

4. PURPOSE OF PROPOSED AMENDMENTS TO GENERAL CODE OF CONDUCT (SCHEDULE A)

4.1. Enterprise development contributions (Definition of 'financial interest')

The proposed amendment allows qualifying beneficiaries as contemplated in the Financial Services Sector Code to receive enterprise development contributions. Currently those beneficiaries are prohibited under the conflict of interest requirements from accepting such contributions. The requirement seeks to promote and facilitate transformation within the financial services industry.

4.2. Definition for 'replacement'

The proposed definition clarifies which types of transactions (including variations) in respect of financial products constitute a replacement. The term 'variation' is also defined for purposes of the aforementioned definition to clarify which types of variations constitute a replacement.

4.3. Requirement to act honestly at all times (Section 2)

The requirement in section 2 is extended from only being applicable to a provider when rendering financial services to when a provider acts. Although broadly phrased, the requirement is limited by the context, the purpose and objective of the Code and the Act as a whole.

4.4. Referencing of authorisation status (Section 3)

The Registrar proposes the addition of specific requirements relating to the referencing by a provider of its licence or the fact that it is regulated by the FSB in respect of business for which it is not licensed or regulated. It is not a new requirement in that the aforementioned is already indirectly regulated through the general requirement that representations made or information provided to clients must be factually correct and may not be misleading or confusing. The amendment is proposed in response to a number of matters investigated by the Registrar where members of the public were placed under the false impression that a provider's authorisation extended to activities not regulated by the FSB.

4.5. RDR related amendments (sections 3A, 7 and 8)

The FSB published its Retail Distribution Review ("RDR") in November 2014, proposing a number of reforms to the regulatory framework for financial advice and distribution on financial products. A number of subsequent discussion documents have been published providing the FSB's updated views on certain of these RDR proposals. The Registrar proposes certain amendments to the General Code to give effect to a number of these RDR proposals. Note that the RDR proposals are being implemented in a phased manner, with certain proposals

being introduced through existing regulatory instruments – such as the General Code – while others will be introduced through future instruments as the legislative framework for the Twin Peaks model of regulation evolves.

Enhanced requirements regarding intermediary remuneration

In line with aspects of RDR Proposals HH to KK and in preparation for more detailed RDR standards regarding advice fees, the Registrar proposes enhanced disclosure requirements regarding intermediary remuneration to ensure clients fully understand and agree to fees payable and the services they can expect in exchange for those fees. The current requirement that certain financial interests must be reasonably commensurate with the service being rendered has been expanded to clarify what “reasonably commensurate” entails and to align with both RDR intermediary remuneration principles and proposed amendments to the Regulations to the Long-term and Short-term Insurance Acts in relation to certain types of intermediary remuneration.

Financial interests offered by a provider to its representatives

The General Code currently provides that a provider may not offer financial interests to its representatives for giving preference to the quantity of business secured for the provider “to the exclusion of” the quality of service rendered to clients. Supervisory experience has shown that this requirement is inconsistently interpreted and that many providers are not able to demonstrate what particle measures they have in place to achieve and monitor compliance with the requirement. Amendments are therefore proposed to clarify the Registrar’s expectations in this regard, including the adoption of measurable indicators of the quality of client treatment and compliance with the FAIS Act. This requirement also seeks to support RDR proposal RR, in terms of which the playing fields between incentives for tied and non-tied advice in the insurance sector are to be made more level by strengthening the principle of “Equivalence of Reward”.

Suitability of advice to clients transacting to provide benefits to underlying natural persons

In line with RDR Proposal C, an amendment is proposed to require providers who render advice to pension funds, medical schemes, friendly societies, employers or other entities providing benefits to underlying members, employees or other natural persons to consider the reasonably identified needs and circumstances of those persons.

Suitability of advice in case of legal or contractual limitations

The General Code (section 8(1)(c)) currently requires identification of a suitable financial product or products “subject to the limitations imposed on the provider under the Act or any contractual arrangement”. The Registrar recognises that such limitations apply to many distribution models to various degrees and that, provided the client fully understands and

accepts such limitations, then they do not compromise the suitability of the advice provided. Supervisory experience has however shown that, in cases where a provider is legally or contractually limited in relation to the range of products or product suppliers it can offer, the risk of the provider seeking to recommend a potentially unsuitable product in order to “make a sale” is increased. Although such a recommendation would already constitute a contravention of the General Code, an amendment is proposed to avoid any doubt as to the Registrar’s expectations in such situations, by clarifying that where the provider is not able to identify a suitable product, the provider must not recommend a product and must advise the client accordingly.

Clarification that suitability analysis may be tailored to specific circumstances of the client interaction

The Registrar proposes amendments to provide further clarity on the extent to which the depth of information required to be taken into account when performing a suitability analysis before providing advice, may vary depending on the extent of the client’s specific needs and objectives – either as explicitly agreed with the client or as may be reasonably ascertained from surrounding circumstances. This amendment should be seen in the context of RDR Proposal B. Proposal B initially proposed that a framework should be developed for so-called “low advice” distribution models, being models where advice is provided but a full suitability analysis is not required. Based on very mixed comment received, the FSB subsequently advised that two options are being considered: (i) that no formal recognition of a “low advice” model is required and that the FSB should instead clarify that the existing FAIS suitability analysis requirements are sufficiently flexible and scalable to apply in such models; or (ii) to proceed with the development of “simplified advice” standards to apply in specific situations. After further deliberation, the FSB has decided that option (i) above is the preferred approach. The amendments to section 8 of the General Code are proposed in light of this decision. The Registrar will also provide supporting guidance in this regard in due course.

