Financial Intermediaries Association
of Southern Africa
(NPC) Company Reg No: 1999/002724/08

Tel: 012 665 0085
Fax: 012 665 0534
Email: info@fia.org.za
Website: www.fia.org.za

Corporate Corner, Unit No 9
Cnr John Vorster & Marco
Polo Drive
Centurion

PO Box 11901, Centurion,
0046

1 March 2017

Ms. Jo-Ann Ferreira
Head: Insurance Regulatory Framework
Financial Services Board
Riverwalk Office Park, Block B
41 Matroosberg Road
Menlo Park
0081

By email: FSB.INSProposedPPRs@FSB.co.za

Dear Ms. Ferreira

RE SUBMISSION BY THE FIA ON THE DRAFT REVISED POLICYHOLDER PROTECTION RULES (LONG-TERM AND SHORT-TERM)

The Financial Intermediaries Association of Southern Africa (FIA) would like to thank the Financial Services Board for affording it the opportunity to comment on the replacement of the Policyholder Protection Rules (PPRs) made under the Long-term Insurance Act, 1998 and Short-term Insurance Act, 1998 (the Acts).

We include hereunder FIA comments from a Short Term and Long Term perspective, with Annexure A provided by way of reference to standard product disclosures.

Yours sincerely,

Lizelle van der Merwe
CEO

A. SUMBISSION RE LONG-TERM PPR

Prepared by Peter Atkinson, FIA National Technical Portfolio Manager

Reference	Proposed change	FIA comment
Chapter 1		
2 Definitions	Definition of "beneficiary"	There is generally huge confusion around the difference between a "claimant", a "policyholder" and a "beneficiary".
2 Definitions	Definition of "cancellation"	Why has this been removed? (Look more into replacements and short term PPR.)
2 Definitions	Definition of "fund policy"	Should read "… in terms of which an ***insurer***…"?
2 Definitions	Definition of "intermediary" and "independent intermediary"	Why use these classes when RDR refers to different classes? What regulations are being referred to? There is no definition of an "intermediary" in the LTIA.
2 Definitions	Definition of "outsourcing"	Although a definition is provided the term does not seem to appear in the document. What regulation is applicable? Is it Outsourcing Directive 159.A.i?
2 Definitions	Definition of "potential policyholder"	The term as defined seems to be only used in comments to Rule 13.10.1 from which one can insinuate that the intention is that "potential policyholders" must enjoy the same treatment as "policyholders" (where applicable). The old definition of "policyholder" included "prospective policyholders", but the proposed definition would be too broad. For example, the requirements that "products are designed to meet the needs of identified customer groups and are targeted accordingly" would not be able to be ensured with general advertising and the distribution of promotional material. Consideration should be given to only starting the relationship once personal contact has been established.

Reference	Proposed change	FIA comment
2 Definitions	Definition of "representative"	What regulations? This is not defined in the LTIA.
2 Definitions	Definition of "services as an intermediary"	What regulations? This is not defined in the LTIA. Why does this still include premium collections? Will this be changed at a later stage?
2 Definitions	Definition of "white labelling"	Must disclose the insurer (already a requirement anyway?)
Chapter 2		
Rule 1.3 (c)	Disclosure requirements	This duplicates the responsibilities of an intermediary under FAIS and could cause confusion. How would the insurer know whether the policyholder was given the required information ***before*** entering into a policy?
Rule 1.3(d)	Requirement that insurers ensure proper advice	How are insurers expected to do this where an intermediary (especially an "independent intermediary") is involved?
Chapter 3		
Rule 2.2	Requirement for signing off of new products	Can this function be delegated? Would the person/s concerned be able to offer a considered opinion?
Rule 5	Cooling off period	Suggest changing "30 days" to "monthly" to align with the bulk of policies. Consider the principle of "anti-selection" as this rule would work against the insurer for would be "transgressors". Difficult to apply as the date on which the summary was received may not be known or provable.
Rule 5.2	Refund of premiums	An insurer should be entitled to a pro-rata premium for the period on risk – otherwise consumers could "roll over" to effectively enjoy free cover.
Rule 6	Requirement around negative option selection of certain aspects	It is not clear exactly what this covers. The intention needs to be spelt out more clearly.

