



Financial Sector
Conduct Authority

Consultation report

FSCA Guidance Notice 1 of 2023 (RF):

Application of section 14(7) of the Pension Funds Act, 1956

February 2023

1. Summary of the public consultation process

- 1.1 The draft Guidance Notice on the application of section 14(7) of the Pension Funds Act, 1956 (Act No. 24 of 1956) (PFA) was published for public comment on 5 July 2022 and comments were due to the Authority on or before 2 August 2022.
- 1.2 The draft Guidance Notice on the application of section 14(7) of the PFA was published together with accompanying documents. The following documents were published as part of the public consultation process:
- Draft Guidance Notice on the application of section 14(7) of the PFA (draft Guidance Notice);
 - FSCA Communication 19 of 2022(RF); and
 - Comments Template for submission of comments.
- 1.3 At the close of the consultation period, the Authority received a total of 60 comments from 8 industry stakeholders (consisting of financial institutions and representative bodies) in respect of the different sections of the draft Guidance Notice. A list of the commentators and relevant contact persons, as well as all comments received through the consultation process and the Authority's responses thereto, are set out in the tables below.

2. General account of the issues raised in the submissions made during the consultation

- 2.1 All comments received as part of the consultation process were considered and are set out in the table as per the Schedule below, together with the Authority's response to the comments received.
- 2.2 The main issues raised during the public consultation for clarification purposes were as follows:

No	Main issue	Response from Authority
1	Paragraphs 2.2. (a) & (b) of the Guidance Notice – Background and applicable legislation:	Recommendation not supported. Paragraph 18(a) of the FSRA Conduct Standard No.1 of 2019 deals with the requirements of section 14(1) of the PFA and states that

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	<p>Paragraphs (a) and (b) refer to either a member’s interest or non-member spouse’s interest. However, paragraph 18(a) of the FRSA Conduct Standard No.1 of 2019 specifies that a transfer of a pension interest, awarded in terms of section 7(8) of the Divorce Act, 1979 to a non-member spouse does not fall under the ambit of Section 14.</p> <p>We recommend that the Guidance Note excludes these pension interest transfers between RA funds.</p>	<p>a transfer of pension interest awarded in terms of section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), to a non-member spouse is not considered to be a 'transfer of business' as contemplated in section 14(1).</p> <p>The term 'transfer of business' should not be confused with 'transfer of interest'. The section 14(7) is aimed at ensuring that the member and non-member spouses are able to transfer their interest [i.e., interest in the fund]. The exclusion in paragraph 18(a) of the FSRA Conduct Standard No.1 of 2019 does not extend to section 14(7) of the PFA.</p>
<p>2</p>	<p>Paragraph 3.3 of the Guidance Notice – Guidance on the application of section 14(7)(b): It has always been understood that the fees and commissions referred to the fund-based fee that the client and FSP/representative had agreed to when the transfer was being effected and, among others, for the advice rendered by such FSP/representative to the client in relation to the transfer.</p>	<p>That is an incorrect understanding. Subsection 14(7)(b)(i) of the PFA contains the prohibition of fees or commissions payable for the facilitation, intermediation, or recommendation of the transfer itself. Subsection 14(7)(b)(ii) specifically deals with financial services <u>after the transfer</u> in respect of the transferred interest of the transferring member or non-member spouse.</p>
<p>3</p>	<p>Paragraph 3.8 of the Guidance Notice – Guidance on the application of section 14(7)(b): Section 14(7)(ii)(bb) states that the fee in excess of the maximum commission must be agreed to in writing by the transferring member or non-member spouse annually. Does the fee need to be agreed to in writing on an annual basis even though the fee does not increase annually? Subsection 3A(1)(a)(iv) of the FAIS General Code of Conduct provides for the client to cancel or stop this fee at any time. Is the intention, considering that a client has the option to stop the fee at any time, to negotiate and agree to the fee on an annual basis even though the fee stays the same?</p>	<p>The provision in respect of the annual negotiation does not stipulate that such negotiation should takes place in the event of an increase. Even if the fee or commission remains the same, the services may or may not have changed, the requirement in section 14(7) of the PFA is that the fee must be negotiated and agreed to in writing by the transferring member or non-member spouse <i>annually</i>. The fees for the service should be commensurate to the services rendered. The reason why there is a need for an annual negotiation and agreement to the fee is to ensure that the transferring member or non-member spouse explicitly agrees to such a fee , as this fee exceeds the maximum allowed for in the Regulations under the Long-term Insurance Act.</p>

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<p>4</p>	<p>Paragraph 4.2 of the Guidance Notice – Application of the LTIA Regulations: We agree to the extent that the remuneration is paid by the insurer i.e., where there is a contractual nexus between the insurer and the FSP for the purposes of remunerating the FSP. However, section 14(7)(b)(ii)(bb)(A) makes provision for fees to be negotiated and agreed between the FSP and the member and paid by the member personally. We do not agree that the commission regulations extend to remuneration paid directly by the client (member) as agreed between the member and the FSP and paid by the member.</p>	<p>We disagree with this interpretation.</p> <p>Please see Part 3A and 3B of the Regulations that throughout refers to consideration provided to or accepted by. The commission regulation therefore applies both to the payer and the recipient of such remuneration.</p> <p>An independent intermediary may therefore not accept remuneration for rendering services as intermediary other than in accordance with s 49 of the LTIA and provision in the LTIA Regulations.</p> <p>The commission regulations therefore extend to the fees or commissions paid after the transfer contemplated in section 14(7) of the PFA in the case of an underwritten fund.</p>
<p>5</p>	<p>Paragraph 5 of the Guidance Notice – Application of the FAIS General Code of Conduct : Why is it relevant to have this paragraph in the Guidance Notice? The provisions of the FAIS Act and the FAIS General Code of Conduct apply to fees and commissions payable on all retirement products, not just retirement annuity funds. It is suggested that it be removed. If this suggestion is not accepted, rather summarise the provisions of sections 3A(1)(a)(iv) and (d) of the Code in the Guidance Notice to avoid having to search for these provisions elsewhere.</p>	<p>The purpose is to remind the reader that the PFA should not be read in isolation. Even though the limitation on commission in the LTIA Regulations would apply to fees and commissions related to an underwritten fund and not to a non-underwritten fund, the industry is reminded of the application of the FAIS General Code in the case of an underwritten fund and a non-underwritten fund. The requirements in subsection 3A(1)(d)(ii) of the FAIS General Code - namely the prohibition on remunerating an intermediary more than once for the same service, as stipulated is particularly important for the industry to take note of.</p>

SECTION A - LIST OF COMMENTATORS

No	AGENCY / ORGANISATION	CONTACT PERSON
1	Allan Gray	Ziyaad Akharwaray
2	Financial Intermediaries Association of Southern Africa (FIA)	Samantha Williams
3	Institute of Retirement Funds Africa NPC (IRFA)	Wayne Hiller van Rensburg / Sizakele Khumalo
4	Liberty Group including STANLIB	Chantal Manson
5	Ninety-One	Janine Langehoven
6	OUTvest (Pty) Ltd	Jacques Botha
7	Sanlam Life Insurance	Veekash Ramowthar/ Ulandi Fraser
8	Sanlam Life Insurance Limited (Group Compliance)	Hameeda Khan

