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# Study Guide

**UNDERSTANDING THE NEW REGULATORY STRUCTURE OF FSCA: ONLINE CPD  
COURSE 2020 / 2021**



## Course summary

The course provides an in dept look at the mandate of the Financial Sector Conduct Authority as per the Financial Sector Regulation Act. The strategy as well as the new structure of the Financial Sector Conduct Authority is considered.

It is essential for all regulated officers to complete this course to understand the approach to regulation that will be followed in the future.

## Time allotted for course

The course consists 4 of topics with an assessment that needs to be completed. The time allotted for each aspect is as follows:

Topic number	Title	Word count	Level	Time allotted
Topic 1	The regulatory strategy document	2 194	Intermediate	20 minutes
Topic 2	Introduction to the FSCA	8 554	Intermediate	75 minutes
Topic 3	Strategic priorities	13 359	Intermediate	125 minutes
Topic 4	The FSCA Approach	5 615	Intermediate	50 minutes
	Assessment			0 minutes

<b>Total time</b>	<b>4.5 hours</b>
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## 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:** 20 questions
- **Duration:** 60 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 program

**COB Category:** All Classes of Business

**Financial planning component:** Ethics & Practice Standards

**Advice component:** Ethics, Standards & Compliance

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

**CPD Points allocated:** 4.5 hours | points on completion and pass of assessment

**FPI approval number:** FPI20080231

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## Ordering information

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## TOPIC 1 THE REGULATORY STRATEGY DOCUMENT

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### Learning outcomes

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

- Outline the mandate of the FSCA.
- Understand the approach of the FSCA.

### 1.1 Introduction

The Financial Sector Conduct Authority (FSCA) issued a regulatory strategy document in 2018. This regulatory strategy is a watershed document for the financial industry in that it charts the FSCA's regulatory journey over the next three years, starting October 2018 and ending September 2021. The strategy is a culmination of an incredible amount of work over the past seven years leading up to the establishment of the FSCA on 1 April 2018.

The strategic intent of the document is to outline the FSCA's approach in discharging its responsibilities over the short to medium term. Chief among these is the duty to protect financial customers and ensure that they are treated fairly. This material addresses the content of the strategy document assisting reader to understand the new mandate and structure of the FSCA.

The widened scope of the FSCA mandate means that it now has in its regulatory ambit oversight over retail banks and credit providers, among other new functions, a move which enables the FSCA to serve this industry and the country even better. FSCA will do this through a dedicated focus on the FSCA's objectives as stipulated in the Financial Sector Regulation Act 9 of 2017 summarised as follows:

- Enhance the efficiency and integrity of financial markets.
- Promote fair customer treatment by financial institutions.
- Provide financial education and promote financial literacy.
- Assist in maintaining financial stability.

The FSR Act requires the FSCA to be the driving force behind financial inclusion and the FSCA's Transitional Management Committee has been exploring the various ways in which FSCA can make this possible. FSCA will seek to ensure that the FSCA's regulatory and supervisory frameworks support and strengthen transformation in its initiatives in the sector and other initiatives aimed at broad based black economic empowerment.

Financial inclusion not only ensures that black South Africans get access to financial services and products, but that those products are developed and distributed in a manner that adheres to Treating Customers Fairly principles.

Through the new legislation, including the Conduct of Financial Institutions (COFI) Bill (legislation that will harmonise existing sectorial laws), FSCA are well positioned to execute on this mandate.

The regulatory strategy set out the following:

- The FSCA's regulatory and supervisory priorities for the next three years.
- The intended key outcomes of the strategy.
- Guiding principles and matters FSCA should have regard to when performing the FSCA's functions.
- The FSCA's approach to administrative actions.
- How FSCA will give effect to requirements of openness to consultation, accountability, consistency with relevant international standards, and generally perform the FSCA's functions under the FSR Act.

The Minister of Finance, the Prudential Authority and the National Credit Regulator have been afforded an opportunity to review the strategy.

## 1.2 Executive summary

A strong dedicated market conduct supervisor is essential to an effective Twin Peaks system of financial sector regulation. The architecture for the Twin Peaks system is set out in the Financial Sector Regulation (FSR) Act.

The FSR Act establishes the Financial Sector Conduct Authority (FSCA), a dedicated market conduct authority with a different jurisdiction, mandate and approach to those of the Financial Services Board (FSB), which it replaced on 1 April 2018.

This regulatory strategy aims the following:

- Introducing stakeholders to the FSCA.
- Share the FSCA's strategic priorities for the next three years.
- Confirm the FSCA's approach to regulation and supervision.

## 1.3 Introducing the FSCA

The FSCA's mandate is to enhance the efficiency and integrity of financial markets; promote fair customer treatment by financial institutions; provide financial education and promote financial literacy; and assist in maintaining financial stability.

The FSR Act extends the jurisdiction of the FSCA to include oversight of financial products and services not overseen by the FSB – among others, banking, services related to credit and the buying and selling of foreign exchange. It also dictates a shift in approach from the FSB's traditional compliance driven model to being proactive, pre-emptive, risk-based and outcomes focused. Crucially, the FSR Act includes financial inclusion and transformation of the financial sector in its objects.

The scale of change is significant, impacting on how the FSCA is structured, resourced and skilled and how regulatory and supervisory frameworks are designed, to empower the organisation to deliver on its mandate and so build confidence in the financial services sector. This needs to be achieved whilst maintaining supervision over current institutions in terms of existing laws as well as identifying emerging risks, new technologies and enabling a transformed and inclusive sector that caters to and includes all South Africans.

## **1.4 The Financial Sector Regulation Act**

The subsections following considers key extracts from the Financial Sector Regulation Act.

### **1.4.1 Section 7: Object of the Act**

The object of this Act is to achieve a stable financial system that works in the interests of financial customers and that supports balanced and sustainable economic growth in the South Africa, by establishing, in conjunction with the specific financial sector laws, a regulatory and supervisory framework that promotes:

- Financial stability.
- The safety and soundness of financial institutions.
- The fair treatment and protection of financial customers.
- The efficiency and integrity of the financial system.;
- The prevention of financial crime.
- Financial inclusion.
- Transformation of the financial sector.
- Confidence in the financial system.

### **1.4.2 Section 57: Objective of the FSCA**

The objective of the Financial Sector Conduct Authority is to:

- Enhance and support the efficiency and integrity of financial markets.

- Protect financial customers by-
  - Promoting fair treatment of financial customers by financial institutions.
  - Providing financial customers and potential financial customers with financial education programmes, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions.
- Assist in maintaining financial stability.

### **1.4.3 Section 58: Functions of FSCA**

In order to achieve its objective, the Financial Sector Conduct Authority must:

- Regulate and supervise, in accordance with financial sector laws, the conduct of financial institutions.
- Cooperate with, and assist, the Reserve Bank, the Financial Stability Oversight Committee, the Prudential Authority, the National Credit Regulator, and the Financial Intelligence Centre, as required in terms of this Act.
- Cooperate with the Council for Medical Schemes in the handling of matters of mutual interest.
- Promote, to the extent consistent with achieving the objective of the Financial Sector Conduct Authority, sustainable competition in the provision of financial products and financial services, including through cooperating and collaborating with the Competition Commission.
- Promote financial inclusion.
- Regularly review the perimeter and scope of financial sector regulation and take steps to mitigate risks identified to the achievement of its objectives or the effective performance of its functions.
- Administer the collection of levies and the distribution of amounts received in respect of levies.
- Conduct and publish research relevant to its objective.

- Monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers.
- Formulate and implement strategies and programs for financial education for the general public.

When performing its functions, the Financial Sector Conduct Authority must-

- Consider the National Credit Act and regulatory requirements for financial institutions that are authorised and regulated under that Act.
- Consider the need for a primarily preemptive, outcomes focused and risk-based approach, and prioritise the use of its resources in accordance with the significance of risks to the achievement of its objective.

To the extent practicable, have regard to international regulatory and supervisory standards set by bodies), and circumstances prevalent in South Africa.

The Financial Sector Conduct Authority must perform its functions without fear, favour or prejudice.

#### **1.4.4 Section 70: Regulatory strategy**

The Executive Committee must, within six months after the date on which this Chapter takes effect, adopt a regulatory strategy for the Financial Sector Conduct Authority to give general guidance in the achievement of its objective and the performance of its regulatory and supervisory functions.

The regulatory strategy must:

- State the regulatory and supervisory priorities for the Financial Sector Conduct Authority for the next three years.
- State the intended key outcomes of the strategy.

- Set guiding principles for the Financial Sector Conduct Authority on-
  - How it should perform its regulatory and supervisory functions.
  - The matters which it should have regard to in performing those functions.
  - Its approach to administrative actions.
  - How it should give effect to the requirements applicable to it with respect to transparency, openness to consultation accountability and be aimed at giving effect to the functions of the FSCA.

## **1.5 Strategic priorities**

Section 1 of the strategy document explains the FSCA's new scope and functions, the policy context in which FSCA operate and how the FSCA's stakeholders can expect the FSCA to engage with them as FSCA implement the new responsibilities.

The strategic priorities for the next three years for FSCA are as follows:

- Building a new organisation.
- An inclusive and transformed financial sector.
- A robust regulatory framework that promotes fair customer treatment.
- Informed financial customers.
- Strengthening the efficiency and integrity of the FSCA's financial markets.
- Understanding new ways of doing business and disruptive technologies.

For the first three years, FSCA will apply a level of internal focus while building a new organisation that is appropriately structured to break down the previous sector focused silos of the FSB structure and adequately resourced and skilled to achieve the expanded mandate.

The aim of the Twin Peaks framework is a stable and efficient financial services sector that treats its customers fairly. A sector that has the trust and confidence of the customer will be one that thrives and grows, but it is absolutely essential in the interests of South Africa that its growth reflects and caters for all South Africans. From this perspective, transformation and inclusion are prominent parts of the strategy for FSCA. The authority intends to focus particularly on what role the FSCA can and must play to drive the national policy imperative to achieve broad-based black economic empowerment for all South Africans.

The FSR Act paves the way for a shift in the legislative architecture for financial sector conduct from the current sectoral laws to a holistic, cross-cutting conduct framework that promotes fair customer treatment.

Although full implementation of the future overarching Conduct of Financial Institutions (COFI) Act and its activity-based licensing framework will still take some years, the FSCA is preparing for this shift by embedding the Treating Customers Fairly (TCF) approach in existing regulatory frameworks and in the supervisory and enforcement approach.

Financial institutions often raise as concerns the pace and amount of regulation and regulatory change. FSCA recognises the need for a strategic focus on a robust regulatory framework that supports a relatively seamless shift to the future COFI Act landscape while being proportionate to risks posed by different types of financial institutions and services.

As a market conduct regulator, the FSCA's primary responsibility is to the financial customer. FSCA are not a consumer watchdog but will achieve the FSCA's mandate by ensuring that financial institutions treat their customers fairly. In addition to promoting fair customer outcomes through the FSCA's regulatory and supervisory work, having informed and educated customers will significantly aid the FSCA in achieving its mandate. Customers themselves must be enabled to understand the value of quality financial services, and the power of savings and risk management. They must be given the knowledge and right to challenge institutions when they are not being treated fairly. An informed consumer is central to the mandate of the FSCA and, thus, is one of the FSCA's strategic focus areas.

The FSCA is also committed to strengthening oversight of financial market efficiency and integrity, necessitated by the evolving market infrastructure landscape. The experience of the FSB in, for example, processing new exchange license applications, reignited the debate about the suitability of the self-regulatory organisation model in South Africa, the structure of the financial markets regulatory landscape and the range and types of financial markets activities and platforms that should be accommodated through the Financial Markets Act.

The financial services sector is constantly evolving, and new technologies are fueling the rate of change, creating opportunities to improve efficiencies, reach more customers and drive inclusion. However, these opportunities – if not effectively managed and understood - come with the risk of disruption, instability, further exclusion and poor customer and market outcomes. Traditionally, regulators have been behind the curve in terms of technological and financial technology (FinTech) developments, and due to the escalating pace of change and the scale of the risk and opportunity that FinTech presents, FSCA recognises that this has to be a strategic focus area for the FSCA, in collaboration with other financial sector stakeholders.

## **1.6 The approach of FSCA**

The strategy document concludes by confirming the approach and guiding principles the FSCA will adopt in carrying out their regulatory, supervisory and enforcement functions. The FSR Act provides the FSCA with a comprehensive set of tools to deliver on the FSCA's mandate, balancing these powers with strict checks and balances to ensure that FSCA use them efficiently and responsibly.

## TOPIC 2 INTRODUCTION TO THE FSCA

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### Learning outcomes

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

- Name the FSCA's objective and scope.
- Outline matters outside of the FSCA scope.
- Understand how the FSCA is to deal with unregistered businesses and illegal activities.
- Describe the FSCA's new functions.
- Understand how the FSCA operate in the context of other regulators.
- Describe how stakeholders are to engage with the FSCA.

### 2.1 The FSCA's objective and scope

#### 2.1.1 The FSCA's objective

The FSCA was created by the Financial Sector Regulation Act, 9 of 2017 (the FSR Act), which sets the objective for the FSCA as follows:

- Enhance the efficiency and integrity of financial markets.
- Promote fair customer treatment by financial institutions.
- Provide financial education and promote financial literacy.
- Assist in maintaining financial stability.

The FSR Act groups the objectives regarding fair customer treatment and financial education and literacy together, as part of a broader objective of protecting financial customers. The FSCA's focus therefore will be both on protecting customers against unfair treatment by financial institutions, and equally importantly on empowering customers to protect themselves by strengthening their ability to make informed financial decisions.

The FSCA's objectives relating to efficiency and integrity of financial markets and relating to fair customer treatment are complementary. Regulation aimed at promoting fair customer treatment focuses on the conduct of business of financial institutions. It emphasizes the protection of financial customers against unfair outcomes caused by inappropriate behaviour of financial product and service providers.

Regulation for market integrity and efficiency, on the other hand, promotes fairness in the capital markets – participants have to act fairly, markets have to provide fair access to information about prices, and issuers and markets must provide fair access to financial products and services. It typically involves setting and enforcing rules governing transparency of market information to promote orderly and efficient trading and price formation, rules to avoid market abuse and requirements to oversee the effective and efficient operation of market infrastructures. The FSCA's oversight over financial markets and market infrastructures, therefore, comprises elements of both of these complementary types of regulation.

### **2.1.2 Who do FSCA regulate?**

The FSCA's scope is determined by the activities carried out by financial institutions.

Where an entity carries out an activity that requires it to be licensed as a financial institution under the FSR Act – namely providing a financial product or a financial service as a business or part of a business, or operating a market infrastructure - the FSCA has the authority to regulate and supervise that institution.

This authority means that the FSCA may use the full regulatory and supervisory toolkit provided by the FSR Act and existing financial sector laws to meet its statutory objective.

The terms 'financial product' and 'financial service' are broadly defined in the FSR Act. The effect is that the FSCA has jurisdiction over a wide range of traditional types of regulated entities, but the law is also flexible enough to extend the scope of regulation to financial sector activities that have not been clearly addressed in the regulatory framework in the past.

Traditional types of financial institutions overseen by the FSCA include life and non-life insurers, banks, collective investment schemes (CIS), retirement funds, investment managers, financial advisers and other financial intermediaries.

The FSCA’s jurisdiction applies not only to institutions that provide financial products, but also to institutions that provide a wide range of financial services. Many of these services, such as distribution and advice, are performed in relation to financial products and financial instruments. However certain services stand alone, such as credit rating services and the provision of benchmarks. The broad scope of these services means that the FSCA’s scope extends beyond the traditional regulatory focus areas.

The FSCA also oversees market infrastructures and their members such as exchanges, central counterparties, central securities depositories, clearing houses and trade repositories. The FSCA’s primary focus in overseeing these infrastructures is informed by the objective to enhance the efficiency and integrity of financial markets.

In addition to the actual financial institutions providing financial products and services, the FSCA also has the authority to regulate and supervise aspects of the conduct of key persons and control functions of financial institutions; representatives of financial institutions; and outsourcing arrangements entered into by financial institutions.

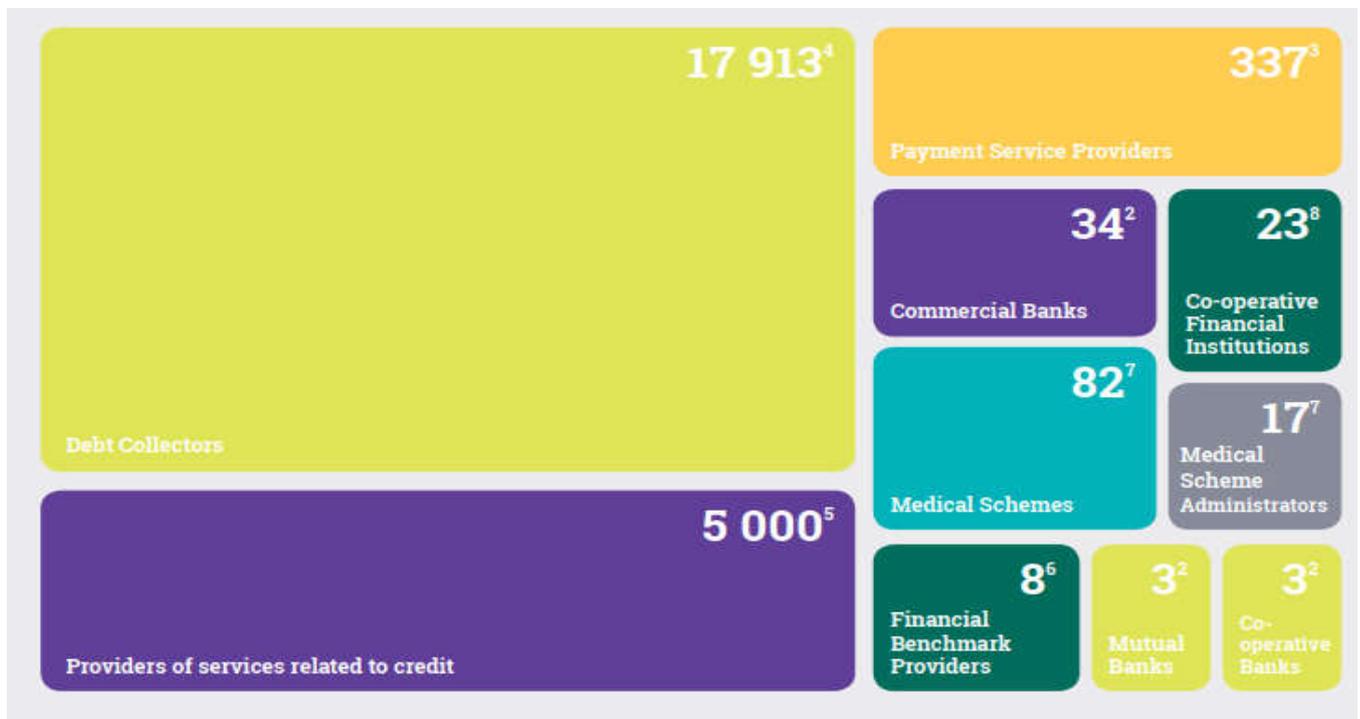
The tables following indicate the entities overseen by the former FSB and the additional entities to be overseen by the FSCA.

*Figure 2.1: Types of entities overseen by the former FSB as at 31 March 2018*



<sup>1</sup>This number includes Exchanges Clearing Houses and Securities Depositories

Figure 2.2: Additional types of entities to be overseen by the FSCA



Figures are illustrative and will be confirmed as the relevant licensing frameworks evolve.

Importantly, the FSR Act allows the Minister of Finance to close identified gaps in the regulatory framework and strengthen the FSCA’s jurisdiction where necessary, by specifying the FSCA as the responsible authority for designated financial products or financial services.

This mechanism allows for a substance over form approach to financial sector regulation, enabling the regulatory framework to respond appropriately and flexibly to emerging risks to financial customers and markets. Examples of possible gaps in the regulatory framework that could potentially be addressed through this mechanism are regulation of crypto currencies (or cyber tokens) and crypto exchanges, or property syndication schemes.

### 2.1.3 Key differences between the FSB and the FSCA

On 1 April 2018, the FSCA came into existence, replacing its predecessor, the Financial Services Board (FSB). Some key differences between the roles and operations of the FSCA and the FSB are set out in the table following.

