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Leanne Jackson
Head: Market Conduct Strategy
Financial Services Board

By email: fsb.rdrfeedback@fsb.co.za

Dear Leanne,

Re: FIA comments Long Term Retail Distribution Review

3. Advisor Categorisation

3.1(a) We agree that the term "agent" is the more appropriate term for employees of product suppliers who are licensed as representatives.

3.1(b) We fully support that freedom from product supplier influence should be the determinant of "independence" for the lack of a better or more appropriate term at this stage.

3.1(c) Proposal R. We support the concept of "gap filling" across different segments and lines of business as well as that of the model – "where a tied adviser (product supplier agent) should be able to act as the agent of one product supplier per line of business" - however we believe the concept should also be considered across client segments within short term insurance (mainly personal vs. commercial) where the 'home' supplier / group does not offer the line of business concerned. FAIS implications will need to be considered.

3.2 We fully support a two-tier as opposed to a three-tier advisor categorisation. We believe that a simple solution will be better understood by the consumer who is already challenged; but also easier for the industry. We also believe that a two-tier approach can adequately clarify the different product supplier / advisor relationships if all parties simply adhere to the provisions in sections 2, 3, 4 and 5 of the FAIS General Code of Conduct. There should be no confusion about any contractual relationship between advisors and product suppliers because the General Code of Conduct already requires ethical conduct. The Code addresses conflict of interest and requires full disclosure pertaining to advisor representation and potential product supplier influence. We respectfully submit that if the two-tier approach does not adequately clarify the nature of product supplier / advisor relationships the problem is not the two-tier approach, but in the quality of advisor disclosures

If there is concern that disclosures may be misleading, perhaps compliance officers and the FAIS Supervision Department should improve the quality of monitoring pertaining to FSP Disclosures to customers. We are in favour of a simplified model with strict disclosure standards as opposed to a more complicated model that potentially leads to confusion. We would rather work with the

Regulator and support reasonable measures to mitigate risks of conflicts arising from product supplier influence.

The FSB is suggesting only two license categories namely Registered Product Supplier Agent (replacing the Tied Advisor label) and Registered Financial Adviser-RFA (replacing the multi-tied and IFA labels) and only one can be used and not both at the same time. Either a RFA or Agent may also describe themselves as a "financial planner "provided they meet the applicable standards for financial planning which will be defined by the FPI.

- **The Registered Product Supplier Agent** cannot be licensed in its own right and provides advice on license of the product supplier and the product suppliers and are fully accountable for advice and may provide advice only on products of own product supplier / group – including "external" investment products on own supplier's LISP platform but with possible "gap filling" as mentioned already above. They also considering allowing the tied adviser to act as an agent for more than one product supplier – but limited to one supplier per line of business e.g one L-T insurer for long-term risk insurance products, one S-T insurer for short-term insurance products, one supplier for savings & investment products , one medical scheme, etc. This "per line of business" model will allow for a degree of "gap filling", but minimizes conflicts as products and suppliers do not compete. Agree

- **The Registered Financial Adviser (RFA)** would be licensed in its own right to provide advice (sole proprietor) or provides advice on license of an authorized advice firm provided advice firm is not also a product supplier license holder (sole prop or advice firm) and is accountable for advice provided. The RFA will need to comply with all the conflict of interest controls (discussed in detail during Leanne presentation) to mitigate risk of different levels of influence by different suppliers. This is a huge improvement on where we stood with the poorly named labels initially with IFA, Multi-Tied and Tied.

We also refer to FIA Short Term submission where it is clear that the terms Insurance Agent and Insurance Broker are the preferred and well-established terms. Where an Insurance Broker also provides financial advice it should be the choice of the Insurance Broker or Financial Planner to disclose this fact in the letter of introduction. The fact that "independent" will not be a licensed name anymore is a huge step forward to prevent abuse of the use of the IFA label which could never live up to the "independence", "whole of market" or "free from outside control and not subject to another's authority" tests. A recent survey has indicated that the consumer really does not have a good understanding of the IFA label and that it is not high on their priority list and leads to confusion.

