

CONSULTATION REPORT

DRAFT CONDUCT STANDARD - REQUIREMENTS RELATING TO THIRD PARTY CELL CAPTIVE INSURANCE BUSINESS

Consolidated comments and responses to public comments received

September 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 Conduct Standard - Requirements relating to third party cell captive insurance business.

2. Definitions

In this consultation report -

“Authority” means the Financial Sector Conduct Authority, as defined in section 1 of the Financial Sector Regulation Act;

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

“the LTIA” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998); and

“the STIA” means the Short-term Insurance Act, 1998 (Act No. 53 of 1998).

3. Summary of the public consultation process

- 3.1 This consultation report must be read with the *Statement supporting the draft conduct standard – Requirements relating to third party cell captive insurance business*.
- 3.2 The draft Conduct Standard was published for public comment on 28 July 2020. Section 98(2) of the Financial Sector Regulation Act requires that the comment period must be at least six weeks, and comments were therefore due to the FSCA on or before 22 September 2020.
- 3.3 The draft Conduct Standard was published together with accompanying documents, as required under section 98(1)(a) of the Financial Sector Regulation Act, and the Authority invited submissions in relation to the draft Conduct Standard in accordance with section 98(1)(a)(iv) of Financial Sector Regulation Act. The following documents were published as part of the public consultation process:
 - draft Conduct Standard - Requirements relating to third party cell captive insurance business (draft Conduct Standard);
 - *Statement Supporting the draft Conduct Standard – Requirements relating to third party cell captive insurance business; and*
 - Comments Template for submission of comments.
- 3.4 At the close of the public consultation period, the Authority received a total of 111 comments from 16 industry stakeholders (consisting of financial institutions and representative bodies) in respect of the different sections of the draft Conduct Standard. A list of the commentators and relevant contact persons, as well as all comments received through the public consultation process and the FSCA's responses thereto, are set out in the tables below.

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

- 4.1 All comments received as part of the public 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.

4.2 The main issues raised during the public consultation for clarification purposes were as follows:

No	Main issue	Response from FSCA
1	Governance and Oversight Requirements proposed in section 3: The need for a categorisation of cell owners (Investment, UMA and NMI cell owners), to distinguish between cell owners who perform binder functions and/or financial services and cell owners who do not perform binder functions and/or financial services, as the industry commentators are of the view that the due diligence requirements for each differ, and accordingly the requirements should differ.	Where a clause only applies to the cell owner that is an NMI or associate of a cell owner of an NMI, this is specifically stated in the section (e.g. clause 6). The skills, technical knowledge, and expertise requirement (set out in clause 3(2)(c)) are, for example, only applicable where the cell owner is the binder holder. Arguably the Conduct Standard does therefore already appropriately distinguish between cell owners who perform binder functions and/or financial services and cell owners who do not perform binder functions and/or financial services in the drafting. Further, the due diligence requirements are equally relevant in both scenarios, except to the extent that a differentiation is made (as mentioned above). Formal categorisation is therefore not required. In our view, the differentiation suggested by commentators will not serve a purpose from a regulatory perspective and the distinction seems superfluous.
2	Governance and Oversight Requirements – Section 3(5): The comprehensive due diligence assessment may not be delegated to the cell owner. Clarity was sought as to whether the cell owner and/or binder holder can facilitate the ‘on-boarding’ of the distribution channel within the cell considering section 3(5).	The clause referred to intentionally prohibits the delegation of the comprehensive due diligence by the cell captive insurer to the cell owner. The principle is that the cell owner cannot conduct a due diligence over the operations for which it is the cell owner (i.e. over its own operation), and the cell captive insurer remains ultimately accountable when allowing a third party to operate under its license. Although this part necessitates that consideration is given in respect of distribution, the standard is not prescriptive regarding whom performs the actual operational functions related to the ‘on-boarding’ in respect of the distribution channel. Therefore, the draft Conduct Standard does not limit the ‘on-

		boarding' of the distribution channel by the cell owner but rather links direct accountability for the due diligence assessment to the cell captive insurer. To ensure the wording in the Conduct Standard reflects this clearly, minor amendments were made to section 3(5) to confirm that the accountability in respect of the confirmations as part of the comprehensive due diligence may not be delegated and that the cell captive insurer remains responsible in this regard.
3	Disclosure requirements stipulated in section 4 - Rationale for the disclosure requirements to a policyholder in relation to cell ownership and remuneration arrangements, where it does not relate to binder functions and performance of services as intermediary. Considering the complex nature of cell captive business, care must be taken to ensure that clients are indeed serviced and informed in the most practical manner to ensure their understanding of the products.	The comments regarding disclosure are noted, however, the principle is that potential policyholders and policyholders have a right to know and understand the relationship between the parties with whom they are intending to contract, as well as the flow of remuneration between such parties, as the cost of such remuneration is ultimately borne by the policyholder. The cell owner adds another level of participation in respect of the policies, whether the role is more passive or more active. The policyholders right to information and to making an informed decision is being protected by requiring these disclosures. The section has been slightly amended in response to public comments to clarify the responsibilities with regards to disclosure. Disclosure of all remuneration arrangements will be required where the cell owner is an NMI due to the inherent conflicts that arise from being a cell owner and also being an intermediary. Disclosure of any other fees or charges payable by the policyholder to the cell owner will be required, regardless of whether the cell owner is an NMI or not.
4	Limitation on ownership in cell structures by non - mandated intermediaries in section 6: concerns raised in respect of impeding market growth or inhibiting smaller entrants to compete.	In respect of the competition concerns, claims were raised by some commentators that the limitations contained in section 6 of the Conduct Standard will inhibit growth in the cell captive market or impede new entrants into the market. The comments raised mostly relate to limiting these cell owners to only rendering services as intermediary in respect of policies underwritten through a cell structure of that cell owner. The comments is also mainly provided in respect of the motor vehicle industry where it is argued that large companies in this space dominates this industry, and that this will create barriers to entry for "smaller players" that offer certain insurance products only or do not have the scale to compete with the large companies. The Authority has wide powers in terms of the FSR Act to exempt an applicant from certain provisions of the law if necessary and will consider doing so in particular if it can be demonstrated that allowing these structures will improve competition in the market and enable or support transformation of the insurance sector. Such applications will be considered on a case-by-case basis. Concerns about the growth of the cell captive market are noted. However, the draft standard does not limit all cell owners as the comments seems to imply, and cell owners that are not NMIs or associates of NMIs still very much have a choice to have more than one cell structure. It is not envisaged that any hurdles, specifically to new entrants are introduced by the Conduct Standard. The only limitation is

		that a cell owner that is an NMI cannot also sell and market all the policies of the different cell structures. Fundamentally it comes down to choosing the role that the cell owners want to fulfil and not simply attempting to circumvent limitations on remuneration, which is unfair to other industry players. We do not agree that the limitations in the standard will result in competition concerns, to the contrary, it is aimed at levelling playing fields across the insurance industry. In terms of the so-called 'traditional' model of intermediation, there are already limitations in effect that applies to an NMIs that earns commission and prohibits them from also sharing in the profits of the insurer. The effect of this limitation in the Conduct Standard will therefore be to level playing fields between intermediaries in the cell captive insurance space and in the transitional insurance space. The policy position in respect of the risks that can arise in the cell structures where the cell owner is a NMI has been clearly articulated in the 2019 Position Paper. Supervisory experience strengthened the view of the FSCA that statutory intervention was required. There are also other regulatory developments to assist new entrants to the insurance market. To provide inroads into the cell captive insurance market for smaller entrants, the FSCA and the Prudential Authority allows for licensing as a cell captive microinsurer.(the PA is the licensing authority and issues insurance licenses with the concurrence of the FSCA) It is expected that Microinsurance cell captives will increase the pace of transformation and allow new entrants in the insurance sector at large. The microinsurance cell captive license is issued as a composite license which features both long- and short-term products. Because of the lower capital requirements for microinsurance cell captive insurers this may translate into lower management fees, making it more affordable for new entrants.
5	Limitation on ownership in cell structures by non - mandated intermediaries in section 6: Concerns were raised that the proposed limitations may lead to a limitation on customer choice as the NMI cell owner will only be able to provide the products of that cell. It was argued that if a NMI is limited to one cell captive insurer, the NMI within the cell structure will punt the products	The Authority does not agree with the views raised by some commentators that the limitations on ownership will lead to a limitation on customer choice and impede competition in the market. With regards to customer choice, the comments implying that the limitation will result in dealerships punting unsuitable products is very surprising as such action would be in direct conflict with the requirements of the FAIS Act. It, therefore, seems as if it is being implied that NMI's are so inherently conflicted that they will never act responsibly or do the correct thing. If this is indeed the case, then the Authority is more concerned than ever, and an appropriate policy response would be to prohibit any NMI from owning a cell. However, we are optimistic that such a view is overly cynical and that NMI's would not simply decide to act contrary to the law.

	that they can sell to the clients regardless of whether those products are suitable to clients thereby leading to undesirable outcomes.	The Authority also disagrees with the general argument that this proposal will limit customer choice. A customer has the option of approaching any intermediary and purchasing any product he or she wants to purchase. This proposal would simply mean that the customer cannot purchase the broader scope of products through the particular cell owner NMI. But to imply that the fact that the latter NMI cannot sell additional products to the consumer results in that customer not having additional options is a fallacy. With regards to specific examples provided in the motor vehicle dealer environment, the same argument as made above holds true, i.e. if the motor dealer decides to sell unsuitable products to clients, then the motor dealer is acting in direct contravention of the FAIS Act and its FSP licence should be withdrawn. If the motor dealer decides to act in the interest of the client it will inform the client of the limitations and potentially also refer the client to an FSP that can provide it with a broader and more suitable scope of products. If there are special exceptions that require consideration, this can be dealt with through an exemption mechanism.
6	Impact on existing cell captive arrangements – where an NMI cell owner is the cell owner of more than one cell structure with more than one insurer.	Regarding the limitation around only owning a cell structure in one life and one non-life cell captive insurer, indications from engagements with cell captive insurers are that there is only a small number of NMI cell owners that own cell structures in more than once cell captive insurer. To accommodate these existing cell structures, appropriate transitional provisions are included in the Conduct Standard to allow for these arrangements to be restructured in an appropriate manner. It is our view that the benefits and enhanced protection of policyholders outweigh the possible impact on these existing cell captive arrangements that will no longer be allowed to offer products underwritten by other insurers or outside of the cell arrangement. Once the Conduct Standard comes into effect, all <i>new</i> third-party cell captive arrangements will be required to comply with the Conduct Standard immediately. Specific transitional periods have been allowed for in the standard to allow for a smooth transition of all existing arrangements and arrangements entered into between the publication date of the draft Conduct Standard for public comment and the effective date of the final Conduct Standard, as may be required.

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SECTION A – LIST OF COMMENTATORS

No	AGENCY / ORGANISATION	CONTACT PERSON
1	Absa Short –term Insurance Group	Puseletso Motaung
2	Infiniti Insurance Limited	Sharon Paterson
3	The Banking Association South Africa (BASA)	Adri Grobler
4	CIB (Pty) Ltd	Juan Erasmus
5	Association for Savings & Investments SA (ASISA)	Anna Rosenberg
6	Leanne Jackson (Independent commentator)	Leanne Jackson
7	Guardrisk Group (Pty) Limited	Sade Govender
8	Centriq Insurance Company Limited	Marika Mattheus
9	Centriq Life Insurance Company Limited	Marika Mattheus
10	Moonstone Compliance (Pty) Ltd	Billy Seyffert
11	Mutual & Federal Risk Financing Ltd	Sharai Gaka
12	Capitec Bank	Wilmien Steenkamp
13	Associated Compliance Motor (Pty) Ltd	Peter Veal
14	Foschini Retail Group (Pty) Ltd	Antonio Jacobus
15	Home Loan Guarantee Company NPC (HLGC)	Willem Jan van Emmenis
16	South African Insurance Association (SAIA)	Themba Palagangwe

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD

No	Section of the standard	Commentator	Comment	Response
Section 1. DEFINITIONS USED IN THE CONDUCT STANDARD				
1.	Definitions	Absa Short – term Insurance Group	The definitions used are noted and supported.	Noted.
2.	Section 1, definition of “associate”	Infiniti Insurance Limited	Although the definition refers to the “association” definition in the Short-term Insurance Regulations, 6.1 – clarity is sought in terms of specific relationships and structures. There are various iterations and structures in the market especially in the environment of cell structures. Could a cell owner be an associate or minor shareholder to multiple cells in order to write multiple classes across various insurers or with one insurer but across various specialist cells with that insurer? If so, this would nullify the condition of a cell owner or an associate of a cell owner being able to place business into that cell structure only and the resultant mitigation of the inherent conflict of interests. Please could the interpretation of the current draft document be clarified in respect of the above scenario.	The definition in the Short- and Long-term regulations refers to the meaning assigned to it in the General Code of Conduct, which set out that in relation to a juristic person it means any subsidiary or holding company of that company, any other subsidiary of that holding company, and any other company of which that holding company is a subsidiary. A subsidiary is defined in the Companies Act, 1973 and refers to holding majority voting rights, the right to appoint and remove directors, and control of the majority of voting rights. The limitation on ownership in respect of associates of a non-mandated intermediary is applicable where there is significant control or ownership as the conflicts arise in these scenarios.
3.	“Potential policyholder”	The Banking Association South Africa	We suggest that this definition replicate or refer to the definition in PPR which reads as follow: “potential policyholder” means a person who- (a) has applied to or otherwise approached an insurer or an intermediary to become a policyholder; (b) has been solicited by an insurer or an intermediary to become a policyholder; or	Disagree. The definition was specifically limited to exclude sub-paragraph (c) of the definition in the PPRs as this will place an unreasonable burden to disclose to anyone who receives advertising the nature of the relationship the cell captive insurer and cell owner as well as remuneration structures and fees in this arrangement. Such disclosure would not serve any purpose. As it currently reads the disclosure requirements are only applicable when a person

No	Section of the standard	Commentator	Comment	Response
			(c) has received advertising, as defined in rule 10, in relation to any policy or related service of an insurer;	applied to or otherwise approached an insurer or an intermediary to become a policyholder or has been solicited by an insurer or an intermediary to become a policyholder. The principle is that these persons have a right to know and understand the relationship between the parties with whom they are to contract, as this may impact their rights.
4.	Definition of “cell owner”	CIB (Pty) Ltd	It is proposed that definition of a “cell owner” should allow for some categorisation and the regulation should be crafted on the basis on the categories so that specific regulation to a category can be made clearly and concisely, removing any ambiguity of the application to the various categories. The categories should distinguish between those who perform binder functions and financial services and those that do not.	Disagree. Cell owner means a person referred to in the definition of “cell structure” in the Insurance Act, 2017. It is not clear what purpose categorisation would serve as it seems unnecessarily prescriptive without mitigating or addressing any of the risks. The draft standard aims to address the risks by limiting ownership where certain relationships already exist and where the cell owner also performs specific activities which may result in the risks as mentioned in the detail in the Statement of Need published alongside the draft Conduct Standard may arise. There is no differentiation in the Draft Standard between different types of ownership when it comes to conduct requirements, therefore the need for differentiation is unclear as it pertains to the Draft Standard.
5.	“cell owner”	ASISA	It is suggested that the underlined wording is added to clarify which Act the definition is contained in. 'cell owner' means a person referred to in the definition of 'cell structure' <u>in the Insurance Act</u> ;	Disagree. The definition of cell owner refers to the definition of “cell structure” in the Conduct Standard which in turn clearly references the Insurance Act. This is standard drafting practice in relation to definitions. To include “in the Insurance Act” in each definition would be superfluous.
6.	“contractor”	ASISA	A contractor as referred to in section 3(7) is not defined in the Standard and it is proposed that a definition is included as follows: “contractor” has the meaning ascribed to it in Part 1 of the Financial Sector Regulation Act 9 of 2017;	Disagree that it is necessary. In the definitions section (section 1) it is clearly stated that any word to which a meaning has been assigned to it in the Financial Sector Regulations Act 9 of 2017 bears such a meaning unless the context otherwise indicates. The term “contractor” is defined in the FSR Act. This is standard drafting practice

No	Section of the standard	Commentator	Comment	Response
				in subordinate legislation and clearly links to the meaning in the FSR Act.
7.	"life insurance cell captive insurer"	ASISA	The terminology used in the Insurance Act is that an insurer is licensed rather than authorised so suggest the change shown below: 'life insurance cell captive insurer' means a cell captive insurer that is authorised licensed to conduct life insurance business;	Agreed. "Authorised" has been changed to licensed.
8.	"microinsurance cell captive insurer"	ASISA	The terminology used in the Insurance Act is that an insurer is licensed to conduct certain types/classes of insurance business, therefore suggest the addition underlined below: 'microinsurance cell captive insurer' means a cell captive insurer that is a licensed micro insurer;	Disagree. The definition in the draft Conduct Standard cross-references the Insurance Act definition. The Insurance Act definition is: <i>"microinsurer" means an insurer licensed to conduct only microinsurance business;"</i> By way of interpretation for purposes of the Conduct Standard: "microinsurance cell captive insurer" means a cell captive insurer that is an <i>insurer licensed to conduct only microinsurance business;</i> The insertion of the word "licensed" would amount to tautology.
9.	'non-life insurance cell captive insurer'	ASISA	The terminology used in the Insurance Act is that an insurer is licensed rather than authorised so suggest the change shown below: 'life insurance cell captive insurer' means a cell captive insurer that is authorised licensed to conduct non-life insurance business;	Agreed. "Authorised" has been changed to licensed.
10.	"non-mandated Intermediary"	ASISA	A non-mandated intermediary ("NMI") is defined in Reg 6.2 of the LT Regulations as "a representative	Disagree with the commentator's interpretation. A non-mandated intermediary is defined in 6.1 of the regulations

No	Section of the standard	Commentator	Comment	Response
			or an independent intermediary, other than a mandated intermediary or an underwriting manager”. This definition and the practical application of section 6(a) and supporting requirements may create confusion: 1.An NMI is used in Reg 6 of the LT Regulations in the context of a person performing binder services and is therefore a specific type of independent intermediary or representative. 2.If a cell owner does not perform binder services this definition would not apply and then the limitations in paragraph 6 of the Standard would not apply. 3.The standard cell captive insurance licence conditions prohibit a cell owner from being an independent intermediary. It is therefore proposed that this definition is amended to exclude independent intermediaries and that the limitations in paragraph 6 should specifically also be made to apply to independent intermediaries who are cell owners.	under the Long-term Insurance Act, 1998 as a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager, but it does not mean that that person ‘must ‘ perform binder functions. The definition of “rendering services as intermediary” 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 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; “independent intermediary” means a person, other than a representative, rendering services as intermediary and the application of the limitations in paragraph 6 applies to a cell owner or associate thereof that is a non-mandated intermediary which includes an independent intermediary as defined. The limitation applies to instances where a cell owner is an NMI – in other words, where a cell owner is a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager.
11.	Definition of “outsourcing”	SAIA	The definition of outsourcing should be included in the Conduct Standard. As it stands, we are relying on the definition in the FSR Act.	Disagree that it is necessary. In the definitions section (section 1) it is clearly stated that any word to which a meaning has been assigned to it in the Financial Sector Regulations Act 9 of 2017 bears such a meaning unless the context otherwise indicates. The term “outsourcing” is defined in the FSR Act. This is standard drafting practice in subordinate legislation and clearly links to the meaning in the FSR Act.

No	Section of the standard	Commentator	Comment	Response
Section 2. APPLICATION				
12.		Absa Short – term Insurance Group	The application requirements are noted and supported.	Noted.
13.		The Banking Association South Africa	The application requirements are noted and supported.	Noted.
14.	Section 3(3)(b)(i)	Leanne Jackson (Independent commentator)	Typographical error: Please change “makes it suitable” to “makes them suitable”.	Noted, corrected.
Section 3. GOVERNANCE AND OVERSIGHT REQUIREMENTS				
15.		The Banking Association South Africa	The governance and oversight requirements are noted and supported.	Noted.
16.	Section 3(1)	SAIA	There are various types of cell owners which could be categorized as: a) Companies which undertakes a cell structure for only an investment purpose, b) In addition to point (a) above, such company can also provide binder functions and/or financial services. Therefore, given the categorization of the cell owners and their intended purpose, a company as mentioned in category (a) would not have the skills	The requirements contained in the draft Conduct Standard do not require categorization as no differentiation is made between the different types of cell owners per se. Where a section only applies to the cell owner that is an NMI or associate of a cell owner of an NMI, this is specifically stated.(e.g. section 6) The skills, technical knowledge and expertise requirement (set out in section 3(2) (c)) is only applicable where the cell owner is the binder holder. Arguably the Conduct Standard does therefore already appropriately distinguish between cell owners who perform binder functions and/or financial services and cell owners

No	Section of the standard	Commentator	Comment	Response
			and/or resources as required by section 3(1) as set out in the draft Conduct Standard. Considering the above, it is proposed that the FSCA considers distinguishing between cell owners who perform binder functions and/or financial services and cell owners who do not perform binder functions and/or financial services as due diligence requirements for each differ. Furthermore, clarity is required on whether the cell owner referred to in point (a) above can be a cell owner which is not authorised as an FSP.	who do not perform binder functions and/or financial services.
17.	Section 3(1)	Guardrisk	There are various types of cell owners which could be categorized as: a) Investment Cell Owners: Companies which undertakes a cell structure for only an investment purpose. b) UMA Cell Owners: Companies which undertakes a cell structure and provide binder functions and/or financial services¹ in the capacity as underwriting manager (UMA) binder holder. c) NMI Cell Owners: Companies which undertakes a cell structure and provide binder functions and/or financial services in the capacity as non-mandated intermediary (NMI) binder holder.	The requirements contained in the draft Conduct Standard do not require categorization as no differentiation is made between the different types of cell owners per se. Where a section only applies to the cell owner that is an NMI or associate of an NMI, this is specifically stated (e.g. section 6). The skills, technical knowledge, and expertise requirement (set out in section 3(2) (c)) are for example only applicable where the cell owner is the binder holder. Arguably the Conduct Standard does therefore already appropriately distinguish between cell owners who perform binder functions and/or financial services and cell owners who do not perform binder functions and/or financial services.

No	Section of the standard	Commentator	Comment	Response
			• Therefore, given the categorization of the cell owners and their intended purpose, a company as mentioned in category (a) would not have the skills and/or resources as required by section 3(1) as set out in the draft Conduct Standard as the binder and intermediary functions business would be outsourced and conducted by another third party entity. • Considering the above, the FSCA must distinguish between cell owners who perform binder functions and/or financial services and cell owners who do not perform binder functions and/or financial services as due diligence requirements for each differ. • Furthermore, it is our understanding that the cell owner referred to in category (a) above can be an entity which is not authorised as an FSP.	
18.	Section 3(2)	Guardrisk	Where a cell owner is referenced, it must be aligned to the capacity as set out in section 3(1).	Comment not clear / not understood.
19.	Section 3(2)	SAIA	Where a cell owner is referenced, it is proposed that such reference must be aligned to the capacity as set out in section 3(1)	Disagree. Reasons are stated in the above comment.
20.	Section 3(2)(a)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	This expectation should be placed on the insurer and/or binder holder. A cell owner might just be an investment holding company. There needs to be recognition of the fact that: (1) The cell captive insurer can outsource all of these functions to a binder holder who is a third party to the cell owner; and	The due diligence assessment is the responsibility of the cell captive insurer, and section 3(5) prohibits the delegation of the comprehensive due diligence assessment referred to in subparagraph (3) to the cell owner. This does not impact on the binder functions that are outsourced as these are already comprehensively

No	Section of the standard	Commentator	Comment	Response
			(2) The agreement setting up the Cell Arrangement with cell owner is distinct from what sets out the various outsource and binder functions. These agreements need to be standalone always otherwise you run the risk of the cell captive insurer being stuck with a service provider who is not meeting required standards. These service agreements need to stand alone from the agreement that establishes the cell captive structure.	regulated in terms of the binder regulations which requires amongst other things that the binder holder must at all times befit and proper, and has appropriate governance, risk management, internal controls, and information technology systems in place to render the services under the binder agreement.
21.	Section 3 (2) (b)	Infiniti Insurance Limited	The section deals with the fit & proper requirements of a non-mandated intermediary only, what would be the requirements if the cell owner is not a non-mandated intermediary? Refer 6(1)(c) and (d) where distinct scenarios of a cell owner being a non-mandated intermediary is made in (c) and a cell owner being an associate of a non-mandated intermediary in (d) With the exception of the above the requirements are clear, fair and in line with the requirements on any insurer outsourcing a function.	Section 3(2)(a) sets out the general system and process requirements in respect of all cell owners, regardless of their nature or any other activities that they may perform. The fitness and propriety requirements as stipulated in the FAIS Act, 2002 are only applicable here to non-mandated intermediaries. Fitness and propriety are relevant depending on the functions being performed by the cell owner. Differently, put why would it be necessary for the fitness and propriety requirement to apply where the cell owner is purely an investor that does not play any other role in the business of the cell structure and therefore the same risks would not apply.
22.	3(2)(b)	ASISA	Please note the comments above on the definition of an NMI.	Please see the response above to comment 10 by the commentator in the section pertaining to definitions.
23.	Section 3(2)(b)	Leanne Jackson (Independent commentator)	Typographical error: Please change “proprietary” to “propriety”. In light of section 6(1)(d), that requires any associate of the cell owner that is an NMI to also be an authorised financial services provider, this requirement should extend to the fitness and propriety of such associate.	Noted, typographical error corrected. Disagree. Section 3(2)(b) specifically relates to the due diligence to be conducted by the insurer prior to entering into the cell arrangement.

No	Section of the standard	Commentator	Comment	Response
				To require the cell captive insurer to confirm the fitness and propriety of each associate of the cell owner that is an NMI prior to entering into the cell structure seems unnecessarily onerous. Section 6(1) (d) requires that where a cell owner that is an associate of NMI, that <i>non-mandated intermediary</i> must be an authorised financial services provider. The requirements are therefore distinctly different.
24.	Section 3(2)(c)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	- The cell owner will only have the technical knowledge, skills, and expertise to deliver the specific binder function that is allocated to them by the cell captive insurer. The word “all” might create the incorrect expectation from the cell owner. - The cell owner cannot be held responsible to offer ‘suitable insurance products’. This remains the responsibility of the cell captive insurer.	Disagree. The cell captive insurer is ultimately responsible and must confirm that the cell owner who performs binder functions on its behalf has all the necessary technical knowledge, skills, and expertise. The word ‘necessary’ following ‘all’ limits the requirement and therefore ‘all necessary’ will depend on the functions being performed. The requirement is further qualified to link to the insurer having to (through its due diligence assessment) ensure that the cell owner has all the necessary technical knowledge, skills, and expertise to ensure that the conducting of insurance business through the cell structure results in the offering of suitable insurance products that provide consistently fair value to policyholders. The insurer will be held responsible if it enters into an agreement with a cell owner that does not have the necessary skills to ensure what the commentator refers to as ‘suitable insurance products’.
25.	Section 3(2)(c)	Leanne Jackson (Independent commentator)	The product design standard imposed by this provision is considerably more onerous than the more general obligation imposed for all cell structures under section 3(3)(b)(i). (However, see comment below on s.6(2)(d)). It is also more onerous than the general fair treatment and product suitability	The requirements imposed are not imposed at the product design stage but refers to the due diligence assessment that a cell captive insurer must conduct prior to entering into the arrangement to constitute the cell structure. In our view, it is therefore not in contradiction of the product

No	Section of the standard	Commentator	Comment	Response
			requirements imposed on binder relationships under the Regulations under the LTIA / STIA. And it is also more onerous than the general product suitability requirements imposed on insurers under the PPRs. Those other sets of provisions focus on providing fair outcomes for policyholders generally and on suitability to the needs of identified groups / categories of policyholders. They do not go so far as to require “consistently fair value”, apparently to all policyholders and not just targeted policyholder groups. The language of “consistently fair value” is also a significant shift from the long-communicated TCF focus on fair outcomes that are in line with expectations created. It is unclear why cell owners (under this provision and s.6(2)(d)) have been particularly singled out for more far-reaching product design standards than insurers generally, and binder holders generally. I recommend that, to avoid confusion regarding the FSCA’s product design expectations across these business models, this section 3(2)(c) and s.(6)(2)(d) be reviewed for consistency with these other sets of requirements. Alternatively, this provision could be deleted as its substance is already provided for in the applicable LTIA / STIA Regulations (the “binder regulations”) and through s.3(3)(b)(i) of this Standard.	design rule in the PPRs if read, understood and interpreted holistically. Nevertheless, minor drafting changes have been made to remove reference to “consistently fair value” and link to the wording in the PPRs thereby ensuring that the requirement is interpreted correctly.
26.	3(3)(a)(ii)	ASISA	Corporate culture can be subjective and difficult to assess and practically very difficult in the case of a start up. It is requested that the term be replaced	Disagree that it should be limited to business processes. Fair treatment of policyholders is directly linked to culture in terms of the Treating Customers Fairly (TCF) outcomes.

