insurance Act No. 53 of 1998 - Final amendment of Regulations]. In particular note the details in the document titled: "High-level response to comments received on the draft Regulations under the Long-term Insurance Act, 1998 and Short-term Insurance Act, 1998 published in March 2018 for public comment" and specifically paragraph 2.2.5 on page 6 of said document. The aim of the amendments to the Regulations was to strengthen policyholder protection by providing for more robust legislative requirements pertaining to the collection of premiums by intermediaries. It's it therefore nonsensical to suggest that the Authority exempts all intermediaries from the requirements introduced by the National Treasury. The FSCA is

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
				satisfied that the proposed conditions in the exemption notice appropriately mitigates the risk created by granting the exemption.
5.	FIA	2(2)(b)	In 2(2)(b) reference is made to the commercial agreement between the intermediary and the policyholder. We have a concern that the wording may not be strictly correct, as the primary commercial agreement is not with the intermediary at all and we would suggest that the wording is amended accordingly to correctly describe the situation.	The Authority acknowledges that this could be problematic in the context of credit agreements where the commercial agreement (credit agreement) is between the credit provider and the policyholder and not necessarily the intermediary (e.g. motor dealerships). Some of the individual exemptions we received which led to this general exemption ("individual exemption applications") was particularly relevant in the aforementioned context. For this reason, we have amendment the condition to specifically include credit agreements. In all of the examples contained in the individual exemption applications, apart from the credit agreement example mentioned above, it was a commonality that the other commercial agreement is entered into between the independent intermediary and the policyholder, for example: • a cell phone network provider that has a cell phone contract with a customer, and then collects insurance on the mobile handset simultaneously with the instalment from that customer; • Contract with DSTV for a DSTV subscription and then collects insurance on the device simultaneously with the instalment from that customer; and • Freight company that has a freight agreement with a customer, and then collects insurance on the freight simultaneously with the fees for transporting the freight for that customer. The Authority is not amenable to further extending the scope of the condition lacking clear examples of other

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
				business models where practicalities also impede the implementation of the relevant requirements, but where a commercial agreement is not entered into between the intermediary and the policyholder.
6.	BASA	2(2)(b)	Same comment as in 1 above. 1. We are not clear why only certain intermediaries are exempted and it is our view that all independent intermediaries should be exempt from complying with S4.2(3) to ensure a levelled playing field in the industry. 2. To not allow all independent intermediaries, specifically those whose primary business is that of rendering independent intermediary services, to benefit from this exemption may result in escalating costs as they will need to ensure that they meet the requirements of S4.2(3). They may not be able to afford or sustain such additional costs. **Recommendation:** We recommend that all independent intermediaries be exempt, provided that the conditions are met. This will create the levelled playing field and mitigate the risk/s the FSCA seeks to address. 3. In addition, the use of the word "*existing*" implies that the independent intermediary must already be in a relationship with a policyholder for the exemption to be applicable. It does not appear to cater for onboarding of a new client on the lending product (primary product) in respect of which the insurance policy is sold. We do not believe that this was the intention of the FSCA and we request consideration of both scenarios to be catered for. **Recommendation:** 1. Based on our comment to include all intermediaries, we recommend that this condition be removed in its entirety.	1 and 2: Refer to the response in item 4 above. 3: Agree. Amendment made. 1: Disagree. Refer to the response under item 4 above.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			2. Alternate to the above (should the FSCA not want to include all intermediaries), we recommend the following rewording: "(b) The short-term policy in respect of which the independent intermediary received, holds or deals with premium is ancillary or consequential to ~~another existing~~ ***a*** commercial agreement between the intermediary and the policyholder, ***other than an agreement related to the rendering of services as intermediary***; and"	2: See amendment made.
7.	ACM	2(2)(c)	Customers, on the purchase of a motor vehicle, are provided with advice and guidance regarding insurance protection available for the vehicle. Advice and guidance is also provided in terms of the customers responsibilities assumed by entering into a credit agreement. Often, the customer requests time to 'consider' the purchase of such insurance and takes delivery of the vehicle. At a later date, the customer then calls the dealership to enter into certain insurance contracts. This means that the insurance contracts, although linked directly to the purchase of the vehicle, will be paid separately. Similarly, a term policy relating to the vehicle (such as a warranty) may wish to be renewed by the customer. In terms of the current wording of the clause, dealerships that only deal with insurance premiums that are ancillary to the vehicles sold by them will face the impracticality of having to manage two separate bank accounts; one being for premiums included with the monies for the vehicle purchase and the other in respect of premiums paid after the vehicle is purchased. **Recommendation:** The words *"and forms part of"* be deleted from Clause 2(2)(c).	Disagree. The purpose of this exemption is to address practical challenges where the insurance premium is paid simultaneously with another payment due to an independent intermediary and it is impractical / impossible to split the premium from the other payment. Should premium be paid and collected separately, the Authority is of the view that the premium can be collected into a separate bank account.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
8.	BASA	2(2)(c)	1. We are not clear why only certain intermediaries are exempted and it is our view that all independent intermediaries should be exempt from complying with S4.2(3) to ensure a levelled playing field in the industry. 2. To not allow all independent intermediaries, specifically those whose primary business is that of rendering independent intermediary services, to benefit from this exemption may result in escalating costs as they will need to ensure that they meet the requirements of S4.2(3). They may not be able to afford or sustain such additional costs. **Recommendation:** We recommend that all independent intermediaries be exempt, provided that the conditions are met. This will create the levelled playing field and mitigate the risk/s the FSCA seeks to address. 3. Further to the above, use of the words "forms part of the collection of monies payable...." appears to exclude the scenario where the premium is collected separately to the loan payments i.e. two debit orders but deposited into the same account of the independent intermediary. Is this the intention of the FSCA? 4. We also note that the word ""ancillary"" is included. It is not necessary as the above condition covers this aspect. **Recommendation:** 1. Based on our comment to include all intermediaries, we recommend that this condition be removed in its entirety. 2. Alternate to the above (should the FSCA not want to include all intermediaries):	1 and 2: Disagree. Refer to the response in item 4 above. 3: Refer to the response in item 7 above. 4: Disagree. The words “ancillary to” used to link the receipt of the premium with the receipt of the other monies due to the independent intermediary. 1: Disagree. Refer to the response in item 4 above. 2 and 3: Disagree. Refer to the response in item 7 above.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			3. We recommend the following rewording: *"(c) Premium received, held, dealt with by the independent intermediary* ~~is ancillary to and forms part of the collection of monies payable to the intermediary in respect of the commercial agreement referred to in subparagraph (b~~***); is collected with or separately from the monies payable to the intermediary in respect of the commercial agreement, provided it is paid into the same account in the name of the policyholder or independent intermediary;*** *and"*	
9.	BASA	2(2)(d)(i)	Following from our comment to include all independent intermediaries, we suggest that only the conditions contained in this section remain in the Notice, as it addresses the key risk/s intended to be mitigated by the FSCA.	Disagree. See response under item 4 above.
10.	ACM	2(2)(d)(ii)	A number of larger motor dealership groups have upward of 50 separate dealerships. If each dealership is expected to have a separate bank account used solely for the collection of monies, the additional administrative burden to reconcile each account by group accountants would impact on the group's overall governance. Moreover, the dealership will be required to negotiate upward of fifty new code contracts with all banks. **Recommendation:** The dealerships be allowed to have all monies paid into their current bank accounts, with the premium being transferred to one specific bank account within a specified time frame (example – end of month close-off). This would address the impracticalities referred to in our comments.	See amendments made to the condition. We believe that these amendments will address your concern.
11.	AC	2(2)(d)(ii)	Para 2(d)(ii) limits the funds which may be held in the appropriate account to "monies payable to the Independent Intermediary in respect of a commercial agreement referred to in Sub. Para 3 and premiums payable to the Short Term Insurer "	This is correct.

