

CONSULTATION REPORT

AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

Consolidated comments and responses to public comments received

November 2021

1. Purpose

The purpose of this document is to set out, as required in terms of section 104(1) of the Financial Sector Regulation Act, a report on the consultation process undertaken in respect of the draft amendments to the draft General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (draft amendments).

2. Definitions

In this consultation report –

“**Authority**” means the Financial Sector Conduct Authority;

“**General Code**” means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, published in Board Notice No. 80 of 2003, as amended.

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

“**Financial Sector Regulation Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

3. Background

- 3.1 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.
- 3.2 The draft amendments 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.
- 3.3 The main purpose of the draft amendments is to update the General Code in order to offer additional protection to financial customers, to align requirements relating to premium collection across short- and long-term insurance and to limit the need for a further exemption notice.
- 3.4 Section 1B of the FAIS Act states that codes of conduct determined under section 15 are regulatory instruments.

- 3.5 As the General Code is a regulatory instrument, the process for making regulatory instruments as set out in Chapter 7 of the Financial Sector Regulation Act must be applied when giving effect to amendments to the General Code.
- 3.6 As part of this process, section 104(1) and (2) of the Financial Sector Regulation Act provides that with each regulatory instrument, the Authority making the regulatory instrument must publish a consultation report which includes a general account of the issues raised in the submissions made during the consultation, and a response to the issues raised in the submissions.
- 3.7 The purpose of this document is to provide a report on the consultation undertaken during the amendment of the General Code.

4. Summary of consultation process and general account of the issues raised

- 4.1 The following documents were published for public comment on 30 November 2020:
- A Notice regarding the publication of Draft Amendments to the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 inviting comment;
 - A statement of the need for, intended operation and expected impact of the proposed amendments to the General Code.
- 4.2 Ten (10) commentators submitted comments on the draft amendments.
- 4.3 Commentators raised a concern with the draft amendment to section 3A of the General Code, which proposed to insert a new item (1)(a)(iv)(bb), as well as the new section 8(5). The new clauses 3A(1)(a)(iv)(bb) and 8(5) were proposed to give effect to RDR related reforms, i.e. to set requirements which must be adhered to in order to be able to charge advice fees. Concerns raised noted that these proposed amendments constitute a duplication of the requirements already in place in section 3A(1) of the General Code and that the latter already facilitates the charging of advice fees. The FSCA wishes to clarify that the intention behind these proposed amendments were to specifically allow for advice fees in the context of insurance policies. The Regulations under both the Long- and Short-term Insurance Acts (Insurance Regulations) currently limit remuneration that may be received when rendering “services as intermediary” (as defined in the Regulations) in relation to life (long-term) and non-life (short-term policies). The definition of “services as intermediary” in the Regulations is very wide and includes advice provided in respect of insurance policies. Therefore, the provision of advice in the context of insurance policies is currently subject to the commission limitations. Against this background, we disagree that section 3A(1) of the General Code facilitates the charging of advice fees in the context of insurance policies and the intention of the draft insertion was therefore aimed at allowing the charging of advice fees in the context of insurance policies notwithstanding the Regulations. However, in hindsight the FSCA

holds the view that it might be more appropriate to deal with this issue in the Insurance Regulations itself and not in the General Code. The insertion has therefore been removed and we will consider this in more detail when we review the Insurance Regulations in future.

- 4.4 In general, commentators did not raise any further significant issues in respect of the draft amendments.
- 4.5 Annexure A to this report sets out all the comments that were received on the draft amendments together with the Authority's responses to each comment.

ANNEXURE A

RESPONSE TO COMMENTS SUBMITTED ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

FINANCIAL SECTOR REGULATIONS ACT (ACT, NO. 9 OF 2017)

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Commentators:

<u>#</u>	<u>Commentator</u>	<u>Acronym</u>
<u>1.</u>	Association of Savings and Investment South Africa	<u>ASISA</u>
<u>2.</u>	The Banking Association South Africa	<u>BASA</u>
<u>3.</u>	Financial Intermediaries Association of South Africa	<u>FIA</u>
<u>4.</u>	Grovest	
<u>5.</u>	Leanne Jackson	

<u>6.</u>	Masthead Financial Advisors Association, and Masthead (Pty) Ltd	<u>Masthead</u>
<u>7.</u>	Moonstone Compliance	<u>Moonstone</u>
<u>8.</u>	National Treasury	
<u>9.</u>	South African Insurance Association	<u>SAIA</u>
<u>10.</u>	South African Institute of Stockbrokers	<u>SAIS</u>