SECTION B - COMMENTS ON THE GUIDANCE NOTICE

No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
1. PURPOSE OF THE GUIDANCE NOTICE				
1.	1	Ninety-One	<p>While we appreciate the fact that the purpose of the guidance note is to ensure compliance with section 14(7)(b) in a consistent way, our understanding is that this interpretation differs completely from the interpretation the FSCA previously had (for example as set out in Draft Information Circular PF No 6 of 2013 – although this circular was never finalised) and the interpretation of the majority of the industry.</p> <p>Sec 14(7) was already introduced in 2008, and most administrators would have done a lot of system development</p>	As correctly stated, the Draft Information Circular PF No 6 of 2013(draft circular) was never made final. As such the industry should not implement system changes on an information document which has not been made final and only published for instance as part of a public consultation process and therefore subject to change. The guidance provided as the commentator stated provides for a less cumbersome

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			<p>over the years to ensure compliance with the previous / current interpretation of this section.</p> <p>The new interpretation may be less cumbersome to administer (also less onerous for financial advisors and RA members), however the industry shouldn't be placed in a position where they are required to make changes to their systems temporarily (resulting in costs), if the position will be changed again under COFI. In that case, our recommendation is for the status quo to remain as is, until the future regulatory reforms are made effective (including the proposed conduct standards dealing with intermediary remuneration matters).</p>	<p>administration and provides clear interpretation on section 14(7) of the PFA as far as the inconsistency between the PFA and the Regulations under the Long-term Insurance Act.</p> <p>Following queries from the industry and the inconsistent interpretation of this section, it was needed to provide the interpretation of the Authority to the industry. It therefore follows that there have been inconsistent interpretations and potentially inconsistent system developments – corrections are either way therefore necessary.</p>
2. BACKGROUND AND APPLICABLE LEGISLATION				
2.	2.1.	IRFA	<p>Substitute with:</p> <p>To ensure that retirement annuity funds do not prevent members and non-member spouses to transfer their interests from one retirement annuity fund to another should they so request (s.14(7)(a));</p>	<p>Recommendation noted and wording in the guidance notice changed accordingly.</p>
3.	2.1.	Sanlam Life Insurance Limited (Group Compliance)	<p>The words 'fees and commissions', on the one hand, and 'remuneration' appear to be used interchangeably – it is suggested that use of the words 'fees and commissions' be adhered to, for the sake of clarity.</p>	<p>The term "remuneration" is used in the context of rendering services as intermediary and aimed at encompassing any payment, compensation or remuneration which includes fees and commission. It is therefore a collective term and not used interchangeably.</p>
4.	2.2.	Sanlam Life Insurance Limited (Group Compliance)	<p>Section 14(7)(b)(ii) implies that, at some stage, if fees and/or commission were/had been/are being paid, and a fee is not negotiated between the client and the FSP/representative on transfer, if the maximum commission/ had not been reached at</p>	<p>Section 14 of the PFA deals with amalgamation and transfers. Section 14(7)(b)(i) deals with facilitation and the restriction of fees and commissions in return</p>

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			<p>the time of transfer, then the remainder of the calculated commission (upfront, for example) can be paid to the FSP/representative who facilitates the transfer.</p>	<p>for this. As is set out in the guidance notice, Section 14(7)(b)(ii) speaks to financial services rendered <u>after the transfer in respect of the transferred interest</u> of the transferring member or non-member spouse which exceeds the fees or maximum commission. This must be read with section 14(7)(b)(i) that clearly prohibits fees or commissions for the facilitation, intermediation, or recommendation of the transfer.</p> <p>It does not relate to commission / fees payable for financial services rendered before the transfer. This may still not exceed the maximum commission. Whether or not the commission was due before the transfer would therefore be a factual consideration and will have to be evidenced when measures for compliance with the commission requirements in the LTIA Regs.</p>
5.	2.2. (a) & (b)	Sanlam Life Insurance Limited (Group Compliance)	<p>Paragraphs (a) and (b) refer to either a member’s interest or non-member spouse’s interest. However, paragraph 18(a) of the FRSA Conduct Standard No.1 of 2019 specifies that a transfer of a pension interest, awarded in terms of section 7(8) of the Divorce order Act, 1979 to a non-member spouse does not fall under the ambit of Section 14.</p> <p>We recommend that the Guidance Note excludes these pension interest transfers between RA funds. Please also see our comment at 6.3 below.</p>	<p>Disagree, paragraph 18(a) of the FSRA Conduct Standard No.1 of 2019 deals with the requirements of section 14(1) of the PFA and states that a transfer of pension interest awarded in terms of section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), to a non-member spouse is not considered to be a 'transfer of business' as contemplated in section 14(1). This does not extend to section 14(7) of the PFA.</p>

3. GUIDANCE ON THE APPLICATION OF SECTION 14(7)(b) OF THE PFA

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6.	3.1.	IRFA	Substitute “for services rendered during or before the transfer, and after such transfer.” with: “for services rendered before, during and after such transfer.”	Noted, agreed.
7.	3.1.	Sanlam Life Insurance Limited (Group Compliance)	To be clearer, legislation/regulations/Conduct Standards should make it clear that ‘pension interest’ (as defined in the Divorce Act 70 of 1979) is what is being referred to, here, in relation to non-member spouses.	Suggestion noted however as the term is not used in the Guidance Notice, this comment seems to be directed at the legislation more broadly. The PFA defines non-member spouse in the context of pension interest and clearly speaks to dissolution of the relationship by way of court order (divorce). The substantive provisions of the PFA cross reference the Divorce Act, 1979. The comment does not impact the Guidance Notice or content thereon directly.

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8.	3.2.	FIA	<p>While not the specific focus of the proposal, we note the provision that no fees or commissions are payable for the facilitation, intermediation or recommendation in respect of all transfers between retirement annuity funds, regardless of whether or not either the transferor or transferee funds are underwritten.</p> <p>We wish to note that the transfer of individual member (or non-member spouse) interests between retirement annuity funds requires significant work by an intermediary. This work includes comparing the offerings of the existing retirement annuity fund to newer funds which may offer more innovative and competitive products. It is this service that should be remunerated appropriately. There further appears to be a presumption that such transfers are not undertaken in the best interests of clients; however without actual evidence of this, we would stipulate that this is not the case, and only transfers that are in the interests of clients are effected. Should there be specific abuses then these should be individually addressed.</p>	<p>Response noted.</p> <p>As the comment is not in the scope of the guidance provided in the Guidance Notice as no interpretational clarity is required, no detailed response is provided.</p> <p>However, commentator is referred to paragraph 3 of FSCA Communication 19 of 2022 (RF) published alongside the draft Guidance Notice that explains the expected impact of pending regulatory reforms on these provisions in the PFA.</p>
9.	3.2.	Sanlam Life Insurance	Restricts/Discourages fee motivated transfers. Underwritten and non-underwritten to be defined.	Comment noted on the restriction discouraging fee motivated transfers. Paragraph 3.2 that the commentator refers to states that the prohibition contained in subsection 14(7)(b)(i) of the PFA applies to all transfers whether underwritten or non-underwritten.

