



# **2024 FSCA 3-YEAR REGULATION PLAN**

**(1 APRIL 2024 – 31 MARCH 2027)**

**[FOLLOWING THE 2023/2024 REVIEW OF THE REGULATION PLAN]**

**JULY 2024**

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# 1. EXECUTIVE SUMMARY

The ongoing review and development of the regulatory framework is critical to ensure that the regulatory framework is robust, aligned with international standards, fit for purpose and sufficiently flexible to position the FSCA to meet its legislated objectives and functions.

The first review, for the period 2022/2023, was finalised in early 2023 and resulted in the publication of the 2023 FSCA 3-year Regulation Plan on 30 June 2023. The review for the period 2023/2024 was concluded in early 2024, leading to the publication of this, the 2024 FSCA 3-year Regulation Plan (2024 Regulation Plan).

The 2024 Regulation Plan sets out the following:

- High-level details surrounding the outcome of the review undertaken in respect of the 2023/2024 Regulation Plan period;
- Insights into how the Regulation Plan was approached and revised following the aforementioned review;
- Sets out the regulatory framework focus areas for the next 3-year period (April 2024 to March 2027).

In terms of performance, the FSCA is very satisfied with the progress made during the year under review and various notable milestones were achieved which resulted in the finalisation of four instruments, the submission of four instruments to Parliament/ National Treasury and public consultation on eight instruments. In addition, good progress has been made in various other focus areas reflected in the Regulation Plan. In general, all projects reflected in the FSCA's Regulation Plan are on track.

With regards to developing the 2024 Regulation Plan, we continue to adopt the prioritisation principles and approach explained in previous 2022 and 2023 Regulation Plans. In general, the priorities identified last year remain the same, but certain changes to timelines have been necessary.

To ensure alignment with the FSCA Regulatory Strategy (2021 – 2025), each project on the Plan was mapped to one or more of the FSCA's Strategic Objectives and intended outcomes. In addition, there are certain key strategic factors that are driving the development of the Regulation Plan. These include the following:

- i. Alignment of the regulatory frameworks with international standards: The regulatory framework has lagged behind certain international standards, especially in the financial markets context. In addition, various international peer reviews conducted in respect of South Africa have highlighted shortcomings in the South African legislative environment, for example the most recent Financial Sector Assessment Program conducted by the World Bank Group and International Monetary Fund, and the Financial Action Task Force Mutual Evaluation Report. Many of the projects reflected in the Regulation Plan are therefore aimed at ensuring greater alignment with international standards and remedying the deficiencies highlighted through the aforementioned peer reviews.
- ii. Actively pursuing harmonisation and consolidation of laws governing cross cutting themes and transforming the legislative landscape to one that is more outcomes- and principles-based: Actively pursuing the harmonisation and consolidation of legislation across the financial sector, with the underlying objective of ensuring more consistent financial customer outcomes, remains a key strategy of the FSCA. To achieve this and make the law more responsive to emerging risks associated with new and emerging technology and business models, it is pivotal that financial sector legislation embraces the move to a more outcomes- and principles-based approach. The aforementioned plays a key role in informing the development of the Regulation Plan and the COFI Bill Transition Project is one of the main focus areas in this regard.
- iii. Topical and emerging risks: At both an international and local level, various topical themes and emerging risks keep arising, such as FinTech, artificial intelligence and machine learning, crypto assets, sustainable finance, culture and governance, open finance, IT risk, cyber risk & resilience, operational resilience, a focus on vulnerable consumers, Diversity, Equity and Inclusion, and the like. Many of these issues and risks require a response in the form of legislative interventions. The Regulation Plan therefore accommodates these topics, to the extent deemed appropriate and necessary.



iv. Identified sector specific risks: Even though there is a specific focus on establishing more cross-cutting/sector requirements, the FSCA still closely monitors industry specific risks and developments and in many instances legislative interventions are necessary to mitigate the identified risks and/or deal with a specific identified development.

General revisions to the 2024 Regulation Plan include the following:

- Timelines on certain projects were revised;
- New deliverables and timelines for the period 1 April 2026 – 31 March 2027 have been included;
- The projects that were finalised during the reporting period have been removed;
- New projects of strategic importance are added;
- New focus areas have been added. These entail very strategic focus areas where the nature and timing of specific regulatory framework interventions are not quite clear (e.g. because policy work is still underway), but it is very likely that there will be a regulatory framework intervention within the course of the next three years;
- A discussion on Interpretation Rulings and Guidance Notices have been added to the 2024 Regulation Plan.

Four new projects have been included in the Regulation Plan:

- Joint Standard - Third party service provision/outsourcing: This project is being initiated borne by the need to harmonise and strengthen requirements pertaining to third party service provision (outsourcing). Financial institutions rely on third party service providers for a number of services, some of which support critical operations. These dependencies have grown in recent years as part of the digitalisation of the financial sector and can bring multiple benefits to financial institutions. However, if not properly managed, disruption to critical services or service providers could pose risks to financial institutions. During December 2023, the Financial Stability Board released its Enhancing Third-Party Risk Management and Oversight toolkit for financial institutions. This Paper also highlighted various important considerations that the working group will be taking into account when developing the Joint Standard.
- Joint Standard - Capital requirements and risk management rules for ODPs: The World Bank Group made various recommendations following South Africa's last Financial Sector Assessment Program (FSAP). One recommendation that was contained in the World Bank's document titled "Technical Note on Collective Investments Schemes and Derivative Market Providers Monitoring", which was issued in January 2022, highlighted the following recommendation (emphasis added) : "Capital requirements, and risk management rules for ODPs needs to be strengthened.". The FSCA and Prudential Authority has initiated this project to focus on how the aforementioned recommendation, especially in the context of capital requirements, can be addressed. The areas that will be considered include, amongst others, market risk, counterparty credit risk and credit valuation risk.
- Prudential Standard – Quarterly Regulation 28 reporting (holistic quarterly reporting): A need has been identified to implement an additional layer of quarterly reporting for pension funds to ensure more proactive and preemptive supervision of compliance with Regulation 28. This approach will build on the current quarterly reporting of "non-compliance with Regulation 28" approach and expand quarterly reporting to also include holistic reporting on assets held in compliance with Regulation 28 on a quarterly basis.
- Amendments to FSRA Conduct Standard No. 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act: Currently FSRA Conduct Standard No. 1 of 2019 (PFA) prescribes the forms that must be completed when giving effect to an amalgamation or transfer in accordance with section 14 of the Pension Funds Act. Due to the implementation of the two-pot system, some of the prescribed forms will have to be amended. The complication is that these forms are prescribed as part of the Conduct Standard and any amendment to a form will therefore constitute an amendment to the Conduct Standard. To avoid a similar situation in future, and to provide the FSCA with more flexibility when determining these forms, it is proposed that the Conduct Standard be amended to remove the forms from the Conduct Standard itself, and to merely enable the FSCA to determine the forms. Once this has been done, the FSCA will amend the forms to accommodate the necessary changes as a result of the implementation of the two-pot system, and these forms will then be determined on the website of the FSCA.

The new strategic focus areas that have been added to the Regulation Plan include the following:

- Sustainable Finance: The FSCA is currently implementing its sustainable finance workplan, following the publication of a 'Statement on Sustainable Finance and Work Programme' and, more recently, the publication of its Sustainable Finance Consumer Risk Report and Roadmap 2024. This work will inevitably lead to regulatory framework interventions, hence the reason for inclusion in the Regulation Plan. A specific focus area entails sustainable finance disclosure and reporting.
- Open Finance: Open Finance is not technically a new inclusion on the Regulation Plan, but because the exact nature of the intended regulatory framework intervention is still in the process of being considered, the topic of Open Finance has been transformed to a strategic focus area as opposed to a specific regulatory framework intervention deliverable. Regulatory

<sup>1</sup>See paragraph 74 of the aforementioned Technical Note

framework interventions are, however, likely to follow on the back of the FSCA's Open Finance Policy Recommendations that was published in March 2024.