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No	Respondents	Section of the notice	Issue/Comment/Recommendation	Responses
1.	ASISA	Section 2: Amendment of section 3A Insertion after item (1)(a)(iv)(bb)	Paragraph 2.4(a) of the Statement supporting the proposed amendments indicates that amendments are proposed to give effect to RDR related reforms, i.e. to set requirements which must be adhered to in order to charge an advice fee. It is submitted that these proposed amendments to section 3A of the General Code of Conduct have already been made on 26 June 2020 and became effective on 26 December 2020. Please refer to section 3A(1)(d) of the General Code of Conduct which adequately and more appropriately sets requirements for advice fees. The proposed amendment to section 3A(1)(a)(iv) is therefore wholly unnecessary.	Comment noted. We wish to clarify that the intention behind the proposed amendment, read with the proposed insertion of clause 8(5), was to specifically allow for advice fees in the context of insurance policies. The Regulations under both the Long- and Short-term Insurance Acts (Regulations) currently limit remuneration that may be received when rendering “services as intermediary” (as defined in the Regulations) in relation to life(long-term) and non-life (short-term policies). The definition of “services as intermediary” in the Regulations is very wide and would include advice provided in respect of insurance policies. Therefore, the provision of advice in the context of insurance policies is currently subject to the commission limitations. Against this background, we disagree that section

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				3A(1)(a)(iv) of the General Code facilitates the charging of advice fees in the context of insurance policies. The intention of the draft insertion was therefore aimed at allowing the charging of advice fees in the context of insurance policies notwithstanding the Regulations. However, in hindsight it might be more appropriate to deal with this in the Regulations itself and not in the General Code. The insertion has therefore been removed and we will consider this in more detail when we review the Regulations in future.
2.	FIA	Section 2 - Section 3A (1)(a)(iv) (cc) and (dd)	We are assuming that these provisions regarding financial interest being commensurate with the services rendered include compensation in respect of the cost of providing the service, the risk of doing the business and a reasonable profit margin for the financial institution, as these are all elements that would be required to manage a sustainable financial institution. In addition, it should not only include the cost of providing the service, but all other costs in running the business such as rental costs, training, research, employee costs, regulatory costs, insurance, etc. that cannot be directly linked to the provision of the specific service. That, however, is our view and we are concerned that others may not interpret the wording in a similar manner. In our view, it would be useful if the FSCA could consider issuing guidance notes along with the draft changes so as to provide clarity on what is intended by the wording used.	Comment noted. Also see response directly above.

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			The proposed changes could open the industry up to potential regulatory arbitrage, where a strict interpretation of the words will, on the one hand, have some industry players making substantial changes to their fee models and on the other hand, have some doing absolutely nothing, taking a simplistic view of the wording. Furthermore, we are of the view that the wording ‘commensurate to the service being rendered’ needs to be reconsidered. At present, it creates the impression that a company that is able to perform the service more cost effectively, would be forced to reduce its fee income.	
3.	L Jackson	Section 2 - Section 3A (cc), (dd), (ee)	It is not clear why these criteria are being added here, as they are already covered (using slightly different language) by the provisions of s. 3A(1)(d). The effect is that where a provider earns a fee contemplated in s.3A(1)(a)(iv), that fee must meet both these new requirements and the similar but slightly differently worded existing requirements of s.3A(1)(d). Presumably this is not the intention? If it is necessary for some reason to have these provisions in both places, then they should at least be aligned.	See response to item 1 above.
4.	L Jackson	Section 2 - Section 3A (cc) & (dd)	The wording of the existing s.3A(1)(d)(i) is clearer and preferable to this formulation. The requirement for the fee to be "not unreasonable" with no further qualification is difficult to interpret and the requirement for the fee to "commensurate" with the service rather than "reasonably commensurate" is harsh.	See response to item 1 above.
5.	L Jackson	Section 2 - Section 3A(ee)	The wording of existing s.3A(1)(d)(ii) is preferable. "More than once" is more accurate than "twice"; and "the same service" is easier to circumvent than a "similar" service.	See response to item 1 above.
6.	Masthead	Para 2(a) – re s3A(cc) and (dd)	We have a concern with the use of words like “unreasonable” and “commensurate” as suggested for these two subsections. Our concern lies in	See response to item 1 above.

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			the vague and subjective nature of such words and extends to who determines what is “unreasonable” and “commensurate” in a given set of circumstances. With this uncertainty, we ask who bears the onus of proof – is it “<i>she who alleges (eg. a regulator), must prove</i>” or is it the FSP/provider that must dispel or refute such a claim? If it is the latter, we are concerned that this places unreasonable burden on the provider. Further, in terms of onus to defend or show reasonability, it is not clear whether the onus is on the offeror or the receiver of the financial interest? Given the vagueness and uncertainty that this creates, we suggest leaving out these two proposed subsection amendments.	
7.	Masthead	Para 2(a) – re s3A (ee)	We agree with this inclusion.	The comment is noted, however the proposed amendments will not be included at this stage.
8.	Masthead	Para 2(a) – re s3A (cc) to (ee)	Grammar: The words “those fees” should be added to the beginning of each of the subsections from (cc), (dd) and (ee). Also, if the words “those fees” are added to (ee), then the word “does” in that subsection should be changed to “do”.	The comment is noted, however, see response to item 1 above.
9.	Moonstone	Section 2 - Amendment of Section 3A to include (cc) – (ee)	Supportive of this amendment	The comment is noted, however, see response to item 1 above.