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				Regarding the request for the terms “underwritten” and “non-underwritten” to be defined, the commentator did not provide any reason for the request or detail as to why the terms require a definition / what interpretational challenges arise. A footnote has been inserted in the Guidance notice to explain the common understanding of the meaning ‘underwritten fund’ and ‘non-underwritten fund’.
10.	3.3.	Sanlam Life Insurance	Fosters advice driven transfers and greater relationship management	Comment is noted.
11.	3.3.	Sanlam Life Insurance Limited (Group Compliance)	It has always been understood that the fees and commissions referred to the fund-based fee that the client and FSP/representative had agreed to when the transfer was being effected and, among others, for the advice rendered by such FSP/representative to the client in relation to the transfer.	That is an incorrect understanding. Subsection 14(7)(b)(i) of the PFA contains the prohibition of fees or commissions payable for the facilitation, intermediation, or recommendation of the transfer itself. Subsection 14(7)(b)(ii) specifically deals with financial services after the transfer in respect of the transferred interest of the transferring member or non-member spouse.
12.	3.4.	IRFA	Is it necessary to include the underlined part? <u>“This understanding is informed by the deliberations and voting by Parliament’s Finance Standing committee, held on 5 June 20071 during Parliament’s consideration of the then proposed Pension Funds Amendment Bill [B11-2007] which inserted sections 14(5) – (8) into the PFA. During the deliberations the National Treasury advised that “the FAIS Act provides a sound framework to deal with the issue.”. It is, therefore, understood that the references were intended by the policymaker to cross reference the</u>	The part is inserted to provide clarity should there be any uncertainty whether the terms could be read to mean “financial services” and “financial services provider” in the Financial Sector Regulation Act, 9 of 2017. Since the definitions contained in the FAIS Act and the FSR Act are different in scope, through this explanation the Authority

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			<p>definitions in the FAIS Act.” We don’t believe that the retirement funds industry will understand the terms "financial services" or "financial services provider" to mean anything other than how it is defined in the FAIS Act. It should therefore not be necessary to expand on why those definitions should be used to interpret the terms used in section 14(7)(b).</p>	<p>attempted to ensure a consistent understanding.</p>
13.	3.5.	IRFA	<p>Remove the word “Accordingly” at the beginning of this paragraph and start with “The reference..”.</p>	<p>The suggestion makes a material difference in the understanding of the two paragraphs. The word “accordingly” refers to the explanation given in the preceding paragraph and links the argument. The use of the word is therefore appropriate.</p>
14.	3.6.	Ninety-One	<p>Our understanding / interpretation has always been that this was an absolute prohibition, with no exceptions. That fees must be below the maximum in terms of the LTIA regs, and annual authorization (in writing) by the member is required.</p>	<p>The absolute prohibition is contained in subsection 14(7)(b)(i) of the PFA, which is directed at prohibiting fees or commissions of any nature for facilitation, intermediation, or recommendation in respect of the transfer itself. Subsection 14(7)(b)(ii) sets out a prohibition on the payment of fees or commissions that exceed the fees or maximum commission for services rendered after the transfer.</p>
15.	3.6.	Sanlam Life Insurance Limited (Group Compliance)	<p>See comment in point 2.2 by Sanlam Life Insurance Limited, above.</p>	<p>Please see corresponding response to the comment from Sanlam Life Insurance Limited (Group Compliance) above.</p>
16.	3.7.	Liberty Group including STANLIB	<p>Guidance is required on the following:</p> <ul style="list-style-type: none"> • That automatic fee renewals are not permitted, as Section 14(7)(b)(ii)(bb) of the PFA states that any such fees must be negotiated and agreed to in writing annually by the transferring member or non-member spouse. Therefore, any authorisation by the transferring member or non-member spouse for the fees to 	<p>The interpretation by the commentator as set out in this bullet point is correct.</p>

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			<p>be paid by the fund or administrator must also be confirmed on an annual basis.</p> <ul style="list-style-type: none"> • If the fee may be negotiated and agreed more often than annually should the member/non-member spouse and adviser choose to do so? • If for example the fee was first negotiated on 1 September 2020, and then renegotiated on 1 February 2021(i.e., only 5 months later), are we correct in our application that the next renewal date would only need to be prior to 1 February 2022, 12 months after the last renewal, and would not be 1 September 2021? • What must take place if the fee is not renewed within the annual period? Are we correct in presuming that the fee must be set to zero until such time as a new fee is re-negotiated, and that this new fee cannot be applied retrospectively? • What is the annual renewal date where there was a transfer into the RA Fund on 1 March and then a subsequent transfer into the same RA Fund on 1 July - would the annual renewal date now be 1 July in respect of the combined values of both transfers into the same RA Fund? 	<p>The wording in this subsection is not restrictive in that the fees can only be negotiated annually, the fees/commissions must however at least be negotiated annually.</p> <p>Agreed with the example provided, the fee/commissions must be negotiated and agreed to in writing at least on an annual basis from the last negotiation date.</p> <p>You cannot charge a fee if the fee is not agreed to in writing for the period.</p> <p>The transfer into the fund on 1 March will have a renewal date on 1 March the following year. The transfer into the same fund on 1 July will have a renewal date on 1 July the following year.</p>
17.	3.7.	OUTvest (Pty) Ltd	<p>It is stated that “The prohibition on the payment of fees or commission is, therefore, linked to the maximum commission provided for in the LTIA Regulations, in that it prohibits the payment of any fees which exceeds the maximum commission that would have been permissible had the transfer not been done”. Is our understanding correct that if the fees of a financial</p>	<p>The commentator’s understanding is correct. The requirement in section 14(7)(b)(ii)(bb) is in respect of the fees or commission that exceed what is allowed for in the Regulations under the Long-term Insurance Act. This subsection only relates to fees or</p>

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			services provider, under a non-underwritten fund, is within the limits of the maximum allowable commission provided for in the LTIA Regulations, that the requirement to negotiate and agree to the fee on an annual basis would not apply. We would just like to ensure that our understanding is correct.	commissions emanating out of financial services rendered after the transfer that exceeds the limitations.
18.	3.7.	Sanlam Life Insurance	Contributes to the fair treatment of clients and ensures that the adviser is compensated for ongoing services provided. It also fosters continuous engagement as the fee needs to be negotiated and agreed to annually.	Support for the annual negotiation is noted.
19.	3.7.	Sanlam Life Insurance Limited (Group Compliance)	See comment in point 2.2 above. There is doubt that many intermediaries are revisiting these fund-based fees with their clients on an annual basis, and it is thought that many clients are unaware of the fee that is being charged against their fund values on an annual basis which is meant to be quid pro quo for work done (advice given) which does not materialise.	Comment is noted. It is an important requirement that fees are negotiated on an annual basis and that the fees are paid for actual services rendered and commensurate with such services. The aim of the Guidance Notice to draw attention to this requirements and clarify the requirements in terms of the law in this regard.
20.	3.8.	Ninety-One	Our interpretation has always been that prescribed max cap may not be exceeded (no exceptions) and fee must be authorized annually by the member.	Noted, the Guidance Notice provides clarity that the PFA is primary legislation and therefore prevails in term of the law of interpretation over the Regulations under the Long-term Insurance Act. Section 14(7)(b)(ii) provides for instances where the fees or commission for services rendered after the transfer may be exceed if conditions are met.
21.	3.8.	OUTvest (Pty) Ltd	Section 14(7)(ii)(bb) states that the fee in excess of the maximum commission must be agreed to in writing by the transferring member or non-member spouse annually. Does the fee need to be agreed to in writing on an annual basis even though the fee does not increase annually? Subsection 3A(1)(a)(iv) of the FAIS General Code of Conduct provides for the client to cancel or stop	The provision in respect of the annual negotiation does not stipulate that such negotiation should takes place in the event of an increase. Even if the fee or commission remains the same, the services may or may not have changed the fee need to be agreed