The FIA's preferred solution therefore is a two-tiered system comprising financial advisor and financial agent with an additional descriptor for financial planner:

- **Financial Advisor** who will replace the current IFA and broker / multi-tied and who will be dealing with a wide spectrum of product providers and not work according to minimum targets with as little influence and conflict as possible form FSPs.

- **Financial Agent** who will be tied to a group of companies with a range of products and who will operate on a gap fill principle where some products is not available y the tied FSP.

- **Financial Planner** who will have a minimum number of years of experience (possibly three years), a qualification (NQF 5 or 6) and be affiliated with a professional body (membership of the FPI). **This Financial planner can be either Financial Advisor or Financial Agent.**

3.3(a) Please refer to the FIA's Short Term RDR submission.

3.3(b) We support the proposal that the setting of any production sales targets and competitions by product suppliers be prohibited for all advisors other than the supplier's agents. It is our plea that the FSB assist providers in seeking a sound solution to the problem of product suppliers closing / cancelling provider contracts based on non-delivery of production targets. In many cases this is simply another form of product supplier influence. What should be non-negotiable is that contracts should remain open for the servicing of existing clients. With respect, product suppliers should be forced to make it possible for advisors to provide good service - not just reasonable service - to those clients who are mutual clients of the provider and the product supplier.

3.3(c) We agree that direct or indirect ownership in an advisor by a product supplier does not automatically result in influence, but it certainly could. However, strict standards and supervisory scrutiny could prevent product supplier bias. In cases where providers and / or product suppliers do not meet the standards and corrective action, such as re-classification as "agents" is applied, they will only have themselves to blame.

3.3(d) We agree that ownership or any other financial interest of an advisor in a product supplier, by definition, is a strong indicator of influence.

3.3(e) We agree that product suppliers should be prohibited from imposing any such restrictions, other than in respect of their own advisors.

3.3(f) The statement "or could be seen to be influenced" could be too broad and open to unfair interpretation.

3.4 As indicated above, we support a two-tier model.

3.4(a) We fully support the proposal that an advisor should only be permitted to offer advice under one license. However, if the advisor wants to expand his license categories in areas that his / her FSP does not offer or if he / she wants to offer additional products which his / her FSP does not offer, he / she should be permitted to be a representative on multiple licences, for purposes of advice.

3.4(c) We support this proposal.

3.4(d) We support this proposal, but we do not believe that one 'lead' supplier is the answer. We propose that the advisor should simply be registered as a product supplier agent per product line. In this way there would be full ownership, responsibility and accountability for product suppliers without any confusion or blame shifting.

3.4(e) We support this proposal.

3.4(f) We support this proposal.

3.4(g) We support this proposal.

3.4(h) Agreed.

3.4(i) As previously detailed, the term "independent" should have very little influence on customers in determining the categorisation of the entity. We do agree that the designation "independent" should not be a separate license category.

3.4(j) We fully support this proposal.

3.4(k) Agreed.

4.1(a) We share the FSB's concerns in respect of potentially conflicted "hybrid" models. We believe that gap-filling should only be allowed if the "primary" product supplier does not offer that specific product line and if the registered product supplier agent wants to do "gap filling" he / she should be licensed on both product suppliers' licenses. To be consistent with all the other proposals the "agent" should become a registered product supplier agent on more than one license. Then it is absolutely clear who is fully accountable for the agent's responsibilities under FAIS.

4.1(b) We support further consultation in this regard and we agree that product suppliers will have to enter into agreements with one another when permitting agents to promote "external" products on "external" licenses. We agree with the application of the new proposed arrangements to new products only.

4.2(a) We support the FSB's updated view to permit a representative of FSP A to act as a representative of FSP B in respect of product categories for which FSP A is not licensed. As far as the "Rent-a-Key Individual" practices is concerned, we believe that the FSB should take into account that succession planning is a major concern / problem for small FSPs and the only way for a single practitioner in a company or Close Corporation to ensure that there is business continuity in the event of his / her death or disability is to appoint another Key individual from another FSP. However, this should not mean that the other Key individual needs to perform all the managerial and oversight duties as defined in the FAIS Act whilst the "primary" Key individual is in a position to fulfil his/her duties. We therefore propose that the FSB recognise the need for allowing Key individuals to serve on another license for purposes of continuity and perhaps creating a separate category of Key individual purely for that purpose. From a legal point of view that would make sense, because strictly speaking, if a Key individual is the only KI and dies or becomes disabled, the FSP is without someone that can fulfil the management and overseeing duties. This needs to be addressed as it is indeed a problem smaller practices experience.