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10.	National Treasury	Section 2 “are not unreasonable”	The phrase sounds a bit confusing and not very clear, particularly to a layman. Is there a criteria in place to help in determining if something is “not unreasonable”	The comment is noted, however, see response to item 1 above.
11.	SAIA	Section 2 (amendment of section 3A of the General Code)	Comment 1 The FSCA is requested to consider qualifying the new section 3A(1)(a)(iv)(cc), to provide that the nature of the service and the resources, skills, and competencies reasonably required to perform the service must be taken into account when the fees are determined. This qualification will align the requirements on the Financial Service Provider in terms of the General Code of Conduct with the requirements as set out in the Binder Regulations. Comment 2 The definitions of advice and intermediary service need to be clearly delineated and aligned with activity-based costing. The proposed amendment does not make this clear. It is also submitted that the definition of advice insofar as it relates to “commission regulations” be removed to allow for the determination of fees on an activity basis. Comment 3 The FSCA is requested to reconsider the drafting of the new sections 3A(1)(a)(iv)(cc) – (ee), for example, it is suggested that the wording of the new section 3A(1)(a)(iv)(cc) should commence with (cc) those fees are not unreasonable; and the same for subsections (dd) and (ee).	The comment is noted, however, see response to item 1 above.

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12.	Grovest	Section 3, the amendment of Section 7 of the GCOC. The insertion of subsection "(5)"	Issue: My immediate first thought was that there is now an allowance for a provider to provide additional products and services to a client, other than the products and services the provider is approved to render, that being "registered at FSCA". Comment: The statement in my belief can be largely misinterpreted. Recommendation: 1. Rewording or the inclusion of the words <i>"approved additional product and services"</i> in the paragraph. 2. Since subsection "(4)" of the GCOC instructs a provider to provide the client with a "written statement", in respect of the details pertaining to the advice given and with product detail, for one or more financial products, I recommend the same instruction for subsection "(5)". Example; there must be a <i>"written disclosure"</i> that the projections of the additional products and services will not apply in respect of the provisions of the financial services in terms of the Act.	The proposed amendment relates to products and services not falling within the ambit of the FSCA, i.e. <i>"other than financial products or financial services"</i> . We do not believe that this is open to (mis)interpretation.
13.	L Jackson	Amendment of section 7 of the General Code	See suggested simplified wording. Drafting point: Note that it is the Act that "affords" the protection, not the products and services. "5) A provider who provides additional products or services to a client in addition to other than financial products or financial services, must inform disclose to the client the fact that the additional products or services sold or so provided does not afford the client the protections afforded by the Act that apply in respect of the provision of financial services do not apply to the provision of those additional products and services. in terms of the Act."	The comment is noted, and the wording has been revised.
14.	Masthead	Para 3(a) – s7(5)	We note the commentary in the explanatory note to the effect that this additional disclosure to customers provides additional protection to those customers.	The comment is noted, and the wording has been revised.

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			We support appropriate and relevant disclosure to clients, but we are concerned that clients are already bombarded with information, almost to the extent of overload, and we therefore question whether adding more disclosure adds any value. The fact that the FAIS Act may not provide protection in respect of a particular product, does not mean that the client doesn't have protection in relation to that product/service. For example, a person may act as an estate agent and an FSP within the same entity. When providing estate agent services, we find it unnecessary for a person to state that the FAIS Act does not give protection in relation to those services. Despite our comments above, we are concerned that there are still many instances where clients are sucked into non-regulated products through licensed FSPs. Therefore, perhaps the following, different wording would deal with the matter? <i>"A provider who provides additional products or services to a client other than financial products or financial services, must disclose to the client that the additional products or services are not regulated under the (FAIS) Act and therefore the client is not afforded the same protections in respect of those additional products or services that may apply in respect of the provision of financial products or services in terms of the Act."</i> Should the regulator not agree with this recommended change, then we suggest a grammatical fix to the proposed amendment as follows: <i>"A provider who provides additional products or services to a client other than financial products or financial services, must disclose to the client the fact that the additional products or services sold or so provided does<u>do</u> not afford the</i>	

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			<i>client the protections that apply in respect of the provision of financial services in terms of the Act.”</i> In addition to the above, we would suggest that many of the operators that peddle the unregulated products are not licensed under FAIS and do not provide clients with any form of disclosure. Therefore, the proposed amendment does little to alert clients of those entities. In our view, the regulator should seek to include these other products under the ambit of the relevant legislation that provides protection to the customer.	
15.	Moonstone	Amendment of Section 7 to include subparagraph (5)	Supportive of this amendment	The comment is noted.
16.	National Treasury	Section 7	Cosmetic comment. Please change “does” to “do” after “provided” in line 3 of the paragraph This amendment seems to suggest that a Financial Services Provider (“FSP”) can provide additional products that are not financial services or products. What could be the “additional products or services”?	The comment is noted, see revised wording. Note that many FSP’s conduct other “non-financial services” business, and these other products and services do not fall within the ambit of the Act. This could include e.g. the sale of goods such as furniture or vehicles or what is known as “add-on products”, to name but a few.
17.	SAIA	Section 3 of (amendment of	The FSCA is requested to provide clarity with regards to the following:	a) The requirement applies whenever an FSP provides products or services to a client other than financial products or