- **Artificial intelligence and Machine Learning:** Although Artificial Intelligence (AI) and Machine Learning (ML) is still largely unexplored by the FSCA, the FSCA acknowledges the potential impact of AI and ML on the financial sector. Exploratory work in relation AI and ML will occur during the course of the next year or two and may result in specific policy recommendations. Notwithstanding this ongoing work, the FSCA, in conjunction with the Prudential Authority, is considering including high-level governance principles relating to the use of AI machine learning by financial institutions into the Joint Standard – Culture and Governance requirements for financial institutions. The FSCA will use the targeted and formal consultation processes to further engage on these topics.
- **Operational risk and resilience and cloud computing:** Over the past few years international standard setting bodies has re-emphasised the critical importance of managing operational risk and resilience effectively and has highlighted the need to consider regulatory and supervisory implications of cloud computing through a variety of publications. The FSCA and Prudential Authority is currently assessing the extent to which the regulatory framework requires strengthening to ensure i. financial institutions manage operational risk and resilience effectively and consistently; and ii. the regulatory framework appropriately deals with the emerging risk of cloud computing. It is envisaged that the outcome of this assessment will lead to legislative interventions in the form of Joint Standards.
- **Transitional arrangements pertaining to the prudential regulation of retirement funds, collective investment schemes, friendly societies and medical schemes:** With the introduction of the Financial Sector Regulation Act in 2017, the Prudential Authority was granted the legislative objective of promoting and enhancing the safety and soundness of retirement funds, collective investment schemes, friendly societies and medical schemes. However, the Prudential Authority's regulatory obligations in respect of these institutions were temporarily allocated to the FSCA- until 31 March 2026 in respect of retirement funds, collective investment schemes and friendly societies, and until 31 March 2027 in respect of medical schemes. In preparation for the transition, the FSCA and Prudential Authority established a working group which is tasked with developing roadmaps that will set out how the transition in respect of retirement funds, collective investment schemes and friendly societies will occur. The outcome of the transition process is likely to have an impact from a regulatory framework perspective, which could entail –
  - transitioning certain prudentially focused frameworks currently supervised by the FSCA to the Prudential Authority;
  - converting certain frameworks currently supervised by the FSCA to Joint Standards;
  - developing new prudentially focused frameworks (by the Prudential Authority).
- **Guidance Notices and Interpretation Rulings:** Previous Regulation Plans did not accommodate Guidance Notices and Interpretation Rulings. However, these instruments play an important role in supporting the implementation of the regulatory frameworks, and this role will become increasingly important as the regulatory framework starts to evolve to one that is more outcomes- and principles-based, especially in the context of Guidance Notices. As such, the 2024 Regulation Plan explains the FSCA's approach in planning for Guidance Notices and Interpretation Rulings.

Projects highlighted in the 2023 Regulation Plan have therefore been retained, except where a project has been finalised, but certain project timelines and deliverables were revised.

Key focus areas for the next three years will be progressing the work to develop a new conduct regulatory framework under the Conduct of Financial Institutions Bill; ensuring the financial markets regulatory framework becomes closer aligned to international standards; addressing peer review findings and addressing topical areas and emerging risks.

The FSCA remains committed to developing the regulatory framework in such a way as to ensure it is robust, promotes the fair treatment of financial customers and the efficiency and integrity of financial markets, is aligned to international standards, yet remains fit for purpose considering the domestic context.

<sup>2</sup>Following the latest extension issued by the Minister of Finance on 22 March 2024.

## 2. INTRODUCTION

- 2.1. The first FSCA Regulation Plan was published on 30 June 2022 and had a three-year outlook (1 April 2022 – 31 March 2025). The Regulation Plan is, however, a rolling 3-year plan and is reviewed and revised on an annual basis to ensure that it remains up to date, effective and continues to align to the FSCA's broader strategic objectives, also taking into account emerging risks and developments.
- 2.2. The first review, for the period 2022/2023, was finalised in early 2023 and resulted in the publication of the 2023 FSCA 3-year Regulation Plan on 30 June 2023. The review for the period 2023/2024 was concluded in early 2024, leading to the publication this, the 2024 FSCA 3-year Regulation Plan (2024 Regulation Plan).
- 2.3. The FSCA Regulation Plan remains a critical strategic tool that assists the FSCA in carrying out ongoing legislative review and development of the regulatory framework falling within its purview, in a strategic and focused manner.
- 2.4. The 2024 Regulation Plan sets out the following:
  - 2.4.1. High-level details surrounding the outcome of the review undertaken in respect of the 2023/2024 Regulation Plan period;
  - 2.4.2. Insights into how the Regulation Plan was approached and revised following the aforementioned review; and
  - 2.4.3. Regulatory framework focus areas for the next 3-year period (April 2024 to March 2027).

## 3.1 Overall summary

3.1.1 Reflecting on the past year, the FSCA is very satisfied with the progress made during the year under review (1 April 2023 – 31 March 2024). Notable milestones that were achieved during this period include the following:

- Conduct Standard – Conditions for investment in derivative instruments: Final Conduct Standard published on 11 May 2023.
- Joint Standard Amendment 1 of 2023 - Amendments to Joint Standard 2 of 2020 - Margin Requirements for Non-Centrally Cleared Over-The Counter Derivative Transactions: Final Joint Standard Amendment published on 9 June 2023.
- Draft Equivalence Framework for Financial Markets: Draft Equivalence Framework published for public comment on 26 September 2023.
- Draft Determination of requirements relating to external central counterparty and external trade repository licence applications: Draft Determination published for public comment on 26 September 2023.
- Draft Joint Standard: Criteria for the exemption of an external central counterparty of external trade repository from the provisions of the FMA: Draft Joint Standard published for public comment on 1 November 2023.
- Discussion Document: Development of framework for regulation and supervision of financial benchmarks: Discussion Document published for public comment on 2 November 2023.
- Joint Standard 1 of 2023 - IT Governance and Risk Management: Final Joint Standard made on 10 November 2023.
- Prudential Standard [-] of 2023 – Regulation 28 Quarterly Reporting Requirements for Pension Funds (holistic reporting): Draft Prudential Standard published for public comment on 14 November 2023.
- Draft Conduct Standard [-] of 2023 - Requirements for Collective Investment Scheme Managers: Draft Conduct Standard published for public comment on 23 November 2023.
- Draft Notice of Amendment of Board Notice 90 of 2014: Draft Notice of Amendment submitted to National Treasury for tabling in Parliament on 29 November 2023.
- Joint Standard [-] of 2022 - Cybersecurity and Cyber Resilience Requirements: Draft Joint Standard tabled in Parliament on 30 November 2023.
- Draft Joint Standard [-] of 2023 - Outsourcing by insurers: Draft Joint Standard tabled in Parliament on 8 December 2023.
- Draft Prudential Standard [-] of 2023 - Regulation 28 Reporting Requirements for Pension Funds: Draft Prudential Standard submitted to National Treasury for submission to Parliament on 12 December 2023.
- FSCA Interpretation Ruling 1 of 2024 (RF) – Interpretation and Application of Section 37C of the Pension Funds Act, 1956: Final Interpretation Ruling published on 4 March 2024.

3.1.2 In addition, good progress has been made in various other focus areas reflected in the Regulation Plan.

## 3.2 Cross-sector/cutting projects

- Support in developing critical pieces of primary legislation - Conduct of Financial Institutions Bill and Financial Markets Act Review:

During the reporting period the FSCA continued to contribute to the development of the Conduct of Financial Institutions (COFI) Bill and Financial Markets Act Review (FMAR). Progress has been made and during the reporting period the FSCA provide further input on both these pieces of draft primary legislation. The FSCA will continue its effort to support National Treasury in progressing these two very important pieces of primary legislation.

- Developing a holistic, cross-sector, robust and customer-focused regulatory framework under the COFI Bill

The development of a holistic, cross-sector, robust and customer-focused regulatory framework under the COFI Bill, as explained in the 2023 and 2024 Regulations Plans, remains a top priority for the FSCA.

The COFI Bill Transition Project is being progressed in parallel with the COFI Bill legislative process. The timelines for implementation of the Phases 2 and 3 work (Themed Frameworks and Transition work ) is therefore dependent on the finalisation of the COFI Bill. Notwithstanding, progress has been made and the FSCA has established an industry reference group that is intended to assist the FSCA in refining the draft Themed Frameworks and also provide guidance and support to the FSCA in progressing the Phase 3 work. The industry reference group is called the “COFI Bill Transition Working Group” and will function under the auspices of the Market Conduct Committee. Members of the Working Group will, however, not be limited to MCC members and the FSCA is also extending membership to non-MCC members that are associations of specific sectors that are not currently regulated by the FSCA, but who will be regulated once the COFI Bill is promulgated. The FSCA is in the process of finalising membership of the aforementioned Working Group and the Working Group will start operating during the second half of 2024.