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			this fee at any time. Is the intention, considering that a client has the option to stop the fee at any time, to negotiate and agree to the fee on an annual basis even though the fee stays the same?	to in writing on an annual basis. The fees for the service should be commensurate with the services rendered. This is the reason why there is an annual negotiation and agreement to the fee, as this fee exceeds the maximum allowed for in the Regulations under the Long-term Insurance Act.
22.	3.8.	Sanlam Life Insurance	No prescribed maximum cap – Providers to ensure compliance with the General code of conduct 3A(1)(d) that remuneration should be “reasonably commensurate with the service being rendered”.	Agreed, at all times remuneration for services rendered as a financial services provider should be reasonably commensurate with the services being rendered. Whether there are statutory maximums in place in respect of the fee or not.
23.	3.8.	Sanlam Life Insurance Limited (Group Compliance)	It is very rare that the client pays the fee personally. More often than not, the fund/insurer facilitates the payment of the fee and continues with such payment from year-to-year without proper notice to the client. A cap on such fees should be considered – the limitation that these fees should be negotiated annually appears not to have been adhered to, so some other monetary cap should be considered to offer greater protection to clients.	The comment is noted. Specific considerations will be made in respect of possibly providing a statutory maximum. Commentator is referred to paragraph 3 of FSCA Communication 19 of 2022 (RF) published alongside the draft Guidance Notice that explains the expected impact of pending regulatory reforms on these provisions in the PFA. The Guidance Notice reiterates that the fee must be negotiated in writing and on an annual basis.
24.	3.9.	Sanlam Life Insurance	Section 14 transfers can be an arduous process, this allows the adviser to be compensated for his efforts while being fair to the client.	Please note that subsection 14(7)(b)(ii) of the PFA relates to services provided after the transfer and allows that fees or commissions may be paid in excess of maximum commission payable for furnishing advice and/or rendering of intermediary services provided after the transfer , if the fee is

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				negotiated with, and agreed to in writing, by the transferring member or non-member spouse, on an annual basis. This must be read with section 14(7)(b)(i) that prohibits the payment of any fees or commission in return for the facilitation, intermediation or recommendation of the transfer.
	3.9.	Sanlam Life Insurance Limited (Group Compliance)	What happens if the maximum commission had not been met and the intermediary facilitating the transfer is different to the original intermediary? Does a reading of section 14(7)(b)(ii) not imply that the former would only be entitled to the remainder of the commission?	In terms of subsection 14(7)(b)(i) of the PFA, no fees or commissions are payable for the facilitation, intermediation, or recommendation of the transfer. Subsection 14(7)(b)(ii) of the PFA relates to the payment of fees and commissions for financial services provided <i>after the transfer</i> . It allows that fees or commissions may be paid in excess of maximum commission payable for furnishing advice and/or rendering of intermediary services provided after the transfer , if such the fee is negotiated with, and agreed to in writing, by the transferring member or non-member spouse, on an annual basis. It is therefore not relevant to the intermediary that facilitated the transfer and the services rendered during this process.
25.	3.10.	Liberty Group including STANLIB	This is very difficult to achieve practically if the new ongoing or additional contributions and investment growth reside in the same account as the transferred amount. Therefore in practice, many administrators will apply section 14(7)(b) to the entire account/value in the RA Fund. We trust that this is not prohibited in terms of section 14(7)(b), and would appreciate clarity in the guidance note.	Whether or not this is allowed will depend on if the fund is underwritten or not. Paragraph 3.10 aims to confirm that section 14(7)(b)(ii) applies only in respect of the transferred amount. Fees or commissions for services rendered allowable in relation to new ongoing or additional lump sum contributions

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				<i>after the transfer</i> will be dependent on whether it is a non-underwritten fund on an underwritten fund. If it is an underwritten fund the commission limitations in the LTIA Regulations would apply.
26.	3.10.	Sanlam Life Insurance	More conducive to fee for advice framework. Align with RDR environment. FSP or representative will not be remunerated more than once for performing a similar service.	Comment noted. Remuneration in general, and intermediary remuneration specifically, will be considered as part of the process focussed on developing a regulatory framework under the envisaged COFI Bill. This is likely to entail the development of regulatory instruments that will, amongst other things, replace the LTIA Regulations and give effect to further proposals flagged in the Retail Distribution Review. When developing these regulatory instruments, the Authority will ensure that the existing inconsistencies are resolved.
27.	3.11.	OUTvest (Pty) Ltd	We agree that this section only applies to transfers from underwritten funds. However how do funds and administrators apply this rule when a client makes more than one transfer. For example, client transferred from fund 1 (an underwritten fund) to fund 2 (a privately administered fund). Client then transfers again from fund 2 (privately administered) to fund 3 (privately administered). For the last transfer to fund 3 – would this section also apply to the last transfer? How would this be practically possible, as fund 3 would not be aware that fund 1 was involved previously?	Section 14(7)(b)(ii) only applies where the LTIA Regulations would have applied to the transferor fund - in other words, where the transferor fund is an underwritten fund. In the example provided fund 2 is a non-underwritten fund. Subsection 14(7)(b)(ii) does not apply to transfers from a non-underwritten fund to another non-underwritten fund. Accordingly, subsection 14(7)(b)(ii) does not apply to the transfers from fund 2 to fund 3 in the example provided.
28.	3.11.	Sanlam Life Insurance	We welcome clarity on restrictions related to transfers between underwritten and non- underwritten funds as subsection	Comment noted.

CONSULTATION REPORT – GUIDANCE NOTICE ON THE APPLICATION OF SECTION 14(7) OF THE PENSION FUNDS ACT, 1956

No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			14(7)(b)(ii) made no distinction between underwritten and non-underwritten retirement annuity funds.	
29.	3.11.	Sanlam Life Insurance Limited (Group Compliance)	This paragraph in the Guidance Note does not explain how the distinction spoken of can be deduced from reading the Pension funds Act together with the Regulations to the Long-term Insurance Act.	The distinction is drawn when reading the PFA with the Regulations under the Long-term Insurance Act. Since the Regulations under the Long-term Insurance Act, specifically in this context, the limits to commissions apply only to insurance, therefore underwritten funds.
30.	3.12.	Allan Gray	<p>We agree that the member and the FSP must negotiate and agree to the charging of fees annually and in writing. We further agree that the members authorization to deduct the fees must also be done annually. However, we do not necessarily agree that the manner in which such authorization is given to the administrator should be in writing. In this regard, we refer to a draft Information Circular on the interpretation and application of section 14(7) issued by the FSB in 2016. This information circular was never finalized but it is worth referring to. In particular, paragraph 4.7 states:</p> <p>Permission for the further deduction and payment of fees or commissions in respect of contributions to the transferee fund to an advisor must be obtained at intervals not exceeding twelve months. That permission may be obtained either –</p> <p>4.7.1 by asking the member or non-member spouse to submit to the fund a document signed by him or her in which he or she gives permission for the deduction and payment of fees or commissions to his or her financial services provider for a further period of not more than 12 months; or</p>	<p>The requirement in law stipulates that the fee or commission must be negotiated and agreed to in writing by the transferring member or non-member spouse annually. The draft Information Circular that was issued was not made final and therefore not a formal interpretation of the section.</p> <p>As is clarified in paragraph 3.12 of the Guidance notice it is not sufficient for the financial services provider or its representative to rely on such authorisation indefinitely until the member or non-member spouse informs the fund or administrator otherwise. It is in the best interest of the member or non-member spouse that this be agreed to annually especially because it allows for fees over and above the commission limitations in the Regulations under the Long-term Insurance Act.</p>