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			Is it acceptable to assume that the Commercial Agreement, which relates to the financed cost of a motor vehicle, is deemed to include fees for financed, non-insured VAPS (Value Added Products), to be paid to the service provider in terms of the VAP, apart from the Premium for regulated Insured products to be paid to the Short Term Insurer?. Thus whatever is to be financed whether it be the cost of the vehicle to be paid to the Dealer, premiums for insured product to be paid to Insurer, and fees for Value Added Products, can be made into the specific account for ultimate distribution by the dealer to the various product/service providers.	
12.	Bidvest	2(2)(d)(ii)	We note that Section 2(2)(d)(ii) in the draft exemption requires the “combined” funds payable to the intermediary to be received into a dedicated bank account. McCarthy (Pty) Ltd does not use separate bank accounts exclusively for receiving the “combined” funds payable to it from the finance houses in respect of the sale of vehicles on credit. These funds are received into various operational bank account as operated by the various divisions within McCarthy (Pty) Ltd. In our original application to the FSCA for exemption, dated 22 October 2019, it was stated that McCarthy (Pty) Ltd has various significant controls in place to manage all funds and cash resources. As indicated, it is the view of Bidvest Insurance Ltd that these controls are adequate and appropriate, which controls include the receipt of funds into operational bank accounts. Should section 2(2)(d)(ii) be retained in the final published exemption, Bidvest Insurance Ltd wishes to request the FSCA to reconsider the original application for exemption as lodged with the FSCA on behalf of McCarthy (Pty) Ltd in the context of the above clarification regarding the use of operational bank	See amendments made to the condition. We believe that these amendments will address your concern.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			accounts. The final paragraph of the original application for exemption alluded to this fact, although not explicitly stated. Our preference would, of course, be that Section 2(2)(d)(ii) be deleted from the final version of the General Exemption.	
13.	Guardrisk	2(2)(d)(ii)	It is impractical to require independent intermediaries to open up a separate bank account to receive premiums together with monies payable in respect of a commercial transaction. This provision will require intermediaries to operate their primary business with an additional bank account and to shift clients between bank accounts as necessary. Such independent intermediaries maintain separate general ledger accounts so that premiums are separately identifiable. The intermediary collects one amount and then allocates the premiums to a separate insurance account for subsequent pay over. Such insurance accounts are formally reviewed, reconciled and audited on a regular basis. We propose that the Authority afford such independent intermediaries an exemption from maintaining a separate bank account.	See amendments made to the condition. We believe that these amendments will address your concern.
14.	BASA	2(2)(d)(ii)	1. We note the reference to "bank" account being the type of account required for these instalments and premiums to be paid into. 2. Clarification is requested if whether this "bank account" referred to must be in the name of the customer or the independent intermediary? 3. Furthermore, not all independent intermediaries are banks and therefore it gives the perception that this exemption is only for the banks, which we do not believe is the intention of the FSCA.	1 and 2: The exemption is from Regulation 4.2(3) of the STIA Regulations, which must be read with Regulation 4.2(2). It is clear from these Regulations that the requirement is not for the intermediary to open separate bank accounts for each individual customer. 3: It is unclear why you are of the view that this exemption is only for banks. The Authority disagrees that the draft exemption creates the impression that all independent intermediaries are banks and that the exemption accordingly only applies to banks. The context of the exemption is clear and was also explained in FSCA Communication 9 of 2019 (Insurance). The Communication very clearly stated