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		section 7 of the General Code)	a) Whether the disclosure required in terms of non-financial products or services will be required when conducting referrals. One member is of the view that the requirement regarding the disclosure in terms of non-financial products or services should be undertaken/ implemented by the product provider instead of a representative. b) One member is of the view that this requirement is not applicable to bundled products and only to products where there are additional/ optional purchases.	services. Although it would depend on the facts of the matter, it could probably be argued that merely providing a referral would not constitute “providing a product or service”) The requirement applies where it relates to a product or service that does not constitute a financial service or product. Whether or not such “other” product or service forms part of a bundled product (which might include FAIS regulated products) is therefore irrelevant, the requirement must still be applied in the context of the “non-FAIS regulated” products.
18.	ASISA	Section 4 - Amendment of section 8 Insertion of (5)	Section 8 of the General Code of Conduct deals with the suitability of advice. The proposed insertion of subsection (5), i.e. charging of advice fees, is out of the context of section 8 and likely to cause confusion. It may even lead to an assertion or misunderstanding that the FSCA is attempting to create a split between advice fees and fees for services as an intermediary as defined in insurance regulations which is not possible through amendments to the FAIS General Code of Conduct. It is submitted that section 3A adequately and appropriately deals with charging advice fees and to duplicate a requirement in section 8 will cause confusion. The insertion of subsection (5) is unnecessary.	See response to item 1 above. The same principle applies in respect of this draft amendment.
19.	Grovest	Section 4, the ammendement of Section 8 of the GCOC. The	Issue: In my personal view this may be a entryway to future abuse in the market by advisors especially if there are no strict fee guidelines in place i.e. thresholds. Important to reflect on what initially brought about the FAIS Act. Comment: Senario: A client receives advice from a Broker, provides all personal information and decides not to conclude the policy in the end. Is	Noted. See response directly above. This draft amendment will not be retained.

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		insertion of subsection "(5)"	that client liable for an advice fee? More guidance should be provided in trms of what warrants and advice fee in order to eliminate risk to the client and to ensure that the client is treated fairly. Recommendation: Although the proposed ammendment is to give effect to the RDR proposals, i recommend that the evidence of the adoption of TCF principles be made evident as one the the set criterias in order to charge such a fee and that perhaps an advice fee disclosure be made upfront in the Broker/Advisors Section 13 mandate with the client for example. It is important to see that the advice fee does not overly exceed the intial commssion fees in respect of the Ammendent 3A	
20.	L Jackson	Amendment of section 8 of the General Code	General comment / questions re the allowance for advice fees (which I fully support!): - Is the intention also to (simultaneously?) amend the Insurance commission regs to carve advice fees out of commission? Or to at least create a temporary dispensation to allow them? If not, a few anomalies arise. For e.g. s.3A(1)(a)(iv) refers to fees for services for which commission is NOT paid, so technically an adviser who earns both commission and charges an advice fee could not actually comply with s.3A(1)(a)(iv). They would also have a potential problem with the prohibition on being paid more than once for a similar service. - The RDR proposals around advice fees included various supporting proposals around customer contracting, disclosures, etc. Is the intention to still expand on these later? "(5) A provider providing advice to a client may charge <u>the client</u> an advice fee for the advice rendered, on the proviso that the charging of such a fee adheres to the requirements of section 3A(1)(a)(iv) <u>and 3A(1)(d).</u>"	See response directly above.

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			The client - Suggest this for clarity - i.e. per RDR principles this is a fee paid for directly by the client for a service rendered to the client, not an excuse for "add-on commissions" by product suppliers and other FSPs. 'and 3A(1)(d)' - As per my comments above, I question whether the new items under 3A(1)(a)(iv) are necessary as they are adequately (and more clearly) covered by 3A(1)(d). So this comment is based on the assumption that advice fees should be covered by the existing 3A(1)(iv) (aa) and (bb) and by 3A(1)(d).	
21.	Masthead	Para 4(a) – s8(5)	We support the inclusion of this provision but suggest that it would be more appropriate under s3A rather than s8 of the Code. This s8 deals with suitability of advice following the gathering and synthesis of information from the client and therefore we suggest that the proposed change would be a better fit under s3A as one of the types of financial interest to which a provider is entitled. More specifically, we believe that it could become a new s3A(1B). Since s3A(1)(a), in our view, only applies to financial interest received or offered <u>by or from a third party</u>, and since a client is not defined as a "third party", subsection s3A(1)(a)(iv) does not apply to fees payable between client and provider/FSP. If that subsection should apply, then we submit that a more correct reference in the proposed s8(5) should read "... <i>adheres to the requirements of subsections (aa) to (ee) of section 3A(1)(a)(iv)</i>".	Noted. However, see response to item 18 above.
25.	Moonstone	Amendment of Section 8 to include subparagraph (5)	We are supportive of the inclusion of an advice fee which may be charged by providers, however we urge the regulator to take cognisance of the practical implications of the proposed amendment within the context of the Long-Term and Short-Term Insurance Acts. To insert this amendment within the vacuum of the FAIS legislation only, will create numerous discrepancies if the amendment is to be applied in accordance with the relevant remuneration requirements within the Long-Term and Short-Term Insurance Acts.	Noted. See response to item 18 above.