CONSULTATION REPORT – GUIDANCE NOTICE ON THE APPLICATION OF SECTION 14(7) OF THE PENSION FUNDS ACT, 1956

No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			<p>4.7.2 by giving the member or non-member spouse written notice of the terms on which he or she has given permission for the deduction and payment of such fees or commissions in the past; and that-</p> <p>4.7.2.1 he or she has the right to give the fund written notice in a way specified by the fund that he or she does not agree to the deduction and payment of fees or commissions to his or her financial services provider on the same terms for a further period not exceeding twelve months; and</p> <p>4.7.2.2 if he or she does not exercise that right by a date specified in the notice, he or she will be deemed to have agreed to it the further deduction and payment of fees or commissions on those terms.</p> <p>Paragraph 4.7.2. appears to make provision for a deemed authorisation if notification had been sent to the member and the member failed to respond which is an indication that the member's authorization will continue to apply for further period of 12 months on the same terms as the pre-ceeding 12 months.</p> <p>We are of the view that this is a feasible option that the retirement fund/administrator should be able to explore.</p>	
31.	3.12.	FIA	<p>Whilst section 14(7)(b)(ii)(bb) is clear in that any such fees must be negotiated and agreed to in writing annually by the transferring member or non-member spouse, it unfortunately does not take into consideration the practical and real scenario whereby the transferring member, mistakenly fails to sign the annual fee agreement. Would the transferring member then engage directly with the underwriter concerned? It is proposed</p>	<p>The practicalities are noted; however, the requirement stipulates that the fee or commission must be negotiated and agreed to in writing by the transferring member or non-member spouse annually. No fees or commissions can be paid, directly or indirectly if this condition is not met. There</p>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			<p>that the Regulator considers the possibility of retaining in-force, the negotiated fee (between the transferring member and servicing intermediary) until such time that the transferring member changes or terminates his/her servicing intermediary.</p> <p>Current practice also indicates that most transferring members opt for the fee to be deducted from their funds/investment as opposed to being invoiced for this particular service from the servicing intermediary.</p>	<p>needs to be agreement (annually) of the deduction of the fee or commission exceeding the limitations in the Regulations under the Long-term Insurance Act.</p>
32.	3.12.	Liberty Group including STANLIB	<ul style="list-style-type: none"> • We understand there have been different interpretations in respect the application of s14(7)(b)(ii)(bb) in that some are of the view this does NOT apply to non-written RA Funds, namely that the requirement for an annual review of the fees is not required in respect non-written RA Funds. • We are of the view that s14(7)(b)(ii)(bb) applies to ALL RA Funds and request that this be made clear in the Guidance Note. 	<p>Noted, Section 14(7)(b)(i) makes no distinction as this applies across underwritten and non-underwritten funds. However, section 14(7)(b)(ii) refers to commissions or fees in excess of the Regulation under the Long-term Insurance Act, therefore the transferor fund is underwritten. Importantly please see paragraph 3 of FSCA Communication 19 of 2022 (RF) published alongside the draft Guidance Notice that explains the expected impacts of pending regulatory reforms on these provisions in the PFA.</p>
33.	3.12.	OUTvest (Pty) Ltd	<p>In addition to our comment made above (under 3.8), does a member or non-member spouse need to give authorisation to a Fund or Administrator on an annual basis, even if the fee stays the same as the previous year? If the fee needs to be negotiated and agreed to on an annual basis, and the fee stays the same, it is our view that the members should not be required to authorise those fees on a yearly basis. If a member has authorised a Fund or Administrator to pay a certain fee to a financial services</p>	<p>Please see the response to the commentator’s comment on paragraph 3.8 above. The purpose of the Guidance Notice is to provide guidance to the industry to ensure a consistent understanding and application of section 14(7)(b) in respect of the inconsistency between the PFA and the Regulations under the Long-term Insurance</p>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			<p>provider and has agreed to the fee in writing, what need or purpose does a yearly authorisation serve – considering that the fee may be stopped at the client’s discretion? The way that we read Section 14(7)(ii)(bb)(B) is that the fee needs to be agreed to in writing annually, which fees are authorised by the transferring member – meaning that if a Fund or Administrator have authorisation for a percentage fee, and the fee or percentage is not increased, the authorisation stays in place unless stopped by the member and does not require a new authorisation. Is our interpretation and understanding correct?</p> <p>It is stated under paragraph 3.12 that “It therefore follows that any authorisation by the transferring member or non-member spouse for the fees to be paid by the fund or administrator must also be confirmed on an annual basis”. Does this mean that the Fund or</p>	<p>Act. Section 14(7)(ii)(bb) inserts the requirement that fees or commissions in excess of what is allowed in the Regulations under the Long-term Insurance Act must be negotiated and agreed to in writing by the transferring member or non-member spouse annually.</p> <p>No, this interpretation that authorisation stays in place unless stopped by the member and does not require a new authorisation is incorrect. Regardless of whether the fees stay the same or change, if they are in excess of what is provided for in the Regulations under the Long-term Insurance Act and for financial services rendered by a financial services provider or representative after the transfer the fees need to be negotiated and agreed to annually. Also, please see subsection 3A(1)(a)(iv) of the FAIS General Code which applies in addition to s14(7)(b)(ii).</p> <p>The authorisation for the deduction includes agreement on the amount. The requirement speaks to negotiation, therefore it is not enough that a communication is sent out from the administrator.</p>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			Administrator just need to confirm the authorisation in writing to the member? For example that the Fund or Administrator annually send out communication to the member which sets out what the fee payable is and that the authorisation stays in place.	
34.	3.12.	Sanlam Life Insurance	Ensures that an adviser does not continuously earn a fee when there has been no relationship maintenance.	Agreed.
35.	3.12.	Sanlam Life Insurance Limited (Group Compliance)	If the transfer of pension interest of a non-member former spouse to a transferee fund is regarded as ‘new business’ by that fund, there is a danger that commission would be charged ab initio on the funds if they are regarded as a lump sum premium on a new retirement annuity policy. Please see point 3.7 above regarding the annual renegotiation of the fee.	It is not clear from the comment how this can be seen as ‘new’ business and not a transfer – as the description in section 14(7) is clear. Not dealing with it as a transfer would risk contravening section 14(7). Please see response above to comment by commentator on paragraph 3.7.
36.	3.13.	Allan Gray	Refer to comment 3.12	Refer to response to 3.12 above
37.	3.13.	OUTvest (Pty) Ltd	Same question as paragraph 3.12. However, in addition, it is stated under 3.13 that “Where a fund or administrator obtains the authorisation contemplated in section 14(7)(b)(ii)(bb)(B), the fee must be confirmed in writing annually thereafter subsequent to the annual negotiation and agreement...” Does this place a responsibility on the Fund and Administrator to confirm the fee? In our view, Section 14(7)(ii)(bb)(B) does not place an obligation on the Fund or Administrator to also confirm the fee in writing annually. We would just appreciate clarity in this regard and specifically who needs to confirm the fee in writing annually.	Section 14(7)(ii)(bb)(B) requires that any fees for financial services rendered after the transfer that exceed commission in the LTIA Regulation must be negotiated and agreed to annually in writing by the transferring member or non-member spouse. Paragraph 3.12 explains that where such a fee is paid by the fund or administrator, this must also be confirmed annually and in writing. Nothing precludes such an authorisation from the transferring member or non-member spouse to be done in a single document or process as long as the member is clear on the fee and how this will be paid.
38.	3.13.	Sanlam Life Insurance	Please see point 3.7 above regarding the annual renegotiation of the fee.	Please see response to 3.7 above.