Reference	Proposed change	FIA comment
Rule 7.1	Requires premiums to conform with certain requirements	Why is this necessary given market forces and competition? What criteria would be used to decide whether the premium is acceptable? This could be construed as undue interference in the basic business principles of the market?
Rule 7.2	Prohibition on insurers charging a policy fee	While there may be a principle here this seems to be just "change for the sake of change" as insurers will simply include the policy fee in the premium, meaning less disclosure / transparency?
Rule 8	Banning the use of polygraph testing	This is already in the Short Term PPRs and we support this.
Rule 11	Anyone being insured must give written consent	Although the principle is probably a good one and one can see what is intended, this will be almost impossible to implement in the case of some group life schemes, some funeral policies where family members who are to be included may be far away in the rural area and not easily contacted and even in some key man schemes.
Chapter 4		
Rule 13.3.5	Obligation of insurer to ensure that intermediaries comply with the requirements for advertising, etc.	How would an insurer go about this without intruding unduly on the intermediary?
Rule 14	Initial disclosure and record keeping	The obligations apply to the insurers but in most cases it will be the intermediary who actually ensures this. This will result in insurers starting to "meddle" in the broker's business. **Also refer to the note on disclosures at the end of this document.**

Reference	Proposed change	FIA comment
Rules 14.1.2 and 14.1.3	Timing of disclosure	The obligations apply to the insurers but in most cases it will be the intermediary who actually ensures this. This will result in insurers starting to "meddle" in the broker's business. What is meant by "good time"? This proposed change duplicates the responsibilities of an intermediary under FAIS and could cause confusion.
Rule 14.2	Initial disclosure	Duplicates the intermediary's responsibilities under FAIS which could cause confusion.
Rule 14.2.1	Pre-policy disclosure	Where an intermediary is involved the intermediary is bound to do this. How would the insurer be able to control this and would there not be duplication?
Chapter 5		
Rule 15.2.1	Requirements for intermediary agreements	Suggest deleting the words from "and meets any competency …"
Rule 15.2.3	Termination of intermediary agreement	What are the obligations on the insurer when this happens?
Rule 15.3	Insurers must provide policy details to intermediaries on presentation of suitable authorisation from clients	This is supported. However, it will be necessary to define "reasonable time" and perhaps to insist that the format, etc. is consistent with that used for recognised intermediaries of that provider (or the general market in the case of direct insurers).
Rule 16.2	Data management	Requirements should align with binder and outsource requirements to avoid confusion.
Rule 16.2 (a)	Data management	Suggest "…continuous access, ***on demand***, to access".
Chapter 7		
Rule 19.4.1	Oversight of claims	Is the oversight of the claims function really the responsibility of the Board or the company's management?

Reference	Proposed change	FIA comment
Rule 19.4.3	Claims submitted through intermediaries	Suggest that the word "independent" be inserted before "intermediary". (The independent intermediary who provides "services as an intermediary" as defined including claims does not act as an agent of the insurer and therefore "is deemed to have been submitted to the insurer" is not applicable. There have been many claims and determinations made against independent intermediaries who have erred in passing claims notifications to insurers.) **Also refer back to the comments on the definition of intermediary above.**
Rule 20	Complaints management	This will result in duplication of complaints recording etc. as the intermediary is also pulled in by definition. It is essential that the intermediary is 'kept in the loop' at all times.
Rule 21	Replacement of policies	Not much different to the current ASISA process which means that the RPAR should fall away to avoid duplication?
Rule 21.2.1	Insurer may not enter into a risk policy until confirmation is obtained as to whether it is a replacement	What would happen if a claim event happened in the interim?
Rule 22.2.1 (b)(ii)	Termination of policies	Policy conditions would have to be aligned to the 30 days but this could be problematic where the insurer wishes to cancel due to "moral behaviour" or "fraud" where immediate cancellation is appropriate?
Rule 22.2.1 (b)(aa)	Notice of termination	Impractical and could lead to abuse by policyholders as receipt may not be able to be verifiable.
Rule 22.2.1.(b)(bb)		Unreasonable and impractical (for example where the insured has become uninsurable, or cannot purchase similar cover).
Chapter 3 (page 47)	Administration	Should this section not be under Chapter 8?

Additional comments on the replacement PPR, Long-Term

The rules for direct marketers and specific rules for assistance business group policies have been removed. Will the PPR now apply in full to these activities? This may present a problem to the FIA's assistance and micro insurance business members.

Comments pertaining to disclosure requirements in terms of the proposed amendments to the Policyholder Protection Rules

The FIA would like to see full alignment between the disclosure requirements that financial advisers and intermediaries face in terms of section 7 of the FAIS General Code of Conduct and the disclosures envisaged in the PPR amendments. We believe that it is in the interest of consumers that, when a financial adviser discloses product benefits, values, terms, conditions and exclusions to clients, he / she can depend on the product disclosures supplied by the product supplier for purposes of compliance in terms of the FAIS General code of conduct.