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			With reference to the Long-Term Insurance Act ("LTIA"), the relevant remuneration sections and regulations can be summarised as follows: - Section 49 of the LTIA: "49. Limitation of remuneration <i>No consideration shall be-</i> <i>(a) offered or provided by a long-term insurer or a person on behalf of a long-term insurer to an independent intermediary or any other person; or</i> <i>(b) accepted by an independent intermediary or other person,</i> <i>for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations."</i> - Regulation 3.2(1) of the LTIA regulations stipulates as follows: "3.2 General limitations <i>(1) No consideration shall, directly or indirectly, be provided to, or accepted by 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> "Rendering services as intermediary" is defined in regulation 3.1 of the LTIA regulations as follows: <i>"...means the performance by a person other than a long-term insurer or a policyholder, on behalf of a long-term insurer or a policyholder, of any act</i>	

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			<i>directed towards entering into, maintaining or servicing a policy or collecting, accounting for or paying premiums or providing administrative services in relation to a policy, and includes the performance of such an act in relation to a fund, a member of a fund and the agreement between the member and the fund;"</i> With reference to the Short-Term Insurance Act ("STIA"), the relevant remuneration sections and regulations can be summarised as follows: • Section 48 of the STIA: "48. Limitation of remuneration <i>No consideration shall be-</i> (a) <i>offered or provided by a short-term insurer or a person on behalf of a short-term insurer to an independent intermediary or any other person;</i> or (b) <i>accepted by an independent intermediary or other person,</i> <i>for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations."</i> • Regulation 5.1 of the STIA regulations: "5.1 General limitations	

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			<i>(1) No consideration shall directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of commission in monetary form."</i> • "services as intermediary" is defined in regulation 1.1 of the STIA regulations as follows: <i>"... means any act performed by a person-</i> <i>(a) the result of which is that another person will or does or offers to enter into, vary or renew a policy; or</i> <i>(b) with a view to-</i> <i>(i) maintaining, servicing or otherwise dealing with;</i> <i>(ii) collecting or accounting for premium payable under; or</i> <i>(iii) receiving, submitting or processing claims under, a policy."</i> Although there are slight differences in wording of the LTIA and STIA sections and regulations referenced above, the working of the remuneration principles are exactly the same, and the proposed advice fee amendment will result in the same consequences (as set out hereunder) in both the LTIA and the STIA. According to the sections and definitions as set out above, it is clear that the provision of advice regarding a policy is included within the definition of "rendering services as intermediary" in the LTIA and the definition of "services as intermediary" in the STIA, and that the provider may therefore only be remunerated for such advice by way of the payment of commission in monetary form. There is no scope within the LTIA and the STIA for the separate remuneration for advice apart from remuneration in the form of commission, as the provision of the advice itself falls within the ambit of "any	

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			act” as referred to in regulation 3.1 of the LTIA regulations and regulation 1.1 of the STIA regulations. In support of our position above, we refer to the FSCA’s Retail Distribution Review document (“the RDR”) issued in 2019. In paragraph 3.4.2 of the RDR, the FSCA states the following: <i>“The FSCA is of the view that advice and most advice related services fall within the definition of “services as intermediary” and must therefore currently be remunerated through commission in accordance with the Insurance Regulations.”</i> The view of the FSCA above aligns with the current remuneration dispensation regarding intermediary services within the LTIA and the STIA, and we submit that the proposed amendment to the General Code of Conduct of the addition of an advice fee which may be charged by a provider, cannot be applied within the context of the LTIA and the STIA as the current wording of the sections and regulations referred to above is in stark contrast with the intention of the proposed amendment. We furthermore also refer the regulator to the Supreme Court of Appeal decision in <i>Maree v C Booysen t/a NVM Beleggings & Versekeringsadviseurs</i> (307/09) [2010] ZASCA 44 (31 March 2010), in which the remuneration to be accepted by intermediaries and the limitations placed thereon has been confirmed. In light of the above, we submit that the proposed inclusion in the absence of amendments to the definitions in the STIA and LTIA, is going to lead to mass confusion as to what fees may be charged and for what commission is already	

SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Respondents	Section of the notice	Issue/Comment/Recommendation	Responses
			being paid for. The ambiguity caused will naturally also provide space for regulatory arbitrage. We propose that, as an alternative, “advice fees” should be defined in the General Code of Conduct with enough clarity to provide certainty as to what activities are commissionable and which are not. •	
26.	SAIA	Section 4 (amendment of section 8 of the General Code)	The FSCA is requested to clarify the following: a) Section 3A(1)(a)(iv) already provides for financial services in respect of which commission or fees is not paid. Please clarify why advice fees are addressed separately from other financial services in respect of which commission or fees is not paid. b) Further, the current view is that regulated commission is remuneration for both intermediary services and advice. Accordingly, is the advice fee referred to herein over and above that which is remunerated as per commission regulations? If this is not the case, the proposed changes will result in a reconsideration of the commission structures and activity models that are currently in place. This will need to be considered in line with the Retail Distribution Review proposals that relate to advisor categorisation models that still need to be finalised. We also submit that the definition of advice insofar as it relates to “commission regulations” be removed to allow for the financial institution to consider the fees on an activity basis.	Noted. See responses to items 1 and 18 above.
28.	Masthead	Para 5(a) – s10(3)(a)	No comments.	Noted.

SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Respondents	Section of the notice	Issue/Comment/Recommendation	Responses
29.	Masthead	Para 5(b) – s10(3)(b)	No comments.	Noted.
30.	Moonstone	Amendment of Section 10(3)(a) to include reference to long-term	Supportive of this amendment	Noted.
32.	Masthead	Para 6(a) – s13	We have no objection to the change.	Noted.
33.	Moonstone	Amendment of Section 13	Supportive of this amendment	Noted.
34.	National Treasury	Section 13	Clarity is sought on the bank and Insurer being subjected to the same regulatory requirement on guarantees, just for our understanding of this provision?	The intention with the proposed amendment is to exclude both Banks and Insurers from the requirement as sufficient protection for clients are provided for by the prudential framework and additional requirements are not necessary under the auspices of the FAIS Act.
35.	SAIA	Section 6 (amendment of	The FSCA is requested to clarify if this clause is intended to exclude insurers, as defined in the Insurance Act 2017 (Act 18 of 2017).	Yes, the intention is to exclude Insurers from this requirement.

SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Respondents	Section of the notice	Issue/Comment/Recommendation	Responses
		section 13 of the General Code)		