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
		Limited (Group Compliance)		
4. APPLICATION OF THE LTIA REGULATIONS				
39.	4.1.	IRFA	This paragraph is confusing. We suggest that it simply states as follows: “Parts 3A and 3B of the LTIA Regulations regulate the payment of commission for rendering services as intermediary and apply inter alia to such service in respect of long-term insurance policies issued to underwritten retirement annuity funds, referred to as “fund member policies”.”	Agreed that the paragraph can be shortened to remove the technical explanation of the application of Part 3A and 3B. See ammendment in the Guidance Notice.
40.	4.2.	Allan Gray	We agree to the extent that the remuneration is paid by the insurer i.e., where there is a contractual nexus between the insurer and the FSP for the purposes of remunerating the FSP. However, section 14(7)(b)(ii)(bb)(A) makes provision for fees to be negotiated and agreed between the FSP and the member and paid by the member personally. We do not agree that the commission regulations extend to remuneration paid directly by the client (member) as agreed between the member and the FSP and paid by the member.	Disagree. Please see Part 3A and 3B of the Regulations which throughout refer to consideration provided to or accepted by. The commission regulation therefore applies both to the payer and the recipient. As an example, Regulation 3.2 reads as follows: <i>“3.2 General limitations</i> <i>(1) No consideration shall, directly or indirectly, be provided to, or accepted by [our emphasis] or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of the payment of commission in monetary form.”</i>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
				<p>An independent intermediary may therefore not accept remuneration for rendering services as intermediary other than in accordance with s 49 of the LTIA and provision in the LTIA Regulations.</p> <p>It is not agreed that the said commission regulations do not extend to the fees or commissions paid after the transfer contemplated in section 14(7) of the PFA.</p>
41.	4.2.	IRFA	<p>It appears as if the underlined part is intended to confirm that if one only looks at the LTIA Regulations, <u>it will not be possible to negotiate and agree upon a fee to be paid on a transfer amount as contemplated to in subsection 14(7)(b)(ii)(bb)</u>. The wording used however is a bit confusing. It is suggested that the underlined part be reworded to make the intention clearer, e.g. to use the words underlined above.</p> <p>Section 14(7)(b)(i) deals with all transfers, irrespective of whether or not either fund is an underwritten fund, and also state that no fees or commission will be payable for the actual transfer.</p> <p>Both item 2.1.3 of Table 1 of the LTIA Regulations (applying to fund member policies entered into before 1 January 2009) and Regulation 3.12(2)(b)(iii) (applying to fund member policies entered into on or after 1 January 2009) provide that there is no commission payable on the amount transferred from a retirement annuity fund (whether that fund is underwritten or not) to an individual fund member policy on an underwritten retirement annuity fund.</p> <p>Section 14(7)(b)(ii) deals with transfer from an underwritten fund and allows for negotiated fees and commission in excess of the fees and commissions allowed for under the LTIA, payable on the transferred amount.</p>	<p>The interpretation of the Regulations under the Long-term Insurance Act is correct in that if read in isolation it is not allowed to negotiate a fee on the transfer amount. It is further correct that the Regulations under the Long-term Insurance Act only applies to underwritten funds.</p> <p>4.2 is however aimed at explaining the application of the LTIA regulations if read in isolation. The point of the Guidance notice is however not this, but to explain the inconsistency between the LTIA Regulations and that the PFA prevails in terms of the law of interpretation.</p> <p>The comment is noted on the systems of the administrators and the suggestion to incorporate a compulsory field on form H as to whether the transferor fund was underwritten.</p>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			<p>The LTIA Regulations only apply to underwritten retirement annuity funds, which means that the prohibition on the payment of commission on the transfer amount does not apply to non-underwritten funds. Section 14(7)(b)(ii) on the other hand deals with transfers from an underwritten fund and narrows down the application of the LTIA Regulations – it applies to transfers from an underwritten fund, irrespective of the status of the transferee fund. It will therefore apply to a non-underwritten transferee fund. A number of administrators do not have systems in place to recognize whether the transferor retirement annuity fund is an underwritten fund. We suggest that Form (H) should have a compulsory field which states whether the transferor fund was underwritten.</p>	
42.	4.2.	Sanlam Life Insurance Limited (Group Compliance)	<ul style="list-style-type: none"> • Recommend that ‘Remuneration’ is defined, as it is deduced from the section that it incorporates both fees and commission paid. • The fees in the last sentence can only be on the transferred amount which is the single premium on the receiving RA policy. It cannot mean to disallow a fund-based fee on the growing fund value in the receiving RA fund after transfer. For instance, it cannot disallow commission if the receiving RA also gets recurring contributions over and above the single premium. Section 14 can only rule the transfer as such and it is arguable whether the annual negotiation after transfer be ruled from section 14. 	<p>It is agreed that the term remuneration refers to both fees and/or commission. It is not needed to define this term in the context as from the normal grammatical meaning it is clear that both fees and commissions will be captured when there is reference to remuneration.</p> <p>Section 14(7)(b)(ii) (bb) means that the fees and or commission will not be permissible where the transferee fund is an underwritten retirement annuity fund. It is agreed that this relates only to the transferred interest alone and not other recurring contributions. The last part of the comment is not understood in respect of the annual negotiation. The annual negotiation and agreement in writing is a clear requirement in Section 14(7)(b)(ii) (bb)(B).</p>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
43.	4.3.	IRFA	In some instances “section 14(7)(b)(ii)” is used, and in others “subsection 14(7)(b)(ii)”. Rather use “section 14(7)(b)(ii)” throughout the Guidance Notice.	Noted. Agreed to align.
44.	4.3.	Sanlam Life Insurance Limited (Group Compliance)	If the statement relating to the ‘practical overall effect of the relevant parts of Part 3A and part 3B’, above, is to be accepted, then this would be correct. See our comments at 2.2 and 6.3	Noted. See responses to 2.2 and 6.3.
45.	4.4.	Sanlam Life Insurance	Clears up inconsistencies between PFA and LTIA.	Noted. Purpose of Guidance Note achieved in providing clarification on the inconsistency between the primary law and the subordinate law.
5. APPLICATION OF THE FAIS GENERAL CODE OF CONDUCT				
46.	5.	IRFA	Why is it relevant to have this paragraph in the Guidance Notice? The provisions of the FAIS Act and the FAIS General Code of Conduct apply to fees and commissions payable on all retirement products, not just retirement annuity funds. It is suggested that it be removed. If this suggestion is not accepted, rather summarise the provisions of sections 3A(1)(a)(iv) and (d) of the Code in the Guidance Notice to avoid having to search for these provisions elsewhere.	The purpose is to remind the reader that the PFA should not be read in isolation. Even though the limitation on commission in the LTIA Regulations would apply to fees and commissions related to an underwritten fund the industry and intermediaries in the case of a non-underwritten funds are reminder of the application of the FAIS General Code specifically insofar it relates to remuneration. The requirements in subsection 3A(1)(d)(ii) of the FAIS General Code - namely the prohibition on remunerating an intermediary more than once for the same service is stipulated is particularly important for the industry to take note of.
47.	5.2.	Sanlam Life Insurance	Affords autonomy to the client as fees can be stopped at any time.	Agreed.