*Table 2.1: Key differences between the FSB and FSCA*

	<b>Financial Services Board</b>	<b>Financial Sector Conduct Authority</b>
Jurisdiction	Non-banking financial sector	All financial institutions
Focus	Combined prudential and market conduct regulator	Dedicated market conduct regulator
Founding legislation	Financial Services Board Act	Financial Sector Regulation Act
Legislations overseen	A range of sector-specific laws	Conduct-related aspects of existing sector-specific laws to be replaced in due course by an overarching Conduct of Financial Institutions (COFI) Act.  The Financial Markets Act is expected to be retained but amended to deal with market infrastructures only, while the Pension Funds Act is expected to be amended to focus on prudential matters only.
Rule-making powers	Various powers to make subordinate legislative instruments under a range of sector-specific laws	Power to make conduct standards, and joint standards with the Prudential Authority, under the FSR Act, in addition to powers under sector-specific laws. When the COFI Act comes into operation, conduct standards under COFI will replace instruments under sector-specific laws
Governance structure	Overseen by a Board appointed by the Minister of Finance, with governance subcommittees	Overseen by an Executive Committee comprising the FSCA Commissioner and Deputy Commissioners appointed by the Minister of Finance, with governance sub-committees appointed by National Treasury

	Financial Services Board	Financial Sector Conduct Authority
Regulatory decision-makers	Executive Officer and (through delegation) Deputy Executive Officers, appointed by the Minister of Finance, performed the role of Registrars and Deputy Registrars in terms of each sector specific law.	The Commissioner is accountable for day-to-day management of the FSCA and for performing its functions, other than certain key functions (including standard setting and licensing powers) to be performed by the Executive Committee as a collective.
Organisation design	Sector-specific divisions focused on sector-specific laws.	Largely functional design, with cross-cutting licensing, enforcement and conduct of business supervision divisions. Specific focus to be retained for retirement fund supervision and market integrity supervision. Strengthened research and technical analysis capacity.

## 2.2 Matters outside the FSCA's scope

Despite the breadth of the FSCA's mandate, there are a number of legal and practical limitations on the scope of the FSCA's activities. FSCA are not a general consumer protection agency for all types of consumer goods and services. FSCA focus exclusively on regulating and supervising the conduct of entities that provide the financial products and services set out in the FSR Act, and FSCA are permitted to use the FSCA's powers under the Act only to meet the FSCA's specific objectives.

The FSCA's investigation, regulatory and enforcement jurisdiction is, therefore, limited to regulated and supervised entities, financial products and financial services. However, the FSCA jurisdiction also extends to investigation and taking enforcement action against unregistered business.

The FSCA is also not best positioned to act as the first port of call for complaints by specific financial customers against financial institutions - unless the complaint involves a contravention of a financial sector law. For example, FSCA will usually not deal directly with individual disputes about rejected insurance claims or poor customer service. Instead, a number of ombud schemes are in place to ensure that such complaints are dealt with fairly and efficiently.

FSCA work closely with the ombud schemes to monitor and respond to worrying trends in the types of complaints they receive. The ombud schemes also refer complaints to FSCA where they pick up contraventions of the law and alert the FSCA when institutions show a pattern of poor customer treatment, so that FSCA are able to intervene.

### **2.3 How is the FSCA to deal with unregistered business and illegal activities**

A person or entity performs unregistered business where it purports to provide otherwise legitimate financial products, financial services or a market infrastructure without the appropriate license to do so. The culprit could either have no financial services license at all, or could be an entity that has a license, but is performing financial activities that are outside the scope of its license.

Illegal activities, on the other hand, are not legitimate at all. They typically entail fraudulent schemes designed to dupe consumers into parting with their money, using a lure of unrealistic get rich quick financial returns. Examples are illegal pyramid and Ponzi schemes. These illegal activities are also sometimes carried out by rogue entities that hold a license for other, legitimate business. There is an increased risk of customers being misled into believing that the activities are legitimate particularly when unregistered or illegal activities are performed by licensed entities. Understandably, customers falling victim to such conduct would expect the FSCA to come to their aid.

#### **2.3.1 In cases of unregistered business**

The FSCA's response will depend on the materiality of the contravention. In less material cases, Particularly, where there has not been significant harm to financial customers, the FSCA may assist the entity concerned to regularize its business and ensure it applies for the correct license.

This is sometimes appropriate in the case of small entry-level businesses and, where applicable, will be done in collaboration with the Prudential Authority and any applicable development agencies. In more serious cases, the FSCA will take formal enforcement action, usually resulting in an administrative penalty or debarment of individuals from participating in the financial sector. In the most serious cases, where the FSCA believe there has been fraudulent conduct, the FSCA will (in addition to FSCA's own enforcement actions) refer the matter to the National Prosecuting Authority (NPA) for criminal prosecution.

### **2.3.2 In cases of illegal activities**

Ponzi schemes are a good example of illegal activity and because they are criminal in nature, they can never be legitimized through a licensing process nor can the business be regularized. The FSCA may have jurisdiction where the Ponzi operator falsely uses a valid license to operate the scheme but, in many cases, the FSCA will refer matters to and work in collaboration with other regulators and the SAPS. In addition to the SAPS, the NPA and the Asset Forfeiture Unit, appropriate authorities include the National Consumer Commission, the Financial Intelligence Centre and, in the case of illegal deposit taking, the Prudential Authority.

Where the FSCA becomes aware of apparently unauthorised or illegal activity, it will also usually issue a public alert, warning consumers to take care before dealing with the entity concerned

## **2.4 The FSCA's new functions**

As a result of its expanded mandate and scope, the FSCA has jurisdiction over a number of types of financial institutions, products and services that did not fall under the jurisdiction of the FSB. These new aspects of the FSCA's jurisdiction will need to be addressed in detail in the FSCA's future regulatory frameworks, in the FSCA's supervisory and enforcement frameworks, and in the FSCA's organisational design.

Some of the most significant of these new functions, and the steps FSCA will take to fulfil them in the medium term, are considered in the subsections following.

### **2.4.1 Banking products and services**

Prior to the promulgation of the FSR Act, the FSB's oversight of the banking sector applied only to advisory and intermediary services provided by banks (in their capacity as financial services providers under the FAIS Act), the provision by banks of tax-free investment products and, to a degree, the relationship between banking and non-banking products and services within existing bank assurance models.

The National Credit Regulator (NCR) supervised, and will continue to supervise, the conduct of banks as credit providers.

Other than in these areas, the conduct of banks and their consideration of fair customer outcomes – for example in relation to the design, servicing and performance of transactional bank accounts – was not subject to specific regulatory oversight.

The mandate to exercise this oversight now lies with the FSCA. In addition, the FSCA's new mandate to oversee services related to the provision of credit will include banks.

This is a far-reaching new mandate in respect of a vitally important part of the economy, relied on by millions of financial customers and essential to the FSCA's financial inclusion objectives. Rolling out a comprehensive market conduct regulatory and supervisory framework for the banking sector cannot be achieved overnight. Importantly, for the FSCA to meaningfully supervise the conduct of banks, there must be an enforceable market conduct regulatory framework against which FSCA can measure their conduct. An important first step, therefore, is to develop a set of conduct standards for the banking sector, using the FSCA's standard setting powers under the FSR Act.

To inform the drafting of banking conduct standards and to prepare for the task of supervising the conduct of banks and the manner in which they consider and embed fair customer treatment principles, FSCA are adopting a multifaceted, incremental approach, including the following:

- Drawing on the findings of the Retail Banking Diagnostic.<sup>1</sup> The National Treasury engaged the World Bank Group to conduct a diagnostic of the South African retail banking sector as part of its financial sector development reform programme. The objective was to assess the sector's conduct practices and make recommendations to the National Treasury and financial sector regulators on how to improve customer outcomes. The study focused on transactional accounts and scoped in credit and investment features where linked to a transactional account. FSCA will assess the diagnostic findings in a risk-based, proportional way to develop an appropriate, pragmatic regulatory and supervisory response. FSCA will prioritise key customer risks identified in the diagnostic, to be addressed incrementally over time.
- Meeting with individual banks to understand their business models and how the evolving market conduct regulatory framework affects them. These engagements will also focus on understanding the approach taken by banks to date to embed the management of conduct risks within their overall enterprise risk, assurance and reporting frameworks.
- Engaging with individual banks on specific customer complaints or complaint trends or other conduct concerns that are referred to the FSCA.
- Establishing working relationships with the Banking Association South Africa (BASA) and individual banks. These will continue the work of the formal meetings set up between the previous FSB Exco and the board of BASA, between the BASA Exco and the FSB Exco, and of the trilateral engagements of the BASA Board, the National Treasury and the FSB.
- Key points of engagement, in some cases with the National Treasury, include the following:
  - Identifying the key banking sector conduct risks and priorities to be addressed in the FSCA's regulatory and supervisory frameworks.
  - How to customize the outcomes of the work done by the G20 and G30 on banking conduct and culture for the unique South African banking and financial services landscape.
  - Analysing the nature, structure and value proposition of specific banking products to agree how best to address them in the market conduct licensing framework.

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<sup>1</sup> See the report Retail banking Diagnostic: Treating customers fairly in relation to transactional accounts and fixed deposits, June 2018. The report is available on the National Treasury's website [www.treasury.gov.za](http://www.treasury.gov.za)

- Enhanced disclosure and other conduct standards for banking products and their costs, including key information documents and product standards.
- Resourcing the FSCA with appropriate banking skills.
- Engagement with the National Treasury, the Prudential Authority and the SARB to coordinate work where FSCA have a shared interest in the supervision of the banking sector – including exploring issues where it would make sense to issue joint standards. Focus areas include bank governance frameworks, FinTech innovations affecting banks and conduct-related aspects of payment services.
- Applying learnings from the FSCA’s participation in a Bank seta/The Finance Union (SASBO) factfinding mission to assess the impact of digitization on the banking sector.

**(I) Setting conduct standards for the banking sector**

Section 106 of the FSR Act empowers the FSCA to make conduct standards for financial institutions, including banks, on a wide range of conduct related matters.

In developing such standards, the FSCA will consider the following:

- The findings of the World Bank’s Retail Banking Diagnostic.
- What the FSCA learn from wide-ranging stakeholder engagement programme.
- The existing provisions of the industry’s voluntary Code of Banking Practice - recognizing, however, its gaps and limitations.
- The future conduct framework proposed in the draft COFI Bill.
- Alignment, where appropriate, with existing conduct standards for other sectors – such as the Policyholder Protection Rules under the insurance laws and the Codes of Conduct under the FAIS Act.
- Applicable international standards for the conduct of business of banks.

Any proposed conduct standards will, in the normal course, be subject to thorough stakeholder consultation

### **2.4.2 Payment services**

The FSR Act extends the mandate of the FSCA to include the licensing and supervision of payment service providers, by including a payment service in the definition of a financial service.

In line with the FSCA's overall objective, the FSCA's focus here will be on the extent to which the conduct of payment service providers is delivering fair outcomes to financial customers. This includes a focus on the extent to which the conduct of payment service providers supports the FSCA's aims of financial inclusion and fair access to financial services.

The FSCA, National Payment System Department (NPSD) of the SARB and the National Treasury are working together to identify activities and role-players in the payment system that will fall under the ambit of the FSCA.

Clearly, the efficiency and integrity of the payment system are essential for overall financial stability, and it is important that the FSCA and the NPSD work together closely to ensure that each supports the other's policy objectives. Various work-streams are, therefore, in place that will ultimately inform the conduct framework for payment services providers. Focus areas include the following:

- Defining the scope of payment services that will fall within the ambit of the future COFI Act and developing an appropriate licensing framework for these services through the COFI Act and / or amendments to the National Payment System Act.
- Participating in the review of the National Payment System Act and the general regulatory framework for the national payment system currently being undertaken by the NPSD.
- Specific payments-related initiatives, including ongoing rollout of measures to mitigate the risk of abusive debit order practices, promote faster payment services, and an appropriate regulatory framework to better control the manner and purposes for which employer payroll deductions may be used.

### **2.4.3 Services in relation to credit, including debt collection**

In relation to credit providers regulated by the NCR, the FSCA's jurisdiction excludes the actual content and entering into of credit agreements but includes the provision of financial services related to the provision of credit and aspects of the corporate governance of credit providers. The services of debt counsellors, payment distribution agents and alternative dispute resolutions agents are explicitly excluded.

The FSCA is required to license and supervise these activities. FSCA are working with the NCR to refine the scope of these related services and the FSCA's respective roles in relation to them, but focus areas include advice on credit, distribution models used in the credit industry, and enhanced disclosure, advertising and marketing standards for credit offerings.

The FSCA will oversee three broad categories of credit entities:

- Credit providers themselves, in their capacity as such, where the FSCA's role is limited to setting conduct standards for the governance of credit providers. Such standard setting will be done after consultation with the NCR and in a risk based and proportional manner, focusing mainly on larger providers.
- Credit providers themselves, in relation to services related to the provision of credit. Cooperation and collaboration with the NCR to avoid duplication or misalignment in approaches is particularly important in these cases.
- Entities that are not credit providers but provide services related to credit provision. Although the NCR does not license or directly oversee these entities, appropriate information sharing between the FSCA and the NCR will be required to the extent that these entities indirectly impact credit extension outcomes. The FSR Act specifically includes debt collection as a service related to credit, which will be subject to FSCA oversight. The FSCA's focus will be on debt collection in relation to credit agreements falling within the NCR's jurisdiction, including where debts are ceded to a third party for value (selling the book of debt). FSCA will work with the NCR and the Department of Justice to align the FSCA's regulatory and supervisory approach to debt collection with other existing frameworks.

#### **2.4.4 Services related to the buying and selling of foreign exchange**

The FSCA's primary focus on this activity will be cases where there is an interaction between a retail financial customer and the foreign exchange service provider concerned to promote fair outcomes for such customers. With wholesale interactions, FSCA will oversee adherence to an appropriate code of conduct for the providers concerned, which is being developed with the SARB. FSCA are working with the Financial Surveillance (Fin Surv) department of the SARB, who have oversight over foreign exchange dealing through the Currency and Exchanges Act, to co-ordinate the FSCA's functions.

#### **2.4.5 Medical schemes**

The FSCA's full powers and duties under the FSR Act apply to medical schemes. However, the Minister of Finance has determined that the Council for Medical Schemes (CMS) must exercise these powers until 31 March 2021, but with the concurrence of the FSCA. The FSCA and the CMS are working together to reach agreement on when FSCA concurrence with CMS decisions is required during this transition period, as well as more broadly on how FSCA can harmonise the FSCA's approaches to conduct of business and consumer protection issues in the medical schemes' environment.

#### **2.4.6 Supervising financial groups and conglomerates and significant owners**

Concentration risk in South Africa is of particular concern and failures of institutions in the past have shown that the Twin Peaks approach to supervision of groups and conglomerates will be more effective in identifying and mitigating potential failure.

The failure of a financial institution has significant impact on customers, as evidenced by the impact on retail and commercial depositors of the curatorship of VBS Bank. The failure of Saxum, an insurer, caused significant hardship for policyholders. Poor market conduct is often the catalyst for prudential failure.

The Prudential Authority (PA) will be responsible for designating conglomerates and groups and, once designated, supervision of such groups by both the FSCA and the PA will ensure two sets of eyes on the group, enabling a holistic picture of each group.

This approach breaks down the silos of the previous regime and, together with the inclusion of a framework for significant owners, allows supervisors proactively to identify and manage concentration risk and systemic impact

### **2.5 The FSCA in context**

The FSCA's strategic priorities and approach in carrying out the FSCA's functions are a function of the environment within which FSCA operate.

The FSCA is part of a broader regulatory framework for the South African financial sector made up of a range of authorities and laws, with complementary objectives, working together to deliver and support national policy goals for the sector. The regulatory framework also recognises the need for the South African financial sector to participate and thrive in the global financial system.

### **2.5.1 Implementing national policies affecting the financial sector**

The FSCA and the other regulatory authorities making up the regulatory framework must deliver and support government policy objectives for the financial sector. The FSCA takes its policy direction from the National Treasury, whose objectives are, in turn, informed by broader government strategic and development plans.

The FSCA's strategic priorities are, therefore, guided largely by the commitments expressed by the National Treasury in its policy statements. Policy positions that have guided the FSCA in formulating this strategy, including certain key documents published by the FSCA's predecessor, the FSB, are as follows:

- A safer financial sector to serve South Africa better (National Treasury: 23 February 2011). Treating Customers Fairly: The Roadmap (Financial Services Board: 31 March 2011)
- National Development Plan: Vision for 2030 (National Planning Commission: 11 November 2011)
- Implementing a Twin Peaks model of financial regulation (Financial Regulatory Reform Steering Committee: February 2013)
- National Consumer Financial Education Strategy, July 2013
- Retail Distribution Review (Financial Services Board: November 2014)
- Treating Customers Fairly in the Financial Sector: A draft market conduct policy framework for South Africa (National Treasury: December 2014)
- Report of the IFWG on the FinTech Workshop, 19 – 20 April 2018 (Intergovernmental FinTech Working Group: April 2018)
- Retail Banking Diagnostic: Treating customers fairly in relation to transactional accounts and fixed deposits (World Bank Group: June 2018).
- 2018 Financial Markets Review (National Treasury, SARB, FSCA: September 2018)

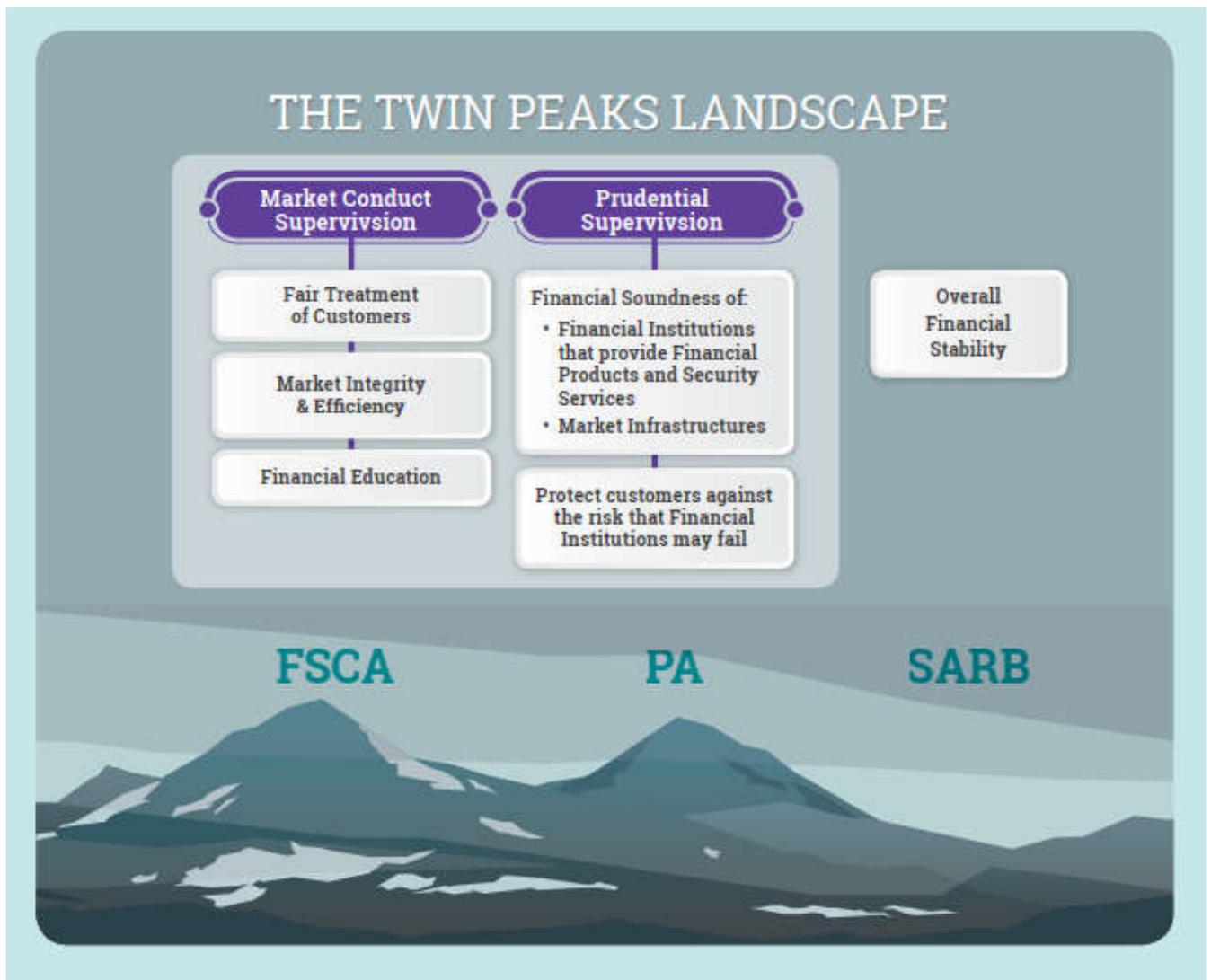
A number of the themes of government's National Development Plan (NDP) are of particular relevance to the FSCA. The NDP sets out the government's approach to growth to 2030. It provides an integrated approach for business, government and civil society to address the critical issues of income inequality, poverty and unemployment in South Africa. Given its mandate, the FSCA has a clear impact on the financial sector and the broader economy, and accordingly, has a meaningful role to play in promoting growth, employment and poverty reduction. More particularly, the FSCA is able to support the NDP goals in the following ways:

- Promoting an inclusive and transformed financial sector, including supporting the entry of small businesses to the financial services industry through proportional regulatory and supervisory frameworks. This is a key strategic priority for the FSCA.
- Using regulatory and supervisory tools to promote more value for money financial products and services and reduce the abuse of savings and investments by unscrupulous providers of financial products and services.
- Supporting the design and implementation of cost-effective measures to promote savings, investments and risk reduction, to increase asset ownership and asset protection by the historically disadvantaged. This includes supporting sustainable and responsible investments by retirement funds.
- Developing an appropriate regulatory framework to support innovation (including through financial technology) in the system consistent with the NDP growth strategy and to support a more inclusive and responsive financial sector.
- Internally, the FSCA – building on the policies of the former FSB - is largely transformed, as indicated by the FSCA's employment and supply chain policies and practices. The FSCA will continue to offer employment opportunities to skilled black professionals, promote the development of skills for all its employees and support emerging businesses when procuring goods and services.
- Promoting fair and efficient capital markets that support financial intermediation and facilitate the flow of savings to build businesses.
- Supporting the SARB in reforming the national payment system. A more accessible and inclusive payment system can reduce South Africa's cash dependency.

