




## FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002



### REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED AMENDMENTS TO THE DETERMINATION OF FIT AND PROPER REQUIREMENTS FOR FSPs AND REPRESENTATIVES [Proposed amendments published for comment on 21 October 2016]

#### LIST OF COMMENTATORS

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|----------------------|---|----|--|
| 1                    | ASISA   | 14 | Financial Intermediaries Association of South Africa |
| 2                    | BASA  | 15 | PlanRight Investments                                |
| 3                    | FirstRand Bank                                  | 16 | SAVCA  |
| 4                    | Standard Bank of South Africa                   | 17 | SAIA   |
| 5                    | ABSA  | 18 | The Insurance Institute of South Africa              |
| 6                    | BIAC  | 19 | Ascor Financial Advisors CC                          |
| 7                    | Direct Marketing Association of Southern Africa | 20 | Moonstone  |
| 8                    | PSG Konsult                                     | 21 | Maitland Group South Africa Limited                  |
| 9                    | Clientèle Group                                 | 22 | Rothschild (South Africa) Pty Ltd                    |
| 10                   | Associated Compliance                           | 23 | SAIPA  |
| 11                   | Financial Planning Institute of Southern Africa | 24 | Thuthukani Financial Services (Pty) Ltd              |
| 12                   | SDK Compliance Consultants                      | 25 | Baillie Gifford & Co                                 |
| 13                   | Masthead  | 26 | The Institute of Bankers in South Africa             |

|   | Commen-<br>tator | SECTION                              | WORDING / PROPOSED WORDING   | COMMENT   | REGISTRAR'S RESPONSE  |
|---|------------------|--------------------------------------|--|---|---|
| <b>CHAPTER 1 – INTERPRETATION, PURPOSE AND APPLICATION OF DETERMINATION</b> |                  |                                      |  |   |   |
| 1.  | 8                | Definition:<br>“accredited provider” |  | The definition only refers to providers accredited by one of the quality councils, namely the QCTO. We would recommend also including accreditation under the Council for Higher Education.   | Agree.<br><br> See amended definition that includes accreditation under the CHE and the inclusion of a foreign person that is so recognised and certified or accredited by a foreign authority that is equivalent to a Quality Council. See also response under comment 2.   |
| 2.  | 11               | Definition:<br>“accredited provider” | A legally established institution (public or private) that has been recognised, usually for a particular period of time, by a QC or its appointed agent, as having the capacity or provisional capacity to offer a qualification or part-qualification registered on the NQF at the required standard. | The current definition only covers providers accredited by one of the quality councils, namely QCTO. There are two more quality councils, namely Umalusi and the Council for Higher education. All three quality councils have a role to play in post school learning and one must be careful to exclude any of the quality councils<br><br>We recommend that SAQA’s NQFpedia’s definition be used instead as it covers all three quality councils. | Disagree.<br>See response under comment 1.<br><br> In addition, see new definition of ‘Quality Council (QC)’ and ‘NQF’.<br><br>QC is defined in the NQF Act with reference to the Councils listed in Chapter 5 of that Act that includes the QC for-<br><ul style="list-style-type: none"> <li>• General and Further Education and Training;</li> <li>• Higher Education; and</li> <li>• Trades and Occupations</li> </ul> |
| 3.  | 20               | Definition:<br>“accredited provider” | “ <b>accredited provider</b> ” means a body that is accredited by the relevant Quality Assurance Body frameworks such as Council for Higher Education or Quality Council of Trades and Occupations (QCTO).   |   | See responses under comment 1 and 2.  |
| 4.  | 20               | Definition:<br>“administrative FSP”  | “ <b>administrative FSP</b> ” means an administrative FSP as defined in the Code of Conduct for Administrative FSPs.   |   | Disagree. See definition of “Administrative Code of Conduct”.   |
| 5.  | 1                | Definition:<br>“annual expenditure”  | “ <b>annual expenditure</b> ” means <del>the expenditure set out in -</del><br>(a) <del>the expenditure set out in the</del>   | A minority of ASISA members propose that the definition of “annual expenditure” should be amended to allow for the deduction of variable costs (remuneration and administration   | Disagree.<br>In terms of the proposed new definition the requirement has  |



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|    |                  |                                  | <p>latest set of financial statements of an FSP; or</p> <p>(b) in the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or financial accounts,</p> <p>less-<br/>.....<br/>(vi) <u>variable costs that are linked to assets under management;</u></p>                               | <p>costs) that are linked to assets under management. The intention of the regulation is to ensure that an FSP is able to operate and cover fixed costs for a period of 3 months. In the context of a Category II and IIA FSP, a reduction of income or assets under management leads to a decrease in variable costs. As paragraph (v) of the definition allows for the deduction of variable remuneration linked to the FSP's revenue, the minority believes that variable costs linked to assets under management should also be excluded from annual expenditure for the purposes of this definition.</p> | <p>already been relaxed by the exclusion of variable remuneration. The exclusion of variable costs would defeat the purpose of the liquidity requirement.</p>  |
| 6. | 1                | Definition: "annual expenditure" | <p><b>"annual expenditure"</b> means <del>the expenditure set out in -</del></p> <p>(a) <u>the expenditure set out in the</u> latest set of financial statements of an FSP; or</p> <p>(b) in the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or financial accounts, ....</p> | <p>Improved reading.</p>  | <p> See amended definition that allows for improvement. In addition, all definitions relating to soundness requirements have been moved to Chapter 6 for ease of reference.</p>   |
| 7. | 8                | Definition: "annual expenditure" | <p>(vi) to read:<br/><i>"depreciation and amortisation"</i></p>  | <p>We support the changes made to the definition and believe it will create a more just basis while still ensuring sufficient liquidity within Financial Services Providers (FSPs). We would however recommend expanding (vi) as both are accounting entries and have no impact on cash flow and liquidity of the FSP.</p>  | <p>Disagree.<br/>The new definition has already been relaxed by the exclusion of variable remuneration. In addition, depreciation relates to a tangible asset whilst amortisation relates to intangible assets. The exclusion of amortisation aligns with the exclusion of intangible assets for purposes of the solvency requirement.</p> |
| 8. | 11               | Definition: "annual expenditure" | <p>(ix) amortisation/impairment of intangible assists.</p>   | <p>We support the amended definition and believe that that this will provide a better way of analysing liquidity.</p> <p>We recommend adding (ix). For a FSP that acquires another business this may be a large expense that will not impact on liquidity (similar to depreciation).</p>  | <p>See response under comment 7.</p>   |

|   | Commen-tator  | SECTION                  | WORDING / PROPOSED WORDING  | COMMENT   | REGISTRAR'S RESPONSE  |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
|---|---------------|--------------------------|---|---|---|---------------|--|----------------|----|--|----------------------|-------------|--|---------------------|--|----|-----------|--|-----------|--|---------------|--|--|----|--|---|----------|--|----------------|--|--|----------------------|-----------|--|---------------------|--|----|--|
| 9.  | 11            | Definition: "assessment" | ".....to which a person's knowledge, skills and <b>abilities</b> meet the pre-determined standard." | The addition of the word abilities then covers all three areas that make up competence.   | Noted.<br> See amended definition that allows for improvement and aligns with terminology used in Chapter 3. See also definition of 'competence' that refers to a person's skills, knowledge and expertise needed for the proper discharge of a person's responsibilities in the performance of his/her functions. |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| 10.   | 20            | Definition: "assessment" |   | Moonstone are concerned as to how this assessment is going to be achieved by the FSP who will be accountable for achieving this, particularly ensuring that standards are consistent across the industry.   | Noted. The minimum criteria/factors which must be assessed is set out in Part 5 of Chapter 3.   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| 11.   | 11            | Definition: "assets"     |   | <p>The exclusion of all goodwill from the definitions of assets will prevent FSP's from expanding their businesses. This is specifically a problem for smaller independent FSP's and therefore may impact on their ability to compete in a fair and equitable market.</p> <p><b>Example to demonstrate the problem created by excluding all goodwill before acquiring</b> another business:</p> <table border="0" style="width: 100%;"> <tr> <td></td> <td colspan="2" style="text-align: right;">Balance Sheet</td> </tr> <tr> <td>Current Assets</td> <td colspan="2" style="text-align: center;">Dr</td> </tr> <tr> <td>    Bank account balance</td> <td style="text-align: right;">R 1,000,000</td> <td></td> </tr> <tr> <td>Current Liabilities</td> <td></td> <td style="text-align: right;">Cr</td> </tr> <tr> <td>    Creditors</td> <td></td> <td style="text-align: right;">R 500,000</td> </tr> </table> <p><b>Solvency test = Pass</b><br/>R1,000,000 less R500,000 = R500,000 (solvent and financially sound)</p> <hr/> <p><b>After acquiring</b> a fee generating business for R 700,000:</p> <table border="0" style="width: 100%;"> <tr> <td></td> <td colspan="2" style="text-align: right;">Balance Sheet</td> </tr> <tr> <td></td> <td colspan="2" style="text-align: center;">Dr</td> </tr> <tr> <td>Goodwill (fee generating business acquired)</td> <td style="text-align: right;">R700,000</td> <td></td> </tr> <tr> <td>Current Assets</td> <td></td> <td></td> </tr> <tr> <td>    Bank account balance</td> <td style="text-align: right;">R 300,000</td> <td></td> </tr> <tr> <td>Current Liabilities</td> <td></td> <td style="text-align: right;">Cr</td> </tr> </table> |   | Balance Sheet |  | Current Assets | Dr |  | Bank account balance | R 1,000,000 |  | Current Liabilities |  | Cr | Creditors |  | R 500,000 |  | Balance Sheet |  |  | Dr |  | Goodwill (fee generating business acquired) | R700,000 |  | Current Assets |  |  | Bank account balance | R 300,000 |  | Current Liabilities |  | Cr | <p>Noted.</p> <p> See amended solvency requirement in Part 2 of Chapter 6 for Category I FSPs and their juristic representatives who are not holding, receiving or otherwise dealing with client funds. In terms the new requirement the exclusion of certain assets are removed and those FSPs' assets (without the exclusions) must merely exceed their liabilities. The concession is made to alleviate barriers to entry.</p> <p>The Registrar is not proposing an amendment to current requirements applicable to Category I FSPs that hold or deal with client funds/premiums and Categories I, II, IIA, III and IV FSPs. See also response to comment 6.</p> |
|   | Balance Sheet |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Current Assets                              | Dr            |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Bank account balance                        | R 1,000,000   |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Current Liabilities                         |               | Cr                       |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Creditors                                   |               | R 500,000                |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
|   | Balance Sheet |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
|   | Dr            |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Goodwill (fee generating business acquired) | R700,000      |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Current Assets                              |               |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Bank account balance                        | R 300,000     |                          |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |
| Current Liabilities                         |               | Cr                       |   |   |   |               |  |                |    |  |                      |             |  |                     |  |    |           |  |           |  |               |  |  |    |  |   |          |  |                |  |  |                      |           |  |                     |  |    |  |