The rationale is that product suppliers design products, which they market to financial advisers, and in turn financial advisers market the same product to customers. Surely, if financial services providers are required to disclose product benefits, features, terms, conditions and exclusions to clients, one would expect product suppliers to disclose the same to the people who distribute their products?

It is important to note that this request by the FIA does not refer to the Key Information Disclosure (KID) documents. It was agreed by all the stakeholders in the TCF Product Disclosure Work Group that the KID documents would focus on the essential product information and that these documents would not represent all disclosures as required in terms of section 7 of the General Code of Conduct.

Therefore, it is our plea that the amendments in the Policyholder Protection Rules would include rules that will enable financial advisers and intermediaries to present one document prepared by the product supplier in question, which at the same time will contain all the product information necessary to disclose to a client as required in terms of section 7 of the Code.

There are numerous benefits for all stakeholders in the financial services industry if product suppliers would be required to draft comprehensive disclosure documents in terms of the Policyholder Protection Rules, namely:

1. It would create a level playing field for disclosures pertaining to product suppliers and financial services providers.
2. It will no longer be necessary for financial services providers to draft their own disclosure documents in respect of products designed by product suppliers.

3. This will avoid much duplication that is currently going on in the industry and it will reduce the level of paperwork that consumers have to deal with when they purchase financial products.

The FIA is further of the view that the designers of financial products should be subject to exactly the same product disclosure requirements to intermediaries as the latter are required to disclose to consumers. We firmly believe that product disclosures in plain and simple language and readable font size should be the responsibility of product suppliers.

This will result in one standard for product disclosures for financial advisers and customers alike. If product suppliers are regulated according to the same standards as financial services providers, it will enhance the quality of product training to financial services providers and it will enhance the quality of product disclosures to the consumer at the same time.

Annexure A (provided at the end of this document) contains all the product disclosure requirements for long-term insurance policies in terms of section 7 of the General Code of Conduct for ease of reference.

B. SUBMISSION RE SHORT-TERM PPR

Prepared by Peter Atkinson, FIA National Technical Portfolio Manager

Reference	Proposed change	FIA comment
Chapter 1		
Rule 1.2	Effective date	There needs to be some kind of period (reasonable period?) spelt out.
Rule 1.4(b)	Insurer's reliance on intermediaries	Should be aligned with FAIS
2 Definitions	Definition of "intermediary" and "independent intermediary"	Why use these classes when RDR refers to different classes? What Regulations are being referred to? There is no definition of an intermediary in the STIA.
2 Definitions	Definition of "outsourcing"	Although a definition is provided the term does not seem to appear in the document. What Regulations? Outsourcing Directive 159.A.i?
2 Definitions	Definition of "policy"	How will variations during the period of insurance be treated? Has the additional cost of segmenting the commercial book been considered and how practical is it to use turnover when some clients may not be prepared to disclose this? Would premium not be a better differential?
2 Definitions	Definition of "potential policyholder"	The term as defined is then seems to be only used in comments to Rule 11.10.1 from which one can insinuate that the intention is that "potential policyholders" must enjoy the same treatment as "policyholders" (where applicable). Although the old definition of "policyholder" included "prospective policyholders", this is too broad. For example, the requirements that "products are designed to meet the needs of identified customer groups and are targeted accordingly' would not be able to be ensured with general advertising and the distribution of promotional material. Consideration should be given to only starting the relationship once personal contact has been established.

Reference	Proposed change	FIA comment
2 Definitions	Definition of "representative"	What regulations? Not defined in the STIA.
2 Definitions	Definition of "services as an intermediary"	What regulations? Not defined in the STIA. Why does this still include premium collections? Will this be changed at a later stage?
2 Definitions	Definition of "white labelling"	Already a requirement anyway?
Chapter 2		
Rule 1.3(c)	Disclosure requirements	This duplicates the responsibilities of an intermediary under FAIS and could cause confusion. How would the insurer know whether the policyholder was given the required information ***before*** entering into a policy?
Rule 1.3(d)	Requirement that insurers ensure proper advice	How are insurers expected to do this where an intermediary (especially and "independent intermediary") is involved?
Chapter 3		
Rule 2.2	Requirement for signing off of new products	Can this function be delegated? Would the person(s) concerned be able to offer a considered opinion?
Rule 4.1	Cooling off period	Suggest changing "30 days" to "monthly" to align with the bulk of personal lines policies (and Rule 16). Consider the principle of "anti-selection" as this rule would work against the insurer for would be "transgressors". Difficult to apply as the date on which the policy was received may not be known/provable.
Rule 4.2	Refund of premiums	An insurer should be entitled to a pro-rata premium for the period on risk. (Otherwise consumers could "roll over" to effectively enjoy free cover.)
Rule 5	Requirement around negative option selection of certain aspects	It is not clear exactly what this covers. The intention perhaps needs to be spelt out more clearly.