### 2.5.2 Cooperation and collaboration in a Twin Peaks framework

The FSR Act is the first step in South Africa’s shift to a Twin Peaks model of financial sector regulation. A Twin Peaks model separates regulatory functions between a regulator that performs prudential supervision and a regulator that performs market conduct supervision. The FSR Act, therefore, creates two new authorities - the Prudential Authority (PA) housed in the SARB and the FSCA, replacing and revising the mandate of the former FSB; as illustrated in the figure following.

Figure 2.3: The twin peaks landscape



This framework has the benefit of allowing the FSCA to dedicate its full attention to the protection of financial customers, and the efficiency and integrity of financial markets, while the PA focuses on the complementary, but separate, objective of promoting the safety and soundness of financial institutions and market infrastructures. An effective Twin Peaks model, however, requires careful coordination between the two peaks – and other relevant authorities – to avoid duplication of work and potential conflicts.

The FSCA Commissioner is a member of the Financial System Council of Regulators. This Council is a high-level forum created by the FSR Act to facilitate cooperation and collaboration among a range of institutions with an interest in the financial sector. Chaired by the Director-General of the National Treasury, the Council also comprises the Chief Executive Officers of the PA and the NCR together with senior representatives of the Department of Trade and Industry, the Department of Health, CMS, Financial Intelligence Centre, National Consumer Commission, the Competition Commission, the SARB, the Deputy Governor responsible for financial stability matters, and any organ of state or other organisation that the Minister of Finance may determine.

The FSR Act makes the FSCA responsible for performing secretariat and administrative functions in relation to the Council and it has started performing this function.

### **2.5.3 Memoranda of understanding**

In addition to the need for coordination and collaboration between the FSCA and the PA, the FSCA has oversight powers over certain financial institutions and services that are also regulated by other South African authorities. The FSCA has, therefore, worked together with the authorities considered in the subsections following to agree memoranda of understanding (MoU) on how important touchpoints between the FSCA's functions and responsibilities will be managed.

#### **(I) Prudential Authority**

As required by the FSR Act, the FSCA and the PA have concluded a comprehensive MoU to ensure that they work together effectively and efficiently, with minimal duplication and inconsistency, in meeting complementary Twin Peaks objectives.

Areas of responsibility covered by the MoU include the following:

- Consistent policy positions and regulatory strategies.
- Making standards, joint standards and other regulatory instruments.
- Licensing financial institutions.
- Designating financial conglomerates.
- Supervisory on-site inspections and investigations.
- Enforcement and administrative action.
- Information sharing and mini missing duplication.
- Delegating certain responsibilities to one another.

## **(II) South African Reserve Bank**

An MoU between the SARB and the FSCA will govern cooperation in supporting financial stability and working with the SARB's National Payment System Department (NPSD) on oversight of payment service providers and with the SARB Financial Surveillance Department (Fin Surv) on services related to the buying and selling of foreign exchange.

## **(III) National Credit Regulator**

As discussed, an important new FSCA function is the oversight of services related the provision of credit and the governance of credit providers. An MoU with the NCR will govern responsibilities for oversight of the credit industry.

## **(IV) Financial Intelligence Centre**

The FSCA's responsibilities for supervising the anti-money laundering and anti-terror financing obligations of financial institutions are set out in the Financial Intelligence Centre Act. An MoU governs coordination between the FIC, the FSCA and the SARB. MOUs between the FSCA, the PA and the SARB will also coordinate their respective oversight responsibilities under the FIC Act, particularly in areas of overlap. This ensures holistic oversight of money-laundering and terror-financing risks, while recognizing that supervision of compliance with the FIC Act has both market conduct and prudential implications.

#### **(V) Council for Medical Schemes**

The FSCA and the Council for Medical Schemes (CMS) are discussing when FSCA concurrence is required with CMS decisions, and broader opportunities for collaborating on consumer protection objectives in the medical schemes sector.

#### **2.5.4 International best practice**

The National Treasury has stipulated that market conduct frameworks and practices should comply, where appropriate, with international standards to which South Africa subscribes. In line with this policy position, the FSR Act requires the FSCA to have regard to international standards set by relevant international regulatory, supervisory, financial stability and standard setting bodies. Importantly, the FSR Act requires the FSCA to consider these international standards 'to the extent practicable', and also to consider South African circumstances.

The FSCA actively participates in relevant international and regional bodies and forums. FSCA do this not only to ensure that FSCA remain abreast of international developments, but also to participate in shaping standards that affect the FSCA's financial system and institutions. FSCA are focused particularly on ensuring that international standards appropriately take account of priorities for emerging and developing markets, including financial sector transformation and inclusion imperatives.

Key focus areas of international standard setting bodies in which FSCA participate and which FSCA have considered in developing the FSCA's strategy, are considered in the subsections following.

#### **(I) International organisation of pension supervisors (IOPS)**

The major goal of the IOPS is to improve the quality and effectiveness of supervision of private pension systems throughout the world, thereby enhancing their development and operational efficiency, and allowing for the provision of a secure source of retirement income in as many countries as possible.

The objectives of the IOPS include the following:

- Setting standards on pension supervisory matters and regulatory issues.
- Promoting international cooperation on pension supervision.
- Providing a worldwide forum for policy dialogue on pension supervision.
- Promoting, conducting and facilitating research with international bodies.

The IOPS Secretariat is hosted by the Organisation for Economic Cooperation and Development (OECD), according to the IOPS/OECD partnership agreement.

The FSB/FSCA is a governing member of IOPS. A governing member is any entity, responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements in a country or in the subdivision of a country, whether invested with its own personality or not.

The FSCA is a member of the IOPS Executive Committee. The Executive Committee has all the powers necessary to achieve the objectives and purposes of the organisation, including appointing Chairpersons and Vice-Chairpersons, considering membership applications and setting membership fees, overseeing the Secretariat and establishing agenda for the annual general meeting and conferences.

## **(II) International Organisation of Securities Commissions (IOSCO)**

IOSCO is the international body that brings together the world's securities regulators and is recognised as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognised standards for securities regulation. It works intensively with the G20 and the Financial Stability Board on the global regulatory reform agenda.

The objectives of IOSCO are to as follows:

- Cooperate in developing, implementing and promoting adherence of internationally recognised and consistent standards of regulation, oversight and enforcement to protect investors, maintain fair, efficient and transparent markets, and address systematic risks.
- Enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries.
- Exchange information at both global and regional levels on experiences to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

The policy work of IOSCO is conducted by the following eight committees under the aegis of the board:

- **Committee 1:** Issuer Accounting, Auditing and Disclosure
- **Committee 2:** Regulation of Secondary Markets
- **Committee 3:** Regulation of Market Intermediaries
- **Committee 4:** Enforcement and the Exchange of Information and the Multilateral Memorandum of Understanding Screening Group
- **Committee 5:** Investment Management
- **Committee 6:** Credit Rating Agencies
- **Committee 7:** Commodities Derivatives Markets
- **Committee 8:** Retail Investors

The FSCA participates in the growth and emerging markets (GEM) committee, the Africa/Middle East regional committee (AMERC), the assessment committee, the screening group and a number of task forces within IOSCO. In addition, it is a member of the secondary markets committee and of the investment committee

### **(III) International Organisation of Insurance Supervisors (IAIS)**

Established in 1994, the IAIS is the international standard setting body responsible for developing and assisting in the implementation of principles, standards and other supporting material for the supervision of the insurance sector. The IAIS provides a forum for members and stakeholders to share experiences and understanding of insurance supervision and insurance markets.

The objectives of IAIS are as follows:

- Promoting effective and globally consistent supervision of the insurance industry to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders.
- Contribute to global financial stability.

The three primary focus areas of IAIS are as follows:

- **Standard setting:** IAIS develops supervisory material (i.e. principles, standards and guidance) for effective insurance supervision.
- **Implementation:** IAIS supports the implementation of its supervisory material. It also assesses member observance of supervisory material through the self-assessment and peer review process.
- **Financial stability:** IAIS plays a central role in contributing to global financial stability. It does this in two keyways:
  - By developing the assessment methodology used by the Financial Stability Board to designate global systemically important insurers (G-SIIs) and policy measures to address systemic risk in G-SIIs
  - Assisting IAIS members in enhancing macro-prudential surveillance tools.

The FSCA participates in the Executive Committee, financial stability and technical committee, implementation committee, accounting and auditing working group, governance working group, market conduct working group, resolution working group, financial inclusion working group, and the signatories working group of IAIS.

#### **(IV) International Actuarial Association (IAA)**

Founded in 1895, and reformed in 1998 with a new constitution, the IAA is the worldwide association of professional actuarial associations, with a number of special interest sections for individual actuaries.

The IAA encourages the development of a global profession, acknowledged as technically competent and professionally reliable, which will ensure that the public interest is served.

The mission of the IAA, as the worldwide organisation of actuarial associations, includes the following:

- Representing the actuarial profession and promoting its role, reputation and recognition in the international domain.
- Promoting professionalism, developing education standards and encouraging research, with the active involvement of its member associations and sections, to address changing needs.

IAA is made up of numerous committees and working groups. The FSCA is represented on various committees through the Actuarial Society of South Africa (which is a full member of the IAA)

**(V) Financial Action Task Force (FATF) and Eastern and South African Anti Money Laundering Group (ESAAMLG)**

FATF is an intergovernmental body that sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and related threats to the integrity of the international financial system. FATF is, therefore, a policy-making body that generates the necessary political will to bring about national legislative and regulatory reforms in these areas.

FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter measures and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

FATF engages directly with the various financial intelligence units (FIUs) of its member countries. South Africa is a member of FATF and Financial Intelligence Centre (FIC) is the relevant FIU in South Africa.

From a South African perspective, FATF standards are incorporated in various local acts, most notably the FIC Act, Prevention of Organised Crime Act (POCA) and Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA). Various FATF standards apply to entities regulated by the FSCA via the application of the FIC Act. In terms of Section 45 of the FIC Act, read with schedules 1 and 2, the FSB (and now, the FSCA) is responsible for supervising and enforcing compliance with the FIC Act by all accountable institutions regulated by it (i.e. authorised users, CIS managers, long-term insurers and financial services providers).

ESAAMLG is a FATF regional body committed to preventing and combating money laundering and terrorist financing and proliferation in the Eastern and Southern African region. It mirrors the work being done by FATF in the region. Its working groups and decision-making processes are similar to those of FATF.

## **(VI) International Financial Consumer Protection Organisation (FinCoNet)**

FinCoNet is an international organisation of supervisory authorities responsible for financial consumer protection. FinCoNet promotes sound market conduct and strong consumer protection through efficient and effective financial market conduct supervision.

Each member of FinCoNet is responsible for protecting the interests of consumers of financial services. It seeks to enhance the protection of consumers and strengthen consumer confidence by promoting robust and effective supervisory standards and practices and by the sharing best practices among supervisors. It also promotes fair and transparent market practices and clear disclosure to consumers of financial services.

FinCoNet's initial focus was on banking and credit consumer issues, but now includes digitalization of financial products and distribution channels, and the specific challenges that brings.

The FSCA participates in the following key focus areas/activities:

- Risk-based supervision in a digital age.
- Advertising and marketing of consumer credit products in supervision of financial consumer protection.
- Supervisory techniques to support product design with consumer-focused outcomes.

## **(VII) Organisation for Economic Cooperation and Development (OECD)**

The OECD is a forum of countries committed to democracy and the market economy, providing a setting to compare policy experiences, seek answers to common problems, identify good practices, and coordinate domestic and international policies. Its mandate covers economic, environmental and social issues.

The main OECD structures are as follows:

- **Council:** The council has the decision-making power. It meets regularly at the level of permanent representatives to OECD and decisions are taken by consensus. It also meets at ministerial level once a year to discuss key issues and set priorities for OECD work.

- **Committees:** These are where representatives of the 35 OECD member countries meet to advance ideas and review progress in specific policy areas, such as economics, trade, science, employment, education and financial markets.
- **Secretariat:** The Secretariat is situated in Paris and comprises 2 500 staff who support the activities of committees and carry out work assigned by the OECD Council.

The FSCA participates in key focus areas/activities including corporate governance aspects of listed companies and financial consumer protection activities.

#### **(VIII) International Network on Financial Education (INFE)**

INFE was created in 2008 to promote and facilitate international cooperation among policymakers and other stakeholders on financial education issues worldwide. INFE focus on the following key policy areas:

- National strategies for financial education.
- Measuring financial literacy.
- Financial education and youth.
- Financial consumer protection.
- Evaluating financial education programmes.
- Financial education and women.

#### **(IX) Committee of Insurance, Securities and Non-Banking Financial Authorities (CISNA)**

CISNA forms part of the Trade, Industry, Finance and Investment Directorate with the Southern African Development Community (SADC) and consists of non-banking financial institutions authorities in capital markets, Collective Investment Schemes, retirement funds and medical aid schemes, and providers of intermediary services in the SADC.

Strategic objectives of CISNA include the following:

- Harmonizing legislation of regulatory regimes within SADC.
- Enhancing cooperation among authorities on anti-money laundering.
- Enhancing communication and exchange of information in the region.
- Promoting compliance with international standards.

The CISNA secretariat supports the Plenary, which is the highest decision-making body. CISNA has an executive committee that oversees the implementation of its strategic plan.

The Plenary consists of the following subcommittees and technical committees:

- Executive Committee (Exco).
- Strategic Planning and Performance Review Committee.
- Capital Markets Subcommittee (SPPRC).
- Insurance, Retirement Funds, Medical Aid Schemes and Intermediaries Subcommittee (IRMIS).
- Microfinance and Financial Cooperatives Subcommittee.
- Anti-Money Laundering Technical Committee.
- Consumer Financial Education Technical Committee (CFETC).
- Legal Technical Committee (LTC).

In achieving the abovementioned strategic objectives, the FSCA participates the following CISNA committees: Exco, SPPRC, IRMIS, CFETC, LTC and the Plenary

**(X) African Insurance Organisation (AIO) and Association of African Insurance Supervisory Authorities (AAISA)**

The AIO is a non-governmental organisation recognised by many African governments. Its main objectives are as follows:

- Develop a healthy insurance and reinsurance industry in Africa.
- Promote inter-African cooperation in insurance.

Ongoing strategic goals of AIO include the following:

- Improving the strategic relevance of the organisation in member countries.
- Restructuring the secretariat to support the growth of the organisation.
- Improving organisation brand and communication.

The AIO has established the AAISA, which is the umbrella body that brings together insurance supervisory authorities from all parts of Africa. The association's main objectives are as follows:

- Promoting cooperation among supervisory authorities.
- Assisting countries in human resources development.
- Creating a forum for the standardisation of insurance laws and supervisory structures on the continent.

AAISA is also sensitizing African countries on the need for specific preparations in insurance for World Trade Organisation negotiations

**(XI) Enlarged Contact Group on the Supervision of Collective Investment Schemes (ECG)**

The ECG is an informal group of collective investment fund regulators. It holds annual meetings, chaired and organised by the host regulatory authority. These annual meetings include discussions on current regulatory topics, international regulatory cooperation and recent developments in regulation in member countries. During the year, members maintain contact on regulatory matters such as the exchange of information.

### **2.5.5 Financial Sector Assessment Programme**

The FSCA will participate in the Financial Sector Assessment Programme (FSAP's) periodic reviews.

An FSAP review is a voluntary assessment by the International Monetary Fund (IMF) that assesses the stability of the country's financial system and helps countries to identify key sources of systematic risk in the financial sector and implement policies to enhance its resilience to shocks and contagion. In 2013, the IMF board decided that 29 jurisdictions deemed to have systematically important financial sectors undergo mandatory five-yearly assessments under the FSAP. For other jurisdictions such as South Africa, participation in the assessment continues to be voluntary.

The last South African assessment was conducted in 2014, after which the FSB has taken steps to comply with FSAP recommendations. The FSCA will continue to do so. A number of the recommendations have been addressed through the FSR Act.

## **2.6 Engaging with the FSCA**

The FSCA strongly believes that shared stakeholder commitment to financial sector policy goals and its own statutory objectives is best achieved through open, honest and constructive collaboration with stakeholders. FSCA, therefore, welcome the fact that the FSR Act enjoins the FSCA to be transparent and open to consultation.

FSCA also recognises that the FSCA itself needs to be more accessible to a wider range of financial customers and businesses. Although, as explained earlier, the FSCA is not intended to be a direct port of call for customer complaints, its transformation, inclusion and consumer education strategies require it to be easy to engage with. However, the cost of building physical bricks and mortar offices across the country could have the unintended consequence of increasing funding requirements – which in themselves are a potential barrier to entry. The FSCA's 'Taking Regulation to the People' project and the FSCA's collaboration with provincial structures through the Consumer Protection Forum (CPF) therefore, look at alternative communication channels between the FSCA and financial customers and institutions, including increasing the FSCA's footprint in all nine provinces.

The FSCA's strategy for engaging with stakeholders, therefore, goes far beyond minimum legislated measures. The FSCA's stakeholders can expect to exchange ideas with the FSCA and be kept up to date on the FSCA's work through a range of communication channels.

### 2.6.1 The website

The FSCA's website at [www.fsca.co.za](http://www.fsca.co.za) and [www.fscaconsumered.co.za](http://www.fscaconsumered.co.za)

The website's primary purpose is to be the window of the world into the FSCA. It disseminates information to the public about financial sector regulation, including the protection of consumers, enhancing and supporting the efficiency and integrity of financial markets, and assisting in maintaining financial stability.

Regulated entities have the option to interact with the FSCA through various regulatory applications, including applications dealing with licensing applications and related matters, submission of information, making enquiries, and collaborating with the FSCA on regulatory matters, including consultation on regulatory instruments and other publications.

Consumers also have a dedicated option on the website that provides them with access to information on their rights, and materials on financial education and capabilities for them to make enquiries and raise complaints.

### 2.6.2 The FSCA's Business Centre

The FSCA's new organisational structure includes a single Business Centre, housed in the FSCA's new Licensing and Business Centre Division. The Business Centre is the point of entry for all external stakeholder inputs to the FSCA, including queries and complaints from multiple sources, statutory submissions, licensing and other applications, and responses to regulatory information requests. In effect, it will act as an information management hub for the entire FSCA. Until the Business Centre becomes fully operational, stakeholders should continue using existing communication channels and contact details. Any changes in contact details will be communicated in good time.

### 2.6.3 Formal consultation forums

Formally established regular stakeholder consultation forums are in place. These include the following:

- **The Market Conduct Regulatory Framework Steering Committee (MCRF Steer Co):** The MCRF Steer Co is made up of cross-functional representatives from financial sector industry associations, ombud schemes and professional bodies. The committee is chaired by the FSCA and meets quarterly. It acts as an informal consultation forum and technical advisory panel for key conduct of business regulatory reforms proposed by the FSCA.

- **Industry association meetings:** FSCA hold regular, usually quarterly, meetings with the governance structures of specific industry associations. These are strategic meetings, focusing on how best the FSCA and the industry sector concerned can collaborate to achieve financial sector policy goals and address material conduct risks in the sectors concerned, and on the strategic impacts of key regulatory and supervisory initiatives on these sectors.
- **FinTech Work Group:** The FSCA co-hosts the Intergovernmental FinTech Work Group (IFWG) conferences with the FinTech sector. The inaugural conference was held in the first half of 2018 and FSCA have undertaken to host these regularly.
- **The Exchange Fragmentation Forum:** The purpose of this forum, comprising representatives of the FSCA and the five licensed exchanges, is to identify the major areas of market fragmentation arising in a multi-exchange landscape and the appropriate regulatory interventions and cooperation among the exchanges to address these fragmentation concerns.

