



FSCA COMMUNICATION 19 OF 2022 (RF)

DRAFT GUIDANCE NOTICE ON THE APPLICATION OF SECTION 14(7) OF THE PENSION FUNDS ACT, 1956 PUBLISHED FOR PUBLIC COMMENT

1 PURPOSE

- 1.1 The purpose of this Communication is to -
- (a) inform stakeholders that the Financial Sector Conduct Authority (“FSCA”) today published a draft Guidance Notice on the application of section 14(7)(b) of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PFA”) for public consultation; and
 - (b) invite interested parties to submit comments on the draft Guidance Notice, using the Comments Template (Annexure B) **by 2 August 2022**.

2 BACKGROUND

- 2.1 Section 14(7) of the PFA deals with the transfer of individual member (or non-member spouse) interests between retirement annuity funds. Section 14(7)(a) provides that a retirement annuity fund may not prohibit such transfers, while section 14(7)(b) imposes various conditions regarding the remuneration intermediaries may receive in relation to such transfers.
- 2.2 The FSCA received several queries around the interpretation of section 14(7)(b) of the PFA, read with the limitations on the payment of commission in terms of the Regulations made under section 72 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTIA Regulations). The queries brought to the attention of the FSCA, the need for guidance to the industry to ensure a consistent understanding and application of section 14(7)(b) of the PFA.
- 2.3 It is acknowledged that there are inconsistencies between the two pieces of legislation and it is for this reason that the FSCA is proposing to issue, in terms of section 141 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“the FSR Act”), the guidance notice. The clarity being proposed is aimed at providing interpretational guidance to industry to alleviate uncertainty and to ensure more consistent application of section 14(7). It is anticipated that future regulatory reforms, which are explained below, will in due course resolve the current inconsistency.

3 EXPECTED IMPACTS OF PENDING REGULATORY REFORMS

- 3.1 The regulatory provisions dealt with in the draft Guidance Notice are likely to be changed by future regulatory reforms, including the following:
- (a) *The proposed repeal of section 14(7)(b) of the PFA through consequential amendments effected under the Conduct of Financial Institutions (COFI) Bill.*

The consequential amendments to the PFA as contained in the COFI Bill is proposing to repeal section 14(7)(b) of the PFA. The expectation is that this provision will in due course be replaced by conduct standards under the COFI Act (when such may be promulgated), dealing with intermediary remuneration matters.

- (b) *Proposed reforms to intermediary remuneration regulations under the COFI Bill, informed amongst others by the FSCA's Retail Distribution Review.*

Remuneration in general, and intermediary remuneration specifically, will be considered as part of the process focussed on developing a regulatory framework under the envisaged COFI Bill.¹ This is likely to entail the development of regulatory instruments that will, amongst other things, replace the LTIA Regulations and give effect to further proposals flagged in the Retail Distribution Review. When developing these regulatory instruments the Authority will ensure that the existing inconsistencies are resolved.

- 3.2 The issue of this Guidance notice is therefore an interim measure to ensure consistent understanding in and application by the industry, pending the broader regulatory reforms.

4 OBJECTIVES OF THE GUIDANCE NOTICE

- 4.1 The main objective of the Guidance Notice is to ensure a consistent understanding and application of section 14(7) of the PFA. The guidance notice provides guidance on provisions of different pieces of legislation read together, to support consistent interpretation and application of section 14(7) of the PFA and other intermediary remuneration provisions in the LTIA Regulations and the General Code of Conduct for authorised Financial Services Providers and Representatives, 2003 (FAIS General Code).²

- 4.2 The Guidance Notice, therefore, in broad terms, sets out the following:

- (a) When applying section 14(7)(b)(ii) of the PFA it must be kept in mind that subsection 3A(1)(a)(iv) and subsection 3A(1)(d) of the FAIS General Code applies together with the sections of the PFA.
- (b) In respect of the payment of fees and commissions for financial services rendered by a financial services provider or representative after the transfer of interests, any fees and commissions over the maximum allowed for in terms of the LTIA Regulations would require that the requirements of subsection 14(7)(b)(ii)(bb) are met.
- (c) The PFA prevails over the LTIA Regulations, in respect of the existing inconsistency that exists in relation to remuneration payable in the context of transfers from one underwritten retirement annuity fund to another.

5 INVITATION TO COMMENT

- 5.1 Interested parties are hereby invited to, in writing, submit comments on the draft Guidance Notice (Annexure A), via email to FSCA.RFDStandards@fsc.co.za **on or before 2 August 2022**.
- 5.2 Commentators are requested to make use of the submission template published alongside this document, marked Annexure B, available on the FSCA's website <https://www.fsc.co.za>.

¹ See paragraph 4.1 of the FSCA's Regulation Plan that was published on 30 June 2022: https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Regulation%20Plan_1%20April%202022%20-%2031%20March%202025.pdf

² Issued under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

6 ENQUIRIES

For more information regarding this Communication, this Guidance Notice and the contents hereof please contact the FSCA Regulatory Framework Department by emailing Johann.Vanderlith@fsc.co.za



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