
**Office:** 010 597 0835 | **Facilitator:** 083 821 8801 | **E-mail:** anna@compliancelearningcenter.net
**Website:** www.compliancelearningcenter.net |
**Address:** 10A Lever Street Brackenhurst Alberton, South Africa
**Registration nr:** 2018/242685/07 | **Vat nr:** 4070281904

# Study guide

**AMENDED GENERAL CODE OF CONDUCT FOR FSPS ON-LINE CPD COURSE: ONLINE CPD COURSE 2020 / 2021**



*August 2020*

## Course summary

The process of making certain changes to the General Code of Conduct has now come to an end with the final amendments published on 26 June 2020. Some of the provisions come into effect immediately while other provisions only start 6 or 12 months from date of publication (i.e. 26 December 2020 or 26 June 2021).

The course considers the amendments and considers the Code of Conduct in it entirety with the amendments in place.

## Time allotted for course

The course consists of 3 topics with an assessment that needs to be completed. The time allotted for each aspect is as follows:

| Topic number | Title | Word count | Topic level | Time allotted |
|---|---|---|---|---|
| Topic 1 | Ethics in the financial services industry | 2 494 | Introductory | 20 minutes |
| Topic 2 | Definitions as amended | 2 486 | Introductory | 20 minutes |
| Topic 3 | General Code of conduct | 16 732 | Introductory | 145 minutes |
| | Assessment | | | 30 minutes |
| | **Total time** | | | **3 hours** |

## Assessment and certification

After completion of the workshop the learner must complete an electronic assessment on the learning management system.

- **Form of assessment:** Multiple Choice Questions
- **Number of questions**: 15 questions
- **Duration:** 45 minutes
- **Competency mark:** 60%

Upon obtaining a competency mark of 60% the learning will receive a certificate of completion. The learner will be afforded an opportunity to re-do the workshop should a competency mark not be attained.

## Course accreditation

**CPD Category:** Online programme

**COB Category:** All Classes of Business

**Financial Planning Component:** Ethics & Practice Standards

**Advice Component:** Ethics, Standards and Compliance

**Accreditation validity:** 1 September 2020 to 31 August 2021

**CPD Points allocated:** 3.0 hours | points

**FPI approval number:** FPI20080214

## Table of contents



## Copyright Notice



Anna Bouhail
10A Lever Street
Brackenhurst
Alberton
1449
South Africa

**Ordering information**
If you would like to order the publication, please contact author at address above.

# TOPIC 1 ETHICS IN THE FINANCIAL SERVICES INDUSTRY

**LEARNING OUTCOMES**

After studying the topic, the learner should be able to-

- Understand the concept of regulation and ethics in the context of the financial services industry.
- Name the most important amendments made to the General Code of Conduct as amended by General Notice 706.

## 1.1 Introduction

The economic policy of a country determines the philosophy that underlies its approach to regulation.

South Africa follows largely a market-oriented approach. This implies minimum intervention by the authorities as the market mechanism is assumed to achieve the highest efficiency in terms of the allocation of resources. Market imperfections do occasionally arise and that intervention by the authorities by way of regulation is sometimes justified.

Governments, therefore, promulgate legislation and create regulatory authorities and authorise them to influence the economy according to government policy.

Regulation does come with a cost. Therefore, not all sections of the economy are regulated. Not even all sections of the financial markets are regulated.

Regulatory measures are set out in broad outline in legislation (Acts of parliament). In South Africa there are separate Acts for each industry or even a part of an industry, which is why the Financial Sector Conduct Authority (FSCA) administers many different Acts.

These Acts generally make provision for regulations, conditions, codes of conduct or other pieces of subordinate legislation to be issued. In some cases, the permission of the Minister of Finance must be obtained, but in others the commissioner can issue subordinate legislation. Subordinate legislation contains detailed provisions that apply to the industry concerned.

## 1.2 Ethics in the Financial Services Industry

Corporate governance refers to those principles and procedures underlying the way in which companies and other organisations should be directed and controlled. They originate from the division of ownership and control in a company and the need to clarify the roles and responsibilities of the board of directors and the management of a company.

South Africa has been at the forefront of international development of corporate governance principles through the various King Codes of Corporate Governance, initiatives of the Institute of Directors, the latest of which is King III, published in 2009.

The Financial Sector Conduct Authority (FSCA)as the regulator in South Africa gave legal effect to many ethical principles by issuing codes of conduct as subordinate legislation. In terms of the Financial Advisory and Intermediary Services Act (FAIS), several codes of conduct were issued whose main aim is the protection of consumers by creating ethical standards.

Ethics is the science of what is right and goods. Ethical behaviour in the financial services industry is seen as behaviour that is aligned to the Codes of Conduct applicable to that specific type of financial services provider (FSP) as the Codes of Conduct provides guidance when deciding if a specific course of action is wrong or right.

## 1.3 Different Codes of Conduct

The Financial Advisory and Intermediary Service (FAIS) Act provides for the drafting of different codes of conduct that will be binding on different categories of financial services providers (FSPs). There are the following codes of conduct:

- General Code
- Specific Code for banks taking short-term deposits
- Code for Administrative financial services providers (FSPs)
- Code for Discretionary financial services providers (FSPs)
- Code of Conduct for Hedge Fund financial services providers (FSPs)
- Code for Forex financial services providers (FSPs)

The General Code of Conduct applies to financial services providers (FSPs) in conjunction with the Specific Codes. In case of a discrepancy between the provisions of the General Code and the Specific Code, the Specific Code will prevail. However, the Code for financial services providers (FSPs) (banks) conducting short-term deposit-taking business is an exception and stands on its own.

This course will only consider the General Code of Conduct.

## 1.4 Overview of amendment to the Code of Conduct

The Financial Sector Conduct Authority published the amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives 2003 on 26 June 2020.

The amendment is published in terms of General Notice 706 of 2020 (GN706).

The process of making certain changes to the General Code of Conduct has now come to an end with the final amendments published on 26 June 2020. Some of the provisions come into effect immediately while other provisions only start 6 or 12 months from date of publication (i.e. 26 December 2020 or 26 June 2021).

### 1.4.1 Amendments that came into effect on 26 June 2020

The key amendments that came into effect on 26 June 2020 is considered in the subsections following.

#### (I) Specific duties of the financial services provider (FSP)

Section 3 of the General Code of Conduct has been amended to include that a financial services provider (FSP) may not indicate or imply that it is authorised, regulated or otherwise supervised by the Financial Sector Conduct Authority (FSCA) in respect of business for which it is not so authorised, regulated or supervised, nor may it in any manner refer to its authorisation or name the Financial Sector Conduct Authority (FSCA) as its regulator in any advertisement relating to products or services that are not financial products or financial services in respect of which it is authorised, in such a manner as to create the impression that its authorisation extends to such products and services or that its provision of such products or services is regulated by the Financial Sector Conduct Authority (FSCA).

In addition, a financial services provider (FSP) may not describe itself or the financial services it renders as being "Independent" if any relationship exists between the financial services provider (FSP) and any product supplier in respect of whose products the financial services provider (FSP) renders financial services that gives rise to a material conflict of interest (e.g. the financial services provider (FSP) or its associate is a significant owner of the product supplier, or vice versa, or receives or is eligible for any financial interest from a product supplier, subject to certain exceptions).

#### (II) Information on product suppliers

Section 4 of the General Code of Conduct provides that a financial services provider (FSP), in dealing with a client may not compare different financial services, financial products, product suppliers, financial services provider (FSP)s or representatives, unless the differing characteristics of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial service, financial product, product supplier, financial services provider (FSP) or representative.

Section 4 has been amended to provide that advertising requirements contained in the new section 14(10), relating to the use of comparisons in advertising, also apply to comparisons referred to in this paragraph. However, given that section 14(10) only becomes effective on 26 December 2020, it is unclear how this amendment, which is effective immediately, shall be implemented or enforced in practice.

**(III) Information about financial service**

A new section 7A has been included in the General Code of Conduct which provides that advertising requirements contained in the new section 14(15), relating to the use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in advertisements, also apply to the use of such data or projections in the rendering of a financial service. However, given that section 14(15) only becomes effective on 26 December 2020, it is unclear how this amendment, which is effective immediately, shall be implemented or enforced in practice.

The new section 7A also provides that a financial services provider (FSP) may only make a statement regarding the past performance (including awards and rankings) of a financial product or financial service if all of the following is met:

- The basis on which the performance is measured, is clearly stated and the presentation of the performance is accurate, fair and reasonable.
- The statement is accompanied by a warning that past performance is not indicative of future performance
- The past performance is relevant to the financial service being rendered.

In addition, a financial services provider (FSP) that uses forecasts, illustrations, hypothetical data or projections when rendering financial services must provide the client with certain specified information, disclosures and risk warnings in respect of such forecasts, illustrations, hypothetical data or projections.

**(IV) Suitability**

Section 8 of the General Code of Conduct has been amended to place a positive obligation on the financial services provider (FSP) to obtain from the client such information regarding the client's needs and objectives, financial situation, risk profile and financial product knowledge and experience as is necessary for the financial services provider (FSP) to provide the client with appropriate advice, which advice takes into account the following:

- The client's ability to financially bear any costs or risks associated with the financial product.
- The extent to which the client has the necessary experience and knowledge in order to understand the risks involved in the transaction
- In respect of pension funds, medical schemes, friendly societies, employers, and other entities aimed at providing benefits to underlying members, the reasonably identified collective needs and circumstances of members, employees or other natural persons.

Where as a result of regulatory or contractual limitations a financial services provider (FSP) is not able to identify a financial product or products that will be appropriate to the client's needs and objectives, financial situation, risk profile and product knowledge and experience, the financial services provider (FSP) must make this clear to the client, decline to recommend a product or transaction and suggest to the client that they should seek advice from another appropriately authorised financial services provider (FSP).

In certain specified circumstances, for example where the client has explicitly requested the financial services provider (FSP) to focus or not focus on specific objectives in its analysis of the client, there is also an obligation on a financial services provider (FSP) to alert a client that there may be limitations on the appropriateness of the advice provided in light of such circumstances, and that the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs, particularly any aspects of such objectives, situation or needs that were not considered in light of such circumstances.

Where a client elects to conclude a transaction that differs from that recommended by the financial services provider (FSP), or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the financial services provider (FSP) is able to provide, the financial services provider (FSP) must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.

**(V) Record of advice**

Section 9 of the General Code of Conduct has been amended to include that a financial services provider (FSP) must provide a client with a copy of the record of advice contemplated in section 9(1) of the General Code of Conduct in writing, and that the Registrar may determine the format of and the matters to be addressed in the record of advice.

**(VI) Definitions**

GN706 also amends several existing definitions and provides for a number of new definitions to be included in the General Code of Conduct.

A few notable amendments include the following:

- Advertisement has been substituted with a broader definition, in particular to include "any communication published through any medium and in any form, by itself or together with any other communication…"
- Direct marketing has been expanded to include rendering of financial services by way of "digital application platform"

- Financial interest has been expanded to include "a qualifying enterprise development contribution to a qualifying beneficiary entity by a financial services provider (FSP) that is a measured entity" (as those specific terms are defined in the Financial Sector Code published in terms of the Broad-Based Black Economic Empowerment Act, 2003).

Many of the new definitions included which are currently effective relate to amendments to the General Code of Conduct which are not yet in force and are therefore not currently used anywhere in the Code of Conduct.

### 1.4.2 Amendment that comes into effect on 26 December 2020

Significant amendments which are pending and which will be coming into effect in the next 6 months, including substantial amendments to the General Code of Conduct in respect of the requirements relating to, inter alia, advertising, direct marketing, financial interests, conflict of interests policies, complaints management, reporting, and engagement with the Ombud.

