



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

NOVEMBER 2021

1 BACKGROUND AND PURPOSE OF THE STATEMENT

- 1.1 In terms of section 98 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), a financial sector regulator may not make a regulatory instrument unless it has published the following documents:
- (a) a draft of the regulatory instrument;
 - (b) a statement explaining the need for and the intended operation of the regulatory instrument;
 - (c) a statement of the expected impact of the regulatory instrument; and
 - (d) a notice inviting submissions in relation to the regulatory instrument, stating where, how and by when submissions are to be made.
- 1.2 The FSR Act defines a regulatory instrument as amongst others:
- “(f) an instrument identified as a regulatory instrument in a financial sector law; and*
(g) an instrument amending or revoking an instrument referred to in paragraphs (a) to (f)”.
- 1.3 Section 1B of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS Act) determines that for the purposes of the definition of “regulatory instrument” in section 1 of the Financial Sector Regulation Act, codes of conduct drafted under section 15 is a regulatory instrument. Therefore, the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (General Code) and any amendment made thereto constitutes a regulatory instrument for purposes of the Financial Sector Regulation Act.
- 1.4 In fulfilment of the abovementioned requirements, the Financial Sector Conduct Authority (Authority) has prepared a statement of the need for, intended operation and expected impact of the proposed amendments to the General Code (proposed amendments).

2 STATEMENT OF NEED

- 2.1 The General Code was first published under Board Notice 80 of 2003. The General Code was subsequently amended on multiple occasions to ensure the requirements stays current.
- 2.2 The proposed amendments discussed below are necessary to contribute to the fulfilment of the Authority's legislated objectives and is ultimately intended to promote the fair treatment and protection of financial customers.
- 2.3 The proposed amendments include the following –

- (a) *Additional protection to financial customers:* The Authority received various complaints from customers whereby customers were under the impression that they experienced the protection of the FAIS Act when dealing with a licenced FSP, however the products or services offered to the customers did not fall within the ambit and mandate of FAIS and no protection was afforded. In order to ensure that the customer is making an informed decision an additional disclosure obligation is being created with the proposed amendment. Where products other than financial products and services are sold to a customer, the FSP must additionally disclose that the products or services does not fall within the ambit of the Act with the aim to ensure customers understand that they are not afforded protection under the FAIS Act for these other products or services and act accordingly.
- (b) *Alignment of requirements relating to premium collection across short- and long-term insurance:* Currently requirements in relation to premium collection activities are imposed both from the insurance regulatory framework perspective as well as in terms of the FAIS Act. As alluded to in the 2019 FSCA Position Paper¹ which sets out proposals on the future regulatory framework for the collection of insurance premiums, there is an inconsistency within the FAIS framework itself in respect of the application of section 10 of the General Code to the collection of long- term insurance premiums as opposed to short-term insurance premiums. Further to this there is a need to align the requirements in section 10 of the General Code and the premium collection requirements contained in the Regulations under the Short- and Long-term Insurance Acts in order to avoid potential regulatory arbitrage and to ensure harmonisation between the requirements applicable to the collection of long-term and short-term insurance premiums. The premium collection framework in the Regulation under the Short- and Long- term Insurance Acts were amended to ensure alignment between long-and short-term insurance in September 2018. As such, an amendment to the custody and financial products and fund requirements, is being proposed to extend the current exclusion applicable to the collection of short-term insurance premiums to also apply to the collection of long-term insurance premiums, thereby further. Aligning the requirements across the short- and long-term insurance premium collection frameworks.
- (c) *Limiting the need for a further exemption:* Currently banks and insurers are exempted from the requirement to hold a suitable guarantee or professional indemnity or fidelity insurance

¹ Available at:
<https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/FSCA%20Position%20Paper%20on%20future%20Insurance%20Premiums%20Collection%20Framework.zip>

cover. This exemption has been extended on numerous occasions (starting in 2015) and the main reason for this exemption is because of the fact banks and insurers are prudentially regulated and this requirement does not necessarily lead to any additional protection considering that fact that banks and insurers are already subjected to robust prudential requirements serving a similar purpose. Therefore, an amendment to the General Code is proposed to permanently exclude banks and insurers from having to obtain a suitable guarantee or professional indemnity or fidelity insurance cover.

3 STATEMENT OF IMPACT OF THE PROPOSED AMENDMENTS

- 3.1 The impact of the additional disclosure requirements on FSPs and their representatives referred to in paragraph 2.3(a) is expected to be minimal.
- 3.2 The alignment of requirements relating to premium collection across short- and long-term insurance and incorporation of an existing exemption as explained in paragraphs 2.3(b) above is also expected to have little to no impact on FSPs or their representatives as no new requirements are being proposed.
- 3.3 The amendment referred to in paragraph 2.3(c) is expected to have no impact as there is already an existing exemption serving the same purpose. No new requirements are being proposed.

4. STATEMENT OF INTENDED OPERATION OF THE PROPOSED AMENDMENTS

- 4.1 The draft amendments are consistent with the objective of the FSCA, specifically the mandate of the FSCA to protect financial customers by promoting the fair treatment of financial customers by financial institutions.
- 4.2 Once the final amendments have been published, all FSPs will be required to comply with the amended requirements. Due to the nature of the amendments, i.e., alignment of premium collection requirements and an existing exemption in place, the Authority is of the view that specific transitional periods are not required.
- 4.3 The proposed amendments are intended to take effect early 2022.

5. WAY FORWARD

The proposed amendments have been published in terms of section 98(2) of the FSRA for a period of 6 weeks for public comment. After careful consideration of all submissions received on the draft

Amendment Notice, the Authority has made the necessary changes to the draft Amendment Notice and will submit the updated Amendment Notice to Parliament (with the assistance of National Treasury) for a period of at least 30 days while Parliament is in session.