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|---|------------------|----------------------|----------------------------|---|----------------------|--|----------------|----|----------------------|-------------|---------------------|----|-----------|-----------|----------------------|--|--|----|---|----------|----------------|--|----------------------|-----------|---------------------|----|-----------|-----------|--------------------------------|
|   |                  |                      |                            | Creditors R 500,000<br><br><b>Solvency test = Fail</b><br>R1,000,000 less R700,000 less R500,00 = - R200,000 (Not Solvent and Not financially sound)<br><br>To give a more level playing field we have made recommendations under the definition for annual expenditure as well as amendments to paragraph 44(2).   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| 12.   | 19               | Definition: "assets" |                            | The exclusion of all goodwill from the definitions of assets will prevent FSP's from expanding their businesses and infringes on their right to do businesses in a fair and equal market. This is specifically a problem for smaller independent FSP's.<br><b>Example to demonstrate the problem created by excluding all goodwill:</b><br><b>Before acquiring</b> another business :<br><table style="margin-left: 40px;"> <tr> <td colspan="2" style="text-align: center;"><u>Balance Sheet</u></td> </tr> <tr> <td style="width: 60%;">Current Assets</td> <td style="text-align: right;">Dr</td> </tr> <tr> <td style="padding-left: 20px;">Bank account balance</td> <td style="text-align: right;">R 1,000,000</td> </tr> <tr> <td>Current Liabilities</td> <td style="text-align: right;">Cr</td> </tr> <tr> <td style="padding-left: 20px;">Creditors</td> <td style="text-align: right;">R 500,000</td> </tr> </table><br><b>Solvency test = Pass</b><br>R1,000,000 less R500,000 = R500,000 (solvent and financially sound) <hr/> <b>After acquiring</b> a fee generating business for R 700,000:<br><table style="margin-left: 40px;"> <tr> <td colspan="2" style="text-align: center;"><u>Balance Sheet</u></td> </tr> <tr> <td></td> <td style="text-align: right;">Dr</td> </tr> <tr> <td style="padding-left: 20px;">Goodwill (fee generating business acquired)</td> <td style="text-align: right;">R700,000</td> </tr> <tr> <td>Current Assets</td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Bank account balance</td> <td style="text-align: right;">R 300,000</td> </tr> <tr> <td>Current Liabilities</td> <td style="text-align: right;">Cr</td> </tr> <tr> <td style="padding-left: 20px;">Creditors</td> <td style="text-align: right;">R 500,000</td> </tr> </table><br><b>Solvency test = Fail</b><br>R1,000,000 less R700,000 less R500,00 = - R200,000 (Not Solvent | <u>Balance Sheet</u> |  | Current Assets | Dr | Bank account balance | R 1,000,000 | Current Liabilities | Cr | Creditors | R 500,000 | <u>Balance Sheet</u> |  |  | Dr | Goodwill (fee generating business acquired) | R700,000 | Current Assets |  | Bank account balance | R 300,000 | Current Liabilities | Cr | Creditors | R 500,000 | See response under comment 11. |
| <u>Balance Sheet</u>                        |                  |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Current Assets                              | Dr               |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Bank account balance                        | R 1,000,000      |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Current Liabilities                         | Cr               |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Creditors                                   | R 500,000        |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| <u>Balance Sheet</u>                        |                  |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
|   | Dr               |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Goodwill (fee generating business acquired) | R700,000         |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Current Assets                              |                  |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Bank account balance                        | R 300,000        |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Current Liabilities                         | Cr               |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |
| Creditors                                   | R 500,000        |                      |                            |   |                      |  |                |    |                      |             |                     |    |           |           |                      |  |  |    |   |          |                |  |                      |           |                     |    |           |           |                                |

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|-----|------------------|--|----------------------------|---|---|
|     |                  |  |                            | <p>and Not financially sound)</p> <p>The above clearly illustrates that not all goodwill can be excluded from the definition of "assets" as per Chapter 1.</p> <p>We recommend that goodwill generated in respect of the purchase of another fee generating business be included in the definition of "assets".</p>   |   |
| 13. | 23               | Definition:<br>"assets"                                      |                            | <p>In the definition of "assets", it makes sense why goodwill and intangible assets would be excluded, but investments in and loans to related parties is a regular practice in commerce, and would excluding such effectively create more security, or limit the trading activities of the company? When you consider the liquidity requirements per Table B of Part 2, together with the definitions "liquid assets", "liquid asset requirement", "cash", and "annual expenditure", you will find that a company will be required to hold large portions of its current assets in the form of cash. For example, a Category I FSP with a turnover of R10 million and a gross profit before tax of R500 000, will be required to hold at all times at least R730 769 in cash, in addition to the cash flow required to operate it business and settle the very debts and on-going expenses that the cash holding should secure. If in the same example the FSP was a category II the cash holding increases to R1 461 538, and for category IIA and III the cash holding will be R2 375 000.</p> | See response under comment 11.  |
| 14. | 2                | General<br>comment -<br>Definition:<br>"automated<br>advice" |                            | <p><b>COMMENT</b></p> <p>1.1 We note that the definition of "automated advice" only relates to "advice". There is uncertainty around how automated "intermediary services" or "execution only sales" will be regulated. For example, funeral plans can be opened by the client via ATM, USSD, Online and App. In these sales interventions, no "advice" is provided. The product options and factual information are displayed and the customer may decide on suitability and will self-contract without human intervention.</p> <p>1.2 It appears that the market has the ability to provide for a combination of automated advice and execution of sales. From the example above (and other similar scenarios)</p>  | <p>Noted.</p> <p>The purpose of the definition of 'automated advice' is to extract from the general definition of 'advice' a particular form of advice in order to impose additional requirements given the risk inherent in the medium used to provide the advice. This definition has no impact on the rendering of any type of intermediary service.</p> <p>As regards the rendering of intermediary services the Registrar is not proposing an amendment to</p> |

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|     |                  |                                   |                            | <p>clients are able to obtain automated advice records, and then instead of doing the transaction online, may wish to visit a bank branch or contact a call centre to finalise the buying of or investing in financial products.</p> <p><b>PROPOSAL</b></p> <p>1.3 We recommend that clarity be provided in relation to automated self-contracting by clients. It is our understanding that this scenario constitutes an intermediary service. As such, a key individual will be appointed to oversee the rendering of financial services, but there will be no representatives appointed as the staff members that may assist the client (in scenario 1.2 above) are merely capturing the information to the questions that the system is requesting.</p> <p>1.4 We request the Regulator to provide clarity/cater for this scenario. If there is a combination of a system and natural persons concluding the transaction (even if the natural person is involved after the use of the "robo-advisor"), then it is our understanding that the FSP needs to comply with the automated advice provision and the natural person concluding the sales must be appointed as a representative for intermediary services and can operate under the provisions of "execution of sales".</p> | <p>current conduct requirements applicable to those services which includes the execution of sales.</p> <p>The Registrar does not agree with the commentator's interpretation of the application of the Act. See the Guidance Note: Intermediary services and Representatives issued by this Office in 2011.</p> <p>It is important that a clear distinction is made between advice and intermediary services. A person eg. assisting (without advice) a client to conclude a transaction must be appointed as a representative. Whether or not that person will be performing the execution of sales is a factual question. It is further important to note that a person performing the execution of sales will not necessarily benefit from the reduced competency requirements unless all the criteria set out in section 22 are met which, <i>inter alia</i>, include the requirement that the execution of sales must be performed in accordance with a script.</p> |
| 15. | 17               | Definition:<br>"automated advice" |                            | <p>Automated advice is a new concept within the FAIS landscape. As such we recommend that care be taken to clearly define each aspect thereof, so as to avoid ambiguity or misinterpretation.</p> <p>The current definition states "without direct involvement". The term direct involvement should be defined so it is clear what level of involvement will either bring advice within the automated realm or not.</p>   | <p>Disagree.</p> <p>The definition is sufficiently clear and intentionally restrictive in order to exclude a natural person using algorithms and technology as a tool in order to provide his clients with advice.</p>  |

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|     |                  |                                      |   | <p>In addition the requirement of “without direct involvement of a natural person” causes contradiction when read together with the proposed Chapter 3 that sets out very onerous competency requirements for key individual working for an FSP that provides automated advice.</p> <p>Further, we may be faced with a scenario in which there is a combination of a system and a natural person (albeit that the natural person is involved after the use of the robo-advisor). In such an instance the FSP would require a license and natural person must be appointed as a representative of the FSP. Such a situation is not catered for in the proposed amendments.</p> <p>In light of the foregoing, we recommend that the requirements and the definitions are aligned to meet the primary purpose of what automated advice seeks to achieve.</p>  |  |
| 16. | 20               | Definition:<br>“automated<br>advice” | “automated advice”  | Amended quotation marks.   |  See correction.  |
| 17. | 1                | Definition:<br>“cash”                | <p>“cash” means –</p> <p>(a) physical currency consisting of Reserve Bank notes and coins; and</p> <p>(b) <del>a deposit at a bank</del> <u>any balance in an account with a–</u></p> <p><u>(i) bank as defined in section 1(1) of the Banks Act, 1990;</u></p> <p><u>(ii) branch of a foreign institution, which institution is authorised in terms of the Banks Act, 1990, to conduct the business of a bank by means of a branch in the Republic;</u></p> <p><u>(iii) bank established in a country other than the Republic and which lawfully conducts in such other country a business similar</u></p> | <ol style="list-style-type: none"> <li>The proposed definition of cash may be confusing. The reference to an overdraft or loan facility could be misread to mean overdraft or loan only. The intention is understood to be that a credit extension facility (loan or overdraft) arranged with a bank is excluded as it would not necessarily be prudent to use credit to finance business operations during financial distress.</li> <li>Paragraph (f) of the definition of a financial product refers to a deposit as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), and section 1(4) of FAIS limits the application of FAIS to financial services rendered in respect of bank deposits with a term not exceeding 12 months. This section 1(4) refers to a bank as defined in the Banks Act but there is no general definition of a bank in FAIS. It is not clear whether a deposit with a branch of a foreign bank (also subject to the Banks Act) will be accepted.</li> <li>Cash balances with a foreign bank should also be included</li> </ol> | <p>Agree insofar it relates to the commentator’s proposals under paragraph 1 and 2 and a cash balance in a foreign bank.</p> <p> See amended definition that incorporates the commentator’s proposals other than the proposal regarding the inclusion of a positive balance on a settlement account.</p> <p>See also extension to include a ‘branch of a bank’ and a ‘mutual bank’ as defined in section 1(1) of the Banks Act.</p> <p>The Registrar does not agree with the inclusion of a positive balance in a settlement account as cash.</p> |