Although a number of these consultation forums will remain in place, FSCA are also reviewing the FSCA's broader stakeholder engagement strategy to ensure that it is fully capable of meeting the FSCA's commitment to open and transparent engagement. In particular, FSCA are considering how best to ensure that FSCA are effectively and consistently hearing the voices of consumer representatives and of small and emerging regulated entities.

#### **2.6.4 Presentations and workshops hosted by the FSCA**

The FSCA is planning an annual FSCA-wide regulatory and supervisory seminar to update stakeholders on key regulatory developments, supervisory approaches, and particular focus areas or concerns. This seminar will replace the previous sectoral regulatory seminars held by the previous FSB departments. Ad hoc seminars and workshops on specific topics will also be held as and when necessary.

#### **2.6.5 The public media, including the printed press, television, radio and social media.**

In addition to the above communication channels, the FSCA is open to invitations to participate in conferences, workshops and other forums arranged by professional or industry bodies, or, in some cases, specific financial institutions, where FSCA believe they will present an appropriate information-sharing platform. Regulated entities and other stakeholders are also always welcome to make appointments with FSCA officials on matters of mutual interest.

### **2.6.6 A range of consumer education forums and engagements**

Consumer representation in the financial sector is not formally organised, which makes regular engagement difficult. The FSCA will look at how to assist consumers to formally organise so that they can be represented more fully

## TOPIC 3 STRATEGIC PRIORITIES

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### Learning outcomes

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

- Describe the strategic priorities of the FSCA over the next three years.

### 3.1 Introduction

As a newly established authority, the FSCA has much work to do to ensure that it delivers on its mandate. FSCA need to focus the FSCA's energies and resources on initiatives that FSCA believe are most likely to enable the FSCA to achieve the FSCA's statutory objective and policy goals.

FSCA have identified six strategic priorities for the next three years. These priorities are discussed in no particular order - all of them are of material importance to the FSCA. The priorities are as follows:

- Building a new organisation.
- An inclusive and transformed financial sector.
- A robust regulatory framework that promotes fair customer treatment.
- Informed financial customers.
- Strengthening the efficiency and integrity of the FSCA's financial markets.
- Understanding new ways of doing business and disruptive technologies.

Naturally, these priority focus areas are not the only work of the FSCA. FSCA continue the FSCA's ongoing responsibilities of supervising financial institutions' compliance with financial sector laws and taking appropriate remedial and enforcement action where FSCA are concerned that they are failing to do so. So, although many of the FSCA's regulatory and supervisory projects will form part of the priority focus areas discussed in this section, the FSCA also has a wide range of additional business as usual projects underway or in the pipeline, on which FSCA regularly communicate with all interested stakeholders.

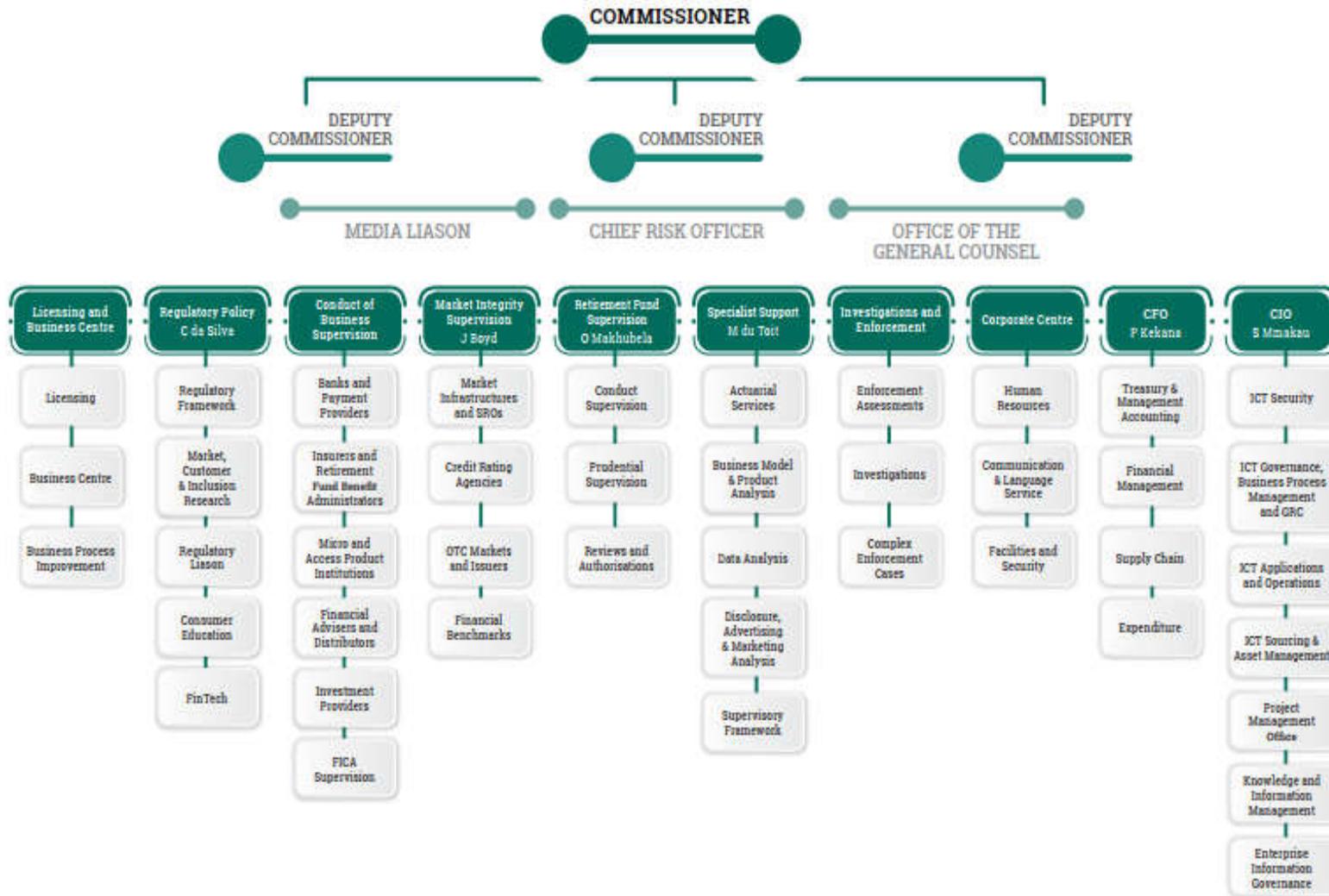
## **3.2 Building a new organisation**

The FSCA's organisational design, skills, and infrastructure must be fit for purpose to optimally support its functions – including the new functions and approach.

Building on recommendations and transition plans developed by the FSB, the FSCA has introduced an organisational redesign and capacity building programme to ensure a smooth transition from the FSB to the FSCA, with minimal disruption for stakeholders. This redesign programme has a number of components, considered in the subsections following.

The figure following illustrates the new Leadership and structure of the FSCA.

Figure 3.1: FSCA Leadership and Structure



### 3.2.1 A functional, activity-based organisational design

The organisational structure of the FSB was aligned to the legislative framework within which it operated. Different pieces of legislation regulated different parts of the financial sector, establishing different Registrars regulating different types of financial institutions. Hence, the FSB was made up of separate divisions, each focused on a sector and its compliance with sector-specific laws.

The figure following depicts the sector-based silo structure of the FSB.

*Figure 3.2: Financial Services Board: A sector-based silo structure*



As explained previously, the FSCA is a single regulator to holistically oversee the market conduct of all parts of the financial sector, with its jurisdiction founded on the activities performed by financial institutions, rather than their institutional form.

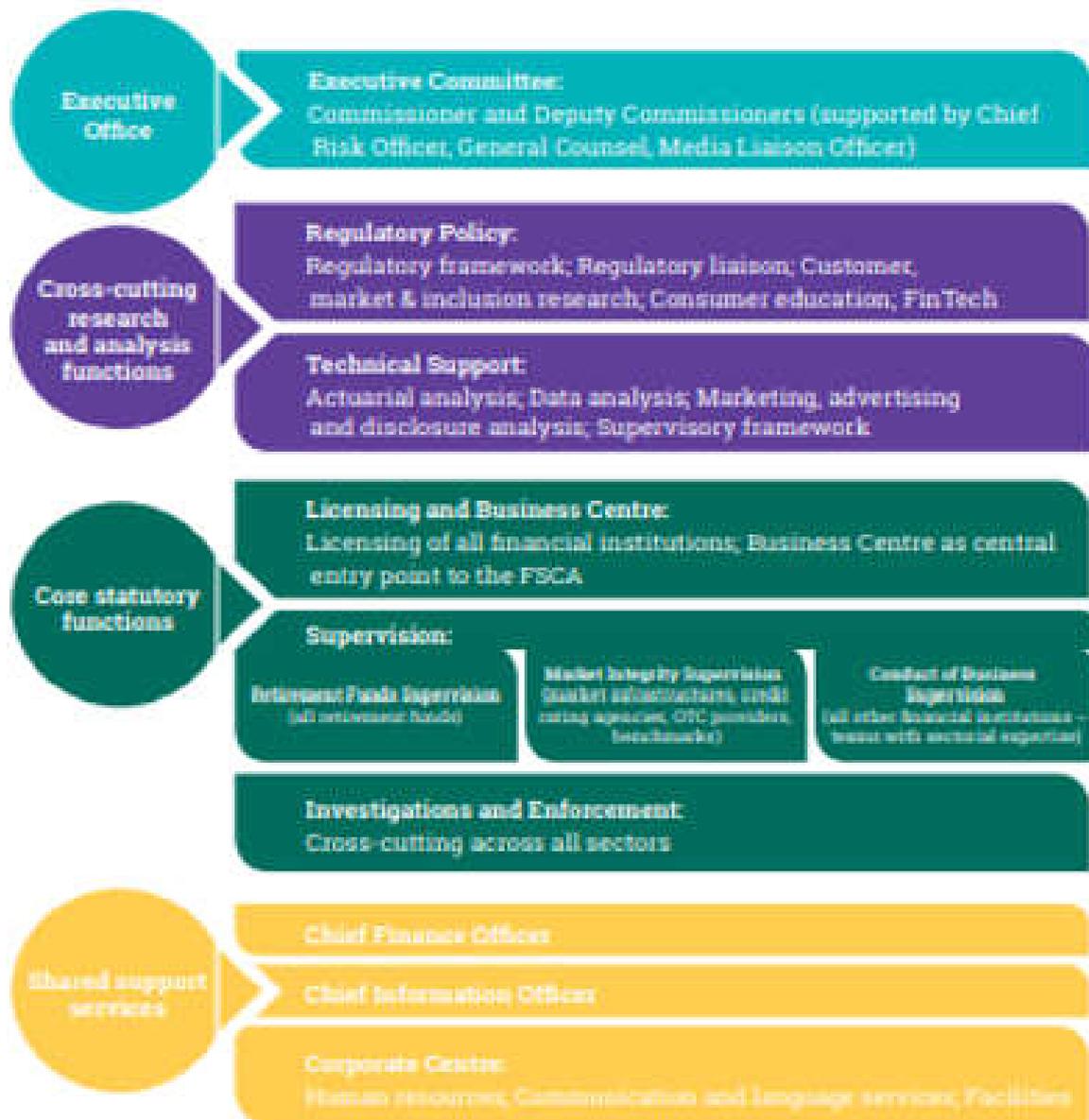
Although existing sector-specific legislation will remain in place for an interim period after the promulgation of the FSR Act, the National Treasury has confirmed that some or all of these laws will – as part of the next phase of implementing the Twin Peaks model - be replaced and consolidated by an overarching Conduct of Financial Institutions (COFI) Act.

To mirror these changes, and to better support the supervisory approach described, the FSCA has adopted a primarily functional, activity based organisation design rather than the sector based 'silo' structure of the FSB.

The FSCA's organisation design includes centralized divisions for conduct of business supervision, licensing, and investigations and enforcement, each dealing with the full spectrum of financial institutions and activities FSCA regulate (with limited exceptions). It also includes a Business Centre operating as a single point of entry for all applications, submissions and queries processed by the FSCA; a centralized Specialist Support Division for providing specialist technical support to the supervision functions; and a centralized Regulatory Policy Division responsible for carrying out key research and regulatory framework development functions.

The figure following depicts the cross-cutting functional structure of the FSCA.

Figure 3.3: FSCA: Cross-cutting functional structure



FSCA recognises that, notwithstanding the activity-based legislative framework FSCA are moving to, FSCA must not lose sight of the fact that different types of financial institutions, products and services have unique features and pose specific types of risk. The centralized functional areas in the FSCA’s organisational design, therefore, include a combination of cross-cutting and sector-specific teams and expertise.

The organisational structure makes the following two exceptions to the functional, activity-based approach:

- A dedicated division responsible for supervising and licensing market infrastructures, credit rating agencies and related financial markets activities. This is to ensure specific accountability for delivering the FSCA's mandate to enhance the efficiency and integrity of financial markets.
- A dedicated division for supervision of retirement funds. There is a need for a dedicated focus on this sector – at least in the medium term – due to the far-reaching policy and regulatory reforms in progress in the sector. This division will also be accountable, for a transitional period, for the prudential supervision of retirement funds. The need to maintain this separate focus will be reviewed when appropriate.

In addition to supervising individual financial institutions, the FSCA will also supervise financial conglomerates and groups. The FSCA's organisational design will, therefore, include the creation of virtual teams, pulling together the right mix of sectoral experts from different departments to ensure holistic oversight at group or conglomerate level.

FSCA appreciate that structural changes can be disruptive to those who need to deal with the FSCA as FSCA implement the transition. FSCA have a detailed project plan in place for the implementation of the FSCA's new structure.

FSCA intend to start implementing the new organisational design from 1 October 2018. As FSCA reach key project milestones, FSCA will share the details with stakeholders to ensure that they are kept up to date with any changes in key FSCA contact points or processes.

The FSCA's functional, activity-based organisational design comprises of divisions. Each of these divisions are considered in the subsections following.

**(I) Licensing and Business Centre (Divisional Executive to be appointed)**

This division performs a centralized licensing and authorisation function for all financial institutions requiring a license from the FSCA, and also houses the FSCA Business Centre.

The division will process all FSCA license/authorisation applications, to the point of recommending the approval or rejection of the application to the FSCA Executive Committee. In reaching this point, it will coordinate with the relevant Supervision divisions and, where necessary, with relevant subject matter experts in the Specialist Support Division. Licensing of market infrastructures, credit ratings providers and certain other entities performing activities in financial markets will, however, be carried out by the Market Integrity Supervision Division, but coordination with the Licensing Division will be required to ensure central FSCA licensing records are updated.

The division will also be responsible for processing voluntary/requested license terminations and ensuring central FSCA licensing records are updated when a license is revoked or suspended as a result of FSCA enforcement action. The division is the owner of the central record of the market conducts license status of all regulated entities.

The FSCA Business Hub will act as the point of entry for all external stakeholder inputs to the FSCA – in effect an ‘information management hub’ for the FSCA as a whole.

**(II) Regulatory Policy (Divisional Executive: Caroline da Silva)**

The division comprises a number of specialists’ departments, staffed by technical experts, tasked with ongoing development of the FSCA’s regulatory frameworks, and its financial inclusion and consumer education mandates. The division also conducts research into broader domestic and international developments and emerging risks, including technological innovations (FinTech) necessary to inform such frameworks. The division will also coordinate the FSCA’s interaction with other regulatory and supervisory authorities and standard-setting bodies and ensure adequate stakeholder consultation on the development of regulatory frameworks. It is a primarily outward -facing division, focused on ongoing proactive monitoring and research of external developments, ensuring that regulatory frameworks respond appropriately to such developments and engaging with external stakeholders on related matters.

### **(III) Conduct of Business Supervision (Divisional Executive to be appointed)**

This division carries out ongoing supervision of the business conduct of all supervised entities, with an emphasis on promoting fair treatment of financial customers. Exceptions are retirement funds (supervised by the Retirement Funds Supervision Division) and market infrastructures and certain other participants in the financial markets (supervised by the Market Integrity Supervision Division).

Focus will be on supervision throughout the relevant product lifecycle, including actual product design and customer targeting, and all stages of post-sale service. The division is structured to strike a pragmatic balance between the future activity-based COFI licensing and regulatory framework and the need to ensure adequate sector-based expertise for specific processes.

In many cases, the same entity or group of entities may carry out multiple activities supervised by different units in this division. In these cases, the intention is that virtual teams, comprising experts from all relevant areas, will be established to ensure holistic supervision of such entities or groups, including coordinated onsite inspections. Where applicable, further coordination with the PA on supervisory processes will be addressed through FSCA/PA MoUs.

### **(IV) Market Integrity Supervision (Divisional Executive: Jurgen Boyd)**

The division supervises the conduct of market infrastructures (including, currently, indirect oversight of users and participants of those structures through self-regulatory models, where applicable) and the conduct of credit ratings providers and other entities authorised to provide or participate in a range of activities in the financial markets. The division focuses on the efficiency and integrity of financial markets. It will also license market infrastructures, credit rating agencies, benchmark providers and Over-the-counter issuers.

### **(V) Retirement Fund Supervision (Divisional Executive: Olano Makhubela)**

This division carries out ongoing supervision of the business conduct of retirement funds. It will cooperate with the Conduct of Business (COB) Supervision Division on supervision of retirement fund benefit administrators and investment providers (both to be supervised by the COB Supervision Division), as well as in relation to oversight over the underlying financial products provided by retirement funds to their members (as the product issuers will also be supervised by the COB Supervision Division).

The rationale for a separate division to supervise the business conduct of retirement funds is mainly the need for dedicated focus – at least in the medium term – on a number of planned policy and regulatory reforms in the sector, as well as in recognition of the specific nature of retirement funds, which are both financial customers and financial institutions. The need to maintain this separate focus can be reviewed in the longer term. This division will also be accountable, for a transitional period (as per the current provisions of the FSR Act), for the prudential supervision of retirement funds.

**(VI) Specialist Support (Divisional Executive: Marius du Toit)**

The division comprises a number of specialist departments, staffed by technical experts tasked with providing specialist technical support primarily to the ongoing supervisory functions of the Supervision divisions, but also to other areas of the FSCA as required– typically on a case-by-case basis. It is a primarily (although not exclusively) inward-facing division providing specialist support services in areas including actuarial services, data analysis, business model and product analysis, analysis of advertising and marketing practices, and supervisory framework development

**(VII) Investigations and Enforcement (Divisional Executive to be appointed)**

This division will carry out investigations into market abuse matters and other potential contraventions of financial sector laws, as provided for in the FSR Act. It will also perform assessments on complaints or other matters referred to it, in collaboration with the Supervision divisions to determine the need for enforcement action. The division will also implement agreed enforcement actions in accordance with FSCA protocols, including administrative penalties directed by applicable FSCA decision-making processes. The division will also be expected to support the FSCA (in particular the Supervision divisions) in identifying and supporting priority enforcement initiatives.

**(VIII) Corporate Centre (Divisional Executive to be appointed)**

The Corporate Centre comprises a number of departments providing essential internal support services to ensure the smooth functioning of the FSCA’s human resources, facilities, security and communications operations.

**(IX) Finance and Supply Chain (Chief Financial Officer: Paul Kekana)**

This division is tasked with ensuring efficient and effective strategic business support to the FSCA in treasury, management accounting, financial management and supply chain management.

**(X) Information and Communication Technology (Chief Information Officer: Sello Mmakau)**

This division provides support on Information and Communication Technology (ICT) requirements and operations of all areas of the FSCA, including driving the FSCA's Data Driven Digital Strategy and refreshed operating model.

**(XI) Executive Office (Office of the Commissioner)**

Three expert support roles and their departments – the Chief Risk Officer, the Media Liaison Officer and the General Counsel – are placed in the Executive Office, to provide support primarily to the Commissioner and Deputy Commissioners (the FSCA Executive Committee) in the performance of their functions.

**3.2.2 New skills for new functions**

As explained, the FSCA has jurisdiction over a number of types of financial institutions, products and services that did not fall under the jurisdiction of the FSB. These new responsibilities call for new skills, which will be acquired through a combination of recruiting new staff and retraining and upskilling the FSCA's existing team.

As part of the FSCA's upskilling approach, FSCA staff members have participated in international study tours to the United Kingdom and Australia to learn from the Twin Peaks implementations in those jurisdictions.