No	Section of the standard	Commentator	Comment	Response
			with “business processes”, which is more measurable.	That said the point is taken that technically not all cell structures will take the legal form of a corporation and therefore the terminology will be changed.
27.	3(3)(b)	ASISA	The view of one member is that the responsibilities set out in this part should lie with the cell owner and not the cell captive insurer. This part, they believe, imposes onerous obligations on cell captive insurers to ensure that all the requirements in 3(3)(b)(iii) are met by the cell owner. This means that cell captive insurers would assume joint liability, which is not currently the case where the cell owner shares in the profits and losses of the business and the cell captive insurer receives only a fee for the arrangement.	Disagree, the licensed entity in terms of the insurance regulatory framework is the insurer who is responsible for the fair outcomes to their policyholders. The cell captive insurer is also the contracting party with the policyholder and therefore legally accountable to the policyholder. The overall accountability for the design of the product in respect of claim ratios, premiums, and the distribution of its policies lies with the insurer.
28.	3(3)(b)(iii)	ASISA	It is proposed that the due diligence requirements in relation to claims ratios be limited to instances where there is an existing product as it is practically difficult to provide claims ratio's for new business. Alternatively, this provision should allow for industry benchmarks for similar products to be leveraged, where available.	This requirement speaks to the due diligence in subparagraph 1 which is done prior to inception. Also, see revised wording. The revised requirement is essentially that the cell owner must demonstrate how it will be monitoring claims ratios once it starts conducting business and how it will use the claims ratio information to ensure fair value. We do not see this as an unreasonable or unachievable requirement. We maintain the view that this is a critical requirement, especially considering the critical insights provided by claims ratios.
29.	Section 3(3)(b)(iii)	SAIA	It is proposed that the due diligence requirements in relation to claims ratio's be limited to instances where there is existing product as it is practically difficult to provide claims ratio's for new business alternatively to allow for industry benchmarks for similar products to be leveraged, where available.	This requirement speaks to the due diligence in subparagraph 1 which is done prior to inception. The potential practical challenges have been noted and amendments brought to this requirement. The amended requirement requires the cell captive insurer to confirm upfront that the cell structure will have measures in place

No	Section of the standard	Commentator	Comment	Response
				to monitor claims ratios on an ongoing basis to ensure fair value to customers.
30.	Section 3 (3) (a)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	The cell structure is not a separate entity with its own corporate culture and business model.	The cell structure is not a separate legal entity in its own right, however, the definition of cell structure includes the 'cell owner' and because cell structure is defined as the arrangement under which a person (cell owner) holds equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares is entitled to a share of the profits and liable for a share of the losses as a result of the said equity participation, linked to profits or losses generated by the insurance business and places or insures insurance business with the cell captive insurer which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up, this arrangement includes any arrangement in regards to services in relation to the policies written under this arrangement by the cell captive insurer. In other words, the cell captive insurer must confirm as part of its due diligence assessment that the arrangement it intends entering into also provides for the requirements in section 3(3)(a) (i) –(iii).
31.	Section 3(3)(b)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	Is this not a current requirement for all outsource and binder arrangements? Why specific to cells?	These are inserted here specifically in respect of the due diligence to be conducted prior to entering into the cell arrangement. This would apply even if there is no binder agreement or outsource arrangement in place. This is therefore not necessarily new requirements where there is a binder / outsource arrangement in place but rather it sets out what exactly needs to be confirmed by the insurer when undertaking the due diligence not just at the product design stage, but also prior to entering into a new cell structure.

No	Section of the standard	Commentator	Comment	Response
32.	Section 3(3)	SAIA	As defined in the Insurance Act “cell structure” means an arrangement under which a person (cell owner)— (a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares; (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and (c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up; - Given the definition of a cell structure, it would mean that it is inclusive of the cell owner (points a and b in the definition) and/or binder holder and intermediaries (point c of the definition) whereby it places or insures insurance business with the insurer. Therefore, the requirements set out in 3(3) must be applied to each party as applicable: - For Cell Owners mentioned in category (a), only requirement 3(3)(a)(i) would apply. - For Cell owners mentioned in category (b), section 3(3) would apply, in its entirety.	Agreed that the cell owner forms part of the cell structure as it is defined in the Insurance Act, 2017. However, we disagree with the commentator’s interpretation that there are different parts of section 3(3)(a) that should apply differently depending on the type of cell owner according to the commentator. Section 3(3)(a) is appropriate and relevant to all cell structures to and it is not clear from the comment why the necessary governance and operational requirements should only apply in certain cell structures but not in others. The arrangement (cell structure) would include any agreements in respect of the insurance business that is placed and the cell captive insurer is responsible to ensure that this ringfenced business has sufficient capability, processes, controls, and a culture that results in fair outcomes. The differentiation made does not serve a purpose from a regulatory perspective and the distinction is rendered meaningless for the purposes that the Conduct Standard aims to achieve.
33.	Section 3(3)	Guardrisk	As defined in the Insurance Act “cell structure” means an arrangement under which a person (cell owner)—	Agreed that the cell owner is a party to the cell structure as it is defined in the Insurance Act, 2017.

No	Section of the standard	Commentator	Comment	Response
			(a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares; (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and (c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up; Given the definition of a cell structure, it would mean that it is inclusive of the cell owner (points a and b in the definition) and/or binder holder and intermediaries (point c of the definition) whereby it places or insures insurance business with the insurer. Therefore, the requirements set out in 3(3) must be applied to each party as applicable. For Cell Owners mentioned in category (a), only requirement 3(3)(a)(i) would apply. For Cell owners mentioned in category (b) and category (c), section 3(3) would apply.	The distinctions made by the commentator between types of cell owners do not apply as the draft standard follows the categorisation and definitions as provided for in legislation. Disagree with the argument that some of the requirements in section 3 (3) would / should not apply to so-called “investment cell owner” as the commentator refers to it insurance business will be placed by that cell owner with the insurer and therefore the other requirements as set out in section 3(a)(ii) – (iii) need not apply. The arrangement (cell structure) would include any agreements in respect of the insurance business that is placed and the cell captive insurer is responsible to ensure that this ringfenced business has sufficient capability, processes, controls, and a culture that results in fair outcomes.
34.	3 (4)	ASISA	ASISA members propose that records must be kept for at least 5 years from the date on which the cell	Please refer to the wording of section 3(4):

No	Section of the standard	Commentator	Comment	Response
			structure is terminated rather than from the date of entering into the cell structure. This will align with the record keeping requirements in terms of the Financial Intelligence Centre Act and the Financial Advisory and Intermediary Services Act and thereby assist insurers in following a standardised approach.	A cell captive insurer must keep adequate records of all due diligence assessments undertaken as referred to in subparagraphs (1) to (3) for a period of at least 5 years from the date of entering into the cell structure. [our emphasis] It must therefore be kept for at least 5 years from the date of entering into the cell structure.
35.	Section 3(4)	SAIA	Clarity is sought on whether this requirement in respect of the due diligence records should be kept after the cell has incepted or once the cell is terminated. Therefore, it is proposed that record keeping should be in line with the FAIS Act whereby records must be kept for 5 years after termination of the cell.	Please refer to the wording of section 3(4): A cell captive insurer must keep adequate records of all due diligence assessments undertaken as referred to in subparagraphs (1) to (3) <u>for a period of at least 5 years from the date of entering into the cell structure.</u> [our emphasis] The due diligence records must therefore be kept for at least 5 years from the date of entering into the cell structure.
36.	Section 3(4)	Guardrisk	Clarity is required on whether the due diligence records should be kept after the cell has incepted or once the cell is terminated.	Please refer to the wording of section 3(4): A cell captive insurer must keep adequate records of all due diligence assessments undertaken as referred to in subparagraphs (1) to (3) <u>for a period of at least 5 years from the date of entering into the cell structure.</u> [our emphasis] The due diligence records must therefore be kept for at least 5 years from the date of entering into the cell structure.

No	Section of the standard	Commentator	Comment	Response
37.	Section 3(5)	SAIA	Clarity is sought regarding the understanding of this subsection, with the current interpretation being as follows: “The comprehensive due diligence is on the cell structure which includes the cell owner and the entity providing the insurance business (which could or could not be the same entity as discussed above).” We agree that the cell captive insurer cannot delegate a due diligence to cell owner in respect of on boarding a cell owner or a binder holder performing all five binder functions. This process needs to be facilitated by the cell captive insurer. However, there would be significant implications should the cell owner and/or binder holder not be allowed to facilitate the on-boarding of the distribution channel within the cell. Whilst it is supported that the accountability lies with the insurer for the distribution channel (i.e. through rule 12.2.1 of the PPRs) we submit that in terms of cost and infrastructure it is more feasible that the cell owner is allowed to on-board their distribution channel. An example is where a cell owner is motor cell owner, they utilise huge volumes of dealership FSPs. The insurer would perform a due diligence on the motor cell owner and amongst other processes review its distribution channel on-boarding process whereby they will facilitate the on-boarding of these dealerships. Only once the insurer has signed off on their on-boarding process will the motor cell owner be allowed to on-board the dealership FSPs.	The part referred to only speaks to the comprehensive due diligence that may not be delegated by the cell captive insurer. Although this part necessitates that consideration is given in respect of distribution, we are not prescriptive in this Standard regarding whom performs the actual operational functions related onboarding in respect of the distribution channel. Therefore, the draft Conduct Standard does not deal with the onboarding of the distribution channel by the cell owner, but links direct accountability for the due diligence assessment to the cell captive insurer. To ensure clarity in respect of this view in the wording of the Conduct Standard, certain changes have been made. The changes in Section 3(5) has been clarified to confirm that the accountability in respect of the confirmations may not be delegated.

No	Section of the standard	Commentator	Comment	Response
38.	Section 3(5)	CIB (Pty) Ltd	We agree with the principle of performing comprehensive due diligence as prescribed in this section. The due diligence of the cell owner should be performed by the Insurer. We propose all due diligences should be reviewed and signed off by the insurer but that the performance of the due diligence, in respect of distribution channels, may be delegated to the cell owner. The cell owner has a detailed understanding of the structures in these channels and is generally also resourced to perform these due diligences. The proposal of categorising cell owners (in terms of the definition above) should be a feature of which parties may be delegated responsibilities.	The part referred to only speaks to the comprehensive due diligence that may not be delegated by the cell captive insurer. Although this part necessitates that consideration is given in respect of distribution, we are not prescriptive in this Standard regarding whom performs the actual operational functions related onboarding in respect of the distribution channel. To ensure the wording in the Conduct Standard reflects this clearly, minor amendments changes were made to section 3(5) to confirm that the accountability in respect of the confirmations as part of the comprehensive due diligence may not be delegated and that the cell captive insurer remains responsible in this regard
39.	Section 3(5)	Guardrisk	Please confirm our understanding of this subsection. Our understanding is as follows: The comprehensive due diligence is on the cell structure which includes the cell owner and the entity providing the insurance business (which could or could not be the same entity as discussed above in the comment made on section 3(1)). • We agree that the cell captive insurer cannot delegate a due diligence to cell owner in respect of on boarding a cell owner or a binder holder performing all five binder functions. This process needs to be facilitated by the cell captive insurer. • However, there would be significant implications should the cell owner and/or binder holder not be allowed to facilitate the on-boarding of the distribution channel within the cell. Whilst we agree	Although this part necessitates that consideration is given in respect of distribution, we are not prescriptive in this Standard regarding whom performs the actual operational functions related to the onboarding in respect of the distribution channel. Therefore, the draft Conduct Standard does not deal with the onboarding of the distribution channel by the cell owner but links direct accountability for the due diligence assessment to the cell captive insurer. To ensure the wording in the Conduct Standard reflects this clearly, minor amendments changes were made to section 3(5) to confirm that the accountability in respect of the confirmations as part of the comprehensive due diligence may not be delegated and that the cell captive insurer remains responsible in this regard.

No	Section of the standard	Commentator	Comment	Response
			that the accountability lies with the insurer for the distribution channel (i.e. through Rule 12.2.1 of the PPRs), we submit that in terms of infrastructure it is more feasible that the cell owner is allowed to onboard their distribution channel. In addition, Guardrisk ensures that the cell owner has the appropriate operational ability to onboard the appropriate distribution channel and to ensure that TCF outcomes are demonstrated. Despite the onboarding being conducted by the cell owner, the onboarding is conducted in line with a Guardrisk approved framework. This is to further promote and entrench fair outcomes to policyholders.	
40.	Section 3(6)	Guardrisk	This section must align with the comments raised in section 3(3) for consistency of on-going monitoring.	It is our understanding that the commentator refers to its own comments on section 3 (3). Please see the response to comment 33 above.
41.	Section 3(6)	SAIA	It is proposed that this section must align with the comments raised in section 3(3) for consistency of on-going monitoring.	It is our understanding that the commentator refers to its own comments on section 3(3). Please see the response to comment 32 above.
42.	Section 3(6)(a)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	Need to recognise that these functions are sometimes outsourced to third parties and so the cell captive Insurer needs to ensure that the Cell Structure, and not the cell owner, has these in place.	Section 3(6)(a) refers to the matters in subparagraph (2) which differentiates between matters where the cell owner is a binder holder or where the cell owner is a non-mandated intermediary. It is only subparagraph 2(a) (i) – (ii) that applies regardless of the type of ownership. The system and processes requirement are not in respect of any outsourced third parties but in respect of the cell owner itself.
43.	Section 3(7)	Centriq Insurance Company Limited and	Is this not a current requirement for all outsource and binders arrangements? Why specific to cells?	Disagree. There are no direct provisions relating to a comprehensive due diligence on outsourced functions from the FSCA. In respect of binder arrangements which is a specific set of outsourcing the regulations issued under

No	Section of the standard	Commentator	Comment	Response
		Centriq Life Insurance Company Limited		the Short-and Long-term insurance Acts provide that the insurer needs to satisfy itself in respect of issues like operational ability, governance, risk, and internal controls but do not specifically mention comprehensive due diligence.
44.	3 (7)	ASISA	It is suggested that a definition of “contractor” is included -refer to comment on this in the definition part above. It is proposed that it would also assist users of the Standard if it is made clear that this subsection is in addition to the requirements for a cell captive insurer as contained in Prudential Standard GOI 5 Outsourcing by Insurers, as well as Part 6 2.A of the LTI Act Regulations and STI Act Regulations.	Disagree that it is necessary. In the Definitions section of the draft Conduct Standard it is stated that any word to which a meaning has been assigned to it in the Financial Sector Regulations Act 9 of 2017 bears such a meaning unless the context otherwise indicates. It is also unnecessary to cross-reference each and every other piece of legislation that is applicable to insurers.
45.	Section 3(7)	SAIA	It is proposed that the definition of outsourcing should be included in the Conduct Standard and aligned with definitions in other relevant legislative frameworks, where appropriate. As it stands, the reliance is placed on the definition in the FSR Act. It is also recommended that this requirement is aligned to the GOI 5 standard as materiality principles must apply.	Disagree that it is necessary. In the definitions section (section 1) it is stated that any word to which a meaning has been assigned to it in the Financial Sector Regulations Act 9 of 2017 bears such a meaning unless the context otherwise indicates. This is standard drafting practice in subordinate legislation and clearly links to the meaning in the FSR Act which is the intention.
46.	Section 3(8) (a)	Absa Short – term Insurance Group	Absa Insurance supports majority of the governance and oversight requirements proposed, however we would like the regulator to “reconsider the requirement for cell captive insurer to keep a “central complaints register” and align this requirement to the requirements made under binder regulations. Our suggestion is based on the fact that these cell structures will be constructed on an outsourcing model structure where certain functions will be performed by the cell owner or an independent	Noted, however, the comments refer to oversight management on the complaints management framework as stipulated in the binder regulations, the binder functions set out in the LTIA and STIA which does not have as one of its function’s complaints management. One of the primary concerns identified in relation to the cell captive business model is unnecessarily complex complaints and escalation procedures within certain cell structures especially identified where the cell owner is a bank or another large institution. This requirement is informed by

No	Section of the standard	Commentator	Comment	Response
			intermediary associated with that cell owner on behalf of the cell captive insurer. Therefore, this will be a duplication of activities which the cell captive would have already paid for from an outsourcing perspective. Furthermore, we need to highlight that ensuring that all cell structures linked to a particular cell captive insurer are using the same complaints register will require a lot of IT development which will be costly. The costs of those development may be borne by the client. We therefore propose the regulator to align the complaints handling requirements under the cell structures to those of binder regulations and allow cell captive insurers to continue exercising oversight management on the complaints management framework as stipulated in the binder regulations. It is in our view that the risks which the regulator seeks to mitigate will be addressed by the implementation of robust controls listed below prior to entering into a cell arrangement with a non-mandate intermediary; • Performance of an enhanced due diligence on the IT systems of the cell owner and or its associates to ensure that they have the IT capability to implement a complaints management framework that is similar to that of the cell captive insurer and the capability to update the information related to complaints on the cell captive insurers systems in line with data management requirement stipulated in the binder regulations.	supervisory experience, which has shown that the cell captive insurer in many instances does not have the necessary oversight to ensure it complies with the Complaints management requirements in the PPRs. Record keeping and complaints management framework is an existing requirement in the regulatory framework. For the cell captive insurer to analyse complaints and take corrective action a holistic view is required which is obtained through a centralised complaint register.

No	Section of the standard	Commentator	Comment	Response
			Implementation of the enhanced governance and oversight framework to ensure that complaints handling is given effect to in accordance with the cell captive insurer's complaints management framework. We welcome the requirements of section (b), where we propose that the complaints escalation process should be included in the disclosure documents. This will allow the policy holder to lodge a complaint directly with the insurer should it be required.	
47.	Section 3(8)	Leanne Jackson (Independent commentator)	Consider adding wording to this section to clarify that these requirements should be complied with as part of the complaint's management requirements imposed by the PPRs, rather than being a separate and parallel set of requirements. Typographical error: In s.3(8)(b) change "allow" to "allows".	Noted. Typographical error corrected. Disagree that it is necessary to clarify, as the Policyholder Protection Rules under the Short-and Long-term insurance Acts apply to all insurers including cell captive insurers. The requirements in 8(a) – (b) apply <i>in addition</i> to the PPRs because of the specific risk identified. Please consider the Statement of Need and impact as published alongside the draft Conduct Standard that clearly articulates this.
48.	Section 3(8)(b)	CIB (Pty) Ltd	The insurer is not in a position to resolve complaints as expeditiously as the cell owner would be able to, as the cell owner is generally in the operations. An escalation process should take this into account.	The draft Conduct Standard does not prohibit the handling of complaints by the cell owner, but it requires that any complaints escalation and review process must allow for the direct escalation of a complaint to the cell captive insurer. Supervision experience has shown in some cases unnecessary processes regarding escalation to areas that do not specialise in insurance, to the detriment of the customer. One of the primary concerns identified in relation to the cell captive business model is unnecessarily complex complaints and escalation procedures within certain cell

No	Section of the standard	Commentator	Comment	Response
				structures especially identified where the cell owner is a bank or another large institution. This requirement is informed by supervisory experience, which has shown that the cell captive insurer in many instances does not have the necessary oversight to ensure it complies with the Complaints management requirements in the PPRs. Please also see the Statement of need published alongside the draft Conduct Standard in this regard.
Section 4. DISCLOSURE REQUIREMENTS				
49.		Infiniti Insurance Limited	These are fair, clear and well written.	Noted.
50.	Section 4 (1) (a-c)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	- Where the cell owner is an investor cell, is it the intention that in addition to disclosing the details about the cell captive insurer, binder holder and intermediary, details about the investor cell owner must be made as well as disclosure referred to under section 4 (1)? - This can be misleading. A cell owner might just be an investment company with an unrelated brand and name. We should specify that the NMI selling the policy is part of a group that has a shareholding in the insurer. This should be in place across the industry – not just cell captives. - This should only be in place where an NMI or its associate owns the cell. Not for a UMA that transacts via independent intermediaries. - Raises the issue of brand fees – if they are to be disclosed then it should be an industry issue not a cell captive issue.	The requirements in Section 4(1) (a) – (c) need to be read and applied holistically. You will note that Section 4(1) (a) relates to disclosure of the <i>exact nature of the relationship between the cell captive insurer and the cell owner to which the policy relates</i>; The disclosure in Section 4(1) (a) was partially informed by supervisory experience which highlighted the need for the customer to understand the relationship and have a clear understanding as to who the insurer (i.e. contracting and accountable party) is in the relationship and what the nature is of the cell owner. It became clear that many customers do not have a clear understanding about these relationships. Section 4(1) (b) has been amended to limit this specific disclosure only to where the cell owner is a non-mandated

No	Section of the standard	Commentator	Comment	Response
				intermediary. It states: <i>where the cell owner is a non-mandated intermediary, all remuneration arrangements (including profit share and dividends) between the cell owner and the cell captive insurer in relation to the policy; and</i> In addition to this, section 4(1)(c) has been amended to apply to disclosure of any other fees and charges payable to any cell owner, regardless of whether they are an NMI or associate of an NMI, or any other type of cell owner. This is drafted in this way because the policyholder has the right to know about any other fees or charges payable by the policyholder to the cell owner in relation to the policy. The fee disclosure to the policyholders in respect of cell captive structures who are owned by non-mandated intermediaries emanates out of the shareholding by the cell owner in the cell captive insurer, which is not the case in the rest of the industry outside cell captive insurers. The cell owner has a shareholding in the business and therefore an additional layer of involvement to the product being offered while being a non-mandated intermediary. The policyholder should have all the information to make informed choices.
51.	Section 4(1)(a)	Centriq Insurance Company Limited and Centriq Life Insurance	- What is the rationale for this disclosure especially where the cell owner provides neither binder nor intermediary services i.e. if no association between cell owner and intermediary exist. - Current practice is to disclose intermediary, binder holder and cell captive insurer as the	See response to comment directly above which raises the same issue and attracts the same response. The cell owner adds another level of participation in respect of the policies, whether the role is more passive or more active. If there is remuneration flowing from this participation, this should be disclosed to the potential

No	Section of the standard	Commentator	Comment	Response
		Company Limited	underwriter of policies and those are disclosures make sense since they are all active parties in the policy contract that the policyholder is entering into.	policyholder. The cell captive insurance structure is unique in this respect as there may be many cell structures with different levels of participation. From supervisory experience it became clear that there is a need for the customers to understand who the insurer (i.e. contracting and accountable party) is in the relationship and what the nature is of the cell owner. It is clear that the customers are unsure who they are dealing with, which may lead to unfair outcomes.
52.	Section 4(1)(a)	CIB (Pty) Ltd	This is vague and will result in ambiguous disclosures. Defined relationships should be set out and such disclosure of these defined relationships should be made. The disclosure is not only excessive, but it may be difficult to capture the structure of the remuneration to fit a typical disclosure. Short of explaining the contractual relationship by e.g. giving the entire contract, the disclosure may not do justice to the regulation.	Disagree. Transparency in respect of the relationship between the different parties and the remuneration agreements is important before a policy is entered into to afford clients the best opportunity to make informed choices. Supervisory experience showed that many customers are unsure of who they are dealing with in complex structures, which may lead to unfair outcomes. By requiring exact disclosures of the relationships between the cell captive insurer and the cell owner, this provides the clarity to the customer. The principle is that potential policyholders and policyholders have a right to know and understand the relationship between the parties with whom they are intending to contract, as well as the flow of remuneration between such parties, as the cost of such remuneration is ultimately borne by the policyholder. The policyholders and potential policyholders should not bear the brunt of overly complex business structures created by industry players which exacerbates the

No	Section of the standard	Commentator	Comment	Response
				dissymmetry in information between the financial institutions and customers.
53.	4(1)	ASISA	Clairty is requested as to where these disclosures must be made and by whom i.e. is it the binder holder, the cell owner etc or the cell captive insurer itself?	The cell captive insurer as the regulated entity remains responsible for the compliance in this respect, however, the Authority is not prescriptive in this respect if it is for example to be made by the intermediary or binder holder when engaging with the policyholder. It is the same principle as with regards to disclosures required in terms of the PPRs.
54.	4(1) (b)	ASISA	One member has a concern about having to provide “concise” details which they understand to mean the actual dividend amounts for the following reasons: • The result could be that competitors could leverage these disclosures to policyholders to lure cell owners to move cell structures resulting in market churn. • Practically it is not possible to determine upfront what the potential dividend could be and disclosure documents will have to be issued to policyholders when the dividends are paid which may be quarterly, resulting in increased costs that may be passed on to policyholders. It is therefore proposed by this member that paragraph (b) be amended to require that a cell captive insurer disclose that the cell owners holds shares in the insurer and receives dividends without providing the actual amounts thereof.	Use of the word “concise” will take on the grammatical meaning thereof. The disclosure of “concise” details is the same type of terminology as is used in the wording in the PPRs as it pertains to the disclosure requirements. The disclosures in this section refer to prior to inception, this would entail disclosing succinct (and “to- the- point”) information as to what profits/dividends can be payable in terms of these arrangements. As dividends are not certain, precise amounts at inception may not be possible. Because of the disclosure at inception on what is being paid in this arrangement, if nothing changes in respect of that arrangement disclosures on payment of dividend will not be required, and therefore increased costs are not anticipated.

No	Section of the standard	Commentator	Comment	Response
55.	Section 4(1)(b)	SAIA	The nature of the relationship and the fees payable can be disclosed	Noted
56.	Section 4(1)(b)	SAIA	In principle requirement for disclosures on the nature of the relationship and the fees payable is supported; however the disclosure requirements in relation to providing “concise” details be reconsidered both from a practical point of view as well as the unintended consequence of providing competitive sensitive information. The result could be that competitors could leverage these disclosures to policyholders to lure cell owners to move cell structures resulting in market churn. It is proposed that the information to be provided to policyholders in the disclosures relating to remuneration arrangements be reconsidered to balance the risks of market churn and achieving fair outcomes to policyholders. As such it is proposed that paragraph (b) be reviewed to instead disclose that the cell owners hold shares in the insurer and receives dividends without providing the details thereof.	The disclosure of “concise” details is the same type of terminology as is used in the wording in the PPRs as it pertains to the disclosure requirements. Concerns noted regarding cell owners ‘moving’ their cell structures between cell captive insurers as a type of competitive power to negotiate higher dividends and profit share. This is an exact illustration of the risks that the Conduct Standard aims to address. What is of a higher concern is that cell owners would have the “powers” to do so which illustrates the inappropriate power that cell owners have over the policyholder even though contractually it is the cell captive insurer that is responsible and accountable to the policyholder. The disclosure of the relationship, the fees, and remunerations is very specifically aimed at transparency in respect of the relationship between the different parties and the remuneration agreements are important before a policy is entered into to afford clients the best opportunity to make informed choices. The principle is that potential policyholders and policyholders have a right to know and understand the relationship between the parties with whom they are intending to contract, as well as the flow of remuneration between such parties, as the cost of such remuneration is ultimately borne by the policyholder. This aligns with international best practice as set out by the IAIS ICP’s, more specifically ICP 18.5. In this regard please see comments under item 4 of this consultation report under

No	Section of the standard	Commentator	Comment	Response
				“General account of the issues raised in the submissions made during the consultation.” The policyholders and potential policyholders should not bear the brunt of overly complex business structures created by industry players which exacerbates the dissymmetry in information between the financial institutions and customers. Cell captive insurers have an obligation to ensure that they conduct their business in a manner that ensures fair outcomes to policyholders, this responsibility extends to the chosen business arrangements of the cell captive insurer. Ultimately the cell captive insurer as licensed entity will remain responsible. Section 4(1) does not prescribe that the exact rand amount in dividend must be disclosed, but rather the remuneration arrangements in respect of dividends. A description of the dividend as is agreed to between the insurer and the cell owner should therefore suffice. In our view, the wording, which states that a concise summary of the remuneration arrangements must be provided, is therefore already largely aligned to what you are proposing.
			There are a few practical considerations relating to disclosure of concise details to policyholders: It is not possible to determine upfront what the potential dividend could be. Disclosure documents will have to be issued to policyholders when the dividends are paid which	Agreed. Disagree. The captive insurer must, before it enters into a policy, provide a potential policyholder with concise details

No	Section of the standard	Commentator	Comment	Response
			may be quarterly resulting in increased costs that may be passed on to policyholders. It is suggested that the disclosure be limited to disclosing the earning of a dividend only and not the amounts. The design of the disclosure notice in relation to dividends and the timing of the disclosures should be taken into consideration specifically in line of the financial literacy of targeted policyholders so as to avoid confusion.	of remuneration arrangements (including profit share and dividends) between the cell owner and the cell captive insurer in relation to the policy. This does not mean it necessarily has to be the Rand amount. Disagree for the reasons explained above. Agreed. It is for this reason that the disclosure responsibility falls upon the cell captive insurer, who should know the expected financial literacy levels of the policyholders at whom the products are being targeted.
57.	Section 4(1)(b)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	- What is the rationale for this disclosure where it does not relate to binder and intermediary services provided to get the policyholder to take up cover? This dilemma is more apparent in a scenario where both binder and intermediary services are provided by a party other than cell owner. - Current practice is to disclose commission and binder fees paid by the cell captive insurer. We agree that the situation is different if the cell owner and the intermediary are associated parties	See response to comment directly above which raises the same issue and attracts the same response. Section 4(1)(b) has been amended to specifically apply to disclosures where the cell owner is a non-mandated intermediary only be required where the cell owner is a non-mandated intermediary. The profit share and dividend are an additional layer of involvement from the cell owner in the product being offered to the policyholder. The disclosure provides transparency and provides the policyholder with a full view before it decides to enter into the agreement.

No	Section of the standard	Commentator	Comment	Response
58.	Clause 4.(1) – specifically (b)	Absa Short – term Insurance Group	1) Absa Insurance fully supports disclosure in order to afford clients the best opportunity to make informed choices and we welcome the fact that the Regulator wants to ensure adequate disclosure within the cell captive environment. 2) We need to caution that cell captive arrangements are complex in nature and care must be taken to ensure that clients are indeed serviced and informed in the most practical manner to ensure their understanding of the products. 3) We suggest that it may not be pragmatic, especially in a call-centre environment to provide all the information contemplated in 4(1), however we agree that it is important that initial disclosures include the nature of the relationship between the cell captive insurer and owner as well as the profit/loss sharing arrangement. 4) More comprehensive disclosures could then follow in the documentation pack which will be provided to the client. 5) We also support that disclosures to be more prominent and on marketing material if need be.	Noted. It is agreed that comprehensive disclosures could pose challenges through certain distribution channels. However, transparency in respect of the relationship between the different parties and the remuneration agreements is important before a policy is entered into to afford clients the best opportunity to make informed choices. The principle is that potential policyholders and policyholders have a right to know and understand the relationship between the parties with whom they are intending to contract, as well as the flow of remuneration between such parties, as the cost of such remuneration is ultimately borne by the policyholder. The policyholders and potential policyholders should not bear the brunt of overly complex business structures created by industry players which exacerbates the dissymmetry in information between the financial institutions and customers.
59.	Section 4(1)(b)	Guardrisk	Disclosures of cell captive insurance arrangements to policyholders is supported and can be facilitated through the distribution channel that is utilized to on-board a potential policyholder. The definition of potential policyholder in the PPRs includes a person who has received advertising, as defined in advertising section of the PPRs, in relation to any policy or related service of an insurer. Please clarify if the definition of potential	Noted. The definition was specifically limited to exclude paragraph (c) as stated in the definition of “potential policyholder” which includes “a person who – (c) has received advertising, as defined in rule 10, in relation to any policy or related service of an insurer” The reason for the difference is that including any person that has received advising as defined in the PPRs will place an undesirable burden on insurers to disclose the nature of the relationship between the cell captive insurer and cell

No	Section of the standard	Commentator	Comment	Response
			policyholder, for purposes of disclosures as it is referenced in s.4(1), would extend to advertising.	owner as well as remuneration structures and fees in this arrangement to any person that has received advertising. As it currently reads the disclosure requirements are only applicable when a person applied to or otherwise approached an insurer or an intermediary to become a policyholder or has been solicited by an insurer or an intermediary to become a policyholder. The required disclosure will be most relevant to the person who is intending to contact the insurer.
60.	Clause 4.(1) – specifically (b)	The Banking Association South Africa	1) BASA fully supports disclosure in order to afford clients the best opportunity to make informed choices and we welcome the fact that the Regulator wants to ensure adequate disclosure within the cell captive environment. 2) We need to caution that cell captive arrangements are complex in nature and care must be taken to ensure that clients are indeed serviced and informed in the most practical manner to ensure their understanding of the products. 3) We suggest that it may not be pragmatic, especially in a call-centre environment to provide all the information contemplated in 4(1), however we agree that it is important that initial disclosures include the nature of the relationship between the cell captive insurer and owner as well as the profit/loss sharing arrangement. More comprehensive disclosures could then follow in the documentation pack which will be provided to the client.	Noted. Please see the response to the same comment under 58 above.