These pending amendments to the General Code of Conduct should also be carefully considered and prepared for by financial services providers and representatives.

The most important amendments that will come into effect on 26 December 2020 is considered in the subsections following.

#### (I) Financial interest and conflict of interest management policy

There have been some enhancements to ensure that clients fully understand and agree to fees payable and the services they can expect in return for those fees. The financial interests which can be offered by a Financial Services Provider (FSP) to its representative have also been expanded to incorporate measurements relating to fair customer outcomes. The changes will require Financial Services Providers (FSPs) to re-look at their Conflict of Interest Management Policy, the way they remunerate representatives and any fee arrangements with clients, to ensure that these are aligned with the amendments.

#### (II) Information about a financial service – enhancing disclosure of a client's monetary obligations

This requires that where feasible, there should be a written agreement between the client and the provider which deals with the specifics relating to the client's monetary obligations in terms of amount, frequency, payment method, services to be provided, termination arrangements etc.

#### (III) Advertising

The section on advertising has been completely overhauled and aligned, where possible, with other regulation such as the Long-term and Short-term Insurance Policyholder Protection Rules (PPRs). This section will require Financial Services Providers (FSPs) to have a close look at their Advertising Policy and Procedures and to make appropriate changes by the end of the year when it takes effect.

**(IV) Direct Marketers**

There have been some slight changes to this section which, in the main, align with the fact that direct marketers are no longer excluded from sections 7, 8 and 9 and, therefore, those sections now apply and do not need to be separately addressed under this section.

**(V) Complaints**

Like the changes on advertising, the requirements relating to complaints have been replaced with a completely new section which is aligned with the policyholder protection rules as far as possible. While there is still some time before these requirements kick in Financial Services Providers (FSPs) need to start looking at their complaints management framework and identify necessary adjustments to bring it into line with the new requirements.

### 1.4.3 Amendments that comes into effect on 26 June 2021

The effective date of the stipulations with regard to the complaint's management framework; categorisation of complaints, record keeping pertaining to complaint's categorisation and date to be kept with regard to reportable complaints comes into effect 12 months from the publication date.

# TOPIC 2 DEFINITIONS AS AMENDED

**LEARNING OUTCOMES**

After studying the topic, the learner should be able to-

- Describe the different concepts as defined in the amended General Code of Conduct.

## 2.1 Introduction

The sections following consider the definitions in the General Code of Conduct as amended by the various amendments to the General Code of Conduct, including the latest amendments.

## 2.2 Advertisement

An advertisement is defined as any communication published through an medium and in any form itself or together with another communication which is intended to create public interest in the business, financial services, financial products or related services of a provider or to persuade the public (or a part thereof) to transact tin in respect of a financial product, financial service or related service of the provider in an manner but which does not purport to provide detailed information to or for a specific client regarding a specific financial product, financial service or related service.

## 2.3 Associate

An associate in relation to a natural person means one of the following:

- A person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person.
- A child of that person, including a stepchild, adopted child and a child born out of wedlock. This includes the spouse, life partner or civil unions partner of such a person.
- A parent or stepparent of that person. This includes the spouse, life partner or civil unions partner of such a person.
- A person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person. This includes the spouse, life partner or civil unions partner of such a person.
- A person who is in a commercial partnership with that person.

An associate in relation to a juristic person which is a company 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.

An associate in relation to a juristic person which is a close corporation registered under the Close Corporation Act, 1984 (Act no. 69 of 1984) means any member thereof as defined in section 1 of the Close Corporations Act.

An associate in relation to a juristic person which is not a company or a close corporation means another juristic person which would have been a subsidiary or holding company of the first-mentioned person had such first-mentioned juristic person been a company or in the case where other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company.

An associate in relation to a juristic person means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act.

An associate in relation to any person mean any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph. This includes any trust controlled or administered by that person.

## 2.4 Company

The meaning of a company has the meaning assigned to it in the Companies Act, 2008 (Act no 71 of 2008).

## 2.5 Conflict of interest

A conflict of interest is defined as any situation in which an FINANCIAL SERVICES PROVIDER (FSP) or representative has an actual or potential interest that may in the rendering of financial services influence the objective performance of its obligations to that client or prevent an financial services provider (FSP) or representative from rendering an unbiased and fair service to that client, or from acting in the interest of that client.

A conflict of interest includes but is not limited to one of the following:

- A financial interest
- An ownership interest
- Relationship with a third party

## 2.6 Comparative

Comparative refers to a direct or indirect comparison between providers or between financial products, financial services or related services of one or more provider or product supplier.

## 2.7 Direct marketing

Direct marketing is the rendering of financial services by way of telephone, internet, digital application platform, media insert direct or electronical mail, but excludes the publication of an advertisement.

## 2.8 Direct marketer

A direct marketer means a provider who, in the normal course of business, provides all or the predominant part of the financial services concerned in the form of direct marketing.

## 2.9 Distribution channel

A distribution channel means one of the following:

- Any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client.
- Any arrangement between two or more providers or any of their associates, which arrangement facilitates, support or enhances a relationship between the provider or providers and a product supplier.
- Any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier.

## 2.10 Endorsements

An endorsement refers to the public statements declaring the virtues of a financial product, financial service or related service of a provider or recommending the entering into of a financial product, financial service or related service.

## 2.11 Fair value

Fair value has the meaning assigned to it in the financial reporting standards adopted or issued under the Companies Act.

## 2.12 Financial interest

A financial Interest is any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration.

Financial interest excludes the following:

- An ownership interest.
- Training that is not exclusively available to a selected group of financial services providers or representatives on one of the following: (This excludes travel and accommodation associated with that training.)
    - Products and legal matters relating to those products.
    - General Financial and Industry information.
    - Specialised technological systems of a third party necessary for the rendering of a financial service.
- A qualifying enterprise development contribution to a qualifying beneficiary entity by a provider that is a measured entity.

## 2.13 FSC

FSC means the Financial Sector Code published in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act (Act 53 of 2003) as amended from time to time.

## 2.14 Holding company

Holding company means a holding company as defined in the Companies Act., 2008 (Act no. 71 of 2008).

## 2.15 Immaterial financial interest

Immaterial financial interest is any financial interest with a determinable monetary value, the aggregate of which does not exceed R1 000 in any calendar year from the same 3rd party received by one of the following:

- A sole proprietor financial services provider (FSP).
- A representative for direct benefit.
- A financial services provider (FSP), who for its benefit or that of some or all its representatives, aggregates the immaterial financial interest paid to its representatives.

## 2.16 Loyalty benefit

Loyalty benefit means any benefit (including a so called cash or premium back bonus) that is directly or indirectly provided or made available to a client by a provider or a product supplier or an associate of the provider or product supplier, which benefit is wholly or partially contingent upon on of the following:

- The financial product with that provider or product supplier remaining in place.
- The client continuing to se a financial service of that provider or product supplier.
- The client increasing any benefit to be provided under a financial product.

- The client entering into any other financial product or benefit or utilising any related services offered by that provider, product supplier or their associates.

## 2.17 Measured entity

Measured entity has the meaning assigned to it in the Financial Sector Code (FSC) insofar it relates to a qualifying enterprise development contribution.

## 2.18 New entrant

A new entrant is a person who has never been authorised as a financial services provider or appointed as a representative by and financial services provider.

## 2.19 No-claim bonus

No-claim bonus means any benefit that is directly or indirectly provided or made available to a client by a product supplier in the event that the client does not claim or does not make a certain claim under a financial product within a specified period of time.

## 2.20 Plain language

Plain language means communication that adheres to the all of the following standards, taking into account the factually established or reasonably assumed level of knowledge of the person or average persons at whom the communication is targeted:

- Is clear and easy to understand.
- Avoids uncertainty or confusion.
- Is adequate and appropriate in the circumstances.

## 2.21 Ownership interest

Ownership interest includes any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition; including any dividend, profit share or similar benefit derived from that equity or ownership interest. Ownership interest excludes equity, or a propriety interest held on behalf of another person.

## 2.22 Provider

Provider means an authorised financial services provider and includes a representative.

## 2.23 Publish

Publish or publication means one of the following:

- To make generally known.
- To make a public announcement of.
- To disseminate to the public.
- To product or release for distribution.

## 2.24 Puffery

Puffery means any value judgement or subjective assessments of quality based solely on the opinion of the evaluator and where there is no pre-established measure or standard.

## 2.25 Qualifying beneficiary entity

Qualifying beneficiary entity has the meaning contemplated in the Financial Sector Code (FSC) insofar as it relates to a qualifying enterprise development contribution.

## 2.26 Qualifying enterprise development contribution

Qualifying enterprise development contribution has the meaning assigned to it in the Financial Sector Code (FSC).

## 2.27 Replace

Replace or replacement means the action or process of substituting a financial product, wholly or in part, with another financial product or the termination or variation of a financial product and the purchase, entering into, investment in or variation of another financial product with the purpose of meeting the same or similar needs or objectives of the client or in anticipation of, or as a consequence of, effecting the substitution, terminations or variation, irrespective of the sequence of the occurrence of the transactions.

## 2.28 Service supplier

Service supplier means any person (whether or not that person is the agent of the provider), other than a representative, with whom a provider has an arrangement relating to the marketing, distribution, administration or provision of financial products, financial services or related services.

## 2.29 Sign-on bonus

A sign-on bonus is any financial interest offered or received directly or indirectly, upfront or deferred, and with or without conditions, as an incentive to become a provider. The financial interest includes but is not limited to the following:

- Compensation for the potential or actual loss of any benefit including any form of income or part thereof
- Compensation for the cost associated with the establishment of a provider's business or operations, including the sourcing of business, relating to the rendering of financial services.
- A loan, advance, credit facility or any other similar arrangement.

## 2.30 Significant owner

Section 157 of the Financial Sector Regulation Act, describe a significant owner of a financial institution if the person, directly or indirectly, alone or together with a related or inter-related person, has the ability to control or influence materially the business or strategy of the financial institution.

Without limiting the above, a person has the ability referred to one of the following is true:

- The person, directly or indirectly, alone or together with a related or inter-related person, has the power to appoint 15% of the members of the governing body of the financial institution.
- The consent of the person, alone or together with a related or inter-related person, is required for the appointment of 15% of the members of a governing body of the financial institution.
- The person, directly or indirectly, alone or together with a related or inter-related person, holds a qualifying stake in the financial institution.

The Minister of Finance, the Reserve Bank and a financial sector regulator are not, in those capacities, significant owners of a financial institution.

A financial sector regulator may, with the concurrence of the other financial sector regulator and on application, declare a person not to be a significant owner of an eligible financial institution; the manager of a collective investment scheme; or a financial institution prescribed in terms of Regulations made for the purposes of this paragraph.

## 2.31 Subsidiary

Subsidiary means a subsidiary as defined in the Companies Act.

## 2.32 Third party

A third party is seen as a product supplier, another financial services provider (FSP), an associate of the product supplier or financial services provider (FSP), a distribution channel and any person who in terms of an arrangement with these entities mentioned provides a financial interest to an financial services provider (FSP) or its representatives.

## 2.33 Transaction requirement

A transaction requirement means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, a product supplier by or on behalf of a client relating to the purchase of or investment in any financial product, including any amendment thereof or variation thereto.

## 2.34 Variation

Variation includes one or more of the following:

- An acceleration of the contractual retirement date or other date on which benefits become available.
- Any change to the premium or other periodic investment amount payable in respect of a financial product.
- Makin the financial product or investment paid-up.
- The cessation of premiums or other periodic investment amount.
- The application of the policy or investment value as premium or other periodic investment amount payable in respect of a financial product.
- The reduction or removal of any guarantee or benefit in respect of a financial product.
- Any act that results in a change to a material term or condition or the contract term.
- The financial product becoming static because an option to update cover, benefits, premiums or other periodic investment amounts has not been exercise.
- Any transfer from or of one financial product to another financial product.
- A non-renewal of a short-term insurance policy.