**3.2.3 Enhanced research and analysis capacity**

The FSCA's regulatory and supervisory approach, requires the FSCA to proactively identify and respond to emerging financial sector trends and risks, and to have a deep understanding of the business models and practices of the institutions FSCA supervise.

The FSR Act obliges the FSCA to conduct and publish research relevant to the FSCA's objectives. More particularly, it obliges the FSCA to monitor the extent to which the financial system is delivering fair outcomes for financial customers and to regularly review the perimeter and scope of financial sector regulation to identify and mitigate risks to the FSCA's objectives.

This means that the FSCA needs focused research and analysis capabilities in specific areas of expertise. The FSCA's organisational design provides for this by establishing a number of expert teams in the FSCA's Regulatory Policy and Specialist Support divisions. Unlike the FSB model, where sector-specific research and development functions were placed in the separate sectoral divisions, these expert teams are centralized, working together to provide a suite of technical support services to the FSCA as a whole.

The specific expert teams are considered in the subsections following.

#### **(I) Market, customer and inclusion research**

The aim of this team is to carry out proactive research into and monitoring of financial sector trends and emerging conduct risks.

Focus areas include domestic and international trends and risks in relation to financial customer behaviour and preferences (Behavioural economics); business model, distribution and servicing trends emerging in lower-income customer segments to ensure that regulatory framework developments appropriately support financial inclusion and transformation of the financial sector; trends and risks in relation to new types of financial products and service offerings; and trends and risks impacting on the integrity and efficiency of financial markets.

The team will also carry out specific research projects in its areas of expertise as requested by other FSCA areas. This department will also have a dedicated unit focused on providing support to financial institutions that are small businesses, to support their sustainability and compliance, in line with the FSCA's financial sector transformation strategy.

#### **(II) Business model and product analysis**

The aim of this team is to provide support, mainly to the supervision and licensing areas, in analysing business models and products of specific financial institutions. This team will include accounting and financial skills, enabling it to follow the money to understand the commercial rationale for particular business models.

#### **(III) Data analysis**

The aim of this team is to analyse data submitted through statutory returns or other datasets, to monitor market conduct risk indicators. This team will also assist in the design of statutory returns or other information requests, to ensure that they will yield meaningful data, and will also build expertise in the use of big data for supervisory purposes. The team will also enable the FSCA to generate meaningful public reports to support benchmarking success in delivering fair customer outcomes.

#### **(IV) Disclosure, advertising and marketing analysing**

The aim of this team is to review the disclosure, advertising and marketing strategies of specific financial institutions and to support thematic reviews in this area. This team will also carry out ongoing scanning of media, and ongoing monitoring of new advertising and marketing approaches. It will also be responsible for the development of key information documents (KIDs) to be used by financial institutions.

#### **(V) Regulatory framework development**

The aim of this team is to carry out ongoing legislative review and development of the market conduct regulatory framework, to ensure that it continues to effectively support both the FSCA's customer protection and market integrity and efficiency objectives.

The team will also provide support in the interpretation and application of regulatory instruments, including the drafting of interpretation rulings and guidance notices

#### **(VI) Supervisory framework development**

The aim of this team is to carry out ongoing review and development of the FSCA's 'supervisory toolkit', being the FSCA's approach to supervision and supervision methodologies, including the FSCA's conduct risk-based supervisory framework.

The team also carries out ongoing research and monitoring of local and international supervisory standards and approaches.

#### **(VII) FinTech**

This team is responsible for ongoing monitoring, research and assessment of technological trends and innovations to understand their external impact on financial sector business models, product and solution design and customer outcomes, and inform appropriate regulatory and supervisory responses.

#### **(VIII) Actuarial services**

The aim of this team is to provide professional actuarial support, particularly to the supervision areas. The team will also be responsible for the supervision of specific provisions of the Pension Funds Act relating to pension fund valuations.

### **3.2.4 Digitization and technology refresh**

The FSCA is preparing its technology environments to be responsive to its business needs and enable a proactive and embedded culture of data analytics. The FSCA's ICT Division will implement a Data Driven Digital Strategy, which will require systems integration, upskilling, training and transformation of the current ICT workforce to perform optimally. In addition, a new ICT operating model will inform new ways of working and process re-engineering, resulting in technology upgrades across the FSCA's core systems to support business effectively and efficiently.

### **3.2.5 Intended key outcomes of this strategic priority**

Through the FSCA's new organisational design, capacity building and infrastructure upgrades, the FSCA aims to be-

- Trusted by financial customers to promote their fair treatment by financial institutions and take visible, meaningful action against those that jeopardise their financial wellbeing or the integrity or efficiency of the financial markets.
- Respected by all stakeholders as a competent, effective and accountable regulator that engages with them openly and transparently and without fear, favour or prejudice.
- Proactive in identifying conduct risks across the financial sector and taking evidence-based actions to respond to those risks.
- Respected as a global leader in the area of market conduct regulation and supervision by both domestic stakeholders and international peers.
- A modern organisation that draws on international best practice and leverages technology to respond flexibly, proactively and pragmatically to new risks and opportunities.

### **3.3 An inclusive and transformed financial sector**

The overarching statutory objects of the FSR Act include the establishment of a supervisory and regulatory framework that promotes financial inclusion and transformation of the financial sector.

The FSCA's commitment to financial inclusion and transformation is supported by the FSCA's organisational structure, with a dedicated team within the FSCA's Regulatory Policy Division tasked with ongoing development and review of the FSCA's regulatory and supervisory frameworks that promote transformation and financial inclusion.

#### **3.3.1 Transformation**

The financial services sector plays a pivotal role in ongoing transformation of the South African economy and in ensuring that the economy is inclusive. The sector is central to the realisation of a society in which all South Africans have an equal opportunity to participate in mainstream economic activities as envisaged in the NDP. It is, therefore, crucial that the sector is well regulated and stable. Equally important is the need to ensure transformation of the sector. The FSCA's transformation strategy focuses both on transformed financial institutions and optimizing the role that the sector plays in supporting economic growth and development.

There is an existing framework for broad-based transformation entrenched in the Financial Sector Code (FSC) for Broad-Based Black Economic Empowerment issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act, 53 of 2003 (the B-BBEE Act). This is recognised by the FSR Act, which defines transformation of the financial sector as transformation as envisaged by the FSC.

The FSC commits all participants to actively promote a transformed, vibrant and globally competitive financial sector that reflects the demographics of South Africa and contributes to the establishment of an equitable society by providing accessible financial services to black people and by directing investment into targeted sectors of the economy.

Hearings on transformation in Parliament in 2017 renewed the focus of all stakeholders on the need to transform the financial sector to serve South Africa better. Important discussions took place on how effective the FSC had been in achieving its objectives and what role regulators should play in improving reporting, compelling participation, monitoring progress and creating consequences for lack of transformation through their regulatory frameworks and licensing conditions.

The FSCA will, therefore, seek to ensure that its regulatory and supervisory frameworks support and strengthen the aims of the FSC in achieving broad based economic empowerment. In addition, focus will be given to reducing barriers faced by financial institutions wishing to participate meaningfully in the sector and to creating an enabling environment for them to develop inclusive business models. Here, FSCA need to ensure that regulatory requirements do not limit diversification of financial institutions and products, and competition and sustainable growth in financial services by imposing unreasonable barriers to the entry of new players – particularly emerging small and medium sized businesses.

As pointed out above, the object of the FSR Act includes the promotion of transformation of the financial sector. At present, the Insurance Act, 2017 is the only other financial sector law that places explicit transformation requirements on a financial sector regulator. The FSCA strategy will focus on how these requirements may be extended to other financial sectors, specifically through explicitly providing for proportionality in the legislative framework and possibly expanding the range of financial institutions able to participate in these financial sectors.

The approach to transformation entrenched in the Insurance Act, which will inform the FSCA's approach and conduct legislation going forward, is not to 'hard-code' transformation targets in the legislation itself, but rather to recognise the overarching and central role the B-BBEE Act and the FSC play in facilitating transformation, and to support this role. This approach builds on and supports the overarching transformation and empowerment architecture enacted by Parliament and allows for monitoring of implementation and, where necessary, supervisory intervention. The Insurance Act, accordingly, defines transformation as that envisaged by the FSC and builds in licensing requirements that an applicant for an insurance license must demonstrate that it has a plan to meet its stated transformation commitments, including meeting the targets envisaged by the FSC.

This approach does not require the FSCA to play an active role in the negotiation process of implementation targets. The FSCA's strategy recognises that the FSC is the product of negotiations among trade associations, labour, community, government and the Association of Black Securities and Investment Professionals (ABSIP) and that it will be through this process that targets for the sector are agreed. Once targets are agreed upon and gazetted under the FSC, financial institutions have a legal obligation to meet them.

The role of the FSCA will be to support the Financial Sector Transformation Council (FSTC) (previously known as the Financial Sector Charter Council) by ensuring that institutions indeed make meaningful progress in meeting these commitments. The FSCA is considering achieving this by monitoring the extent to which a financial institution has met its own committed transformation goals, as set out in its transformation plan.

The FSCA's transformation strategy will integrate monitoring of the implementation of transformation plans into the supervisory framework for financial institutions.

### **3.3.2 Strategic initiatives to support transformation**

The FSCA's priority focus on supporting transformation of the financial sector entails the following substantial work programme:

- Supporting the outcomes of the upcoming National Economic Development and Labour Council (Nedlac) Financial Sector Summit
- Building strong co-operative relationships with the FSTC and the B-BBEE Commission to enable improved coordination and harmonisation of efforts to promote and monitor progress in the transformation of the financial sector.
- Engaging with financial institutions to monitor their progress against their transformation commitments
- Encouraging enterprise development by supporting FSC targets<sup>26</sup>
- Conducting research to understand how to support sustainable black businesses operating in the financial services value chain
- Ensuring regulatory frameworks are proportionate to the risks, nature and scale of financial institutions and allow for progressive realisation of requirements, including consideration of tiered licensing requirements
- A dedicated regulatory framework for microinsurance has been introduced by the Insurance Act, 2018 with effect from 1 July 2018. The framework sets specific micro-insurance product standards and allows a broader set of providers to underwrite these products, within regulatory parameters proportionate to the risk posed by them.

- A revised regulatory framework for funeral service providers, to encourage and facilitate the provision and distribution of good value, low cost funeral cover products that are appropriate to the needs of low-income consumers without imposing an inappropriate compliance burden.
- A revised framework for friendly societies. A working group comprising the FSCA, National Treasury and the Department of Small Business Development is exploring legislative options for transitioning friendly societies into the regulatory framework for co-operative institutions
- A more proportional regulatory framework for advisers and intermediaries operating in low income market sectors is being developed. The framework (currently through the FAIS Act) sets minimum competency standards, operational requirements and codes of conduct for financial advisers and intermediaries. Many intermediaries operating in the low-income market have argued that these requirements are too onerous for them to sustain their businesses. In the past, the FSB addressed this concern through various exemptions from the FAIS Act and reduced levies. The FSCA will adopt a more holistic approach through proportional fit-and proper requirements and less onerous financial, operational and compliance requirements.
- Proposed focus on transformation commitments in the governance requirements to be imposed on financial institutions in the future COFI Act.

#### **(I) Strategic focus on supporting small business in the interest of transformation**

The FSCA will be responsible for licensing and supervising all financial institutions, which will include a large number of small businesses in the financial sector. For these SMEs, regulation can be seen as not only a barrier to entry but can, if not managed proportionately, cause the failure of a business through compliance costs, and even withdrawal of licenses due to their inability to comply. An analysis of current licensed entities shows that a significant proportion of the business supervised by the FSCA falls into the SME space, with 3 794 license holders being CCs and 1 804 being sole proprietors as at July 2018.

The organisational design of the FSCA introduces a Financial Inclusion Research unit and an Inclusive Business Model Support unit in the Regulatory Policy Division.

These units will focus on the following initiatives:

- Small business education and coaching on regulatory compliance.
- Assisting sole proprietors and CCs with business continuity initiatives, including conversion to a (Pty) Ltd.
- Coordination of an appropriate funeral providers framework.
- Collation of evidence and practice-based input into a proportionate regulatory framework.
- Focus on an appropriate exemption framework, especially in the transition period before the COFI Act comes into operation.
- Communication and cooperation with the sector and encouraging the development of industry associations where none exists.
- Monitoring and measurement of transformation trends in this sector.
- Creating and delivering appropriate workshops on regulation.
- Creating and developing appropriate support for FAIS regulatory examinations for previously disadvantaged individuals.
- Focus on credit control and compliance reporting to avoid administrative supervision and withdrawal of licenses
- Develop and implement an appropriate communication framework for this sector based on issues particular to this sector.

### **3.4 Financial inclusion**

The FSR Act includes financial inclusion in the object of the Act and stipulates that promoting financial inclusion is one of the FSCA's specific functions.

The Act defines financial inclusion to mean that all persons have timely and fair access to appropriate, fair and affordable financial products and services. These provisions drive the FSCA's financial inclusion strategy to promote a financial sector that ensures that previously excluded South Africans participate in the mainstream economic activities of the country. It is crucial that FSCA drive the sector to provide greater access to, and sustainable use of, financial services and products for financial customers, while ensuring fair treatment.

The FSCA's prioritisation of financial inclusion is not just about increasing consumer access to financial products and services as an end in itself. FSCA want to ensure that this access enables South Africans to use appropriate financial products that meet their needs and improve their quality of life. This means that the FSCA's regulatory and supervisory frameworks must support inclusive business models – models that will minimise the barriers that prevent customers from meaningfully using financial products and services.

The extent of consumer usage of financial products and services is also heavily influenced by trust and confidence in the sector. Over and above inadequate financial literacy and capability, factors that discourage a target market from using products and services include lack of trust in the provider, negative perceptions of the affordability or value, and fear of formalities. Conversely, if consumers believe that they are protected, they are more likely to have confidence in the sector.

It is important to see the FSCA's financial inclusion objective as a key part of – and not separate from – the FSCA's objectives to promote fair customer treatment and to enhance the efficiency and integrity of financial markets. Financial inclusion initiatives would defeat their purpose if they compromised fair customer outcomes or market integrity.

### **3.5 Strategic initiatives to support financial inclusion**

To promote meaningful financial inclusion, the FSCA's strategic plans are as follows:

- The FSCA's focus on ensuring that regulatory requirements are proportional and reduce inappropriate barriers to entry, in addition to supporting transformation of the financial sector, will also support financial inclusion by encouraging financial institutions to develop more inclusive business models with potentially more affordable products and services.
- The FSCA's frameworks will support development and distribution of products and services that meet the needs of low-income customers, including accessible and appropriate investment products. This will include a focus on reducing product complexity to improve understanding and enable simpler regulatory requirements.
- It is also necessary to make South African capital markets accessible to less sophisticated and smaller investors, who have historically been excluded from these markets. FSCA will consider international developments in liberalizing capital markets and the potential introduction of initiatives to make capital markets more accessible. These initiatives will be consulted upon once policy positions are agreed.
- National Treasury's primary objective in introducing tax-free investments (TFIs) in 2015 was to address the worryingly low level of household savings through tax-free products that are simple to understand, transparent, reasonably priced and suitable for a target market made up largely of non-expert financial investors. In practice, contrary to the intended objective and target market for TFIs, a number of more complex and sophisticated financial products are currently being offered as TFIs across the banking, insurance and CIS sectors. FSCA intend to apply a cross-cutting proportional supervisory approach to focus on TFIs that will best support the primary objective of encouraging access to suitably tailored products by a consumer base with a historically poor savings culture.
- The Retail Banking Diagnostic undertaken by the World Bank includes findings relevant to the FSCA's inclusion objectives. It is complementary to the 'Achieving Effective Financial Inclusion in South Africa: A payment perspective' analysis and report undertaken by the World Bank in 2016 (2016 WBG Report). These reports will inform the approach of the FSCA to financial inclusion in the banking and payments sectors.

- The FSCA's focus on understanding new ways of doing business, includes supporting technological innovation that enables inclusion. The rapid penetration of mobile phones together with innovations such as automated advice models, distributed ledger technology, peer-to-peer and crowdfunding, present new, lower cost forms of access for both low-income customers and smaller financial institutions. An engagement model has been drafted, with inclusion as a requirement, for entry into the innovation space.
- The FSCA's inclusion-focused interventions will be informed by customer-focused research. As noted above, this research need has been recognised in the FSCA's organisational design.

**(I) How and when will the FSCA consider using product standards to support the objectives**

TCF Outcome 1 requires products marketed and sold in the retail market to be designed to meet the needs of identified customer groups and targeted accordingly.

The FSCA's primary approach to this outcome will be to scrutinise the governance processes that product providers have in place for designing their products. The FSCA will expect these providers to demonstrate that they have effective processes in place for ensuring that their products – and the marketing and distribution strategies they use for these products – are and remain appropriate to their targeted customer base. This principles-based approach allows flexibility in product design but places the onus on product providers to satisfy the FSCA that their products are delivering fair customer outcomes.

However, there are contexts in which a more intrusive, rules-based approach, including prescribing product features, may be effective in supporting FSCA's objectives. Examples of how product standards could be used are as follows:

- Controlled product features may be necessary to ensure consistent quality and protection across a category of products intended for retail financial customers, such as South Africa's current requirements for collective investment scheme portfolios.
- Controlled product features mean that regulators can possibly relax other regulatory requirements, such as micro insurance product standards which allow for reduced prudential obligations for an insurer and less onerous adviser competency standards, in turn supporting transformation and inclusion.

- Prescribed minimum product features (combined with disallowing certain more complex features) can be used to develop baseline financial products for low income South Africans in support of financial inclusion. An example could be developing minimum product standards for transactional banking accounts.
- Prescribed minimum product features can reduce product complexity leading to reduced product development and distribution costs. Particularly when combined with appropriately reduced prudential requirements, this creates an opportunity for passing cost savings on to customers
- Prohibition of fundamentally unfair contract terms reduces the risks of information asymmetry between financial institutions and customers.
- Product standards can respond to cases where there is systemic abuse of vulnerable financial customers, and less intrusive regulatory interventions have not sufficiently corrected the behaviour. An example is the minimum product standards for consumer credit insurance.

While introducing conformity, product standards need not standardise the product to the extent that there is no space for competition.

Regulating product features does not mean price regulation. Price caps would only be considered in exceptional circumstances, such as where the structure of the market prevents competitive forces from operating optimally (such as in the consumer credit space).

### **3.6 Intended key outcomes of this strategic priority**

Intended outcomes of the FSCA's transformation and inclusion strategies are as follow:

- Formalised relationships with the FSTC.
- Licensing conditions and other provisions in the COFI Act (or other financial sector laws in the interim, where appropriate) that cater for transformation commitments aligned to supporting the FSC.
- The FSCA monitors progress against transformation plans and assists with driving achievement of commitments to FSC targets, including through consequences for failure to demonstrate progress against these commitments.
- Proportionality and progression built into supervisory and regulatory frameworks.

- FinTech Department suitably resourced and actively engaged with FinTech start-ups and incumbents using FinTech.
- Inclusion Research unit suitably resourced and engaged to ensure regulatory and supervisory frameworks cater for transformation and inclusion.
- Training and support initiatives for small financial services businesses held every year.

### 3.2 A robust regulatory framework that promotes fair customer treatment

The FSCA's predecessor, the FSB, launched its outcomes-based customer protection initiative, Treating Customers Fairly (TCF), with the publication of its TCF Roadmap in March 2011. The TCF Roadmap was published shortly after National Treasury announced its plans to move to a Twin Peaks model, highlighting the TCF initiative as an important step in strengthening market conduct objectives in the financial sector.

TCF is a regulatory and supervisory approach that seeks to ensure that financial institutions demonstrably deliver specific, clearly articulated fairness outcomes for financial services customers throughout the typical financial product lifecycle. The six target TCF outcomes are:

- **Outcome 1:** Customers are confident that they are dealing with financial institutions in which the fair treatment of customers is central to their culture.
- **Outcome 2:** Products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly.
- **Outcome 3:** Customers are given clear information and are kept appropriately informed before, during and after the time of contracting.
- **Outcome 4:** Where customers receive advice, the advice is suitable and takes account of their circumstances.
- **Outcome 5:** Customers are provided with products that perform as financial institutions have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect.
- **Outcome 6:** Customers do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint.

These TCF outcomes not only describe the way in which the FSCA expects financial institutions to deal with their customers, but act as the guiding principles it will use to design both its regulatory and supervisory frameworks to ensure that financial institutions will indeed prioritise these outcomes.

### **3.2.5 Working towards an overarching conduct of business framework that promotes TCF outcomes**

The FSR Act formally entrenches the TCF approach in the legislative framework, by giving the FSCA an explicit objective to promote fair treatment of financial customers by financial institutions and empowering it to make conduct standards aimed at ensuring that this is achieved.