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
1.	Question 1 Do you support the implementation of the Amendment Notice? Please provide reasons for your answer.	ASISA	ASISA members do not support the implementation of paragraphs 2 and 4 of the Amendment Notice as these amendments have already been made. Please refer to the comments in section B of this submission.	The comment is noted, see responses above relating to your comments on those paragraphs
2.	Question 1 Do you support the implementation of the Amendment Notice? Please provide reasons for your answer.	FIA	Yes The alignment of requirements relating to premium collection across short- and long-term insurance and incorporation of an existing exemption is expected to have little to no impact on FSPs or their representatives, as no new requirements are proposed. The nature of the additional disclosure aimed at protection of financial customers does not contain any material or significant amendments, and the impact of these amendments on FSPs and their representatives is also expected to be minimal.	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
3.	Question 1 Do you support the implementation of the Amendment Notice? Please provide reasons for your answer.	Grovest	Yes, I do believe that it addresses the fair treatment and protection of financial customers. My only concern is the wording for Section 3, the ammendement of Section 7 of the GCOC. The insertion of subsection "(5)". Recommendation is noted above.	Noted.
4.	Question 1 Do you support the implementation of the Amendment Notice? Please provide reasons for your answer.	Masthead	Largely, yes - see comments above.	Noted.
5.	Question 1 Do you support the implementation of the Amendment Notice? Please provide reasons for your answer.	Moonstone	As we are a compliance practice and not an FSP, we are not in a position to complete this Section.	Noted.
6.	Question 1 Do you support the implementation of the Amendment Notice? Please provide reasons for your answer.	SAIA	Generally yes, however, this must be considered within the context of the comments raised herein.	Noted.
7.	Question 2 Will the proposed amendment lead to: a) a reduction in consumer choice; b) higher prices due to less competition; c) the creation of barriers for new entrants and service providers; d) facilitation of anti-competitive behaviour or emergence of monopolies; and e) market segmentation?	ASISA	The question does not seem relevant to the proposed amendments.	Noted.
8.	Question 2 Will the proposed amendment lead to:	FIA	No	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	a) a reduction in consumer choice; b) higher prices due to less competition; c) the creation of barriers for new entrants and service providers; d) facilitation of anti-competitive behaviour or emergence of monopolies; and market segmentation?			
9.	Question 2 Will the proposed amendment lead to: a) a reduction in consumer choice; b) higher prices due to less competition; c) the creation of barriers for new entrants and service providers; d) facilitation of anti-competitive behaviour or emergence of monopolies; and (e) market segmentation?	Grovest	I do believe that the proposed ammendment in terms of an advice fee will provide for competitive bahaviour as cheaper fees will definitely attract more customers.	Noted.
10.	Question 2 Will the proposed amendment lead to: a) a reduction in consumer choice; b) higher prices due to less competition; c) the creation of barriers for new entrants and service providers; d) facilitation of anti-competitive behaviour or emergence of monopolies; and (e) market segmentation?	Masthead	Not that we anticipate.	Noted.
11.	Question 2	SAIA	a) No.	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	Will the proposed amendment lead to: a) a reduction in consumer choice; b) higher prices due to less competition; c) the creation of barriers for new entrants and service providers; d) facilitation of anti-competitive behaviour or emergence of monopolies; and (e) market segmentation?		b) No. c) The charging of upfront and ongoing fees may require system capabilities to track whether the fees continue to commensurate to the financial service offered. d) None anticipated at this stage. e) Yes. Taking into consideration the overall amendments proposed and already in place, it is anticipated that more advisers will specialise in a particular offering in the future.	
12.	Question 3 Will the Amendment Notice impose additional compliance costs on the business? If yes, please provide details including the expected costs.	ASISA	The amendments proposed in paragraphs 3, 5 and 6 of the Amendment Notice are unlikely to impose additional compliance costs.	Noted.
13.	Question 3 Will the Amendment Notice impose additional compliance costs on the business? If yes, please provide details including the expected costs.	FIA		n/a
14.	Question 3 Will the Amendment Notice impose additional compliance costs on the business? If yes, please provide details including the expected costs.	Grovest	I don't see a financial cost implication but there would certainly be a requirement to add this item in for compliance review, monitoring and or auditing. i.e. advice fees/commissions	Noted.
15.	Question 3 Will the Amendment Notice impose additional compliance costs on the	Masthead	Yes, any additional administrative requirements add time and cost.	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	business? If yes, please provide details including the expected costs.		In addition (in relation to para 3) this will, in our view, lead to further discussions with clients and the need to explain the implications of the disclosure in a way that does not create panic.	
16.	Question 3 Will the Amendment Notice impose additional compliance costs on the business? If yes, please provide details including the expected costs.	SAIA	It is anticipated that an increase in compliance monitoring, engagement, and oversight is expected due to the amendments including the introduction of additional disclosures may result in additional costs.	Noted.
17.	Question 4 How do you anticipate the Amendment Notice will affect the operational cost of the business?	ASISA	The amendments proposed in paragraphs 3, 5 and 6 of the Amendment Notice are unlikely to affect operational cost.	Noted.
18.	Question 4 How do you anticipate the Amendment Notice will affect the operational cost of the business?	FIA	N/a	n/a
19.	Question 4 How do you anticipate the Amendment Notice will affect the operational cost of the business?	Grovest	Uncertain at this stage.	Noted.
20.	Question 4 How do you anticipate the Amendment Notice will affect the operational cost of the business?	Masthead	Any increase in administrative requirements adds time and cost. It also adds complexity to client discussions.	Noted.
21.	Question 4 How do you anticipate the Amendment Notice will affect the operational cost of the business?	SAIA	The requirements necessitate changes such as automation of current processes, potential systems development, updates on call scripts, additional training which will result in increased costs and resources. However, no definite figure of the costs can be ascertained at this stage.	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
22.	Question 5 If an increase in operational cost is expected, who will bear the cost and why?	ASISA	Not applicable.	n/a
23.	Question 5 If an increase in operational cost is expected, who will bear the cost and why?	FIA	N/a	n/a
24.	Question 5 If an increase in operational cost is expected, who will bear the cost and why?	Grovest	Uncertain at this stage. It needs to be tested	Noted.
25.	Question 5 If an increase in operational cost is expected, who will bear the cost and why?	Masthead	The FSP will bear the cost, and the impact on smaller FSPs is proportionately greater than on the larger ones	Noted.