Reference	Proposed change	FIA comment
Rule 6.1	Requires premiums to conform with certain requirements	Why is this necessary given market forces and competition? What criteria would be used to decide whether the premium is acceptable? Is this not undue interference in the basic business principles of the market?
Rule 6.2	Prohibition on insurers charging a policy fee	While there may be a principle here this seems to be just "change for the sake of change" as insurers will simply include the policy fee in the premium, meaning less disclosure?
Rule 7.1(e)	Insurers may repudiate claims if premiums are not paid	Where is this Section 52(1)?
Rule 10	Requirement that anyone being insured must give written consent	Although the principle is probably a good one and one can see what is intended this will be almost impossible to implement in the case of some group accident schemes and keyman policies where the beneficiary to whom the benefit is payable may be discretionary. The principle of "insurable interest" should be sufficient.
Chapter 4		
Rule 11.3.5	Obligation of insurer to ensure that intermediaries comply with the requirements for advertising, etc.	How would an insurer go about this without intruding unduly on the intermediary?
Rules 12.1.2 and 12.1.3	Initial disclosure and record keeping	The obligations apply to the insurers but in most cases it will be the intermediary who actually ensures this. This will no doubt result in insurers starting to "meddle" in the broker's business. What is meant by "good time"? This duplicates the responsibilities of an intermediary under FAIS and could cause confusion. **Also see the note on disclosures at the end of this document.**

Reference	Proposed change	FIA comment
Rule 12.2	Initial disclosure	Duplicates the intermediary's responsibilities under FAIS which h could cause confusion.
Rule 12.2.2	Pre-policy disclosure	Where an intermediary is involved the intermediary is bound to do this. How would the insurer be able to control this and would there not be duplication?
Rule 12.6.2		Should read "12.5.2" and the reference should be to "12.5.1"?
Chapter 5	**Intermediary agreements**	
Rule 13.2.1	Requirements for intermediary agreements	Suggest deleting from "and meets any competency …"
Rule 13.2.3	Termination of intermediary agreement	What are the obligations on the insurer when this happens?
Rule 13.3.1	Insurers must provide policy details to intermediaries on presentation of suitable authorisation from clients	We support this. However, it will be necessary to define "reasonable time" and perhaps to insist that the format, etc. is consistent with that used for recognised intermediaries of that provider (or the general market in the case of direct insurers).
Chapter 6	**Product performance and data management by insurers**	
Rule 14.2	Data management	Requirements should align with binder and outsource requirements to avoid confusion.
Rule 14.2 (a)	Data management	Suggest "…continuous access, ***on demand***, to access…".
Chapter 7	**A requirement for post-sale barriers**	
Rule 17.4.1	Oversight of claims	Is the oversight of the claims function really the responsibility of the Board or the company's management?

Reference	Proposed change	FIA comment
Rule 17.4.3	Claims submitted through intermediaries	Suggest that the word "independent" be inserted before "intermediary". (The independent intermediary who provides "services as an intermediary" as defined including claims does not act as an agent of the insurer and therefore "is deemed to have been submitted to the insurer" is not applicable. There have been many claims and determinations made against independent intermediaries who have erred in passing claims notifications to insurers.) (Also refer back to the comments on the definition of intermediary above.)
Rule 18.4.1	Complaints management	Is the oversight of the claims function really the responsibility of the Board or the company's management? This will mean duplication of complaints recording etc. as the intermediary is also pulled in by definition. (It is essential that the intermediary is "kept in the loop' at all times.)
Rule 19.2.1 (b)(ii)	Termination of policies	Policy conditions would have to be aligned to the 30 days but this could be problematic where the insurer wishes to cancel due to "moral behaviour" or a "multi-claimant" where immediate cancellation is appropriate.
Rule 19.2.1 (b)(aa)	Notice of termination	Impractical and could lead to abuse by policyholders as receipt may not be able to be verifiable.
Rule 19.2.1.(b)(bb)		Unreasonable and impractical (for example where the insured has become uninsurable, or cannot purchase similar cover). Most personal lines policies are renewable monthly and insurers should retain the right to cancel at any month end.
Chapter 3 (page 84)	Administration	Should this not be Chapter 8?

Additional comments on the replacement PPR, Short-Term

The rules for direct marketers have been removed, with the assumption that the PPR in general will now apply in full to this segment? Also refer to the **Comments pertaining to disclosure requirements in terms of the proposed amendments to the Policyholder Protection Rules** provided at the end of the Long-Term section. A format similar to Annexure A would need to be constructed for use in the Short-Term market.