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			4. Furthermore, the collection of instalments and premiums are collected and held in various types of accounts, which does not appear to be catered for in this section. Is this the intention of the FSCA? **Recommendation:** We propose the following rewording if all independent intermediaries are not included: *"(ii) Ensures that **the premiums are collected into the same account into which the independent intermediary receives it monies for a commercial agreement referred to in subparagraph (b) and where the insurance is an ancillary product to the commercial agreement."***	that most of the practical issues identified relates to retailers. 4: This comment is not clear. The type of accounts into which premiums must be collected is not prescribed. With regards to the recommendation, please see amendments made to the condition.
15.	BASA	2(2)(d)(iv)	1. We request clarifications from the FSCA on the following: (i) What kind of changes need to be reported? (ii) What is the rationale for the notification i.e. purpose of the notification and what does the FSCA intend to do with such notification? (iii) Consequence, if any, for the independent intermediary who reports a change to the FSCA? 2. It is our view that this requirement may be too burdensome on the industry and create unnecessary admin for the FSCA as well. 3. It is our further view that subsection 3 provides sufficient clarity that should the conditions not be met that the exemption will automatically lapse, making this condition unnecessary. **Recommendation:** 1. Based on our comment, we recommend that this condition be removed in its entirety.	Agree. See amendment which deletes this condition.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			2. Alternatively, if this requirement is to remain, we request clarity as per our questions in order to properly consider the impact on business.	
16.	VAPS & CCP	2(3)	Section 2(3) refers to an automatic lapse if the conditions of 2(2) are not met. How will this be determined, and will there be reporting to FSCA in this regard?	Refer to the response in item 2 above. The exemption does not lapse in respect of a particular independent intermediary upon non-compliance with any condition, but merely ceases to be applicable to that intermediary.
17.	BASA	2(3)	1. It is our view that if the conditions are clear and practical to implement, the requirement for automatic lapsing would be feasible. 2. We support the intent, provided that the conditions be clear and practical to implement.	Noted.
18.	Nedbank	2(4)	We note that the Exemption is valid for a period of two years only. Does the regulator envisage that this exemption will be extended or are insurer's to bring Exemption Applications before the expiry of this proposed exemption? There is also uncertainty whether the 2 year period may relate to the proposed regulatory framework issued by the FSCA in 2019, which may take effect within the 2 year period and therefore supersede or replace the exemption.	The exemption is issued for a two-year period pending the changes to the regulatory framework on premium collection alluded to in the FSCA Position Paper: Proposals on the future regulatory framework for the collection of insurance premiums, available on the FSCA website www.fsca.co.za as follows: Home > Regulatory Frameworks > Documents for Consultation > Insurance. The abovementioned changes may: • precede the expiry date of the exemption, in which case the exemption potentially becomes academic; or • not be finalised before the expiry date of the exemption, in which the exemption might be renewed.
19.	SAIA	2(4)	The exemption creates uncertainty as to whether impacted intermediaries are expected to develop controls to comply with the legislation within the exemption period. It appears that the FSCA is satisfied that the impacted intermediaries should be excluded from applying the relevant section of the regulations	Refer to the response in item 18 above.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			relating to collection of premiums, which begs the question if the most suitable solution is not to exclude such intermediaries from the scope of regulation 4.2(3), instead of applying an exemption? Due to the unique position of premium-collecting intermediaries (as set out in the par. 2.4 of Communication 9 of 2019) it would be advisable that impacted intermediaries be excluded from the ambit of this regulation as opposed to being exempted from compliance for the 2-year period. Please confirm the reason for limiting the exemption period to 2 years and not allow it to apply indefinitely?	
20.	BASA	2(4)	1. Clarity is required as to how the two-year period was determined. Is the intention to incorporate a permanent exemption in COFI? 2. We recommend that this exemption be made permanent to provide stability to the industry. 3. This permanent exemption can then be incorporated into COFI, when required.	Disagree that the exemption should be permanent. Refer to the response in item 18 above. The FSCA will consider how to best transition the premium collection requirements into the COFI Bill framework once it becomes law.
21.	Masthead	General Comment	We recognise the practical challenges faced by certain FSPs that collect short-term insurance premiums which are ancillary to another commercial contract, and therefore have no objection to the proposed exemption or the conditions imposed on such FSPs.	Noted.
22.	FIA	General comment	We would also suggest that the reference to “independent intermediary” should be changed to “intermediary” throughout as the term “independent intermediary” is perhaps not properly understood and in order to maintain consistency in the communication and to avoid possible misinterpretation/confusion.	Disagree. “independent intermediary” is defined in the STIA regulations. The terms used in the exemption must be consistent with the prevailing regulatory framework.
23.	VAPS & CCP	General Comment	In general, the parties welcome the exemption due to the factors mentioned by FSCA and the complexity of some business models in the retail environment.	Noted.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
24.	VAPS & CCP	General Comment	In general, the parties welcome the exemption due to the factors mentioned by FSCA and the complexity of some business models in the retail environment. The exemption applies specifically to Regulation 4.2(3), with the regulation referring to sub-regulation 2. Sub-regulation 2 states: "An independent intermediary who receives premiums must account for such premiums properly and promptly and open and maintain one or more separate bank account into which premiums are to be received." In particular, sub-regulation 2 confirms a separate bank account for premiums. There are various interpretations of this aspect that the exemption on Regulation 4.2(3) also means an exemption of 4.2(2). Is this interpretation correct? The parties request clarity on this. It is suggested that FSCA include a point in the exemption notice to clearly address the issue of a separate bank account for premium. In other words, must FSP's that qualify for the exemption have a separate bank account for premiums or not.	Noted. The exemption is not from the requirement to open and maintain a separate bank account (Regulation 4.2(2)), but from the requirement that the bank account referred to in Regulation 4.2(2) may only contain monies collected from policyholders (Regulation 4.2(3)). Therefore, premiums must be received into a bank account, but due to the exemption from regulation 4.2(3) that bank account does not necessarily have to contain only premiums and/or policyholder monies. The revised condition in paragraph 2(2)(d)(ii) of the exemption, however, now requires that premiums collected into the aforementioned bank account must be appropriately ring-fenced from other operational activities of the intermediary to ensure the intermediary's business operations and own funds are kept separate from premiums. We therefore disagree that further clarity is required in the exemption. If there are challenges in the interpretation, the Authority can be approached for clarity.