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|     |              |   | <p><u>to the business of a bank;</u><br/> <u>and</u><br/> (c) <u>any positive net balance in a settlement account, other than a margin account, operated for the buying and selling of shares;</u><br/> <del>excluding an overdraft or loan a facility that extends credit to an FSP;</del></p> | <p>as well as a positive net balance in a settlement account.</p> <p>ASISA members propose that the cash definition should be amended to avoid the interpretation difficulties as explained above. The proposed wording in the left hand column is largely based on the definition of liquid assets in Board Notice 90 which determines the investment limits and conditions for collective investment schemes.</p>  | <p>Money in a settlement account is pre-allocated for a specific transaction and is technically no longer available for other transactions. Regarding it as cash will therefore defeat the purpose of the requirement.</p> |
| 18. | 2            | “class of business” in terms of Long-Term Insurance and Definitions of different Long-term Insurance sub-categories |   | <p><b>COMMENT</b></p> <p>The future “classes of business” / product categories need to be aligned across all key financial sector legislation and subordinate legislation, including the insurance Bill, the FSR Bill and COFI Bill licensing framework paper.</p> <p><b>PROPOSAL</b></p> <p>We request that the definitions align long-term insurance product definitions to the Insurance Bill is considered as far as possible at this stage keeping in mind that the Insurance Bill has not been passed into law and might still change.</p> | <p>Noted.</p> <p>We have aligned as far as possible with the relevant Bills and will continue to do so when they are enacted.</p>  |
| 19. | 20           | Definition: “class of business”   |   | <p>We believe that Product Suppliers should submit their products to the FSB to confirm into which Financial Product, which Tier and which class of business the product will reside, before marketing to the clients. Once approved, this information should be provided to FSPs to ensure that they do not fall foul of their licence conditions. This will assist FSPs in determining whether they are authorised for the product and able to provide financial services for that product.</p>  | <p>Disagree.</p> <p>Product Approval is not a function of the FSB.</p>   |
| 20. | 11           | Definition: “class of business training”  |   | <p>We recommend that “class of business training” rather be called – Generic legal and technical product training. This more accurately describes the type for training and is a term that the industry is used to.</p>  | <p>Disagree.</p> <p>The proposal of the commentator does not properly reflect all factors set out in section 29(3).</p>  |
| 21. | 8            | Definition: “CPD”   | ‘means continuous professional development with the aim to develop and maintain the competencies of representatives and key individuals in order to perform competently with their accredited environments’   | <p>We are of the opinion that the definition does not clearly indicate the nature of continuous professional development.</p>  | <p>Disagree.</p> <p>Please see definition of “continuous professional development” in section 1(1) of the Act.</p>   |

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| 22. | 1                | General<br>comment-<br>Definition:<br>"CPD activity" |  | <p>The meaning of "tracked" is not explained in the Explanatory Memorandum. If the intention is that a Professional Body should monitor the compliance of FSPs, key individuals and representatives with the CPD requirements, ASISA members submit that Chapter 4 of the Draft Notice appropriately assigns the responsibility for managing CPD and monitoring compliance with the CPD requirements to the FSP and it is not necessary for a Professional Body to "track" CPD activities.</p> <p>From a practical perspective, ASISA members also respectfully request that the Registrar provide more detailed information in respect of its consideration and decision to rely on Professional Bodies to accredit CPD activities. It is understood that the FSB places reliance on Professional Bodies because these bodies are recognised by SAQA for setting professional standards and they are supervised by SAQA in this respect. The extent to which and the manner in which the FSB will exercise its supervisory obligations as part of this process is not clear. Specific questions raised by ASISA members are included in the comment on the definition of "CPD Activity".</p> | <p>Agree.</p> <p> See amended definition for "CPD activity" in which the requirement that it must be tracked by a professional body has been removed.</p> <p>The Registrar does not have supervisory obligations in respect of Professional Bodies. SAQA has those obligations.<br/>The Registrar remains of the view that CPD activities must be accredited by a Professional Body as the latter is recognised by SAQA for setting professional standards in respect of a specific sector or occupation and therefore possesses the expertise required to set and maintain those standards.</p> |
| 23. | 1                | Definition:<br>"CPD activity"                        | <p><b>"CPD Activity"</b> means an activity that is –</p> <ul style="list-style-type: none"> <li>(a) accredited <del>and tracked</del> by a Professional Body;</li> <li>(b) allocated per hour value by that Professional Body; and</li> <li>(c) verifiable,</li> </ul> <p>and excludes –</p> <ul style="list-style-type: none"> <li>(i) an activity performed towards a qualification; and</li> <li>(ii) product specific training;</li> </ul> | <p>The meaning of "tracked" is not explained in the Explanatory Memorandum. During the discussions in the FSB Competence Workstream under the Market Conduct Regulatory Framework Steering Committee, the Registrar at times expressed an intention is that a Professional Body should monitor the compliance of FSPs, key individuals and representatives with the CPD requirements. ASISA members submit that Chapter 4 of the Draft Notice appropriately assigns the responsibility for managing CPD and monitoring compliance with the CPD requirements to the FSP and it is not necessary for a Professional Body to "track" CPD activities. It is therefore proposed that the definition should be amended accordingly.</p> <p>From a practical perspective, ASISA members also respectfully request that the Registrar provide more detailed information in respect of its consideration and decision to rely on Professional Bodies to accredit CPD activities. It is understood that the FSB</p>   | <p>See response under comment 22.</p> <p>Although the requirement that a CPD activity must be tracked by a professional body has been removed, Professional Bodies will continue to offer to track CPD activities accredited by it for both members and non-members. They may not only assist FSPs with their monitoring obligations but also the FSB with its supervisory obligations.</p> <p>Requiring accreditation by Professional Bodies of CPD activities will ensure that the same standard as regards the quality of CPD activities</p>   |


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|  |                  |         |                            | <p>places reliance on Professional Bodies because these bodies are recognised by SAQA for setting professional standards and they are supervised by SAQA in this respect. The extent to which and the manner in which the FSB will exercise its supervisory obligations as part of this process is not clear.</p> <p>The following questions have been raised by ASISA members:</p> <ol style="list-style-type: none"> <li>1. What measures will the FSB implement to ensure that any adverse information that comes to SAQA's attention is communicated to the FSB so that the impact thereof on FSPs, key individuals and representatives could be considered?</li> <li>2. Has the FSB in its development of the CPD requirements considered the following risks and how does the FSB anticipate that these risks will be managed or mitigated? <ul style="list-style-type: none"> <li>• Inadequate number of SAQA recognised Professional Bodies to implement the accreditation requirement in respect of all FSPs, key individuals and representatives;</li> <li>• Operational proficiency of current Professional Bodies to manage a potential significant increase in requests for accreditation and the sustainability of a Professional Body's capability to do so;</li> <li>• Professional Bodies requiring membership as condition to accreditation; and</li> <li>• Professional Bodies charging excessive fees to accredit CPD activities.</li> </ul> </li> </ol> <p>Please also refer to the comments on paragraph 31 in respect of the applicability of CPD requirements to a Category II, IIA and III FSP.</p> | <p>will apply across the industry and it will ensure appropriate quality assurance.</p> <p>The FSB recognises the importance of collaboration amongst all stakeholders. It currently, on a regular basis, engages and will continue to engage with SAQA in respect of all competency requirements including the oversight of professional bodies. That engagement will entail the sharing of information between the FSB and SAQA regarding their respective supervisory responsibilities. The FSB's current supervisory structures and framework will be applied to supervise compliance with the fit and proper requirements. However, where required, enhancements will be effected to ensure the FSB complies with its supervisory responsibilities.</p> <p>The Impact Assessment commissioned by the Registrar did not highlight the capacity of Professional Bodies to perform the functions set out in the requirements as a major risk. It is further important to note that the Assessment was conducted based on the assumption that Professional Bodies would be required to do both tracking as well as accreditation. Based on the new requirement, they will only be required to accredit CPD activities. However, it is expected</p> |

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|     |                  |                               |   |  | <p>that the CPD requirements may result in an increase in the number of Professional Bodies.</p> <p>As regards the last two bullet points, the Registrar is of the view that competition and market forces will address the commentator's concerns. However, the Registrar will monitor the situation and if any abuse is noted or if there are adverse changes in the behaviour of Professional bodies the Registrar will engage and if necessary will reconsider the requirements and the role of Professional Bodies.</p>   |
| 24. | 4                | Definition:<br>"CPD activity" | <p>We propose the following changes (<i>italics and underlined</i>) based on the discussion with the FSB:</p> <p><b>CPD activity</b>" means an activity that is-</p> <p>(a) <i>provided and tracked by FSPs; and</i></p> <p>(b) accredited and tracked by a Professional Body; and</p> <p>(b) allocated a hour value by that Professional Body; and</p> <p>(c) verifiable,</p> <p>and excludes-</p> <p>(i) <i>any completed qualification per the qualification requirements under Part 3 below;</i> and</p> <p>(ii) product specific training;</p> | <p>This section now gives activities that will be accepted for CPD. However, the definition only provides the option for a professional body to offer CPD activities. We believe that this is a barrier to entry and the legislation needs to provide options and consider the cost factor for the rep/FSP in this regard.</p> <p>Discussion with FSB on 29 November 2016:<br/>The FSB confirmed:</p> <ul style="list-style-type: none"> <li>- that FSPs can do activities that can be used towards CPD provided the activities are accredits.</li> <li>- that Class of business training can be used for CPD provided it does not result in a qualification.</li> <li>- Additional qualification that are product specific can be used for CPD</li> </ul> | <p>Disagree.<br/>The Registrar is not prescribing who should provide the CPD activities only that the activity must be accredited by a Professional body.</p> <p>It is correct that-</p> <ul style="list-style-type: none"> <li>- an FSP can provide the CPD activities as long as those activities are accredited by a Professional Body; and</li> <li>- class of business training can be used for CPD as long as it meets the criteria of a CPD activity, i.o.w it eg. excludes an activity performed towards a qualification.</li> </ul> <p>It is not correct that an additional qualification can be used or can be regarded as a CPD activity.</p> |
| 25. | 8                | Definition:<br>"CPD activity" |   | <p>While we acknowledge that a qualification acquired towards becoming fit and proper cannot count for CPD activity, we do believe that activities performed towards additional relevant</p>   | <p>Disagree.<br/>The hours prescribed for CPD is very low. If activities performed towards</p>   |


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|     |                  |                               |   | qualifications should indeed be included under CPD activity.   | a qualification should qualify as a CPD activity the number of required CPD hours will have to increase. The exclusion of those types of activities was considered in the determination of the prescribed hours. It is further important to note that class of business training can form part of a qualification.   |
| 26. | 11               | Definition:<br>"CPD activity" | <p>CPD Activity means</p> <p>(a) range of learning activities through which representatives and key individuals ensure that they retain their capacity to practice safely, effectively and legally within their scope of practice that is;</p> <p>i. accredited and tracked by a Professional Body;</p> <p>ii. allocated an hourly value by that Professional Body</p> <p>iii. verifiable</p> <p>(b) financial services offered on a pro bono basis</p> <p>And excludes</p> <p>An activity performed towards a qualification <i>required to meet the minimum licensing qualification requirement in this standard.</i></p> <p><b>"Pro bono services"</b> are those which involve the exercise of professional skills and are provided on a free or substantially reduced fee basis to clients who cannot afford to pay full market rates or to organisations working for disadvantaged groups or for the public good.</p> | <p>Including a broad definition of CPD will assist FSPs with meeting their requirements. We have recommended the definition as defined by SAQA.</p> <p>The completion of a qualification, in addition to the minimum qualification required should not be excluded from CPD as this is a valid method of increasing knowledge</p> <p>To include pro bono in the definition of CPD activity we recommend a definition for pro bono.</p> | <p>Disagree.</p> <p>CPD is already defined in section 1(1) of the Act.</p> <p>See response under comment 25.</p> <p>The Registrar agrees that pro bono services that are limited to transformation, consumer literacy or mentoring small black businesses should be included as a qualifying CPD activity. However, the details of what it must entail will be set out in the FSB's Inclusion Strategy/Policy which strategy/policy is still under consideration. Once finalised, the Registrar will reconsider the requirements / definition of CPD activity.</p> |
| 27. | 17               | Definition:<br>"CPD activity" |   | We note that the definition only affords a professional body the opportunity to offer and track CPD activities. We would   | Disagree.<br>The SAQA supervisory and legislative  |