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
48.	5.3.	Allan Gray	Section 3A(1) of the FAIS General Code deals with financial interest received by a FSP (financial adviser) from a third party. Section 14(7)(b)(ii)(bb)(A) provides for fees to be paid to a FSP by the member personally. The member is not a third party in relation to the financial adviser. We therefore do not believe that the FAIS general Code is applicable. We do acknowledge that this method of paying a financial adviser is not common in practice	Noted and agreed. The previous paragraph 5.3 of the Guidance Notice has been deleted.
49.	5.4.	Sanlam Life Insurance Limited (Group Compliance)	The provisions of the FAIS Code of Conduct are wider than the limitation contained in section 14(7)(b)(ii)(BB) of the Pension Funds Act Footnote 5 refers to paragraph 4.8 – this is a typographical error. It should refer to paragraph 3.8	It is true that the operation of the sections in the General Code is not limited to retirement annuity funds, but it remains relevant to highlight the application thereof, especially in relation to non-underwritten funds. section 14(7) of the PFA. Footnote 5 has been deleted.
6. CONCLUSION				
50.	6.	IRFA	<p>The Guidance Notice does not provide the clarity that was requested and still requires a lot of interpretation. Can we please have a summary of the relevant issues to remove any possible ambiguity?</p> <p>We suggest the following:</p> <p>6.1 Section 14(7)(b)(i) provides that no fees or commissions for any services relating to the transfer itself between retirement annuity funds are allowed, irrespective of whether either the transferor fund or the transferee fund is an underwritten fund.</p> <p>6.2 Section 14(7)(b)(ii) imposes certain restrictions on the excess of the maximum commission permissible under the Long-term Insurance Act (LTIA) on retirement annuity fund transfer amounts.</p> <p>6.2.1 The restrictions: the higher fee must be negotiated and agreed to in writing by the member annually.</p>	<p>FSCA Communication 19 of 2022 (RF) provides a summary by alluding to the objectives of the Guidance Notice. It states:</p> <p><i>“(a) When applying section 14(7)(b)(ii) of the PFA it must be kept in mind that subsection 3A(1)(a)(iv) and subsection 3A(1)(d) of the FAIS General Code applies together with the sections of the PFA.</i></p> <p><i>(b) In respect of the payment of fees and commissions for financial services rendered by a financial services provider or representative after the transfer of interests, any fees and commissions over the maximum allowed for in terms of the LTIA Regulations would require that the</i></p>

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			<p>6.2.2 Any authorisation by the transferring member for the fees to be paid by the fund or administrator must be confirmed on an annual basis. This must be done by the member personally and cannot be done by his financial service provider or representative to whom the fees are to be paid.</p> <p>6.2.3 The restrictions only apply where the transferor retirement annuity fund is an underwritten retirement annuity fund.</p> <p>6.2.4 The restrictions only apply on the transfer amount, not to new on-going or additional lump sum contributions after the transfer, or to any investment growth after the transfer.</p> <p>6.2.5 The fees prescribed on a transfer amount under the Long-term Insurance Act for a transfer from a retirement annuity fund is nil. Accordingly, all fees and commission payable on a transfer from an underwritten retirement annuity fund will be subject to the restrictions.</p> <p>6.2.6 Fees may be negotiated and agreed regardless of whether or not the maximum commission provided for in the LTIA Regulations had been paid before the transfer was effected. The maximum commission applying to fund member policies entered into before 1 January 2009 is prescribed in item 2.1.1 of Table 1 of the LTIA Regulations, and for fund member policies entered into on or after 1 January 2009, in Regulations 3.12(1) and 3.12(2)(a).</p> <p>6.2.7 If the restrictions are complied with, there is no prescribed maximum cap on the amount of the negotiated and agreed fees.</p>	<p><i>requirements of subsection 14(7)(b)(ii)(bb) are met.</i></p> <p><i>(c) The PFA prevails over the LTIA Regulations, in respect of the inconsistency that exists in relation to remuneration payable in the context of transfers from one underwritten retirement annuity fund to another.”</i></p> <p>These main elements are also provided in the Guidance Notice under the heading “Conclusions”. The intention of the Guidance Notice is to provide clarity specifically when it comes to the inconsistency between the PFA and the Regulations under the Long-term Insurance Act. The queries received that prompted the Guidance Notice dealt with this aspect specifically and a need was identified to provide clarity across the industry participants. Even though the commentator provides a summary of what is said in the Guidance Notice. We remain of the view that there is value in more circumspectly describing the interpretation for the benefit of guiding the industry.</p> <p>The conclusion remains the same.</p>
51.	6.1.	Allan Gray	Refer to comment 5.3	Refer to response provided on the comment on paragraph 5.3
52.	6.3.	Sanlam Life Insurance	Provides greater clarity in terms of which is the primary legislation applicable. Removes grey areas	Noted.

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
53.	6.3.	Sanlam Life Insurance Limited (Group Compliance)	While we note the rules of interpretation, we do not think the Pension Funds Act should overrule the regulations of another Act and the legislation should rather be aligned to address such conflicts and avoid ambiguity. While this is accepted for purposes of the Guidance Note, it is hoped that this is one of those areas of ambiguity that will be clarified through the FSCA's Harmonisation Programme.	The purpose of the Guidance Notice is to alleviate uncertainty and to ensure more consistent application of section 14(7) that exists currently. Please refer to FSCA Communication 19 of 2022(RF) which details the future regulatory reforms which the Authority anticipates will in due course resolve the current inconsistency.
54.		Sanlam Life Insurance Limited (Group Compliance)	In addition to our comment at 2.2 above we also refer to the comment:” The PFA prevails over the LTIA Regulations, in respect of the existing inconsistency that exists in relation to remuneration payable in the context of transfers from one underwritten retirement annuity fund to another.” As pension interest transfers are also mentioned in section 14(7) it is indicated that no commission is also payable on the single premium as a result of the transfer to an underwritten retirement annuity fund for the spouse who was a non-member of the transferring underwritten retirement annuity fund. It is debatable that one Act can overrule sub-legislation of another Act. In any event there seems to be a conflict between the draft Communication 19 and the FSRA Conduct Standard 1 of 2019	If a conflict exists between a primary financial sector law and a subordinate financial sector law, the primary law prevails. Paragraph 18(a) of the FSRA Conduct Standard No.1 of 2019 deals with the requirements of section 14(1) of the PFA and states that a transfer of pension interest awarded in terms of section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), to a non-member spouse are not considered to be a 'transfer of business' as contemplated in section 14(1). This does not extend to section 14(7) of the PFA.