In progressing the Themed Frameworks, the FSCA will adopt a prioritisation approach, meaning that certain Themed Frameworks will be prioritised over others. For example, the fit and proper themed framework is enjoying top priority because other developments, such as the development of a single cross-sector licensing framework, is critically dependent on the aforementioned themed framework. Finalisation of the Themed Frameworks will thus follow a staggered approach as opposed to simultaneous adoption. A similar approach will apply in respect of the Phase 3 work.

As explained previously, the COFI Bill Transition Project is envisaged to be a multi-year project and, in the interest of transparency, the FSCA will in due course provide further insights into how this project will unfold and be implemented.

- Other cross-sector/cutting projects

All the deliverables of the remaining cross-sector/cutting projects were achieved. The Joint Standards pertaining to Information Technology Governance and Risk Management, and Cyber Security and Cyber Resilience Requirements has been finalised. Work on the cross-cutting Joint Standard relating to Culture and Governance requirements for financial institutions progressed well and targeted consultation on the draft Joint Standard commenced is envisaged to take place during the second half of in June 2024. Comments on the Conduct Standard focused on Consumer Education has been processed and the final Conduct Standard has been drafted. Policy work focused on Open Finance and industry practices and treatment of lost accounts and unclaimed assets progressed well.

### 3.3 Financial markets projects

Good progress was made in progressing the financial markets projects reflected on the Regulation Plan, such as the implementation of the Joint Roadmap for Development of a Regulatory Framework for Central Clearing in South Africa; establishing a framework for the regulation of benchmark administrators, giving effect to amendments to Joint Standard 2 of 2022 (Margin Requirements for non-centrally cleared over-the-counter derivatives margin transactions), developing a framework pertaining to recovery plans for market infrastructures; developing a framework setting out requirements for market infrastructures; developing a reporting and public disclosure framework in relation to short sales; and developing a framework pertaining to securities financing transactions

### 3.4 Collective Investment Schemes

All collective investment scheme (“CIS”) project deliverables contained in the 2023 Regulation Plan were achieved. These include progressing the Review of Board Notice 90 of 2014, Board Notice 52 of 2015 and Board Notice 573 of 2003; submitting draft (interim) amendments to Board Notice 90 of 2014 to National Treasury for onforwarding to Parliament; continuing work in developing a CIS accounting framework; introducing enhanced requirements for collective investment scheme managers; and formulating an instrument that will replace Board Notice 257 of 2013.

<sup>3</sup>Final Joint Standard was made on 15 May 2024.  
<sup>4</sup>Final Joint Standard was made on 17 May 2024.  
<sup>5</sup>Final Prudential Standard was made on 2 April 2024.



### 3.5 Insurance

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The only insurance specific project contained in the 2023 Regulation Plan was the Joint Standard – Outsourcing by insurers. This Joint Standard was tabled in Parliament on 8 December 2023. Other insurance related projects have been incorporated into the COFI Bill transition work.

### 3.6 Financial Advice and Intermediary Services (FAIS)

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No FAIS specific project was contained in the 2023 Regulation Plan. Other FAIS related projects have been incorporated into the COFI Bill transition work.

### 3.7 Co-operative Financial Institutions

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As per the previous Regulation Plans, the Conduct Standard – Requirements for Co-operative Financial Institutions has been pended in the light of the COFI Bill and COFI Bill transition work. However, new developments surrounding co-operative financial institutions is discussed in more detail below.

### 3.8 Section 13B (Pension Fund Benefit) Administrators

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As explained in the 2023 Regulation Plan, a decision has been taken to reconsider progressing the Conduct Standard titled Conditions prescribed for pension fund benefit administrators. During the reporting period the FSCA reconsidered the Conduct Standard and made various amendments.

### 3.9 Pension/Retirement Funds

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High priority retirement fund focused deliverables were achieved, i.e. the finalisation of the Conduct Standard – Conditions for investment in derivative instruments; the submission of Draft Prudential Standard - Regulation 28 Reporting Requirements for Pension Funds to Parliament (exception reporting); the publication of draft Prudential Standard - Regulation 28 quarterly reporting requirements (holistic reporting) for pension funds for public consultation; and the publication of draft Prudential Standard – Requirements related to regulatory reporting and audited financial statements for pension funds.

Uncertainty remains surrounding two (lower priority) retirement fund focused projects, i.e.:

- Draft Conduct Standard – Conditions for living annuities in an annuity strategy; and
- Draft Conduct Standard – Communication of benefit projects to members of pension funds.

Further details surrounding these projects, and the related uncertainties, is discussed in paragraph 4.

<sup>6</sup>See the 2023 Regulation Plan for a more detailed explanation of what the Themed Frameworks entail.

<sup>7</sup> Which covers, amongst other things, honesty, integrity and competency requirements.

<sup>8</sup>In March 2024, the FSCA published its Policy Recommendations relating to Open Finance.

<sup>9</sup> Specifically focused on addressing findings reflected in the most recent Financial Sector Assessment Program.

<sup>10</sup> The final Joint Standard was subsequently published in May 2024.

## 4. 2024 REGULATION PLAN



## 4.1 APPROACH IN DEVELOPING THE 2024 REGULATION PLAN

4.1.1 With regards to developing the 2024 Regulation Plan, we continue to adopt the prioritisation principles and approach explained in previous 2022 and 2023 Regulation Plans. In general, the priorities identified last year remain the same, but certain changes to timelines have been necessary.

4.1.2 For purposes of the 2024 Regulation Plan, each project on the Plan was mapped to one or more of the FSCA's Strategic Objectives and intended outcomes, as reflected in the FSCA's Regulatory Strategy (2021 – 2025). The intention behind this was to ensure that there is a clear link between the outcome that a project reflected in the Regulation Plan is intending to achieve and the FSCA's strategic objectives and intended outcomes.

4.1.3 In addition, there are certain key strategic factors that are driving the development of the Regulation Plan. These include the following:

- i. Alignment of the regulatory frameworks with international standards: The regulatory framework has lagged behind certain international standards, especially in the financial markets context. In addition, various international peer reviews conducted in respect of South Africa have highlighted shortcomings in the South African legislative environment, for example the most recent Financial Sector Assessment Program conducted by the World Bank Group and the Financial Action Task Force Mutual Evaluation Report. Many of the projects reflected in the Regulation Plan are therefore aimed at ensuring greater alignment with international standards and remedying the deficiencies highlighted through the aforementioned peer reviews.
- ii. Actively pursuing harmonisation and consolidation of laws governing cross cutting themes and transforming the legislative landscape to one that is more outcomes- and principles-based: Actively pursuing the harmonisation and consolidation of legislation across the financial sector, with the underlying objective of ensuring more consistent financial customer outcomes, remains a key strategy of the FSCA. To achieve this and make the law more responsive to emerging risks associated with new and emerging technology and business models, it is pivotal that financial sector legislation embraces a more outcomes- and principles-based approach. The aforementioned plays a key role in informing the development of the Regulation Plan and the COFI Bill Transition Project is one of the main focus areas in this regard.
- iii. Topical and emerging risks: At both an international and local level, various topical themes and emerging risks keep arising, such as FinTech, artificial intelligence and machine learning, crypto assets, sustainable finance, culture and governance, open finance, IT risk, cyber risk & resilience, operational resilience, a focus on vulnerable consumers, Diversity, Equity and Inclusion, and the like. Many of these issues and risks require a response in the form of legislative interventions. The Regulation Plan therefore accommodates these topics, to the extent deemed appropriate and necessary.
- iv. Identified sector specific risks: Even though there is a specific focus on establishing more cross-cutting/ sector requirements, the FSCA still closely monitors industry specific risks and developments and in many instances legislative interventions are necessary to mitigate the identified risks and/or deal with a specific identified development.

4.1.4 General revisions to the 2024 Regulation Plan include the following:

- Timelines on certain projects were revised;
- New deliverables and timelines for the period 1 April 2026 – 31 March 2027 have been included in the 2024 Regulation Plan;

<sup>11</sup> The final Joint Standard was subsequently published in April 2024.