## 2.35 White labelling

White labelling refers to the marketing of or offering of, a specific financial product of a product supplier wholly or partially under the brand of another person who is not the product supplier, in terms of an arrangement between the product supplier and that other person.

## 2.36 Writing

Writing includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and written has a corresponding meaning.

# TOPIC 3 GENERAL CODE OF CONDUCT

**LEARNING OUTCOMES**

After studying the topic, the learner should be able to-

- Describe the general and specific duties applicable to representatives and financial services providers in terms of the General Code of Conduct.

## 3.1 Introduction

The General Code of Conduct imposes general and specific duties on the representative and financial services provider. This topic includes the amendments that has been made to the General code of Conduct in recent years.

## 3.2 General duty of the financial services provider

A financial services provider (FSP) and representatives must render financial services in the following manner:

- Honestly and fairly.
- With due skill, care and diligence.
- In the interests of clients.
- In the interest of the integrity of the financial services industry.

## 3.3 Representations of information

The following provisions must be considered when rendering a financial service to a client:

- Information provided must be factually correct, in plain language, avoid uncertainty and not be misleading.
- Information must be adequate and appropriate for a particular financial service and consider the clients factually established or reasonably assumed level of knowledge of the client.
- Information must be provided timeously to ensure that the client has sufficient time to make an informed decision.
- Information may be provided orally and confirmed in writing on request of the client within a reasonable time after such a request.
- Written information (by standard format or otherwise) must be in a clear and readable print size, spacing and format.

- Information must be reflected in specific monetary terms regarding all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned therein or if not reasonably pre-determinable, its basis of calculation must be adequately described.
- Information need not be duplicated or repeated for the same client unless material changes or significant changes have occurred, or the relevant financial service renders it necessary. Material or significant changes must be disclosed to the client without delay.[1]

## 3.4 Prohibitions

A financial services provider (FSP) or representative may not indicate or imply that it is authorised, regulated or otherwise supervised by the Financial Sector Conduct Authority (Financial Sector Conduct Authority (FSCA)) in respect of business for which it is not so authorised, regulated or supervised.

A financial services provider (FSP) or representative may not in any manner refer to its authorisation or name the Financial Sector Conduct Authority (Financial Sector Conduct Authority (FSCA)) as its regulator in any advertisement relating to products or services that are not financial products or financial services in respect of which it is authorised in such a manner to create the impression that its authorisation extends to such products and services or that its provisions of such products or services is regulated by the Financial Sector Conduct Authority (FSCA).

A financial services provider (FSP) or representative may not describe itself or the financial services it renders as being independent in the following circumstances:

- The financial services provider (FSP) or representative or its associate is a significant owner or any product supplier or its associate in respect of whose product the provider renders financial services.
- Any product supplier in respect of whose product the financial services provider (FSP) or representative renders financial services or an associate of such product supplier is a significant owner of the financial services provider (FSP) or representative or its associate.
- The financial services provider (FSP) or representative directly or indirectly receive or is eligible for any financial interest from any product supplier in respect of whose products the financial services provider (FSP) or representative renders financial services, other than financial interest permitted under the General Code of Conduct.
- Any other relationship exists between the financial services provider (FSP) or representative and any product supplier in respect of whose product the financial services provider (FSP) or representative renders financial services that gives rise to a material conflict of interest.

**Definition of significant owner**

Section 157 of the Financial Sector Regulation Act, describe a significant owner of a financial institution if the person, directly or indirectly, alone or together with a related or inter-related person, has the ability to control or influence materially the business or strategy of the financial institution.

Without limiting the above, a person has the ability referred to one of the following is true:

- The person, directly or indirectly, alone or together with a related or inter-related person, has the power to appoint 15% of the members of the governing body of the financial institution.
- The consent of the person, alone or together with a related or inter-related person, is required for the appointment of 15% of the members of a governing body of the financial institution.
- The person, directly or indirectly, alone or together with a related or inter-related person, holds a qualifying stake in the financial institution.

The Minister of Finance, the Reserve Bank and a financial sector regulator are not, in those capacities, significant owners of a financial institution.

A financial sector regulator may, with the concurrence of the other financial sector regulator and on application, declare a person not to be a significant owner of an eligible financial institution; the manager of a collective investment scheme; or a financial institution prescribed in terms of Regulations made for the purposes of this paragraph.

## 3.5 Duties when contacting clients

A financial services provider (FSP) must act honorably, professionally and with due regard to the convenience of the client when making contact arrangements with a client.

At the commencement of any contact, visit or call initiated by the financial services provider (FSP), the representative must explain the purpose thereof and at the earliest opportunity, provide the client with the required information regarding the financial services provider (FSP). [2]

## 3.6 Furnishing of advice

### 3.6.1 Steps of advice

Before providing advice to a client, a financial services provider (FSP) other than a direct marketer, must prior to provide a client with advice, follow the steps considered in the subsections following:

**(I) Step 1: Gather information**

A financial services provider or representative must prior to providing a client with advice, take reasonable steps to obtain from the client such information regarding the client's needs and objectives, financial situation, risk profile and financial product knowledge and experience as is necessary for the provide to provide the client with appropriate advice, which takes into account all of the following:

- The client's ability to financially bear any costs or risks associated with the financial product.
- The extent to which the client has the necessary experience and knowledge in order to understand the risks involved in the transaction.
- Where the client is a pension fund, medical scheme, friendly society, employer or other entity that is being advised on entering into a financial product or transaction aimed at providing benefits for its members, employees or other underlying natural persons, the reasonably identified collective needs and circumstances of such members employees or other natural persons.

**(II) Step 2: Needs analysis**

Conduct an analysis based on the information obtained.

In performing the analysis, a financial services provider or representative may, in determining the extent of the client information necessary to provide appropriate advice, take into account the following:

- Any specific objectives or needs of the client that the client has explicitly requested the financial services provider or representative to focus on, or not to focus on, in performing the needs analysis.
- Any specific objectives or needs of the client that the client and the financial services provider (FSP) or representative have explicitly agreed to focus on or not to focus on in performing the needs analysis.
- Applicable surrounding circumstances that make it clear that the analysis can reasonable be expected by the client to focus only on specific objectives or specific needs of the client.
- The fact that the client has explicitly declined to provide any information requested by the financial services provider (FSP) or representative.

In any of the above-mentioned events, the financial services provider (FSP) or representative must alert the client as soon as reasonable possible of all of the following:

- That a full needs analysis of the client could not be undertaken.
- Limitations on the appropriateness of the advice provided may exist.

- The client should take care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs, particularly any aspects of such objectives, situation or needs that were not considered in light of the aforementioned circumstances.

**(III) Step 3: Identify product**

Identify the financial product appropriate to the client's risk profile and financial needs, subject to legal or contractual limitations imposed on the financial services provider (FSP). Where as a result of limitations, the financial services provider (FSP) or representative is not able to identify a financial product or products that will be appropriate to the client's needs and objectives, financial situation, risk profile and product knowledge and experience, the financial services provider (FSP) or representative must make this clear to the client, decline to recommend a product or transaction and suggest to the client that they should seek advice from another appropriately authorised financial services provider.

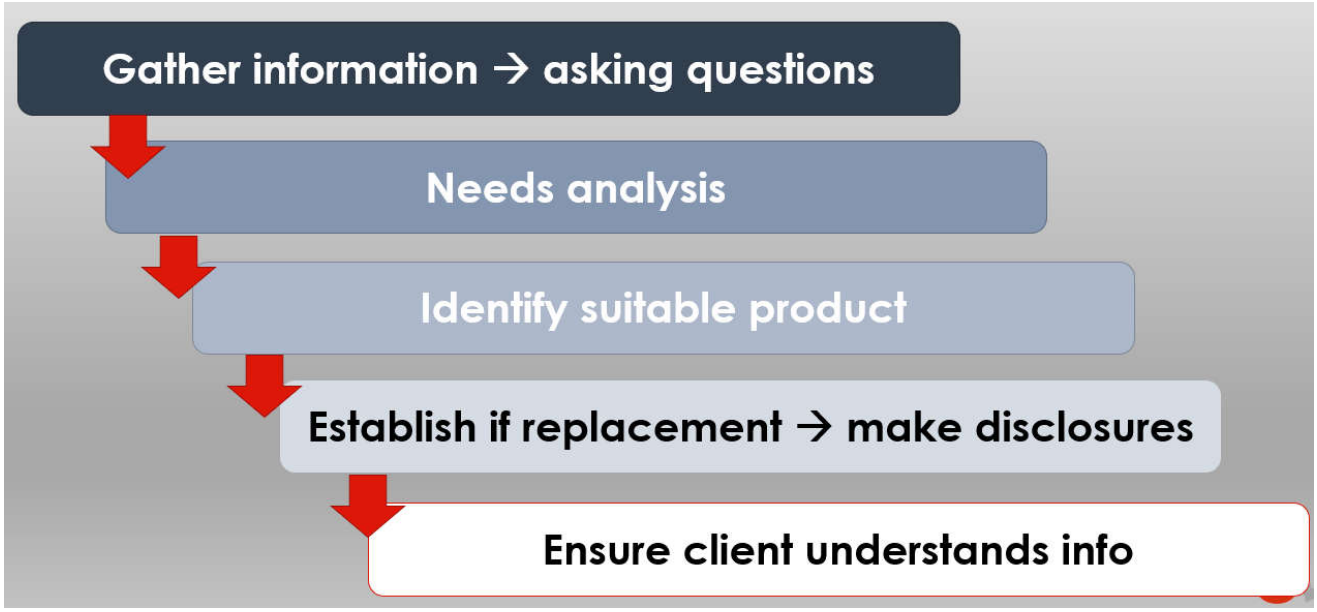
**(IV) Step 4: Replacement disclosures**

Take reasonable steps to establish whether the financial product identified is to replace another financial product of the client and if it is such a replacement, the financial services provider (FSP) must comply with the disclosure requirements regarding replacement products.

### 3.6.2 Ensuring that client understands

A financial services provider (FSP) must take reasonable steps to ensure that the client understands the advice and will be able to make an informed decision.[3]

*Figure 3-1: Steps that needs to be followed when providing advice*



### 3.6.3 Replacement of long-term insurance policy

An financial services provider (FSP) providing advice to a client to replace an existing long-term insurance policy with any other financial product must at the earliest practical opportunity but not later than the date on which any transaction requirement is submitted to the product supplier, notify the issuer of the long-term insurance contract or policy of such advice.[4]

### 3.6.4 Special circumstances

Where the client elects to conclude a transaction that differs from that recommended by the financial services provider or representative or otherwise elects not to follow the advice furnished or elects to receive more limited information or advice than the financial services provider (FSP) is able to provide, the financial services provider (FSP) must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.

### 3.6.5 Other considerations

A financial services provider (FSP) that can provide clients with financial services in respect of a choice of product suppliers, must exercise judgement objectively in the interest of the client concerned.[5]

A financial services provider (FSP) may not in dealing with a client, compare different financial products, product suppliers, financial services provider (FSP)s or representatives unless the differing characteristics of each are made clear. The requirement relating to the use of comparisons in advertisement apply also to these comparisons.

The financial services provider (FSP) may also not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, financial services provider (FSP) or representative.[6]

## 3.7 Record of advice

A financial services provider (FSP) must maintain a record of advice furnished to a client if a transaction or contract in respect of a financial product is concluded because of advice furnished. The record must include the following:

- A summary of the information and material on which advice was based.
- The financial products which were considered.
- The financial product or products recommended with an explanation of why the products selected will meet the needs of the client.

The Financial Sector Conduct Authority (FSCA) may determine the format of and the matters to be addressed in the record of advice.