The FSCA will continue to work closely with the National Treasury, the PA and other stakeholders to shape the next phase of the Twin Peaks legislative framework.

FSCA expect that the design of the COFI Act will support the TCF outcomes-based approach. The draft COFI Bill is to be structured broadly in line with the required TCF fairness outcomes. It will comprise a number of chapters specifically focused on ensuring financial institutions deliver TCF outcomes for their customers throughout the typical financial product lifecycle and will empower the FSCA to make conduct standards to reinforce this objective. Although the COFI Bill will entrench requirements for fair treatment of all financial customers, including in the wholesale space, it will impose proportionally more rigorous TCF-aligned customer protection obligations on retail customers. The TCF-aligned provisions of the COFI Bill are expected to be largely principles-based, while more explicit conduct standards will be developed to underpin the delivery of the six TCF outcomes.

This legislative design is consistent with the message that the FSB has communicated since the publication of the TCF Roadmap in March 2011, that outcomes-based regulation comprises a combination of market conduct principles and explicit rules. As explained in the TCF Roadmap, 'delivery of TCF, therefore, requires the development of a regulatory framework that will effectively balance principles-based and rules-based regulation to ensure that regulated firms deliver the desired outcomes of discipline and transparency in a consistent manner'.

However, it will still be some time before the COFI Act comes into operation. Current indications are that it will be tabled in Parliament during 2019. Considering that it is a substantial and far-reaching piece of legislation, the COFI Bill is likely to be subject to rigorous debate through the Parliamentary process before it is finalised. Thereafter, full implementation of the COFI framework can take place only once the FSCA has consulted on and finalised a suite of conduct standards to underpin the primary provisions of the COFI Act. Realistically, therefore, FSCA do not expect full implementation of the COFI framework during the three-year planning horizon covered by this strategy document.

Given this timing, the FSCA's medium-term strategy to deliver on the FSCA's mandate to promote fair customer treatment is to adopt an incremental approach to working towards an overarching conduct of business framework that promotes TCF outcomes. This incremental approach entails the following:

- Embedding TCF in existing regulatory frameworks or, where necessary, through conduct standards under the FSR Act.
- Continuing to prioritise a number of key TCF aligned regulatory projects.
- Embedding TCF in the FSCA's supervisory and enforcement frameworks. These elements are discussed in more detail below.

This incremental approach will ensure that, when the final overarching COFI conduct of business and licensing frameworks become effective, the FSCA's regulatory and supervisory frameworks will already be reasonably aligned to the new model, enabling a smooth transition.

### **3.2.6 Embedding TCF in existing regulatory frameworks**

The FSB started a process of incrementally implementing and harmonizing regulatory changes to support delivery of the TCF outcomes within existing regulatory frameworks, pending the implementation of the future COFI Act and its underlying conduct standards. This will ensure that, when the COFI Act comes into operation, then existing subordinate regulatory instruments can be transitioned into conduct standards under the COFI Act as smoothly as possible.

The FSCA will continue this TCF-aligned regulatory development, primarily through its rule-making powers under existing financial sector laws. Where existing financial sector laws do not enable the FSCA to make appropriate conduct standards (for example in relation to entities or activities not regulated under existing laws, such as the FSCA's new functions), FSCA are already able to use the FSCA's standard-making powers under the FSR Act.

The six TCF outcomes will, therefore, consistently be used as the guiding framework for regulatory instruments, especially for financial institutions whose products or services directly or indirectly impact retail customers.

### **3.2.7 Priority TCF-focused regulatory projects**

A number of specific regulatory projects initiated by the FSB and aimed at ensuring the FSCA's regulatory framework supports delivery of fair customer outcomes, will be progressed by the FSCA. Key TCF-aligned regulatory projects are considered in the subsections following.

#### **(I) Focus on governance and culture**

TCF Outcome 1 aims to ensure that customers can be confident that they are dealing with entities for which the fair treatment of customers is central to their culture. The FSCA believes that meaningful delivery of the remaining TCF outcomes is unlikely without true commitment to this first outcome.

The FSCA's supervisory experience (and that of the FSB before the FSCA) has shown that where specific TCF failings occur, institutions with strong TCF-aligned governance structures are best positioned to identify and mitigate risks to their customers.

As highlighted in the initial TCF Roadmap, to ensure the behaviors and attitudes necessary for a culture of fairness to customers, financial institutions will need to build a TCF approach into many of their key organisational structures and processes. These include board and senior management accountabilities, strategic and business planning processes, governance frameworks such as those for risk management and compliance, decision-making forums and processes, management information and measurement systems, performance management and recruitment, and remuneration, incentive and reward policies.

The FSCA's broader objective of promoting fair customer treatment, therefore, includes a particular focus on requiring financial institutions to have governance and control structures in place that support their commitment to fair customer treatment. Historically, regulatory corporate governance requirements have been viewed mainly as part of the prudential regulatory domain.

Increasingly, however, regulators are recognizing the important role that governance frameworks play in ensuring that customer interests are prioritized.

The FSCA has been working with the PA and the National Treasury to review governance and culture related requirements developed by various international standard setting bodies and policy forums, and applicable South African frameworks – including the King IV Report on Corporate Governance for South Africa, 2016. This assessment is being used to complete a gap analysis, comparing these broader frameworks against current South African regulatory requirements, which will, in turn, inform the ongoing development of appropriate governance-related standards by the FSCA and PA. Given that both the PA and the FSCA have an imperative to ensure that the culture and governance frameworks of financial institutions support the achievement of a stable and sustainable financial system that works in the interests of financial customers, the development of joint standards focusing specifically on governance related matters is an appropriate area for collaboration and coordination.

The FSCA will focus primarily on the conduct of business aspects of a financial institution’s governance framework, with specific consideration of the key drivers of behaviour within financial institutions across all levels, from board through to senior and middle management, as well as frontline customer-facing staff. Such drivers could be influenced by factors such as the financial institutions’ overall vision, mission and purpose, strategic growth targets, employee remuneration and incentive structures, and internal governance, risk management, reporting and other assurance frameworks. Importantly, the FSCA’s focus on governance frameworks will be risk-based and proportional. FSCA will expect more proactive and comprehensive governance frameworks in larger, more complex financial institutions than in smaller businesses.

## **(II) Fair and sustainable advice and distribution models through ongoing phased implementation of the Retail Distribution Review (RDR)**

The FSCA strongly believes that access to fair and appropriate financial advice, at a reasonable cost and through sustainable business models, is an essential element of the consumer protection framework. The FSB began consultation on its RDR in November 2014.

The RDR proposed far-reaching structural reforms to the regulatory landscape for financial advice and distribution of financial products, aimed at the following:

- Supporting the delivery of suitable products and providing fair access to suitable advice for financial customers.
- Enabling customers to understand and compare the nature, value and cost of advice and other services intermediaries provide.

- Enhancing standards of professionalism in financial advice and intermediary services to build consumer confidence and trust.
- Enabling customers and distributors to benefit from fair competition for quality advice and intermediary services, at a price more closely aligned with the nature and quality of the service.
- Supporting sustainable business models for financial advice to enable adviser businesses to viably deliver fair customer outcomes over the long term.

Both the FSB and the FSCA have, since the initial RDR paper in 2014, published a series of status updates on progress in its implementation and outlining refinements of RDR proposals based on stakeholder input and ongoing technical work. The FSCA continues to prioritise the objectives of the RDR as a key contributor to ensuring the delivery of TCF outcomes – particularly TCF Outcome 4 - (fair and appropriate financial advice and distribution models).

The RDR will continue to be implemented in phases, aligned as far as possible to broader market conduct regulatory developments, as other elements of the TCF aligned conduct regulatory framework are rolled out.

### **(III) Key Information Documents (KIDs)**

To develop standardised templates for pre-point of sale disclosure documents (KIDs) setting out key features of financial products sold to retail customers and allowing easy product comparison, in support of TCF outcome 3.

### **(IV) Performance fee standards**

Cross-cutting standards are being considered for various types of performance fees levied by investment managers against financial products in different sectors of the financial services industry. The intended outcomes are performance fee structures and levels that are reasonable to investors and consistency across industries.

These standards will also apply specifically to default portfolios offered by retirement funds as part of the retirement funds default regulations. This initiative supports TCF outcome 5. These standards will be aligned to international best practices.

## **(V) Unclaimed benefits**

There are unclaimed benefits of more than R42 billion in retirement funds as well as unclaimed benefits in other financial sectors such as insurance, CISs and banks. Whilst the main effort is currently on retirement benefits, other industries will be included in the unclaimed benefits project going forward.

The FSCA continues to roll out an initiative to drive the payment of these benefits to their rightful owners, which will make a significant difference to many beneficiaries' lives. A joint policy paper between the FSCA and National Treasury is being considered to address key policy questions, for example, how best to deal with unclaimed benefits where members of retirement funds cannot be traced, and best practice in avoiding unclaimed benefits in the future. This project supports TCF outcomes 5 and 6.

## **(VI) Complaints management review**

To ensure a more consistent and comprehensive regulatory framework for the complaint's management processes of different types of financial institutions, in support of TCF outcome 6.

In addition to strengthened complaints management regulatory requirements and alignment of these standards across sectors, complaints monitoring will also be a key supervisory focus area, enabling the FSCA to gain insight into a regulated entity's internal complaints management and dispute resolution system and procedures. In particular, FSCA will expect financial institutions to be able to show the FSCA how they are using the findings of their complaints management processes and data to identify and remedy poor customer outcomes.

Complaints data collection from both financial institutions themselves and through ombud structures assists the FSCA in identifying and monitoring market trends, governance and management failures, and poor customer outcomes.

### **3.2.8 Embedding TCF in supervisory and enforcement frameworks**

In addition to the FSCA's focus on TCF-aligned regulatory framework development, the FSCA will build on the FSB's work in driving fair customer treatment by monitoring industry commitment to TCF and through actions taken when financial institutions fail to meet fair treatment standards. The ways in which this will be achieved are considered in the subsections following.

## **(I) Gathering information to monitor TCF delivery**

To comply with its FSR Act obligation to monitor whether the financial system is delivering fair outcomes for customers, the FSCA needs access to meaningful, reliable, measurable and comparable information on TCF indicators. FSCA are, therefore, implementing a number of conduct of business statutory returns that will provide the FSCA with the qualitative and quantitative data required to make meaningful assessments - supported by the FSCA's strengthened data analysis capability. For financial institutions to be able to complete these returns accurately, their own management information processes must be appropriately geared to monitor TCF delivery.

After an exhaustive consultation and pilot process, insurance conduct of business statutory returns was introduced by the FSB in December 2016. Using a risk-based approach and to ensure that insurers have sufficient time to address internal systems and data limitation challenges, they have a two-year transitional period to achieve full compliance with reporting requirements. During this period, information gathered from the returns will be used solely for internal supervisory and framework development. Publication of comparative indicators and key trends will begin after the transitional period is over and when FSCA are sufficiently comfortable with the integrity, validity and reliability of information being submitted.

The FAIS Department is also considering comments on a draft conduct of business statutory return that was first published for input in December 2016. The return was materially changed based on input received and was published for a further round of comments in July 2018. The intended date of publication will depend on the outcome of the current round of consultation.

In the retirement funds space, the Retirement Funds Supervision Division will adopt a specific focus on the delivery of TCF outcomes in the sector. FSCA are considering stakeholder comments on draft TCF guidance documents for pension funds and benefit administrators, and on draft complaints management and reporting requirements, both of which were issued for comment in late 2017. FSCA are also developing a biannual conduct of business report, which will be issued for comment shortly.

## **(II) Engaging institutions on their TCF progress**

In the FSCA's ongoing supervision of financial institutions, through routine supervisory on-site inspections, focused thematic reviews and other formal and informal supervisory engagements, operationalizing TCF will be a core focus. Senior leadership of all the entities FSCA regulate should be equipped and able to have in depth conversations about, and readily demonstrate, their progress in ensuring the consistent delivery of fair outcomes to their customers, the risks they have identified to delivering these outcomes, and the steps they have taken to mitigate and manage these risks in an integrated manner across their businesses.

## **(III) Remedial and enforcement action for unfair customer treatment**

Section 3.2 of this document explains the various tools the FSCA has available to take regulatory action when market conduct laws are contravened. Institutions – and their leaders - that fail to meet their TCF responsibilities can expect the FSCA to use the enforcement powers necessary to most effectively remedy the effects of their misconduct, provide redress to prejudiced customers, stop them reoffending, penalize their misconduct, and deter others from considering similar unacceptable actions.

Importantly, the FSCA's enforcement powers apply to contraventions of both rules-based and principle-based requirements. As explained by the National Treasury: '... the legislation should be flexible enough to allow for a finding of non-compliance with the principle without a finding that one or more specific conduct standards have been breached; in other words the law must support judgment-based decision making by the regulator... in keeping with its proactive and pre-emptive approach, the new authority will increasingly focus not only on breaches of specific rules-based conduct standards, but also on transgressions of principles-based conduct standards – including failure to deliver TCF outcomes for customers”.

### **3.2.9 Moving to an activity-based licensing model**

Licensing is a critical component of the supervision value chain. The licensing function facilitates and provides an entry point for all applicants before they are permitted to conduct business. Of necessity, this means that the FSCA's licensing framework, processes and systems must be not only stringent but robust enough to sift out bad applications and accept only good applications. All applicants, irrespective of size, must be subjected to an appropriately intense and intrusive licensing process. However, it is important that proportionality must also apply, to ensure that the licensing approach and requirements are not a 'one-size-fits-all' but are proportionate to the risks underlying the business activities of different applicants. This is to ensure that the licensing requirements do not pose an unnecessary barrier to entry into the financial services sector.

In line with the activity-based approach of the FSR Act in defining its mandate, the FSCA's licensing model will ultimately be built around the specific regulated activities carried out by financial institutions. Therefore, as part of the COFI Act development process, work is underway to build a detailed activity-based licensing model. The establishment of the FSCA's new centralized Licensing Division also prepares the FSCA for this future model.

However, until the COFI Act comes into operation, financial institutions continue to be licensed under current sector-specific laws. The FSR Act allocates these licensing powers between the FSCA and the PA, but also stipulates that, in this interim period, neither authority may issue, revoke, suspend or amend a license without the concurrence of the other.<sup>35</sup> To make this work, the FSCA will enter into MoU with the relevant regulatory authorities to govern the relationships, cooperation mechanisms and obligations of the authorities when considering the license applications of entities that are supervised by multiple regulatory authorities.

The FSCA's plans for moving from this interim licensing approach to the ultimate activity-based model will focus on causing as little disruption as possible to already licensed institutions and their customers. More particularly, the process will entail a conversion of existing sectoral licenses to licenses and authorizations under the COFI Act, rather than requiring already licensed entities to re-apply for their licenses. Details of the phasing in of the new licensing framework, including the license conversion process, will be confirmed and communicated closer to finalisation of the COFI Act. At that stage, the FSCA will issue guidance on its process to ensure a smooth transition from the current sectoral licensing model to the centralized and activity-based model under the COFI Act.

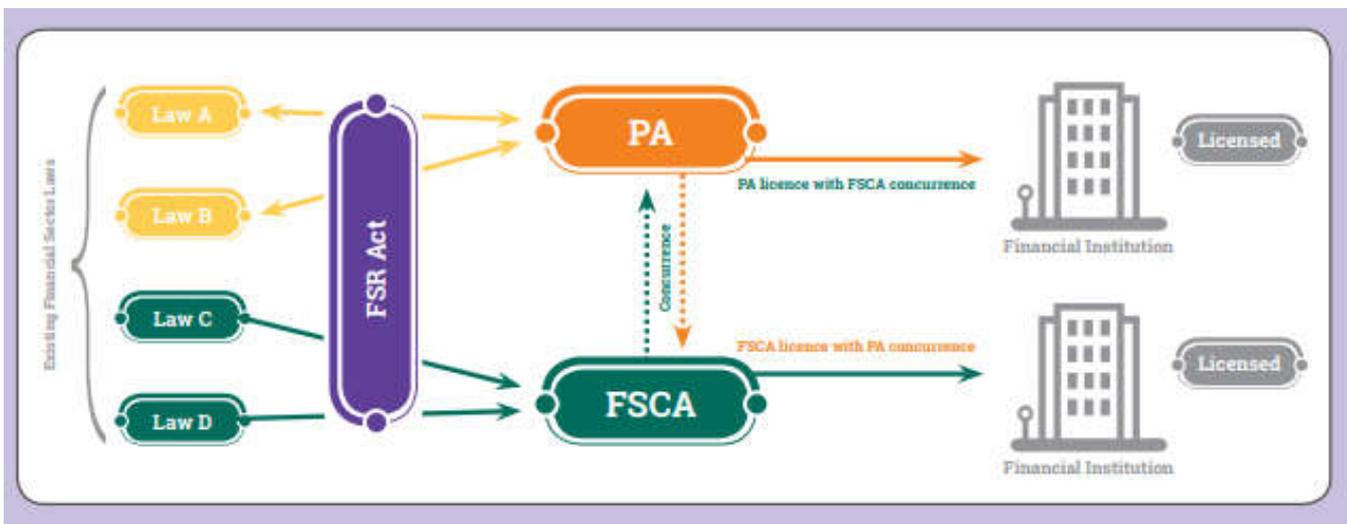
The transition for the current licensing model to the expected future model under the COFI framework will be phased.

A financial institution will require a license in terms of law C or D (for e.g. the FAIS Act, Pension Funds Act, Collective Investment Schemes Act, etc.). The FSR Act assigns FSCA as the responsible authority for those laws. The FSCA will seek the concurrence of the PA when deciding to issue a license.

If the PA agrees, the FSCA will issue a license to the financial institution. The same scenario applies to the PA in relation to laws A and B (for e.g. the Insurance Act or the Banks Act) which the FSR Act assigns to it as the responsible authority.

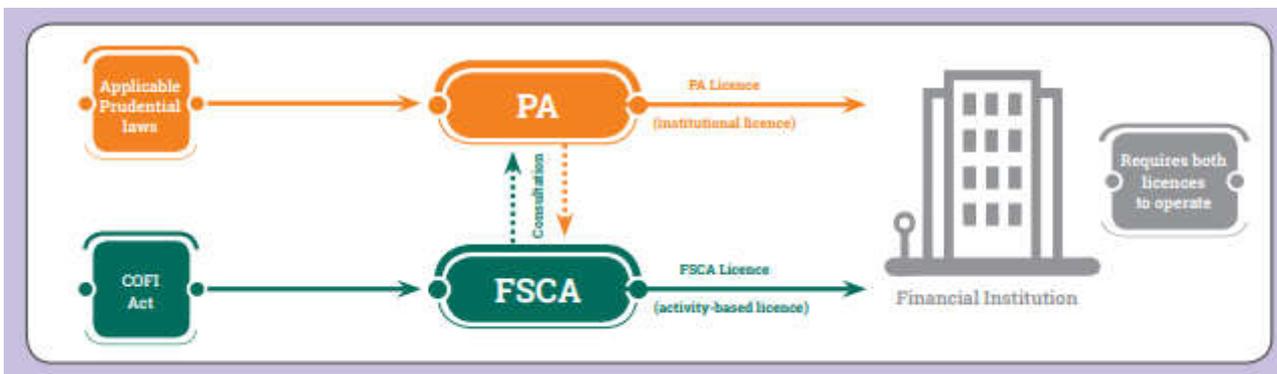
The figure below depicts licensing in Phase 1.

Figure 3.4: Licensing in Phase 1: Licenses issued by the FSCA or PA (as responsible authority)



During phase 2 a financial institution will require a license from both the PA and FSCA in order to operate. Should an authority not grant it a license, it is unable to operate.

Figure 3.5: Licensing in Phase 2: Licenses issued by both the FSCA and PA in terms of conduct and prudential laws



### 3.2.10 Intended key outcomes of this strategic priority

The FSCA’s incremental implementation of a TCF-aligned framework for conduct of business regulation aims to achieve the following.

- Increasingly aligned and harmonised conduct standards under existing sectoral laws,

- New conduct standards under the FSR Act for financial institutions and activities not covered by existing sectoral laws,
- A holistic TCF-aligned supervisory approach to monitor and enforce delivery of these conduct standards,
- Ongoing implementation of key TCF-aligned regulatory projects, including achieving the outcomes of the RDR,
- Readiness for a smooth transition to the overarching licensing and conduct standards framework under the COFI Act,

### **3.3 Informed financial customers**

Under the specific objectives of the FSCA as set out in the FSR Act,<sup>36</sup> in addition to promoting fair treatment of financial customers, the consumer protection element of the FSCA's mandate requires it to provide financial customers and potential financial customers (including small businesses) with financial education programmes, and promote financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions. This objective drives the FSCA's financial literacy and consumer education strategy.