No	Section of the standard	Commentator	Comment	Response
61.	Section 4(1)(b)	CIB (Pty) Ltd	If the cell owner is a binder holder and is not a broker, the disclosure of such remuneration is excessive. It is suggested that the disclosure concentrates on whether the cell owner is paid a fee that has an element of profit share in it, or not. Or whether the cell owner participates both in the upside and downside of the underwriting risk.	Disagree. The principle is that potential policyholders and policyholders have a right to know and understand the relationship between the parties with whom they are intending to contract, as well as the flow of remuneration between such parties, as the cost of such remuneration is ultimately borne by the policyholder. The PPRs already require disclosure when it comes to remuneration to binder holders. It provides as follows: Concise details of all of the following, where applicable- (i) any charges or fees to be levied against the policy or the premium; (ii) any commission or remuneration payable to any intermediary or binder holder in relation to the policy, and the recipient thereof; and (iii) any excesses that may become payable by the policyholder, the circumstances under which it will be payable and the consequences of not paying; This only extends the disclosures to profit share and dividends between the parties. To accept the commentator's proposals would therefore be contrary to the existing regulatory framework.
62.	Section 4(1)(c)	SAIA	Does this disclosure include the reinsurance commission.	This part speaks to fees payable by the policyholder to the cell owner or its associates.

No	Section of the standard	Commentator	Comment	Response
63.	Section 4(1)(c)	CIB (Pty) Ltd	Disclosure of fees or charges payable to the associate of a cell owner (that is an NMI) is excessive unless these are outside the ambit of existing regulation. The mere disclosure of associate relationships presents a significant challenge.	Transparency in respect of the relationship between the different parties and the remuneration agreements is important before a policy is entered into to afford clients the best opportunity to make informed choices. Changes were made to section 4(1)(b) and 4(1)(c). Section 4(1)(c) applies to disclosure of other fees and charges payable by the policyholder irrespective of the nature of the cell owner. This was amended because the policyholder has the right to know about any other fees or charges payable by the policyholder to the cell owner in relation to the policy.
64.	Section 4(2)	CIB (Pty) Ltd	This is burdensome and has potential to draw additional costs for policyholders. Change in binder fee percentages or the like may occur more regularly in the future.	The PPRs already provide for ongoing disclosure. An insurer must in writing disclose to the policyholder information on any contractual changes during the duration of the policy and, on an ongoing basis, disclose to the policyholder relevant information depending on the type of policy. Comments on a potential cost implication are noted however without any details or substantiation it still does not explain why a policyholder would not be entitled to know about these costs - which const the policyholder ultimately bear.
Section 5. REPORTING REQUIREMENTS				
65.		Absa Short – term Insurance Group	The reporting requirements are noted and supported.	Noted.

No	Section of the standard	Commentator	Comment	Response
66.		Infiniti Insurance Limited	These are fair, clear and well written.	Noted.
67.		The Banking Association South Africa	The reporting requirements are noted and supported.	Noted.
68.	5(2)	ASISA	ASISA members acknowledge that this type of “file and use” requirement where the authorities can revert to the insurer at a later stage with objections has been introduced in other regulatory requirements but in their view it is crucial in this case to have a set time period for the FSCA to raise any objections. The nature of cell captive arrangements means that they take a long time to set up and also to unwind or amend. It is therefore submitted that the FSCA should be required to notify the cell captive insurer of any objections before the end of the period referred to in 5(1).	Disagree. Regulatory concerns with cell structures will not only arise at the time of entering into the agreement and may present at any time of the business relationship. Objections related to possibly leading to unfair outcomes may only be picked at a later stage when other supervisory information is available. Supervision over licensed entities is continuous and as matters arise, they are taken up with the insurer.
69.	Section 5(2)	CIB (Pty) Ltd	This section is too broad in respect of the cell structure agreement. This section states “at any time”, this should be done at the time of entering the agreement.	Disagree. Regulatory concerns with cell structures will not only arise at the time of entering into the agreement and may present at any time of the business relationship. The reporting requirements provide an opportunity for the supervision teams to consider the arrangements, matters that may lead to unfair outcomes may at any time be picked up and addressed as they are noted.
70.	Section 5(2)	Leanne Jackson (Independent commentator)	The phrase “at the Authority’s own accord” is unnecessary and should be deleted.	Disagree. This serves a specific regulatory purpose. Please also see the regulations under the LTIA and STIA related to authorisation of and requirements for the collection of premiums by intermediaries and contracts identified as health policies under the LTIA and accident and health policies under the STIA which contains similar provisions.

No	Section of the standard	Commentator	Comment	Response
71.	Section 5(2)	SAIA	It is suggested that the mandate of the FSCA in relation to raising objection be confirmed to be limited with the objectives as set out in Section 57 of the Financial Sector Regulation Act - either in the Standard or in the Statement supporting the standard.	No confirmation of this is required within the Standard. It speaks for itself that any objections will be conduct related and within the scope of the objectives of the Authority. The Authority may only act within the mandate afforded by Parliament through legislation. Any person aggrieved by a decision made by the regulator in terms of a financial sector law has as a recourse the Financial Services Tribunal as per the FSR Act.
72.	Section 5(2)(b)(ii)	CIB (Pty) Ltd	It is not equitable that the Authority may determine terms and conditions of an agreement. The regulation should stipulate what is acceptable or not and the agreements should meet these requirements. This is open ended and provides no contract certainty to either party to the agreement.	Disagree, the power requires the amendment of terms and conditions in respect of these agreements to correct aspects which may be to the detriment of policyholders falls directly within the legislative mandate and powers bestowed on the regulator. It must always be viewed in respect of the mandate of the Authority, this circumscribes the powers in this respect.
73.	Section 5(3)	CIB (Pty) Ltd	This should be removed as per details provided in above.	As per above.
74.	Section 5(4)(a) and (b)	Guardrisk	A cell structure agreement ordinarily sets out the course of action in respect of termination of a cell structure. The usual termination clause would support a notification of termination with a 60-day notice period. However, this section does not consider instances where the cell structure and/or agreement is terminated due to a breach of contract (which could with immediate effect or less than 60 days). In such circumstances, the termination period is dependent on the materiality of breach and a cell captive insurer would not be in a position to comply with the 60-day notice period. We submit that the section does not take the mentioned nuances into account.	Noted. However, these reporting requirements are similar to the Reporting requirements in relation to binder agreements as set out in the regulations. It is not clear why the regulator needs to accommodate termination due to breach of contract, which would likely be the exception and not the rule. The reason for the reporting requirements is to ensure that the policyholders in these structures are not prejudiced by the termination of the cell arrangement. It aligns with oversight requirements in other 3 rd party business arrangements. The commentator's concerns and motivation to treat this differently are not clear.
75.	Section 5(4) (c) and (d)	Guardrisk	We are of the view that the requirements relating to the policies and protection of policyholders are	Disagree. This relates to the termination of a cell structure, which is different from the agreements relating to a binder

No	Section of the standard	Commentator	Comment	Response
			dealt with under the binder holder agreement and subsequently, the binder holder termination notification requirements. Thus, this is a duplication of requests.	agreement. Not all cell owners will be binder holders, so comment that this is duplication if it is different business agreements potentially performed by different parties are unclear. The reporting requirements in this section apply regardless of whether binder functions are being performed. This requirement relates to all terminated cell structures.
76.	Sections 5(4)(c) and (d)	CIB (Pty) Ltd	This should be dealt with in terms of the binder regulations and the policyholder protection rules and not a determination by Authority at time of termination.	Disagree. This relates to all terminations of cell structure, not only where binder functions are outsourced. This relates to the termination of a cell structure, which is different from the agreements relating to a binder arrangement. Not all cell owners will be binder holders, so comments that this should be dealt with in terms of the binder regulations are unclear.
Section 6. LIMITATION ON OWNERSHIP IN CELL STRUCTURES BY NON - MANDATED INTERMEDIARIES				
77.	6(1)	ASISA	It is requested that the Standard be expanded to specifically cater for the following scenarios: - To allow new cell structures and or new non-cell captive arrangements with life and non-life insurers once existing arrangements have been terminated and the business has been placed in run-off with the existing cell captive insurer; - Allowance should be made for a cell owner to have 2 cell structures during a Section 50 transfer process i.e. while the transferor cell is closed to new business and the transferee cell is open to new business; - In order to facilitate expedient compliance to court orders or a ruling from for example the	The 1st scenario is not understood as it is not clear what the non-cell captive arrangements could be or how it is disallowed items of the standard. The standard merely limits cell ownership by NMI cell owners. Disagree that a specific regulatory concession should be made for cell ownership by an NMI cell owner for a cell structure in runoff. This can be dealt with by way of a regulatory exemption if in fact necessary, based on the facts of the matter. Exemptions are by nature usually temporary in nature and based on the facts in a particular matter and the necessary conditions to the granting of the exemption. We do not agree that the limitations in the standard will result in

No	Section of the standard	Commentator	Comment	Response
			Competition authorities, it is suggested that these exemptions be provided for in the Standard so as to avoid insurers having to apply for an exemption in terms of Section 281 of the Financial Sector Regulation Act.	competition concerns, and on the contrary, it is aimed at levelling playing fields. In terms of the ‘traditional’ model of intermediation, there are already limitations in effect when it comes to an NMI that earns commission also sharing in the profits of the insurer. The effect of this limitation will therefore be to level playing fields between intermediaries in the cell captive insurance space and in the transitional space and therefore support competitive forces rather than impede on it.
78.	Clause 6(1) General comments	The Banking Association South Africa	1) Limitation of Customer Choice The Position Paper as it currently reads, and more specifically the restriction imposed on an intermediary to render services only in relation to the products of the cell that it owns, significantly limits customer choice and will adversely impact fair customer outcomes and create further substantial conflict of interest. The “Tied Agent” model in relation to being tied to the cell where the intermediary earns the profits is contrary to the fundamental principles of Treating Customers Fairly and contrary to the intermediary’s primary duty to act in the best interest of the policyholder, offer consumer choice and to offer consistently fair value to customers. In relation to the Motor vehicle dealer industry, the proposed legislation will have the consequence that consumer choice will disappear from a dealer floor where the dealer chooses to own a cell captive. When a consumer decides to purchase a new vehicle, the choice of which dealership they go to depends primarily on two factors:	1) We disagree with the view that the limitations in the Conducts Standard will limit customer choice. In addition to the response here, also please see comments under item 4 of this consultation report under “General account of the issues raised in the submissions made during the consultation.” Both the competition law concerns, and the limitation of customer choice do not arise from the draft Conduct Standard. A customer has the option of approaching any intermediary and purchasing any product he or she wants to purchase. This proposal would simply mean that the customer cannot purchase the broader scope of products through the particular cell owner NMI. But to imply that the fact that the latter NMI cannot sell additional products to the consumer results in that customer not having additional options is a complete fallacy. With regards to specific examples provided in the motor vehicle dealer environment, the same argument as made above holds true. I.e. if the motor dealer decides to sell unsuitable products to clients then the motor dealer is acting in direct contravention of the FAIS Act and its FSP licence should be withdrawn. If the motor dealer decides to act in the interest of the client it will

No	Section of the standard	Commentator	Comment	Response
			- o Proximity of the dealer; and - o Where they can get the best price for their vehicle of choice There is no way that the consumer can know if the dealer that they choose to deal with is a cell owner or not and hence their choice of dealer could prejudice them when it comes to choice of insurance products. If one uses a Toyota dealership as an example, Toyota SA has gone to great lengths to develop a Toyota Original Extended Warranty that has the same cover as the original new vehicle warranty, and they have managed to price the product very competitively due to discounts on part and labour rates from the Toyota dealer network. This is a great outcome for the consumer as they are getting the best possible product at the cheapest possible price. The proposed Cell Captive Conduct Standard will have the result that a consumer will no longer be offered the Toyota SA extended warranty by approximately 60% of all Toyota dealers as they all own cell captives. Once again the consumer will have no way of knowing if the dealer they choose to deal with is a cell owner or not as the brand the customer sees at the dealership is that of Toyota. A further consequence is that in instances where the customer cannot be sold the Original Equipment Manufacturer's (OEM) extended warranty plan, the manufacturer cannot guarantee that the workmanship done on the vehicle will be conducted in accordance with the OEMs quality standards. This	inform the client of the limitations and potentially also refer the client to an FSP that can provide it with a broader and more suitable scope of products.

No	Section of the standard	Commentator	Comment	Response
			further impacts any guarantees in place by the OEM and could potentially impact the longevity of the customer having the vehicle. Customers needs will not be addressed and sub-standard products may be sold to customers. 2) Unfair outcomes to customers may arise Non mandated Intermediaries (NMI's) are highly likely to only select "good risks" if they are tied to their cell. An example would be where a vehicle is in questionable mechanical condition, the cell owner would not offer a warranty product to the customer in order to protect the profitability of their cell. These are the very customers that require a warranty product. Today, the customer still has options as the cell owner will offer a warranty product not belonging to their cell to a customer and place the risk with an insurer other than their cell, where the risk is uncertain or not within the appetite of the NMI cell owner. This anti-selection risk is "baked into" the pricing of insurers and they are happy to accept the risk. The proposed future position will result in clients who need mechanical warranty protection not being offered alternate products due to the cell restrictions. 3) Stand-Alone Retrenchment product example As an example, currently no cell captive insurers in the dealer space offer Stand-Alone Retrenchment cover as a product of the cell. In the current economic climate, the stand-alone Retrenchment product offers significant value and benefits to customers. Not only does it pay the finance instalments to the benefit of the customer, it also	2) See comment about the intermediary choosing to be a cell owner and an NMI – it is therefore not because of the restrictions in the standard that will have this effect but the choice of the intermediary. Please see response to this argument under point (1) above. 3) A customer has the option of approaching any intermediary and purchasing any product he or she wants to purchase. This proposal would simply mean that the customer cannot purchase the broader scope of products through the particular cell owner NMI.

No	Section of the standard	Commentator	Comment	Response
			protects the financiers from bad debt risk. Not allowing an NMI that is a cell owner to offer these products outside of their cell may not be in the best interest of the consumer and cell owners are unlikely to offer this product as the profitability is marginal at best but many of the financiers use this product to protect their consumers in case of retrenchment. Although a leads option is possible for this product given the drop off in conversion seen in a telesales environment compared to point of sale, this would result in an increase in underinsured customers and, due to the low premium involved, may not be commercially viable for insurers that would pay the cell owner for the lead and incur a telesales or additional acquisition cost to sell the product. 4) Competition Law concerns The proposed legislation, by tying the cell owners to an insurer, will create barriers to entry for “smaller players” that offer certain insurance products only or do not have the scale to compete with the cell providers into the motor vehicle market, an environment previously dominated by large motor dealer groups and Original Equipment Manufacturers (“OEMs”). This would be misaligned to what the Competition Commission is aiming to achieve in this industry, as noted in the “Guidelines for Competition in the South African Automotive Aftermarket Industry paper” it published for comment in February 2020. 5) Risk of unfair decision-making related to claims	4) In respect of the competition, concerns and claims that it will impede smaller new entrants in the market is concerned, the Authority has wide powers in terms of the FSR Act to exempt an applicant from certain provisions of the law if necessary and will consider doing so in particular if it can be demonstrated that allowing these structures will improve competition in the market and enable or support transformation of the insurance sector. Such Applications will be considered on a case-by-case basis. In respect of the competition, concerns and claims that it will inhibit growth in the market or impede new entrants in the market is concerned, the Authority has wide powers in terms of the FSR Act to exempt an applicant from certain provisions of the law if necessary and will consider doing so in particular if it can be demonstrated that allowing these structures will improve competition in the market and enable or support

No	Section of the standard	Commentator	Comment	Response
			We take cognisance of the risk in relation to decision-making on claims raised in the Statement supporting the Draft Conduct Standard. In the motor dealer space, there is a low prevalence of cell owners performing claims settlement binder functions and we propose that there are other regulatory interventions that could mitigate any risk herein, including that a cell-owner could be prohibited from having a claims binder with the cell insurer. It is our submission that due to the above issues raised, cell owners should not be required to be tied agents of the cell insurers. We note that the FSCA has highlighted the risks emanating from the ownership of cells by motor dealers that can give rise to adverse customer outcomes however we do not believe that the “tied ownership” model adequately addresses the risk of poor customer outcomes as the NMI remains driven to derive maximum profits through its ownership of the cell to the detriment of the customer. It does in fact strengthen the position of the motor dealer, being the very conflicted entity the standard seeks to address, in limiting customer choice at the point of acquiring the vehicle. It is to be noted that if a dealer is part of a cell structure (cell) and hence restricted to only selling products that fall within the cell, the customer may still accept a product from an alternate intermediary.	transformation of the insurance sector. Such Applications will be considered on a case-by-case basis. The limitation in section 6 is limited to NMI’s. Therefore, the only limitation then would be that that cell owner cannot also sell and market all the policies of the different cell structures by also acting as an NMI. Fundamentally it comes down to choosing the role that the cell owners want to fulfil and not simply attempting to circumvent limitations on remuneration, which is unfair to other industry players We do not agree that the limitations in the standard will result in competition concerns, and on the contrary, it is aimed at levelling playing fields. In terms of the ‘traditional’ model of intermediation, there are already limitations in effect when it comes to an NMIs that earns commission also sharing in the profits of the insurer. The effect of this limitation will therefore be to level paying fields between intermediaries in the cell captive insurance space and in the transitional space. The policy position in respect of the risks that can arise in the cell structures where the cell owner is a NMI has been clearly articulated in the 2019 Position Paper containing the final proposals. Supervisory experience strengthened the view of the FSCA that statutory intervention was required. There are also other developments to assist new entrants to the market as a whole. To provide inroads into the market to smaller entrants, the FSCA and the Prudential

No	Section of the standard	Commentator	Comment	Response
			6) Envisaged practical challenges: At present, the motor vehicle finance application includes financing of the Value Added Insurance Product (VAP). The proposed regulatory changes will introduce a more cumbersome sales process, which is not ideal in terms of the customer experience. We anticipate the following practical challenges relating to financing of the value added product (VAP): (a) This will include process and system changes which will need to – in future – solve for the inclusion of a specific dealer requirement.	Authority allowed for microinsurance cell captive licensing. It is expected that Microinsurance cell captives will increase the pace of transformation and allow new entrants in the insurance sector at large. The microinsurance cell captive license is issued as a composite license which features both long- and short-term products. Because of the lower capital requirements for microinsurance cell captive insurers this may translate into lower management fees, making it more affordable for new entrants. Comment / suggested alternative noted, however, this is one of many risks that were identified that informed the limitation. Please see the 2019 position paper. You will see that the Conduct Standard is based on a multi-pronged approach – to address the conflicts as identified as well as the regulatory arbitrage that can arise and to limit the proliferation of cell structures over which the cell captive insurers do not have appropriate oversight and control 6) The practical challenges under (6) are noted, however, engagements were held with industry players and a consultation process followed together with a proposed transitional period of two years. The Conduct Standard is likely to lead to improved outcomes for policyholders due to the absence of conflicted or biased advice by NMI cell owners who will only be able to sell and earn commission on policies that are written in the cell structure for which they are the cell owner, and act as tied agents of the cell captive insurer that underwrites that cell.

No	Section of the standard	Commentator	Comment	Response
			(b) At present, the FSP/Credit Grantor completes an affordability assessment that considers the financing of the vehicle and the VAP. The proposed changes will necessitate two affordability assessments and will (a) require that a Credit Grantor will conduct an affordability assessment, and (b) in addition, a separate / new affordability assessment will need to be completed by the Dealer in relation to the VAP. (c) Marketing consent will have to be re-checked by each FSP/Credit Grantor on each VAP deal. (d) Alternate intermediaries would need to set up call centre teams to action “hot VAP leads” received to prevent delaying the Finance and Insurance Manager (F&I) process of concluding the vehicle finance application which includes the financing of the VAP. This may result in additional costs both for the dealer and the customer. (e) The ability of the customer to make an informed decision on a product will be hampered due to limited timeframes afforded to the customer of comparing and choosing the most suitable VAP. To ensure that the customer is in a position to make an informed decision, a customer awareness marketing campaign / advertising would have to be undertaken explaining the new cell captive tied	This, coupled with the enhanced disclosure requirements will ensure that policyholders will not be led to believe that they are receiving independent advice and understand that the NMI cell owner only offers products underwritten in a cell structure of which it is the cell owner and that the cell owner standard to benefit from the profitability of the products being sold. It is our view that the benefits to and enhanced protection of policyholders outweigh the possible impact on these existing cell captive arrangements that will no longer be allowed to offer products underwritten by other insurers or outside of the cell arrangement.

No	Section of the standard	Commentator	Comment	Response
			model and the fact that the customer will only be offered products from a specific cell.	
79.	Clause 6(1) (a) General comments	Absa Short – term Insurance Group	We will appreciate clarity from the Authority on the anticipated risk management value it will achieve by the limitation of ownership in cell structures by non-mandated intermediaries in an effort to mitigate the perceived inherent conflict of interest of a cell owner in the profitability of the cell and to assist in the proliferation of cell structures owned by NMIs, and whether said limitation is the only way to manage these risks. We are not in support of the proposed limitation of prohibiting non-mandated intermediaries conducting business through a cell to be limited to one cell captive insurer. It is in our view that this requirement will result in the following conduct risks; 1. Limitation of Customer Choice Customer will only be limited to products offered by the one cell captive insurer. Therefore assessments analysis on product suitability and the needs of the clients may not be fully considered as non-mandated intermediaries within the cell structure will punt the products that they can sell to the clients regardless of whether those products are suitable to clients, as an unintended consequence the regulator may promote the risk of mis selling of products to client. 2. Lack of competition While we note that the clients will always have freedom to choose the insurer or products of their own, we have to be cognisant that buying a car or a	The risks that the Authority is trying to limit by the draft Conduct Standard and the proposals contained therein have been set out in the published documents accompanying the draft Standard. The risks that have been found to be particularly prominent in the third-party cell captive space was outlined here as follows: • Lack of appropriate governance and oversight by the cell captive insurer over the business operated in the cell structures, which results in a lack of meaningful monitoring of the delivery of fair outcomes to policyholders. • Lack of oversight by the insurer over new product development which is likely to result in an increase in inappropriate or low value products, exacerbated by a proliferation of cell structures. • Shortage of skills and resources in some cell captive insurers to administer products sold through the cell structures, coupled with a lack of knowledge and understanding of the intimate workings of the business operated within the cell structure (“rent-a-license” type models). • Unnecessarily complex complaints and escalation procedures within certain cell structures especially identified where the cell owner is a bank or another large institution. Please also read the 2019 position paper in its entirety. The commentator will note that the Conduct Standard is based on a multi-pronged approach – to address the conflicts as identified as well as the regulatory arbitrage that can arise and to limit the proliferation of cell structures over which

No	Section of the standard	Commentator	Comment	Response
			house in an emotional buy as a result client may be inclined to conclude all necessary requirements related to the sale of a vehicle or property with one person, therefore this limitation may also deny the client to access to an open market for shopping for a competitive insurance product in this regards. This limitation may result in lack of product innovation and having the benefit of realising opportunities which could benefit clients. Based on the above we recommend that the regulator to further assess the conduct risks which could emanate as a result of the implementation of this limitation. We believe that the risks which the regulator is hoping to mitigate by proposing this limitation can be mitigated by creating customer awareness around marketing campaign / advertising to be undertaken and fully explain and disclose that the cell captive is not a tied model, and the fact that the customer will be offered products from certain cell captive insurers, this will ensure that the customer is well informed and placed in a position to make an informed decision before purchasing a product.	the cell captive insurers do not have appropriate oversight and control. The proposed limitation in respect of ownership of cell structures does not in itself restrict the customer choice. If the NMI chooses to be a cell owner and potentially share in the profit of the cell, the limits apply otherwise they are able to provide all the different products at the point of sale and earn commission as provided for in the regulations. We disagree that the limitation in section 6(1) impedes offering the most suitable products. Regarding the concerns of this leading to mis-selling and biased advice, this can be addressed through the provisions of the FAIS Act, seeing that the Conduct Standard proposes that the NMI cell owner must be a registered FSP. Regarding the comment on product innovation, it is not clear why product innovation could not take place within the same cell structure. We believe the benefit to policyholders in addressing the risks as identified, and level playing fields across the insurance sector in support of fair competition will outweigh the potential commercial benefit to NMI cell owners. The research and assessment of the conduct risk have been discussed and consulted on extensively and over a number of years. Other measures which are less intrusive have been considered, however through supervisory experience and deliberation it was concluded that a stricter approach is required.

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				Please again see paragraph 2.3 of the 2019 Position paper: “The clearest way to address these risks and concerns would be to outright prohibit NMLs from owning cell structures. However, the fact that there are existing cell structures of which the cell owners are NMLs has to be acknowledged, and regulatory requirements should be crafted in such a way to balance the rights of these cell owners against the protection to policyholders and the public at large.” The reason why this will be allowed is because to outright prohibit it would have a significant impact on existing cell structures, as inadvertently on policyholders of these structures. These expected impacts on existing cell structures are the exact same arguments as was raised by the same commentator in previous versions of the Conduct Standard, which poses the question the requirements are not being argued for argument's sake and as stalling tactics. No substantiation is made why two or three structures should be allowed if we have clearly explained that the preferred regulatory approach and the clearest way to address these risks and concerns would be to outright prohibit NMLs from owning cell structures. Allowing one life and one nonlife cell is, therefore, a regulatory concession.
80.	Clause 6(1) (a)	Absa Short – term Insurance Group	1. Absa Insurance would like more clarity from the regulator on whether will it be permissible for a non-mandated intermediary in a cell structure with a cell captive insurer thereby selling certain products	The limitation pertains to or attaches to cell ownership and therefore equity participation of the non-mandated intermediary. Section 6(1)(a) stipulates that where the cell owner is a non-mandated intermediary, or its associate

No	Section of the standard	Commentator	Comment	Response
			within the cell to simultaneously have another arrangement with the same cell captive insurer or another insurer wherein insurance products are sold outside of a cell arrangement structure? 2. Absa Insurance would like more clarity on whether an intermediary that is an associate to a non-mandated intermediary that owns a cell may, sell insurance products underwritten by other insurers? Or must the intermediary also be a tied agent to the non-mandated intermediary that actually owns the cell because of its association with the cell owner? If such an intermediary is required to be a tied agent, we believe it will result in limiting the choice of the consumer and promote anti-competitiveness. If the concern is related to TCF and that the consumer may not receive the correct advice from the intermediary that is associated to the cell owner, there could be more prominent disclosure requirements to create consumer awareness in respect of the relationship between the associated intermediary and the cell owner. 3. Absa Insurance would also like clarity on whether Underwriting Managers will be permitted to own a cells with a cell captive insurer, furthermore please advise if the Underwriting Manager will also be	may only render services as intermediary in respect of the policies underwritten through a cell structure of that cell owner. 2. No. If the cell owner is an NMI, or the associate of an NMI, the NMI cell owner, or associate of that cell owner that is an NMI may only render services as intermediary in respect of policies underwritten through a cell structure of that cell owners. Disagree that it will result in so-called 'anti-competitiveness'. In the absence of any substantiation why this could lead to anti-competitiveness the statement is rejected. See the explanation above regarding customer choice and the NMI cell owner's role in limiting customer choice when choosing to be a cell owner. Regarding the concerns of this leading to mis-selling and biased advice, this can be addressed through the provisions of the FAIS Act, seeing that the Conduct Standard proposes that the NMI cell owner must be a registered FSP. Regarding the comment on product innovation, it is not clear why product innovation could not take place within the same cell structure. We believe the benefit to policyholders in addressing the risks as identified, and level playing fields across the insurance sector in support of fair competition will outweigh the potential commercial benefit to NMI cell owners.

No	Section of the standard	Commentator	Comment	Response
			required to have an affinity relationship with the cell captive insurer?	There is no restriction on UMA's in respect of cell ownership as the same conflicts as detailed in the communication do not surface. UMA's are allowed to profit share outside of a cell structure. And UMA's, by definition, cannot deal directly with policyholders.
81.	Section 6(1)(a)	Leanne Jackson (Independent commentator)	My comment here is not on the wording of this subsection itself, but on the way it is described in the Statement supporting the draft Conduct Standard (the Statement). Limiting the cell owner and its associated non-mandated intermediary to rendering services as intermediary on policies underwritten through the applicable cell makes sense, for the reasons provided in the Statement and the December 2019 Position Paper. However, the Statement describes this limitation as the cell owner being the "tied agent" of the cell captive insurer (see paragraphs 2.3 and 3.4 of the Statement). This terminology is inaccurate and confusing and must not be used in the final version of the Statement. It is also inconsistent with the language used in the December 2019 Position Paper, inconsistent with the FSCA's Adviser Categorisation proposals under the Retail Distribution Review (RDR), and inconsistent with the draft Conduct Standard itself. Although the term "tied agent" is not formally defined in legislation, it is commonly used in FSCA and industry parlance to describe the type of relationship that exists between an insurer and its representative (as defined in the Insurance laws) and / or between a product supplier and a "product supplier agent" (PSA) as	Noted, however, the binding document is the Standard and not the statement, which is non-binding in nature. As the commentator stated, the term "tied agent" is not used in the draft Conduct Standard. The reference to "tied agent" in the Statement of Need was not meant to reflect any of the terminologies which is still under consultation in terms of the RDR. It is purely for descriptive purposes and in terms of the meaning understood by the industry is a tied agent being a person who performs advice and/ intermediary services on behalf of only one insurer. The description is used in the supporting documents only to explain how the limitation in respect of products offered is established in the draft Standard and should not be assumed to be linked to the RDR policy process and terminology still under development. The links that are created to the RDR and terminology under consultation are misplaced. The terminology used is used for descriptive purposes in the statement and not as a reference to the language used in the December 2019 Position Paper, or the FSCA's Adviser Categorisation proposals under the Retail Distribution Review (RDR). The word "tied agent" is not used in the draft Standard.