The financial services provider (FSP) must provide a client with a copy of the record of advice in writing as soon as a transaction is entered into.[7]

A telemarketer only needs to provide a copy of the record of advice on request within a reasonable time.[8]

## 3.8 Managing Conflict of Interest

A conflict of interest is defined as any situation in which an financial services provider (FSP) or representative has an actual or potential interest that may in the rendering of financial services influence the objective performance of its obligations to that client or prevent an financial services provider (FSP) or representative from rendering an unbiased and fair financial service to that client, or from acting in the interest of that client.

A conflict of interest includes one of the following[9]:

- *Financial Interest:* Any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration and training that is not exclusively available to a selected group of financial services providers (FSPs) or representatives. Financial interest excludes an ownership interest, training on products - if it is not exclusive (excluding travel and accommodation in relation to the training), legal matters relating to products, general financial and industry information and third-party systems which is needed.
- *Ownership interest:* Includes any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition; including any dividend, profit share or similar benefit derived from that equity or ownership interest. Ownership interest excludes equity, or a propriety interest held as an approved nominee or held on behalf of another person [10]
- *Relationship with a third party:* A relationship with a product supplier, another financial services provider (FSP), an associate of the product supplier or financial services provider (FSP), a distribution channel and any person who in terms of an arrangement with these entities mentioned provides a financial interest to an financial services provider (FSP) or its representatives.

### 3.8.1 Requirement regarding conflict of interest

A financial services provider (FSP) and a representative must avoid and where this is not possible mitigate any conflict of interest between the financial services provider (FSP) and the client or between the representative and the client.

A financial services provider (FSP) or representative must, in writing, at the earliest reasonable opportunity disclose to the client any conflict of interest of respect of the client, including the following:

- The measures taken, in accordance with conflict of interest management policy to avoid or mitigate the conflict.
- Any ownership interest or financial interest, other than immaterial financial interest, that the financial services provider (FSP) or representative may be or become eligible for.

- The nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest.

A financial services provider (FSP) or representative must, in writing, at the earliest reasonable opportunity inform the client of the conflict of interest management policy and how it may be accessed. [11]

### 3.8.2 Permitted financial interest

A financial services provider (FSP) or representative may only receive or offer the following financial interest from or to a third party:

- Commission and fees authorised under the Long-term Insurance Act, the Short-term Insurance Act or the Medical Schemes Act.
- Fees authorised under the Long-term Insurance Act, the Short-term Insurance Act or the Medical Schemes Act.
- Fees for the rendering of a financial service in respect of which commission or fees referred to above is not paid if the amount, frequency, payment method and recipient of those fees and details of the services that are to be provided by the financial services provider or its representative are specifically agreed to by a client in writing and may be stopped at the discretion of the client.
- Fees or remuneration for the rendering of a service to a third party.
- Subject to any other law, any immaterial financial interest.
- Any financial interest not referred to above for which a consideration, fair value or remuneration that is reasonably commensurate (appropriate) to the value of the financial interest, is paid by that financial services provider (FSP) or representative at the time of receipt thereof. [12]

A financial services provider (FSP) or representative may only receive or offer the financial interests related to fees above if all of the following is met:

- Those financial interest are reasonably commensurate with the service being rendered, taking into account the nature of the service and the resources, skills and competencies reasonably required to perform it.
- The payment of those financial interest does not result in the financial services provider or representative being remunerated more than once for a performing a similar service.
- Any action or potential conflicts between the interest of clients and the interest of the person receiving the financial interest are effectively mitigated.
- The payment of those financial interest does not impede the delivery and fair outcomes to clients.

The above specifications do not apply to representative of an entity if the entity is a product supplier and a financial services provider (FSP). [13]

**Definition of immaterial financial interest**

Any financial interest with a determinable monetary value, the aggregate of which does not exceed R1 000 in any calendar year from the same 3rd party received by one of the following:

- A sole proprietor FSP.
- A representative for direct benefit.
- An FSP, who for its benefit or that of some or all its representatives, aggregates the immaterial

### 3.8.3 Payment of incentives or bonuses

A financial services provider (FSP) may not offer any financial interest to a representative that is determined for giving preference for quantity of business secured for the financial services provider (FSP) to the exclusion of the quality of the service rendered to clients. The financial services provider (FSP) must be able to demonstrate that the determination of and entitlement to the financial interest takes into account measurable indicators relating to the following:

- Achievement of minimum service level standards in respect of clients.
- Delivery of fair outcomes for clients
- The quality of the representative's compliance with the Financial Advisory and Intermediary Services (FAIS) Act.

The above must be agreed between the financial services provider (FSP) and the representative and that sufficient weight is attached to such indicators to materially mitigate the risk of the representative giving preference to the quantity of business secured for the financial services provider (FSP) over the fair treatment of clients.

A financial services provider (FSP) may not offer any financial interest to a representative that is giving preference for one of the following:

- A specific product supplier, where a representative may recommend more than one product supplier to a client.
- A specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client. [14]

### 3.8.4 Conflict of interest management policy

The Amendment Code stipulates that all financial services provider (FSP)s must adopt, maintain and implement a conflict of interest management policy that complies with the provision of the Financial Advisory and Intermediary Service (FAIS) Act. [15]

The conflict of management policy must provide for the management of conflicts of interest and for the following:

- Mechanisms for the identification of conflicts of interest.
- Measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest.
- Measures for the disclosure of conflicts of interest.
- Processes, procedures and internal controls to facilitate compliance with the conflict of interest management policy.
- Consequences of non-compliance with the policy by the FSP's employees and representatives.[16]

The conflict of management policy must also include the following:

- The policy must specify the type of and basis on which representative will qualify for a financial interest and motivate how that financial interest complies with the provisions of the General Code of Conduct.
- A list of all the FSP's associates.
- The names of any third parties in which the FSP holds an ownership interest.
- The names of any third parties that holds an ownership interest in the financial services provider (FSP).
- The nature and extent of the ownership interest. [17]

#### (I) Other requirements regarding the conflict of interest management policy

The conflict of management policy must be in an easily comprehensible form and manner.

The conflict of management policy must be adopted by a sole proprietor financial services provider (FSP), the Board of Directors of an financial services provider (FSP) where the financial services provider (FSP) is a company or close corporation, and, where not an incorporated entity, the governing body of the financial services provider (FSP)

The financial services provider (FSP) must ensure that its employees, representatives and (where appropriate) its associates are aware of the contents of its conflict of interest management policy and provide for training and educational material in this regard.

The financial services provider (FSP) must publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.

A financial services provider (FSP) must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy. [18]

A financial services provider (FSP) or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with these stipulations through an associate or an arrangement involving an associate. [19]

**(II) Reporting obligations in terms of conflict of interest management policy**

A compliance officer must include a report on the financial services provider (FSP)'s conflict of interest management policy in compliance reports submitted to the Commissioner. The report must report at least on the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.[20]

## 3.9 Custody of financial products and funds

The General Code of Conduct stipulates the procedures to be followed by a financial services provider (FSP) when receiving funds, financial products or premiums from clients. These provisions are subject to any other legislation which may be more prescriptive regarding the custody of financial products and funds[21].

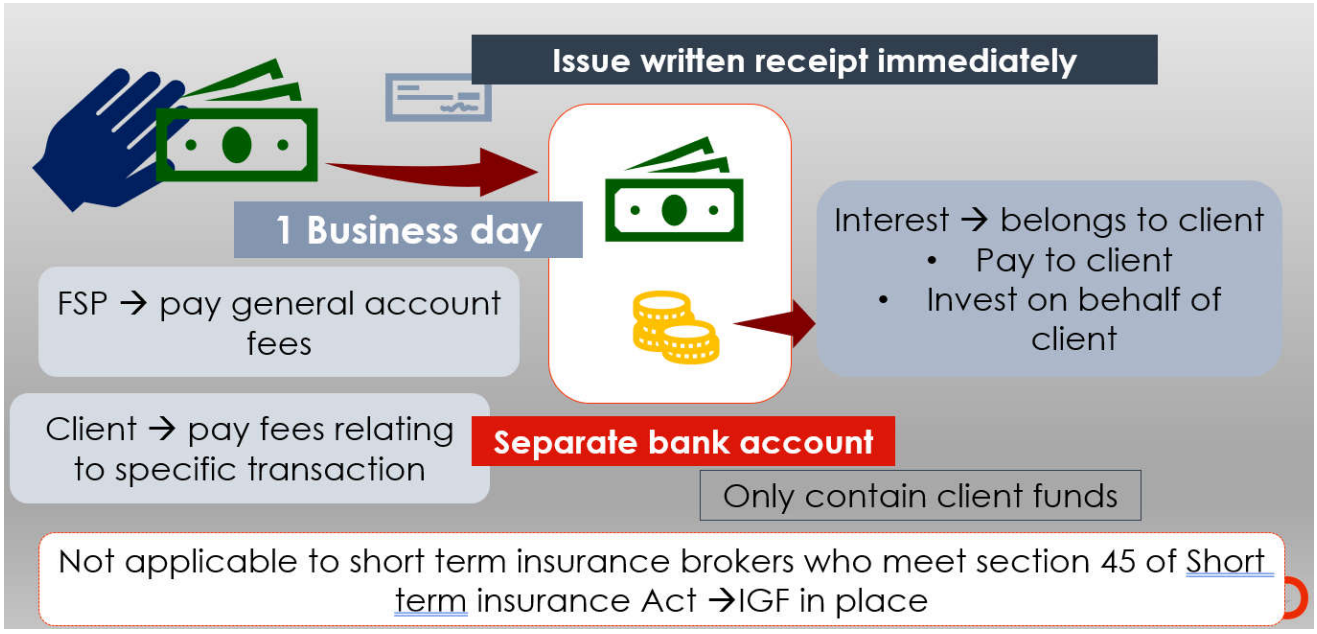
### 3.9.1 Custody of Funds

The General Code of Conducts provides for the following requirements, regarding client's funds received:

- A financial services provider (FSP) who receives funds into safe custody without the mediation of a bank, must issue a written receipt immediately.[22]
- The financial services provider (FSP) must open and maintain a separate bank account, designated for client funds and must deposit funds received on behalf of clients within one business day into such an account.[23]
- The bank account is exclusively for client's funds and may not contain funds of the financial services provider (FSP).[24]
- The financial services provider (FSP) is liable for bank charges except those charges directly relating to a client's deposit or withdrawal.[25]
- Interest accruing in the separate bank account is payable to the client or the owner of the funds.[26]

The provisions are not applicable to short-term insurers if the comply with the requirements stipulated in section 45 of the Short-term Insurance Act, 1998. [27]

*Figure 3-2: Custody of funds stipulations*




In addition, the, financial services provider (FSP), must also adhere to the following:

- The client must readily have access to such funds subject to the deduction of fees and charges allowed by law and subject to any applicable contractual or statutory provisions.[28]
- The financial services provider (FSP) must ensure that funds held by it or by a third party on its behalf are adequately safeguarded. [29]
- The financial services provider (FSP) must take steps to ensure that funds are dealt with strictly in accordance with the mandate. [30]
- The financial services provider (FSP) must take reasonable steps to ensure that client's funds are readily discernible from the FSP's funds. [31]

### 3.9.2 Documents of title

When documents of title are lodged with a financial services provider (FSP) on behalf of a client, written confirmation of receipt identifying the documents must be issued immediately.[32]

The financial services provider (FSP) must ensure that documents of title held by it or by a third party on its behalf are adequately safeguarded. [33] The documents of title must be readily discernible from the assets of the financial services provider (FSP).[34]

### 3.9.3 Original agreement

The financial services provider (FSP) must ensure that any transaction or agreement that has been recorded in writing is delivered to the client for safe custody.[35]

## 3.10 Statement of accounts

A financial services provider (FSP) must provide the client with a statement of account relating to any financial service rendered to the client on request[36] or at least annually. The statement must provide brief current details of the following:

- Any ongoing monetary obligations of the client in respect of such product.
- The main benefits provided by the product.
- Where any product was marketed as an investment or having an investment component, the value of the investment and the amount accessible to the client.
- Any ongoing incentives, remuneration, commission, fee or brokerage payable to the financial services provider (FSP) in respect of such products.