#### **3.3.1 Financial literacy and consumer education initiatives**

Financial education increases consumers' financial capability and so contributes to demand for financial products, transparency and fair market conduct. Financial literacy is also a key factor in ensuring sustainable and effective financial inclusion. Recognizing this, the National Treasury and the FSB established the National Consumer Financial Education Committee (NCFEC) in 2012 to foster coordination and consistency across various consumer financial education initiatives with other stakeholders.

In 2012, the FSB published the results of the first study into financial literacy in South Africa: Financial Literacy in South Africa: Results of a baseline study. The internationally recognised methodology used in the survey is based on measuring four domains of financial literacy – financial planning, financial control, financial knowledge and understanding, and financial product choice. Following this initial baseline, the FSB conducted follow-up surveys in partnership with the Human Sciences Research Council, which have provided a year on-year national barometer of South Africans’ financial literacy and behaviour. The data collated over four years have provided those involved in consumer education with clear emergent trends in economic and social stressors being experienced by South Africans. The baseline data was also used to develop the first National Strategy for Consumer Financial Education in South Africa and the NCFEC approved the strategy in 2013.

It is recognised that achievement of the national strategy could have been improved had there been better coordination, monitoring and evaluation of the sector’s initiatives. This learning will inform the FSCA’s strategy going forward. The FSCA’s mandate for consumer education has been further strengthened by the inclusion in the FSR Act of the ability to make conduct standards for consumer education.

The FSCA will now promote financial literacy by developing best practice for delivery of initiatives and standards for monitoring and evaluating the impact of consumer education initiatives undertaken by the financial services sector. The strategy will not only look at monitoring and evaluation and best practice but will drive coordination of industry initiatives to maximise the impact of the sector’s spends on financial education and ensure it is aligned to the strategy and to changes in the behaviour of South Africans.

The FSCA’s strategy, therefore, is to drive delivery of effective and coordinated literacy campaigns in areas identified through the national strategy and to evaluate the impact of coordinated efforts. This includes using established networks to integrate the FSCA’s financial education strategies with broader government policy goals.

Specific consumer education-related initiatives are considered in the subsections following.

#### **(I) The FSCA’s Taking Regulation to the People project**

In line with the FSCA’s intent to make the FSCA more accessible to both financial customers and regulated entities, this project looks at creating innovative communication channels with stakeholders. The FSCA will continue the FSB’s initiative of hosting events in all nine provinces to interact directly with financial institutions and customers.

FSCA have procured a vehicle to take FSCA representatives into rural areas and townships. In addition, FSCA will deliver training and support programmes to small business to promote sustainability from a compliance perspective.

#### **(II) The National Consumer Financial Education Committee (NCFEC)**

National Treasury and the FSB established the NCFEC in 2012 to foster coordination and consistency across various consumer financial education initiatives with other stakeholders. The NCFEC is a multi-stakeholder committee chaired by the National Treasury and has representation from government departments, financial industry associations, ombuds, labour and civil society.

#### **(III) The Consumer Protection Forum (CPF)**

The CPF is chaired by the National Consumer Commission and comprises the nine provincial Consumer Affairs offices from the provincial Departments of Economic Development, represented by the Consumer Protector in each province, and various regulatory authorities. The FSCA's participation in the CPF increases the FSCA's footprint across South Africa through the FSCA's Taking Regulation to the People project described above.

#### **(IV) Partnership with the Department of Public Works**

This project provides financial literacy to participants of the Expanded Public Works Programme (EPWP) and is further being entrenched through a train-the-trainer initiative for official and provincial coordinators of the EPWP. This partnership is a good example of integrating government's objectives of job creation and skills development with the provision of financial education.

#### **(V) Other national financial education projects**

The FSCA will continue to coordinate national financial education projects such as the Money Smart Week and the Financial Literacy Schools Speech Competition, as well as initiating appropriate bespoke financial education projects that will assist the FSCA in formulating best practice.

### **3.3.2 Intended key outcomes for this strategic priority**

Intended outcomes of the FSCA's financial literacy and consumer education strategy are as follows:

- Broader consumer protection.
- Integration of financial education with regulatory functions.
- Coordinated industry financial education activities.

- Improved data on consumer behaviour.
- Positive consumer Behavioural change.

### 3.4 Strengthening the efficiency and integrity of the financial markets

The FSCA is committed to strengthening oversight of financial market efficiency and integrity through a number of key projects. The key projects are considered in the subsections following.

#### 3.4.1 Changing the market infrastructure regulatory landscape - review of the Financial Markets Act

The National Treasury has instituted an inter-agency committee, the Financial Markets Implementation Committee, tasked with progressing the review of the Financial Markets Act (FMA). With assistance from international experts appointed through the World Bank, the committee will assist the National Treasury to identify policy gaps and develop a policy paper as a baseline for an FMA Amendment Bill.

The FSCA will engage with the PA, the SARB and the National Treasury on the following focus areas:

- **Alternative trading platforms:** Given the narrow structure of the FMA, which recognises only a single type of trading venue (an exchange as defined in the FMA), a similar approach may be necessary to the one under European frameworks, which provide for alternative trading platforms that cater for different market needs and execution protocols, such as systematic internalizers and multilateral trading platforms. Among the benefits of having diverse trading platforms are increased competition, improved market access and transparency, and higher liquidity, to enhance the competitiveness of the South African markets.
- **Regulation of authorised users:** In terms of the current 'strong self-regulatory organisation (SRO)' model of regulation embodied by the FMA, market infrastructures are currently responsible for the authorisation and supervision of their members (authorised users, participants and clearing members). It is proposed that the FSCA assume responsibility for the regulation and supervision of members under the COFI Act and FSR Act, while the market infrastructures oversee their members in terms of their rules.

- **Cross-market surveillance:** Each licensed exchange is currently responsible for the oversight of trading on its platform, with the aim of identifying any market abuse practices. It is proposed that the FSCA carry out cross-market surveillance of trading activity across all licensed exchanges. The individual exchanges must, however, continue market oversight of trading activity by their members on their own exchanges.

### **3.4.2 Review of the South African wholesale financial markets**

The National Treasury, the SARB and the FSCA jointly established a Financial Markets Review Committee (FMRC) to undertake a benchmark review of South Africa's wholesale financial markets, similar to the Fair and Effective Markets Review conducted in the UK. The objective of the review was for the FMRC to develop recommendations to reinforce conduct standards in wholesale financial markets and the output of the FMRC is intended to inform legislative changes, including to the FMA.

The National Treasury, SARB and the FSCA released the FMRC report titled 2018 Financial Markets Review on 3 September 2019 for public comment. The report reviews South African over-the-counter fixed income, currency, commodities and derivatives markets. The report contains forty-three recommendations for consideration by policymakers that will assist financial sector authorities to enhance the integrity and conduct regulatory framework of wholesale financial markets in South Africa.

### **3.4.3 Specific financial markets initiatives**

Complementary to the holistic FMA and FMR reviews summarised above, the FSCA is also working on the specific financial markets' projects. These projects are considered in the subsections following.

#### **(I) Interoperability and cooperation of exchanges**

The licensing of new exchanges in competition with the Johannesburg Stock Exchange (JSE) requires the FSCA to ensure cooperation and interoperability among the exchanges.

The FSB issued a position paper in 2017 to address issues of market fragmentation brought about by the existence of multiple exchanges. Flowing from this, it initiated the Exchange Fragmentation Forum, comprising representatives of the five licensed exchanges.

The purpose of the forum is to identify major areas of market fragmentation and appropriate regulatory interventions, and cooperation required among the exchanges to address fragmentation concerns. To bring regulatory certainty, the FSCA, in consultation with the exchanges, is developing Market Fragmentation Conduct Standards to be issued under the FSR Act.

These standards will need to be adopted by each exchange and must be harmonised where required. Key issues considered in the standards include consolidation of pre- and post-trade information, introduction of a common best-execution rule, cross market surveillance and standards on operational issues relating to issuers listed on multiple exchanges, such as disclosure of price-sensitive information (treatment and timing), corporate actions, trading suspensions/removals and identification of a reference price.

## **(II) Short-selling reporting regime**

Legitimate short selling plays an important role in financial markets for various reasons, including more efficient price discovery, mitigation of price bubbles, increasing market liquidity, and facilitating hedging and other risk management activities. To address conduct concerns where short selling may be used in an abusive manner, the FSCA is developing a short-selling reporting regime in which short sales are flagged by the authorised user and reported to the exchange concerned as well as to the FSCA. This will give the FSCA a repository of short-selling data, enabling it to carry out its market abuse investigation mandate in terms of the FSR Act.

## **(III) Electronic trading platform (ETP) for government debt securities**

The JSE, in consultation with the FSCA, the National Treasury, the SARB and market participants, recently developed an ETP for government debt securities, which was launched in July 2018. Its aim is to enhance liquidity, efficiency and transparency in the trading of these securities. To address market abuse risks, the FSCA is developing appropriate market surveillance mechanisms for the platform.

## **(IV) Regulation of securities financing transactions (SFTs)**

A shorter settlement cycle reduces systemic and operational risk in the market, since there are fewer unsettled trades at any time. An exchange with a shorter settlement cycle, however, requires a failed trades management process that may involve scrip being borrowed from securities lending desks to facilitate settlement. It is, therefore, imperative to enhance regulatory oversight of SFTs, particularly as this activity is currently conducted off-exchange.

It is envisaged that all participants in SFTs in the local securities markets will be subject to appropriate regulation. Work needs to be done on finalising the scope of the regulatory framework, which regulatory instruments to use, and the respective roles of the FSCA and other authorities.

#### **(V) Regulation of over-the-counter (OTC) derivatives markets**

South Africa is committed to G20 and Financial Stability Board agreements for OTC derivative market reforms. In keeping with these reforms, which require effective regulatory oversight of this sector of the markets, conduct standards for the authorisation and supervision of OTC derivative providers (ODPs) have been finalised. The FSCA is developing the licensing and supervisory framework for these markets.

#### **(VI) Regulation of financial benchmarks**

Credible benchmarks are important for a successfully functioning financial system. For benchmarks to fulfil this role, their calculating methodologies, characteristics and governance framework should match best practice. The recent cases of manipulation of the LIBOR and EURIBOR, as well as commodity and forex benchmarks, have highlighted the shortcomings in the benchmark regulatory framework. In response, international regulatory bodies have introduced regulatory frameworks to stem the misconduct.

The FSCA, in consultation with stakeholders and considering its international regulatory peers, will develop appropriate benchmark conduct standards for the South African market and has in September 2018 published a consultation paper in this regard.

The standards will address the following:

- Improving governance and controls over the benchmark process to ensure that administrators avoid conflicts of interest, or at least manage them appropriately.
- Improving the quality of input data and methodologies used by benchmark administrators.
- Ensuring that contributors to benchmarks and the data they provide are subject to adequate controls to avoid conflicts of interest.
- Protecting consumers and investors through greater transparency and adequate rights of redress.

#### **(VII) Legal entity identifiers (LEIs)**

The FSCA will play an active role in the regulatory oversight of the global public interest system of legal identifiers for counterparties to financial transactions. This is to meet international commitments to improved transparency, mitigation of systemic risk and protection against market abuse, and to facilitate central reporting of OTC derivatives transactions by market participants to trade repositories.

### **(VIII) Central counterparties (CCPs)**

CCPs provide an infrastructure to clear transactions in securities, governed by a rigorous regulatory framework developed by the FSCA, the SARB and the PA. The framework recognises the cross-border systemic risk that these institutions pose and contains stringent prudential, governance and conduct requirements. The FSCA will now develop the appropriate conduct supervisory framework for CCPs.

### **(IX) External market infrastructures**

Equivalence recognition for external market infrastructures has been introduced, which facilitates access for South African market participants to international financial markets. The FSCA and the PA are developing a framework for equivalence recognition of these foreign infrastructures.

#### **3.4.4 Intended key outcomes of this strategic priority**

This strategic priority is intended to ensure that South African financial markets are-

- Fair, efficient and transparent, with reliable and effective price discovery.
- Supported by robust and efficient post-trade systems.
- Provide a diverse and competitive range of products and services to meet investors' needs.

### **3.5 Understanding new ways of doing business and disruptive technologies**

Financial technology (FinTech) is transforming the financial services sector and presents exciting opportunities for financial customers and providers alike – innovative and flexible products and services; faster, easier, cheaper and more convenient ways of doing business; greater customization to individual customer needs; improved access to the financial system for both customers and providers; speed to market for providers and ease of switching for customers; instant access to information to support decision-making and comparability; and almost limitless customer choice.

However, while the use of technology presents significant benefits by potentially improving the accessibility of financial products, thus enhancing financial inclusion and the value of financial services to society, it also has the potential to create significant risk. The opportunities for fraud and cybercrime are increasing as digital channels and products expand, and the rapid adoption of new technology by financial service providers can introduce systemic and conduct risks when the technology fails or is not appropriately customised.

The FSCA FinTech strategy will strive to create an appropriate balance between innovation and risk management to ensure good outcomes for customers. South Africa's complex regulatory environment and a lack of clarity or guidance on how FinTech fits into South Africa's existing financial regulatory framework can be daunting barriers for FinTech start-ups. The FSCA regulatory framework needs to mitigate the risks associated with technology in financial services, while encouraging innovation that may deliver efficiencies and promote inclusion.

FSCA will work closely with innovators to understand FinTech developments and regulatory obstacles to innovation and will support FinTech start-ups through Innovation Hubs and Regulatory Sandboxes. The strategy will focus on collaboration with other financial sector regulators and the National Treasury through an Intergovernmental FinTech Working Group (IFWG).

The IFWG includes representatives from the National Treasury, the PA, the SARB, the FSCA and the FIC, and membership will be extended to other sector regulators as required. An inaugural IFWG workshop was held during April 2018, which included participation from the private sector. This was an important first step towards ensuring enhanced regulator and private sector engagement and collaboration on key regulatory and innovation developments.

Irrespective of the types of technologies being deployed by providers, if they are carrying out financial services activities at a significant scale, the activities must be subject to regulatory oversight to ensure consistent delivery of fair outcomes for financial customers. However, FSCA recognises that regulatory oversight needs to be proportional to the risks involved, and more clarity needs to be provided to FinTechs on the extent of oversight. This will probably require a blend of existing regulation subject to certain amendments, supplemented by new regulation only where necessary and supported by appropriate innovation facilitators. FSCA also acknowledges that any regulatory interventions must be principle-based, activity-centered and technology neutral.

Regulators inevitably find themselves playing 'catchup' to technological innovations. To ensure that FSCA are ready to close gaps in the FSCA's frameworks as quickly and effectively as possible – to both support new developments and mitigate any risks they may pose – it is important that FSCA have the skills and tools to stay abreast of changes, understand their implications and intervene if necessary.

The regulatory framework introduced by the FSR Act puts the FSCA in a better position to respond to this challenge than did the previous legislative architecture. As discussed, the substance over form approach to defining financial products and services, and the mechanism for the Minister to designate new products and services, make it easier for gaps in the regulatory framework to be addressed. The FSCA's obligation to regularly review the scope of financial sector regulation also requires the FSCA to undertake ongoing proactive research into emerging trends and FSCA are building the FSCA's research and analysis capacity to carry out this responsibility

### **3.5.1 A coordinated approach to FinTech**

Since FinTech developments have the potential to raise a wide range of regulatory and supervisory considerations, the IFWG has identified the need to create a coordinated point of entry for regulatory and supervisory engagement with FinTech stakeholders, including start-ups and incumbent institutions. This means the FSCA team will work closely with FinTech leads in the PA, the SARB and the FIC to ensure a harmonised and consistent approach.

As pointed out previously, the FSCA's new organisational structure includes a dedicated FinTech department in the Regulatory Policy Division, and the PA will have a similar dedicated structure. Innovation Hubs enable users to fully appreciate the impact of the regulatory environment and what is required of them, while also allowing the supervisor to assess the appropriateness of the regulatory framework in a real-world testing environment through the use of sandboxing.

The FSCA FinTech team, working with the FinTech structures of fellow supervisors, will develop protocols of engagement, which will include the establishment of and criteria for participation in Innovation Hubs, sandboxing and tailored licensing requirements. Protocols for entry into an Innovation Hub will include requirements that the FinTech initiative must introduce a customer enhancement and have a focus on enabling inclusion. The FinTech team will be research driven and work closely with international counterparts to enable best practice in South Africa, not only from a FinTech perspective, but also from a SupTech or RegTech perspective, using technology to enable and enhance regulation and supervision (see more detail later in this section).

The IFWG has agreed that FinTech responsibilities be appropriately shared among the different regulatory authorities and supervisors involved. All relevant aspects of FinTech will be dealt with in a coordinated manner and through appropriately tailored regulatory interventions.

## **(I) Terminology**

Herewith is an explanation of some FinTech terminology:

- Sandboxing is a process of allowing testing of new technologies in a managed space, affording customers appropriate protection and resolution should the FinTech initiative not deliver to expectations.
- A FinTech hackathon promotes the development of financial technology for financial customers by identifying technological solutions to meet identified consumer needs. Hackathons bring together FinTech developers, product innovators, incumbent financial institutions, regulators and other key stakeholders to develop financial solutions, discover new technologies, and identify and share critical skills and resources.
- RegTech refers to adoption by regulated entities of technology to assist them with their regulatory reporting and improve compliance management.
- SupTech entails supervisors themselves using technology to improve the efficiency and effectiveness of their supervisory methods.

### **3.5.2 RegTech and SupTech**

The FSCA's FinTech unit will not only focus on industry use of emerging financial technologies for providing financial products and services, but will explore regulatory and supervisory technology to enable regulated entities and the FSCA's supervision divisions to be more efficient and effective in managing regulatory reporting and compliance (in the case of financial institutions) and supervisory monitoring (in the case of the FSCA). FSCA will engage with industry as it identifies appropriate RegTech solutions and cooperate with international regulators on best practice SupTech tools. Engagement with FinTech stakeholders through workshops and hackathons dedicated to RegTech and SupTech will be coordinated through the IFWG.

The use of 'big data' also presents opportunities to enhance regulatory and supervisory effectiveness. The data required by both regulated entities and supervisors for financial services regulatory compliance are complex and stored in many different systems.

Regulatory big data is the processing, capture and analysis of larger sets of regulatory data using both traditional and newly developed data-processing tools. Regulators aim to use big data sets to complement traditional supervision, enable a proactive approach and assist in maintaining financial stability. The increased quantity and expected more frequent submission of data for regulatory big data purposes, present an opportunity for regulators to enhance their understanding of the institutions they regulate. The FSCA will have a dedicated data governance strategy setting out the manner in which it will ensure optimal use of regulatory data.

### **3.5.3 Intended key outcomes of this strategic priority**

Intended outcomes of the FSCA's FinTech strategy are as follows:

- Creation of the FSCA's dedicated FinTech Department within the Regulatory Policy Division.
- Active participation in the IFWG.
- Finalisation and establishment of an Innovation Hub protocol with other financial sector regulators through the IFWG.
- Establishment of a Regulatory Sandbox, or participation in multi-regulator sandboxing with other financial sector regulators through the IFWG .
- Co-hosting, with IFWG members, of engagement conferences with the FinTech sector.
- Co-hosting of hackathons with IFWG members.
- Development and implementation of the FSCA data strategy.
- Recruitment of necessary specialist skills.

## TOPIC 4 THE FSCA'S APPROACH

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### Learning outcomes

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

- Outline the FSCA's guiding principles.
- Describe the FSCA's toolkit.
- Understand the funding model of the FSCA.
- Describe how the FSCA will be held to account.

### 4.1 The FSA's guiding principles

The policy context and new legislative framework within which the FSCA operates presents it with an excellent opportunity to examine its overall approach to regulatory and supervisory work. This section sets out the approach that the FSCA intends to adopt in fulfilling its mandate and implementing the strategic priorities set out in the previous sections.

Both the FSR Act and the policy direction FSCA have been given by the National Treasury set out key principles that the FSCA must apply in carrying out its regulatory and supervisory functions. The FSCA is committed to an approach guided by the principles considered in the subsections following.

#### 4.1.1 Pre-emptive and proactive

The FSCA must not only be equipped to mitigate risks to its objectives that have already resulted in prejudice to customers or financial markets. The FSCA's preferred approach is, of course, to pre-empt such prejudice and, to do so, FSCA must proactively identify and respond to emerging risks.

The emphasis in the FSCA's organisational design on research and trend-monitoring functions, together with the FSCA's strategic focus on understanding new ways of doing business and disruptive technologies, support this principle. In addition, in the FSCA's supervision of financial institutions, FSCA will require them to share with the FSCA their work in identifying and mitigating emerging risks in their own businesses.

This entity-specific view will be balanced with thematic reviews of crosscutting emerging risks FSCA identify, as well as inputs from a wider range of third-party information sources such as ombud schemes, and social and other media.