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|     |                  |  |   | recommend that the Registrar include minimum criteria which FSPs are to meet in order for their activities to be recognised for CPD which is to be tracked by the Professional Body.  | framework will apply.   |
| 28. | 13               | Definition:<br>"CPD activity"<br>(a) & (b) | <p>"CPD activity" means an appropriate (learning, training, awareness or educational) activity that is directed towards enhancing the "competence" (as defined in s1) of the FSP/KI/Reps and is:</p> <p>(a) recorded and tracked by the FSP/KI/Rep; and</p> <p>(b) is allocated an hour's value in accordance with sections 33 and 34 of these regulations.</p> | <p>We cannot agree with the definition in its current form and do not agree that there is a need for a "Professional Body" in relation to this CPD activity. Should the regulator wish to push ahead with the definition in this format, we have several concerns in this regard:</p> <ul style="list-style-type: none"> <li>- <b>Definition of "accredited" and "tracked"</b> - while we accept the move to principles rather than rules, without this clarity we do not see the need for a Professional Body to accredit such CPD activities. Further, Chapter 4 sets out requirements for an FSP to maintain records and we therefore don't see the need for a Professional Body to track the CPD. We believe that interposing a Professional Body between the FSP and the FSB adds unnecessary admin and cost to the system.</li> <li>- <b>Fair competition and access to market</b> - In the context of the life assurance, short-term insurance and investment industries, there are only really only two active Professional Bodies, namely the FPI and the IISA (We have not counted the Actuarial Society of South Africa (ASSA) and the Compliance Institute of South Africa (CISA) as they are specialist-focused). And, according to SAQA policy (SAQA Policy and Criteria for Recognising a Professional Body and Registering a Professional Designation - November 2012) the <i>"proliferation of professional bodies within the same community of practice will be discouraged"</i>. Our experience is that in giving effect to this policy, only one Professional Body per industry sector is typically registered. This limitation effectively reduces competition and creates unfair and unequal playing fields. In addition, if the market were extended to other players to consider becoming a Professional Body, they would be at a significant competitive disadvantage.</li> <li>- <b>Conflict</b> – According to SAQA an approved Professional Body cannot be accredited/registered as an education and training provider. We are concerned that Professional Bodies operating in the life, short-term and investment space have "for profit" arms and therefore they are providers of CPD interventions, even if these may technically be separate from the non-profit body. This means they compete in the delivery space while</li> </ul> | <p>Noted.</p> <p>See response under comment 22 regarding the requirement that CPD activities must be tracked. See further response under comment 23 re requirement that CPD activities must be accredited.</p> <p>See outcome of Impact Assessment regarding the concerns raised. In addition, it is important to note that the conflicts referred to will be managed and supervised by SAQA, only a Professional Body can accredit CPD activities and the Registrar has provided for delayed effective dates of certain requirements. Please note further that SAQA has confirmed that it will recognise more than one Professional body within the same sector provided the recognition requirements are met.</p> <p>As regards cost, the Registrar will monitor the situation and if any abuse is noted or if there are adverse changes in the behaviour of Professional bodies the Registrar will engage and if necessary will reconsider the requirements and the role of Professional Bodies.</p> |



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|  |                  |         |                            | <p>acting as custodian of standards. In our view, this creates a potential conflict. Another point here is the question as to which body (the “for profit” or the non-profit arm) actually does the accrediting and/or tracking?</p> <ul style="list-style-type: none"> <li>- <b>Competitive insight into proprietary work</b> – given what we believe is a potential for conflict, we are concerned about service or training providers having to submit their proprietary work to a Professional Body whose delivery arm competes with them.</li> <li>- <b>Capacity of Professional Bodies</b> - In the context of the life assurance, short-term insurance and investment industries, there are only two active Professional Bodies, namely the FPI and the IISA. We question their ability/capacity to cope with the volume (in relation to accrediting and tracking), especially in the early stages when there will be a rush to get programmes “accredited”.</li> <li>- <b>Bottlenecks and speed to market</b> – given our concern about capacity, what would happen to backlogs? If it is first-come-first-served, we are concerned that those first through the gate (which could be the Professional Bodies’ own delivery programmes) would have an unfair competitive advantage over the rest of the market, who will still be waiting for their programmes to be accredited. Therefore, in this case, we would suggest that no programme gains full accredited status until each provider’s application for accreditation of their programmes has been processed.</li> <li>- <b>Same rules to apply to all</b> – given the delivery arms of the two Professional Bodies, we are concerned that they essentially gain a competitive edge. While the current two Professional Bodies start reviewing and accrediting the CPD activities of other suppliers, their for-profit arms have the inside track on delivery of their existing programmes which they themselves have already approved. We believe this would not be fair and we would look for absolute assurance that everyone, including the Professional Bodies’ delivery arms are measured, tested, and dealt with under the same rules as everyone else.</li> <li>- <b>Price/cost</b> – given the virtual monopoly of these two bodies, we are concerned about the ability to set and control price.</li> </ul> | <p>Noted.</p> <p>It is not the function of the FSB to set, accredit, manage or supervise CPD activities. As regards the second proposed solution, the Registrar, in her engagement with industry prior to the publication of the draft requirements, initially proposed a</p> |


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|     |                  |                                      |  | <p><b>Possible solutions to address these concerns:</b></p> <p>Our views are that if the structure of CPD is to continue as proposed, then there are a few possibilities:</p> <ul style="list-style-type: none"> <li>- The entire CPD structure and programme is managed by the FSB. This includes setting/defining the standard and setting out what elements should be contained in a CPD programme. It also includes the accreditation of programmes, tracking of records and periodic audits of adherence to the principles. We understand that this comes with resource requirements. But, even if this is done by Professional Bodies, there are still resource requirements needed beyond their current capabilities and therefore cost is inevitable.</li> <li>- The entire CPD structure and programme is managed by an independent body that accredits programmes and tracks records, for a fee, subject to the principles/guidelines set out by the FSB. And, to avoid conflicts, such independent body cannot be a supplier themselves. The FSB will retain the right to audit.</li> </ul> <p>Institute and follow an easy and inexpensive "honesty" system. This, we believe is more closely aligned to principles-based regulation than the existing proposal and even the two suggestions above. Under an honesty system the FSB defines the information elements needed for record-keeping and holds the FSP accountable. FSPs already (in terms of these drafts regs) have an onus to keep a competence register and there are already questions in the proposed Conduct of Business Report that they will be required to complete. The FSB should always retain the right to audit. We see this solution as the quickest and most cost-effective to implement. It is also the one that has the least negative impacts if it needs to be changed because very little needs to be undone.</p> | structure similar to the SARS structure and what was proposed by the commentator but industry, unanimously, decided against it. Therefore, the currently proposed structure. |
| 29. | 10               | Definition:<br>"CPD activity"<br>(b) | (b) allocated <u>an</u> hour value <u>or a part</u> thereof... | Recognition is needed for events that are rated less than 1 hour by adding "...or part thereof"   | Agree.<br> See amended definition.  |
| 30. | 13               | Definition:<br>"CPD activity"<br>(c) | Delete exclusions  | We don't understand why "CPD activity" as defined should exclude<br><i>(i) an activity performed towards a qualification; and</i><br><i>(ii) product specific training</i><br>We propose that, to encourage ongoing development, even   | Disagree.<br>See response to comment 25.   |


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|     |                  |   |                            | activities performed towards a qualification and product specific training be acceptable for purposes of CPD. Therefore, we suggest that subsections (i) and (ii) of the definition be deleted.   |   |
| 31. | 10               | Definition:<br>"CPD activity"<br>(c)        |                            | This makes sense but is not in line with any other industry, where CPD is based on trusting the integrity of the individuals. Have the enormous administrative requirements that will be required to manage this been properly considered? There is a likelihood that CPD from other related industries (vis. Accountants, Auditors, Actuaries and more) will not be registered as per the requirements and the individuals involved will be required to achieve two sets of CPD hours. Surely CPD for related industries managed by relevant bodies should be given equivalence? | Noted.<br>Please see Impact Assessment and definition of "professional body" that refers to <b>any</b> body recognised by SAQA as a professional body. CPD activities recognised and tracked by professional bodies of other professions will therefore qualify provided the requirements in Chapter 4 are met. |
| 32. | 10               | Definition:<br>"CPD activity"<br>(c)(ii)    |                            | It is assumed that this exclusion of product specific training refers specifically to the product training as envisaged by S 29(4) and that all subsequent product training will count towards CPD standards. It is suggested that the definition be amended to make this clear.  | Disagree.<br>Section 29(4) specifically refers to section 29(1) that provides that training on a product includes any amendments to that product. Subsequent product training on amendments will therefore not count towards CPD.   |
| 33. | 14               | Definition:<br>"CPD activity"<br>Exclusions |                            | We do not support the exclusion of activities performed towards a qualification and product-specific training from the definition of CPD activity.  | Noted.  |
| 34. | 18               | Definition:<br>"CPD activity"<br>Exclusions |                            | Clarity is required on whether this exclusion was intended only for the initial qualification and product training used for FAIS Fit and proper purposes, however that further qualification study and product updates would in fact be allowed for CPD purposes as this would qualify as further enhancement and development of technical knowledge and skill.   | See responses under comments 25 and 32.   |
| 35. | 17               | Definition:<br>"CPD cycle"                  |                            | Clarity is sought as to why this period i.e. June to May has been selected as a CPD Cycle period?<br>We are of the view that this period should be a calendar year as it will ease administration and be more in line with CPD activity programs which are usually pre planned within a calendar year.  | The cycle was based on previous requests from industry not to provide for December deadlines, <i>inter alia</i> , to alleviate the difficulties experienced by industry regarding administrative processes and resources during the December  |

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|     |                  |                                     |   |   | period.   |
| 36. | 18               | Definition:<br>"CPD cycle"          |   | <i>IISA recognise that the FSB proposed CPD cycle falls within a current reporting compliance requirement. IISA's current Membership / CPD cycle is 01 July to 30 June which can be adjusted to fit the FSB reporting year.</i>   | Noted.  |
| 37. | 1                | Definition:<br>"discretionary FSP"  | "discretionary FSP" ..... Discretionary <del>Conduct</del> Code of Conduct;                             | Incorrect reference.  | Agree.<br> See amended wording.  |
| 38. | 20               | Definition:<br>"discretionary FSP"  | "discretionary FSP" means a discretionary FSP as defined in the Code of Conduct for Discretionary FSPs" |   | See response under comment 37.  |
| 39. | 7                | Definition:<br>"execution of sales" |   | We assume this in fact refers to <b>non-advice</b> sales execution, as set out in Proposal D (page 31) of the Retail Distribution Review, 2014 document. It is critical that this definition is not contingent on an intermediary being able to reasonably establish a customer's financial capability. We refer in this regard to Proposal D in the RDR paper. Determining a customer's financial capability could have the unintended consequence of intermediaries engaging in financial needs analyses – which is only appropriate to advice models. To our knowledge, it is precisely because 'execution of sales' is only applicable to simple financial products that have no or limited underwriting, are easy to communicate, perform as the client has been led to believe and which are subject to other standards that provision has been made for this category of marketing as part of Treasury's on-going objective of improving access to financial services. Our comment is also apposite in relation to clause 13(1)(f) in Part 1, <i>Competence Requirements</i> . | Noted. The concerns raised will be considered in the Retail Distribution Review process.  |
| 40. | 13               | Definition:<br>"execution of sales" |   | With the obligations on execution sales being less onerous than on "advised sales", we believe that this may be open for misuse and therefore not in the interests of clients/consumers. Unless execution sales were narrowly defined, there would, in our view, be providers that prompt or guide clients (eg. via questions and answers or by using a script) to the "instruction" that is required from the client.<br><br>In our view, failure to do this would potentially lead to FSPs looking for arbitrage opportunities for the easy route and obviating the more onerous requirements in relation to advised sales by FSPs. Additionally, it also potentially creates unequal and   | It is important to note that 'execution of sales' constitutes the rendering of an intermediary service and is not advice. If advice (any guidance, proposal or recommendation) is furnished the requirements applicable to advice will apply. All conduct standards still apply to the execution of sales.<br><br>The Registrar is of the view that the |