The financial services provider (FSP) does not need to submit a statement if the client is aware or should be reasonable aware that the financial services provider (FSP) concerned no longer render ongoing financial service in respect of the client or the product.[37]

## 3.11 Remuneration Disclosures

If the financial services provider (FSP) and the relevant product supplier is not the same entity, a representative must disclose the nature, extent and frequency of the following:

- All applicable remuneration or considerations.
- All applicable commissions, fees or brokerages.
- All bonuses or incentives received.

The identity of the product supplier or any other person that provides this must also be disclosed. Where the maximum amount is prescribed by law, the financial services provider (FSP) may choose to disclose the actual amount or the prescribed maximum amount.

Remuneration need not to be disclosed by the representative of an entity if the same legal entity is a product supplier and a financial services provider (FSP).

## 3.12 General Disclosures: Face to Face Representatives

Disclosures is an essential part of ethical conduct in the financial services sector as disclosures assist clients to make informed decision.

financial services providers (FSPs) and product suppliers make certain disclosures, as discussed in the subsections following. [38]

Disclosure may be made orally but must be confirmed in writing within 30 days of rendering of the financial services.

### 3.12.1 Information regarding Financial Services Provider

A financial services provider (FSP) (other than a direct marketer) must as soon as possible provide the client with the information regarding the financial services provider (FSP) outlined in the table following.

*Table 3.1: Information regarding financial services provider (FSP) to be disclosed*

| Contact details | Contractual agreements | Other disclosures |
|---|---|---|
| ▪ Full business and trade names<br>▪ Registration number if any<br>▪ Postal and physical address<br>▪ Telephone number and cell phone number if applicable<br>▪ Internet and e-mail addresses<br>▪ The names and contact details of appropriate contact person or offices<br>▪ Contact details of the compliance department | ▪ Arrangements with product suppliers<br>▪ Status of agreements with product suppliers<br>▪ Details of the legal and contractual status of the financial services provider (FSP) regarding the product supplier clarifying which entity accepts responsibility for the actions of the financial services provider (FSP) or representative and the extent to which the client will have to accept such responsibility | ▪ Financial services and products which the financial services provider (FSP) is authorised to provide in terms of its license<br>▪ Any condition, restriction or exemptions applicable to the license<br>▪ If the financial services provider (FSP) or representative holds or do not holds guarantees, professional indemnity or fidelity insurance |

### 3.12.2 Information regarding the product suppliers

A financial services provider (FSP) must as soon as possible provide the client with the information regarding the product supplier outlined in the table following.

*Table 3.2: Information regarding product supplier to be disclosed*

| Contact details | Contractual agreements | Other disclosures |
|---|---|---|
| ▪ Name of product supplier<br>▪ Place of product supplier<br>▪ Postal address<br>▪ Telephonic contact details<br>▪ Contact details of the complaints or compliance department | ▪ The existence of any conditions or restriction imposed by the product supplier regarding the types of financial products or services that may be provided by the financial services provider (FSP)<br>▪ The contractual relationship with the product supplier (if any)<br>▪ If there are contractual relationships with other product suppliers as well | ▪ If financial services provider (FSP) directly or indirectly holds more than 10% of the product supplier's shares, or has any equivalent substantial interest in the product supplier<br>▪ If financial services provider (FSP) received more than 30% of total remuneration, including commission, from the product supplier during the last 12 months |

The financial services provider (FSP) must convey any changes thereafter regarding such information at the earliest opportunity to the client.[39]

A product supplier which is an financial services provider (FSP) and which has entered into an intermediary contract with another financial services provider (FSP) (not a representative) for purpose of rendering a financial service, must provide the other financial services provider (FSP) with sufficient particulars to enable the financial services provider (FSP) to comply with the disclosure requirements of the General Code of Conduct relating to the furnishing of details of the product supplier and product in question.[40]

### 3.12.3 Information regarding the financial service/product

A financial services provider (FSP), must provide a client with the information regarding the financial service/product as outlined in the subsection following.

A financial services provider (FSP) must at the earliest reasonable opportunity after conclusion of a transaction provide the client with this information and in writing, to the extent that any such information has not already been provided to the client in writing.

**(I) General information**

A financial services provider (FSP) must disclose the following general information regarding the financial service/product:

- A reasonable and appropriate general explanation of the nature and material terms of the transaction and such other information that will enable the client to make an informed decision.
- Full and frank disclosure of any info that would reasonable be expected to enable the client to make an informed decision.
- Any material contractual information and illustrations, the possession of the financial services provider (FSP), when reasonable and appropriate i.e. any info provided by the product supplier.

**(II) Terms and conditions**

A financial services provider (FSP) must disclose the following regarding the terms and conditions of the financial service/product:

- Name, class or type of financial product
- The nature and extent of benefits to be provided
- The way benefits are derived or calculated
- The way which benefits will accrue or be paid
- Special terms or conditions
- Exclusions of liability
- Waiting periods
- Loadings and penalties
- Excesses
- Restriction or circumstances in which benefits will not be provided
- Any guaranteed minimum benefits or other guarantees.
- To what extent the product is readily realisable, or the funds concerned are accessible
- Any restrictions on or penalties for early termination of the product or other consequences of such termination or withdrawal (if any)
- Material tax considerations
- Whether cooling-off rights are offered and, if so, procedures for the exercise of such rights
- Any material investment or other risks associated with the product including any risk of loss of any capital amount invested due to market fluctuations

**(III) Monetary Concerns**

A financial services provider (FSP) must disclose the following regarding the monetary concerns of the financial service/product:

- The nature and extent of monetary obligations assumed by the client in favour of the product supplier including the manner of the payment or discharge thereof, the frequency thereof, the consequences of non-compliance and subject to the disclosures pertaining to insurance products, any anticipated or contractual escalations, increases or additions.
- The nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the financial services provider or representative including the following: (The information should, wherever feasible, be included in a written agreement between the client and the financial services provider.)
    - The amount, frequency and payment method thereof.
    - Details of the services that are to be provided by the financial services provider (FSP) or its representatives in exchange, therefore.
    - The client's rights in relation to termination those obligations and the consequences of terminating of failing to meet those obligations.
- The nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages (valuable consideration), which will or may become payable to the financial services provider (FSP) or representative, 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 a law, the financial services provider may elect to disclose either the actual amount applicable or such prescribed maximum amount or rate.
- In the case of an insurance product, the amount of the increased premium, if any, for the first five years and thereafter on a five-year basis but not exceeding 20 years

**(IV) Additional disclosures for investment products**

The following disclosures should be made in addition to the general disclosures where the financial product is an investment or have an investment component:

- The way the value of the investment is determined, including concise details of any underlying assets or other financial instruments.
- In a separate disclosure (not a mere disclosure of all-inclusive fees) disclose the following regarding charges and fees:
    - The amount and frequency thereof.
    - The identity of the recipient.

- The services or other purpose for which each fee or charge is levied.
- Where any charges 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.
- Where the specific structure of the product entails other underlying financial products, such details as will enable the client to determine the net investment amount ultimately invested for the benefit of the client.
- Any rebate arrangements must be disclosed and thereafter on a regular basis, (but not less frequently than annually).
- 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 (FSP) concerned, rather than disclosing the actual monetary amount.

The financial services provider (FSP) must also provide information on request regarding to the past investment performance of the product over periods and at intervals which are reasonable regarding the type of product involved, including a warning that past performances are not necessarily indicative of future performances.

**(V) Forecasts, illustrations, hypothetical data or projected benefits and past performance data**

The requirements relating to the use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in an advertisement apply with the necessary changes to a financial services provider when making use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in the rendering of a financial service.

A financial services provider (FSP) or representative may only make a statement regarding the past performance (including awards and rankings) of a financial product or financial service if the following conditions are all met.

- The basis on which the performance is measure is clearly stated and the presentation of the performance is accurate, fair and reasonable.
- The statement is accompanied by a warning that past performance is not indicative of future performance.
- The past performance is relevant to the financial service being rendered.

A financial services provider (FSP) that uses forecasts, illustrations, hypothetical data or projections when rendering financial services must adhere to the following:

- Furnish the client with support for such forecasts, illustrations, data or projections in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances.
- Make it clear that the forecasts, illustrations, hypothetical data or projects are not guaranteed and are provided for illustrative purposes only.
- Disclose where the return or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence.
- Warn the client about risks involved in buying or selling a financial product based on a forecast, illustration, hypothetical data or projection.

## 3.13 Transactional disclosures

The representative must inform the client of the following regarding the completion or submission of any transaction requirement by a client:

- A statement 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.
- A statement that if the financial services provider (FSP) 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.
- A statement of the possible consequences of the misrepresentation or non-disclosure of material facts or the inclusion of incorrect information.
- The client's right to be supplied, on request, with a copy or written or printed record of any transaction requirement within a reasonable time.[41]

## 3.14 Disclosures for Direct Marketers

A direct marketer must furnish a client with the following particulars when rendering a financial service to a client:

- The business or trade name of the marketer.
- The telephone number of the direct marketer (unless the contact was initiated by the client).
- The telephone number of the compliance department.
- Whether the direct marketer is a licensed financial services provider (FSP) and for which products.
- If any restrictions are applicable to the license under which the financial services provider (FSP) provides the service.

- Whether the direct marketer holds professional indemnity and/or fidelity insurance.

If the direct marketer is a representative, the above information must be provided regarding the financial services provider (FSP) to which the representative is authorised by.[42]

A direct marketer advising a client must as soon as possible enquire to establish whether the financial product will be appropriate in the light of the client's risk profile, financial needs and circumstances and furnish the client with the following:

- Business name or trade name of the product supplier.
- Legal status and relationship with product supplier.
- Name, class or type of financial product.
- Nature and extent of benefits of a financial product and the way benefits are calculated or derived, with reference to underlying assets of any investment component and how the value thereof is determined.
- Monetary obligations of the client and manner of payment.
- Whether cooling off rights are offered and if so, procedures for the exercise of such rights.
- Any material investment and other risks associated with the product.

The direct marketer must also take reasonable steps to establish whether a financial product is wholly or partially a replacement for an existing financial product of the client, and if it is such a replacement, inform the client of actual and potential financial implications, costs and consequences before any transaction is concluded.[43]

A direct marketer must provide a client with the following information prior to or with conclusion of a contract. Where the information was provided orally, it must be confirmed in writing within 30 days thereafter:

- Telephone number of compliance department of product supplier.
- To what extent the product is readily realisable or the funds accessible.
- Way benefits will be paid.
- Restrictions on or penalties for early termination or withdrawal from the product, or other effects of such termination or withdrawal.
- Charges and fees to be levied against the product including the amount and frequency thereof.
- The net amount to be invested if the product has an investment component.
- Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, the product supplier or any other person.
- On request, past performance of the product over periods and at intervals that are reasonable regarding the product concerned.

- Consequences of non-compliance with monetary obligations assumed by the client.
- Anticipated or contractual escalations, increases and additions.
- In the case of an insurance product in respect of which provision is made for premium increases, abbreviated disclosures of contractual increases.
- Concise details of special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances under which benefits will not be provided.
- Guaranteed minimum benefits or other guarantees.
- That recordings of telephone discussions will be made available to the client on request.[44]

A direct marketer must record all telephone conversations with clients during direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings.