26.	Question 5 If an increase in operational cost is expected, who will bear the cost and why?	SAIA	It is anticipated that parties such as compliance and business will bear the cost.	Noted.
27.	Question 6 Do you anticipate that business models may need to change as a result of the Amendment Notice? If yes, please provide details including the expected costs.	ASISA	The question does not seem relevant to the proposed amendments	Noted.
28.	Question 6 Do you anticipate that business models may need to change as a result of the Amendment Notice? If yes, please	FIA	No	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	provide details including the expected costs.			
29.	Question 6 Do you anticipate that business models may need to change as a result of the Amendment Notice? If yes, please provide details including the expected costs.	Grovest	Yes, but uncertain of projected costs at this stage.	Noted.
30.	Question 6 Do you anticipate that business models may need to change as a result of the Amendment Notice? If yes, please provide details including the expected costs.	Masthead	No.	Noted.
31.	Question 6 Do you anticipate that business models may need to change as a result of the Amendment Notice? If yes, please provide details including the expected costs.	SAIA	Yes, it is anticipated that business models may change. For example; the amendment of section 8 of the General Code could result in a reconsideration of the commission structures and activity models that are currently in place.	Noted.
32.	Question 7 How will different customer groups be impacted by the requirements of the Amendment Notice?	ASISA	The question does not seem relevant to the proposed amendments	Noted.
33.	Question 7 How will different customer groups be impacted by the requirements of the Amendment Notice?	FIA	There will be no impact.	Noted.
34.	Question 7	Grovest	Some groups may be impacted negatively with the advice fee, they may find themselves limited in shopping around.	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	How will different customer groups be impacted by the requirements of the Amendment Notice?			
35.	Question 7 How will different customer groups be impacted by the requirements of the Amendment Notice?	Masthead	Where the regulator advocates more information being provided, we believe that it creates the potential for more complexity and more confusion amongst customers who are less financially literate.	Noted.
36.	Question 7 How will different customer groups be impacted by the requirements of the Amendment Notice?	SAIA	The customer groups where advice fee requirements are implemented will be impacted.	Noted.
37.	Question 8 Will the risk of increased prices to consumer be mitigated by greater transparency and competition?	ASISA	The question does not seem relevant to the proposed amendments	Noted.
38.	Question 8 Will the risk of increased prices to consumer be mitigated by greater transparency and competition?	FIA	No	Noted.
39.	Question 8 Will the risk of increased prices to consumer be mitigated by greater transparency and competition?	Grovest	No, especially since Covid has impacted so negatively from a financial perspective.	Noted.
40.	Question 8 Will the risk of increased prices to consumer be mitigated by greater transparency and competition?	Masthead	We do not believe that the additional disclosure requirements will add much value to the customer.	Noted.
41.	Question 8	SAIA	Some members are of the view that the risk of increased prices to consumer is mitigated by greater transparency and competition, but some	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	Will the risk of increased prices to consumer be mitigated by greater transparency and competition?		have indicated that this cannot be deduced at this current stage.	
42.	Question 9 Are transitional arrangements necessary to implement the Amendment Notice? If yes, what transitional arrangements do you propose and for which section of the Amendment Notice?	ASISA	Regulated entities should be afforded an appropriate period of time to implement processes and procedures to ensure that the disclosure required by the proposed amendment in paragraph 3 of the Amendment Notice will be made properly.	Noted.
43.	Question 9 Are transitional arrangements necessary to implement the Amendment Notice? If yes, what transitional arrangements do you propose and for which section of the Amendment Notice?	FIA	Greater clarity is requested regarding the wording 'reasonable and commensurate' as this wording may have unintended consequences if clarity is not provided on what is included. Furthermore, we request that provision be made, that the change in respect of 'reasonable and commensurate' will only apply to fees agreed to (not received) after a stated date, for example, 12 months after implementation.	Noted.
44.	Question 9 Are transitional arrangements necessary to implement the Amendment Notice? If yes, what transitional arrangements do you propose and for which section of the Amendment Notice?	Grovest	Yes, for Section 4, the amendment of Section 8 of the GCOC. The insertion of subsection "(5)". The market need time to redo business models, update marketing platforms and re-do their record of advices for example. 6 months perhaps?	Noted.
45.	Question 9 Are transitional arrangements necessary to implement the Amendment Notice? If yes, what transitional arrangements do	Masthead	No	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
	you propose and for which section of the Amendment Notice?			
46.	Question 9 Are transitional arrangements necessary to implement the Amendment Notice? If yes, what transitional arrangements do you propose and for which section of the Amendment Notice?	SAIA	It is submitted that transitional provisions should afford a minimum of twelve months for implementation	Noted.
47.	Question 10 Do you find the format of the Amendment Notice user-friendly and simple to understand? If no, please provide suggestions for improvement.	ASISA	The format of the Amendment Notice is simple to understand. Please refer to section B of this submission for challenges with content.	Noted.
48.	Question 10 Do you find the format of the Amendment Notice user-friendly and simple to understand? If no, please provide suggestions for improvement.	FIA	Yes	Noted.
49.	Question 10 Do you find the format of the Amendment Notice user-friendly and simple to understand? If no, please provide suggestions for improvement.	Grovest	Yes.	Noted.
50.	Question 10 Do you find the format of the Amendment Notice user-friendly and simple to understand? If no, please provide suggestions for improvement.	Masthead	Yes.	Noted.

SECTION B - QUESTIONS RELATING TO THE SECTION A - COMMENTS ON THE AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES, 2003

No	Question	Respondents	Issue/Comment/Recommendation	Responses
51.	Question 10 Do you find the format of the Amendment Notice user-friendly and simple to understand? If no, please provide suggestions for improvement.	National Treasury	The format is not very different from the Code, therefore no major concerns.	Noted.
52.	Question 10 Do you find the format of the Amendment Notice user-friendly and simple to understand? If no, please provide suggestions for improvement.	SAIA	It is submitted that marked-up versions will be beneficial and further context is required regarding proposed amendments in order to: a) understand the FSCA's intention and/or reasoning; and b) enable appropriate commentary.	Noted.

SECTION C - GENERAL COMMENTS

No	Respondents	Comment/Recommendation	FSCA Response
1.	SAIS	Notice The SAIS would like to comment that all documents relating to the review of the Notice must be included in the pack for ease of reference. Also, it is further suggested that the Notice specify to which participants the amendments relate	The comment is noted.