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|     |                  |                                     |   | <p>potentially unfair advantages, relative to the competency requirements for more direct operations compared to advised operations.</p> <p>Therefore, we feel that as the phrase "... <i>on instruction of a client</i> ..." currently reads, it is open for interpretation and needs to be clarified. We would suggest that the definition should mean that the client is fully informed and directs the FSP "<i>to buy, sell, deal, invest or disinvest in, replace or vary one or more financial products</i>". In other words, the customers have considered their options, made up their minds, know exactly what they want and contact an FSP to help execute their decisions.</p> <p>At the very least we suggest that the regulator should provide detail, guidance, or definition of what is accepted as an 'instruction'. An alternative is for the regulator to limit the application of "instruction" to more simple products, like those described in Tier 2 and limit these to non-solicited sales – in other words, outbound calls are tantamount to canvassing for business and therefore are not "execution sales" by definition.</p> | <p>new requirements are proportionate to the nature, scale and complexity of the activity and that additional protection has been built-in through the requirement that the "reduced competencies" would only apply, <i>inter alia</i>, when a person performs the execution of sales in accordance with a script, direct oversight of a key individual and compliance with other additional governance and oversight requirements.</p> <p>The Registrar is further of the view that the definition is sufficiently clear.</p> |
| 41. | 17               | Definition:<br>"execution of sales" |   | <p>The definition may be confused with the requirements of 'sales execution' in RDR which provides that intermediaries will need to be able to reasonably establish the customer's financial capability in relation to the products offered through the non-advice model. There will be restrictions on the types of products or product features that may be distributed through this model, and will be restricted to simple products that comply with explicit product standards.</p> <p>As such, we recommend that this definition be aligned with the RDR requirements, alternatively the current definition of intermediary services in FAIS Legislation.</p> <p>We note further that 'a person' is not defined. We would propose that a definition be provided to reflect that this would be a representative that is rendering the service.</p>   | <p>Disagree.<br/>The Retail Distribution Review (RDR) is a separate process from the FAIS Fit and Proper Requirements. However, the requirements will be aligned to the RDR proposals when they have been finalised and implemented.</p> <p>Disagree. The intention is not to limit the definition. See further the definition of 'person' in the Act read with the introductory paragraph of section 1 of the Requirements.</p>   |
| 42. | 20               | Definition:<br>"execution of sales" | " <b>execution of sales</b> " means an intermediary service performed by a person on <u>an unsolicited</u> instruction of a client that results in the conclusion of an agreement to buy, sell, deal, invest or |   | Disagree. The intention is to include solicited transactions. See also response under comment 40.  |


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|     |                  |                          | disinvest in, replace or vary one or more financial products;”  |  |   |
| 43. | 1                | Definition: “experience” | “ <b>experience</b> ” ..... relevant to a particular, category, .....   | Comma after “particular” must be deleted.  | Agree.<br> See amendment.  |
| 44. | 1                | Definition: “experience” | “ <b>experience</b> ” means continuous practical working experience-<br>(a) .....<br>(b) gained through ..... product; <del>or</del><br>(c) in relation to ..... category; <u>or</u><br>(d) <u>gained either within or outside the Republic of South Africa,</u><br><del>with no break in service of more than 5 years between the individual's last working experience and the date of the assessment of that individual's experience;</del> | The current Fit and Proper Requirements provide that experience could have been gained either within or outside the Republic of South Africa. It is suggested that the definition be amended to include this clarification.<br><br>The lapsing of experience is dealt with in paragraph 16 and it is thus suggested that it is not necessary to include a reference to a break in service in the definition of experience. |  See amended wording.<br>Proposal of commentator is accepted in order to provide comfort to industry although, technically, it does not matter where the experience has been obtained.<br>Definition further amended to provide clarity as regards to the experience required from a key individual. |
| 45. | 2                | Definition: “experience” | We request that the following be added to the definition:<br>that entails the active and on-going gaining of knowledge, skills and expertise relevant to a particular, category, financial service and, where applicable, a financial product, <u>gained either within or outside the Republic of South Africa;</u>   | We note that the definition excludes experience gained outside South Africa.   | See response under comment 44.  |
| 46. | 4                | Definition: “experience” |   | <b>COMMENT</b><br>The amended definition of “experience” is a more limited version than the current version. It does not include the experience gained outside of SA as was previously in the definition.<br><b>PROPOSAL</b><br>We recommend that the Regulator considers including the parts of the current criteria that was left out (supervision requirements, experience gained outside SA).                          | See response under comment 44.  |
| 47. | 17               | Definition: “experience” |   | We note that the previous definition made provision for the recognition of experience either within or outside the Republic of South Africa.<br><br>Clarity is sought for the rationale for excluding experience gained  | See response under comment 44.  |

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|     |                  |                                |   | outside South Africa. We would recommend that such experience be recognised.  |   |
| 48. | 1                | Definition:<br>"family member" | <p><b>"family member"</b> means a <del>spouse, partner, child, parent or grandparent;</del> <u>natural person who is –</u></p> <p>(a) <u>recognised in law or the tenets of religion as a spouse, life partner or civil union partner;</u></p> <p>(b) <u>a child, including a stepchild, adopted child and a child born out of wedlock;</u></p> <p>(c) <u>a parent or stepparent;</u></p> <p>(d) <u>a grandparent; or</u></p> <p>(e) <u>dependent on a representative who is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the dependent person;</u></p>   | It is suggested that the definition be amended as proposed for the sake of clarity. The definition may inadvertently exclude adopted children or other dependents if it is not amended. The proposed amended wording is largely based on the definition of "associate" in the FAIS General Code of Conduct. | Agree<br> See amended wording. |
| 49. | 2                | Definition:<br>"family member" | <p>The definition should be extended to include a wider array of the members that make up a family. As a minimum, this definition should be extended to included siblings. Ideally, the definition should include "in-laws", aunts, uncles, nieces, nephews, step-relations and wards/guardians.</p> <p>We propose that the definition of spouse as used in the Income Tax Act be added:</p> <p><b><u>"spouse"</u></b><br/><u>in relation to any person, means a person who is the partner of such person—</u></p> <p>a) <u>in a marriage or customary union recognised in terms of the laws of the Republic;</u></p> <p>b) <u>in a union recognised as a marriage in accordance with the tenets of any religion; or</u></p> <p>c) <u>in a same sex or heterosexual</u></p> | <p>The proposed definition of family member may be too restrictive and does not take the social and cultural dynamic of the Republic of South Africa into account.</p> <p>We propose that the definition should include "spouse" as per the Income Tax Act No 58 of 1962.</p>                               | See response under comment 48.  |


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|     |                  |  | <u>union which is intended to be permanent, and 'married', 'husband' or 'wife' shall be construed accordingly: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union out of community of property;</u> |   |   |
| 50. | 17               | Definition: "family member"                |   | <p>Clarity is sought as to whether this would include a life partner?</p> <p>We recommend that the definition in the Income Tax Act be used as it is all encompassing. In terms of this definition, "spouse" means, in relation to any other person, a person who is the partner of that person:</p> <ul style="list-style-type: none"> <li>➤ in a marriage or customary union recognized in terms of the laws of the Republic;</li> <li>➤ in a union recognized as a marriage in accordance with the tenets of any religion; or</li> <li>➤ in a same sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.</li> </ul> | See response under comment 48.  |
| 51. | 17               | Definition: "financial product"            |   | <p>We note that this definition does not define the products which will fall into this section, nor does it reference the different products defined in this amended Board Notice.</p> <p>Further it is noted this definition is not aligned with the definition of a financial product as defined in the Financial Sector Regulation Bill ("FSR Bill").</p> <p>We recommend that the definition be aligned with the definition in the current version of the FSR Bill.</p>   | <p>Disagree.</p> <p>See definition of 'financial product' in the Act read with the introductory paragraph to section 1 of the Requirements.</p> <p>Please note that subordinate legislation, like the Fit and Proper Requirements, cannot extend beyond to what is in the primary legislation. The definition therefore cannot be aligned to what is in the FSRA.</p> |
| 52. | 1                | Definition: "general solvency requirement" | <b>"general solvency requirement" ..... to in section <del>45(2)</del> paragraph 44(2);</b>   | Incorrect reference.  |  See correction. In addition, all definitions relating to soundness requirements have been moved to Chapter 6 for ease of reference. .   |

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| 53. | 13           | Definition: "general solvency requirement" |  | There is no section 45(2). Should the reference be to s46?   | See response under comment 52.  |
| 54. | 20           | Definition: "general solvency requirement" | "general solvency requirement" means the requirement referred to in section 44(2);"  |  | See response under comment 52.  |
| 55. | 23           | Definition: "general solvency requirement" |  | There is no section 45(2).   | See response under comment 52.  |
| 56. | 1            | Definition: "hedge fund"                   | <del>"hedge fund" means a hedge fund as defined in the Declaration made by the Minister under section 63 of the Collective Investment Schemes Control Act;</del> | <p>Hedge fund is defined in the Code of Conduct for Discretionary FSPs. The CISCA Declaration defines hedge fund similarly with the exception of referring to an arrangement in pursuance of which members of the public are invited or permitted to invest. The differing definitions may cause confusion.</p> <p>The proposed definition will be appropriate in the context of class of business training requirements and experience requirements for a Category I FSP (Annexure One Table 1). In the context of experience requirements for a Category II FSP, it will mean that a Category II FSP will be able to manage a hedge fund CIS but not a hedge fund portfolio as a private arrangement even if it is essentially the same. This could not have been the intention given the regulatory framework in respect of a hedge fund FSP.</p> <p>It is proposed that the definition should be deleted to avoid the confusion with the existing definition of hedge fund in the Code of Conduct for Discretionary FSPs and to clarify that the requirements in respect of a hedge fund collective investment scheme is not applicable in the context of a Category II FSP.</p> | <p>Disagree.</p> <p>The Registrar is not proposing an amendment to the definition of a Category IIA FSP/ Hedge Fund FSP in the Fit and Proper Requirements or the definition of 'hedge fund' or the activities referred to in the definition of 'hedge fund FSP' in the Discretionary Code of Conduct. The purpose of providing for a definition of 'hedge fund' is to distinguish between a participatory interest in a hedge fund and an interest in a collective investment scheme that is not a hedge fund to allow the Registrar to set different competency requirements for persons rendering financial services in respect of the two subcategories. It is important to note that the definition in the Fit and Proper Requirements does not impact on the definition in the Discretionary Code of Conduct.</p> |