4.2(b) We agree that further consultation is required.

4.3 Please refer to the FIA's Short Term RDR submission.

4.4 It is of the utmost importance to reconsider product supplier responsibilities in relation to receiving and providing relevant customer data. Please also refer to the FIA's Short Term RDR submission.

4.4(a) According to sections 2 and 8(1)(c) of the FAIS Act advisors are clearly accountable for suitable advice and all relevant disclosures and it is also confirmed by the many FAIS Ombud determinations against financial advisors. There should therefore be no interference by product providers for the following reasons:

(i) Product suppliers already have sufficient customer data by virtue of the fact that they required basic client information as part of their requirements for risk assessment and for FICA purposes. They can obtain all relevant client information during the application process.

(ii) Product suppliers should take full responsibility of ensuring the integrity of the products they design and be held to the highest standards when it comes to the marketing of those products. They should also be responsible for training advisors properly, with specific reference to the type of customer that that particular product is suitable for. Product suppliers should also be held fully accountable for the

quality of disclosures in respect of the benefits, terms, conditions, exclusions, risks and fees. In our view, much must be learned from the failed unlisted property syndications before we impose additional obligations on providers.

(iii) We believe that, if product suppliers design products with integrity, market them ethically to advisors in the appropriate markets, meet their full and frank disclosure requirements, train advisors properly and deliver on their product supplier promises, there would be no need for product supplier supervision / monitoring, simply because advisors are and always will be responsible for the suitability of advice. Logically product supplier agents should be subject to these proposals too.

(iv) We therefore propose that product supplier duties should include:

(a) Accountability for the integrity of the product;
(b) Marketing the product to the appropriate markets;
(c) Full and frank product disclosures;
(d) Proper training of Financial advisors and Financial Agents; and
(e) Delivering on product promises.

4.4(a)(ii) We would like to participate when these standards are considered.

4.4(a)(iii) We firmly believe that it is of the utmost importance to set standards for product suppliers to provide advisors with customer data when authorised by customers to do so. If RDR is ultimately about TCF outcomes then everything it proposes should be scrutinised based on the resultant service to the consumer. If a client then authorises an advisor to obtain information from a product supplier, the product supplier should oblige for the following reasons:

(1) The client's wishes and requests should be far more important than what the product suppliers deem to be necessary;

(2) The Protection of Personal Information Act already makes provision for such authorisation by the client;

(3) The FAIS General Code of Conduct places an onerous obligation on advisors as it states that: the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider.

We would argue that such a provision should also apply to product suppliers. It applies to financial services providers so why would product suppliers be treated any differently? If the client requests or instructs an advisor to obtain his / her product information from a product supplier, we would argue that this client request also applies to the product supplier and that the product supplier should respect the client's wishes and the service must be rendered in accordance with the reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the product supplier.

There should be no difference between a client requesting product information directly from the product supplier or via a registered advisor.

For the client it is merely a matter of convenience, because the advisor is saving the client time and administration by obtaining this information on the client's behalf.

(4) There is a further obligation that advisors have to adhere to, namely:

A provider other than a direct marketer must, prior to providing a client with advice-

(a) Take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation , financial product experience and objectives to enable the provider to provide the client with appropriate advice;

If product suppliers have too much control over what they provide to providers, advisors will not be able to comply with sections 3(1)(d) and/or 8(1)(a) of the Code of Conduct.

If the same principles do not apply to both advisors and product suppliers, we would argue that there continues to be different regulatory standards that apply to advisors as opposed to product suppliers. We respectfully submit that advisors need certain product information in order to fulfil their duties in terms of the FAIS Act. Product suppliers should be obliged to provide this information as soon as reasonably possible and with due regard to the request of the client, which must be accorded appropriate priority over any interests of the product supplier.

4.4(b) We support the consultation process planned for April 2016.