SECTION D - COMMENTS ON THE DRAFT EXEMPTION FROM COMPLIANCE WITH REGULATION 8.2(2) OF THE LTIA REGULATIONS

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
1.	BASA	Section 2(2)(a)	1. We are not clear why only certain intermediaries are exempted and it is our view that all independent	Disagree. See response in item 4 of Section C.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			intermediaries should be exempt from complying with S8.2(2) to ensure a levelled playing field in the industry. 2. To not allow all independent intermediaries, specifically those whose primary business is that of rendering independent intermediary services, to benefit from this exemption may result in escalating costs as they will need to ensure that they meet the requirements of S8.2(2). They may not be able to afford or sustain such additional costs. **Recommendation:** We recommend that all independent intermediaries be exempt, provided that the conditions are met. This will create the levelled playing field and mitigate the risk/s the FSCA seeks to address.	
2.	FIA	Paragraph 2(2)(b)	In 2(2)(b) reference is made to the commercial agreement between the intermediary and the policyholder. We have a concern that the wording may not be strictly correct, as the primary commercial agreement is not with the intermediary at all and we would suggest that the wording is amended accordingly to correctly describe the situation.	Disagree. See response in item 5 of Section C.
3.	ASISA	Clause 2(2)(b)	1. The word “independent” has been omitted and should be inserted. 2. Some group credit life policies are structured where the policyholder is the credit provider and the debtor is the insured life, who is responsible for the payment of the premium together with the instalment amount for the loan. In terms of Schedule 2 of the Insurance Act the credit class of business is ‘*an insurance policy where a credit provider is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are debtors of that credit provider.’* Therefore, the wording	1: Agree. Amendment made. 2: Agree in principle. See amendments made to condition.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			needs to cater for this instance where the policyholder is the credit provider. **Recommendation:** Please see proposed wording: The exemption referred to in subparagraph (1) is subject thereto that the – (b) the long-term policy in respect of which the independent intermediary receives, holds or deals with premium is ancillary or consequential to another existing commercial agreement between the <u>independent</u> intermediary and the policyholder <u>or persons who are the lives insured under the policy</u>, other than an agreement related to the rendering of services as intermediary.	
4.	BASA	2(2)(b)	1. We are not clear why only certain intermediaries are exempted and it is our view that all independent intermediaries should be exempt from complying with S8.2(2) to ensure a levelled playing field in the industry. 2. To not allow all independent intermediaries, specifically those whose primary business is that of rendering independent intermediary services, to benefit from this exemption may result in escalating costs as they will need to ensure that they meet the requirements of S8.2(2). They may not be able to afford or sustain such additional costs. **Recommendation:** We recommend that all independent intermediaries be exempt, provided that the conditions are met. This will create	See response to item 4 of Section C.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			the levelled playing field and mitigate the risk/s the FSCA seeks to address. 3. In addition, the use of the word "*existing*" implies that the independent intermediary must already be in a relationship with a policyholder for the exemption to be applicable. It does not appear to cater for onboarding of a new client on the lending product (primary product) in respect of which the insurance policy is sold. We do not believe that this was the intention of the FSCA and we request consideration of both scenarios to be catered for. **Recommendation:** 1. Based on our comment to include all intermediaries, we recommend that this condition be removed in its entirety. 2. Alternate to the above (should the FSCA not want to include all intermediaries), we recommend the following rewording: "(b) The long-term policy in respect of which the independent intermediary received, holds or deals with premium is ancillary or consequential to another existing ***a*** commercial agreement between the intermediary and the policyholder, ***other than an agreement related to the rendering of services as intermediary***; and"	
5.	BASA	2(2)(c)	1. We are not clear why only certain intermediaries are exempted and it is our view that all independent intermediaries should be exempt from complying with S8.2(2) to ensure a levelled playing field in the industry. 2. To not allow all independent intermediaries, specifically those whose primary business is that of rendering independent intermediary services, to benefit from this exemption may result in escalating costs as they will need to ensure that they meet the requirements of S8.2(2).	See response to item 8 of Section C.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			They may not be able to afford or sustain such additional costs. **Recommendation:** We recommend that all independent intermediaries be exempt, provided that the conditions are met. This will create the levelled playing field and mitigate the risk/s the FSCA seeks to address. 3. Further to the above, use of the words "forms part of the collection of monies payable...." appears to exclude the scenario where the premium is collected separately to the loan payments i.e. two debit orders but deposited into the same account of the independent intermediary. Is this the intention of the FSCA? 4. We also note that the word "ancillary" is included. It is not necessary as the above condition covers this aspect. **Recommendation:** 1. Based on our comment to include all intermediaries, we recommend that this condition be removed in its entirety. 2. Alternate to the above (should the FSCA not want to include all intermediaries): 3. We recommend the following rewording: *"(c) Premium received, held, dealt with by the independent intermediary* is ancillary to and forms part of the collection of monies payable to the intermediary in respect of the commercial agreement referred to in subparagraph (b***); is collected with or separately from the monies payable to the intermediary in respect of the commercial agreement, provided it is paid into the***	