4.6. Format of record of advice (section 9)

An amendment is proposed to enable the Registrar, where appropriate, to prescribe the format and the matters to be addressed in the record of advice. The Registrar is of the view that a prescribed format, in certain circumstances, will improve the quality of the record of advice, will improve compliance and may reduce costs for FSPs.

4.7. Advertising, Marketing and Complaints Management Requirements (sections, 14, 16 – 19)

Alignment

4.7.1. One of the FSB’s priorities is to align similar requirements across the laws administered by the FSB. Requirements relating to advertising, marketing and

complaints management were identified as requirements that would benefit from alignment. A cross cutting sectoral review was conducted that highlighted the misalignment of those requirements across the different sectors in the financial services industry and the inadequacy of the requirements in ensuring good outcomes for customers.

- 4.7.2. On 15 December 2017, the Registrar of Long-term- and Short-term Insurance (“Registrar or Insurance”) published for public comment the first draft of the proposed amendments to the Policyholder Protection Rules (“Rules”). The amendments included proposed amendments to the requirements relating to advertising, marketing and complaints management. A second draft of the Rules was published for public comment on 1 September 2017. The Registrar of Insurance informed by the comments received, revised the second draft of the Rules.
- 4.7.3. The proposed amendments to the advertising, marketing and complaints management requirements in the General Code of Conduct are aligned, where feasible, to the revised second draft of the Rules.

Inadequacy of current requirements

- 4.7.4. Consumers are influenced by advertisements for financial products and financial services when making financial decisions and seeking financial services. Therefore, it is of paramount importance that advertisements are clear, accurate and give balanced messages when promoting financial products and financial services.
- 4.7.5. Advertisements that do not fairly represent the financial product or its key features and risks, or the nature and scope of the financial service, can be misleading and create unrealistic expectations that may lead to poor financial decisions and poor customer outcomes.
- 4.7.6. The Registrar is of the view that the current advertising and marketing requirements do not adequately address or ensure good outcomes for customers. The proposed amendments seek to raise the standards applicable to the advertising and marketing activities by financial services providers (FSPs) to ensure clients are not subjected to aggressive, misleading or unwanted marketing and are able to make informed decisions.
- 4.7.7. Consumers of financial services are further entitled to complain and seek resolution from financial services providers. The proposed requirements seek to ensure that the complaints process is straightforward, transparent and fair to consumers of financial

services. They also seek to align complaints management and record keeping requirements with the desired outcomes of the Treating Customers Fairly framework.

4.8. Forecasts, illustrations, hypothetical data or projected benefits and past performance data (new section 7A)

The Code of Conduct currently only regulates the use of forecasts, illustrations, hypothetical data or projected benefits (prospective financial information) and past performance data when used in advertisements. Given the inherent risks in the use of prospective financial information and performance data the Registrar proposes that the requirements regarding the use of such information in advertisements be extended to the use of that information by providers when rendering financial services. Some additional requirements are proposed that provide for when prospective financial information and past performance data may be used and what should be disclosed.

4.9. Direct marketing (Sections 7, 8 and 15)

Definition of 'direct marketing'

4.9.1. In line with the FSB's stated objective in paragraph 4.5.1 the definition of 'direct marketing' is aligned to that proposed in the Rules.

Advice & Disclosures

4.9.2. The proposed amendments relating to direct marketing remove the current distinction regarding the level of disclosure required by a provider that provides financial services to clients in person, as opposed to a provider providing financial services through another medium. The Registrar is of the view that no good rationale exists to justify the distinction and that the removal thereof will result in better outcomes for clients and a more level playing field between distribution models.

4.9.3. The Registrar further proposes to clarify that "earliest reasonable opportunity" referred to in section 7 means 'prior to the conclusion of a transaction'. The purpose of the disclosures and information referred to in section 7 is to enable a client to make a meaningful and informed decision - receiving the information post the transaction defeats the purpose of the disclosure. Direct marketers are currently required to provide information similar to that in section 7 to clients prior to the conclusion of any transaction. The proposed requirement further aligns with the Rules.

Furnishing of information to clients in writing

4.9.4. Section 7 is amended to require a provider, in line with similar requirements in sections 4, 5 and 15, to furnish, in writing, the information referred to in that section to a client at the earliest reasonable opportunity after the conclusion of a transaction to the extent that the information has not already been provided to a client in writing.

4.9.5. It is important to note that in terms of the Electronic Communications and Transactions Act, 2002 (ECTA), a requirement in law that a document or information must be in writing is met if the document or information is in the form of a data message and accessible in a manner usable for subsequent reference. Therefore, a provider may provide the information to a client in the form of a data message as defined in the ECTA.

5. PURPOSE OF AMENDMENTS TO SHORT-TERM DEPOSIT CODE (SCHEDULE B)

The purpose of the proposed amendments is to align the provisions relating to advertising, marketing and complaints management to the requirements in the General Code.



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