#### **4.1.2 Risk-based and proportional**

This principle requires the FSCA to identify key risks to the achievement of the FSCA's objectives, and prioritise the use of the FSCA's resources according to the significance of these risks. As a market conduct authority, the risks to the FSCA's objectives – and the way FSCA go about identifying and prioritizing them – are different to those traditionally focused on by prudential authorities. A prudential risk-based approach typically considers risks to the financial soundness and sustainability of financial institutions themselves. A conduct risk-based approach, on the other hand, considers the risks posed to financial customers and to the efficiency and integrity of financial markets.

A risk-based approach to supervision, therefore, means that FSCA will use the supervisory and regulatory tools available to the FSCA in a way that enables the FSCA to proactively assess these sources of potential conduct risk, and respond to them appropriately and proportionately. Effective analysis of financial institution data FSCA receive will be an important tool in assessing conduct risk.

FSCA will also continue to monitor evolving international standards for the supervision of conduct risk and adapt the FSCA's supervisory frameworks accordingly.

##### **(I) Sources of conduct risk<sup>2</sup>**

Conduct risks arise from three broad types of sources:

- **Inherent factors:** These factors are inherent in the nature of financial service provision. They include aspects of the very nature of financial products and services, information asymmetries between consumers and industry players, and aspects of the behaviour and changing needs of financial customers generally.
- **Factors related to governance and business processes of financial institutions:** These are factors where aspects of the regulated entity's own governance frameworks, distribution models, incentivization structures, business processes or assurance maturity can heighten conduct of business risk exposures, for example ineffective risk management, product design, conflict of interest or complaints management governance structures.

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<sup>2</sup> Source: IAIS Issues Paper and Conduct of Business and its Management November 2015

- **Economic and environmental factors:** These factors relate to the external environment in which a regulated entity conducts its business, but that are typically outside its control. They include economic circumstances, regulatory and technological trends, global and local business and distribution trends, and market-wide poor conduct practices.

#### **4.1.3 Intensive and intrusive**

This part of the FSCA's approach has two dimensions. From a supervisory perspective, it requires the FSCA to adopt a judgment-based style of supervision where FSCA interrogate and, where necessary, challenge the strategic decisions and business practices of the institutions FSCA supervise. To do this robustly and credibly, FSCA need to have deep insight into the culture, business models and drivers of behaviour in these supervised entities and ensure FSCA understand any risks posed to customers and markets. Hence, the emphasis in the FSCA's organisational design on technical analysis skills to support the FSCA's supervisors.

From a regulatory perspective, an intensive and intrusive approach to regulation means that the FSCA's ongoing review of regulatory frameworks will interrogate whether they are robust enough to fully support the FSCA's objectives. Where FSCA feel this is not the case, FSCA will use the FSCA's standard setting powers to drive appropriate structural regulatory interventions to deal with the root causes of poor customer or market outcomes. The RDR reforms are an example of this intrusive regulation.

#### **4.1.4 Transparent and consultative**

The FSR Act requires the FSCA to explain, in this regulatory strategy, how FSCA will be transparent and open to consultation.

The Act also prescribes a rigorous consultation process that FSCA will follow when making regulatory instruments, including submissions to Parliament and public reporting on the consultation process used in every case.

#### **4.1.5 Outcomes-based**

The FSR Act requires the FSCA to monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers. FSCA intend to achieve this through the FSCA's approach of embedding TCF in the FSCA's regulatory and supervisory framework.

#### **4.1.6 Comprehensive and consistent**

Adherence to this principle has both regulatory and supervisory implications. It requires the FSCA to ensure that the FSCA's regulatory framework is comprehensive enough to capture all activities that impact on the integrity of the FSCA's financial markets and fair outcomes for financial customers and does not allow arbitrage between different sets of requirements. From a supervisory perspective, it is supported by the FSCA's risk-based approach, which will enable the FSCA to respond consistently to entities, products and services that pose similar levels of risk. The principle also means that FSCA must be fair and consistent in the FSCA's enforcement actions.

This is supported by the internal mechanisms FSCA are putting in place to ensure that FSCA make decisions based on consistent judgments – a necessary counterbalance to a judgment-based supervision approach.

#### **4.1.7 A credible deterrent**

The goal of the FSCA's enforcement approach is to promote compliance with legislation. The enforcement effort is focused on providing credible general and specific deterrence of poor conduct. Enforcement actions need to discourage a specific entity or person from noncompliance, and also more generally discourage other entities or persons from similar poor conduct. In suitable circumstances, enforcement action will support redress to financial customers.

The FSCA's enforcement process is designed to be fair and consistent, and for administrative penalties and other sanctions to be meaningful, but appropriate. The FSCA's enforcement approach will also be consistent with the administrative action procedures the FSR Act requires the FSCA to have in place. More detail on how FSCA will use specific enforcement tools is set out in the 'The FSCA's toolkit' section below.

#### **4.1.8 Aligned with applicable international standards**

The FSCA's commitment to relevant and appropriate international standards is discussed previously.

## **4.2 The FSCA's Toolkit**

The tools FSCA have at the FSCA's disposal to perform or functions are a combination of statutory powers conferred on the FSCA by the FSR Act, and supervisory methods and approaches FSCA have developed based on the FSCA's experience and international best practice.

The subsections following consider the FSCA's approach to using these regulatory, supervisory and enforcement processes.

### **4.2.1 Information gathering**

FSCA plan to draw on a broad spectrum of information sources, extending beyond just the institutions that FSCA regulate, to form meaningful and balanced insights in furtherance of the FSCA's supervisory mandate. Subject to applicable confidentiality restrictions, such sources of information will include the following:

- Complaints and queries from consumers and other impacted stakeholders.
- Consumer bodies and industry associations.
- Alternative dispute resolution structures, including ombud structures.
- Other regulatory bodies, government departments and state agencies.
- Consumer and other media, including social media platforms.
- Whistleblowers.
- Publicly available or privately commissioned studies relating to general or specific consumer and industry trends.
- Targeted mystery shopping exercises to obtain real time consumer experience insights.

#### **(I) What is mystery shopping**

During a mystery shopping exercise, an employee of the FSCA (usually a supervisory team member) or an external individual appointed by the FSCA may approach a financial institution or its representatives in the role of a potential customer to understand first-hand what a typical customer experience would be in a specific scenario in relation to that financial institution.

The objective of mystery shopping is to identify specific risks facing financial customers and to assess how best to pragmatically address such risks. This could be done by assessing a particular practice across a number of financial institutions or a specific practice or practices of a particular financial institution.

Generally, when consumers complain about a specific experience with a financial institution, it can be very difficult to establish after the event what was said or how the customer was treated during the actual customer interaction.

By recording how a financial institution deals first-hand with a 'mystery shopper', the FSCA obtains valuable insights into the financial institution's 'real life' practices and customer culture in a way that it would not otherwise be able to through traditional supervisory mechanisms.

The FSCA may use the information it obtains from mystery shopping in support of both its supervisory and enforcement functions. However, this is done in accordance with defined guidelines and procedures consistent with principles of transparency and procedural fairness.

#### **4.2.2 Supervisory offsite monitoring**

Using specific risk indicators, FSCA will supplement periodic statutory conduct of business reporting with a combination of other targeted routine and ad hoc information and reporting requests. Such requests could target individual institutions specifically or a number of institutions collectively, based on identified commonalities such as risk profile, distribution model, product type or customer base. Insights gained from this type of ongoing monitoring will assist the FSCA in formulating pre-emptive responses to emerging conduct risks and to publish leading practice benchmarks through comparative assessments. It will also enable the FSCA to build a picture, over time, of an institution's culture and behaviors to update and inform their risk profile on an ongoing basis.

#### **4.2.3 Supervisory on-site inspections**

FSCA will use on-site inspections to validate and verify the insights gained about individual institutions from the FSCA's information gathering and offsite monitoring activities. On-site inspections will also be used as a key tracking mechanism to holistically monitor and measure an institution's conduct risk evolution over time.

Face-to-face engagements with board members, executive and senior management and operational staff will also enable the FSCA to assess first-hand the qualitative aspects of an institution's culture from various perspectives. The frequency, scope and length of on-site inspections will be informed by an institution's individual risk profile and will include consideration of factors such as systemic importance, market share, distribution model, product complexity, size and sophistication of customer base and general regulatory responsiveness.

General conduct of business on-site inspections will involve a review of an institution's entire business and operating environment. Communication of findings that emanate from such reviews will usually be limited to the institution itself.

Thematic on-site inspections will be conducted when FSCA identify a need – informed by the FSCA's risk-based approach to supervision - to review specific lines of business or business practices. Examples of these themes include a focus on the compliance culture of categories of institutions, identified complaints trends; the value proposition of complex products, services or business models, and implementation progress of new regulatory requirements. Findings from these types of thematic reviews will usually be published on an aggregated basis to the industry and may form the basis for future regulatory and supervisory reforms.

#### **4.2.4 Making regulatory instruments**

The FSR Act gives to the FSCA conduct standard making powers for financial institutions, representatives, key persons and contractors, in addition to the subordinate legislative powers afforded to the FSCA under the sector laws. Consequential amendments to the sectoral laws stipulate which instruments under those laws may be classified as regulatory instruments. The robust consultation requirements in the FSR Act discussed above will apply.

#### **4.2.5 Guidance notices**

The FSCA may issue guidance notices on the application of financial sector laws for which it is responsible. FSCA will use this tool where there is uncertainty or material inconsistency in the way in which financial institutions implement regulatory requirements. Guidance notices are not binding but provide useful information to promote consistent application of principle-based requirements, without having to resort to less flexible rules-based interventions. Guidance notices may give examples of what FSCA would see as good or poor practice in relation to specific principles or required outcomes.

#### **4.2.6 Interpretation rulings**

FSCA are empowered to publish interpretation rulings where necessary to promote clarity, consistency and certainty in the interpretation or application of financial sector laws for which FSCA are responsible. Whereas guidance notices will typically provide practical information on how to comply with a law, interpretation rulings are more likely to be used where a provision in a law is ambiguous or commonly misinterpreted.

Often, an interpretation ruling will be a relatively temporary measure, in place until the law itself can be amended to resolve the interpretational difficulty. Unlike guidance notices, interpretation rulings are binding on the FSCA. They oblige the FSCA to interpret and apply the applicable law in line with the interpretation ruling, unless or until a legislative change or a court judgment effectively overrides the interpretation ruling.

#### **4.2.7 Investigations**

The FSCA has a wide range of investigative powers to conduct in-depth investigations and corroborate its findings. These include conducting interviews under oath, the power to subpoena documents and in appropriate instances, obtaining search and seizure warrants. These powers are exercised by specialist investigation teams and are subject to various checks and balances to ensure FSCA use them appropriately.

#### **4.2.8 Leniency agreements**

The FSCA may enter into an agreement with a person that it will not impose an administrative penalty on that person for conduct that is in contravention of a financial sector law. Leniency agreements are entered into in exchange for the person's cooperation in an investigation or other proceedings relating to the contravention concerned.

#### **4.2.9 Enforceable undertakings**

The FSCA may enter into an enforceable undertaking with any person. An enforceable undertaking is a contractual arrangement between the FSCA and the other person, in terms of which the other person undertakes to implement specific remedial action – which may include customer redress - within an agreed period as a result of a regulatory contravention. Enforceable undertakings are published.

Enforceable undertakings help to improve efficiency, especially where the outcome of a matter is predictable or a high level of cooperation is present, by obviating the need to impose formal regulatory or enforcement actions. This tool also allows for open and constructive engagement to reach consensus on a proportional and pragmatic plan of action to remedy the conduct failing, suitably tailored to the nature, scale and complexity of the entity and to the impact of the contravention. Importantly though, failure to comply with an enforceable undertaking is a contravention of the law and will trigger formal enforcement action. Enforceable undertakings can also be used together with other forms of enforcement action.

#### **4.2.10 Directives**

Where a financial institution conducts its business inconsistently with its obligations under the FSR Act or other financial sector laws, including its obligation to treat its customers fairly, the FSCA may issue a written directive instructing it to take specified action, depending on the nature of the misconduct and its impact. A directive may be issued against the financial institution itself or against its key persons, representatives or contractors.

#### **4.2.11 Customer redress**

The FSR Act provides the FSCA with a range of tools to assist customers to obtain redress where they have been prejudiced by a financial institution's poor conduct.

Importantly, FSCA will not typically use the FSCA's redress powers to assist customers in resolving their individual disputes with financial institutions. As explained, ombud schemes are the appropriate structures to resolve such disputes. Instead, the FSCA will consider intervening to secure redress for customers where there has been significant misconduct or abuse, pointing to potential systemic weaknesses within the culture or internal control system of the financial institution and where there is evidence of material and widespread prejudice to multiple financial customers. Such cases could arise either where a financial institution's conduct has resulted in poor outcomes for a substantial number of its customers, or where multiple financial institutions have engaged in similar unfair business practices.

The FSCA's authority to issue directives includes the power to order a financial institution to remedy the effects of a contravention of a financial sector law. This means that – in appropriate serious cases such as those outlined earlier – FSCA could order a financial institution to provide its customers with redress for the prejudice caused by the contravention.

The FSR Act also empowers the FSCA to issue conduct standards on how financial institutions should resolve complaints and disputes, including redress.

An enforceable undertaking with a financial institution could also include an undertaking to provide redress.

The FSCA will develop a framework setting out its approach to customer redress, considering these regulatory options. Customer redress does not necessarily entail direct monetary compensation. It may include other forms of remedial action, such as requiring financial institutions to reverse unfair changes made to financial products or adjust unfair contract terms for affected customers.

#### **4.2.12 Administrative penalties**

The FSCA may impose substantial administrative penalties in appropriate cases to promote general and specific deterrence. These penalties are enforced, inter alia, by way of full civil execution. The process FSCA use for imposing penalties is designed to fully comply with administrative law principles, and the respondent will have a fair opportunity to communicate their case, reasons or defense to the FSCA.

#### **4.2.13 Debarments and removal of key persons and suspension or revocation of licenses**

The FSCA may debar or remove key persons and suspend and revoke licenses in appropriate circumstances, to ensure compliance with the FSR Act and its subordinate legislation. The primary consideration is to protect consumers against risk and financial harm. In these instances, a specific administrative process is followed to ensure fairness and consistency.

#### **4.2.14 The FSCA's Administrative Action Procedure (AAP)**

The FSCA's AAP, which is currently being developed for public consultation, will set out the FSCA's approach to using the above tools, particularly those aimed at taking enforcement action in response to contraventions of the FSCA's laws. The AAP will, in particular, ensure that the FSCA's procedures comply with applicable requirements of the Promotion of Administrative Justice Act

### **4.3 The FSCA's funding model**

The Financial Sector Levies Bill (Levies Bill) was published for public comment in the first half of 2018. Subject to Parliamentary processes, it is intended to come into operation on 1 April 2019. For the period 1 April 2018 to 31 March 2019, levies are based on the model used by the FSB in the past.

The Levies Bill provides for the imposition and collection of levies for the benefit of the PA, the FSCA, the Financial Services Tribunal, the Ombud Council, the Office of the Pension Funds Adjudicator and the Office of the Ombud for Financial Services Providers. A separate levy is charged, levied and collected for the benefit of each of these financial sector bodies.

A levy is payable by each supervised entity that is licensed in terms of a financial sector law in accordance with the levy formulae specified in the Schedules to the Levies Bill.

The Levies Bill provides for a special implementation levy to be payable by supervised entities in the first two levy periods following its commencement, to provide for the initial costs associated with the establishment of the PA, FSCA, Financial Services Tribunal and Ombud Council. This special implementation levy is a maximum of an additional 15% of the levy normally payable by the supervised entity for each of the first two levy periods following the commencement of the Levies Act.

These levies will fund the normal supervisory practices and expenses of the FSCA. In addition to levies, the FSCA may charge fees for specific activities.

#### **4.4 Holding the FSCA to account**

The regulatory and supervisory powers of a strong and effective market conduct authority must be counterbalanced by robust measures to ensure that these powers are used responsibly, fairly and consistently. The authority must also be held to account for efficient and effective use of its resources (particularly the levies paid by regulated institutions) to achieve its objectives. The FSCA is, therefore, subject to many checks and balances that ensure that it justifies the confidence placed in it by the legislature, the executive, the financial sector and ordinary South Africans. The FSCA is a national public entity, subject to the rigorous governance, financial control and reporting framework of the Public Finance Management Act.

The Commissioner is the Accounting Authority of the FSCA. The Commissioner's responsibilities include establishing effective, efficient and transparent systems of financial and risk management and internal control, managing and safeguarding the assets, and managing the revenue, expenditure and liabilities of the FSCA. The Commissioner will oversee the preparation of the FSCA's strategic and annual performance plans in accordance with National Treasury guidelines, including annual and periodic reporting of performance against predetermined targets submitted to the National Treasury, the Minister of Finance and Parliament. The FSCA will keep full and proper records of its financial affairs and will prepare financial statements for each financial year for audit and, thereafter, for tabling in Parliament.

The Commissioner and Deputy Commissioners of the FSCA, who collectively make up its Executive Committee, are all appointed by the Minister of Finance and are required to have appropriate expertise in the financial sector. They are also subject to formal performance management standards agreed with the Minister. A detailed selection process is contained in Regulations to the FSR Act. Each holds office for a maximum of only two five-year terms and may be removed from office only by the Minister subject to prescribed due process.

The Director-General of the National Treasury appoints and sets the terms of service (including remuneration) of the members of governance sub-committees of the FSCA, which are mandated to review, monitor and advise the Executive Committee on the FSCA's remuneration policy and risk management plans. The chairpersons and the majority of the members of these sub-committees may not be FSCA staff members.

The FSR Act also imposes duties of good faith, due care and diligence on members of the Executive Committee and sub-committees and prohibits improper benefits and conflicts of interest for these officials and FSCA staff members. As explained, the FSCA Executive Committee is obliged to adopt and publish its regulatory strategy – as contained in this document – after review by the Minister of Finance, the PA and the NCR. FSCA are also required to review the FSCA's strategy annually and publish all changes to it.

The FSCA's obligations to cooperate and collaborate with the PA, SARB, NCR and other authorities, including through MoUs, and participation in the Financial System Council of Regulators, also act as checks and balances in ensuring FSCA act appropriately in the context of the FSCA's mandate. The FSR Act enables an Inter-Ministerial Council to require an independent evaluation of the effectiveness of the FSCA's cooperation and collaboration with other authorities.<sup>54</sup> Any administrative action FSCA undertake must be consistent with the constitutional framework for fair administrative action prescribed in the Promotion of Administrative Justice Act.

In addition, FSCA are obliged to publicly consult on – and then publish – details of the FSCA's administrative action procedures and any changes to those procedures. These procedures must also be reviewed at least every three years. As discussed earlier, the FSCA's power to make regulatory instruments (mainly conduct standards) is subject to rigorous consultation processes, including Parliamentary scrutiny. FSCA may also make such standards only to deliver the FSCA's statutory objectives. Any person affected by an FSCA administrative decision has a right to insist on reasons for the decision, which FSCA are obliged to provide.

Any person aggrieved by the FSCA's administrative decisions may apply to the independent Financial Services Tribunal to have the decision reconsidered.

#### **(i) The Financial Services Tribunal**

The Financial Services Tribunal is established in terms of Section 219 of the FSR Act. It is independent, impartial and a tribunal of record.

Its members are appointed by the Minister of Finance. The Chairperson and Deputy Chairperson of the Tribunal must be retired judges.

Currently, there are 18 members of the Tribunal, who are also members of the Financial Intelligence Centre Appeal Board established in terms of the FIC Act. Ministerial Regulations require the FSCA to provide financial, secretarial, administrative and other support to the Tribunal on a transitional basis until 31 March 2019. Thereafter, the Tribunal will establish its own support structures.

The primary function of the Tribunal is to reconsider decisions made by any of the following decision-makers, on application by a person aggrieved by the decision:

- The FSCA or the PA.
- The Ombud Council.

- FAIS licensed financial services providers (decisions to debar representatives under Section 14 of the FAIS Act).
- Market infrastructures (certain decisions relating to individuals).
- Statutory ombuds.

The Tribunal is empowered to-

- Set aside the decision and remit the matter to the decision-maker for further consideration.
- Dismiss the application (including summary dismissal for frivolous, vexatious or trivial applications).
- Set aside the decision and substitute the decision of the Tribunal (only for administrative penalties, decisions of FAIS financial services providers or market infrastructures or other decision that can be identified in future Regulations).
- In exceptional circumstances, award costs against a party.

Tribunal orders have the effect of civil judgments, are enforceable and are subject to judicial review. The Tribunal's Rules, setting out its processes and procedures, are available on the FSCA website [www.fsca.co.za](http://www.fsca.co.za)