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			same account in the name of the policyholder or independent intermediary; *and"*	
6.	SDK	2(2)(d)(i)	"Accounts to the relevant long-term insurer for any premiums received properly and promptly" Is there a timeframe set for the "promptly"? Many of these entities will run debit order collections once a month or receive monies during the course of a month and account for these monies monthly.	We are of the view that the meaning of "promptly" is clear. The normal grammatical meaning of the word "promptly" will apply. Also Refer to the pending changes to the regulatory framework alluded to in the FSCA Position Paper: Proposals on the future regulatory framework for the collection of insurance premiums, available on the FSCA website www.fsca.co.za as follows: Home > Regulatory Frameworks > Documents for Consultation > Insurance.
7.	BASA	2(2)(d)(i)	Following from our comment to include all independent intermediaries, we suggest that only the conditions contained in this section remain in the Notice, as it addresses the key risk/s intended to be mitigated by the FSCA.	Disagree. See response in item 4 of Section C.
8.	BASA	2(2)(d)(ii)	1. We note the reference to "bank" account being the type of account required for these instalments and premiums to be paid into. 2. Clarification is requested if whether this "bank account" referred to must be in the name of the customer or the independent intermediary? 3. Furthermore, not all independent intermediaries are banks and therefore it gives the perception that this exemption is only for the banks, which we do not believe is the intention of the FSCA. 4. Furthermore, the collection of instalments and premiums are collected and held in various types of accounts, which does not appear to be catered for in this section. Is this the intention of the FSCA?	See response in item 14 of Section C.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			Recommendation: We propose the following rewording if all independent intermediaries are not included: *"(ii) Ensures that* ***the premiums are collected into the same account into which the independent intermediary receives it monies for a commercial agreement referred to in subparagraph (b) and where the insurance is an ancillary product to the commercial agreement.”***	
9.	Guardrisk	2(2)(d)(ii)	It is impractical to require independent intermediaries to open up a separate bank account to receive premiums together with monies payable in respect of a commercial transaction. This provision will require intermediaries to operate their primary business with an additional bank account and to shift clients between bank accounts as necessary. Such independent intermediaries maintain separate general ledger accounts so that premiums are separately identifiable. The intermediary collects one amount and then allocates the premiums to a separate insurance account for subsequent pay over. Such insurance accounts are formally reviewed, reconciled and audited on a regular basis. We propose that the Authority afford such independent intermediaries an exemption from maintaining a separate bank account.	See amendments made to the condition. We believe that these amendments will address your concern.
10.	BASA	2(2)(d)(iv)	1. We request clarifications from the FSCA on the following: (i) What kind of changes need to be reported? (ii) What is the rationale for the notification i.e. purpose of the notification and what does the FSCA intend to do with such notification? (iii) Consequence, if any, for the independent intermediary who reports a change to the FSCA?	See response in item 15 of Section C.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			2. It is our view that this requirement may be too burdensome on the industry and create unnecessary admin for the FSCA as well. 3. It is our further view that subsection 3 provides sufficient clarity that should the conditions not be met that the exemption will automatically lapse, making this condition unnecessary. **Recommendation:** 1. Based on our comment, we recommend that this condition be removed in its entirety. 2. Alternatively, if this requirement is to remain, we request clarity as per our questions in order to properly consider the impact on business.	
11.	BASA	2(3)	1. It is our view that if the conditions are clear and practical to implement, the requirement for automatic lapsing would be feasible. 2. We support the intent, provided that the conditions be clear and practical to implement.	Noted.
12.	ASISA	Paragraph 2(4)	The exemption creates uncertainty as to whether impacted intermediaries are expected to develop controls to comply with the legislation within the exemption period. It appears that the FSCA is satisfied that the impacted intermediaries should be excluded from applying the relevant section of the regulations relating to collection of premiums, which begs the question if the most suitable solution is not to exclude such intermediaries from the scope of regulation 8(2)(2), instead of applying an exemption? Due to the unique position of premium-collecting intermediaries (as set out in the par. 2.4 of Communication 9 of 2019) it would be advisable that impacted intermediaries be excluded from the ambit of this regulation as opposed to being exempted from compliance for the 2-year period. Please confirm the reason for limiting the exemption period to 2 years and not allow it to apply indefinitely?	Refer to the response in item 18 of Section C.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
13.	Nedbank	2(4)	We note that the Exemption is valid for a period of two years only. Does the regulator envisage that this exemption will be extended or are insurer's to bring Exemption Applications before the expiry of this proposed exemption? There is also uncertainty whether the 2 year period may relate to the proposed regulatory framework issued by the FSCA in 2019, which may take effect within the 2 year period and therefore supersede or replace the exemption.	Refer to the response in item 18 of Section C.
14.	BASA	2(4)	Clarity is required as to how the two-year period was determined. Is the intention to incorporate a permanent exemption in COFI? **Recommendation:** 1. We recommend that this exemption be made permanent to provide stability to the industry. 2. This permanent exemption can then be incorporated into COFI, when required.	Refer to the response in item 20 of Section C.
15.	Masthead	General comment	We recognise the practical challenges faced by certain FSPs that collect long-term insurance premiums which are ancillary to another commercial contract, and therefore have no objection to the proposed exemption or the conditions imposed on such FSPs. However, given that the collection of long-term insurance premiums by an FSP is also regulated by section 10 of the FAIS General Code of Conduct (as confirmed in the FSCA Communication 9 of 2019), the exemption from the Long-term Insurance Regulations will provide no relief to these FSPs as, in the absence of an exemption from the FAIS General Code, they will in any event have to ensure that the premiums are collected into a separate bank account. We would, therefore, suggest that the FSCA simultaneously, offers these FSPs a general exemption from section 10(1)(d)(ii) of the FAIS General Code to avoid the need for FSPs to submit separate exemption applications to the FSCA.	Noted. Refer to paragraph 4 of FSCA Communication 9 of 2019 (Insurance). Section 10(1)(d) of the General Code has always been applicable to the collection of long-term insurance premiums. The Authority believes that there is no justification, at this stage, for exempting these independent intermediaries from that requirement. The Authority has not been approached by any of these intermediaries with a request to extend the exemption to section 10(1)(d) of the General Code. Notwithstanding, as per paragraph 4 of the Communication supporting the draft exemptions, the Authority intends to propose an amendment to the