4.5 We still maintain that the current commission payable on replacement policies is one of the drivers for poor replacements or churn of risk products. It should be noted that all replacements are not necessarily bad for clients but rather to the contrary. (This practice has been argued endlessly but there seems to be not consensus in the product supplier space). The Code on replacements in its current format is merely an administrative requirement.

We can also not deny that there are financial advisors who only focus on replacing policies and insurance agency forces have capitalised on these people during the past 10 years. One can therefore argue that insurer agency forces have been in the main responsible for random churn.

4.5(a) In our view there is nothing wrong with the replacement disclosures as contained in section 8(1)(d) read with section 8(2) of the General Code of Conduct, which states:

Where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, **full details of-**

(i) Fees and charges in respect of the replacement product compared to those in respect of the terminated product;

(ii) Special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided,

See section 3(1)(d) of the General Code of Conduct
See section 8(1)(a) of the General Code of Conduct

which may be applicable to the replacement product compared to those applicable to the terminated product;

(iii) In the case of an insurance product, the impact of age and health changes on the premium payable;

(iv) Differences between the tax implications of the replacement product and the terminated product;

(v) Material differences between the investment risk of the replacement product and the terminated product;

(vi) Penalties or unrecovered expenses deductible or payable due to termination of the terminated product;

(vii) To what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;

(viii) Vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and;

(ix) Any incentive, remuneration, consideration, commission, fee or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.

(e) Take reasonable steps to establish whether the financial product identified is wholly or Partially a replacement for an existing financial product of the client and if it is such a replacement, the provider must comply with subparagraph (d).

(2) The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.

The FIA's view is that the aforementioned disclosure requirements are comprehensive enough. There are three basic reasons why churning is still a problem at this point in time:

(1) Non-compliance with these disclosure requirements by advisors

(2) Full upfront commission being paid on replacements

(3) The "receiving" product supplier turning a blind eye to poor compliance in respect of replacement policies by advisors.

4.5(b) We support further consultation on the issue of replacements. We do believe that product suppliers should be policing replacements.

4.6(a) We support the further engagement with the long term insurance industry regarding early termination values on "legacy" policies.

4.6(b) We support the planned further consultation proposed under this point.

4.7 It appears that the FSB is mainly considering the combined impact of early termination charges on the existing product and commissions and charges on the new product. We

have evidence that shows how the pricing of traditional retirement annuity products is instrumental in totally unfair termination charges. In most cases the fee structures are so vague that it is impossible to compare these products in the interest of clients. Product suppliers should be forced to improve their disclosures.

We are convinced that an in-depth investigation into traditional RA fee structures will reveal that commission is not the main reason for unfair termination penalties and that, in many cases, section 14 transfers are warranted.

4.7(a) We support the FSB's updated view.

> We support the recommendation pertaining to no upfront commissions on transfers. However, we do not believe that ongoing advice fees should be reviewed yearly. There is a need for consistency with regards to reviews on Sec 14 and Sec 37 transfers. If the fees are stipulated clearly and agreed to between advisor and client, it should remain if and until the client cancels the agreement.
>
> Product suppliers must be obliged to provide comprehensive information on annuity products with all the necessary penalties etc. to put the advisor in position to advise clients with all the necessary disclosures. Penalty amounts must be explained by product supplier.
>
> There is a current product supplier practice that we believe does not serve the best interests of customers…
>
> Advisors have been on the receiving end of product supplier interventions which we believe are unethical. Advisor A has a contract with product supplier X and places a policy with X. Advisor A is instrumental to introduce the client to X. When the product does not perform and Advisor A transfers the business to product supplier Y, product supplier X informs the client that he no longer has an advisor with X and hands the client over to a product supplier agent, who contacts the client. The product supplier agent then tries to persuade the client to retain the business with product supplier X without doing the necessary financial needs analysis. Advisor A is placed in a bad light because the product supplier intervenes and tries to convince the client that he/she received bad advice.

4.7(b) We support further consultation in this regard.

4.8 We support that the "equivalence of reward" concept be reviewed.

4.9 Please refer to the FIA's Short Term RDR submission

4.10 Applicable to the Short Term sector

4.11 Applicable to the Short Term sector

4.12 Applicable to the Short Term sector

4.13 Applicable to the Short Term sector

Kind Regards,

Justus van Pletzen