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|     |              |  |   |   | However, to avoid confusion the Registrar has amended the definition to make it clear that it refers to a CIS hedge fund. The definition of 'hedge fund' in the Discretionary Code is therefore wider than a CIS hedge fund. |
| 57. | 1            | Definition: "Islamic Compliant Instrument" | <u>"Islamic Compliant Instrument" has the meaning assigned to it in the Determination by the Registrar of Collective Investment Schemes under sections 40, 45(a)(ii) and (b)(ii), 46 and 85 of the Collective Investment Schemes Control Act;</u> | <p>Please refer to the comment on the definition of "liquid assets" in respect of the proposed inclusion of a definition of Islamic Compliant Instruments.</p> <p>The Determination by the Registrar of Collective Investment Schemes under sections 40, 45(a)(ii) and (b)(ii), 46 and 85 of the Collective Investment Schemes Control Act, is currently contained in Board Notice 90 of 8 August 2014. Board Notice 90 defines Islamic Compliant Instrument to be an instrument held in a Shari'ah compliant portfolio, being a collective investment scheme in securities managed under the Act in compliance with the relevant standards of AAOIFI, structured in such a manner that the instrument held by the portfolio will be an instrument defined under paragraphs 2(1)(a). AAOIFI is defined to mean the Accounting and Auditing Organisation for Islamic Financial Institutions.</p> | Disagree.<br>See response under comment 59.  |
| 58. | 8            | Definition: "juristic"                     |   | For administrative efficiency reasons some of our larger financial advisory offices who work together as a unified team have elected to operate through a juristic representative company structure. Where a team of advisers share office infrastructure costs it is easier to do so via a company structure rather than splitting costs between each person which would require financial advisers to each prepare separate detailed income statements. For all other requirements they are treated and controlled in the same manner as our other representatives. We therefore request that the Regulator consider a different distinction when legislating against those representatives that operate in a 'licence for hire' environment than the legal nature of the representative.   | Noted.<br>The Registrar is not of the view that all juristic representatives operate in a 'licence for hire' environment.  |



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| 59. | 1            | Definition: "liquid assets" | <p><b>liquid assets</b>" means-</p> <p>(a) ....;</p> <p>(b) a participatory interest in a money market <u>collective investment scheme portfolio</u>;</p> <p>(c) <u>a participatory interest in a collective investment scheme portfolio of which the primary objective is to provide income from investment in Islamic Compliant Instruments</u>;</p> <p><del>(e)</del>(d) 70% of the market value of a participatory interest in a <del>registered</del> collective investment scheme <del>as defined in the Collective Investment Schemes Control Act</del>, <u>portfolio other than an investment in a money market portfolio or a participatory interest referred to in paragraphs (b) and (c) and a participatory interest in a hedge fund collective investment scheme portfolio</u>; or</p> <p><del>(d)</del>(e) .....</p> | <ol style="list-style-type: none"> <li>The FAIS definition of financial product refers to a participatory interest in one or more collective investment schemes. This reference is not entirely correct as participatory interests are held in a CIS portfolio, not the scheme itself. References to "portfolio" must be identified as a "collective investment scheme portfolio".</li> <li>The reference to "registered" in paragraph (d) of the definition could be deleted. It is superfluous as CISCA requires that collective investment schemes be registered.</li> <li>It is not necessary to refer to a collective investment scheme as defined the Collective Investment Schemes Control Act as FAIS defines "collective investment scheme" to be a collective investment scheme as defined in the Collective Investment Schemes Control Act.</li> <li>The reference to "hedge fund" must be amended to specifically identify a hedge fund collective investment scheme portfolio.</li> </ol> | <p>Noted.</p> <p> See new definition for 'collective investment scheme' that includes a portfolio as defined in CISCA.</p> <p>See also the definition of 'money market portfolio' and 'CIS hedge fund'.</p>   |
| 60. | 1            | Definition: "liquid assets" | <p><b>"liquid assets"</b> means-</p> <p>(a) cash;</p> <p>(b) a participatory interest in a money market <u>collective investment scheme portfolio</u>;</p> <p>(c) <u>a participatory interest in a collective investment scheme portfolio of which the primary objective is to provide income from investment in Islamic Compliant Instruments</u>;</p> <p><del>(e)</del>(d) 70% of the market value of a participatory interest in a</p>  | <ol style="list-style-type: none"> <li><u>Proposed insertion of paragraph (c)</u><br/>There are no Shari'ah compliant money market collective investment scheme (CIS) portfolios as the acceptance of interest is prohibited in Shari'ah law. Shari'ah compliant FSPs will thus be at a disadvantage in comparison with other FSPs because of their inability to include 100% of a money market CIS portfolio as liquid assets. It is proposed that Shari'ah compliant <u>income</u> CIS portfolios should be provided for similar to the provision for money market CIS portfolios. A definition of Islamic Compliant Instruments should be included to support the proposal. Please refer to the proposed definition above.</li> </ol>   | <p>Disagree.</p> <p>The proposed amendment allows Shari'ah compliant FSPs to recognise 70% of the market value of their investments in any type of collective investment scheme. The perceived disadvantage must be seen in light of the extension of qualifying 'liquid assets' to other assets classes and the risks associated with those asset classes.</p> <p>The Registrar remains of the view that the acceptance of the proposal</p> |



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|              |         | <p><del>registered</del> collective investment scheme as defined in the Collective Investment Schemes Control Act, <u>portfolio other than an investment in a money market portfolio or a participatory interest referred to in paragraphs (b) and (c) and a participatory interest in a hedge fund collective investment scheme portfolio;</u></p> <p>or</p> <p><del>(d)</del>(e) 70% of the market value of a security listed on a licensed exchange provided it does not constitute more than 50% of total liquid assets,</p> <p>(f) 70% of the market value of <u>trade debtors which are recoverable directly from the investments of the client as contractually agreed with the client;</u></p> <p>provided that-</p> <p>(i) the assets referred to in paragraphs <del>(a) and (b)</del> <u>(a), (b) and (c)</u> are capable of being converted, without any penalty or loss or the potential of a loss on capital, into cash as follows:</p> <p>(aa) 50% within 7 days; and</p> <p>(bb) 50% within 30 days; and</p> <p>(ii) the assets referred to in paragraphs <del>(c) and (d)</del> <u>(d), (e) and (f)</u> are capable of being converted into cash within 7 days.</p> | <p>2. <u>Proposed insertion of paragraph (f)</u><br/> Three ASISA members (Category II &amp; IIA FSPs) wish to repeat the proposal that the definition of liquid assets should include accounts receivable from clients that contractually agreed to the FSP instructing a product supplier or other FSP to recover management fees payable to the FSP directly from the clients' investments. These accounts receivable currently qualify as assets equivalent to cash that can be liquidated without realising a loss on liquidation and should continue to qualify as liquid assets. The Registrar disagreed with the initial proposal and indicated that accounts receivable may not always be available for liquidation and it further may be subject to market and investment risk.</p> <p>Although a client's investment (and the value of fees) may be subject to market and investment risk, a client is contractually bound to pay fees. These fees will be available shortly after it becomes due as the client agreed to the FSP recovering the fees directly from the client's investment. If these accounts receivable meet the conditions for being converted into cash, it should be accepted as liquid assets. The Registrar is respectfully requested to reconsider the proposal.</p> <p>3. <u>Proposal to include 100% of CIS portfolios</u><br/> One ASISA member (based on recent discussions with the Registrar) proposes that the full value (100%) of all CIS portfolios (other than a hedge fund CIS portfolio) should be regarded as liquid assets provided that these assets meet the requirements for being converted into cash. The market value of a CIS portfolio is determined on a daily basis and this current value will be used for the</p> | <p>would defeat the purpose of the requirement and that such refusal is reasonable given the extension of assets that qualify as liquid assets to assets other than mainly cash. In addition, accounts receivable may not always be available for liquidation and it may further be subject to market and investment risk.</p> <p>Disagree.<br/> The percentages were determined given the inherent risks of the various product categories.</p> |

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|     |              |  |   | liquidity calculation. In addition, these assets could be converted into cash within 24 hours. This, in the ASISA member's opinion, warrants the recognition of the full value of these investments.  |  |
| 61. | 13           | Definition: "liquid assets"  |   | We think that accepting a market value of 70% of a participatory interest in a registered CIS or 70% of a security as acceptable is generous and helpful to FSPs.   | Noted.   |
| 62. | 2            | Definitions: "Long-Term insurance subcategory B1-A" "Long-Term insurance subcategory B2-A" "Long-Term insurance subcategory C" | (a) Change Long-Term insurance subcategory B1-A to Long-Term insurance subcategory B3.<br>(b) Change "Long-Term insurance subcategory B2-A to Long-Term insurance subcategory B4.<br>(c) We suggest an alignment of the Long-term insurance subcategory B with the revised definition/ category of B3 and B4.   | We suggest that the Regulator considers the numeric value of the subcategory as compared to including the "A" in B1 and B2. The use of B1-A and B1-B is difficult to differentiate and numeric numbering would be a simpler approach  | Disagree.<br>The description supports the fact that B1-A is a subset of B1 and not a category on its own.  |
| 63. | 20           | Definitions  |   | Add definition : <b>"Look Through Principle"</b> – We would like to see a definition of the look through principle and when it will apply in terms of experience, qualifications and CPD.   | See section 29(6).   |
| 64. | 1            | Definition: "no or unlimited underwriting"   | <u>"no underwriting" means there is no requirement by a product supplier for any medical, financial or lifestyle information to be provided by a prospective policyholder or life assured in order for such product supplier to accept risk or pay a claim.</u><br><br><u>"limited underwriting" means where the only requirements a prospective policyholder or life assured must comply with in order for a product supplier to accept risk or pay a claim are-</u> | The 1 <sup>st</sup> Draft Fit and Proper Requirements contained separate definitions for "no underwriting" and "limited underwriting". These definitions are currently included in the Exemption of Certain Persons from the Level 1 Regulatory Examination Requirements published on 6 June 2012. The rationale for combining the definitions in the 2 <sup>nd</sup> Draft is not understood. The proposed combined definition will, from a long-term insurance perspective, cause confusion as to the meaning of "limited" and will therefore lead to inconsistent interpretation.<br><br>ASISA members propose that the definitions should be separated and included as it was in the 1 <sup>st</sup> Draft Fit and Proper Requirements. | Agree.<br> See amended definitions.<br><br>Check for appropriateness for short-term insurance. See comment 67. |