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
				General Code to also exclude long-term insurance from section 10(1)(d) in order to avoid dual frameworks governing the same activity. Once the Authority has given effect to such amendments, the regulatory frameworks governing premium collection (long-term and short-term insurance) will be fully aligned.
16.	FIA	General comment	We would also suggest that the reference to "independent intermediary" should be changed to "intermediary" throughout as the term "independent intermediary" is perhaps not properly understood and in order to maintain consistency in the communication and to avoid possible misinterpretation/confusion.	Disagree. See response in item 22 in Section C.
17.	KGA Life	General comment	1. Purpose of Regulation 8 1.1 According to our understanding, the purpose of Regulation 8 of the Regulations ("the Regulations") under the Long-Term Insurance Act no. 52 of 1998 ("the LT Insurance Act"), is to regulate the collection of premiums, by intermediaries, on behalf of registered insurers. 1.2 This, moreover, is to ensure the eradication on undesirable collection practices that negatively impact on Policyholders. Specifically, in terms of the FSCA Position Paper 'Proposals on the Future Regulatory Framework for the Collection of Insurance Premiums' published on 9 April 2019, the following items were raised: 1.2.1 The need to "address certain premium collection risks and abuses that had been identified through supervisory experiences", most notably that historically premiums were held for up to 45 days after receipt of such premiums; and 1.2.2 The need to "ensure that the premium collection regulatory framework remains	Please see responses to item 1 of Section B and item 4 of Section C respectively. As mooted in those responses, the exemption was crafted to capture very specific business models where various practical challenges were raised. With regards to your comments on public interest, fair treatment and your conclusion, we wish to highlight that it is not the draft exemption that will lead to policyholders no longer having access to funeral insurance products. If a barrier to access in the funeral industry is indeed created, this barrier is created through the requirements in the Regulations and not the exemption. If you wish to motivate an exemption for the funeral insurance industry, we would therefore recommend that you rather approach the Authority with a specific exemption request, from the relevant requirements in the Regulations, that is focussed on the funeral insurance industry. That being said, it must be noted that section 10 the FAIS General Code, which sets requirements relating to (amongst other things) a separate bank account, has always been applicable to the funeral insurance

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			relevant in light of evolving market practices". 1.3 To this end, Regulation 8.2(2) specifies that "*[the] separate bank account referred to in subregulation (1) may only contain monies collected from policyholders and may not contain any monies or funds of the independent intermediary*". 2. Application of Regulation 8.2(2) to the Funeral Insurance Industry 2.1 As is well documented, the Funeral Insurance Industry serves the portion of South Africa's population which is traditionally made up of policyholders in rural areas and policyholders of less affluent backgrounds. 2.2 Policyholders and beneficiaries of Funeral Insurance are therefore often, as a result of their location and historical lack of resources, not exposed to the same economic opportunities and more sophisticated payment systems available to others in South Africa. 2.3 As a result, intermediaries that act on behalf of insurers in rural areas perform an extremely important function, namely ensuring access to Funeral Insurance to persons who would otherwise have no access. This is the case for a number of reasons: 2.3.1 Intermediaries are often located in the area where the policyholders reside. This is of utmost importance, as many persons in such rural access do not have access to, or cannot afford, longer distance transport.	industry and we would like to understand how intermediaries have complied with this requirement up until now. With regards to your comment suggesting that the consequence of the exemption could be that intermediaries are encouraged to offer a basket of items to all consumers to ensure that they fall within the scope of the exemption, without such products adding any value or benefit to the consumer, please note that we are of the view that this is unlikely to occur. Firstly, it must be noted that the number of intermediaries that collect premiums are limited. This number is likely to be further reduced once the proposals limiting the types of intermediaries that may collect premiums (as proposed in the Position Paper and the Retail Distribution Review) are introduced. Therefore, the scope of intermediaries that might attempt to abuse the exemption is limited in nature. Secondly, it must be noted that according to the conditions the rendering of services as intermediary may not be the primary business of the intermediary. In order to qualify for the exemption, a traditional intermediary who collects premiums will therefore have to change its entire business model to make "non-financial services business" its primary business. We believe that it is highlight unlikely that a traditional intermediary will go to this extent just to qualify for the exemption. Accordingly, the scope of persons that might attempt to abuse the exemption is limited even further. Lastly, selling additional commercial products to low-end consumers could pose to be a difficult endeavour

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			2.3.2 Intermediaries are often able to assist policyholders in administration-related aspects of the provision of Funeral Insurance. 2.3.3 Intermediaries are often members of the community and, as such, aware of the policyholders' financial situation. They are therefore well placed to ensure that appropriate products are offered to potential policyholders. 2.3.4 Furthermore, because of the challenges posed to insurers by rural areas, being amongst others, the lack of infrastructure and access to certain technological systems, it would largely not be economically viable for insurers to enter such areas. 3. Proposed Exemption 3.1 The FSCA published the Draft Exemption of Independent Intermediaries from compliance with Regulation 8.2(2) of the Regulations under the Long-Term Insurance Act no 52 of 1998 ("Draft Exemption") on 24 December 2019 and requested feedback and or comment by 19 January 2020. 3.2 The Draft Exemption, and FSCA communication 9 of 2019 (Insurance), identifies certain practical challenges to the industry wide application of Regulation 8.2(2), and the resultant need differentiate between business models. 3.3 The Draft Exemption exempts certain intermediaries from Regulation 8.2(2).	and we are of the view that there is not a significant risk that this will occur.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			4. Application of the Draft Exemption to the Funeral Insurance Industry 4.1 Effectively in terms of Section 2(2), subsections (b) and (c), of the Draft Exemption, for the Draft exemption to apply, a further agreement, over and above the intermediary agreement, is required between the intermediary and the insurer and, more importantly, the premiums paid over needs to be over and above further amounts collected from the policyholder and paid to the Insurer. 4.2 This will mean that, where the intermediary acts on behalf of the insurer for the sole purpose of ensuring access to rural areas, despite the collection of premiums being no more than a service that provides rural consumers access to funeral insurance, such intermediaries will be excluded from the exemption. 4.3 This will further mean that, only intermediaries that collect further amounts from consumers, over and above insurance premiums, will be covered by the proposed exemption. 5. Why this exemption should be wider 5.1 As noted above, the intermediaries provide access to Funeral Insurance to persons who would otherwise have no access. This is, firstly, because of the physical location of such intermediaries, and secondly the result of lack of economic viability of doing business in such areas should said intermediaries no longer be able to perform this function. 5.2 As rightly pointed out in the FSCA Communication 9 of 2019 (Insurance), intermediaries often perform further functions than simply collecting premiums and collecting premiums is often not an intermediary's main business.	