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No	Paragraph of the draft Guidance Notice	Commentator	Comment	Response
			<p>which states:</p> <p>18. Transactions that do not fall within the ambit of section 14</p> <p>The transactions listed below are not considered to be a 'transfer of business' as contemplated in section 14(1):</p> <p>(a) A transfer of pension interest awarded in terms of section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), to a non-member spouse.</p> <p>(b) A transaction entailing a member who, on leaving the service of an employer or upon liquidation of the fund, is entitled to receive a benefit in cash or is entitled to elect to translocate the benefit to another fund, including a preservation fund.</p> <p>(c) A transaction entailing a member who makes an election in terms of Regulation 38(1)(b)(i) to transfer to another fund.</p> <p>(d) A transaction entailing the purchase of an annuity policy from a long-term insurer on the retirement of a member.</p> <p>(e) The purchase of one or more annuity policies on behalf of a deceased member's beneficiaries on the death of a member, where the rules of the fund allow this.</p> <p>Clarify is sought regarding the above Communication and please see our suggestion at paragraph 2.2.</p>	

SECTION C - GENERAL COMMENTS

No.	Issue	Commentator	Comment/input	Response
ANY OTHER GENERAL COMMENTS				
55.	Is there a need for annual fee renewals where an FSP is appointed	Allan Gray	We appreciate that transfers present an opportunity for exploitation, and hence why initial fees on the transfer are disallowed. We also understand why its problematic if the same FSP	The comment is noted. It is agreed that the interpretation of the provision in section 14(7)(b)(ii) must be read to apply regardless of whether it is the same FSP before the transfer

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	<p>after the transfer and where fees have been agreed with the member?</p>		<p>earns a commission pre-transfer and an ongoing asset-based fee post-transfer without some kind of regulatory intervention which is what section 14(7) intends to address.</p> <p>Many section 14 transfers are initiated by an FSP on behalf of a member other than the FSP that received the commission while the member was a member of the underwritten transferee fund. In other cases, a new FSP is appointed by the member after the transfer to a non-underwritten fund wherein asset-based fees have been agreed to. On the literal wording of the provision, the requirement for fees to be agreed annually on the transferred amount appears to apply even in these circumstances. The emphasis appears to be that if any commission was payable pre-transfer, no further fees maybe payable post transfer (unless agreed to annually by the client) regardless of whether it is the same or a different FSP.</p> <p>We are of the view that annual fee renewals in the circumstances described above is not necessary as the danger that section 14(7)(b)(ii) aims to mitigate does not manifest. The FSCA is urged to give this some consideration.</p>	<p>that now provide the service after the transfer of the interest. If the fees or commissions exceed what is allowed for in the Regulations under the Long-term Insurance Act that is being charged for services rendered after such transfer, then the conditions stipulated in subsection (ii)(bb) must be met.</p> <p>The annual negotiation and agreement of post transfer fees and commission ensures that the customer continues to receive the services for which they are paying post transfer and that the payment of such fees are not out of kilter with the services so rendered.</p>
56.	<p>Do you find the format of the draft Guidance Notice user friendly and simple to understand? If no, please provide suggestions for improvement.</p>	IRFA	<p>No. The draft Guidance Notice is very difficult to read and does not provide the clarity sought by the industry. The suggestion for a very simplified conclusion should address this.</p>	<p>The Guidance Notice attempts to provide clarity on a complex and technical matter, which cannot be simplified further. Should further clarity be sought on an individual basis, the FSCA can provide the clarity through a conversation. The conclusion section of the Guidance Notice provides summarized points:</p>

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				<ul style="list-style-type: none"> • subsections 3A(1)(a)(iv) and 3A(1)(d) of the FAIS General Code apply together with the sections of the PFA. • The requirements of subsection 14(7)(b)(ii)(bb) must be met when paying fees/commissions over what is allowed for in the LTIA Regulations. • PFA prevails over the LTIA Regulations as PFA is primary legislation. <p>Also see response to comment from commentator on the conclusion of the Guidance Notice above.</p>
57.	Fees must be negotiated and agreed to in writing annually	IRFA	<p>In future legislation, the policy intention behind this requirement for annual negotiation and confirmation of fees needs to be considered. Is it still necessary? In other words, why is it necessary to treat retirement annuity funds differently by getting advice fees annually renewed?</p> <p>There should preferably be a negative annual consent accommodated. Clients should be communicated to on an “opt out” basis rather than an opt in basis. Clients are often not efficient at reading their emails or communicating with their advisers timeously. If an opt in basis is adopted annually, it could be disruptive to advice provided. Financial advisers advise on clients’ portfolios holistically and removing one product from the advice framework might negatively impact the client’s portfolio as a whole. Alternatively, there should be a period of say 3 months, to continue paying the advice fee to accommodate the delay in clients getting back to their advisers before an administrator turns off the advice fee.</p>	<p>The comment is noted. However, the FSCA does not agree with providing consent on an “opt-out” basis when it comes to fees for financial services. The argument brought forward by the commentator in support of this is focused on the disruption that obtaining approval will cause the adviser, and does not seem to consider the benefit this holds for member and non-member spouses (i.e., consumers)</p> <p>If consumers is aware and reminded of their paying a fee to an advisor they can actively consider the benefit of the service in relation to the cost of the fee, and for example where the services are no longer needed, not rendered or of a poor quality the customer has the active choice of not agreeing to the services of the advisor for future use.</p>
58.	Effective date and transition period	IRFA	<p>There has been a lack of clarity in the interpretation of section 14(7). Those service providers who do not currently apply the</p>	<p>Unfortunately, a transitional period cannot be provided for as this Guidance Notice is not a regulatory instrument. It does not place a new</p>

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			restriction would need a lead time of 3 to 6 months in order to get their systems and processes in place to accommodate the annual advice fee review.	requirement on financial institutions and therefore no transitional period can be applied. It merely provides non-binding guidance on how the FSCA interprets that legislation. If there are matters that needs to be discussed in terms of compliance following this Guidance Notice, please engage with your supervision analysts at the FSCA.
59.		Liberty Group including STANLIB	Notwithstanding that this is a Guidance Note, and not a regulatory instrument, we request that a transitional period be provided for to allow for the necessary procedural and operational changes to take place and request that the application of this Guidance Note applies at the renewal date where a fee has been negotiated in terms of s14(7)(b)(ii)(B)	Unfortunately, a transitional period cannot be provided for as this Guidance Notice is not a regulatory instrument as the commentator correctly stated. It does not place a new requirement on a financial institution and therefore no transitional period can be applied. It merely provides non-binding guidance on how the FSCA interprets that legislation. If there are matters that needs to be discussed in terms of compliance following this Guidance Notice, please engage with your supervision analysts at the FSCA.
60.	COFI & further conduct standards dealing with intermediary remuneration	Ninety-One	Refer to comment 1	Refer to response to comment 1 above.