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|     |                  |  | <p>(a) <u>the furnishing of a health declaration by such policy holder of life assured, structured as answers to no more than eight questions relating to specific medical conditions;</u></p> <p>(b) <u>a requirement that the policyholder of life assured must undergo an HIV test;</u></p> <p>(c) <u>the requirements imposed by the National Credit Act, No. 34 of 2005; or</u></p> <p>(d) <u>a combination of any of the requirements referred to in paragraphs (a), (b) and (c).</u></p> |   |                                |
| 65. | 2                | Definition: "no or unlimited underwriting" | <p>i) We recommend the following definition: <b>"no or limited underwriting"</b> means where an insurer requires no or limited medical, financial, demographic or lifestyle information from a prospective policyholder or life insured to assess <u>and accept</u> the risks under a policy or to pay a claim.</p> <p><b>Or</b></p> <p>(ii) Retain the definitions of "limited underwriting" and "no underwriting" as currently in Board Notice 102 of 2012.</p>                               | <p>This definition should not be restricted to include no or limiter underwriting in relation to only assessing risks and whether or not to pay a claim. "No or limited underwriting" should be in relation to whether there is no or limited underwriting required for the insurer to assess and accept the risk in relation to a customer that then progresses into purchasing the product.</p> <p>Use of the word "assess" (as compared to "accept" in Board Notice 102 of 2012) will have the unintended consequence of transactions not translating to product take-up still being subject to these provisions. (note that in the General Code of Conduct records of advice only apply if the customer actually purchases a product). The underwriting risks that could be associated with whether to pay a claim ought to be covered by the Insurance regulations and the FAIS disclosures in the General Code of Conduct relating to material terms and conditions, exclusions and waiting periods etc.</p> <p>What is considered limited can become debatable because you could have two exact products one fully underwritten the other with only a few underwriting questions, thus the two against each other means the latter will be considered as limited underwriting in relation to the fully underwritten product. For that reason, the initial definition of "limited underwriting" as provided in Board Notice 102 of 2012 is preferred as that definition is very specific.</p> | See response under comment 64. |


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| 66. | 8                | Definition: "no or unlimited underwriting"                    |  | We feel that the two definitions should be kept separate as in the 2015 definitions and that the 2015 definition of limited underwriting should be incorporated. If the number of underwriting questions are not specifically provided, it will create uncertainty about whether a certain set of questions applies to limited or full underwriting.   | See response under comment 64.  |
| 67. | 10               | Definition: "no or unlimited underwriting"                    |  | As it stands, this definition has very little relevance to short term risks and requires expansion. It certainly extends beyond what appears to be envisaged in this area for short term personal lines.   | Disagree.<br>Short-term risks are also underwritten through assessment of financial, demographic and lifestyle information of the prospective policyholder (and medical information in respect of accident and health policies). Where no information is requested in respect of any of these factors then it would constitute "no underwriting". |
| 68. | 11               | Definition: "no or unlimited underwriting"                    |  | The current definition does not define what is meant by limited underwriting. Not defining what is meant by limited underwriting could cause poor customer outcomes as products may be marketed as having "limited" underwriting, which in fact have quite onerous requirements, to fit into a category that has lower competency standards. We believe that the definition contained in the December 2015 version of the fit and proper requirements is more appropriate and would recommend that the definition be retained. | See response under comment 64.  |
| 69. | 14               | Definition: "no or unlimited underwriting"                    |  | It would be wise to spell out in more detail exactly what constitutes "limited underwriting".  | See response under comment 64.  |
| 70. | 17               | Definition: "no or unlimited underwriting"                    |  | The definition is too vague as it does not clearly set out what is meant by "limited". Is it limited in the context of the other underwriting criteria or in absolute terms?   | See response under comment 64.  |
| 71. | 2                | Definitions:<br>"assistance policy"<br>"offsetting of claims" | " <b>assistance policy</b> " means an assistance policy as defined in section 1 of the Long-term Insurance Act and <u>Short-term Insurance Act</u> ; | (a) " <b>administration of assistance policies</b> " means work performed by a person relating to the offsetting of claims, processing of claims or payment of fees or commission in respect of an assistance policy<br><br>We note that the definition includes "offsetting of claims", and we  | Disagree.<br>'Assistance policy' is only defined in the Long-term Insurance Act. It is accepted that some short-term insurers write funeral policies under  |

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|     |                  |  | <p><b>"offsetting of claims"</b> means the payment of policyholder's claims and the offsetting of such claims against premium and <u>excess</u> received from policyholders for remittal to a long-term insurer;</p>                                    | <p>propose the inclusion of the <u>excess</u> and premiums payable from long-term and short-term insurers – see (c) infra.</p> <p><b>(b) "assistance policy"</b> means an assistance policy as defined in section 1 of the Long-term Insurance Act;"</p> <p>We are unsure of the reasons for restricting the definition to long-term insurers only as it is our understanding that short-term insurance assistance policies may also be issued. The current definition specifically applies to long-term insurance only.</p> <p><b>(c) "offsetting of claims"</b> means the payment of policyholder's claims and the offsetting of such claims against premium received from policyholders for remittal to a long-term insurer;</p> <p>We are unsure of the reasons for restricting the definition to long-term insurers only and we propose that the Regulator considers inclusion of the <u>excess</u> and premium payable from the claims from long-term and short-term insurers.</p> | <p>the class "accident and health policies" as defined in the Short-term Insurance Act. However, they may not refer to or use the term "funeral" or "burial" in any policy or advertisement.</p> <p>The Registrar does not intend to extent the current definition to Short-term Insurance. This decision is further in line with the proposed new 'Funeral' class of insurance under life insurance.</p> |
| 72. | 17               | Definitions:<br>"offsetting of claims"     |   | <p>Clarity is sought on restricting to long-term insurer only.</p> <p>We recommend that consideration be given to the inclusion of the <u>excess and premium payable</u> from the claims from long-term <b>and</b> short-term insurers.</p>  | <p>Disagree.</p> <p>The definition must be read with reference to the definition of 'assistance business FSP' and 'administration of assistance policies'. It has no reference to short-term insurance products.</p>  |
| 73. | 5                | Definition:<br>"product specific training" | <p><b>"product specific training"</b> means the training referred to in section 29(4) which relates to specific financial products issued by product supplier or foreign product suppliers which will deal with the unique futures of that product.</p> | <p>The definition of Product specific training refers to section 29(4) which deals with the training and assessment criteria for product specific training and is open for different interpretations as to what products need to be trained on and assessed. From our discussion with the Regulator it has been clarified that the intention is to refer to specific products. We suggest that the wording be amended to avoid confusion.</p> <p>To clarify we suggest the definition refers to section 29(1)(ii) or specifically states that the intention is that product specific training is training in relation to a specific product supplier's product or family of products.</p>  | <p> See amended definition and new definition of "particular financial product".</p>   |
| 74. | 11               | Definition:<br>"professional programme"    | <p><b>"professional programme"</b> means-</p> <p>(a) a programme at post-graduate level offered by a professional body for the purposes of providing specialized competence that will lead to a</p>   | <p>We believe that the definition as currently stated contains a risk that a professional programme that has not been recognised by SAQA may be offered. To eliminate this risk we recommend that the definition should read as proposed.</p>  | <p> See amended definition.</p> <p>The Registrar does not agree that the programme must be approved by</p>   |


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|     |                  |                                      | <p>professional designation.</p> <p>(b) a programme offered by a foreign body that is equivalent to a professional body which sets an internationally accepted standard for a specialised profession relevant to the financial services industry, <b><i>on condition that such a programme has been duly approved by SAQA;</i></b></p> | <p>The amended definition for a local programme will ensure SAQA oversight as SAQA recognises professional bodies.</p> <p>Any qualification recognised by a professional body for the purpose of their professional programme would first be a qualification that has been approved by SAQA.</p> <p>The definition of qualification in this determination adequately provides for qualifications offered by educational institutions or accredited providers, whether they are recognised by a professional body for a professional programme or not.</p> <p>We believe that foreign programmes should also be approved by SAQA. This will ensure that there is a proper check for what constitutes "internationally accepted standard". This will further provide clarity and ensure that the local financial services industry is not suddenly flooded by foreign programmes that may not be on par with local programmes. The programmes will also then be able to be aligned with NQF descriptors. (Note: We have attached the Draft NQF amendment bill which may have reference).</p> | <p>SAQA. In terms of the definition of 'qualification' the programme must be evaluated by SAQA for equivalence to qualify as a qualification for purposes of the competency requirements.</p>   |
| 75. | 20               | Definition: "qualification"          | " <b>qualification</b> " means a- [include (d) a part qualification as defined by the QCTO sub framework]  |  | Disagree. The intention is that a person when rendering financial services must have a full qualification.  |
| 76. | 1                | Definition: "regulatory examination" | " <b>regulatory examination</b> " ..... a Table in Annexure <del>Three</del> <u>Five</u> mainly .....  | Incorrect reference.   |  See amended definition for correction. Definition has further been amended to provide for the Financial Sector Regulation Act that was promulgated in August 2017.                                  |
| 77. | 2                | Definition: "Regulatory Authority"   | We suggest this definition aligns to the FAIS definition until the FAIS Act can be amended to the FSR Bill definition of "responsible authority".<br><b>FSR Bill definition: "responsible authority",</b> for a financial sector law, means the responsible authority for the financial sector law as                                  | The suggested definition refers to the Financial Services Board Act, 1990, which will be replaced in terms of the FSR Bill. We suggest this definition aligns to the definition of a Responsible Authority in the FSR Bill or the FAIS Act definition. We appreciate that this is the current legislative requirement but suggest this definition aligns to the definition of FAIS Act.  |  See amended definition. Definition of 'responsible authority' in the FSR Act has a different purpose than that of 'regulatory authority' defined for purposes of the Fit and Proper Requirements. |



|     | Commen-<br>tator | SECTION                               | WORDING / PROPOSED WORDING   | COMMENT   | REGISTRAR'S RESPONSE  |
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|     |                  |                                       | defined in section 5;<br><b>FAIS Act definition:</b><br><b>regulatory authority</b> means an entity established in terms of national legislation responsible for regulating activities of an industry, or sector of an industry; |   |   |
| 78. | 17               | Definition:<br>"Regulatory Authority" |  | <p>We note that this definition differs from the definition in the FAIS Act which provides that this is an entity established in terms of national legislation responsible for regulating activities of an industry, or sector of an industry.</p> <p>The definition of a Responsible Authority in the FSR Bill is as follows:<br/><i>"responsible authority", for a financial sector law, means the responsible authority for the financial sector law as defined in section 5; (which states)</i></p> <p>5.(1) <i>Subject to subsection (2), the responsible authority for a financial sector law is the financial sector regulator identified in Schedule 2 as the responsible authority for that financial sector law.</i></p> <p>(2) <i>Despite subsection (1) and sections 2(5) and 3(5), if a section 77 memorandum of understanding provides for one of the financial sector regulators to delegate its functions and powers in relation to a provision of a financial sector law for which it is the responsible authority to another financial sector regulator, the other financial sector regulator is, to the extent of the delegation, the responsible authority for the provision</i></p> <p>We recommend that this definition be aligned to the definition in the FSR Bill for consistency.</p> | See response to comment 77.   |
| 79. | 2                | Definition:<br>"Related parties"      | We suggest consideration be given to using the definition referred to in the FSR Bill, which refers to the Companies Act definition.   | We note the reference to the IAS definition but we request that the REGULATOR considers the Companies Act definition (description) of "related persons".  | Disagree.<br>The relevance of the definition is limited to the financial soundness requirements set out in Chapter 6. |