<sup>12</sup> <https://www.fsca.co.za/News%20Documents/FSCA%20Regulatory%20Strategy%202021-2025.pdf>

- The projects that were finalised during the reporting period have been removed from the 2024 Regulation Plan; and
- New projects of strategic importance are added to the 2024 Regulation Plan (see discussion below)
- New focus areas have been added. These entail very strategic focus areas where the nature and timing of specific regulatory framework interventions are not quite clear (e.g. because policy work is still underway), but it is very likely that there will be a regulatory framework intervention within the course of the next three years (see more detailed discussion below).
- Interpretation Rulings and Guidance Notices have been added to the 2024 Regulation Plan (see more detailed discussion below).

## 4.2 CONDUCT REGULATORY FRAMEWORK

### Primary legislation

The FSCA will continue to support National Treasury in developing and finalising the COFI Bill for submission to Parliament. The COFI Bill is a critical development that will shape the future conduct framework and many of the FSCA's current conduct regulatory framework projects have some dependency on the promulgation of the COFI Bill.

Developing a holistic, cross-sector, robust and customer-focused regulatory framework under the COFI Bill

- As discussed in the 2023 Regulation Plan, the initial high-level design of the new framework (Phase 1) has been finalised, noting however that this design will evolve and be refined over time as the development of the new framework progresses. The high-level design informs the development of the underlying frameworks (both the Phases 1 and 2 work) and the FSCA will as part of the general COFI Bill Transition Work updates that will be communicated in due course provide insights regarding the initial high-level design that has been completed.
- As explained in paragraph 3, targeted consultation on the themed frameworks (Phase 2), through the COFI Bill Transition Working Group, will start in the second half of 2024 and these frameworks will be progressed incrementally on a priority basis.
- As explained in the 2022 and 2023 Regulation Plans, Phase 3 focuses on how to transition all instruments under existing sectoral laws to the COFI Bill. The work focussed on transitioning the existing sectoral laws to the COFI Bill (Phase 3) will continue throughout 2024 with the intention of starting engagements with the COFI Bill Transition Working Group on this work during the course of 2025.

### Banks, Mutual Banks, Co-operative Banks and Co-operative Financial Institutions

The previous Conduct Standard for Co-operative Financial Institution's (CFIs) was placed on hold due to the overlap with the impending COFI Bill and underlying framework and it was envisaged that the Conduct Standard will be incorporated into the COFI Bill transition project. However, in November 2023, the Prudential Authority published Prudential Standards applicable to CFIs and Co-operative Banks dealing with, amongst other things, licensing requirements, governance, risk management, prudential requirements and the like. The FSCA engaged the Prudential Authority to explore whether some of the Prudential Standards can be converted to Joint Standard between the FSCA and Prudential Authority to avoid duplication, regulatory arbitrage and the like. The Prudential Authority was, in principle, in support of such an approach. Therefore, one focus area for purposes of the 2024 Regulation Plan will be to progress Joint Standards for CFIs and Co-operative Banks, subject to formal confirmation by the Prudential Authority.

In addition, the Prudential Authority is also in the process of finalising Prudential Standards applicable to Mutual



Banks for public consultation. Similar to above, the FSCA also engaged the Prudential Authority on the possibility of converting some of these Prudential Standards to Joint Standards and the Prudential Authority, in principle, agreed. As such, another focus area for purposes of the 2024 Regulation Plan will be to progress Joint Standards for Mutual Banks, subject to formal confirmation by the Prudential Authority.

No other banking specific interventions have been included in the 2024 Regulation Plan.

#### Insurers

- The Joint Standard – Outsourcing by Insurers was earmarked for completion in the 2024 Regulation Plan period. Although the final Joint Standard has already been published (on 17 May 2024), the Joint Standard is still reflected in the 2024 Regulation because it falls within the 2024 Regulation Plan period.

- No other insurance specific interventions are earmarked for completion within the next three years. However, as explained in previous Regulation Plans, various insurance related matters will be considered as part of the process focused on transitioning the existing sectoral laws to the COFI Bill framework.

#### FAIS

- No FAIS specific interventions are earmarked for completion within the next three years. In the FAIS context, the focus will be on how to transition the existing FAIS framework to the COFI Bill.

#### Collective investment schemes

- The CIS related projects listed in the 2023 Regulation Plan, and accompanying explanations, remain relevant and have been included in the 2024 Regulation Plan. These include the following:

Conduct Standard – Requirements for Collective Investment Scheme Managers: The Conduct Standard is specifically focused on addressing shortcomings identified through a recent Financial Sector Assessment Program. The Conduct Standard was published during the 2023/2024 period, and the intention is to finalise this Conduct Standard during the 2024/2025 period.

Interim amendments to Board Notice 90: Interim amendments to Board Notice 90 was submitted to National Treasury on 29 November 2023, for tabling in Parliament.

Review of Board Notice 90 of 2014, Board Notice 52 of 2015 and Board Notice 573 of 2023: As previously reported, a Joint Working Group between the FSCA and Prudential Authority was established, and the technical work has commenced. The review was initially only focused on Board Notice 90 of 2014 but has been extended to include a review of Board Notice 52 of 2015 (Determination on the Requirements of Hedge Funds), in so far as it relates to Retail Hedge Funds, and Board Notice 573 of 2003 (Suspension of repurchase of participatory interests by manager of collective investment scheme in securities). The intention is to develop one holistic Joint Standard that cover various of the areas currently covered by the aforementioned Board Notices, also taking into account that the Prudential Authority will in due course become responsible for the prudential regulation of CIS managers. In terms of timing, it is envisaged that a draft Joint Standard will only be published for public comment during the 2025/2026 business year. However, informal consultation with targeted stakeholder may occur during the 2024/2025 business year.

Replacement of Board Notice 257 of 2013: The Notice sets conditions, in terms of section 65(1)(c) of the Collective Schemes Control Act, for foreign collective investment schemes. The new Notice was drafted during the course of 2023/2024 and the draft Notice is earmarked for publication during the second half of 2024.

Review of Pro-forma Deed for CISs: As explained in the previous Regulation Plans, because the review of the Pro-Forma Deed has dependencies on various CIS regulatory framework developments and on the outcome of the COFI Bill and future framework, timelines for the completion of the review is unclear and will be determined once the other related CIS and COFI Bill developments have progressed well.



Development of a collective investment scheme accounting framework: Work on the draft accounting framework has progressed well during the reporting period. It is likely that formal consultation on this draft framework will only take place once the COFI Bill has been promulgated. However, informal consultation with targeted stakeholders have occurred and might continue throughout 2024/2025.

- No new CIS related projects have been added to the 2024 Regulation Plan. Other CIS focused projects previously reflected in the Regulation is still intended to be incorporated into the COFI Bill Transition project, these include the previous draft Conduct Standard relating to Advertising and Marketing Requirements for CIS Managers; Conduct Standard relating to Governance, Fit and Proper and Other Requirements for CIS Managers; and Review of Board Notice 778 (Determination of the Limits and Conditions for Third Party Named Portfolios of Collective Investment Schemes).

#### Alternative investment funds

As was mentioned previously, the promulgation of the alternative investment fund framework is dependent on the promulgation of the COFI Bill. Delays in finalising the COFI Bill therefore affects the timelines for this project. As such, timelines for this project have been revised.

Notwithstanding, technical work informing the development of a fit for purpose regulatory framework for alternative investment funds commenced during 2023/2024. Targeted stakeholder engagements focused on assisting the FSCA to formulate this framework is likely to occur in 2025/2026. Formal consultation will likely only occur in 2026/2027.

#### Pension fund benefit administrators (section 13B)

As mentioned in the 2023 Regulation Plan, the FSCA has taken a decision to progress the draft Conduct Standard relating to pension fund benefit administrators. The draft Conduct Standard was revised during 2023/2024 and a final draft Conduct Standard has been compiled. The FSCA is intending to embark on informal consultation on the revised Conduct Standard during the second half of 2024, after which the draft Conduct Standard will be submitted to Parliament.