No	Section of the standard	Commentator	Comment	Response
			contemplated in RDR proposals. This is not compatible with the requirement in s.6(1)(c) of the draft Conduct Standard which requires the cell owner to be a licensed FSP in its own right, as opposed to acting as the “agent” of the cell captive insurer. The fact that the cell owner will be subject to a limitation on the range of policies it may render services on (limited to its own cell) does not make it the “tied agent” of the cell captive insurer. Under the proposed RDR adviser categorisation, the cell owner would be a Registered Financial Adviser / RFA – albeit subject to a product range limitation – but would not be a Product Supplier Agent / PSA of the cell captive insurer (or whatever final adviser terminology the RDR process concludes on). Also please see my general comment in Section D below regarding the relationship between the cell owner and the cell captive insurer.	The use of the word is used to explain that the NMI cell owner would not be allowed to provide products outside of the cell structure and is therefore restricted “tied” to the cell structure.
82.	Section 6(1)(a)	CIB (Pty) Ltd	The result of the proposed restriction is that independent NMIs that places business through an associate with the Cell Captive Insurer would become tied agents of the Cell Captive Insurer and would only be able to intermediate and provide their clients access to those insurance products. This will result in the various NMIs losing their “independent” nature. This restriction should therefore exclude associates of NMIs from this restriction. Alternatively: any exemption granted in terms other relevant legislation should apply to this section; or	Disagree. The associate relationship and the choice to be both a cell owner and an NMI is done at the instance of the NMI – the resultant limitation to independence would therefore be the choice of that NMI. The FSCA has wide powers in terms of the FSR Act to exempt an applicant from certain provisions of the law if necessary and will consider doing so in particular if it can potentially improve competition in the market and transformation of the insurance sector.

No	Section of the standard	Commentator	Comment	Response
			relevant parties should be allowed to apply for exemption	
83.	Section 6(1)(a)	Associated Compliance Motor (Pty) Ltd	In respect of motor dealerships, we do not believe that this will be in the customer's interest for the following reasons: - Dealerships, in conjunction with their cell captive insurers, have designed and offer various but similar products that are relevant for its different customer types and cater for different levels of affordability. They have other customers that are 'manufacturer brand' conscious who wish to buy products in the name of a particular manufacturer but in this latter case there is rarely a choice of product. It is imperative that the dealership has both types in its armoury to properly satisfy the needs of its diverse customer base - We accept that the unique characteristics of the third-party cell captive insurance business model can give rise to a number of conduct related risks resulting in adverse outcomes for policyholders. However, motor dealerships are very protective of their brand and indeed make use of their cell captive arrangements to fully support their customer base. Moreover, the additional governance and oversight by the cell captive insurer that you propose should eliminate most, if not all, misselling. - In the motor industry, competition between a manufacturer's products (which are often also cell captive based) and products within the motor	The limitations provided for in the draft Standard do not in itself limit the choice of the customer. The dealership is still able to offer any products to their customers if they are not non-mandated intermediary cell owners and thereby do not have the conflict of interest which arises through equity ownership. We do not agree that competition concerns arise. The intermediary (NMI) is only limited if it chooses to share in profit through a cell structure as a cell owner by at the same time want to be able to act as intermediary and earn commission. The limitations come into play if the non-mandated intermediary made a positive choice to share in profits which brings with this choice possible conduct risks that need to be mitigated. Our supervisory experience has shown that a number of conflicts exist and produced unfair outcomes for policyholders. Please see the detailed context in the 2019 Position paper explaining concerns over the various risks that arise due to these business models, and also please see comments under item 5 of this consultation report under "General account of the issues raised in the submissions made during the consultation." The Standard in draft does not limit competition where the non-mandated intermediary is not a cell owner and only

No	Section of the standard	Commentator	Comment	Response
			dealership's cell captive is fierce, and the removal of one of the competitors is more likely to result in unfair treatment of customers.	earns commission. The limitations proposed relate only to ownership relationships where conflict can arise.
84.	Section 6(1)(a)-6(1)(b)(i) (ii)	Guardrisk	1. In response to industry commentary required the Draft Conduct Standard (hereafter referred as the "Conduct Standard"), we hereby provide a detailed response to section 6 of the Conduct Standard that deals with the Limitation on ownership in cell structures by Non-Mandated Intermediaries (hereafter referred to as "NMIs"). 2. At the outset it is important to note that we accept the view that an NMI or associate of an NMI that is a cell owner (whether life, non-life or microinsurance) should not provide conflicted or biased financial services¹ to policyholders on the financial products² they offer. This inherent risk can be managed appropriately through a legislative limitation and governance within the insurer. The limitation as it stands in section 6(1) is suppressive on the cell captive industry. It will impede an NMI cell owner's ability to offer the most suitable product/s to current and potential new policyholders. The risks that we anticipate are as follows: 1 As defined in Section 1 of FAIS Act and includes advice and intermediary services 2 As defined in Section 1 of FAIS Act and includes life and non-life insurance classes of business • The proposed limitation will have a major negative impact on a cell owner's ability to diversify its risk across more than one insurance partner to the potential detriment of policyholders.	The proposed limitations relate only to cell owners who are also non-mandated intermediaries. Through cell structures, these non-mandated intermediaries are increasing their interest in the policies being sold to the policyholder and increasing their interest into the remainder of the product life cycle e.g. claims. A cell captive owner may make an equity investment and have the right to diversify their investment through the cell captive structure which is a very unique structure to allow for this, again the limit is only where that that investor is also a non-mandated intermediary, because of the potential risks as articulated in a great amount of detail in the December 2019 position paper on cell captive insurance business. We disagree that the limitation in section 6(1) impedes offering the most suitable products. Yes, the NMI, if it chooses to want to share profit and earn commission and potentially other remuneration will be limited in their product range, but this emanates from its choice to share in profit which creates possible conduct risks, which the limitation intends to mitigate. Should the NMI receive consideration through commission and not own a cell it is not restricted by this Standard in respect of the product range. We also do not agree that this will have a major negative impact on the cell owner's ability to diversity. If the cell owner wants diversity in investments by being a cell owner of a number of different cell structures it can still do so, it

No	Section of the standard	Commentator	Comment	Response
			Cell captive owners make an equity investment in a cell and should have the right to diversify their investments – this is very different to a “tied agent” who’s capital is not at risk. • Specific cell captive insurers may not be able to underwrite all the risks that an NMI cell owner may wish to provide to his customers/potential policyholders. • This will certainly lead to the larger cell captive insurers only becoming larger (as generally they will have the expertise and balance sheets to underwrite a wide scope of risks) and the larger retailers may then only use one cell captive insurer – its logical that they will only go for the largest/most established if they do not have a choice. This will severely limit the opportunity for new entrants to the cell captive industry especially new B-BBEE cell captive insurers (whether life, non-life or especially microinsurance). The proposed limitation is quite draconian and Guardrisk will not support this in the legislative process going forward – it is not conducive to the development of the cell captive industry; especially as new participants are concerned. • The opportunity for existing cell captives to grow organically will also be severely limited as in many instances where cell owners want to move from one cell captive provider to another, they follow a “proof of concept” period where they will run with more than one facility concurrently to test the capabilities of the	can simply them opt to not also want to market and sell policies as an NMI. There is a very clear reason for the limitations around remuneration in the insurance regulatory framework. And the cell captive structure should not be used toward creating regulatory arbitrage and unlevel playing fields between the limitations applicable to cell captive insurance vs so-called ‘traditional’ insurance relationships. Please see the detailed context in the 2019 Position paper explaining concerns over regulatory arbitrage and level playing fields. Arguments as to expected behaviour and strategic decisions of what the commentator refers to as large retailers are noted, and albeit as it is positioned as ‘logical’ it seems to be the subjective opinion of the commentator in the absence of evidence. Nothing prevents any large industry player to apply for a micro insurance license or insurance license themselves should it be informed by their business strategy. In the argument provided here in respect of transformation where new entrants in the market are concerned, the FSCA has wide powers in terms of the FSR Act to exempt an applicant from provisions of the law if necessary and will consider doing so in particular if it can potentially improve competition in the market and transformation of the insurance sector. We, therefore, do not think that the lack of competition should be of any concern to the commentator as the legislation is empowering in accommodating new entrants. Such applications will be considered on a case by case basis.

No	Section of the standard	Commentator	Comment	Response
			“new” cell captive insurer. This will not be possible under this limitation as it stands. • The limitation will make it impossible for NMI cell owners to competitively diversify their product offering which may be to the detriment of their customers/ policyholders. They may not be able to enjoy the benefits of innovation (e.g. Insurtech solutions) of more innovative cell captive players and may therefore not be in a position to “lead the way” with their insurer partner. It is a fact that not all competitors in a market segment are of the same quality, progress and technological or other advancement and each one tries to differentiate itself from its competitors in one way or the other. Retailers who own cells will now NOT be able to access the skills and expertise of different competitors – all to the detriment of their customers/policyholders. 3. Our detailed commentary is provided in subsection 3.1 and 3.2 below. 3.1 Misalignment of s.6(1)(a) of the Conduct Standard to Financial Advisory and Intermediary Services Act (“FAIS”) and the proposals addressed in the Retail Distribution Review (“RDR”). <i>Section 6.1(a) quoted as:</i> <i>“A cell captive insurer may only have a cell structure with a cell owner that is a non-mandated</i>	We also note concerns about the growth of the cell captive market. Again, the draft standard does not limit all cell owners as the comment seems to imply, and cell owners still very much have a choice to have more than one cell structure. The only limitation then would be that that cell owner cannot also sell and market all the policies of the different cell structures by also acting as an NMI. Fundamentally it comes down to choosing the role that the cell owners want to fulfil and not simply attempting to circumvent limitations on remuneration, which is unfair to other industry players. We disagree that the limitation in section 6(1) impedes offering the most suitable products. Yes, the NMI, if it chooses to share profit will be limited in its product range, but this emanates from its choice to share in profit which creates possible conduct risks, which the limitation in the Conduct Standard intends to mitigate. Should the NMI receive remuneration in the form of commission and not own a cell structure, it is not restricted in any way by this draft Standard in respect of the product range available to policyholders. It is the choice of the NMI to want to earn both profit share and commission and binder fees that cause the limitation in the product range.

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			<i>intermediary or an associate of a non-mandated intermediary if –</i> <i>• (a) the cell owner, or non-mandated intermediary of which the cell owner is an associate, renders services as an intermediary only in respect of the policies underwritten through the cell structure of</i> <i>• that cell owner;”</i> <i>• (b)</i> 3.1.1 We accept the objective put forward by the FSCA that the requirements in the Conduct Standard must improve outcomes for policyholders. 3.1.2 We are of the opinion that this restriction imposed on the NMI Cell Owner is not aligned to the Financial Advisory and Intermediary Services Act (“FAIS”) and the proposals addressed in the Retail Distribution Review (“RDR”). This requirement will create unintended consequences such that, there is regulatory inconsistency between conventional and cell captive insurers. Furthermore, we hold the view that the proposed restriction will not improve policyholder outcomes while restricting the business of cell owners that render intermediary services and provide advice in an unjust and irrational manner. 3.1.3 The Authority describes a cell owner that is an NMI or associate to NMI as a “tied agent” in the supporting statement on the third-party cell captive standard. To interpret the draft Conduct Standards,	The reference to “tied agent” in the Statement of Need was purely for descriptive purposes and in terms of the meaning understood by the industry as a tied agent being a person

No	Section of the standard	Commentator	Comment	Response
			it has been assumed that a “tied agent” is similar to a product supplier agent (“PSA”) in accordance with RDR and the term “tied agent” aligns to the terminology published in the initial RDR in 2014. The terminology used is confusing. Such confusion ought to be addressed by the Authority by clarifying what a “tied agent” is and providing guidance on how applying such rules to licenced FSPs in relation to cell captives will improve policyholder outcomes. 3.1.4 Current regulations and legislation do not provide a definition of “tied agent”. The closest definition is that of a PSA as per the RDR terminology, where the term was first used in the RDR paper of 2014. The initial RDR paper introduced three types of advisers, namely, independent financial advisers, multi-tied advisers and tied advisers³. The RDR defined a tied financial adviser as: “an adviser who’s contractual, ownership or other relationship with a product supplier restricts the adviser to providing advice in relation to the products of that product supplier only – or, subject to clear controls, another product supplier in the same group.” ³ FSB RDR Review, 2014, page 3 ⁴ November 2015 Status update: RDR Phase 1 3.1.5 In November 2015, the Authority published a paper which introduced the two-tier categorisation⁴. It is proposed that a distinction be drawn only between PSA being “tied advisers operating on the 4	who performs advice and/ intermediary services on behalf of only one insurer. Note that the term “tied agent” is not used in the draft Conduct Standard and this term should not be used to interpret the draft Conduct Standard (which is the actual legal instrument). Only the terms defined in the Conduct Standard must be used when interpreting the Conduct Standard. With regards to the comparison to a PSA and the link to the RDR adviser categorisation developments, please note that this comparison and link is misplaced as the RDR process in this regard is still under development. The commentator seems to have incorrectly deduced certain policy proposals in relation to the RDR adviser categorisation proposals from the draft Conduct Standard, which is not correct. The draft regulatory instrument does not in any way make use of the proposed terminology under RDR or the FAIS Act for that matter and uses clearly defined definitions based on relationships and activities described in the Insurance Act, LTIA, and STIA and subordinate legislation thereunder. The Conduct Standard must be interpreted as is and, to the extent necessary, further clarity regarding the RDR adviser categorisation proposals in the context of cell captives will be provided as and when the latter proposals are progressed.

No	Section of the standard	Commentator	Comment	Response
			licence of a product supplier” and “registered financial advisers” (“RFA”) that are advisers that operate on their own licence as sole proprietors or on the licence of an adviser firm that is not also a product supplier”. 3.1.6 At this point, we emphasize that a PSA is defined as operating on the licence of a product supplier whereas an RFA operates on their own licence. 3.1.7 The most recent RDR discussion document⁵ abandoned the term ‘tied’ in the adviser categorisation as there were concerns that the term may not be easily understood. Despite the term being abandoned, the term “tied advice model” is used extensively in relation to PSAs. It is perceived that the Authority is likely applying the definition of “tied adviser” and/or PSA when referring to “tied agent” in the third-party cell captive review papers and draft Conduct Standards. 5 FSCA RDR : Discussion document on categorization of financial advisors and related matters, December 2019 3.1.8 The draft Conduct Standard does not align with RDR and the FAIS definitions. In its current form, the draft Conduct Standard will create regulatory inconsistency between conventional and cell captive insurers pertaining to intermediary services rendered and advice provided by FSPs and the representatives of FSPs. This inconsistency is explained in detail below.	It is not clear to which entity the commentator is referring to in this paragraph where it is stated that “it is perceived that the Authority is likely applying the definition of “tied adviser” and/or PSA when referring to “tied agent” in the third-party cell captive review papers and draft conduct standards” however it should be noted that these perceptions/ or assumptions are incorrect, as the term “tied-agent” is not used in the draft Conduct Standard and therefore there is no need to define/attempt to interpret it based on any other legislation. The reference to “tied agent” in the Statement of Need was used in the grammatical sense understood by the industry whereby a tied agent is a person who performs advice and /or intermediary services on behalf of one insurer only.

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			3.1.9 Under RDR providers of financial services will likely be classified into two categories, namely: a. PSAs which render advisory and intermediary services as representatives on the FSP licence of the product supplier. PSAs cannot be licenced FSPs in their own capacity. PSAs act solely as agents of the product supplier they represent in their capacity as representatives of that product supplier. The restriction limiting the PSAs to being representatives on a single FSP is what renders a PSA as a “tied agent” of the product supplier. b. RFAs render advisory and intermediary services as licenced FSPs in their own right. RFAs have the ability to sell financial products of any product provider for the classes of business for which it is registered. Currently RFAs may enter into an exclusivity arrangement with a product supplier for a specific class of business. To mitigate any conflict of interest with policyholders it is required to disclose this exclusivity to policyholders and to explain that the restriction allows the RFA to only sell the products of the specific product supplier in the relevant class of business the exclusive arrangement was entered into. c. Guardrisk strongly supports the position as set out in the RDR Discussion Document on adviser categorisation published in December 2019 which states that “non-mandated intermediaries (“NMIs”) will not be permitted to operate as juristic representatives of the cell captive insurer, but will be required to be licensed financial services providers	

No	Section of the standard	Commentator	Comment	Response
			under the FAIS Act in their own right.” This means that that the NMI cell owner, or its associate, will be categorised and licensed as an RFA. “These RFA’s will however be subject to an additional special limitation of not being permitted to provide advice on or distribute insurance policies other than those offered through the cell structure/s owned by them.” 3.1.10 Guardrisk objects to the proposed special limitation as it will effectively reduce the status of an independently licenced RFA to that of a PSA without improving policyholder outcomes. The products offered by an RFA to a customer must be based on the appropriateness of the specific product to the needs of that customer. Introducing restrictions on an RFA that limits it to only offering products underwritten in a cell owned by the RFA will reduce the quality of policyholder outcomes as it will limit the ability of that RFA to propose the most suitable product. 3.1.11 The Authority is of the view that the perceived conflict of interest risk in respect of cell owners who are NMIs is substantially mitigated if the NMI is a tied agent of the cell captive insurer and only sells policies within its own cell structures. It is not certain how applying this restriction beyond the classes of business underwritten in a cell captive of which the intermediary is an owner, or an associate of, will mitigate any conflict of interest.	Please see paragraph 2.3 of the 2019 position paper under the heading of “Possible Regulatory Arbitrage” to explain why potential conflicts of interest the only reasons for the regulatory limitation is not. The 2019 Position paper went into a great amount of detail regarding the risks that the limitations aim to address, which is in many aspects echoed in the Statement of Need. To repeat it here again is therefore unnecessary. The commentator seems to be missing the point that the aim is to preclude the cell owner from owning multiple cell

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			3.1.12 Requiring an RFA with its own licence which by definition has the freedom to contract with multiple product suppliers to be a “tied agent” of the cell captive insurer is in direct contrast with the RDR principle according to which an RFA cannot be a tied agent. Furthermore this does not align with the contractual freedom that an RFA has under FAIS. Unless an exclusivity arrangement exists that limits the ability of the RFA to contract with multiple product suppliers, the RFA is able to market and sell the products of any product provider in the classes of business for which it is licensed. 3.1.13 The principles of managing any conflict of interest between an FSP/RFA and a policyholder where the independent nature of the FSP/RFA has been impacted is well established and dealt with in the FAIS Act and RDR. To ensure that a policyholder understands that it is dealing with an FSP that is not independent, adequate disclosure of the arrangement between the FSP/RFA and a product supplier is required that clearly sets out the nature of the exclusivity and how it restricts the FSP/RFA. Owning a cell captive is no different as the ownership precludes the FSP from being an independent intermediary. This principle is espoused in the licencing conditions of Guardrisk Life. However, a. FSP/RFA owns a cell captive in which Risk policies are underwritten.	structures and earning profit share on each of them by virtue of its ownership and then to also being able to perform advice and/or intermediary service in relation to policies of these various cell structures. This is a limitation entrenched in the law applicable to so-called traditional insurers and therefore, in order to support fair competition across the market, equal limitations should apply to cell captive insurers and intermediaries that sell the products of these insurers. The requirements in the FAIS regulatory framework and in terms of the insurance regulatory framework are complementary. The commentator should bear in mind that the limitations around ownership in the Conduct Standard are made in relation to cell captive insurers and cell owners who are also NMIs or associates of NMIs (this with reference to the Insurance regulatory framework). It appropriately cross-references the FAIS Act.

No	Section of the standard	Commentator	Comment	Response
			b. FSP/RFA also has contracts with multiple Life insurers pertaining to Investment products for which the provider renders intermediary services and gives advice. c. Due to the cell captive ownership the FSP/RFA is restricted to only selling Risk policies underwritten by the cell captive insurer. d. This restriction imposed on the FSP/RFA needs to be clearly disclosed to the policyholder to ensure that the policyholder understands that he/she is not dealing with an independent provider for Risk policies but that the FSP/RFA has an exclusive arrangement with the cell captive insurer for that class of business and that the FSP/RFA can earn dividend income from the cell captive insurer generated by favourable claims experience. e. Restricting the FSP/RFA further by requiring it to be a “tied agent” of the cell captive insurer and thereby removing its ability to have contracts with multiple Life insurers pertaining to Investment products does not improve policyholder protection and merely places an unjust restriction on the FSP/RFA and damages its commercial viability. f. Furthermore, the proposed restriction will remove the opportunity for the policyholder to receive advice from the FSP/RFA with which he/she has a relationship pertaining to investment products that might have been appropriate for meeting the policyholder’s needs.	As has been explained over the years, on numerous occasions, through public forums and as part of individual engagements with insurers, and many responses to public comments on this same point, disclosures for the sake of disclosure by itself is not enough to mitigate the risk of conflicted advice and conflict of interest.

No	Section of the standard	Commentator	Comment	Response
			Extending the restriction beyond the classes of business for which products are underwritten in the cell captive is an unjust restriction limiting the capacity of an FSP/RFA without any additional protection being provided to policyholders. This is best explained by means of an example: 3.1.14 Concerns pertaining to policyholders' understanding of the relationship between an FSP/RFA that is a cell owner, or an associate of a cell owner must be addressed through enforcing adequate disclosure in accordance with the established regulatory framework. 3.1.15 Concerns raised by the Authority over conflict of interest are primarily based on two elements: a. "Risk of unfair decision-making related to claims and other management decisions". The Authority states that a conflict of interest arises where an NMI renders intermediary services in relation to a policy but then also acts as a binder holder on behalf of the insurer especially in relation to the settlement of claims. The following statement is made with cross-reference to paragraph 2.1.3 of the position paper published in December 2019: "The motive of the NMI cell owner to ensure the profitability of the cell due to the benefit that it may derive from owning shares may drive biased decision making related to claims, which may result in higher repudiation of claims to support the profitability of the cell structure." b. "Possible Regulatory Arbitrage". The Authority states that "The ability of an NMI to be a shareholder	The example is noted but please take note that the reference to an FSP (which is defined in the FAIS legislation) should instead be a reference to an NMI (as per the Insurance legislation, which is the entity to which the limitation in the Conduct Standard refers)_It cannot apply a different definition to the entity as is intended as this may well be what is causing the confusion. It seems that this is a matter of incorrect legal interpretation. The commentator is invited to engage the FSCA directly to explain the interpretation per the definitions in the draft Conduct Standard. Please see the comment on the previous page regarding disclosures in itself not being sufficient to mitigate risks, as has been proved by research on the benefit of contractual disclosures and shortcomings especially in instances where there are low levels of financial literacy as is the case in South Africa.

No	Section of the standard	Commentator	Comment	Response
			and earn dividends within a cell structure creates the potential for regulatory arbitrage resulting in uneven playing fields between NMIs and Underwriting Managers cell captive insurers have structured their business in a way that circumvents the legislative prohibition on profit sharing by NMI binder holders, thereby driving unfair competition in the insurance market.” 3.1.16 The concerns raised by the Authority above in 3.1.15 (a) and (b) on unfair decision making and regulatory arbitrage is unfounded as an NMI binder holder cannot repudiate claims. The ability to repudiate a claim is limited to an UMA binder holder by means of the Binder Regulations in order to eliminate conflict of interest pertaining to claims assessment. This principle allows UMA binder holders to profit share with an insurer and correspondingly is prevented from rendering the intermediary service of marketing and selling. This limitation is distinct from the third-party cell captive environment and applies equally to conventional insurers. An NMI binder holder is not conflicted because unlike an UMA it cannot repudiate claims. There is thus no conflict of interest as the NMI cannot increase its financial benefit via the cell captive by repudiating claims in order to improve financial performance of the cell. 3.1.17 The solution proposed by the Authority to eliminate the perceived conflict of interest is: “The FSCA is of the view that the conflict of interest risk in	The commentator seems to have misunderstood the risk as articulated. A cell owner has decision-making powers. So, it is not the decision to pay or repudiate the claim made by the NMI that is of concern, but the decision-making power of that same entity by virtue of its role as cell owner. It is a single entity that “wears two hats” which creates the conflict. To put this in very simple terms, the NMI sells the policy, and the very same entity is also the cell owner, and the cell owner by virtue of its shareholding has decision making powers including the power to influence decisions on procurement, paying claims, product design, etc. It is therefore not that the NMI will have the power to repudiate the claim that is being referred to, but rather that the cell owner will have such influences over decision making more broadly. This decision-making power by its nature results in an inherent conflict of interest.

No	Section of the standard	Commentator	Comment	Response
			respect of cell owners who are NMIs is substantially mitigated if the NMI is a tied agent of the cell captive insurer and only sells policies within its own cell structures.” 3.1.18 As explained above, the perceived conflict does not exist as NMI binder holders cannot repudiate claims thereby improving underwriting experience to the detriment of policyholders and increasing underwriting profits. Furthermore, the proposal to have FSPs/RFAs operate as “tied agents” of the product supplier is in direct contrast with principles in the FAIS Act and RDR. Restricting an FSP/RFA beyond the classes of business underwritten in a cell captive owned by the FSP/RFA, or of which it is an associate, infringes on the ability of the FSP/RFA to operate without achieving any greater level of policyholder protection. 3.1.19 To ensure that policyholders are protected the disclosure requirements need to facilitate an understanding at policyholder level that the FSP/RFA it is engaging with holds a financial interest in the product supplier by means of a cell captive, which financial interest has removed the independent nature of the provider thereby restricting it to only selling products underwritten by the cell captive insurer in certain classes of business. Furthermore, that the FSP/RFA can earn dividend income from the cell captive insurer if the underwriting experience is favourable.	As explained above, to commentator seems to have misunderstood where exactly the conflict arises. It is not that an NMI can repudiate claims that are of concern– it is that exactly the same entity is also the cell owner, by virtue of which it has decision-making power in the cell structure on matters such as claims payments, etc. Please comments above re RDR, FAIS, and the interpretation of the Conduct Standard. Disagree. See comments above regarding disclosure. This aligns with international best practice as set out by the IAIS ICP’s, more specifically ICP 18.5. In this regard please see comments under item 4 of this consultation report under “General account of the issues raised in the submissions made during the consultation.” Please also read the 2019 position paper in its entirety. You will see that the Conduct Standard is based on a multi-pronged approach – to address the conflicts as identified as well as the regulatory arbitrage that can arise and to limit the proliferation of cell structures over which the cell

No	Section of the standard	Commentator	Comment	Response
			3.2 Risks identified in the limitation posed by section 6.1(b)(i)(ii) <i>Section 6.1(b)(i)(ii) quoted as:</i> <i>“A cell captive insurer may only have a cell structure with a cell owner that is a non-mandated intermediary or an associate of a non-mandated intermediary if- (b) the cell structure does not result in the cell owner, or , or non-mandated intermediary of which the cell owner is an associate, individually or together having a cell structure with- (i) more than one life insurance cell captive insurer, non-life insurance cell captive insurer or microinsurance cell captive insurer; or (ii) a microinsurance cell captive insurer and a life insurance cell captive insurer or non-life insurance cell captive insurer;”</i> 3.2.1 At this point, we draw attention to the addition of the blue text above. The word cell has been omitted and reference was only made to a captive insurer. 3.2.2 This principle is said to go against the principle of “one agent one principal” as per the RDR regulations – therefore, a special case needs to be made why it should be allowed for cells. 3.2.3 The Conduct Standard proposes that an NMI may own a cell acting then in its capacity as “agent for the cell insurer”. This is almost exclusively to avoid a potential conflict of interest where one may have the situation that an NMI favours one of his	captive insurers do not have appropriate oversight and control. Noted. This is a typo and will be corrected in the final Conduct Standard. Please note that the RDR is not regulation. Again, this is not the only risk so to say it is almost exclusively to avoid biased advice. Please again refer to the 2019 position paper and the Statement of Need that went to great lengths to articulate all the risks.

No	Section of the standard	Commentator	Comment	Response
			principals to the detriment of the policyholder (e.g. because of better remuneration by the one principal). 3.2.4 Why should cells not be subject to the same restrictions? a. We agree that a cell owner should not be allowed to have cells with more than one cell captive insurer – the limitation should, however, apply only in respect of the same class and sub-class of insurance business. There is a more direct and real potential for a conflict of interest risk that he may not always act in the best interest of the policyholder in the case of the same class and sub-class of insurance business with, e.g. different remuneration structures. b. Our view is that a cell owner should be allowed to have cells with more than one cell captive insurer but for different classes and sub-class of insurance business. To avoid the risk of a material proliferation of the cell captive market, we suggest that this should be limited to a maximum of two or three (the reason for the proposed restriction is merely to manage a potential proliferation of the cell captive insurance market whereby (in theory), no restriction on the number of cell captive facilities could lead to one retailer owning a multiple of cells with a multiple of cell captives. Although we are of the strong opinion that it will not be the case in practice (due to the reasons submitted before), we nevertheless propose some restriction to accommodate the Authority's concerns. We are furthermore of the opinion that the current basis of cell captives having	Please again see paragraph 2.3 of the 2019 Position paper: “The clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. However, the fact that there are existing cell structures of which the cell owners are NMIs has to be acknowledged, and regulatory requirements should be crafted in such a way to balance the rights of these cell owners against the protection to policyholders and the public at large.” The reason why this will be allowed is because to outright prohibit it would have a significant impact on existing cell structures, as well as inadvertently on policyholders of these structures. No substantiation is made why two or three structures should be allowed if we have clearly explained that the preferred regulatory approach and the clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. Allowing one life and one nonlife cell is, therefore, a regulatory concession.