Notwithstanding the above a direct marketer must at the earliest reasonable opportunity after conclusion of a transaction provide, in writing, the client with all disclosures as required in the General Code of Conduct to the extent that any such information has not already been provided to the client in writing.

A financial services provider (FSP) or representative must on request of the client, make recording of telephone discussion available to the client.

A direct marketer must provide a client with a written record of advice where appropriate. [45]

## 3.15 Disclosure requirements for replacement products

Where the financial product (the replacement product) is to replace another financial product (the terminated product), the financial services provider (FSP) or representative must fully disclose to the client the actual and potential consequences of such a replacement including where applicable the following:

- Fees and charges in respect of the replacement product.
- Special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product.
- In the case of an insurance product, the impact of age and health changes on the premium payable.
- Differences between tax implications of the replacement product.
- Material differences between the investment risk of the replacement product and the terminated product.
- Penalties or unrecovered expenses deductible or payable due to termination of the terminated product.

- To what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product.
- Vested rights, minimum guaranteed benefits or other guarantees or benefits that will be lost because of the replacement.
- Any incentive, remuneration, consideration, commission, fee or brokerage received, directly or indirectly, by the financial services provider (FSP) on the terminated product or payable, directly or indirectly, to the financial services provider (FSP) on the replacement product where the financial services provider (FSP) rendered financial services on both the terminated and replacement product.[46]
- The reasons why the replacement product considered is a more suitable to the client's needs than retaining or modifying the existing product.[47]

## 3.16 Confidentiality of client information

A financial services provider (FSP) may not disclose a client's confidential information unless-

- The client has given written permission.
- Disclosure is required in public interest.
- Disclosure is required in terms of the law.[48]

## 3.17 Contract and instructions

Financial services must be rendered in terms of the contract and instructions must be executed as soon as is reasonably possible.

When providing the financial service, clients' interests must enjoy priority over the FSP's interests.[49]

Transactions of a client must be accurately accounted for. [50]

The financial services provider (FSP) or representative may not deal in any financial product for his own benefit based on advance knowledge of pending transactions on behalf or with clients or on any non-public price-sensitive information.[51]

## 3.18 Prohibition on signing of blank forms

No financial services provider (FSP) may during the rendering of a financial service request any client to sign any written or printed form or document unless all details required to be inserted thereon by the client or on behalf of the client have already been inserted.[52]

## 3.19 Risk management

The Code of Conduct stipulates that an financial services provider (FSP) must always have the necessary resources, procedures and technological systems (that can be reasonable expected) to eliminate as far as possible the risk of financial loss to clients, product suppliers and other financial services providers (FSPs) or representatives through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.[53]

This implies that the financial services provider (FSP) must have proper risk management procedures in place as well as the necessary insurance to protect clients.

### 3.19.1 Risk management procedures

The financial services provider (FSP) must develop a risk management policy. The objective of the risk management policy is to ensure that a financial services provider (FSP), other than a representative, structures the internal control procedures as to provide reasonable assurance that-

- The business can be carried on in an orderly and efficient manner.
- The financial and other information is reliable.
- Relevant laws are complied with.[54]

### 3.19.2 Insurance

A financial services provider (FSP) must maintain suitable guarantees or professional indemnity or fidelity guarantee insurance if and to the extent required by the Commissioner.[55]

Fidelity insurance pay for losses suffered by a client caused by employee or representative's acts such as embezzlement, fraud etc. Personal indemnity is taken out to protect the financial services provider (FSP) from any losses or damages suffered by a client as result of a professional act of the financial services provider (FSP), representatives or its employees, for example where a representative did not make appropriate disclosures. Guarantees provide for a 3rd party to accept responsibility for an obligation if the financial services provider (FSP) cannot meet the responsibility.

The table following summarises the level of cover applicable to all categories of financial services providers (FSPs).

*Table 3.3: Guarantees and insurance cover applicable to all categories of financial services providers (FSPs)*

| | Minimum suitable guarantees | Prescribed type of cover and minimum amount |
|---|---|---|
| Category I and IV FSP that does not receive or hold client's assets | R1 million or → | Professional indemnity cover for a minimum of R1 million |
| Category I and IV FSP that does receive or hold client's assets | R1 million or → | Professional indemnity and fidelity cover for a minimum of R1 million respectively |
| Category II FSP that does not receive or hold client's assets | R1 million or → | Professional indemnity cover for a minimum of R1 million |
| Category II FSP that receives funds or securities on behalf of clients | R5 million or → | Professional indemnity and fidelity cover for a minimum of R5 million respectively |
| Category IIA FSP that does not receive or hold client's assets | R5 million or → | Professional indemnity cover for a minimum of R5 million |
| Category IIA FSP that receives funds or securities on behalf of clients | R5 million or → | Professional indemnity and fidelity cover for a minimum of R5 million respectively |
| Category III that receives funds or securities on behalf of clients | R5 million or → | Professional indemnity and fidelity cover for a minimum of R5 million respectively |

*(Board Notice 123 of 2009. Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009)*

## 3.20 Termination of agreement or business

Subject to the contractual obligations, a financial services provider (FSP) must give immediate effect to a request of a client to voluntarily terminate an agreement relating to a financial product or advice.

Where the client makes the request to terminate on the advice of the financial services provider (FSP), the FSP must take reasonable steps to ensure that the client understands all the implications of the termination.[56]

If an financial services provider (FSP) (other than a representative) ceases to operate, it must immediately notify all affected clients and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers, reasonable steps to ensure that outstanding business is completed promptly or transferred to another FSP.[57]

If a representative ceases to operate as a representative of an financial services provider (FSP), the FSP must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers, reasonable steps to ensure that outstanding business is completed or transferred to another the financial services provider (FSP) or another representative of the FSP. [58]

## 3.21 Advertising

### 3.21.1 Application

For purposes of this duty, client includes the general public.

The principles, requirements and standards contained in this section apply regardless of the medium used to publish an advertisement.

This section applies to any advertisement published on or after the date on which this duty takes effect, regardless of whether the advertisement was also previously published prior to this duty taking effect.

### 3.21.2 General principles

A financial services provider, other than a financial services provider that is a natural person and a representative must have documented processes and procedures for the approval of advertisements by a key person (as defined in the Financial Sector Regulation Act, 2017, Act no. 9 of 2017) or a person of appropriate seniority to whom the key person has delegated the approval.

**Definition of key person**

In terms of the Financial Sector Regulation Act a key person is defined as follows:

- In relation to a financial institution, means each of the following:
- A member of the governing body of the financial institution.
- The chief executive officer or other person in charge of the financial institution.
- A person other than a member of the governing body of the financial institution who makes or participates in making decisions that affect the whole or a substantial part of the business of the financial institution or have the capacity to affect significantly the financial standing of the financial institution.
- A person other than a member of the governing body of the financial institution who oversees the enforcement of policies and the implementation of strategies approved or adopted by the governing body of the financial institution.
- The head of a control function of the financial institution.
- The head of a function of the financial institution that a financial sector law requires to be performed.

A financial services provider (FSP) must, prior to publishing an advertisement, take reasonable measures to ensure that the information provided in the advertisement is consistent with this section.

Where feasible, measures must provide for an objective review of an advertisement other than by the person that prepared or designed them.

Where an advertisement is produced or published by another person, the financial services provider (FSP) must –

- Where the person producing or publishing the advertisement is the financial services provider (FSP)'s representative or is otherwise acting on behalf of the financial services provider (FSP) in relation to the advertisement, ensure that the advertisement is consistent with this section and have appropriate processes in place to ensure such consistency.
- Where the person producing or publishing the advertisement is not acting on behalf of the financial services provider (FSP) in relation to the advertisement, but the financial services provider (FSP) is aware or ought reasonably to be aware of the production or publication, take reasonable steps to mitigate the risk of the advertisement not being consistent with this section.

Where an financial services provider (FSP) becomes aware that an advertisement that relates to its business, financial services or related services, whether published by the financial services provider (FSP) or any other person, is not consistent with this section, the financial services provider (FSP) must as soon as reasonably practicable correct or withdraw the advertisement or take reasonable steps to ensure that it is corrected or withdrawn; and notify any persons who it knows to have relied on the advertisement.

### 3.21.3 Factually correct, balanced and not misleading

Advertisements must –

- Be factually correct, excluding aspects of an advertisement constituting puffery.
- Provide a balanced presentation of key information.
- Not be misleading.

The subsections follow provide more clarification on what is meant by this stipulation under his point.

**(I) Factually correct**

If statistics, performance data, achievements or awards are referenced in an advertisement the source and the date thereof must be disclosed and the identity of the grantor of an award ad must make it clear if the award is granted by an associate of the financial services provider or the product supplier.

An advertisement that refers to premiums or other periodic investment amounts must -

- In the case where the premium will escalate automatically, indicate the escalation rate or basis.
- Where the premium may change at a future date (with or without automatic escalations) may change at a future date, indicate the period for which the premium is guaranteed.

**(II) Balanced**

Descriptions in an advertisement must not give benefits or return undue prominence compared with risks.

Descriptions in an advertisement must not exaggerate benefits or create expectations regarding policy performance or the performance of related services that the financial services provider (FSP) does not reasonably expect to achieve.

Descriptions in an advertisement, in respect of a specific financial product, financial service or related service, must include key limitations, exclusions, risks and charges, which must be clearly explained and must not be worded positively to imply a benefit.

References to a fee or cost must give a realistic impression of the overall level of fees or costs a person is likely to pay, including any direct fees or costs.

However, where n financial services provider (FSP) can demonstrate that, due to the nature of the medium used for the advertisement, it is not reasonably practicable for this information to be fully included in the advertisement itself, the advertisement must indicate –

- That additional information on key limitations, exclusions, risks and charges related to the financial product, financial service or related service being advertised is available.
- Where and how the additional information may be accessed.

This information must be publicly available and readily accessible to the average client targeted by the advertisement.

**(III) Not misleading**

An advertisement, when examined as a whole, must not be constructed in such a way as to lead the average targeted client to any false conclusions he or she might reasonably rely upon.

A financial services provider (FSP) must when constructing an advertisement consider the conclusions likely to be made by clients that are subject to the advertisement, and in doing so have regard to the following:

- The literal meaning of the words.
- Impressions from nonverbal portions of the advertisement.
- Materials and descriptions omitted from the advertisement.

An advertisement relating to a financial product that is targeted at a particular type or group of clients must make this clear.

An advertisement must not obscure information.

Each piece of information in an advertisement must be prominent enough and proximate enough to other information so as not to mislead the average targeted client.

An advertisement must not be designed to exaggerate the need for urgency which could encourage the average targeted client to make unduly hasty decisions.

Warning disclaimers and qualifications contained in an advertisement must not be inconsistent with other content in the advertisement and have sufficient prominence to effectively convey key information.

An advertisement relating to a financial service must adhere to all of the following:

Disclose any relevant limitations on the extent of the financial service and the range of financial products on which the financial service is based.

Not create a misleading impression about the nature and extent of a financial services provider's skills, experience, knowledge and expertise insofar it relates to the financial service

Not create a misleading impression about the cost of a financial service; including that is free if the service is in fac paid for by the client directly or indirectly through other costs or chares.

#### 3.21.4 Public interest

An advertisement must not disparage or make inaccurate, unfair or unsubstantiated criticisms about any financial product, financial service, product supplier or financial services provider.

#### 3.21.5 Identification of product supplier or financial services provider (FSP)

An advertisement relating to a financial product or financial service must clearly and prominently must identify the product supplier or financial services provider (FSP) or both.

An advertisement must not use the group or parent company name or the name of any other associate of a product supplier or a financial services provider (FSP) or a name of another person to create the impression that any other person other than the product supplier financial services provider (FSP) is financially liable in relation to a financial product or financial service.