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			5.3 We believe that, further to this, as a result of the location of these intermediaries and the manner in which their main business is conducted, it is in many instances not practically possible for intermediaries to act in accordance with Regulation 8.2(2). 5.4 To this end, we believe the Draft Exemption should also assist such intermediaries, which do not necessarily have any other obligations to an insurer or are not collecting any further amounts from policyholders. 6. Potential effect 6.1 We are of the opinion that, failure to further extend the exemption and strict interpretation of Regulation 8.2(2) may have a potentially significant effect on consumers. 6.2 This is the case as, should intermediaries no longer be able to provide the service to policyholders, many consumers will no longer have access to such funeral products. 6.3 This is the case as, rather than approaching insurers directly, consumers may no longer have access to Funeral Insurance currently being ‘intermediated’ by intermediaries located in the area. 6.4 As such, consumers will either not be able to take out funeral insurance or, more worryingly, be forced to approach institutions not regulated by the FSCA. 7. Cost Factor 7.1 As a further concern to the above, we foresee that strict implementation of Regulation 8.2(2) could	

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			have a potentially significant cost implication for the consumer. 7.2 This is the case as, should either intermediaries or insurers be required to invest in costly technology to allow strict implementation, these entities will simply discontinue the service, or such costs will be passed on to the consumer. 8. Impractical Interpretation 8.1 Moreover, the manner in which the Draft exemption currently reads could be interpreted in a manner which seems to render the exemption impractical. 8.2 This is the case as intermediaries are only exempted in relation to such instances where the collection of a premium is ancillary to another agreement between the intermediary and the policyholder. 8.3 This could be read to mean that an intermediary that is exempted in relation to some consumers, but not in relation to others, namely such consumers who do not have a further agreement with the intermediary. 8.4 This not only raises some fair practice issues, but could have the unintended effect of encouraging intermediaries to offer a basket of items to all consumers to ensure that they fall within the scope of the exemption, some of these products which may not be to the ultimate benefit of the consumer. 9. Public Interest and Fair Treatment 9.1 The FSCA, in Communication 9 of 2019 (Insurance), notes that the Draft exemption will not be contrary to public interest and will not	

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			compromise the fair treatment of or continuous and satisfactory service of policyholders. 9.2 We believe that we have clearly demonstrated above, that, in the current format, the Draft exemption would not benefit those in rural areas and will lead to many policyholders no longer having access to insurance products. 9.3 This will, without a doubt, further foster the culture of historical exclusivity within the Insurance space. 10. Management of risk factors 10.1 We are of the opinion that, including intermediaries that are not necessarily able to comply strictly with Regulation 8.2(2) will lead to a more inclusive outcome and provide access to insurance products for many consumers who would otherwise not have access, without leading undesirable outcomes or premium collection risks and abuses. 10.2 This is the case as a result of the following: 10.2.1 In each instance, the intermediary would have a formalised contractual relationship with the insurer. As the insurer is itself subject to regulation, it puts the various authorities in the position to ultimately more effectively regulate the intermediary. This is of great importance, as such intermediaries may otherwise not be subject to regulation or where they may be subject to regulation, the location and structure of the business may simply leave the enforcement of such obligations by regulatory authorities ineffective.	

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			10.2.2 Further as a result of the contractual relationship between the insurer and the intermediary, the insurer is able to have direct oversight over the intermediary's activity and ensure, over and above the ultimate responsibility to the regulatory authorities, that the intermediary account to it in relation to all of its responsibilities. The insurer is therefore not only able to monitor the intermediary's business from the perspective of managing the relationship between the parties, but it is also able to ensure that the intermediary acts in the best interest of all policyholders. 10.2.3 The value of Treating Customers Fairly cannot be understated. By way of effective monitoring, the insurer is able to ensure, in an environment where this is otherwise not always possible, that TCF principles are applied. TCF, in our opinion, is also applicable to potential customers and the manner in which their needs are addressed. Specifically, as noted above, intermediaries assist in ensuring that products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly. 11. Proposed solution We are of the opinion that, as a first step, Section 2(2), subsections (b) and (c), of the Draft Exemption need to be reconsidered. 12. Conclusion	

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			12.1 In light of the above, we believe it is in the interest of the public, but also specifically in the interest of persons who may otherwise be denied access to insurance products, to widen the exemption. 12.2 We believe that the inclusion of the requirement that the premiums collected from policyholders need to form part of the collection of other funds from policyholders, places an unnecessary burden on intermediaries, insurers and ultimately consumers. 12.3 We are further concerned that the consequence of the exemption, in the proposed format, could be that intermediaries are encouraged to offer a basket of items to all consumers to ensure that they fall within the scope of the exemption, without such products adding any value or benefit to the consumer. 12.4 We look forward to hearing from you and being involved in the continued consultation process, if possible.	
18.	BASA	General comment	1. Section 4.5 of Communication 9 of 2019 indicates that the FSCA is considering aligning S10(1)(d) of the General Code of Conduct (Code) to this exemption, to also exempt the collection of LT premiums from the Code. However, it is indicated that until such time that the amended to the Code is made, the Code must be complied with. 2. The FSCA has correctly pointed out that regulatory arbitrage will take place should the alignment between the Code and this exemption not take place. It is our view that affected independent intermediaries will not practically be able to comply with the Code and apply this exemption. The effect will be that they will need to comply with the LTIA requirement and will not be able to make use of this exemption. Is this the intention of the FSCA?	See response in item 15 of Section D.

No	Commentator	Paragraph of the exemption	Issue/Comment/Recommendation	Responses
			3. In light of the practical challenge noted above, in order to create regulatory certainty, we request that the FSCA issue the exemption under the Code for LT premiums simultaneously with this exemption.	