No	Section of the standard	Commentator	Comment	Response
			to advise the Authority of a new cell should be an adequate measure to mitigate the abovementioned potential risks (conflict of interest and proliferation of the cell captive market). c. A cell owner invests a substantial amount of funds in the form of capital to open a cell. As for any investor, such cell owner should be allowed to have some form of risk spreading of its capital investment by way of diversification. This will in particular be of importance in cases where a financial services entity (such as a retail bank) owns a cell. d. The principle of more than one cell per NMI is already established in that a cell owner may have a cell with one life and one non-life insurer. This is only because of the regulatory framework for insurer licencing and therefore already technically goes against the RDR principle of “one agent one principal” – it should therefore be a logical result that it should include a third for a microinsurance licence. e. The licencing framework in respect of classes of insurance/kinds of policies is predominantly a prudential matter – e.g. the changes in the new Insurance Act requiring that a non-life insurer may not conduct credit life business or issue policies which cover all causes of death going forward is mainly a prudential matter – these changes were made mainly because of prudential insurer matters (capital, reserves, etc.) and not because of market conduct matters (e.g. conflict of interest). Thus, classes of insurance or kinds of policies is mainly a	Please see the comments above – this is only limited if the cell owner is also an NMI – which is at the choice of the NMI cell owner to want to be both. See comment about this being a regulatory concession for the reasons explained. See comment about this being a regulatory concession for the reasons explained.

No	Section of the standard	Commentator	Comment	Response
			prudential matter as the market conduct and TCF principles are very similar across both life and non-life licences, in other words, the principle of “one agent one insurer” is dealt with by type of licence and not in terms of a potential conflict of interest. f. We support the issuing of new cell captive licences as it will improve competition and should ultimately benefit the policyholder. The future growth of cell captive business will predominantly come from third-party cells. Internationally there is a trend of manufacturers and distribution channels embedding asset-based insurance in their core product offering – this trend is expected to increase after Covid-19 as customer buying behaviour changes. One good example is motor manufacturers and dealership groups where comprehensive motor insurance and value-added insurance products (e.g. tyre insurance, scratch and dent, etc.) is increasingly being included in the vehicle offering at a fixed price. Another example is cell phone insurance where manufacturers and mobile network operators are starting to embed insurance in the product offering. g. Many of these manufacturers and retailer groups already have a cell with an existing cell captive insurer for a specific class and sub-class of insurance business with existing business relationships stretching over a number of years. New cell captive insurers will find it extremely difficult to enter these relationships in respect of same class or sub-class of insurance business. However, they have a reasonable chance to do so with a new class	

No	Section of the standard	Commentator	Comment	Response
			and sub-class of insurance business or capability that may not be on offer from the existing cell captive insurer. This is, in particular, made possible through new technologies (e.g. Insurtech and digital capabilities) linked to classes of insurance business and distribution that a new cell captive provider may bring to the table. A specific retailer with an existing cell captive arrangement will not be able to access these new product capabilities from the new cell captive insurer. h. There must necessarily be capacity constraints for all cell captive insurers. Forcing NMI's to use only one cell captive license could, inevitably, result in inefficient service delivery to insureds. i. To not allow multiple cell ownership immediately decreases competition amongst cell captive insurers. Allowing multiple ownership will go some way to ensure efficiency through competitive market forces and not forcing "exclusive arrangements"⁶. j. Limiting cell captive ownership may also restrict access to reinsurance markets that may be suitable for one product but not for another. It is possible that reinsurers that qualify for one cell captive's security list do not qualify for another's for sound reasons. This may prohibit the NMI from offering a certain class of business to its client base, thereby reducing competition in the market. k. Forcing NMIs to use only a single cell captive license could result in the unavoidable consequence of the cell captive company in use becoming overly saturated with one or more type of risk class or in	This would be the choice of the NMI who also chooses to be a cell owner which choice is driven by remuneration. See comment above. The regulations are by no means forcing an NMI to also be a cell owner – this is their choice.

No	Section of the standard	Commentator	Comment	Response
			one or more geographical areas, thereby reducing its ability to diversify its risk portfolio resulting in unnecessary and potentially dangerous risk concentrations as a result of having to accede to NMIs requests to cater for certain classes of risk already written by the cell captive company. 6 To elaborate, an NMI cell owner will be tied to a certain cell captive insurer for all class and sub-class of insurance business and may be restricted to the cell captive insurers approved class of business for which it is licensed. 4. Guardrisk proposal on the limitation As provided for in our previous submitted commentary and highlighted again in paragraphs 3.1 and 3.2 above, it is proposed that the distinction is not made in terms of life, non-life business or microinsurance business but on a class and sub-class of insurance business. For example; permitting a cell structure with one cell captive insurer for a funeral class of business and a cell structure with another cell captive insurer for credit life class of business. Another example would be where one cell structure for property class of business is permitted with one cell captive insurer and another cell structure is permitted for motor class of business with another cell captive insurer. The proposed distinction should be on a class and sub-class level of business as defined by the Insurance Act. This will mitigate the conflict of interest whilst providing for the following successes :-	

No	Section of the standard	Commentator	Comment	Response
			• allow the cell owner to provide the best value proposition for that class or sub-class of business for the policyholder, especially in instances where a cell captive insurer may not be able to underwrite a particular sub-class of insurance business as a result of its licensing conditions or even its own risk appetite; • afford the cell owner an opportunity to present a convenient, complete and comprehensive package of products to the policyholder tailored for the policyholder's needs (the best cover for premium); and • remove the potential offering a deficient or incomplete product to a policyholder, where one cell captive insurer is not in a position to underwrite a sub-class of insurance business. We trust that our commentary, debates and proposals/recommendations will be considered by the Authority in this respect. Furthermore we kindly request that the Authority provide examples or even describe specific situation/s where our suggested proposals/recommendations would have resulted in a conflict of interest or a biased approach by the NMI Cell Owner. We can then consider specific mitigating factors for such situations rather than trying to deal with it by way of a "general restriction" which could	Noted. All comments from all commentators have been considered and responded to in detail, as per this consultation report. Please again refer to the 2019 position paper and the Statement of Need that went to great lengths to articulate all the risks by way of example. We do not think that for purposes of responding to public comments on the draft Conduct Standard and this consultation report it is appropriate to list detailed examples of such structures as this may contain disclosure sensitive information of competitors and to the potential

No	Section of the standard	Commentator	Comment	Response
			have material unintended consequences which will not be in the interest of policyholders.	detriment of parties involved. That would be irresponsible and to the detriment of the industry. Our policy position has been made clear – with ample examples and detailed articulation. The commentator can engage the Authority on an individual basis if necessary, to avoid competition concerns.
85.	Section 6(1)(a)	SAIA	Please confirm our understanding of the limitation under this subsection. Our understanding is as follows: - That an NMI cell owner would be able to provide services as an intermediary for other products of other non-cell captive insurers? As an alternative view to the above, should the limitation be seen whereby the NMI Cell Owner is a tied agent to their specific cell captive insurer it creates consequential barriers as highlighted below under section 6(1)(b)(i). Furthermore, we would like to address the concerns noted by the FSCA: - In the paragraph 2.2.2 of the Statement Supporting the Draft Conduct Standards under the heading, Risk of unfair decision-making related to claims and other management decisions, “it is stated that a conflict of interest arises where an NMI renders intermediary services in relation to a policy but then also acts as a binder holder on behalf of the insurer especially in relation to the settlement of claims. The following statement is made with cross-reference to paragraph 2.1.3 of the position paper	That is incorrect. The Conduct Standard in draft states in section 6(1)(a) that the cell owner or the non-mandated intermediary of which the cell owner renders services as intermediary only in respect of the policies underwritten in the cell structure. There can therefore be no other services as intermediary rendered outside of the cell structure. Please see our response to Guardrisk on the same comment. It is not that an NMI can repudiate claims that are of concern– it is that exactly the same entity is also the cell owner, by virtue of which it has decision making power in the cell structure on matters such as claims payments, etc. To put this in simple terms, the NMI sells the policy, and the very same entity is also the cell owner, and the cell owner by virtue of its shareholding has decision making powers including influencing decisions on procurement, paying claims, product design, etc. It is therefore not that the NMI will have the power to repudiate the claim that is being referred to, but rather that the cell owner will have such influences over decision making more broadly,

No	Section of the standard	Commentator	Comment	Response
			published in December 2019: The motive of the NMI cell owner to ensure the profitability of the cell due to the benefit that it may derive from owning shares may drive biased decision making related to claims, which may result in higher repudiation of claims to support the profitability of the cell structure.” This statement is incorrectly made as an NMI binder holder cannot repudiate claims. The ability to repudiate a claim is limited to an UMA binder holder by means of the Binder Regulations in order to eliminate conflict of interest pertaining to claims assessment. This principle allows UMA binder holders to profit share with an insurer and correspondingly is prevented from rendering the intermediary service of marketing and selling. This limitation is distinct from the third-party cell captive environment and applies equally to conventional insurers. An NMI binder holder is not conflicted because unlike an UMA it cannot repudiate claims. There is thus no conflict of interest as the NMI cannot increase its financial benefit via the cell captive by repudiating claims in order to improve financial performance of the cell. • In paragraph 2.3 under the heading, Possible Regulatory Arbitrage, it is stated, “The ability of an NMI to be a shareholder and earn dividends within a cell structure creates the potential for regulatory arbitrage resulting in uneven playing fields between NMIs and Underwriting Managers cell captive insurers have structured their business in a way that circumvents the legislative prohibition on profit	including to influence decisions on procurement, paying claims, product design. This decision-making power by its nature—can then result in conflicts.

No	Section of the standard	Commentator	Comment	Response
			sharing by NMI binder holders, thereby driving unfair competition in the insurance market.” For the same reason as stated above, this statement is incorrect as an NMI that owns a cell still does not have the ability to repudiate a claim thereby will not be able to improve its financial outcome of the cell captive through this activity.	
86.	Section 6(1)(a)	Moonstone Compliance (Pty) Ltd	Section 6(1)(a) will have the effect that certain intermediaries who offer policies underwritten in a cell structure as well as policies not underwritten in a cell structure may no longer render services as an intermediary in respect of such other policies. The aforementioned will have a negative impact on policyholders who make use of such an intermediary in respect of financial products not underwritten in a cell structure of a cell owner. A question which has to be considered is what happens to cell arrangements that are terminated, and what will the effects be on the policyholder? We submit that insurers will most likely close-off these books of business, which will leave various policyholders without cover, or have to seek the services of other FSPs to service these products. Whilst we note the Authority's views on the matter, we believe and maintain that the same or similar result can be achieved by the prohibition on intermediary services by class of life or non-life insurance business. Our recommendation would rather be that a cell owner who is a non-mandated intermediary or an associate of a non-mandated intermediary who	It is correct that should the NMI decide to keep the cell structure following the publication of the final Standard (in its current form) that the intermediary would not be able to render services as an intermediary in respect of other policies outside of the structure. A two-year transitional period is proposed to enable arrangements in respect of these policies. The suggestion is noted regarding distinguishing per class of business, however, it should be noted that the limitation is also meant to address arbitrage and unlevel playing fields between intermediaries in the so-called traditional space and those operating in a cell captive environment. There were a number of risks identified that informed the limitation. Please see the 2019 position paper. You will see that the Conduct Standard is based on a multi-pronged approach – to address the conflicts as identified as well as the regulatory arbitrage that can arise and to limit the proliferation of cell structures over which the cell captive insurers do not have appropriate oversight and control. Even if the alternative limitation suggested by the commentator is adopted, it will still not address the

No	Section of the standard	Commentator	Comment	Response
			renders intermediary services in respect of a policy which is underwritten within a cell structure be prohibited from rendering intermediary services in respect of any other policy within that class of business, but that such limitation not be extended to all classes of business as this will have the negative impact on clients. Furthermore if by means of an example, one considers the position of a non-mandated intermediary who is also a credit provider, who is the cell owner or an associate of a cell owner, and who currently has a cell arrangement with a non-life insurer in respect of consumer credit policies, and is presently offering credit life policies on the basis of a normal intermediary agreement with a life insurer, the draft standard would now require such an intermediary to agree a cell arrangement with a life insurer in order to provide these policies, or stop offering the credit life policies. We believe that such an intermediary would rather seek to obtain a cell arrangement. This seems <i>contra</i> to the Regulator's intention of a limitation on the proliferation of cell arrangements in that it could likely proliferate cell arrangements. We respectfully submit that the broad brush approach being suggested ignores many business models where various classes of insurance business are being offered by intermediaries and cell arrangements are only in place in respect of one class of business and that the proposed approach will have serious consequences for these intermediaries. We believe the "per class" prohibition	arbitrage between traditional intermediaries and those that operate in the cell captive space as cell owners. Please see the detailed context in the 2019 Position paper explaining concerns over regulatory arbitrage and level playing fields.

No	Section of the standard	Commentator	Comment	Response
			will achieve the intention of mitigating the potential conflicts of interests sufficiently. Whilst we note the concerns of misselling, we submit that FAIS and the amended General Code of Conduct already addresses this issue sufficiently.	
87.	Section 6(1)(a)	Foschini Retail Group (Pty) Ltd	This will result in non-mandated intermediaries who have both life and non-life cell structures with life and non-life cell captive insurers respectively, not being allowed to continue with both cell structures. Such a NMI will have to decide which cell structure it will continue with as it will not be allowed to participate in both. This will not only be prejudicial to the NMI but also the policyholders. Clarity is required regarding the reason for such a restriction. If there are concerns regarding conflict of interests, we would submit that there are less restrictive means to prevent conflicts, e.g. policies and disclosures to consumers. Guidance must be developed setting out how entities will be required to run-off business or convert consumers in the event that this amendment is retained.	Disagree. Section 6(1) provides for an intermediary to have one life and one non-life cell structure with a cell captive insurer. The limitation simply prohibits multiple cell structures with multiple cell captive insurers. Please note the transitional arrangements afforded in the standard. We believe the benefit to policyholders in addressing the risks as identified, and level playing fields across the insurance sector in support of fair competition will outweigh the potential commercial benefit to NMI cell owners. The research and assessment of the conduct risk have been discussed and consulted on extensively and over several years. Other measures which are less intrusive have been considered, however through supervisory experience and deliberation it was concluded that a stricter approach is required. Please again see paragraph 2.3 of the 2019 Position paper: <i>“The clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. However, the fact that there are existing cell structures of which the cell owners are NMIs has to be</i>

No	Section of the standard	Commentator	Comment	Response
				<i>acknowledged, and regulatory requirements should be crafted in such a way to balance the rights of these cell owners against the protection to policyholders and the public at large.”</i> The reason why this will be allowed is because to outright prohibit it would have a significant impact on existing cell structures, as inadvertently on policyholders of these structures. Less restrictive options have been considered, however through supervisory experience it supported the need for more pro-active and intrusive measures to be taken to combat unfair outcomes to policyholders. The draft Standard provides for a transitional period to allow for alignment over this period.
88.	Limitation on ownership 6(1)(a): A cell captive insurer may only have a cell structure with a cell owner that is a non-mandated intermediary or an associate of non-mandated intermediary if – (a) the cell owner, or non-mandated	SAIA	- It is our understanding that the Prudential Authority is in the process of considering its policy stance on similar/mock cell captive structures. It is accordingly suggested that the provisions in the standard that may result in a de facto prohibition on these arrangements be delayed until such time as the policy stance has been finalized. - It is suggested that the unintended consequence regarding the limitation of NMI cell structures at an insurer level be considered from the impact of it resulting in lessening competition and/or creating dominance. This is to be considered in light of achieving fair outcomes for consumers, providing product choices to consumers and ensuring fair participation in the economy.	Disagree with the suggestion to ‘delay’ these requirements. The PA and the FSCA engage regularly on regulatory developments and proposed legislative requirements, and the PA is aware of the limitations in the Conduct Standard. Disagree that the limitations in ownership will result in unfair competition. In terms of the ‘traditional’ model of intermediation, there are already limitations in effect when it comes to an NMI that earns commission also sharing in the profits of the insurer. The effect of this limitation will therefore be to level playing fields between intermediaries in the cell captive insurance space and in the transitional space and therefore support competitive forces rather than impede on it.

No	Section of the standard	Commentator	Comment	Response
	intermediary of which the cell owner is an associate, renders services as intermediary only in respect of policies...		- It is suggested that the standards be expanded to specifically allow new cell structures and or new non-cell captive arrangements with life and non-life insurers once existing arrangements have been terminated and the business has been placed in run-off with the existing cell captive insurer instead of these insurers to follow an exemption process to facilitate competition. - In order to facilitate expedient compliance to Court orders or Ruling from for example Competition authorities, it is suggested that these exemptions be provided for in the standards so as to avoid insurers having to apply for exemption in terms of Section 281 of the Financial Regulation Act.	Disagree that a specific regulatory concession should be made for cell ownership by an NMI cell owner for a cell structure in runoff. This can be dealt with by way of a regulatory exemption if in fact necessary, based on the facts of the matter. Exemptions are by nature usually temporary in nature and based on the facts in a particular matter and the necessary conditions to the granting of the exemption. We do not agree that the limitations in the standard will result in competition concerns, and on the contrary, it is aimed at levelling playing fields. In terms of the 'traditional' model of intermediation there are already limitations in effect when it comes to an NMIs that earns commission also sharing in the profits of the insurer. The effect of this limitation will therefore be to level playing fields between intermediaries in the cell captive insurance space and in the transitional space, and therefore support competitive forces rather than impede on it.
89.	Paragraph 6(1)(b)(1)	Capitec Bank	<u>Background and Introduction:</u> Capitec Bank acknowledges the importance of the points raised in the Draft Conduct Standard. Furthermore, we fully appreciate the purpose of the Draft Conduct Standard, however, Capitec Bank has two third party life insurance cell captives with an excess of 1 million policies per cell structure. Our primary concerns in relation to the Draft Conduct Standard include: i. Capitec Bank is being grouped with other cell owners of multiple third party cell captives that do not have the scale to sustainably support the required level of governance and oversight, as well as with those cell owners whose	The FSCA notes the detailed comments submitted by Capitec Bank in respect of its cell captive business with two of the cell captive insurers. Furthermore, note is taken of the size of each of these cell structures and the complexities the proposed limitations may create to your current model of diversification as a tool to spread the capital investment risk. In the comments, there is substantial detail provided and a request to the FSCA to exempt Capitec Bank from the limitation of a cell owner having a cell structure with more than one life insurance cell captive insurer. We do not think that for purposes of responding to public comments on the draft Conduct Standard and this

No	Section of the standard	Commentator	Comment	Response
			product offering introduces the risks highlighted by the FSCA in the Statement Supporting the Draft Conduct Standard (Requirements Relating to Third Part Cell Captive Insurance Business). ii. The proposed limitation would result in one cell structure per insurance type. In our experience the insurer providing the cell captive takes a strong stance on placing business within their own Group of companies and partners. This reduces Capitec Bank's ability to work with other players in the insurance / reinsurance market, restricting our ability to innovate and provide market leading products to policyholders. Furthermore, this reduces our ability to negotiate the best deal for Capitec Bank and policyholders. If the cell captive charges a fee that is significantly higher than what is considered market related, we are placed in a position where we have no option but to accept an inflated non-market related fee. The above two factors are extremely restrictive and provide no flexibility or protection for Capitec Bank to conditions or fees laid down by the cell captive provider. iii. The proposed limitation would result in all our life insurance risk sitting with one cell provider. What happens if the cell provider were to consider the related insurance risk outside / beyond their risk appetite. Currently this insurance risk is diversified between two cells but combined this could be beyond the risk appetite of a single cell captive provider. Going	consultation report it is the correct avenue to request an exemption on a proposed Standard. The FSCA has wide powers in terms of the FSR Act to exempt an applicant from certain provisions of the law if necessary and will consider doing so in particular if it can potentially improve competition in the market and transformation of the insurance sector. Such applications are brought formally and are sought for relief of existing provisions and considered on an individual basis, considering all the information submitted to the FSCA. The 2019 Position paper went into a great amount of detail regarding the risks that the limitations aim to address, which is in many aspects echoed in the Statement of Need. To repeat it here again is therefore unnecessary. The response would therefore only deal with certain specific issues raised. The aim is to preclude the cell owner from owning multiple cell structures and earning profit share on each of them by virtue of its ownership and then to also being able to perform advice and/or intermediary service in relation to policies of these various cell structures. This is a limitation entrenched in law and applicable to so-called traditional insurers and therefore, in order to support fair competition across the market, equal limitations should apply to cell captive insurers and intermediaries that sell the products of these insurers. The commentator mentions the additional differentiation of Capitec having an affinity relationship since the insurance business Capitec offers their clients is ancillary to the

No	Section of the standard	Commentator	Comment	Response
			forward as we grow our credit and insurance offering the underlying insurance risk will increase further highlighting this as a potential risk to our business. iv. The process of migrating policies from one cell provider to another is extremely costly and complex. v. The risk related to something going wrong in one of the other cells, provided by same the cell captive provider used by Capitec Bank, impacting the Capitec Bank insurance business is increased by the proposed limitation. vi. Capitec Bank clients have taken out a loan and credit life insurance product with Guardrisk. If we were required to migrate our business the policyholder would be forced into a policy with another cell provider. The submissions set out herein supports the case for an exemption on the proposed limitation of one cell structure per life insurance cell captive insurer. Capitec Bank as a Non-Mandated Intermediary (NMI) currently has two cell captive life insurance arrangements in place, these being with: • Guardrisk Life Limited (“Guardrisk”), through which lending credit life insurance is provided. • Centriq Life Insurance Company Limited (“Centriq”), through which funeral insurance is provided.	banking business they provide in their capacity as non-insurer. In the Draft Conduct Standard there is no differentiation provided for in respect of affinity relationships, this is due to a lack of evidence that the potential risks do not materialise in these relationships. The limitations imposed relate to the risks that can materialise when the financial interest of an NMI is larger than the commission it receives for rendering services as intermediary. These risks are not limited to conflict between same class products from different insurers (competing products), but also in respect of policies issued by one insurer in that the NMI performs certain functions in respect of advice, claims, etc. The risks that the proposed statutory intervention tries to address materialises in the chosen commercial model where an NMI earns a profit and thereby unfair competition with so-called traditional NMI’s and insurance models. Should the NMI forgo its profit-sharing motive by not being a cell owner and only earn commission for services rendered, no limitation is imposed on the products it can offer from one or more than one insurer. With reference to the commentator’s submission in highlighting the difficulty of applying a single standard to all third-party insurance cell captives. The proposed legislation is aimed at addressing the identified potential risks within the industry as a whole where cell structures are utilised and cannot be modelled according to one business that may argue that it is different. The

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			It is important to understand that each cell has in excess of 1 million policies and contributes materially to the business of Capitec Bank. Our focus is to ensure the business written in these cells is sustainable, part of this is ensuring that the strictest level of governance and oversight is applied to both cells. As a cell owner it is our responsibility to ensure when developing the long term strategy of the cell, sufficient costs are allocated both internally and to the cell captive insurer to ensure all aspects of governance and oversight are performed to the highest level. Both Capitec Bank and the relevant insurance companies have the correct skills, sufficient resources and systems to support a strong governance and oversight environment. The scale of having in excess of 1 million policies in each of the cells generates sufficient revenue to ensure the governance and oversight in place is more than appropriate and is continually being strengthened. In addition Capitec Bank has an affinity relationship to protect. In other words the insurance business we offer our clients is ancillary to the banking business we provide in our capacity as non-insurer. We have an existing relationship with policyholders outside of the insurance relationship and a fundamental of this relationship is ensuring clients are treated fairly. This favours policyholder protection because Capitec Bank as cell owner has the reputation and brand of the primary business (of providing banking business) to protect and will ensure that policyholders are also treated fairly. Capitec Bank, as a registered bank, is highly regulated, inter alia,	supervisory experience of the FSCA has partially informed the proposed intervention. As stated above, the FSCA has powers to exempt an applicant, should the merits of the applicants warrant such an exemption. When it comes to existing business within more than one cell captive insurer, the Draft Standard proposes certain transitional periods. It provides for cell structures entered into before 1 January 2020 to comply with the requirements within two years of the final publication. In respect of the clarity sought on the use of words ‘individually or together having a cell structure’. It is the FSCA’s intention that an NMI cell owner or any cell owner that is an associate of the NMI within the same group of companies can only have a cell arrangement with a single life and non-life insurer. This is because the risks can materialise within a group where association exists.

No	Section of the standard	Commentator	Comment	Response
			by the Reserve Bank, Prudential Authority and National Credit Act. The affinity relationship and highly regulated environment distinguishes Capitec Bank from other cell owners. Capitec Bank first became a cell owner in a life insurance cell captive in order to provide credit life insurance to our credit clients. When Capitec Bank decided to provide funeral insurance we embarked on an extensive process that involved a Request For Information and Request For Proposal from numerous insurers. As part of this process it was concluded that commercially it made sense to use a second cell captive insurer and as such Capitec Bank became a cell owner in a second life insurance cell captive. The cell insurers are Guardrisk and Centriq. We did consider the efficiency benefit of participating in a single cell. After careful analysis of the advantages and disadvantages, we concluded that each of the relevant cell insurers have unique experience, skills, knowledge, risk management processes and administrative systems specific to the product lines that they support. We believe that there is a level of specialisation and efficiency resulting from synergies with their other businesses and that our current arrangements are an optimised solution for Capitec Bank and its clients, taking into account the commercials, as well as the consideration of risk diversification. In the Statement Supporting the Draft Conduct Standard (Requirements Relating to Third Part Cell Captive Insurance Business) the FSCA	

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			highlighted the risks associated with conflicts of interest and the manner in which these risks materialise. One of which is mis-selling and biased advice, we believe it is important to highlight that the two insurance products we provide have a specific purpose and do not compete with each other. Thus a funeral insurance policy can't be used to provide credit life insurance cover as the terms of the policy do not cater for the settlement of outstanding credit balances in the event of retrenchment, inability to earn an income, disability or death as prescribed in terms of the credit insurance regulations. Furthermore, a credit life insurance policy covers outstanding credit balances in the case of the events previously listed, it does not provide for the payment of a sum of money in order to assist with the costs associate with a funeral. For most of our credit products, credit life insurance is compulsory and clients can either buy the Capitec Bank credit insurance policy or provide us with a credit insurance policy of an alternative insurer, and a funeral insurance policy is not an acceptable substitute. The fact that the insurance products we provide are not competing, removes the risk associated with a policyholder being sold a product that is not considered most appropriate for them. In addition, Capitec Bank provides the financial services for both credit life insurance and funeral cover on a non-advice basis. We believe the information provided in the submission highlights the difficulty in applying a single standard to all third party insurance cell	

No	Section of the standard	Commentator	Comment	Response
			captives. Factors such as scale and product offering have an impact on the ability to meet governance and oversight requirements as well as impact the risks highlighted by the FSCA in the Statement Supporting the Draft Conduct Standard (Requirements Relating to Third Part Cell Captive Insurance Business). Considering the information included in the Statement Supporting the Draft Conduct Standard (Requirements Relating to Third Part Cell Captive Insurance Business) we believe that Capitec Bank as a cell owner in both cells already meets the objectives of what is trying to be achieved through the Draft Conduct Standard. We therefore request the FSCA to exempt Capitec Bank from the limitation of a cell owner having a cell structure with more than one life insurance cell captive insurer. Alternatively the following refinements to the Draft Conduct Standard could be considered to provide clarity and ensure the application of the Draft Conduct Standard where applicable: • Limiting the number of cell structures per Sub-Class rather than Class (as per Table 1 of Schedule 2 of the Insurance Act), or • Increasing the limit of cell structures. In considering the implementation of the Draft Conduct Standard in its current format, it is important that we unpack the effect of potentially being limited to one life insurance cell captive insurer, these include:	

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			- As the credit life insurance business matures more quickly than the funeral cover business (our current maximum loan term is 7 years), we may be forced to transfer the credit insurance business to the cell captive insurer that provides the funeral cover due to the underlying product maturity. This could potentially result in Capitec Bank being forced to select a cell structure based on the maturity of its two business lines and not based on the efficiency and effectiveness of the relevant insurers and the commercial terms. This would also place the insurer providing our funeral solution in an advantageous position relative to the insurer providing our credit life insurance solution, as transfer from the credit insurance cell to the funeral cell, would be less disruptive to our clients. This may also be reflected in the commercial terms offered by the relevant insurers. - The above demonstrates that the possibility to use more than one cell captive insurer can contribute to increased market efficiency, competition and specialisation and provides insurers with an incentive to invest in improved efficiency, innovation and risk management techniques that are ultimately to the benefit of policyholders. - Migrating in excess of 1 million policies is a far more complex task than migrating a cell	

No	Section of the standard	Commentator	Comment	Response
			with a few thousand policies. The impact of doing such a migration onto a new platform will result in increased risk for all parties concerned, including the policyholder. The costs and complexity involved in such an exercise are considerable. • Commercials around the cells would need to be re-negotiated as we understand the outcome of migrating in excess of 1 million policies to be extremely onerous and difficult, as we would need to contact all the policyholders. Furthermore, as one cell provider would need to take on new business and would pass this cost onto Capitec Bank and the policyholder. Whereas, the cell from which the business is migrated would suffer a loss in revenue which could impact their ability in being able to meet the governance and oversight standards required. The reduction in scale during the migration process, combined with the associated administrative burden may also lead to the position that the insurer losing the business will have to increase its pricing for the duration of the migration process, leading to an overall increase in costs to the consumer. <u>Additional Points:</u> <i>“A cell captive insurer may only have a cell structure with a cell owner that is a non-mandated intermediary or an associate of a non-mandated intermediary if the cell structure does not result in the</i>	

No	Section of the standard	Commentator	Comment	Response
			<i>cell owner, or non-mandated intermediary of which the cell owner is an associate, individually or together having a cell structure with more than one life insurance cell captive insurer, non-life insurance captive insurer or microinsurance cell captive insurer”</i> Clarity is sought from the Authority on the anticipated risk management value it will achieve by the limitation of ownership in cell structures by non-mandated intermediaries in an effort to mitigate the perceived inherent conflict of interest of a cell owner in the profitability of the cell and to assist in the proliferation of cell structures owned by NMIs, and whether said limitation is the only way to manage these risks. We propose that there are good arguments for allowing ownership by NMIs in multiple cell structures, and by introducing certain limitations and with increased supervision of cell captive insurers’ ability to adequately control and supervise the business written by their 3rd party cell owners, the same risk management benefits can be achieved – without limitation of cell ownership and the accompanying negative impact anticipated as discussed below: • The proposed limitation will have a major negative impact on a cell owner’s ability to diversify its risk across more than one insurance partner (risk relating to client service, reputational, operational and/or	

No	Section of the standard	Commentator	Comment	Response
			financial/capital risk). As a bank diversification is standard prudential and supervision requirements - it would appear to make sense to also allow banks to do so when investing in insurance cell captive insurers as well. • Specific cell captive insurers may not be able to write all the policies/underwrite all the risks/cover a 3rd party cell owner may wish to provide to his clients (e.g. example of retrenchment cover usually linked to consumer/credit life cover). There can be various reasons therefore e.g. lack of adequate capital, inadequate technical underwriting/claims expertise, limited risk appetite of shareholders, systems limitations, license conditions of a specific cell captive insurer but to name a few. • Limitation may result in lack of innovation and having the benefit of not realising fourth industrial opportunities for the benefits of banks' clients. It is our respectful submission that cell owners, specifically banks without an insurance licence in their group, should be allowed to have a cell structure with more than one cell captive insurer but for different sub-classes of business. Banks, as cell owners, invest a substantial amount of funds in the form of capital to open a cell. As for	

No	Section of the standard	Commentator	Comment	Response
			any investor, such cell owner should be allowed to have some form of risk spreading of its capital investment by way of diversification. This will in particular be of importance in cases where a financial services entity (such as a retail bank) owns a cell. Limiting NMI's to use only one cell captive license could, inevitably, result in inefficient service delivery to clients. It will also decrease competition amongst cell captive companies, whereas allowing multiple cell ownership will go some way to ensure efficiency through competitive market forces and not forcing "exclusive arrangements". Clarity is sought on the use of '<i>individually or together having a cell structure</i>' – is it the Authority's intention that an NMI or associate of the NMI within the same group of companies can only have a cell arrangement with a single captive insurer?	
90.	Section 6 (1)(b)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	- Agree that it should be prohibited than an NMI or its' associate that is a cell owner, sells new policies for more than one Life or Non-life insurer. We do however think this could be done on a per class of business basis. - Notwithstanding the above we need to have competition in the market. If a new cell structure is set up with a new cell insurer that previous business should be allowed to run-off. There is no conflict for new policies sold. We should also not insist on a Section 50 transfer as this is not always in the interests of the policyholder.	Disagree that this should be done on a "per class of business" basis. No substantiation is made why two or three structures should be allowed if we have clearly explained that the preferred regulatory approach and the clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. Allowing one life and one non-life cell is, therefore, a regulatory concession. To allow a cell structure to stay open indefinitely while a new cell structure is created with a new cell owner will

No	Section of the standard	Commentator	Comment	Response
				create regulatory arbitrage and unlevel playing fields if the current provisions are made final. Further to this, it will also provide for supervisory challenges. Regarding whether transfers of policies are to be done in accordance with Section 50 of the Insurance Act, this is an existing requirement in primary legislation that cannot be 'overridden' for purposes of the Conduct Standard. Also, applying the legislation to some transfers and not to others will result in arbitrage.
91.	Section 6(1)(b)(i)	Infiniti Insurance Limited	This clause in effect means that all the business on the cell owner must be placed within that cell and it appears that the intention is to have a "tied agent" scenario? Please could you, in the light of my comments under definitions ensure that this is clearly stated so that cell owners cannot circumvent the intentions of this well thought out document by taking minor shareholding in other specialist cells underwritten by the cell captive insurer and placing business into those cells or by in any other way placing business with the cell captive insurer that is not placed within their own cell or placed within their own cell and 100% reinsured out to another cell. I propose that a cell owner may only have shareholding in/ownership of one cell underwritten by one insurer and that there cannot be reinsurance arrangements between cells.	Comments noted in respect of minor shareholding. The definition in the Short-and Long-term regulations refers to the meaning assigned to it in the FAIS General Code of Conduct. In relation to a juristic person, 'associate' means any subsidiary or holding company of that company, any other subsidiary of that holding company, and any other company of which that holding company is a subsidiary. A subsidiary is defined in the Companies Act, 1973 and refers to holding majority voting rights, the right to appoint and remove directors, and control of the majority of voting rights. The limitation on ownership in respect of associates of a non-mandated intermediary is applicable where there is significant control or ownership as the conflicts arise in these scenarios.
92.	Clause 6(1)(b)(1)	The Banking Association South Africa	1) BASA will appreciate clarity from the Authority on the anticipated risk management value it will achieve by the limitation of ownership in cell structures by non-mandated intermediaries in an effort to mitigate the perceived inherent conflict	The research and assessment of the conduct risks have been discussed and consulted on extensively and over several years.