A must not use the group or parent company name or the name of any other associate of a product supplier or a financial services provider (FSP) or a name of another person to or deceive as to the true identity of the product supplier or the financial services provider (FSP).

An advertisement relating to a financial product that is subject to a white labelling arrangement must clearly and prominently identify the product supplier.

**Definition of white labelling**

White labelling refers to the marketing of or offering of, a specific financial product of a product supplier wholly or partially under the brand of another person who is not the product supplier, in terms of an arrangement between the product supplier and that other person.

### 3.21.6 Appropriate language and medium

An advertisement must use plain language.

Plain language is communication that, considering the factually established or reasonably assumed level of knowledge of the person or average persons at whom the communication is target –

- Is clear and easy to understand.
- Avoids uncertainty or confusion.
- Is adequate and appropriate in the circumstances.

Terms must be defined or explained if the average targeted client could not reasonably be expected to understand them.

A financial services provider (FSP) must consider the appropriateness of the medium to be used to publish any advertisement in relation to the complexity of the features of the financial product or financial service or other information being communicated.

### 3.21.7 Record keeping of advertisements

A financial services provider (FSP) must keep adequate records of all advertisements. All records must be kept for a period of at least 5 years after publication.

### 3.21.8 Negative option marketing

An financial services provider (FSP) or any person acting on its behalf may not offer to enter into an agreement in respect of a financial product or financial service on the basis that the agreement will automatically come into existence unless the client explicitly declines the financial services provider (FSP)'s offer to enter into the agreement.

### 3.21.9 Unwanted direct advertising

Where a financial services provider (FSP) or any person acting on its behalf uses a telephone or mobile phone call, voice or text message or other electronic communication for an advertisement, it must allow the client during that call or within a reasonable time after receiving the message, the opportunity to demand that the financial services provider (FSP) or other person does not publish any further advertisements to the client through any of these mediums.

A financial services provider (FSP) or any person acting on its behalf may not charge a client a fee or allow a service provider to charge a client any fee for making such a demand.

### 3.21.10 Comparative marketing

Where a survey or other financial product or financial service comparison informs a comparative advertisement, the survey or other product or service comparison –

- Must be undertaken by an independent person or, if it is not reasonably practicable that it is undertaken by an independent person, the advertisement must be so qualified.
- Must be conducted at regular intervals if relied on or referenced on an on- going basis.
- Must ensure that financial products, financial services or related services being compared have the same or similar characteristics.
- Must take account of comparable features across the financial product, financial service or related service offerings included in the sample to ensure that not only the price (e.g. the Rand value of premiums) is being compared, but also the benefits provided under the policies, products or related services concerned.
- In particular, in the case of comparisons between financial products that are insurance policies must ensure that price comparisons are based on policies with equivalent terms and conditions, including insured events, cover levels, exclusions, waiting periods, excesses and other key features.
- May not focus on the price of a financial product, financial service or related service to the exclusion of the suitability of the financial product, financial service or related service or its delivery on customer expectations.

The survey or other comparison source and date thereof must be referenced in the advertisement and the methodology applied must be publicly available and readily accessible to the public in an easily understandable format.

### 3.21.11 Puffery

Advertisements that include puffery must be consistent with the provisions relating to puffery in the Code of Advertising Practice issued by the Advertising Standards Authority of South Africa as amended from time to time.

**Provisions related to puffer in the Code of Advertising Practice**

Value judgments, matters of opinion or subjective assessments are permissible provided that it is clear what is being expressed is an opinion and there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.

The guiding principle is that puffery is true when an expression of opinion, but false when viewed as an expression of fact.

### 3.21.12 Endorsements

Testimonials and third-party endorsements used in an advertisement –

- Must be the genuine opinion and actual experience of the person making the testimonial or endorsement and be properly attributed to such person.
- Must be based upon actual statements made for testimonial or endorsement purposes.
- May use a pseudonym instead of the real name of the person making the testimonial or endorsement, provided this is stated in the advertisement concerned.

If the person making the testimonial or endorsement, or their employer or principal or any associate, has any financial interest or relationship to the financial services provider (FSP) / product supplier or any associate of the financial services provider (FSP) / product supplier or person acting on behalf of the financial services provider (FSP) / product supplier, or will or has been compensated for the endorsement by any person (other than through reimbursement of actual costs incurred by the person making the endorsement), this must be disclosed in the advertisement.

Any endorsement in an advertisement must clearly and prominently state that the endorsement does not constitute financial advice.

### 3.21.13 Loyalty benefits or bonuses

An advertisement that reference a loyalty benefit (including so-called cash- or premium-back bonuses in relation to insurance policies) or a no-claim bonus, must not create the impression that such benefit or bonus is free and must adequately -

- Indicate if the loyalty benefit or no-claim bonus is optional or not.
- Regardless of whether or not the loyalty benefit or no-claim bonus is optional, express the cost of the benefit or bonus including where applicable the impact that such cost has on the premium, or investment amount unless the impact is negligible and identify the grantor of the benefit or bonus.

The impact is deemed to be negligible if the cost of the loyalty benefit, no-claim bonus or rebate in premium comprises less than 10% of the total premium or investment amount payable under a financial product.

Where the impact of a loyalty benefit, no-claim bonus is not negligible and where the advertisement refers to the actual premium payable or investment amount payable-

- The cost of the benefit or bonus must be shown as a percentage of that premium or investment amount.
- The financial services provider (FSP) must be able to demonstrate that the premium or investment amount and benefit cost used in the advertisement presents a true reflection of the cost impact for the average targeted client.
- Where the impact of a loyalty benefit or no claim bonus is not negligible and where the advertisement does not refer to the actual premium or investment amount payable, the average cost of the benefit, or bonus as a percentage of premium must be provided.

Where an advertisement highlights a loyalty benefit or a no-claims bonus as a significant feature of a financial product or financial service and makes reference to a projected loyalty benefit value or no-claim bonus value that is payable on the expiry of a period in the future, it must also express the value of the projected benefit or bonus present value terms, using reasonable assumptions about inflation.

An advertisement must clearly state whether the availability or extent of a loyalty benefit or no-claims bonus is contingent on future actions of the client or any factors not within the client's control.

An advertisement may not create the impression that the bonus or benefit is guaranteed or more likely to materialise than the financial services provider (FSP) or product supplier reasonably expects for the average targeted client.

### 3.21.14 Prominence

In determining prominence, whenever information must be disclosed prominently as required by these sections, consideration must, as appropriate, be given to –

- The target audience of the advertisement.
- The likely information needs of the average targeted client.
- Prominence in the context of the advertisement as a whole.
- Positioning of the text and audibility and speed of speech.
- The duration of displays of key information.
- Background; color and font size.

A statement or information in an advertisement is not regarded as being prominent if, amongst other things, the statement or information is –

- Obscured through the close proximity of promotional illustrations and/or additional text.
- Difficult to read due to the use of small font sizes, unclear type styles or the duration for which it is displayed.
- Likely to be overlooked due to its position.
- Superimposed across a colored or patterned background which lessens its visual impact.
- Difficult to hear or understand due to the volume or speed at which speech is delivered.

In an advertisement relating to a financial product that is subject to a white labelling arrangement, the name of the product supplier must be as frequently mentioned, as audible or as visible as that of the white label and, in respect of written media, must be at least the same font size as that of the white label. This does not apply to an advertisement relating to a policy that is subject to a white labelling arrangement where -

- The white label arrangement is with a product supplier that is part of the same group of companies that the financial services provider (FSP) is part of.
- The advertisement uses the brand of the other product supplier.
- All requirements complied with in relation to the identification of the product supplier.

### 3.21.15 Principles relating to forecasts, illustrations, hypothetical data or projected benefits and past performance data

No projected benefits (including but not limited to future investment values and, in the case of insurance policies, maturity, income, death, disability or full or partial surrender benefits) may be included in advertisements, if the benefits depend on future unknown investment performance, unless used to demonstrate the benefits of savings generally.

Any reference to project benefits, investment performance or returns must clearly reflect the effect that fees and costs may have on actual returns or benefits.

When past investment performance provided for or referred to in an information, all of the following conditions must be met:

- All information must be accurate and must be provided in the correct context, and the financial services provider (FSP) must be able to substantiate all claims made.
- A statement must be included that past performance cannot be extrapolated into the future and is not an indication of future performance.

If tax advantages are referenced in an advertisement such advantages must be explained, and any key restrictions, penalties and mitigating circumstances must be disclosed.

Any reference to guaranteed elements or features must indicate whether the guarantee is subject to any requirements and conditions and where disclosure of those requirements and conditions can be found.

Where a financial product comprises participatory interest in an underlying collective investment scheme referred to in the Collective Investment Schemes Control Act no 45 of 2002, or where a financial product provides for an investment of client's funds into collective investment scheme portfolios, any advertisement must, in addition to the applicable required of this section comply with any determination of advertising and marketing requirements for Collective Investment Schemes made under the Collective Investment Schemes Control Act no 45 of 2002.

## 3.22 Complaints handling by financial services provider (FSP)

### 3.22.1 Definitions

**Client query** is a request to financial services provider (FSP) or the financial services provider's (FSP) service provider by or on behalf of a client, for information regarding the financial services provider's (FSP) financial services or related processes, or to carry out a transaction or action in relation to any such policy or service.

**Complainant** means a person who submits a complaint and includes a –

- Client.
- Person nominated as the person in respect of to whom a product supplier should meet financial product benefits or that persons' successor in title.
- Person whose life is insured under a financial product that is an insurance policy.
- Person that pays a premium or an investment amount in respect of a financial product.
- Member.
- Person whose dissatisfaction relates to the approach, solicitation marketing or advertising material or an advertisement in respect of a financial product, financial service or related service of the financial services provider (FSP).
- Anyone who has a direct interest in the agreement, financial product or service to which the complaint relates.
- A person acting on behalf of a person in the aforementioned bullet points.

**Complaint** is an expression of dissatisfaction by a person to an financial services provider (FSP) or, to the knowledge of the financial services provider (FSP), to the financial services provider (FSP)'s service supplier relating to a financial product or service provided or offered by that financial services provider (FSP) which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a client query, that -

- The financial services provider (FSP) or its service supplier has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the financial services provider (FSP) or to which it subscribes.
- The financial services provider (FSP) or its service provider's maladministration or willful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience.
- The financial services provider (FSP) or its service provider has treated the person unfairly.

**Compensation payment** is a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of an financial services provider (FSP) to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the financial services provider's (FSP) contravention, non-compliance, action, failure to act, or unfair treatment forming the basis of the complaint, where the financial services provider (FSP) accepts liability for having caused the loss concerned, but excludes any -

- Goodwill payment.
- Payment contractually due to the complainant in terms of a financial product.
- Refund of an amount paid by or on behalf of the complainant to the financial services provider (FSP) where such payment was not contractually due.

However, compensation does include any interest on late payment of a payment contractually due or a refund as stipulated above.

**Goodwill payment** is a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of an financial services provider (FSP) to a complainant as an expression of goodwill aimed at resolving a complaint, where the financial services provider (FSP) does not accept liability for any financial loss to the complainant as a result of the matter complained about.

**Member** in relation to a complainant means a member of one of the following:

- Pension fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act 52 of 1956)
- Friendly society as defined in section 1(1) of the Friendly Societies Act, 1956 (Act 25 of 1956)
- Medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998
- Group scheme as contemplated in the Policyholder Protection Rules made under section 62 of the Long -term Insurance Act, 1998, and section 55 of the Short-term Insurance Act, 1998

**Rejected** in relation to a complaint means that a complaint has not been upheld and the financial services provider (FSP) regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint and includes complaints regarded by the financial services provider (FSP) as unjustified or invalid, or where the complainant does not accept or respond to the financial services provider (FSP)'s proposals to resolve the complaint.