#### Retirement funds

- The final version of the Conduct Standard – Conditions for investment in derivative instruments was published during 2023/2024 and has therefore been removed from the 2024 Regulation Plan.
- The Prudential Standard – Regulation 28 Reporting Requirements for Pension Funds (exception reporting) was earmarked for completion in the 2024 Regulation Plan period. Although the final Prudential Standard has already been published (on 2 April 2024), the Prudential Standard is still reflected in the 2024 Regulation because it falls within the 2024 Regulation Plan period.
- The other retirement fund related projects listed in the 2023 Regulation Plan, and accompanying explanations, remain relevant and have been included in the 2024 Regulation Plan. These include the following:

Prudential Standard - Requirements related to regulatory reporting and audited financial statements for pension funds: Following the public consultation process, work on this Prudential Standard is ongoing. This Prudential Standard has been earmarked for completion at the end of the 2024/2025 period, or early in the 2025/2026 period.

Draft Conduct Standard – Conditions for living annuities in an annuity strategy: The FSCA is in the process of reconsidering the Conduct Standard, especially the assumptions used on the Conduct Standard. At this stage it is not sure when this Conduct Standard will be progressed, not in which form.

Draft Conduct Standard – Communication of benefit projects to members of pension funds: The FSCA is in the

process of considering whether this project should not perhaps be collapsed into the COFI Bill Transition Project. In addition, the FSCA appreciates the significant implementation impact flowing from the introduction of the Two-Pot System and is concerned that requiring implementation of this Conduct Standard at this point in time will place excessive pressure on the retirement fund industry.

- Two new retirement fund related projects have been included in the 2024 Regulation Plan:

**Prudential Standard – Regulation 28 Reporting Requirements for Pension Funds (holistic reporting):** This Prudential Standard is a product of the outcome of the public consultation process undertaken in respect of the Prudential Standard that was published for public comment on 4 November 2022, also titled “Regulation 28 quarterly reporting requirements for pension funds”. Based on the outcome of the consultation process, a need was identified to adopt a phased approach in giving effect to holistic reporting in terms of Regulation 28. As such, a revised version of the Conduct Standard that was published for public comment on 4 November 2022 was progressed (through submission to Parliament) which only focused on exception reporting, whilst a new consultation process was initiated in respect of a separate Standard focused on holistic reporting in terms of Regulation 28. Further details in this regard were provided in this separate Prudential Standard (also titled ‘Regulation 28 quarterly reporting requirements for pension funds’), through paragraph 2 of the Statement that supported this Standard, as published for public consultation on 14 November 2023. The comments received through the latter public consultation is in the process of being considered and this Prudential Standard has been earmarked for completion at the end of the 2024/2025 period, or early in the 2025/2026 period. This Prudential Standard will replace the exception reporting Prudential Standard discussed under the second bullet above.

**Amendments to FSRA Conduct Standard No. 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act:** This Conduct Standard prescribes the forms that must be completed when giving effect to an amalgamation or transfer in accordance with section 14 of the Pension Funds Act. Due to the implementation of the Two-Pot System, some of the prescribed forms will have to be amended. The complication is that these forms are prescribed as part of the Conduct Standard and any amendment to a form will therefore constitute an amendment to the Conduct Standard. To avoid a similar situation in future, and to provide the FSCA with more flexibility when determining these forms, it is proposed that the Conduct Standard be amended to remove the forms from the Conduct Standard itself, and to merely enable the FSCA to determine the forms. Once this has been done, the FSCA will amend the forms to accommodate the necessary changes as a result of the implementation of the Two-Pot system, and these forms will then be determined on the website of the FSCA. Consultation on the new forms will take place as a separate process (i.e. separate from the amendment of the Conduct Standard process).

- Other pension/retirement fund matters

As was indicated in the previous Regulation Plan(s), the Conduct Standard – Conditions for Securities lending for pension funds was placed on hold because of overlaps with other developments surrounding security financing transactions (which include securities lending transactions) which are broad in scope and nature (as these developments span across the financial markets area, retirement funds, banks and insurers). It was explained that this Conduct Standard will be pended due to the broader ongoing work and the impact that this might have on the Conduct Standard. This status remains the same for now, but since progress has been made on some of the broader securities financing transactions proposals, this project might be resuscitated in due course.

The FSCA is also in the process of considering potential reviews and/or interventions in respect of various other areas in the pension/retirement fund environment. These potential reviews include Directive 8, Pension Fund Circulars 86 and 90, practices in the employer environment, pension/retirement fund liquidation requirements and pension/retirement fund costs and fees. The aforementioned are still under consideration and no final decisions have been made. Should any of the aforementioned reviews be conducted and result in proposed legislative interventions, these interventions will be prioritised as appropriate and will be incorporated into the Regulation Plan.

<sup>15</sup> The Conduct Standard was indeed published during this period, i.e. on 9 April 2024.

<sup>16</sup> A draft Joint Standard was indeed published during this period, i.e. on 31 May 2024.

## 4.3 FINANCIAL MARKETS REGULATORY FRAMEWORK

### Primary legislation

The FSCA will continue to support National Treasury in finalising the review of the Financial Markets Act. The legislative interventions that will flow from the review of the Financial Markets Act will contribute to shaping the future of financial markets regulation resulting in improved integrity and efficiency in the financial markets context. Although some dependencies exist between the Review of the Financial Markets Act and regulatory projects the FSCA is currently working on how these dependencies can be managed and the existing projects can proceed without any significant disruption.

### Subordinate legislation

The following financial markets related projects listed in the 2023 Regulation Plan, and accompanying explanations, remain relevant. These include the following:

- Amendments to Joint Standard 2 of 2020 - Margin Requirements for non-centrally cleared OTC derivative transactions: The final amendments were published in June 2023 and this project has therefore been removed from the 2024 Regulation Plan.
- One new financial markets focused project has been included in the 2024 Regulation Plan. The project is called draft Joint Standard – Capital requirements and risk management rules for ODPs. The World Bank Group made various recommendations following South Africa's last FSAP and the draft Joint Standard is a direct result of one of these recommendations which highlighted that capital requirements and risk management rules for Over-the-Counter Derivative Providers (ODPs) needs to be strengthened, especially in the non-bank ODP context. The draft Joint Standard therefore focuses on establishing capital requirements and risk management requirements for ODPs, and will focus on, amongst other things, market risk, counterparty credit risk and credit valuation risk.
- The financial markets related projects listed in the 2023 Regulation Plan, and accompanying explanations, remain relevant. These include the following:

Development of a Regulatory Framework for Central Clearing in South Africa:

- The Phase 2 work is well progressed following the publications of the Draft Equivalence Framework for Financial Markets, draft Determination of requirements relating to external central counterparty and external trade repository licence applications; and draft Joint Standard: Criteria for the exemption of an external central counterparty of external trade repository from the provisions of the FMA for public consultation. The Phase 2 work is earmarked for finalisation at the end of the 2024/2025 period, or early in the 2025/2026 period.
- The Phase 3 work gained traction and it is envisaged that public consultation on the draft eligibility criteria for central clearing will take place early in the 2025/2026 period.

Framework for regulating the provision of a benchmark: This framework comprises four components:

- Designation of the provision of a benchmark as a financial service: The Minister of Finance is in the process of finalising Regulations that will designate the provision of a benchmark as a financial service for purposes of the Financial Sector Regulation Act. The consultation and Parliamentary process in respect of the draft Regulations have been finalised and the Minister of Finance will make the final Regulations once the FSCA processes relating to this framework is close to finalisation.
- Draft Conduct Standard: Requirements relating to the provision of a benchmark: Public consultation on a draft Conduct Standard occurred in February 2022 and again in November 2022. The final Conduct Standard will be made once the licensing and benchmark classification instruments is close to finalisation.
- Licensing Framework for Benchmark Administrators: The licensing framework will determine the procedures and requirements for benchmark administrator licence applications under the Financial Sector Regulation Act. A draft framework was published for public consultation in April 2024.
- Determination of an "index", "critical benchmark" and "significant benchmark": This Determination will focus on what would constitute an "index" for purposes of the Financial Sector Regulation Act, as well as a critical and

significant benchmark for purposes of the Conduct Standard. A Discussion document together with information request was issued in November 2023. A draft Determination will likely be published for public consultation during the second half of 2024.

The FSCA is intending to conclude the above framework during the 2025/2026 period.