SECTION E - QUESTIONS ON THE DRAFT EXEMPTIONS

No	Commentator	Question	FSCA Response
1.	Nedbank	1. The Drafts are unclear regarding whether affected Insurer's are still to proceed with lodging their Exemption Applications pending the outcomes of these proposed Bills. May we have clarity on this aspect. 2. Will the Exemptions that have already been lodged by the different Insurer's be considered and outcomes thereto given pending the outcome of these proposed Bills? In the event that the outcomes of the Exemption Applications will not be given before the outcomes of the proposed Bills, will the effect be that those insurer's are considered immediately non-compliant?	The period for compliance with these Regulations have been extended to 1 April 2020 in order to facilitate the finalisation of the draft exemptions. It is the intention of the Authority to finalise the draft exemptions prior to 1 April 2020, allowing enough time for submission/consideration of individual applications for exemption should the independent intermediaries not fall within the ambit of the final versions of the general exemptions prior to 1 April 2020.

SECTION F - GENERAL COMMENTS

No	Commentator	Comment/Recommendation	FSCA Response
1.	Moonstone	1. We recognise the efforts made by the FSCA to take into consideration different business models where the rendering of services as an intermediary is not the main business of the FSP. We are supportive of the proposed exemptions as they address a real need which our clients are frequently confronted with.	1. Noted.

No	Commentator	Comment/Recommendation	FSCA Response
		There is however a further matter, which we are of the opinion requires further consideration by the FSCA and that if left unaddressed will hold serious unintended consequences for independent intermediaries. We are limiting our comment to this aspect only. 2. Our concern is in respect of Regulation 4.2(2) & (3) to the Short-Term Insurance Act and Regulation 8.1(1) & (2) of the Long-Term Insurance Act. We will illustrate our concern using examples for both the Short-Term and Long-Term Insurance environments below: 2.1 Regulation 4.2(2) & (3) to the Short-Term Insurance Act,1998 (Act no. 53 of 1998) In our view, a strict reading of the regulations would mean that only "nett" premiums may be received into the premium account envisaged in Regulation 4.2(2). However, in practice, any fees being collected from policyholders in terms of PPR rule12.4 will be collected by the intermediary together with the premium. If premium together with a fee is received into the premium account, it would mean that the provision that such an account may not contain any monies or funds of the independent intermediary would be contravened, even if only for a couple of hours. Evenly the premium may very well be inclusive of commission payable to the intermediary which the intermediary is authorised to reduce the amount payable to the insurer with, again creating a situation where monies of (or at least due to) the intermediary are being held in the premium account.	2. The Authority notes the concerns raised in respect of the collection of "rule 12.4 fees", but please note that this concern is not relevant for purposes of this exemption and must be addressed as a broader concern in the context of the Regulations. The Authority further notes the concerns raised in respect of the commission payable to the intermediary and your interpretation that only "nett" premiums maybe be received into the collection account. We disagree with this interpretation. Regulation 4.2(7) of the STIA Regulations and Regulation 8.2(5) of the LTIA Regulations, respectively, allow an independent intermediary to reduce the amount of premiums received with the value of consideration payable to that independent intermediary by the insurer for rendering services as intermediary in respect of the policies concerned. By implication this confirms that "gross" premium / premium inclusive of commission may be received into that account. The part of the premium that comprises commission will essentially only become commission attributable to the intermediary when the commission part is split from premium. If the collecting intermediary therefore pays the commission part of the premium to a separate business account of the intermediary before the premium is remitted to the insurer (this practice will be aligned with Regulation 4.2(7) of the STIA Regulations and Regulation 8.2(5) of the LTIA Regulations), then we can see no cause for concern. 3. As above, the issue you raise relates to the wording of requirements in the Regulations and

No	Commentator	Comment/Recommendation	FSCA Response
		2.2 Regulation 8.1(1) & (2) of the Long-Term Insurance Act, 1998 (Act no. 52 of 1998) A similar situation is illustratable in the Assistance Business space where "gross" premium collected by the intermediary contains the risk premium owing to the insurer, as well as the commission owing to the intermediary. Again, by receiving this "gross" premium, monies belonging (or at least owing) to the intermediary, will be held in the premium account. 3. Conclusion Although the Authority may be of the opinion that we are being overly pedantic in raising this concern, we can state from experience that these are real concerns which we receive countless queries about and which should be addressed. A possible solution would be to amend the wording of the relevant provisions to read similar to: "A separate bank account referred to in subregulation (2) may only contain monies collected from policyholders and may not contain any monies or funds of the independent intermediary, other than fees or remuneration owing to the intermediary, which fees or commission must be accounted for in accordance with the Insurer's authorization within 30 days of receiving into the account referred to in subregulation (2)." A similar provision could be considered for Regulation 8.1(2) with appropriate changes. Alternatively, the Authority should consider extending the proposed exemption to provide for these scenarios.	is not relevant for purposes of this exemption. Also see response above.

No	Commentator	Comment/Recommendation	FSCA Response
4.	Nedbank	The proposed exemption does not cater for the bancassurance models where the bank acts as both a credit provider and an intermediary when (a) facilitating the credit agreement; (b) receiving premiums; (c) making the payments of premiums to the insurers. It is submitted that the draft exemption specifically address these relationship as it is not possible to comply with the requirement of separate bank accounts, specifically in the context of credit insurance, whether the bank (as bank) debits the account of the client with both the principal debt and the premium but the banks also acts as intermediary in such relationship.	The Authority is of the view that a bancassurance model will generally fall within the ambit of the proposed exemption, as – (a) the Authority views the "primary business of a bank", as set out in the condition, as taking deposits and extension of credit, and not the rendering of services as intermediary; and (b) the bancassurance model would likely comply with the other conditions of the draft exemptions, as there is another commercial contract between the bank and the policyholder (e.g. the credit agreement) and the monthly instalment is collected simultaneously with the premium for the insurance related to that agreement/credit facility.
5.	FIA	We believe that the proposed exemption is appropriate for the entities in the circumstances as described in the communication.	Noted.