No	Section of the standard	Commentator	Comment	Response
			of interest of a cell owner in the profitability of the cell and to assist in the proliferation of cell structures owned by NMIs, and whether said limitation is the only way to manage these risks. 2) We propose that there are good arguments for allowing ownership by NMIs in multiple cell structures, and by introducing certain limitations and with increased supervision of cell captive insurers' ability to adequately control and supervise the business written by their 3rd party cell owners, the same risk management benefits can be achieved – without limitation of cell ownership and the accompanying negative impact anticipated as discussed below: • The proposed limitation will have a major negative impact on a cell owner's ability to diversify its risk across more than one insurance partner (risk relating to client service, reputational, operational and/or financial/capital risk). As a bank diversification is standard prudential and supervision requirements - it would appear to make sense to also allow banks to do so when investing in insurance cell captive insurers as well. • Specific cell captive insurers may not be able to write all the policies/underwrite all the risks/cover a 3rd party cell owner may wish to provide to his clients (e.g. example of retrenchment cover usually linked to consumer/credit life cover). There can be various reasons therefore e.g. lack of	Other measures which are less intrusive have been considered, however through supervisory experience and deliberation it was concluded that a stricter approach is required. Please again see paragraph 2.3 of the 2019 Position paper: <i>“The clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. However, the fact that there are existing cell structures of which the cell owners are NMIs has to be acknowledged, and regulatory requirements should be crafted in such a way to balance the rights of these cell owners against the protection to policyholders and the public at large.”</i> The reason why this will be allowed is because to outright prohibit it would have a significant impact on existing cell structures, as inadvertently on policyholders of these structures. The “good arguments” in the view of the commentator do not alleviate the Regulator's concerns over uneven playing fields and unfair competition between NMIs' that operating in the traditional insurance space versus NMIs that operate in cell captive insurance. We do not agree that this will have a major negative impact on the cell owner's ability to diversity. If the cell owner wants diversity in investments by being a cell owner of a number of different cell structures it can still do so, it can simply them opt to not also want to market and sell policies

No	Section of the standard	Commentator	Comment	Response
			adequate capital, inadequate technical underwriting/claims expertise, limited risk appetite of shareholders, systems limitations, license conditions of a specific cell captive insurer but to name a few. • Limitation may result in lack of innovation and having the benefit of not realising fourth industrial opportunities for the benefits of banks' clients. 3) BASA advises that cell owners, specifically banks without an insurance licence in their group, should be allowed to have a cell structure with more than one cell captive insurer but for different sub-classes of business. 4) Banks, as cell owners, invest a substantial amount of funds in the form of capital to open a cell. As for any investor, such cell owner should be allowed to have some form of risk spreading of its capital investment by way of diversification. This will in particular be of importance in cases where a financial services entity (such as a retail bank) owns a cell. Limiting NMI's to use only one cell captive license could, inevitably, result in inefficient service delivery to clients. It will also decrease competition amongst cell captive companies, whereas allowing multiple cell ownership will go some way to ensure efficiency through competitive market forces and not forcing "exclusive arrangements". 5) BASA will appreciate clarity on the use of <i>'individually or together having a cell structure'</i> –	as an NMI. There is a very clear reason for the limitations around remuneration in the insurance regulatory framework. And the cell captive structure should not be used toward creating regulatory arbitrage and unlevel playing fields between the limitations applicable to cell captive insurance vs so-called 'traditional' insurance relationships. Please see the detailed context in the 2019 Position paper explaining concerns over regulatory arbitrage and level playing fields. 3) Disagree that this should be allowed for banks that are cell owners as this would put banks at an unfair advantage over the rest of the market that cannot be justified. There are other avenues available to banks that want to offer insurance products on this scale, including obtaining an insurance license to do so.

No	Section of the standard	Commentator	Comment	Response
			is it the Authority's intention that an NMI or associate of the NMI within the same group of companies can only have a cell arrangement with a single captive insurer? 6) Based on the commercial requirement to have more than one cell captive it would not be possible for the NMI or NMI's within the group of companies to be "tied agents" to any single cell captive.	
93.	Section 6(1)(b)(ii)	Leanne Jackson (Independent commentator)	The effect of this provision is to disallow a cell structure with both a microinsurer and a traditional insurer, regardless of the type of policies (life or non-life) offered by each. For example, if the microinsurer only provides (micro) life insurance policies, the cell owner would still not be able to also own a cell of a traditional short-term insurer. Is this the intention? (I appreciate that these types of arrangements are uncommon in practice, but clarity would be useful).	Yes, this is the intention. Taking the example provided and accepting that when the commentator referred to cell in a "traditional insurer" it speaks to a cell captive insurer, the cell owner will be able to offer both life and non-life policies out of the cell structure with the cell captive microinsurer. So, there is no argument why they should also have a cell structure with another so-called traditional cell captive. The limitation must be considered from the perspective that a cell owner will be able to offer both non-life and life policies in a microinsurance cell – as micro insurers have composite licenses.
94.	Section 6(1)(c) and (d) – licensing as a financial services provider	Moonstone Compliance (Pty) Ltd	The requirement imposed by the draft standard that a cell owner that is a non-mandated intermediary, or an associate of a non-mandated intermediary, has to be licensed as a financial services provider in its own right, implies that regulatory arrangements imposed at the moment are not achieving its objectives. It is unclear to us what this requirement seeks to achieve outside what is already being regulated by FAIS? The requirements in respect of juristic representatives have been sufficiently addressed in BN 194 of 2017 and we submit that the licensing of	Disagree with this implied assumption of the commentator. There is a specific reason why it is proposed that an NMI cell owner must be licensed. It relates to the direct accountability of the FSP to the FSCA and the direct oversight that the FSCA as well as the fact that if the NMI cell owner is a licensed FSP will have to

No	Section of the standard	Commentator	Comment	Response
			the non-mandated intermediary or an associate of a non-mandated intermediary does not change anything from a conduct risk perspective. Section 13 of FAIS already makes it clear that any financial service rendered by a juristic representative must be conducted in the name of the FSP itself. Ownership of a cell structure is not a financial service and we fail to see how requiring licensing in own name changes any risk to policyholder as the FSP on whose licence the juristic representative resides is already subject to exactly the same requirements when rendering financial services to clients as what the cell owner intermediary or its associate will become subject to. This proposal ignores the operational reasons why many businesses whose primary business is not that of rendering financial services have chosen the juristic representative route in order to obtain authorisation. If this requirement is proceeded with, it may well have the result that many cell owners whose primary business is not that of rendering financial services will likely surrender their cell arrangements. This will lead to negative consequences for the customer, as they will become orphaned clients or find themselves in a position where a book of policies is cancelled by the insurer. The aforementioned scenario is especially prevalent in the motor industry and micro credit provider industry.	meet all requirements around fitness and propriety and competence as required of FSPs under the FAIS Act, including having a Key Individual, compliance officer, and training programs for staff members, etc. The proposal, therefore, does not ignore the reasons why an NMI would opt to be a juristic representative of another FSP, it simply confirms that it the preference that the NMI be a registered FSP within its own right to address the consider of lack of oversight other practices of these entities due to the unique risks that this model poses.

No	Section of the standard	Commentator	Comment	Response
			It has always been our understanding that the RDR principles have as their stated intent the enhanced access to financial products and services by clients. We submit that the termination of a number of cell arrangements as a necessary consequence of this proposal goes against that principle as already expanded on above.	
95.	Section 6(2)(d)	Leanne Jackson (Independent commentator)	The substance of this provision broadly repeats that of s.3(2)(c). Differences are that s.3(2)(c) deals only with cell owners that are binder holders, and focuses on the associated knowledge, skills and expertise required to meet the product design standard, rather than the more general requirement of s.6(2)(d). In addition, the requirement in s.3(2)(c) forms part of the prescribed due diligence assessment requirements (but only for binder holders), whereas s.6(2)(d) imposes a more general up-front oversight responsibility which will apply to all NMI cell owners (including binder holders that are NMIs). The basis for this rather confusing difference in approach and partial overlap is unclear. In addition, please see my comments on s.3(2)(c) regarding the misalignment between the product design standard imposed by the requirement to “consistently deliver fair value” and the corresponding TCF obligations imposed on insurers generally. Those comments apply equally here. Again, this provision could arguably be deleted as its intent is covered by the Policyholder Protection Rules and by s.3(3)(b)(i) of this Conduct Standard.	Please note that there is a distinct difference between s 3(2) and s 6(2). S 3(2) relates to the obligation on the cell captive insurer insofar it relates to the upfront due diligence. S 6(2) relates to general principles and consideration of fair outcomes to policyholders that a cell captive insurer must consider before entering a cell structure with an NMI cell owner. This is informed by the particular risk instances where an NMI is also a cell owner. As the commentator stated section 3(2)(c) deals with a cell owner that is also a binder holder, and therefore requires the technical knowledge, skills, and expertise, opposed to section 6(2)(d). Section 3(2)(c) speaks to the due diligence assessment, which occurs before a cell structure is entered into. This ensures a specific focus on these requirements before a contractual relationship exists. Section 6(2)(d) provides a general demonstratable requirement in respect of suitable products and fair value from the NMI or its associate. This emanates from the possible risks alluded to in the statement of need. The insurer is required to demonstrate this fair value and suitable product and is a requirement before a cell structure is entered into with this type of cell owner.

No	Section of the standard	Commentator	Comment	Response
				We do not agree that there is an overlap – these considerations apply in the specific instances as described. In addition, please also see our responses to the comments raised by the commentator on section s 3(2) and the perceived misalignment.
96.	Section 6(1)(b)(i)	Foschini Retail Group (Pty) Ltd	This section, if read with section 6(1)(a) would mean that a NMI will only be limited to either a life-cell structure, non-life cell structure or microinsurance cell structure and will not be allowed to have more than one of them. If this is the intention the limitation will be prejudicial to a NMI that has cell structures with both life and non-life cell captive insurers even if these cell structures are limited to one cell captive insurer for each type of insurance business. Clarity is required regarding the reason for such a restriction. If there are concerns regarding conflict of interests, we would submit that there are less restrictive means to prevent conflicts, e.g. policies and disclosures to consumers. Guidance must be developed setting out how entities will be required to run-off business or convert consumers in the event that this amendment is retained.	Section 6(1) provides that a cell owner who is a non-mandated intermediary or an associate of the cell owner may not have more than one cell structure with one life insurer and one non-life insurer or if they have a cell structure with cell captive micro insurer they may not also have more than once cell structure with a cell captive life insurer or a cell captive non-life insurer over and above the cell structure with the cell captive micro insurer. Less restrictive options have been considered, however supervisory experience supported the need for more proactive and intrusive measures to be taken to combat unfair outcomes to policyholders. The draft Standard provides for a transitional period to allow for alignment over this period.

No	Section of the standard	Commentator	Comment	Response
97.	Section 6, general	Foschini Retail Group (Pty) Ltd	There is no provision for exemption from the provision of this section. As a NMI with cell structures that will be impacted by this section it would be preferred that the regulator considers grounds for exemption as the products under the cell structures are vastly different and would not constitute any conflict. There was previously consideration for exemptions so it is not entirely clear why this is no longer an option.	The FSCA has wide powers to exempt from substantive provisions in the regulatory framework. It is therefore not required to make specific provisions for this aspect in the Conduct Standard. Any applications will be considered on a case-by-case basis.
98.	Section 6(1)(b)(i)	CIB (Pty) Ltd	We submit that the current wording of this section will have far reaching implications for cell owners that may have other cells in runoff.	A transitional period is proposed for this reason as stipulated in section 7.
99.	General comments on the limitations- Section 6.1 (a) and (b)	ASISA	ASISA members understand that the aim of these limitations is primarily to combat conflicts of interest where an NMI or associate of an NMI is a cell owner. In their view however these limitations are too far reaching and will have various negative impacts as follows: • It will lessen competition and/or create dominance- this is to be considered in the context of achieving fair outcomes for consumers, providing product choices to consumers and ensuring fair participation in the economy. • It will have negative implications for NMI's. • The limitation on an associate of an NMI is very onerous for example , if company X is a cell owner and it is an associate of company Y which is an NMI, then both company X and Y may only conduct the business through the cell. This will severely impact traditional insurers.	The Standard itself does not lessen the competition or product choices of the consumers. The NMI has a choice in becoming a cell owner. In terms of the 'traditional' model of intermediation, there are already limitations in effect when it comes to an NMIs that earns commission also shares in the profits of the insurer. The effect of this limitation will therefore be to level playing fields between intermediaries in the cell captive insurance space and in the transitional space and therefore support competitive forces rather than impede on it. It is not possible to respond to the comment stating that it will have negative implications for NMI's without any substantiation/context or reasons why this is said. Comment noted, but again, this will be the choice of the NMI and its associate, there are various other options available to players in the market. Regarding the operational efficiencies of cell owners, it is not clear from the comment how the standard will limit the use of IT platforms or force the use of different systems.

No	Section of the standard	Commentator	Comment	Response
			There are operational efficiencies from cell owners being able to use IT platform and policy servicing functionality, which may reside in another cell owner, rather than having different systems for each cell structure, especially in the digital distribution space. An IT system is a massive fixed cost. This also means that the oversight requirements for the cell captive insurer are significantly simplified, which in turn reduces risks and costs for policyholders. It is not clear to members whether the limitations would disallow for example an NMI cell owner being a binder holder for another NMI cell owner. Bearing in mind that the cell captive insurer remains ultimately responsible, for all services, policyholder outcomes and managing and avoiding conflicts of interest the following changes are proposed: -That the scope of the associate relationship be limited to instances where the associated entity renders services in respect of the cell arrangement. - That the limitation of a NMI cell owner holding cells with one life and one non-life cell captive insurer should only apply where the NMI is providing advice, thereby addressing possible conflicts of interest. In addition, for the limitation to exclude the intermediary services that are not related to selling activities such as premium collection and claims activities.	Please consider the 2019 position paper in its entirety. You will see that the Conduct Standard is based on a multi-pronged approach – to address the conflicts as identified as well as the regulatory arbitrage that can arise and to limit the proliferation of cell structures over which the cell captive insurers do not have appropriate oversight and control. The risk of conflicted advice is but one of the various risks identified. We believe the benefit to policyholders in addressing the risks as identified, and level playing fields across the insurance sector in support of fair competition will outweigh the potential commercial benefit to NMI cell owners. The research and assessment of the conduct risk have been discussed and consulted on extensively and over several years. Other measures which are less intrusive have been considered, however through supervisory experience and deliberation it was concluded that a stricter approach is required. Please again see paragraph 2.3 of the 2019 Position paper: <i>“The clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. However, the fact that there are existing cell structures of which the cell owners are NMIs has to be acknowledged, and regulatory requirements should be crafted in such a way to balance the rights of these cell</i>

No	Section of the standard	Commentator	Comment	Response
			If the above proposal is not acceptable, then it is proposed that if the NMI cell owner or associate has either a life or non-life cell they should be permitted to render intermediary services in respect of insurance products (life or non-life) for which they do not have a cell. There is also uncertainty as to whether the NMI can still provide intermediary services related to financial products that are not insurance business e.g. banking or CIS products. Please can this be clarified.	<i>owners against the protection to policyholders and the public at large.”</i> The reason why this will be allowed is because to outright prohibit it would have a significant impact on existing cell structures, as inadvertently on policyholders of these structures. The wording used in the limitation contained in section 6, speaks to policies in respect of which services are rendered. Policies are defined in the Standard as a life insurance policy or a non-life insurance policy. It is therefore not envisaged to limit services to other types of non-insurance financial products.
100.	6(1)(b)(ii)	ASISA	The wording used here appears to assume that all micro insurers are composite insurers, which is not the case. If a micro insurer is only a life or non-life insurer, then the limitation should only apply only to such license categorisation. It is suggested the word “cell” is inserted in in paragraph b)i) after the word “non-life insurance” and before the word “captive” to reference a non-life insurance cell captive insurer.	A micro insurer does not require to be licensed to conduct both non-life and life insurance separately. A microinsurer can write both life and non-life risks under a single license, subject to the classes of business it is licensed to conduct. The wording allows for a cell structure with a microinsurance cell captive insurer and one with either a cell captive life insurer or a cell captive non-life insurer. Noted, correction made, and the word “cell” inserted.
101.	6(1)(b)	ASISA	The wording used in the Standard and in the Statement accompanying the Standard differs. The statement refers to “one life insurer and one non-life insurer” whereas the Standard is more specific and refers to “one life insurance cell captive insurer and one non-life cell captive insurer” It is important that the wording in the Standard is retained in the final version as if the wording in the Statement is used this could have the effect of <i>de facto</i> prohibiting similar arrangements.	Noted. The wording in the Standard sets out the actual requirements in the law. The statement of Need is a supporting document and does not carry any legislative power.

No	Section of the standard	Commentator	Comment	Response
102.	6(1)(b) The cell structure does not result in the cell owner or the non-mandated intermediary	SAIA	There appears to be a discrepancy between what is contained in the draft standard and the statement. The statement refers to “one life insurer and one non-life insurer” whereas the draft is more specific and refers to “one life insurance cell captive insurer and one non-life cell captive insurer” It is suggested that clarity on the draft standard against the statement be provided on the limitation to be at a cell captive level. Also see comment made in nr 6 above.	Noted. The wording in the Standard sets out the actual requirements in the law. The statement of Need is a supporting document and does not carry any legislative power.
103.	Section 6(1)(b)(i) • limitation to owning more than one life cell with more than life cell captive insurer. • limitation to owning more than one non- life cell with more than non-life cell captive insurer. Section 6(1)(b)(ii)	SAIA	1. This principle is said to go against the principle of “one agent one principal” as per the RDR regulations – therefore, a special case needs to be made why it should be allowed for cells. 2. The policy framework proposes that an NMI may own a cell acting then in its capacity as “agent for the cell insurer”. This is almost exclusively to avoid a potential conflict of interest where one may have the situation that an NMI favours one of his principals to the detriment of the policyholder (e.g. because of better remuneration by the one principal) 3. Why should cells not be subject to the same restrictions? a. We agree that a cell owner should not be allowed to have cells with more than one cell captive insurer – the limitation should, however, apply only in respect of the same business/kind of policy. There is a more direct and real potential for a conflict of interest risk that he may not always act in the best interest of the policyholder in the case of the same product with, e.g. different remuneration structures. b. Our view is that a cell owner should be allowed to have cells with more than one cell captive	Please see our response to Guardrisk on the same comment. We do not agree that the requirements in the Conduct Standards are contrary to the RDR proposals. Also, note that the RDR is not ‘regulations’ as it is stated. The limitations applicable to NMIs that also choose to be cell owners are justified based on the unique risks identified in this segment of the market. Also, please consider the specific risks clearly articulated in the 2019 position paper in its entirety. You will see that the Conduct Standard is based on a multi-pronged approach – to address the conflicts as identified as well as the regulatory arbitrage that can arise and to limit the proliferation of cell structures over which the cell captive insurers do not have appropriate oversight and control. The risk of conflicted advice is but one of the various risks identified. We believe the benefit to policyholders in addressing the risks as identified, and level playing fields across the insurance sector in support of fair competition, will outweigh the potential commercial benefit to NMI cell owners.

No	Section of the standard	Commentator	Comment	Response
	limitation to owning a microinsurance cell where a life or non-life cell is already owned with a life or non-life cell captive insurer.		insurer but for different classes of business/kinds of policies. To avoid the risk of a material proliferation of the cell captive market, we suggest that this should be limited to a maximum of two or three (the reason for the proposed restriction is merely to manage a potential proliferation of the cell captive insurance market whereby (in theory), no restriction on the number of cell captive facilities could lead to one retailer owning a multiple of cells with a multiple of cell captives. Although we are of the strong opinion that it will not be the case in practice (due to the reasons submitted before), we nevertheless propose some restriction to accommodate the FSCA's concerns. We are furthermore of the opinion that the current basis of cell captives having to advise the FSCA of a new cell should be an adequate measure to mitigate the abovementioned potential risks (conflict of interest and proliferation of the cell captive market). c. A cell owner invests a substantial amount of funds in the form of capital to open a cell. As for any investor, such cell owner should be allowed to have some form of risk spreading of its capital investment by way of diversification. This will in particular be of importance in cases where a financial services entity (such as a retail bank) owns a cell. d. The principle of more than one cell per NMI is already established in that a cell owner may have a cell with one life and one non-life insurer. This is ONLY because of the regulatory framework for insurer licencing and therefore already technically goes against the RDR principle of "one agent one principal" – it should therefore be a logical result that	The research and assessment of the conduct risk have been discussed and consulted extensively and over several years. Other measures which are less intrusive have been considered, however through supervisory experience and deliberation it was concluded that a stricter approach is required. Please again see paragraph 2.3 of the 2019 Position paper: "The clearest way to address these risks and concerns would be to outright prohibit NMIs from owning cell structures. However, the fact that there are existing cell structures of which the cell owners are NMIs has to be acknowledged, and regulatory requirements should be crafted in such a way to balance the rights of these cell owners against the protection to policyholders and the public at large." The reason why this will be allowed is because to outright prohibit it would have a significant impact on existing cell structures, as inadvertently on policyholders of these structures. Disagree that this should be done on a "per class of business" basis. No substantiation is made why two or three structures should be allowed if we have clearly explained that the preferred regulatory approach and the clearest way to address these risks and concerns would be to outright

No	Section of the standard	Commentator	Comment	Response
			it should include a third for a micro-insurance licence. e. The licencing framework in respect of classes of insurance/kinds of policies is predominantly a prudential matter – e.g. the changes in the new Insurance Act requiring that a non-life insurer may not conduct credit life business or issue policies which cover all causes of death going forward is mainly a prudential matter – these changes were made mainly because of prudential insurer matters (capital, reserves etc) and not because of market conduct matters (e.g. conflict of interest). Thus, classes of insurance or kinds of policies is mainly a prudential matter as the market conduct and TCF principles are very similar across both life and non-life licences, in other words, the principle of “one agent one insurer” is dealt with by type of licence and not i.t.o a potential conflict of interest. f. We support the issuing of new cell captive licences as it will improve competition and should ultimately benefit the policyholder. The future growth of cell captive business will predominantly come from 3rd party cells. Internationally there is a trend of manufacturers and distribution channels embedding asset-based insurance in their core product offering – this trend is expected to increase after Covid-19 as customer buying behaviour changes. One good example is motor manufacturers and dealership groups where comprehensive motor insurance and value-added insurance products (e.g. tyre insurance, scratch and dent etc) is increasingly being included in the vehicle offering at a fixed price.	prohibit NMIs from owning cell structures. Allowing one life and one non-life cell is, therefore, a regulatory concession. The argument that licensing is a prudential matter is unclear in relation to limitations in the standard which is set out to address the conduct risks identified by the Authority. Please see views expressed above that reason why NMI cell ownership will be allowed at all is because to outright prohibit it would have a significant impact on existing cell structures, as inadvertently on policyholders of these structures. It is therefore a regulatory concession.

No	Section of the standard	Commentator	Comment	Response
			Another example is cell phone insurance where manufacturers and mobile network operators are starting to embed insurance in the product offering. g. Many of these manufacturers and retailer groups already have a cell with an existing cell captive insurer for a specific product with existing business relationships stretching over a number of years. New cell captive insurers will find it extremely difficult to enter these relationships in respect of the same product. However, they have a reasonable chance to do so with a new product or capability that may not be on offer from the existing cell captive insurer. This is, in particular, made possible through new technologies (e.g. Insurtech and digital capabilities) linked to new products and distribution that a new cell captive provider may bring to the table. A specific retailer with an existing cell captive arrangement will not be able to access these new product capabilities from the new cell captive insurer. h. There must necessarily be capacity constraints for all cell captive insurers. Forcing NMI's to use only one cell captive license could, inevitably, result in inefficient service delivery to insureds. i. To not allow multiple cell ownership immediately decreases competition amongst cell captive companies. Allowing multiple ownership will go some way to ensure efficiency through competitive market forces and not forcing "exclusive arrangements". j. Limiting cell captive ownership may also restrict access to reinsurance markets that may be	Please see the comments above – the standard is by no way 'forcing' NMIs to be cell owners. If an NMI chooses to be a cell owner, it can only act as an NMI for the cell of which it is an owner. The NMI is still free to choose to either be a cell owner OR an intermediary – it is by no way forced to be both. In terms of the 'traditional' model of intermediation there is already a limitation in effect when it comes to an NMIs that earns commission also shares in the profits of the insurer. The effect of this limitation will therefore be to level playing fields between intermediaries in the cell captive insurance

No	Section of the standard	Commentator	Comment	Response
			suitable for one product but not for another. It is possible that reinsurers that qualify for one cell captive's security list do not qualify for another's for sound reasons. This may prohibit the NMI from offering a certain class of business to its client base, thereby reducing competition in the market. k. Forcing NMIs to use only a single cell captive license could result in the unavoidable consequence of the cell captive company in use becoming overly saturated with one or more type of risk class or in one or more geographical areas, thereby reducing its ability to diversify its risk portfolio resulting in unnecessary and potentially dangerous risk concentrations as a result of having to accede to NMIs requests to cater for certain classes of risk already written by the cell captive company.	space and in the transitional space, and therefore support competitive forces rather than impede on it. See comments above regarding the NMI choosing to be a cell owner. The risks have been closely considered and extensively consulted on. We also do not agree that this will have a major negative impact on the cell owner's ability to diversity. If the cell owner wants diversity in investments by being a cell owner of several different cell structures it can still do so, it can simply them opt to not also want to market and sell policies as an NMI. There is a very clear reason for the limitations around remuneration in the insurance regulatory framework. And the cell captive structure should not be used toward creating regulatory arbitrage and unlevel playing fields between the limitations applicable to cell captive insurance vs so-called 'traditional' insurance relationships.
Section 7. SHORT TITLE, COMMENCEMENT DATE AND TRANSITIONAL ARRANGEMENTS				
104.	Transitional arrangements	Guardrisk	We recommend that any cell structure that is entered into prior to the date of commencement must within 2 years from the date of commencement date of this Conduct Standard comply with the requirements of the Conduct Standard.	Noted. However, the Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in

No	Section of the standard	Commentator	Comment	Response
				support of cell structures being owned by NMI's due to the particular risks identified.
105.	Paragraph 7(2)	Capitec Bank	The section of the Standard determines “<i>any cell structure entered into prior to 1 January 2020, must within two years from the commencement date of this Standard, comply with the requirement of this Conduct Standard</i>” In instances where a NMI has cell arrangements with more than one life insurance cell captive insurer, it is assumed that the Authority's expectation is that the NMI will have to elect a single life insurance cell captive insurer to continue doing business with and terminate the cell arrangement with the other. Clarity is sought from the Authority: - As to how the existing book of business with the life insurance cell captive insurer with which the cell arrangement will be terminated should be dealt with. In Capitec Bank's case the wind down period of credit life insurance policies on term loans can be up to 9 years (as we issue loans with an original term of 84 months that can be rescheduled during the loan term). - How the termination would be in the best interest of the policyholder should the transfer of business have an adverse impact on premiums. - Whether the two-year transitional period could be extended in individual circumstances (upon application to the Authority) to allow for the book in the cell	The discussion regarding how a specific book of business should be dealt with to align to the Standard would need to take place on an individual basis with the Authority and cannot be responded to by means of a response in a consultation report to public comment. The commentator is invited to approach the Authority directly to engage on the impact of the Conduct Standard on the business of the commentator, and for detailed engagement on the practical implications for its business. It is also important to keep in mind that the Authority has the power to exempt an entity from any substantive provision or grant an extension of the period to comply as may be necessary which will be considered on a case by case basis. It is not necessary to spell out every possible scenario in the Conduct Standard itself. The consultation process spans over years and the industry effectively already knows the Authority's views as clearly articulated in the 2019 policy paper. It will therefore have more than 2 years to adapt its strategy and plan for an orderly change in the cell structures.