**Conduct Standard - Requirements for Market Infrastructures:** This Conduct Standard was previously called the Conduct Standard for Exchanges, but as explained in the 2023 Regulation Plan, a need was identified to extend the scope of this Conduct Standard to all market infrastructures, hence the reason why the name of the Conduct Standard was changed. Publication of a draft Conduct Standard is earmarked for the 2024/2025 period and has been earmarked for completion in the 2025/2026 period.

**Joint Standard - Recovery Plans for Market Infrastructures:** Work in finalising the first draft of this Joint Standard progressed well during 2023/2024 and a draft Joint Standard is envisaged to be published for public consultation during the first half of 2024/2025.

**Draft Conduct Standard - Requirements relating to the reporting and disclosure of short sales:** The public consultation process on the draft Conduct Standard took place from 31 March 2023 to 17 May 2023 and various commentators raised fundamental concerns with the proposed approach reflected in the draft Conduct Standard. The FSCA is in the process of considering alternative options in how to position and progress this Conduct Standard, and it is likely that the Conduct Standard will be published for another round of public consultation, potentially preceded by targeted industry engagements.

**Draft Conduct Standard – Requirements pertaining to securities financing transactions:** In the 2023 Regulation Plan it was indicated that formal proposals surrounding securities financing transactions is still under consideration. During the 2023/2024 period, formal proposals have, however, been compiled in the form of a draft Conduct Standard. The draft Conduct Standard is envisaged to be published for public consultation during the second half of 2024/2025.

## 4.4 CROSS-CUTTING/SECTOR REGULATORY FRAMEWORK DEVELOPMENTS

- The final version of the Joint Standard – Information Technology governance and risk management was published during 2023/2024 and has therefore been removed from the 2024 Regulation Plan.

- One new cross-cutting/sector regulatory framework project has been included in the 2024 Regulation Plan. The project is called Joint Standard – Requirements relating to third-party service provision/outsourcing. This project is being initiated borne by the need to harmonise and strengthen requirements pertaining to third party service provision (outsourcing). Financial institutions rely on third party service providers for a number of services, some of which support critical operations. These dependencies have grown in recent years as part of the digitalisation of the financial sector and can bring multiple benefits to financial institutions. However, if not properly managed, disruption to critical services or service providers could pose risks to financial institutions. During December 2023, the Financial Stability Board released its Enhancing Third-Party Risk Management and Oversight toolkit for financial institutions. This Paper also highlighted various important considerations that the FSCA and Prudential Authority will be taking into account when developing the Joint Standard. Technical work relating to the development of this Joint Standard will take place during the 2024/2025 period.

- The remaining cross-cutting/sector regulatory framework projects listed in the 2023 Regulation Plan, and accompanying explanations, remain relevant. These include the following:

**Joint Standard - Cyber security and cyber resilience requirements:** The final draft Joint Standard was submitted to Parliament on 30 November 2023. Although the final Joint Standard has already been published (on 15 May 2024), the Joint Standard is still reflected in the 2024 Regulation Plan because it falls within the 2024 Regulation Plan period.

Joint Standard – Culture and Governance requirements for financial institutions: Work progressed well and remains a priority. An initial framework has been developed and the Authorities are intending to embark on commenced informal targeted consultation in June during the 2024/2025 period.

Draft Conduct Standard - Requirements for financial institutions providing financial education initiatives: Revisions were made to the draft Conduct Standard and the FSCA is intending to submit the final draft Conduct Standard to National Treasury, for onforwarding to Parliament, during the second half of 2024/2025.

Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets: Policy work continued following the publication of the FSCA's Discussion Paper relating to industry practices and treatment of lost accounts and unclaimed assets on 22 September 2022. It is expected that regulatory framework interventions will be developed flowing from the Discussion Paper consultation process. The FSCA envisaged that formal regulatory framework interventions, in the form of a Conduct Standard, will be published for public consultation during the 2025/2026 period.

Joint Standard – Requirements relating to beneficial owners: The 2023 Regulation Plan highlighted that the FSCA is considering the development of a Standard flowing from the amendments to the Financial Sector Regulation Act which, through the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022, introduced a Chapter in the Financial Sector Regulation Act pertaining to beneficial owners. The new Chapter empowers the FSCA and Prudential Authority to set certain Standard relating to beneficial ownership. The FSCA has now developed formal proposals relating to beneficial ownership to be included in a Standard and is in the process of engaging the Prudential Authority on the draft proposals. It is envisaged that a draft Joint Standard will be published for public comment at the end of the 2024/2025 period.

Cross-sector licensing requirements: The development of cross-sector licensing requirements in anticipation of the COFI Bill is continuing. The dependencies highlighted in the 2023 Regulation Plan, however, remains relevant and timelines surrounding public consultation on these draft requirements is at this stage uncertain. Notwithstanding, progress on this development will be publicly communicated as part of the progress updates on the COFI Bill Transition Project

## 4.5 OTHER STRATEGIC FOCUS AREAS

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### 4.5.1 Sustainable Finance

On 15 March 2023, the FSCA published a 'Statement on Sustainable Finance and Work Programme' (the Statement). The Statement expressed the FSCA's commitment towards –

- implementing sustainability as part of its values, which entails entrenching sustainable finance principles into the FSCA's business operations, translating into behaviour that will shape the FSCA's organisational culture;
- promoting the development of an innovative, inclusive, and sustainable financial system in line with the FSCA's strategic objectives. This entails playing a transformational role in ensuring that South Africa's financial system best supports the country's sustainability goals, through the FSCA's customer protection and market integrity mandates.

On 27 March 2024, the Statement was followed up by the publication of the FSCA's Sustainable Finance Consumer Risk Report and Roadmap 2024 (FSCA Sustainable Finance Roadmap 2024). The publication consisted of two sections:

- Part A contains research on risks posed to financial customers in the sustainable finance landscape. The study outlines the potential risks, and the consumer protection tools and responses available to policymakers and regulators.
- Part B outlines recent developments and planned actions related to the FSCA's Programme of Work on Sustainable Finance. It recognises the FSCA's vital role in promoting the availability of credible and consistent information in South Africa's financial market.



The FSCA's sustainable finance programme is structured along five pillars, namely 1. Taxonomy; 2. Disclosure, reporting and assurance; 3. Market development; 4. Active ownership; and 5. Consumer Education. These pillars are underpinned by the need to build capacity, conduct research, undertake stakeholder engagement, developing regulatory and supervisory frameworks, and ensuring coordination and cooperation with stakeholders.

The outputs emanating from the above work will therefore result in, amongst other things, legislative interventions that will likely focus on a broad scope of issues. Such as sustainable finance disclosure and reporting will be prioritised and regulatory frameworks interventions are being considered in the context of financial and non-financial corporates within the FSCA's jurisdiction, i.e. those that are listed on a South African exchange. The envisaged focus areas and next steps regarding sustainability disclosures and reporting is discussed in detail in paragraph 2 of the FSCA Sustainable Finance Roadmap 2024. It might be noted that the FSCA will also be collaborating and coordinating with the Prudential Authority to ensure alignment of approaches and to identify where there are areas of common interest that should be approached in a joint fashion.

Legislative interventions flowing from the FSCA Sustainable Finance work programme will, as the work progresses, be incorporated into the FSCA's Regulation Plan.

#### 4.5.2 Open Finance

In December 2021, the FSCA published a 'Draft Position Paper on Open Finance' (draft Position Paper). The Position Paper was followed up in 2024 with FSCA Policy Recommendations on Open Finance. The Policy Recommendations highlighted the FSCA's Open Finance Programme of work as follows:

The FSCA will hold a series of engagements and workshops with stakeholders to further unpack submissions made to date, in support of the following Programme of Work:

- Developing open APIs standards.
- Developing suitable consent, risk management and disclosure frameworks.
- Promoting the voluntary adoption of responsible Open Finance in support of positive customer outcomes
- Developing a common view of use cases that could be prioritised in a mandatory regime, with considerations of impact and a suitable implementation roadmap.
- Assessing the legal framework for weaknesses and gaps, to inform how it may be strengthened.
- Building knowledge and awareness of responsible Open Finance in the sector and seeking insights relating to what the sector expects from the regulator.
- Empowering consumers to respond to opportunities and risks in Open Finance.
- Institutional arrangements between all relevant/ impacted regulators.
- Developing the enabling environment and infrastructure such as sandbox environments, open finance directories, monitoring and data collection.