ANNEXURE A

Standard Product Disclosures As required in terms of the General Code of Conduct Long-Term Insurance & Investments (Combined) Template

1. Name of Product Supplier

Sanlam, Old Mutual, Momentum, Hollard, etc.

Section 4 (a) of the General Code of conduct

Name, physical location, and postal and telephone contact details of the product supplier.

Section 4(a)(ii)

Names and contact details of the relevant compliance and complaints departments of the product supplier.

2. Product type

Life & endowment policy, retirement annuity with life cover and disability benefits, underwritten life/living annuity, etc.

Section 7(1)(c)

Name, class or type of financial product concerned.

3. Product name

Momentum Myriad / Invest, etc.

Section 7(1)(c)

Name, class or type of financial product concerned.

4. Product objective

Examples

- ✓ Investing for capital growth, ideal for investors who require consistent investment returns that outperform inflation over the medium to long term, with life cover and disability benefits.
- ✓ Offering life insurance benefits to individuals and their dependents who require capital at death and investment.
- ✓ Investment plan with life and disability benefits.

5. Product benefits

Section 7(1)(c)(ii)

Nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid.

Section 7(1)(b)

Whenever reasonable and appropriate, provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider.

Section 7(1)(c)(viii)

Any guaranteed minimum benefits or other guarantees.

Section 7(1)(c)(xi)

Material tax considerations (tax deductible premiums for example).

6. Key features

Section 7(1)(c)(iii)(aa)

Where the financial product is marketed or positioned as an investment or as having an **investment component -**concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments.

Section 7(1)(c)(iii)(cc)

On request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances.

Section 7(1)(c)(ix)

Explanation as to what extent the product is readily realisable or the funds concerned are accessible.

Section 7(1)(c)(xi)

Material tax considerations.

7. Terms, Conditions and Exclusions

Section 7(1)(c)(vii)

Concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided.

Section 7(1)(c)(iii)(cc)

On request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances.

Section 7(1)(c)(x)

Any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal.

Section 7(1)(c)(xi)

Material tax considerations.

Section 7(1)(c)(xii)

Whether cooling off rights are offered and, if so, procedures for the exercise of such rights.

Section 7(1)(c)(xiii)

Any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations.

Section 7(1)(c)(xiv)

In the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years.

Section 7(1)(d)

Fully inform a client in regard to the completion or submission of any transaction requirement-

(i) that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility;

(ii) that, if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details;

(iii) of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information; and

(iv) that the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.

8. Product costs

Section 7(1)(c)(iv)

The nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and, subject to subparagraph (xiv), any anticipated or contractual escalations, increases or additions.

Section 7(1)(c)(iii)(bb)

Separate disclosure (and not mere disclosure of an all-inclusive fee or charge) of any charges and fees to be levied against the product, including:-

(A) the amount and frequency thereof;

(B) the identity of the recipient;

(C) the services or other purpose for which each fee or charge is levied;

(D) where any charges or fees are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees; and

(E) where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client. and

Section 7(1)(c)(iii)(dd)

Any rebate arrangements and thereafter on a regular basis (but not less frequently than annually), provided that where the rebate arrangement is initially disclosed in percentage terms, an example using actual monetary amounts must be given and disclosure in specific monetary terms must be made at the earliest reasonable opportunity thereafter: Provided further that for the purposes of this subparagraph, "rebate means a discount on the administration, management or any other fee that is passed through to the client, whether by reduced fees, the purchase of additional investments or direct payment, and that the term "rebate" must be used in the disclosure

concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition.

Section 7(1)(c)(iii)(ee)

Any platform fee arrangements, which may be disclosed by informing the client that a platform fee of up to a stated percentage may be paid by the product supplier to the administrative financial services provider concerned, rather than disclosing the actual monetary amount: Provided that for the purposes of this sub-paragraph, "platform fee" means a payment by a product supplier to an administrative financial services provider for the administration and/or distribution and/or marketing cost savings represented by the distribution opportunity presented by the administrative platform, and may be structured as a stipulated monetary amount or a volume based percentage of assets held on the platform, and that the term "platform fee" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition.

9. Advisor / Intermediary Fees / Commissions

Section 7(1)(c)(v)

The nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including the manner of payment or discharge thereof, the frequency thereof, and the consequences of non-compliance.

Section 7(1)(a)(vi)

The nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration"), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration: Provided that where the maximum amount or rate of such valuable consideration is prescribed by any law, the provider may (subject to clause 3(1)(a)(vii)) elect to disclose either the actual amount applicable or such prescribed maximum amount or rate.