No	Section of the standard	Commentator	Comment	Response
			arrangement that should be terminated to run down, especially In the case of life Insurance products, where the period of two years may not be sufficient time to run down the book. How to deal with existing cell structures where the cell owner is contractually or legally locked in for a period beyond the transitional period of 2 years or where termination period of more than 2 years is required to terminate the cell structure. More detailed transitional arrangements are required regarding the transfer of the existing book and the rundown of the existing book.	
106.	Section 7(1) & (2)	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	Further clarity and detail are sought on transitional arrangements in order to understand what exactly has to be done and by when. We think that existing structures should be allowed to run-off but require confirmation.	The suggestion and request for further details on the transitional period are noted. However, the Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to mitigate the conduct risks instead more proactively of continuing with arrangements that may result the materialising of conduct risks.
107.		Infiniti Insurance Limited	I do believe that an exception should be made in respect of products sold through motor dealerships where the risk of misselling for profit or 'forced	Noted, however, it should be kept in mind that a non-mandated intermediary is not prohibited from offering a variety of products at the point of sale. It is simply where

No	Section of the standard	Commentator	Comment	Response
			selling’ is heightened by the fact that client is a captive market and is often dependent on the dealership for a good trade-in payment on an existing vehicle to enable them to purchase the new vehicle. Motor dealers that are cell owners or associates of cell owners should be obliged to provide clients with viable options outside of their cell at the point of sale if they are permitted to own cells going forward. The ultimate loser will be the consumer who will be obliged to pay whatever premium the consumer’s cellowner offers them as this condition is effectively cutting out competition to the detriment of the consumer. Please would you provide clarity on existing motor warranty business after the transitional period has expired as this typically has a term in excess of 2 years.	the NMI is also a cell owner that the risks articulated in the 2019 policy paper may arise, which is why the Conduct Standard limits cell ownership by NMIs in particular. Arguably consumers may be disadvantaged if the NMI cell owner is ‘obliged’ to offer them other products in which the NMI cell owner does not stand to gain the benefit of profit share, as it may result in misselling or the promotion of inappropriate products. It could mislead the customer into thinking that they are receiving ‘objective’ advice, which may not be the case due to the NMI having an interest in the sale of products in its own cell above such other products. Where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. Matters of this nature would need to be dealt with on a case by case basis, considering the facts at hand.
108.	Clause 7(2)	The Banking Association South Africa	BASA notes that the section of the Standard determines “<i>any cell structure entered into prior to 1 January 2020, must within two years from the commencement date of this Standard, comply with the requirement of this Conduct Standard</i>” and we would like to raise the following. 1) In instances where a NMI has cell arrangements with more than one Life insurance cell captive insurer, it is assumed that the Authority’s expectation is that the NMI will have to elect a single life insurance cell captive insurer to	Comment for guidance in respect of transitional periods noted. Where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. It is not possible to answer very general questions in respect of whether termination of a book of business would be in the best interest if the transfer would have an adverse impact on premiums. Matters of this nature would need to be dealt with on a case by case basis,

No	Section of the standard	Commentator	Comment	Response
			continue doing business with and terminate the cell arrangement with the other. 2) We need to guard against changing existing arrangements to the detriment of clients and we will appreciate clarity from the Authority on the following: • How should the existing book of business with the Life insurance cell captive insurer with which the cell arrangement will be terminated be dealt with? • Will the termination would be in the best interest of the policyholders should the transfer of business have an adverse impact on premiums? • Whether the two year transitional period could be extended in individual circumstances (upon application to the Authority) to allow for the books in cell arrangements that should be terminated to run down, especially in the case of life Insurance products where the period of two years may not be not sufficient time to run down the book? • How will existing cell structures be dealt with where cell owners are locked in for periods beyond the transitional period of 2 years or where a termination period of more than 2 years is required to terminate the cell structure? 3) The reality is that more detailed transitional arrangements are required regarding the transfer and rundown of existing books. 4)	considering the specifics. Commentators are invited to approach the Authority directly to engage on the impact of the Conduct Standard on the business of the commentator, and for detailed engagement on the practical implications for its business. It should be kept in mind that the Authority has extensive powers to exempt insurers from substantive provisions in the framework, this could be considered on a case by case basis. The question on how a book will be dealt with when owners are contractually locked in for a longer period than the proposed transitional period needs to be assessed on a case by case basis and a general response cannot be given in this format. However, the Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to mitigate the conduct risks instead more proactively of continuing with arrangements that may result in the materialising of conduct risks.

No	Section of the standard	Commentator	Comment	Response
			BASA suggests that the commencement date, and transitional period, should be two years from the date that the Standard become effective.	
109.	Section 7(2)	Foschini Retail Group (Pty) Ltd	This section is not clear on how cell structures that would be transgressing the limitation provision under section 6. If section 6 will result in NMI and cell captive insurers having to discontinue a cell structure there will be other aspects to consider, such as the existing book and policyholders etc. If a cell structure is not allowed to continue due to section 6 a period of 2 years would not suffice and more specific provisions would be required.	Where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. It is not possible to answer very general questions in respect of whether termination of a book of business would be in the best interest if the transfer would have an adverse impact on premiums. Matters of this nature would need to be dealt with on a case by case basis, considering the specifics. The commentator is invited to approach the Authority directly to engage on the impact of the Conduct Standard on the business of the commentator, and for detailed engagement on the practical implications for its business. The Authority has extensive powers to exempt insurers from substantive provisions in the framework, this could be considered on a case by case basis. The question on how a book will be dealt with when owners are contractually locked in for a longer period than the proposed transitional period needs to be assessed on a case by case basis and a general response cannot be given in this format. However, the Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the

No	Section of the standard	Commentator	Comment	Response
				Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to mitigate the conduct risks more proactively, instead of continuing with arrangements that may result in the materialising of conduct risks.
110.	7(2)	ASISA	The transitional time period will be insufficient for those cell owners impacted by 6(1)(i). It is our understanding that the FSCA wishes to prevent new cell captive arrangements which don't adhere to the policy direction set out in the FSCA position paper of December 2019, hence the time period in section 7(2). It is submitted that this objective can still be met if the time period in 7(2) is changed to 1 July 2020 which was the licence conversion date for cell captive insurers, and it is requested that this change be made. Other considerations are: There may be tax implications in terms of section 8E of the Income Tax Act - in the event that a preference share is redeemed within 3 years from the date of issue (in order to wind up the cell), then the preference share would be classified as a hybrid equity instrument and the dividends would be declared as income. A transitional period of 3 years and 1 day to wind up existing arrangements, may be required. As a section 50 transfer is a very long process allowance should be made in the transitional arrangements for a cell owner to have two cell	It is not clear why new cell arrangements entered into from 1 January 2020 cannot comply. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to more proactively mitigate the conduct risks instead of continuing with arrangements that may result in the materialising of conduct risks. Where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. It is not possible to answer very general questions in respect of whether termination of a book of business would be in the best interest if the transfer would have an adverse impact

No	Section of the standard	Commentator	Comment	Response
			structures during the transfer process i.e. while the transferor cell is closed to new business and the transferee cell is open to new business.	on premiums. Matters of this nature would need to be dealt with on a case by case basis, considering the specifics. The Authority has extensive powers to exempt insurers from substantive provisions in the framework, this could be considered on a case by case basis. The question on how a book will be dealt with when owners are contractually locked in for a longer period than the proposed transitional period needs to be assessed on a case by case basis and a general response cannot be given in this format.
111.	Section 7(2)	SAIA	We suggest that the transition requirements to be from effective date of publication of standard for all structures entered into prior to the commencement date of the standards and not only limited to those that were entered into prior 01 January 2020. The immediate compliance of existing cell structures entered into between 1 Jan 2020 and the effective date of standard would not be practically achievable.	Please see the response to Guardrisk above. Noted. However, the Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to more proactively mitigate the conduct risks instead of continuing with arrangements that may result the materialising of conduct risks.

SECTION C - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD

No.	Commentator	Question	Responses
Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.			
1.	Guardrisk	Yes. The direct compliance costs have increased with the advent of the binder regulations and the Policyholder Protection Rules. The standard imposes additional compliance requirements in terms of due diligences, ongoing monitoring, disclosures and reporting. Furthermore, systems used to aid compliance is to be developed and/or enhanced to accommodate to the additional compliance requirements.	The Authority acknowledges that there may be an additional cost to be incurred in order for the insurers to comply with the Conduct Standard, however, we believe these measures are appropriate and needed to mitigate the business model risks and conflict of interest risks that may arise. Also, the position of the Authority has been made clear for several years. The lack of oversight in these business models over the business operated in cell structures has been raised through supervisory engagements over the years. Arguments raised by the industry included that there are no specific prescribed requirements applicable and therefore the clarification of the requirements applicable to 3rd party cell captive insurance business will support level playing fields and legal certainty. The comments about the increase in costs are noted, however, the transitional arrangements afforded will allow for an orderly transition to compliance with the new requirements, and sufficient time to develop procedural and operational enhancements. Regarding system development, the comment is noted, but as system developments to ensure regulatory compliance is integrated with the operation cost of an insurer on an ongoing basis we are of the view that the transitional period afforded will allow for time for system developments to be incorporated in the planning and development of the insurer, as would be done with any other regulatory change, thus ensuring an orderly transition that will limit long term cost implications.
2.	Capitec Bank	The proposed limit on one cell structure per life insurance cell captive insurer will potentially result in transfer of policies to ensure Capitec Bank only has a single life insurance cell captive. This could mean transferring the business to a	Where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by means of other avenues. We also do not believe that it would

		sub-optimal cell due to practically having to migrate policies before run-off. This will lead to additional compliance costs. These costs however can't be quantified at this point in time.	necessarily result in business being underwritten in a so-called sub-optimal cell, as this may lead to inappropriate products, which is not in the interest of a cell owner that wants to build its reputation with customers and remain competitive in the market. The NMI cell owner still has the option to be either a cell owner or an NMI, but not both, and to consider the option of licensing in its own right. The choice, therefore, belongs to the cell owner in which capacity it wants to act. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The Conduct Standard provides for a transitional period for cell structures entered into before January 2020.
3.	Absa Short – term Insurance Group	With regards to the requirement to keep a central complaints register for all complaints. We anticipate additional IT cost although it is not possible to quantify at this stage as actions like mapping out the process and the commercial terms negotiated with the relevant insurers, need to be undertaken and we expect the costs to be considerable. Hence we would like the regulator to reconsider this requirement in light of what has been proposed above.	The Authority acknowledges that this requirement may result in additional costs. However, one of the primary concerns identified in relation to the cell captive business model is unnecessarily complex complaints and escalation procedures within certain cell structures especially identified where the cell owner is a bank that may have their own internal complaints processes not aligned with the insurer. For the cell captive insurer to analyse complaints and take corrective action a holistic view is required which is obtained through a centralized complaints register.
4.	The Banking Association South Africa	BASA members indicate that there are a few considerations regarding cost implications. 1) For a Underwriting Management Administrator (UMA) that administers VAPS business for Cell owners, controls would need to be built to ensure that cell owners do not write products not forming part of that cell captive. This is exacerbated by the fact that existing product schemes exist for a particular dealer or dealer group across both cell business and non-cell business. 2) Certain FSPs will need to undertake additional system development to comply.	It is acknowledged that there may be additional costs incurred to comply with the draft Conduct Standard. It is further noted that this may include additional system development. The lack of oversight in these business models over the business operated in cell structures has been raised through supervisory engagements over the years. Arguments raised by the industry included that there are no specific prescribed requirements applicable and therefore the clarification of the requirements applicable to 3rd party cell captive insurance business will support level playing fields and legal certainty. The comments about the increase in costs are noted, however, the transitional arrangements afforded will allow for an orderly transition to compliance with the new requirements, and sufficient time to develop procedural and operational enhancements. The practical challenges are noted, however, extensive engagements were held with industry players and a consultation process

		3) There might be an increased cost to communicate any changes as stipulated in paragraph 4.2 to existing policyholders. 4) The extent of the requirements under paragraph 3.(6) may lead to continuous due diligence exercises that will add significant cost to oversight which will inevitably be passed on to the clients. The proposed limit on one cell structure per life insurance cell captive insurer will potentially result in transfer of policies to ensure a bank only has a single life insurance cell captive. This could mean transferring the business to a sub-optimal cell due to practically having to migrate policies before run-off. This will lead to additional compliance costs. These costs however can't be quantified at this point in time. We note that Conduct risk may be increased as a cell will be swapped out for an inferior one.	followed together with the transitional period should allow sufficient time for the industry to adapt their strategy accordingly, and plan appropriately for an orderly transition to the new regulatory regime mitigating any severe impact that the increase in cost may have. In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the particular cell captive insurer and the cell owner as to how to align their businesses with the Standard, whether this means transferring the business into a single cell or by means of other avenues. It is our view that the benefits to and enhanced protection of policyholders outweigh the possible impact on these existing cell captive arrangements that will no longer be allowed to offer products underwritten by other insurers or outside of the cell arrangement. We also do not believe that it would necessarily result in business being underwritten in a so-called inferior cell, as this may lead to inappropriate products, which is not in the interest of a cell owner that wants to build its reputation with customers and remain competitive in the market. The NMI cell owner still has the option to be either a cell owner or an NMI, but not both, and to consider the option of licensing. The choice, therefore, belongs to the cell owner in which capacity it wants to act.
5.	ASISA	Yes – in relation to the frequency of the publication of disclosure notices and applications for exemptions in relation to rulings by competition authorities.	It is not clear what the commentator is referring to with regards to “rulings by competition authorities”. If it is suggested that the Conduct Standard will result in uncompetitive forces in the industry this is rejected. Please see general comment regarding levelling playing fields and supporting competition in the industry in section 4 of this consultation report, under the heading: “General account of the issues raised in the submissions made during the consultation”
6.	Mutual & Federal Risk Financing Ltd	Enhancement of processes to meet Conduct Standard requirements will incur some operational cost however this is not expected to be material changes to existing processes.	Noted. It is acknowledged that some additional operational costs may be incurred to comply with the Conduct Standard. The Authority is of the view that the requirements imposed in the Conduct Standard is appropriate and necessary to mitigate the risks explained.
7.	SAIA	Yes – in relation to the frequency of the	See response to the same comment by ASISA above.

		publication of disclosure notices and applications for exemptions in relation to rulings by competition authorities. The development and implementation of a suitable system can also be costly, especially for small players.	Regarding system development, the comment is noted, but as system developments to ensure regulatory compliance is integrated with the operation cost of an insurer on an ongoing basis we are of the view that the transitional period afforded will allow for time for system developments to be incorporated in the planning and development of the insurer, as would be done with any other regulatory change, thus ensuring an orderly transition that will limit long term cost implications.
How do you anticipate the Conduct Standard will affect the operational cost of your business, if at all?			
8.	Guardrisk	If the Conduct Standard is implemented as is, it is likely to increase the operational costs. This will be inclusive of system enhancement and increased human resources. As an example, compliance business partners and legal business partners (that is your support staff) have been employed specifically to aid the implementation of the processes dealing with the onboarding, ongoing monitoring and governance of cell captive arrangements. In addition, a distinction is to be made between support staff and the resources responsible for managing relationships (front line staff) with the cell owner and/or binder holder. The latter's core role is structured to be centred around the ongoing maintenance of these relationship and to ensure cell captive arrangements are legally and regulatory sound. Taking the above examples into account, it implies that the number of human resources is likely to be increased which results in increased operational cost of our business. Thus management fees charged to each cell will likely increase with resulting costs passed onto policyholders.	It is acknowledged that there may be additional costs in respect of operational costs to comply with the requirements in the Conduct Standards. Arguably with enhanced operational efficiencies created by technological advancements, balanced with the appropriate profit margins, coupled with the transitional period afforded to allow for time for upskilling and system developments to be incorporated in the planning and development of the insurer, the long term operational cost implications. It is our view that the benefits to and enhanced protection of policyholders and legal certainty created by the Conduct Standard will ultimately outweigh these costs.

9.	Capitec Bank	Commercials around the cell structures would need to be re-negotiated with the respective insurers as we understand the outcome of migrating in excess of 1 million policies to be extremely cumbersome, complex and onerous. As one cell insurer would need to take on new business and would pass this cost onto Capitec Bank and the policyholder. Whereas, the cell from which the business is migrated would suffer a loss in revenue which could impact their ability in being able to meet the governance and oversight standards required. The reduction in scale during the migration process, combined with the associated administrative burden may also lead to the position that the insurer losing the business will have to increase its pricing for the duration of the migration process, leading to an overall increase in costs to the consumer. Migrating in excess of 1 million policies is a far more complex task than migrating a cell with a few thousand policies. The impact of doing such a migration onto a new platform will result in increased risk for all parties concerned, including the policyholder. The costs involved in such an exercise are expected to be considerable.	In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by means of other avenues. This could create new business opportunities. The transitional period afforded will allow for time for implementing the necessary strategic changes as would be done with any other regulatory or business model change, thus ensuring an orderly transition that will limit long term implications. The commentator is invited to approach the Authority directly to engage on the impact of the Conduct Standard on the business of the commentator, and for detailed engagement on the practical implications for its business. It is also important to keep in mind that the Authority has the power to grant an extension of the period to comply as may be necessary and individual exemptions will be considered on a case by case basis.
10.	Absa Short – term Insurance Group	The impact of the increasing oversight requirements that will result in additional review processes and compliance staff being required that will increase the operational costs; System and IT infrastructure investments will be ongoing due to the data and reporting	Regarding the necessary system and IT infrastructure development, the comment is noted, but as system developments to ensure regulatory compliance is generally integrated with the ongoing operational cost of an insurer we are of the view that the transitional period afforded will allow for time for system developments to be incorporated in the planning and development of the insurer, as would be done with any other regulatory

		requirements. Every change and additional information request and change in data results in increased costs and investment in systems. Investment in additional compliance personnel and oversight management;	change, thus ensuring an orderly transition that will limit long term cost implications. The Authority, therefore, acknowledges that there may be an additional cost to be incurred in order for the insurers to comply with the Conduct Standard, however, we believe these measures are appropriate and needed to mitigate the business model risks and conflict of interest risks that may arise. Also, the regulatory development has been undertaken over several years which supports the development time for system and process changes.
11.	The Banking Association South Africa	In addition to our comments in Question 1 above, BASA notes the following impact on the operational costs of the business of our members. 1) There would be a significant loss of revenue as all business written on other licenses will be lost in favour of their cell. This would result in an increase in the operation cost ratio and, potentially a reduction in staff and potentially increases in premiums, as well considerations regarding continued viability of the insurance portions of these businesses. Some examples are noted below: a. FSP 1 {provider of finance to vehicle buying customers through Point of Sale (POS)} - 42% of dealers that deal with the FSP currently operate within a cell. 38% of these dealers currently support FSP 1's value-added products when FSP 1 is the financier of choice for the customer. Should the dealer be restricted to only selling products within their cell, FSP 1 will lose the support of 38% of their insurance base from that channel and in	The Authority does not agree with the views raised that the limitations on ownership will impede competition in the market, create a significant loss of revenue and that limitations in relation to ownership will limit customer choice. Please see responses in this Consultation Report under paragraph 4 on page 2 that deals with "General account of the issues raised in the submissions made during the consultation". As responded to the commentator throughout when then views on the potential impact on competition were raised, we hold the view that arguably the legal certainty and level playing fields created by the Conduct Standard will support fair competition between cell captive insurance business and so-called traditional insurance business. The limitations in relation to owning cells only apply if the cell owner is an intermediary (NMI) that chooses to render services as an intermediary and also chooses to share in profit through a cell structure rather than earning commission only. Accordingly, the limitations only come into play if the non-mandated intermediary made a positive choice also wants to share in the profits of the insurer, which brings with this choice possible conduct risks that need to be mitigated. The FSP in example A chooses to do business through a cell thereby limiting the products that it can offer. The FSP is not forced by the legislation to operate in this model. The customer will still be able to obtain appropriate insurance cover, through other channels if this FSP chooses to limit the products it can offer. It will also benefit the customer by not being led to believe that it is in fact receiving independent advice if this is not truly the case. There are a host of

		additional 38% of those customers would not be provided with the VAP of their choice which results in a substantial loss of revenue to the FSP and limitation of choice to the customer where the customer could only select a cell product being the product that they did not feel best met their needs as they selected FSP 1's product. Furthermore, this equates to a loss of commission income which could have a significant impact on FSP 1's Insurance model's existence and will further impact the value- added offering to our customer. b. FSP 2 (provider of vehicle finance) – 88% of dealers currently operate within a cell. In 2019, these dealers contributed to approximately 10% of FSP 2 VAPS (Value Added Products) sold and hence this will now mean that 10% of insurance revenue will be lost. This is crucial to FSP 2 business and the model on which it operates on, especially due to the economic environment FSP 2 currently operates in. Furthermore FSP 2 currently has representatives that operate in a F&I capacity at these dealers, should these dealers be restricted to only selling products within their cell, the FSPs F&I faces the risk of job losses. c. FSP 3 (provider of vehicle finance) has 59 representatives and there are more than 80 dealer FSP representatives. All are responsible to provide the customer with	other distribution channels available to the customers, and we expect that the industry will jump at the chance to innovate new ways to offer these customers products, thus supporting competitive forces in the market. Where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The Conduct Standard provides for a transitional period for cell structures entered into before January 2020. Please see the comment directly above regarding the restriction not being the only option available to the FSP and that operating in this model is at the instance of the FSP. Non detailed comments on job losses are noted which are not taken lightly. However, job losses should be the last option available. Before any such extreme steps are taken the cell owner and cell insurer should consider all options available to them, and where necessary can approach the Authority for regulatory relief. Comments of potential job losses are also considered against responses above alluding to possible job creation that may arise due to expanding human resources for onboarding, ongoing monitoring, and governance of cell captive arrangements, which in itself may hold the benefits of job creation thus supporting the broader economy. The impact of the Conduct Standard is therefore considered on a holistic level. Please see the comment directly above regarding the restriction not being the only option available to the FSP and that operating in this model is at the instance of the FSP. Also, note the benefit of the customer by not being led to believe that it is in fact receiving independent advice if this is not truly the case.
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		the best products based on their individual needs. Considering a dealer cell, the dealer representatives will not be able to offer FSP 3 Genuine Manufacturer Warranty or Extended Warranty products as these are not part of the dealer cell. d. FSP 3 - 95% of dealers support FSP 3 value added products. Should the dealer representative be restricted to only selling products within their cell captive, customers would be unaware of the variety of products available, be offered products that do not meet their needs and have to source their own cover from direct insurers. FSP 3 have a sizeable insurance portfolio which will be adversely impacted, should dealers decide to retain their own cell captive arrangements 2) The ability for FSPs that are financiers to be able to provide insurance products to customers at point of sale enables the FSP to ensure that the total value proposition to the customer is good value, including the rate at which the financier can provide the finance. If any financier were to lose a significant portion of revenue it may impact on the rates that customers could be offered, and the total customer value proposition would be reduced. 3) The current proposal whereby the cell product is the only product offered at point of sale and all other products need to be	The comments on the potential impact of the regulatory change on the various models are noted. In every instance, the response that the business model is at the choice of the FSP and view expressed above on the holistic consideration of the impact applies.
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		sourced by the customer and entered into separately means that the cell product - which may be the less suitable product - will be the one that a customer is offered at the point of sale and due to the effort and time required for a customer to source an alternative will be the one the customer takes irrespective of whether it is the best product for the customer. 4) Commercials around the cell structures would need to be re-negotiated with the respective insurers as we don't understand the full impact of migrating in excess of millions of policies. As one cell insurer would need to take on new business and would pass this cost onto banks bank and policyholders. Whereas the cell from which the business is migrated would probably suffer a loss in revenue which could impact their ability in being able to meet the governance and oversight standards required as a result of impact on sustainability. The reduction in scale during the migration process, combined with the associated administrative burden may also lead to a scenario that the insurer losing the business will have to increase its pricing for the duration of the migration process, leading to an overall increase in costs to the consumer in order to be able to operate profitably. Migrating a few million policies is a far more complex task than migrating cells with a few thousand policies. The impact of doing such a	Please see the response to the exact same comment by Capitec (comment number 9, page 123)
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		migration onto a new platform will result in increased risk for all parties concerned, including the policyholder. The costs involved in such an exercise are expected to be considerable and will inevitably be passed on to clients.	
12.	ASISA	The frequency of the publication of disclosure notices and applications for exemptions referred to above.	Please see response to this comment raised above.
13.	Mutual & Federal Risk Financing Ltd	Not material increase anticipated.	Noted.
14.	SAIA	See above In addition to the comments in 1 above, adoption of the standards may also significantly increase operational costs as there will be more employees to administer the requirements and a very efficient automated reporting system. Such systems are very expensive.	The Authority acknowledges that there may be an additional cost to be incurred in order for the insurers to comply with the Conduct Standard, however, we believe these measures are appropriate and needed to mitigate the business model risks and conflict of interest risks that may arise. Also, the position of the Authority has been made clear for several years.
Will the Conduct Standard result in termination of existing cell captive arrangements? If yes, please be specific and make reference to specific aspects of the draft Conduct Standard that will lead to such a termination.			
15.	Guardrisk	Yes. Section 6(1) in its current form will lead to terminations of existing cell arrangements. Aspects of cell the structures which may have to be terminated include: - • Number of policyholders impacted, • Number of policies impacted, • Number of employees impacted and • Premium size in respect thereto Limitation on ownership in cell structures by non-mandated intermediaries and the limitation in respect of a tied agent. (As elaborated in Annexure A to commentary). We also expect a number of entities to not enter the formal cell captive insurance market and thereby continuing their unregulated entities.	Noted. In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, the Authority acknowledges that a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by means of other avenues. Arguably this could create new business opportunities. The transitional period afforded will allow for time for implementing the necessary strategic changes as would be done with any other regulatory or business model change, thus ensuring an orderly transition that will limit long term implications. The commentator is invited to approach the Authority directly to engage on the impact of the Conduct Standard on the business of the commentator, and for detailed engagement on the practical implications for its business.

			It is also important to keep in mind that the Authority has the power to grant an extension of the period to comply as may be necessary and individual exemptions will be considered on a case by case basis. The NMI cell owner still has the option to be either a cell owner or an NMI, but not both, and to consider the option of licensing. The choice, therefore, belongs to the cell owner in which capacity it wants to act. Please note responses to comments by the commentator in its “Annexure A” regarding the limitation to the NMI cell owner being only allowed to perform services as intermediary on the cell structure of which it is a cell owner. (the terminology ‘tied agent’ is not preferred as there is no such reference in the Conduct standard itself and the use therefore in the Statement of Need seems to have been misconstrued.
16.	Capitec	Yes, as Capitec Bank has two third party life insurance cell captives it is our understanding that as per the draft standard we would require the transfer of policies from one cell to the other cell. Migrating in excess of 1 million policies is an extremely complex task. The impact of doing such a migration onto a new platform will result in increased risk for all parties concerned, including the policyholder. The costs involved in such an exercise are expected to be considerable.	In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, the Authority acknowledges that a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. Regarding the potential cost implication to ensure compliance, the comment is noted, however developments to ensure regulatory compliance is generally integrated with the ongoing operational cost of financial institutions, especially the larger ones, and we are of the view that the transitional period afforded will allow for time for the planning and development necessary, as would be done with any other regulatory change. The Authority, therefore, acknowledges that there may be an additional cost to be incurred to comply with the Conduct Standard, however, we believe these measures are appropriate and needed to mitigate the business model risks and conflict of interest risks that may arise. Also, the regulatory development has been undertaken over several years which in itself supports the development time to ensure an orderly transition that will limit long term cost implications. The policy position in respect of these structures has been communicated clearly for several years.