The outcome of the Open Finance work programme is likely to result in legislative interventions, subject to prioritisation and a phased approach. The nature and timing of these legislative interventions will be determined in due course and the Regulation Plan will be revised to accommodate these interventions as the work progresses. It might be noted that some of the recommendations will require broader engagements and collaboration between the FSCA, Prudential Authority, South African Reserve Bank and other relevant regulatory authorities. It is therefore likely that legislative interventions in the Open Finance environment will be implemented incrementally.

#### 4.5.3 Artificial intelligence and Machine Learning

Although Artificial Intelligence (AI) and Machine Learning (ML) is still largely unexplored by the FSCA, the FSCA acknowledges the potential impact of AI and ML on the financial sector. Exploratory work in relation AI and ML will occur during the course of the next year or two and may result in specific policy recommendations. Notwithstanding this work, the FSCA, in conjunction with the Prudential Authority, is considering including high-level governance principles relating to the use of AI machine learning by financial institutions into the Joint Standard – Culture and Governance requirements for financial institutions. The FSCA will use the targeted and formal consultation

processes to further engage on these topics. In addition, the FSCA might consider how existing frameworks that are outcomes- and principles-based can be leveraged to explain how these should be applied in an AI and MI context- e.g. potentially through Guidance.

#### 4.5.4 Operational risk and resilience and cloud computing

Over the past few years international standard setting bodies has re-emphasised the critical importance of managing operational risk and resilience effectively and has highlighted the need to consider regulatory and supervisory implications of cloud computing. For example:

- In 2018, the Financial Stability Institute (FSI) published FSI Insights on policy implementation No 13 titled “Regulating and supervising the clouds: emerging prudential approaches for insurance companies”.
- In 2019 the A2ii, under the auspices of the International Association of Insurance Supervisors (IAIS), published a report titled “Cloud Computing: Regulatory and Supervisory Approaches”.
- In 2021 the Bank for International Settlements published “The Principles for operational resilience”.
- In 2021, the International Organization of Securities Commissions (IOSCO) updated its outsourcing principles to ensure operational resilience, as reflected in its Final Report titled “Principles on Outsourcing”. This report also dealt with cloud computing.
- In 2022, the IOSCO published a Report titled “Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic & lessons for future disruptions”.
- In 2023, the International Association of Insurance Supervisors published an Issues Paper on Insurance Sector Operational Resilience.
- In 2023, the FSI published FSI Insights on policy implementation No 53 titled “Managing cloud risk – some considerations for the oversight of critical cloud service providers in the financial sector”.

The FSCA and Prudential Authority is currently assessing the extent to which the regulatory framework requires strengthening to ensure i. financial institutions manage operational risk and resilience effectively and consistently; and ii. the regulatory framework appropriately deals with the emerging risk of cloud computing. It is envisaged that the outcome of this assessment will lead to legislative interventions in the form of Joint Standards that establishes holistic principles pertaining to the management of operational risk and resilience, and that ensures financial institutions appropriately manage risks emanating from the use of cloud computing. The nature and timing of these legislative interventions will be determined in due course and the Regulation Plan will be revised to accommodate these interventions as the work progresses.

#### 4.5.5 Transitional arrangements pertaining to the prudential regulation of retirement funds, collective investment schemes, friendly societies and medical schemes

With the introduction of the Financial Sector Regulation Act in 2017, the Prudential Authority was granted the legislative objective of promoting and enhancing the safety and soundness of retirement funds, collective investment schemes, friendly societies and medical schemes.

However, the Prudential Authority’s regulatory obligations in respect of these institutions were temporarily allocated to the FSCA, insofar as it relates to retirement funds, collective investment schemes and friendly societies, and the Council for Medical Schemes, insofar as it relates to medical schemes (hereafter referred to as the transitional period).

On 22 March 2024, the Minister of Finance advised that the transitional period for these institutions will be extended until 31 March 2026, in respect of retirement funds, collective investment schemes, friendly societies, and until 31 March 2027 in respect of medical schemes.

In preparation for the transition, the FSCA and Prudential Authority established a working group which is tasked with developing roadmaps that will set out how the transition in respect of retirement funds, collective investment schemes and friendly societies will occur. Initial roadmaps have been drafted but are undergoing further refinements.

The outcome of the transition process is likely to have an impact from a regulatory framework perspective, which could entail –

- transitioning certain prudentially focused frameworks currently supervised by the FSCA to the Prudential Authority;
- converting certain frameworks currently supervised by the FSCA to Joint Standards; and
- developing new prudentially focused frameworks (by the Prudential Authority).

The nature and extent of the regulatory framework impacts are still being assessed by the Transitional Arrangements Working Group and will be finalised in due course. The Regulation Plan will be amended to accommodate legislative interventions emanating from the transition work as and when the transition roadmaps are finalised.

With regards to medical schemes, discussions between the FSCA, Prudential Authority, Council for Medical Schemes, National Treasury and the Department of Health are ongoing, and formal proposals surrounding the future regulation of medical schemes will be developed in due course. Should these proposals result in legislative interventions, these interventions will be included in the Regulation Plan at the opportune time.

#### 4.5.6 Projects to be collapsed into the COFI Bill transition project

As was explained in previous Regulation Plans, various developments were pending due to overlap in various aspects that form part of the COFI Bill transition project and the potential risk of misalignment with the future framework. The status of some of these projects have changed and a further project has been included in the list of projects that will be placed on hold pending the COFI Bill transition project. The current status of these projects is set out below:

PROJECT	STATUS
<b>Draft amendments to the Policyholder Protection Rules under the Long- and Short-term Insurance Act</b>	Status remains the same. Draft proposals will be considered as part of the COFI Bill transition project.
<b>Draft amendments to the Regulations under the Long- and Short-term Insurance Regulations</b>	Status remains the same. Draft proposals will be considered as part of the COFI Bill transition project.
<b>Conduct Standard relating to Culture and Governance for pension funds</b>	Status remains the same. Draft proposals will be considered as part of the COFI Bill transition project, in particular the themed framework titled “Culture and Governance Joint Standard”.
<b>Draft Conduct Standard – Communication of Benefit Projections to members of pension funds</b>	Under consideration whether this project should be pending and collapsed into the COFI Bill transition project, in particular the Advertising and Disclosure themed framework.
<b>Conduct Standard relating to Advertising and Marketing Requirements for CIS Managers</b>	Some of the matters contained in this Draft Conduct Standard has been addressed through the new draft <i>Conduct Standard – Requirements for Collective Investment Scheme Managers</i> , e.g. MDD requirements. The remaining issues will be addressed as part of the COFI Bill transition project, in particular the Advertising and Disclosure themed framework.
<b>Draft Conduct Standard relating to Governance, Fit and Proper and Other Requirements for CIS Managers</b>	Many of the matters contained in this Draft Conduct Standard has been addressed through the new draft <i>Conduct Standard – Requirements for Collective Investment Scheme Managers</i> . The remaining matters will be addressed through the COFI Bill transition project, for example the Fit and Proper themed framework.
<b>Governance requirements for market infrastructures</b>	Unlikely that this will be progressed as a separate regulatory instrument. Will be dealt with through the Joint Standard – Culture and Governance. Internal guidance might also be developed by the Market Integrity and Decision Sciences Division.
<b>Review of Board Notice 778 - Determination of the Limits and Conditions for Third Party Named Portfolios of Collective Investment Schemes</b>	Status remains the same. Draft proposals will be considered as part of the COFI Bill transition project.

4.4.7      Guidance Notices and Interpretation Rulings

To date, the FSCA's approach to Guidance Notices and Interpretation Rulings was largely driven on a “needs-basis”, meaning that a Guidance Notice or Interpretation Ruling is only issued as and when a need is identified, be it through an industry request or the identification of a legal ambiguity. The FSCA envisages that this approach will remain the same in respect of Interpretation Rulings, but it is envisaged that going forward the FSCA will adapt its approach to Guidance Notices and that Guidance Notices will become a strategic tool that will be utilised to support the FSCA's supervisory approach. This will especially be the case if the regulatory framework starts to evolve to one that is more outcomes- and principles-based, as Guidance Notices will be utilised to inform the legislated outcomes- and principles, for example highlighting practices that align or does not align with the stated outcomes or principles. Therefore, interventions through Guidance Notices will, in future, be approached in a more structured and strategic manner.