**Reportable complaint** means any complaint other than a complaint that has been –

- Upheld immediately by the person who initially received the complaint.
- Upheld within the financial services provider (FSP)'s ordinary processes for handling client queries in relation to the type of financial product or financial service complained about, provided that such process does not take more than five business days from the date the complaint is received.
- Submitted to or brought to the attention of the financial services provider (FSP) in such a manner that the financial services provider (FSP) does not have a reasonable opportunity to record such details of the complaint as may be prescribed in relation to reportable complaints.

Upheld means that a complaint has been finalised wholly or partially in favour of the complainant and that –

- The complainant has explicitly accepted that the matter is fully resolved.
- It is reasonable for the financial services provider (FSP) to assume that the complainant has so accepted.
- All undertakings made by the financial services provider (FSP) to resolve the complaint have been met or the complainant has explicitly indicated its satisfaction with any arrangements to ensure such undertakings will be met by the financial services provider (FSP) within a time acceptable to the complainant.

### 3.22.2 Establishment of complaints management framework

A financial services provider (FSP) must establish, maintain and operate an adequate and effective complaints management framework to ensure the fair treatment of complainants that –

- Is proportionate to the nature, scale and complexity of the financial services provider (FSP)'s business and risks.
- Is appropriate for the business model, policies, services and clients of the financial services provider (FSP).
- Enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants.
- Does not impose unreasonable barriers to complainants.

- Must address and provide for, at least, the matters provided for in this part.

A financial services provider (FSP) must regularly review its complaints management framework and document any changes thereto.

### 3.22.3 Requirements for complaints management framework

The complaints management framework must at least, provide for –

- Relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the financial services provider (FSP).
- Appropriate performance standards and remuneration and reward strategies (internally and where any functions are outsourced) for complaints management to ensure objectivity and impartiality.
- Documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended.
- Documented procedures which clearly define the escalation, decision- making, monitoring and oversight and review processes within the complaint's management framework.
- Appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to executive management, the board of directors and any relevant committee of the board on –
    - Identified risks, trends and actions taken in response thereto. and
    - The effectiveness and outcomes of the complaint's management framework.
- Appropriate communication with complainants and their authorised representatives on the complaints and the complaints processes and procedures.
- Appropriate engagement between the financial services provider (FSP) and a relevant ombud.
- Meeting requirements for reporting to the Authority and public reporting in accordance with this part.
- A process for managing complaints relating to the financial services provider (FSP)'s service providers, insofar as such complaints relate to services provided in connection with the financial services provider (FSP)'s policies or related services, which process must -
    - Enable the financial services provider (FSP) to reasonably satisfy itself that the service provider has adequate complaints management processes in place to ensure fair treatment of complainants.
    - Provide for monitoring and analysis by the financial services provider (FSP) of aggregated complaints data in relation to complaints received by the service provider and their outcomes.

- Include effective referral processes between the financial services provider (FSP) and the service provider for handling and monitoring complaints that are submitted directly to either of them or require referral to the other for resolution.
- Include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint.

- Regular monitoring of the complaint's management framework generally.

### 3.22.4 Allocation of responsibilities

The board of directors of a financial services provider (FSP) or in the absence of a bord the governing body and key individuals of the financial services provider is responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the financial services provider (FSP)'s complaints management framework.

Any person that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must –

- Be adequately trained.
- Have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of customers, the subject matter of the complaints concerned and relevant legal and regulatory matters.
- Not be subject to a conflict of interest.
- Be adequately empowered to make impartial decisions or recommendations.

### 3.22.5 Categorisation of complaints

A financial services provider (FSP) must categorize reportable complaints in accordance with the following minimum categories:

- Complaints relating to the design of a financial product, financial service or related service, including the fees, premiums or other charges related to that financial product or financial service.
- Complaints relating to information provided to clients.
- Complaints relating to advice.
- Complaints relating to financial product or financial service performance.
- Complaints relating to service to clients, including complaints relating to premium or investment contribution collection or lapsing of a financial product.
- Complaints relating to financial product accessibility, changes or switches including complaints relating to redemptions of investments.
- Complaints relating to complaints handling.

- Complaints relating to insurance risk claims, including non-payment of claims.
- Other complaints.

An financial services provider (FSP) must, in addition to the categorisation, consider additional categories relevant to its chosen business model, financial products, financial services and client base that will support the effectiveness of its complaint management framework in managing conduct risks and effecting improved outcomes and processes for its clients.

A financial services provider (FSP) must categorize, record and report on reportable complaints by identifying the category to which a complaint most closely relates and group complaints accordingly.

### 3.22.6 Complaints escalation and review process

A financial services provider (FSP) must establish and maintain an appropriate internal complaints escalation and review process.

Procedures within the complaints escalation and review process should not be overly complicated or impose unduly burdensome paperwork or other administrative requirements on complainants.

The complaints escalation and review process should -

- Follow a balanced approach, bearing in mind the legitimate interests of all parties involved including the fair treatment of complainants.
- Provide for internal escalation of complex or unusual complaints at the instance of the initial complaint handler.
- Provide for complainants to escalate complaints not resolved to their satisfaction.
- Be allocated to an impartial, senior functionary within the financial services provider (FSP) or appointed by the financial services provider (FSP) for managing the escalation or review process of the financial services provider (FSP).

### 3.22.7 Decisions relating to complaints

Where a complaint is upheld, any commitment by the financial services provider (FSP) to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.

Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any applicable escalation or review processes, including how to use them and any relevant time limits.

### 3.22.8 Record keeping, monitoring and analysis of complaints

A financial services provider (FSP) must ensure accurate, efficient and secure recording of complaints-related information.

The following must be recorded in respect of each reportable complaint:

- All relevant details of the complainant and the subject matter of the complaint.
- Copies of all relevant evidence, correspondence and decisions.
- The complaint categorisation.
- Progress and status of the complaint, including whether such progress is within or outside any set timelines.

A financial services provider (FSP) must maintain the following data in relation to reportable complaints categorised on an ongoing basis-

- Number of complaints received.
- Number of complaints upheld.
- Number of rejected complaints and reasons for the rejection.
- Number of complaints escalated by complainants to the internal complaint's escalation process.
- Number of complaints referred to an ombud and their outcome.
- Number and amounts of compensation payments made.
- Number and amounts of goodwill payments made.
- Total number of complaints outstanding.

Complaints information recorded in accordance with this part must be scrutinized and analysed by a financial services provider (FSP) on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for its clients, and to prevent recurrences of poor outcomes and errors.

A financial services provider (FSP) must establish and maintain appropriate processes for reporting of the information referred to in the paragraph above to governing body or executive management.

### 3.22.9 Communication with complainants

A financial services provider (FSP) must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the financial services provider (FSP)'s clients and beneficiaries.

A financial services provider (FSP) may not impose any charge for a complainant to make use of complaint processes and procedures.

All communications with a complainant must be in plain language.

A financial services provider (FSP) must, wherever feasible, provide clients with a single point of contact for submitting complaints.

A financial services provider (FSP) must disclose to a complainant –

- The type of information required from a complainant.
- Where, how and to whom a complaint and related information must be submitted.
- Expected turnaround times in relation to complaints.
- Any other relevant responsibilities of a complainant.

A financial services provider (FSP) must within a reasonable time after receipt of a complaint acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including –

- Contact details of the person or department that will be handling the complaint.
- Indicative and, where applicable, prescribed timelines for addressing the complaint.
- Details of the internal complaint's escalation and review process if the complainant is not satisfied with the outcome of a complaint.
- Details of escalation of complaints to the office of a relevant ombud and any applicable timeline.
- Details of the duties of the financial services provider and rights of the complainant as set out in the rules applicable to the relevant ombud.

Complainants must be kept adequately informed of –

- The progress of their complaint.
- Causes of any delay in the finalisation of a complaint and revised timelines. and
- The financial services provider (FSP)'s decision in response to the complaint.

### 3.22.10 Engagement with ombud

A financial services provider (FSP) must –

- Have appropriate processes in place for engagement with any relevant ombud in relation to its complaints.
- Clearly and transparently communicate the availability and contact details of the relevant ombud services to complainants at all relevant stages of the insurance relationship, including at point of sale, in relevant periodic communications, and when a complaint is rejected, or a claim is repudiated.
- Display and/or make available information regarding the availability and contact details of the relevant ombud services at the premises and/or on the web site of the financial services provider (FSP).
- Maintain specific records and carry out specific analysis of complaints referred to them by the ombud and the outcomes of such complaints. and

- Monitor determinations, publications and guidance issued by any relevant ombud with a view to identifying failings or risks in their own policies, services or practices.
- Maintain open and honest communication and co-operation between itself and any ombud with whom it deals.
- Endeavour to resolve a complaint before a final determination or ruling is made by an ombud, or through its internal escalation process, without impeding or unduly delaying a complainant's access to an ombud.

#### 3.22.11 Reporting complaints information

A financial services provider (FSP) must have appropriate processes in place to ensure compliance with any prescribed requirements for reporting complaints information to any relevant designated authority or to the public as may be required by the Authority.

## 3.23 Waiver of rights

No FSP may request a client to waive any right or benefit described to a client under the General Code of Conduct. Any such waiver is considered null and void.[59]

## 3.24 Prohibition on sign-on bonus

A Category I provider that gives advice is not allowed to receive a sign-on bonus from any person.

No person may offer or provide a sign-on bonus to any person, other than a new entrant, as an incentive to become a Category I provider that gives advice. A sign on bonus is any financial interest received as an incentive to become a provider.

[1] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 3(1)(a)
[2] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives as amended by Board Notice 43 of 2008. Section 6
[3] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 8(2)
[4]General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 8(3)
[5]General Code for Conduct for Authorised Financial Services Providers and Representatives. Section 4 (3)
[6]General Code for Conduct for Authorised Financial Services Providers and Representatives. Section 4 (4)
[7] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 9
[8]General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 15(5)
[9] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Paragraph 2
[10] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 1
[11] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives.
[12] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 1(a)
[13] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 1(c)
[14] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 1(b)
[15] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 2(a)
[16] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 2(b)(i)
[17] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 2(b)
[18] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 2(c); (d); (e); (f)
[19] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 3
[20] Board Notice 58 of 2010; Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives. Section 4
[21] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)
[22] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(b)
[23] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(d)
[24] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(d)(ii)
[25] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(d)(iii)
[26] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1) (d)(iv)
[27] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(3)
[28] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(e)(iii)
[29] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(c)
[30] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(e)(i)
[31] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(e)(ii)
[32] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(a)
[33] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(c)
[34] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 10(1)(e)(ii)
[35] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives Section 10(3)(g)
[36] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives as amended by Board Notice 43 of 2008. Section 7(3)
[37] Amendment to the General Code of Conduct. Board Notice 43 of 2008. Section 2(c)
[38] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 5
[39] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 4(1)

[40] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 4 (2)
[41] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives as amended by Board Notice 43 of 2008. Section 7(1)
[42] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 15(1)
[43] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives as amended by Board Notice 43 of 2008. Section 15(2)
[44] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 15(3)
[45]General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 15(4)
[46] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives as amended by Board Notice 43 of 2008. Section 8(1)
[47] Amendment to the General Code of Conduct. Board Notice 43 of 2008. Section 3(f)
[48] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 3(3)
[49] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 3(1)(d)
[50] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 3(1)(e)
[51] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 3(1)(f)
[52] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives as amended by Board Notice 43 of 2008. Section 7(2)

[53] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 11
[54]General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 12
[55] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 13
[56] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 20(a)
[57] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 20(b)
[58] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 20 (c)
[59] General Code for Conduct for Authorised Financial Services Providers and Reprensentatives. Section 21