17.	Absa Short – term Insurance Group	N/A to AIRMS	Noted.
18.	The Banking Association South Africa	1) It is conceivable that where a dealer group owns an OEM franchise and such OEM also owns a cell, that the OEM will require of the dealer/dealer group to sacrifice its cell ownership. 2) Certain current FSPs will need to revisit existing cell captive arrangements. Depending on future CoFI tied license arrangements, the cell captive arrangement could potentially tie a conglomerate to a particular insurer. 3) It is our understanding that the draft standard would require the transfer of policies from one cell to the other cell.	In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, the Authority acknowledges that a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues. The policy position in respect of these structures has been communicated clearly for several years.
19.	Foschini Retail Group (Pty) Ltd	Yes, our business will be impacted by the limitation under section 6 (1)(a) and (b).	In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurer in contrast with the proposed limitations, the Authority acknowledges that a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard, whether this means transferring the business into a single cell or by other avenues.
20.	ASISA	There may be an impact on an arrangement where there are both cell structures and similar arrangements which will require the restructuring of these arrangements. This will depend on the regulatory position adopted on similar arrangements which is still being considered by the authorities.	Noted. With regards to similar arrangements. These arrangements relate to the application of the Insurance Act and therefore falls primarily to the Prudential Authority. It suggested that the commentator engages with the Prudential Authority in this respect.
21.	Mutual & Federal Risk Financing Ltd	No terminations expected (exemption applications allowed under Conduct Standard)	Noted.
22.	SAIA	There may be an impact on an arrangement	In respect to cases where the non-mandated intermediary has more than one

		where there are both cell structures and similar/mock cell structure which will require the restructuring of these arrangements.	cell with different cell captive insurers in contrast with the proposed limitations, the Authority acknowledges that a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard. With regards to similar arrangements. These arrangements relate to the application of the Insurance Act and therefore falls primarily to the Prudential Authority. It suggested that the commentator engages with the Prudential Authority in this respect.
If the answer to question 3 is yes, how many arrangements will be impacted, and what is the expected cost implication thereof?			
23.	Guardrisk	Collectively Guardrisk (Life and Insurance) currently have a total of 13 clients who also have cells with another cell captive insurer (we are not aware of any client who has cells with more than two providers). Of the 13, five have their cells in run-off with one of the cell captives due to different reasons, two conduct the same business across both cell captives and six use their different cells for different products. Refer to Annexure A for further detail in this regard.	Noted. From this submission and our understanding of the cell structures in the market currently, there are only a limited number of clients who have cells with multiple cell captive insurers. It is therefore envisaged that there is limited impact. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The Conduct Standard provides for a transitional period for cell structures entered into before January 2020.
24.	Capitec	One cell captive arrangement will be impacted, however, the cost at the moment cannot be quantified, as the process would have to be mapped out and the commercial terms negotiated with the relevant insurers but are expected to be considerable.	Noted.
25.	The Banking Association South Africa	BASA submits that it is not possible to quantify at this stage, as actions like mapping out the process and the commercial terms negotiated with the relevant insurers, need to be undertaken and we expect the costs to be considerable.	Noted. The policy position has been communicated clearly for several years.
26.	Foschini Retail Group (Pty) Ltd	As a NMI we currently have one life cell structure and two non-life cell structures. The products under the two non-life cell structures are vastly different and cater for different markets. If the limitation is imposed in its current form, with no option for exemption, we will have to terminate	In respect to cases where the non-mandated intermediary has more than one cell with different cell captive insurers in contrast with the proposed limitations, the Authority acknowledges that a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard. Arguably this could create new business opportunities.

		two of our cell structures and only continue with one.	The transitional period afforded will allow for time for implementing the necessary strategic changes as would be done with any other regulatory or business model change, thus ensuring an orderly transition that will limit long term implications. The commentator is invited to approach the Authority directly to engage on the impact of the Conduct Standard on the business of the commentator, and for detailed engagement on the practical implications for its business. It is also important to keep in mind that the Authority has the power to grant an extension of the period to comply as may be necessary and individual exemptions will be considered on a case by case basis. The NMI cell owner still has the option to be either a cell owner or an NMI, but not both, and to consider the option of licensing. The choice, therefore, belongs to the cell owner in which capacity it wants to act.
27.	Mutual & Federal Risk Financing Ltd	No terminations expected (exemption applications allowed under Conduct Standard)	Noted.
Are the transitional arrangements proposed sufficient and appropriate to address the expected impact of the Standard? (Please provide a justification for your response and details on timeframes to comply with the relevant section)			
28.	Guardrisk	In line with requirements imposed under s.3 we have been implementing due diligence, monitoring and governance measures for our cell captive arrangements. We are further developing our system and technology platforms for more automated processes. The most significant changes for Guardrisk are in respect of the following sections: • Section 4(5), that deals with reporting requirements pertaining to termination of cells, • Section 5, further disclosure requirements in respect of the cell captive arrangement, and • Section 6, that deals with the limitation of cell ownership by an NMI. With respect to existing cell arrangements entered into prior to January 2020, the two-year	The implementation of the due diligence and the current system development is noted. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to more proactively mitigate the conduct risks instead of continuing with arrangements that may result in the materialising of conduct risks.

		transitional period should suffice. However, this transitional period should be applied to all cells that have been incepted prior to the effective date of this standard.	
29.	Capitec	The transactional arrangements lack clarity and detail and do not provide guidance on whether the insurance business will be able to run-off in the cell in which it is written or is required to be transferred within a period of time. In most cases it will make commercial sense and stop the introduction of risk if business can run off in the cell in which it currently sits, although even such an arrangement would have a scale impact for both the cell where business is wound down and the cell where the new business will be written. This will decrease the commercial feasibility and increase the risk.	The lack of clarity raised here is not understood. The Conduct Standard provides for a transitional period of 2 years for cell structures entered into before January 2020. When it comes to non-mandated intermediaries that have more than one cell with different cell captive insurers in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard. Whether this is in respect of running down the business or transferring the business or other avenues. This would need to be considered and decided by the parties involved.
30.	Centriq Insurance Company Limited and Centriq Life Insurance Company Limited	Comfortable that a cell owner must make the choice of which insurer to write for within 2 years. We should not however enforce Section 50 transfers and we should allow NMI's to write new business for one cell captive insurer only.	When it comes to non-mandated intermediaries that have more than one cell with different cell captive insurer in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard. Whether this is in respect of running down the business or transferring the business or other avenues. This would need to be considered and decided by the parties involved.
31.	Absa Short – term Insurance Group	Currently AIRMS has one cell which is in run off.	Noted.
32.	The Banking Association South Africa	1) BASA will appreciate clarity in respect of business that was written by an NMI outside a cell arrangement prior to 1 January 2020, and what the requirements would be in respect of such business if the NMI	The clarity sought on a specific arrangement would need to be considered on an individual basis. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly

		subsequently becomes tied to a cell. Please refer to our comments in this regard in 14 above. 2) We are of the opinion that the transitional arrangements lack clarity and detail and we will appreciate guidance on whether the insurance business will be able to run-off in the cell in which it is written or will it be required to be transferred within a period of time? In most cases it will make commercial sense and stop the introduction of additional and unnecessary risk if business can run off in the current cell, although even such an arrangement would have a scale impact for both the cell where business is winded down and the cell where the new business will be written in. This will decrease the commercial feasibility and increase the financial risk. BASA submits that the Authority gives serious consideration to our requests and suggestions in (2) and 14 above.	articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to more proactively mitigate the conduct risks instead of continuing with arrangements that may result in the materialising of conduct risks. Please see the comments above in respect of these commentators' submissions.
33.	Foschini Retail Group (Pty) Ltd	No, we believe more specific provision needs to be included for cell captive arrangements that will fall under the section 6 limitation in order to address the implications of termination.	When it comes to non-mandated intermediaries that have more than one cell with different cell captive insurers in contrast with the proposed limitations, a decision would need to be taken by the cell captive insurer and the cell owner as to how to align with the Standard. Whether this is in respect of running down the business or transferring the business or other avenues. This would need to be considered and decided by the parties involved.
34.	ASISA	Please see our comments above on the transitional arrangements.	Refer to the response in respect of the comment raised in relation to transitional arrangements.
35.	Mutual & Federal Risk Financing Ltd	None identified, the transitional periods provided are reasonable.	Noted.

36.	SAIA	See comment on 7.2 above. Specifically, an arrangement that has been entered into between 1 January 2020 and the effective date of the standards in so far as arrangements of NMI's with more than one cell captive/insurer. It is suggested that arrangements prior to the effective date of the standards be aligned to the two-year transitional period.	Noted. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI's clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the Authority's concerns and that it into in support of cell structures being owned by NMI's due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to more proactively mitigate the conduct risks instead of continuing with arrangements that may result in the materialising of conduct risks.
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SECTION D - GENERAL COMMENTS

No.	Commentator	Issue	Comment/input	Response
ANY OTHER GENERAL COMMENTS				
1.	Guardrisk	Similar Arrangements	Where such arrangements are identified, concerns relating thereto should have been addressed through supervisory measures. In which regulatory instrument has the prohibition of "similar arrangements" been dealt?	These arrangements relate to the application of the Insurance Act and therefore fall primarily to the Prudential Authority as the responsible authority for licensing under the Insurance Act. It suggested that the commentator engages with the Prudential Authority in this respect.
2.	Capitec Bank	Item 2.3 of the Statement in Support of the Standard under the heading "An Inclusive and Transformed Insurance Sector"	The relevant section referred to under Issue states "To this end there is a recognition that certain limitations specifically in respect of the ownership and of cell structures may be relaxed on application to the FSCA, if it can be demonstrated that a proposed cell structure is intended to serve as an incubation hub for the progressive	It is not possible to prescribe a general time period in respect of the "defined" period. It will heavily depend on a range of factors, including the capital, expertise, market conditions, etc. Any such application will have to be considered on a case by case basis.

			growth of the cell owner into a fully-fledged licensed insurer or micro insurer within a defined period of time.” Guidance is sought on the Authority’s position in respect of a ‘defined’ period of time and whether the Authority intends on prescribing a maximum time limit for such a transition? The objective of developing a cell owner into a fully-fledged insurer will in any event meet the stumbling block of migration of existing business to a new insurance license. Without clarity and a clear dispensation for such a migration process, it would be impossible to express a view if the stated objective would be feasible. Would cell owners be allowed to apply for relaxation of ownership criteria based on a long-term proposal?	
3.	Capitec Bank	Item 3.8 of the Position Paper- Final Policy Proposals for Conduct Related Requirements Applicable to Third Party Cell Captive Insurance Business - Exemptions	Item 3.8 of the Position Paper published in December 2019 contained reference to the following: “In principle the proposal is that the requirements must apply to both new and existing cell structures, and that existing cell structures will be allowed an appropriate transitional period to align to the requirements. The transitional period, together with the powers the FSCA has to exempt any entity from the requirements, should allow for mitigation of possible disruption	Applications will have to be considered on a case by case basis and the details of such consideration cannot be responded to in this format. The FSCA has wide powers to exempt from substantive provisions in the framework and these applications are considered whether granting the exemption will be contrary to the public interest or may prejudice the achievement of the objects of a financial sector law.

			for the industry and where it cannot be mitigated and exceptional circumstances exist, an exemption can be considered.” Confirmation is sought from the Authority as to whether an application for exemption under section 281 of the Financial Sector Regulation Act, 2017 (“FSR Act”) would be possible in instances where the cell owner can demonstrate that the risks inherent to cell ownership will not exist?	
4.	Centriq Insurance Company Limited and Centriq Insurance Company Limited Life	Definition of tied agent	A definitive, legal definition is required of tied agent to avoid any further confusion and/or loopholes in the market. Will the RDR guidance satisfactorily address this?	The term “tied agent” is not used in the Conduct Standard, so it is not clear why it is needed to interpret the Conduct standard (which is the actual legal instrument.) The reference to “tied agent” in the Statement of Need was purely for descriptive purposes and in terms of the meaning understood by the industry as a tied agent being a person who performs advice and/ intermediary services on behalf of only one insurer. The descriptive use to explain how the limitation in respect of products offered is established in the Standard should not be assumed to be linked to the RDR policy process and terminology still under development.
5.	Centriq Insurance Company Limited and Centriq Life	Similar Arrangements	We agree that cell structures should be formalized. However, there are still a number of ‘similar arrangements’ in the market that should be prohibited.	These arrangements relate to the application of the Insurance Act and therefore falls primarily to the Prudential Authority as the responsible authority for licensing under the Insurance Act. It

	Insurance Company Limited			suggested that the commentator engages with the Prudential Authority in this respect.
6.	Centriq Insurance Company Limited and Centriq Insurance Company Limited and Life	Due consideration of the commercial impact of the Draft Standard on the motor industry and/or motor dealership market	In order to address the concern, we wish to emphasize some of the realities of a motor dealer group: a. Franchised dealers operate centrally via their Franchise Agreements with their original equipment manufacturer (OEM) and each brand would offer the OEM-branded products of that OEM but due to the “associate” links, if there is a cell in the group, then all of these franchises are going to suffer as they would not be able to offer those insurance products of the OEM. b. The only reason that dealerships are so heavily involved in Financial Services (incl Cells) is that dealers are very low-profit enterprises and cross-subsidisation in a dealership is required in order or it to remain solvent. Financial services are an add-on that has developed over many years. c. The Motor industry is ultra-competitive in nature that will ensure that profiteering etcetera is controlled as there are 1800 Franchised car dealers in SA selling 49 brands of vehicle with 3795 derivative options to only 400k – 500k buyers a year. d. The Motus Group, for example, is listed on the JSE and has built up a	The Conduct Standard in draft does not prohibit the intermediary from selling the products of the OEM. If the intermediary chooses to own a cell structure in order to share in the profit and to also act as an NMI they will only be allowed to be the owner of one cell in a cell captive life insurer and one cell in a cell captive non-life insurers. If the intermediary chooses to relinquish the profit sharing and only earn commission, the intermediary may offer a variety of products including the products of the OEM. Alternatively, if the specific industry players are heavily involved in the financial services industry and still wish to participate in the profits of the products being sold, they may consider the viability of obtaining an insurance license in their own right. Nothing prevents such industry players to apply for a micro insurance license or insurance license themselves should it be informed by their business strategy.

			substantial financial services offering over many decades, employing in excess of 700 people, which will be heavily impacted by this Conduct Standard in its current form. Restructuring the group will have other consequences, e.g. tax and the restructuring costs will be substantial. In addition, the likelihood of loss of income could be substantial. e. 80% of cars are financed and dealerships have to offer these services to clients in order to make the car buying process as straight-forward and “easy” as possible. f. The insurance products at dealerships are aimed at protecting the assets (motor cars) for the benefit of the insured – in SA it is accepted to be the second biggest asset of consumers. The credit life product, again, is aimed at protecting the asset for the family of the insured. Our comments are as follows: a. We respectfully submit that the consequences to businesses of the “associate” and single cell captive insurer provisions in the draft Conduct Standard are material and the potential consequences have not been assessed properly. b. The consequences of “associate” and single cell captive insurer provisions far outweigh the perceived ills that the draft	We do not agree that the potential consequences have not been considered in detail. The Standard has been under development for several years, and our concerns around especially the ownership of cell structures by NMI’s clearly articulated at least since 2019 when the final policy paper was published. The reason why the transitional arrangements are only allowed for cell structures entered into before January 2020 is because the industry knows and understands the
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			Conduct Standard seek to address. There are other mechanisms available. c. The “associate” and single cell captive insurer provisions will in all probability lead to reduced competition and dominance. d. The “associate” and single cell captive insurer provisions will destroy the availability of the substantial expertise in claims management for specific motor insurance products which have been made available to a number of insurers. e. The conflict of interest concerns raised centres around the profit-sharing in cells. What is not considered is the capitalisation risk of a cell owner. For instance, a motor group does not have the expertise to price or administer motor comprehensive insurance. It should therefore not be required to put this product into a cell. It does however make sense for an FSP in a motor group to market this product. No conflict of interest arises. f. The tied agent model proposed hugely problematic for the multi-brand dealership structure that motor groups operate. Cells are a profit driver but they also mitigate the risk of the insurer which leads to a wider net of insurable clients. That access will fall away in a group model if the tied approach is maintained.	Authority’s concerns and that it into in support of cell structures being owned by NMI’s due to the particular risks identified. The industry should therefore already start adapting its strategies to the clearly articulated policy view and to more proactively mitigate the conduct risks instead of continuing with arrangements that may result in the materialising of conduct risks.
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			g. Cells have a limited number of sub-class products in that cell. No conflict of interest arises if an “associate” also markets other insurance products or if there are different cells (with different insurers) with different products. h. Motor groups have a number of FSPs focusing on different market segments. The “associate” definition is so wide that it will force motor groups to either dispose of FSPs or close them down – which could lead to substantial job losses and reduced income. An unintended consequence could also lead to market division, which has competition law risk. Restructuring becomes hugely problematic and costly. i. The Conduct Standard should have a provision for exemptions to be granted on application. j. Other mechanisms should be considered to address the Authority’s perceived concern about financial products being sold in the motor dealership market.	
7.	Infiniti Insurance Limited	Question 3 of Section C refers	The danger of cancellation if cell captive owners are permitted to be minor shareholders in other cells or write business into other cells underwritten by the same insurer is that non-cell captive insurers will lose business to the cell captive market purely because the broker wishes to deal directly with all of	Comments noted in respect of minor shareholding. The definition in the Short- and Long-term regulations refers to the meaning assigned to it in the General Code of Conduct. In relation to a juristic person, associate means any subsidiary or holding company of that company, any other subsidiary of that holding company,

			his/her clients on all their business requirements and be able to earn profit. Only books of business that run well will be moved onto cell captive structures and soinsurer's without a cell captive liscence will be severely compromised as will any UMA. The implementation of the cell captive paper, would need to be monitored carefully so as not to detract from the existing UMA business models	and any other company of which that holding company is a subsidiary. A subsidiary is defined in the Companies Act, 1973 and refers to holding majority voting rights, the right to appoint and remove directors, and control of the majority of voting rights. The limitation on ownership in respect of associates of a non-mandated intermediary is applicable where there is Signiant control or ownership as the conflicts arise in these scenarios.
8.	Leanne Jackson (Independent commentator)	General	It would be very useful for the FSCA to clarify its understanding of the precise legal and regulatory relationship between the cell owner and the cell captive insurer, both within the current legislative framework and the future Conduct of Financial Institutions Act (COFI) framework. The following questions arise: (a) This draft Conduct Standard requires the cell owner - if it is a non-mandated intermediary (NMI) - to be licensed as an FSP in its own right. The result of this is that the relationship between the cell owner and the insurer, for FAIS purposes, is the same as that between any other product supplier and an FSP that provides advice and / or intermediary services in relation to its products, albeit supplemented by the additional requirements of this Conduct	(a) The reason why it is required that the NMI is an authorised FSP is to place an additional layer of accountability (under the FAIS Act) on the NMI directly. Although this would philosophically mean that the nature of the relationship is then similar to any other relationship an insurer has with a FSP, in our opinion this will not in any true substance change the nature of the relationship and we do not see this as a cause for concern. With regards to the second part of this comment, please note that "NMI activities" are services as intermediary as defined in the Regulations, which essentially is financial services (advice and/or intermediary services) as defined in the FAIS Act. Therefore, an NMI cell owner's activities will always include one or more of the activities included in the FAIS definition of financial service.

			Standard. A further implication of this, is that the NMI cell owner's activities (regardless of whether or not it also provides advice) must include "intermediary services" as defined in FAIS. Is this understanding correct? Will it always be the case that an NMI cell owner's activity include one or more of the activities included in the FAIS definition of intermediary services? (b) The definition of an NMI in the LTIA / STIA Regulations provides that an NMI is either a representative or an independent intermediary, as defined in those Regulations. As an NMI cell owner is required to be licensed under FAIS, it cannot operate as a representative of the insurer. It follows therefore that an NMI cell owner must be an independent intermediary, as defined. A further implication of this is that the NMI cell owner's activities must include one or more of the activities included under the LTIA / STIA definitions of "rendering services as intermediary". Is this understanding correct? Will it always be the case that an NMI cell owner's activities include one or more of the activities included in the LTIA / STIA definition of "rendering services as intermediary"? (c). The questions in (a) and (b) above raise the further question to what extent	(b) We disagree with the assertion that because a NMI cell owner will have to have its own licence, it cannot operate as a representative (as defined in the Regulations) of the insurer and must be an independent intermediary. A distinction must be drawn between the definition of representative as defined in the FAIS Act and representative as defined in the STIA/LTIA Regulations. If an NMI cell owner must have its own FAIS licence, then it would not be able to be a representative as defined in the FAIS Act as a representative cannot have its own licence in accordance with the FAIS Act (a representative acts on behalf of a licensed FSP). However, there is nothing in the STIA/LTIA regulations stating that a representative (as defined in the Regulations) must act on the FAIS licence of an FSP and may not have its own licence.
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		the activities inherent in being a cell owner align with the activities included in the respective definitions of “intermediary services” (FAIS) and “rendering services as intermediary” (LTIA / STIA). The Insurance Act definition of “cell structure” requires three activities by the cell owner, in summary: (a) equity participation; (b) profit share; and (c) that the cell owner “places or insures insurance business” with the cell captive insurer. On the face of it, parts (a) and (b) of this definition would not constitute intermediary services or rendering services as intermediary. However is it the FSCA’s view that part (c) of the definition (placing or insuring insurance business) falls within the scope of intermediary services and / or services as intermediary? If it falls within both of these definitions, there is no anomaly. But if not, is it possible to perform this activity (placing / insuring insurance business) without also performing intermediary services and rendering services as intermediary? If this is possible it would follow that the cell owner could not be an independent intermediary (LTIA / STIA) or an FSP (FAIS), with uncertain consequences. The FSCA’s views on this would be appreciated. Put differently, is it possible to be a cell owner without also being an NMI (or an underwriting manager), and what are the regulatory implications?	Therefore, theoretically a person can be a representative in terms of the Regulations (which uses the term in a very specific context and purpose), but not a representative for purpose of the FAIS Act (which uses the term in a different context). Further, we don’t see the fact that cell owner’s activities must include one or more of the activities included under the LTIA / STIA definitions of “rendering services as intermediary” as a complication. If a cell owner’s activities do not include one or more of the activities included in the LTIA / STIA definition of “rendering services as intermediary”, then it cannot be a NMI by definition, as a NMI is someone that renders services as intermediary. Therefore, yes, an NMI cell owner’s activities will always include one or more of the activities included in the LTIA / STIA definition of “rendering services as intermediary”. (c) Whether or not paragraph (c) of the definition of “cell structure” constitute intermediary services or rendering services as intermediary is, in our opinion, irrelevant for purposes of the Conduct Standard. For purpose of the Conduct Standard the question is merely whether the cell owner is a non-mandated intermediary (and if it is it then also assumes that it is performing financial
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			(d) The requirement for the NMI cell owner to hold its own FAIS licence means that the cell owner will not be the insurer's representative for either FAIS or LTIA definition purposes (see also my comment on s.6(1)(a) above). It follows that, when providing intermediary services (under FAIS) or rendering services as intermediary (under the LTIA / STIA) the cell owner is not acting as the agent of or under a mandate from the insurer. However, does the same apply to any other activities inherent in being a cell owner – in particular the activity of “placing or insuring insurance business” as per part (c) of the definition of “cell structure”? Arguably, this activity, read with the stringent governance and oversight requirements in this draft Conduct Standard, could be interpreted as falling within the definition of “outsourcing arrangement” in the FSR Act – particularly part (b) of that definition and arguably part (c). Does the FSCA regard cell structure arrangements as constituting outsourcing arrangements? If yes, does this mean that despite the cell owner not being the insurer's agent for purposes of rendering services as intermediary or intermediary services, it does in fact act as the insurer's agent for purposes of “placing or insuring insurance business”?	services as defined in the FAIS Act) and if it is, then it must have its own FAIS licence. Notwithstanding, just to note, the FSCA does not view the intention of paragraph (c) as capturing services as intermediary/intermediary services and believe that it is indeed possible to be a cell owner without also being an NMI. (d) See comments above. As mentioned, we disagree that it means that it cannot be a representative for purposes of the STIA/LTIA Regulations. A cell structure arrangement is not, per se, an outsourcing arrangement. Where specific functions related to the insurance business is outsourced to the cell owner, then such arrangement would constitute an outsourcing arrangement. However, we don't see this comment being relevant to the Conduct Standard.
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			(e) Related to (d) above, a comparison can be made with the FSCA's approach to the relationship between CIS management companies and third party co-branded investment managers (so-called "white label" arrangements), as set out in the RDR Investments Discussion Documents. In the investments space, the FSCA position is that the arrangement between the CIS manco and the white label holder is an outsourcing arrangement, and that the white label holder performs the investment management concerned as the agent of the CIS manco. As a result, the FSCA has proposed strengthened governance, due diligence and other oversight requirements on the CIS manco in relation to the white label holder. The FSCA has been clear (including in enforcement action) that the CIS manco is liable for the investment management activities performed by the white label holder as its agent. However, where the white label holder also provides FAIS regulated advice or distribution / intermediary services (other than investment management) in relation to the white label portfolio, the white label holder, where it is a separate FSP, is <u>not</u> the agent of the CIS manco in respect of those activities. On the face of it, the third party cell captive model is a comparable "white labelling" type of arrangement. To what extent does the	(e) We do not see the benefit of making such a comparison, especially considering the content of the Conduct Standard which forms the subject of this discussion.
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			FSCA's approach in the cell captive space differ from this approach in the investments space and why? (f) Related to (e) above, does a cell captive structure constitute a "white labelling arrangement" as defined in the Policyholder Protection Rules? If yes, presumably the PPR product design and advertising responsibilities for white labelling arrangements will apply to the cell captive insurer in addition to those in this Conduct Standard? (g) A number of questions similar to the above will also arise in the future COFI regime. For example: What activity/ies will a cell owner be required to be licensed / authorised for under the activity based COFI licensing framework? Providing / issuing a product? Distribution? Benefit administration? A new, specific activity? Obviously, Advice, if provided. How will these licensing requirements differ for cell owners that are underwriting managers or other types of binder holders? Which activities will the cell owner be performing as principal and which will it be performing as agent of the cell captive insurer? Hopefully clumsy terminology such as the current definition of "NMI" and the reference to "placing or insuring	(f) Rule 10.3 of the PPRs deal with the situation where advertisements are done by a third party. However, that is not applicable in the context of this Conduct Standard. (g) As these questions are unrelated to the Conduct Standard, we will not be responding to these comments as part of this process. We will, however, consider your comments when providing our inputs to National Treasury on the COFI Bill.
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			insurance business” will be replaced and improved. I appreciate that the next version of the proposed COFI licensing framework is likely to differ from the first draft and is still under construction, but it would be useful for the FSCA to provide some insight on its thinking around the likely COFI framework implications for cell structures.	
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Item 2.3 of the Statement in Support of the Standard under the heading “An Inclusive and Transformed insurance Sector”	The Banking Association South Africa		1) The relevant section referred to under Issue states “To this end there is a recognition that certain limitations specifically in respect of the ownership and of cell structures may be relaxed on application to the FSCA, if it can be demonstrated that a proposed cell structure is intended to serve as an incubation hub for the progressive growth of the cell owner into a fully-fledged licensed insurer or micro insurer within a defined period of time.” 2) BASA seeks guidance on the Authority’s position in respect of a ‘defined’ period of time and whether the Authority intends on prescribing a maximum time limit for such a transition? The objective of developing a cell owner into a fully-fledged insurer will in any event meet the stumbling block of migration of existing business to a new insurance license. Without clarity and a clear dispensation for such a migration process, it would be impossible to express a view if the stated objective would be feasible.	Please see the response above to the same comment from Capitec Bank. It is not possible to prescribe a general time period in respect of the “defined” period. It will heavily depend on a range of factors, including the capital, expertise, market conditions, etc. Any such application will have to be considered on a case by case basis. The FSCA has wide powers to exempt from substantive provisions in the framework and these applications are considered whether granting the exemption will be contrary to the public interest or may prejudice the achievement of the objects of a financial sector law.

			3) Would cell owners be allowed to apply for relaxation of ownership criteria based on a long-term proposal?	
Item 3.8 of the Position Paper- Final Policy Proposals for Conduct Related Requirements Applicable to Third Party Cell Captive Insurance Business - Exemptions	The Banking Association South Africa		Item 3.8 of the Position Paper published in December 2019 contained reference to the following: <i>“In principle the proposal is that the requirements must apply to both new and existing cell structures, and that existing cell structures will be allowed an appropriate transitional period to align to the requirements. The transitional period, together with the powers the FSCA has to exempt any entity from the requirements, should allow for mitigation of possible disruption for the industry and where it cannot be mitigated and exceptional circumstances exist, an exemption can be considered.”</i> Confirmation is sought from the Authority as to whether an application for exemption under section 281 of the Financial Sector Regulation Act, 2017 (“FSR Act”) would be possible in instances where the cell owner can demonstrate that the risks inherent to cell ownership will not exist?	The FSCA has wide powers to exempt from substantive provisions in the framework and these applications are considered whether granting the exemption will be contrary to the public interest or may prejudice the achievement of the objects of a financial sector law.
Discussion	The Banking Association South Africa		BASA and members will appreciate an opportunity to engage with the Authority on our comments and in particular our comments relating to the negative impact the proposed dispensation will have on the broader economy through the impact on financial sustainability which lead to	Comment and request for engagement noted. The commentator is requested to consider the detailed responses to the issues around perceiver limitation of customer choice and view on competitive forces as included in this consultation report. If uncertainty around the Authority’s view remains or is still not

			less choice and higher costs for consumers and the fiscal impact	understood the commentator is welcome to contact the Authority for further engagements as has been had in the past.
Transfers of business due to Competition Commission rulings	ASISA		There is a risk that the costs to restructure will be material and implementation can lead to cell captives having to be closed down with resultant job losses.	The policy intention together with the risks identified has been communicated for several years. Adequate transitional arrangements will be allowed for in the final Standard.
Clarification on similar arrangements	SAIA		In which regulatory instrument has the prohibition of similar arrangements been dealt? It is proposed that the policy framework applicable to similar arrangements or mock cell captives be clarified. We are of the view that the draft standard results in unintended consequences for these arrangements as set out above.	These arrangements relate to the application of the Insurance Act and therefore fall primarily to the Prudential Authority. It suggested that the commentator engages with the Prudential Authority in this respect.
Market conduct standard provisions have Prudential implications.	SAIA		It is suggested that a joint standard be considered as certain market conduct provisions may result in consequential prudential implications.	The requirements in the Conduct Standard are focused at addressing conduct risk as articulated in detail in the 2019 FSCA Position paper. The requirements will be regulated and supervised by the Authority and in line with the FSCA's mandate. There is ongoing consultation between the FSCA and PA in the performance of the respective mandates, including in respect of the development of legislation.
Systemic view	SAIA		The purpose of cell captive is to introduce more players into the industry. If someone has an idea or product and is prepared to capitalise the cell, then they should not be prevented from entering	As commented throughout the comments made, we disagree that the limitations around cell ownership are anti-competitive. The limitation on product offering in respect of associates of a non-

			the industry which seems to be the implication of this Notice. It cannot be overlooked that a product must be of benefit to policyholder and fulfil a particular need. Product must be relevant and appropriate to a need. The Notice promotes one cell per cell captive insurer for life/non-life which is anti-competitive as it perpetuates the dominance of bigger players in the industry. What if you do different products.	mandated intermediary is only applicable where the non-mandated intermediary chooses to own a cell and also wants to act as an NMI, and thereby participate in earning consideration outside of commission. We also disagree that the implication of the Conduct Standard is that it prevents “someone has an idea or product and is prepared to capitalise the cell from entering the industry” This is a sweeping and inaccurate statement. If a cell owner wants to diversity in investments by being a cell owner of a number of different cell structures it can still do so, it can simply then not also perform services as intermediary on behalf of all those various cells and market and sell policies as an n NMI. There is a very clear reason for the limitations around remuneration in the insurance regulatory framework. And the cell captive structure should not be used toward creating regulatory arbitrage and unlevel playing fields between the limitations applicable to cell captive insurance vs so-called ‘traditional’ insurance relationships.
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