The FSCA is, however, still in the process of formulating its future approach to Guidance Notices and, as such, the current Regulation Plan does not set out significant detail in this regard. It is however likely that future Regulations Plan will reflect a much more structured approach to Guidance Notices.

4.5              SUMMARY / HIGH-LEVEL OVERVIEW

Annexure A below itemises the regulatory framework projects that will be focused on over the course of the next three years (1 April 2024 to 31 March 2027) as contained in the 2024 Regulation Plan, as discussed above, together with deliverables and when technical work and drafting will occur. It is reiterated that:

- Projects are dependent on various external and internal dependencies which could influence timelines; and
- The strategic direction of some of these projects might change and the FSCA might decide not to progress a particular project, or to progress it in a different way.

The projects and specifically the timelines indicated in Annexure A are therefore a broad estimate, not fixed and subject to change.

The colour scale for the timeline is as follows:

Planned external facing action
Technical or drafting work or input required
No work required
Timelines for completion uncertain
Completed

## 5. REVIEW OF REGULATION PLAN AND CLOSING

As explained above, the FSCA's Regulation Plan is a three-year plan that will be reviewed annually to ensure the Plan is up to date and takes account of changing circumstances, emerging developments and risks, etc.

The FSCA reiterates that stakeholder engagement and consultation is critical to ensure the framework is robust, promotes the fair treatment of financial customers and the efficiency and integrity of financial markets, is aligned to international standards, yet fit for purpose considering the domestic context. Stakeholders are therefore implored to participate in this process of legislative change to ensure optimal results for the financial sector and South Africa.



Regulations



ANNEXURE A

RP#¹	SI²	INITIATIVE³	2024/2025 BP YEAR				2025/2026 BP YEAR				2026/2027 BP YEAR			
			Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
			2024			2025			2026			2027		
			Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar
1	CC	COF Bill	Timelines for completion outside of the control of the FSCA. Support will continue as long as necessary.											
2	CC	FMR/Bill	Timelines for completion outside of the control of the FSCA. Support will continue as long as necessary.											
3	CC	Regulatory framework under the COFI Bill		Targeted informal consultation on themed frameworks			Progression of themed frameworks Further technical work and consultation on Phase 3 work							
4	CC	Cross-sector licensing requirements	Timelines for completion uncertain as it is subject to various dependencies, especially on the COFI Bill and COFI Bill Transition Project.											
5	CC	CS treatment of lost accounts and unclaimed assets		Technical work, formulation and targeted consultation			Public consultation		Technical work and refinement	2 <sup>nd</sup> round of public	Technical work and refinement			
6	CC	JS – Beneficial Owners	Technical work, formulation and engagement with the PA		Public consultation			Technical work and refinements	Submission to Parliament and finalisation					
Envisaged timeline. Timeline must still be confirmed between the FSCA and Prudential Authority.														
7	CC	CS - Consumer Education	Technical work and refinement		Parliament submission and finalisation									
8	CC	JS - Cyber security and cyber resilience	Publication of final Joint Standard											
9	CC	JS - Third-party service provision	Timeline must still be confirmed between the FSCA and Prudential Authority.											
10	CC	JS – Culture & Governance	Technical work	Targeted consultation		Technical work and refinement		Public consultation	Technical work, refinements and engagement with the PA			Parliament submission and finalisation		
Envisaged timeline. Timeline must still be confirmed between the FSCA and Prudential Authority.														
11	FM	JS - Exemption Criteria external CCPs, TR's and CSD's	Technical work and refinement		Parliament submission and finalisation									
12	FM	Equivalence Framework	Technical work and refinement			Finalisation								
13	FM	Determination-External CCP & TR licence requirements	Technical work and refinement			Finalisation								

<sup>17</sup> Regulation Plan number.  
<sup>18</sup> Sector indicator.  
<sup>19</sup> Due to space restrictions abbreviated descriptions were used. Full descriptions are contained in the Regulation Plan above.

# ANNEXURE A

RP# <sup>1</sup>	SI <sup>2</sup>	INITIATIVE <sup>3</sup>	2024/2025 BP YEAR				2025/2026 BP YEAR				2026/2027 BP YEAR				
			Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
			2024			2025				2026				2027	
			Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	
14	FM	Eligibility Criteria for central clearing	Technical work, formulation and engagement with the PA					Public consultation	Refinement and engagement		2 <sup>nd</sup> round of Public		Parliament submission and finalisation		
15	FM	JS – Capital & risk management requirements for ODPs			Technical work, formulation and engagement with the PA			P u b l i c	Technical work, refinements and engagement with the PA		Parliament submission and finalisation				
			Envisaged timeline. Timeline must still be confirmed between the FSCA and Prudential Authority.												
16	FM	JS - Recovery Plans for MIs	Public consultation	Technical work and refinement				2 <sup>nd</sup> round of public consultation		Technical work, refinements and engagement with the PA		Parliament submission and finalisation			
			Envisaged timeline. Timeline must still be confirmed between the FSCA and Prudential Authority.												
17	FM	Benchmarks regulatory framework	Refinement	Public consultation - Index Determination, critical/significant benchmarks	Refinement and coordination with National Treasury			P a r l i a m e n t submission of conduct standard and finalisation of all related instruments							
18	FM	CS - Requirements for Market Infrastructures	Public consultation	Technical work and refinement			Parliament submission and finalisation								
19	FM	CS – Short sale reporting and public disclosure	Refinement	2 <sup>nd</sup> round of public consultation		Technical work and refinement			P a r l i a m e n t submission and finalisation						
20	FM	CS - SFTs	Refinement	Public consultation		Technical work and refinement			2 <sup>nd</sup> round of public consultation		Technical work and refinement		Parliament submission and finalisation		
21	CIS	CS – CIS Manager requirements	Refinement		Parliament submission and finalisation										
22	CIS	Draft (interim) BN 90 amendments	Finalisation												
23	CIS	Review of BN90, BN52 and BN257	Technical work, formulation and engagement with the PA and targeted informal consultation					Public consultation		Technical work and refinement		2 <sup>nd</sup> round of public consultation			
24	CIS	Replacement of Board Notice 257 of 2013	Refinement	Public consultation	Technical work and refinement			Parliament submission and finalisation							
25	CIS	CISaccounting framework	Timelines uncertain due to OCFI Bill dependency.												
26	CIS	Review of Pro-forma Deed for CIS							Technical work and formulation						

ANNEXURE A

RP# <sup>1</sup>	SI <sup>2</sup>	INITIATIVE <sup>3</sup>	2024/2025 BP YEAR				2025/2026 BP YEAR				2026/2027 BP YEAR				
			Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
			2024				2025				2026				2027
			Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sep	Oct – Dec	Jan – Mar	
27	AIF	Alternative Investment Fund Framework	Technical work and formulation. Potentially also targeted informal consultation.								P u b l i c	Technical work and refinement	2 <sup>nd</sup> round of public consultation		
28	13B	CS - PF Benefit Administrators	Refinement	Public consultation	Refinement	Parliament submission and finalisation									
29	RF	CS – Living Annuities	Decision to be made in respect of how to proceed. Timelines therefore uncertain.												
30	RF	CS – Benefit Projections	Decision to be made in respect of how to proceed. Timelines therefore uncertain.												
31	RF	PS - PF AFS <sup>4</sup> and Regulatory Reporting	Refinements			Parliament submission and finalisation									
32	RF	PS – Quarterly Reg 28 reporting (exception reporting)	Finalisation												
33	RF	PS – Quarterly Reg 28 reporting (holistic reporting)	Technical work and refinement			Parliament submission and finalisation									
34	RF	Amendments to FSRA Conduct Standard 1 of 2018	Publish for public comment	Refinement	Parliament submission and finalisation										
35	INS	Joint Standard – Outsourcing by Insurers	Finalisation												
36	CFI	JS – CFIs	Approach to be agreed with the PA, and timelines to be established.												
37	MB	JS - Mutual Banks	Approach to be agreed with the PA, and timelines to be established.												

<sup>20</sup>Annual Financial Statements.

# 2024 FSCA 3-YEAR REGULATION PLAN