|     | Commen-<br>tator | SECTION                          | WORDING / PROPOSED WORDING | COMMENT   | REGISTRAR'S RESPONSE   |
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| 80. | 17               | Definition:<br>"Related parties" |                            | <p>We note that this definition is not aligned to the definition in the FSR Bill. The definition of related parties in the FSR Bill is as follows:</p> <p><u>"related party", in relation to a person (the "first person") means a person connected to the first person in a manner described in section 2(1)(a), (b) or (c) of the Companies Act;</u></p> <p>The Companies Act provides as follows in respect of Section 2:<br/>For all purposes of this Act—</p> <p>(a) an individual is related to another individual if they—</p> <p>(i) are married, or live together in a relationship similar to a marriage; or</p> <p>(ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;</p> <p>(b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with subsection (2); and</p> <p>(c) a juristic person is related to another juristic person if—</p> <p>(i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2);</p> <p>(ii) either is a subsidiary of the other; or</p> <p>(iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2).</p> <p>Clarity is sought as to the rationale for referring to the IAS 24 standards rather than seeking alignment with the FSR Bill as it is our recommendation that this definition be aligned to the FSR Bill for consistency across the industry.</p> | See response to comment 79.  |
| 81. | 4                | Definition:<br>"Remuneration"    |                            | <p><b>COMMENT</b></p> <p>The remuneration policies and practices will need to be updated and aligned to this definition (if not already catered for).</p> <p><b>PROPOSAL</b></p> <p>We recommend a phasing in period to allow FSPs to align its policies and practices to this definition.</p>  | Disagree.<br>The definition must be read with the definition of 'annual expenditure'.<br>The intention is to provide some alleviation for providers by extending the type of expenditure they can exclude for purposes of the liquidity calculation. |


|   | Commen-<br>tator  | SECTION   | WORDING / PROPOSED WORDING  | COMMENT   |                        |                | REGISTRAR'S RESPONSE |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
|---|---|---|---|---|------------------------|----------------|----------------------|--------|--------|--------|---------------------------------|------------|---------------------------------|--------------------------|--|--------------------------|--|--|--|--|-------|-------|--|-----------------------|-----------------------|--|-------|--|---|---|---|--|--|--|--|-------------------------------|--|---|--|
| 82.   | 1   | Definition:<br>"securities and instruments"   | <p>"securities and instruments" in relation to financial product means –</p> <p>(a) securities and instruments as referred to in paragraph (a) of the definition of 'financial product' in section 1 of the Act; and</p> <p>(b) foreign currency denominated investment instruments, excluding –</p> <p>(i) securities and instruments referred to in the definition of shares, money-market instrument, debentures and securitised debt, warrants, certificates or other instruments, bonds and derivative instruments;</p> <p>(ii) a foreign currency deposit; and</p> <p>(iii) a forex investment;</p> | <table border="1"> <thead> <tr> <th>FAIS financial product</th> <th>FMA securities</th> <th>Draft Board Notice</th> </tr> </thead> <tbody> <tr> <td>Shares</td> <td>Shares</td> <td>Shares</td> </tr> <tr> <td>Debentures and securitised debt</td> <td>Debentures</td> <td>Debentures and securitised debt</td> </tr> <tr> <td>Money market instruments</td> <td></td> <td>Money market instruments</td> </tr> <tr> <td>Warrants, certificates and other instruments</td> <td></td> <td>Warrants, certificates and other instruments</td> </tr> <tr> <td>"Securities" as defined in Financial Markets Act</td> <td>Bonds</td> <td>Bonds</td> </tr> <tr> <td></td> <td>Derivative instrument</td> <td>Derivative instrument</td> </tr> <tr> <td></td> <td>Notes</td> <td></td> </tr> <tr> <td>Participatory interest in one or more collective investment schemes</td> <td>Participatory interest in one or more collective investment schemes</td> <td>Participatory interest in one or more collective investment schemes, excluding hedge fund</td> </tr> <tr> <td></td> <td></td> <td>Participatory interest in a hedge fund</td> </tr> <tr> <td></td> <td>Instruments based on an index</td> <td></td> </tr> </tbody> </table> | FAIS financial product | FMA securities | Draft Board Notice   | Shares | Shares | Shares | Debentures and securitised debt | Debentures | Debentures and securitised debt | Money market instruments |  | Money market instruments | Warrants, certificates and other instruments |  | Warrants, certificates and other instruments | "Securities" as defined in Financial Markets Act | Bonds | Bonds |  | Derivative instrument | Derivative instrument |  | Notes |  | Participatory interest in one or more collective investment schemes | Participatory interest in one or more collective investment schemes | Participatory interest in one or more collective investment schemes, excluding hedge fund |  |  | Participatory interest in a hedge fund |  | Instruments based on an index |  | <p>The inclusion and simultaneous exclusion of similar securities and instruments makes the definition difficult to understand. Based on the above analysis, this definition effectively refers to notes and instruments based on an index. The Explanatory Memorandum indicates that the definitions of the subcategories of financial products are included to clarify that products issued by foreign product suppliers with a foreign currency denomination are included under those subcategories. Whilst the intention is understood, it is</p> | <p> See amended definitions.</p> <p>The Registrar disagree with the commentator's conclusion because "Financial product" is defined in the Act, <i>inter alia</i>, by listing as a separate category '<b>securities and instruments</b>' (see paragraph (a) of the definition of 'financial product').</p> <p>Included under that category specific types of securities and instruments are listed without limiting the main category [see subparagraphs (i) to (v)].</p> <p>Subparagraph (v) reference the definition of 'securities' in the Financial Markets Act which is very wide and includes to a large extent, although not completely, the products referred to in subparagraph (i) to (iv) and participatory interests in a collective investment scheme which is a separate product category (see paragraph (b) of the definition of 'financial product').</p> <p>In addition, a 'foreign currency denominated investment instrument' is listed as a separate product category [see paragraph (e) of the definition of 'financial product' in the Act].</p> <p>To avoid confusion the definition of securities and instruments has been amended to provide that any security</p> |
| FAIS financial product  | FMA securities  | Draft Board Notice  |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
| Shares  | Shares  | Shares  |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
| Debentures and securitised debt                                     | Debentures  | Debentures and securitised debt   |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
| Money market instruments  |   | Money market instruments  |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
| Warrants, certificates and other instruments                        |   | Warrants, certificates and other instruments  |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
| "Securities" as defined in Financial Markets Act                    | Bonds   | Bonds   |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
|   | Derivative instrument   | Derivative instrument   |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
|   | Notes   |   |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
| Participatory interest in one or more collective investment schemes | Participatory interest in one or more collective investment schemes | Participatory interest in one or more collective investment schemes, excluding hedge fund |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
|   |   | Participatory interest in a hedge fund  |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |
|   | Instruments based on an index                                       |   |   |   |                        |                |                      |        |        |        |                                 |            |                                 |                          |  |                          |  |  |  |  |       |       |  |                       |                       |  |       |  |   |   |   |  |  |  |  |                               |  |   |  |

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|     |                  |   |                            | essentially a duplication of paragraph (j) of the definition of "financial product" in the FAIS Act. The intended clarification (by duplicating definitions) complicates the interpretation of securities and instruments in relation to a financial product. ASISA members suggest that the FSB considers simplifying the definition.   | and instrument that has not been defined as a separate product subcategory is captured under this definition.   |
| 83. | 20               | Definition:<br>"securities and instruments"             |                            | The inclusion of a catch all Securities and Investments. How will this be managed in terms of transitional arrangements? Will existing securities and investment licence holders have to apply for the additional category?  | Yes, if they render financial services in respect of that product subcategory. However, it is important to note that the new subcategory is a catch all that is not describe under any of the current product subcategories.  |
| 84. | 22               | Definition:<br>"securities and instruments"             |                            | The definition of "securities and instruments" refers to paragraph (a) of the definition of financial products in FAIS, which states that financial products mean securities and instruments. This is circular. Although some guidance is provided in that the definition states that securities and instruments include shares, debentures etc., greater clarity is required regarding class of business training in this regard. Otherwise this class of business has no finite boundaries, making it difficult to provide comprehensive training in relation to this class. | Noted.<br>Disagree that definition is circular. It references the particular financial product (securities and instruments) in the Act but excludes securities and instruments that are defined as separate subcategories. Therefore a product that qualifies as a security or instrument and that does not fall within any of the exclusions would fall within this subcategory. |
| 85. | 4                | Definition:<br>"short-term insurance personal lines A1" |                            | We recommend this subcategory be called " <b>short-term insurance personal lines A</b> ".  | Disagree.<br>See response under comment 66.   |
| 86. | 7                | Definition:<br>"short-term insurance personal lines A1" |                            | Given the likely impact on an insurer's ability to maintain prudentially sound risk pools should they not be allowed to provide for any other exclusions in relation to personal lines A1 policies other than those set out in sub-clause (v), we propose that provision be made for such policies to contain no more than 2 additional exclusions. Pre-existing conditions/damage (e.g. medical or motor vehicle) is a good example of an exclusion which an insurer should be able to apply in the interests of prudential soundness.  | Disagree.<br><br>The Registrar fails to see how this will in any way impact the prudential soundness of insurers or which exclusions an insurer could or could not apply. It is a mere classification relating to the complexities of products. An insurer can therefore  |

|     | Commen-<br>tator | SECTION   | WORDING / PROPOSED WORDING | COMMENT  | REGISTRAR'S RESPONSE  |
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|     |                  |   |                            |  | still impose additional exclusions in respect of its product, it will merely mean that such product will not fall within "short-term insurance personal lines A1" but rather in "short-term insurance personal lines" for purposes of FAIS.   |
| 87. | 12               | Definition:<br>"short-term insurance personal lines A1" |                            | Please define "group". This is not defined in Short Term Act or Regulations.   |  See amended definition that provides for the deletion of group policies as an exclusion. The Registrar is satisfied that a policy that is structured as a group policy as opposed to an individual policy does not necessarily make the product more complicated. Any group policy will still have to meet the requirements under paragraphs (i) – (v) in this category (e.g. limited/no underwriting, no exclusions except the ones mentioned, no average and the like). |
| 88. | 18               | Definition:<br>"short-term insurance personal lines A1" |                            | <p>IISA requires clarification of the definition of a group policy, as group policies in the industry are not specific to a type of insurance that might not require advice but a structure of a policy to which a preferential rate is given for the cover due to the number of beneficiaries covered by the policy, irrespective of the type or complexity of the cover provided by the group policy.</p> <p>IISA recommend the definition be amended to personal accident, travel and guarantee policies</p> <p>Any insurance product with underwriting rules which are applied at claims stage should be explained at point of sale, for example:</p> <ul style="list-style-type: none"> <li>Cell phone insurance which only covers the cellphone device issued with the contract. i.e. should a person enter into a cell phone contract for a lower price to obtain the sim, and places the sim in another device other than the</li> </ul> | <p>See response under comment 87.</p> <p>As the regards the travel insurance example: An exclusion for pre-existing conditions would constitute an "exclusion" that is not allowed for purposes of this category (see (b)(v) (aa)-(ff) of the definition). The product in the example provided would therefore not fall within this category.</p>   |


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|     |                  |  |   | <p>device issued with the contract should be made aware the cell phone insurance will not apply to the secondary device; similarly</p> <p>Travel insurance which excludes pre-existing conditions, for example, where a person purchasing travel insurance and does not disclose that they had a chest infection two weeks before travel which causes an illness to be excluded from cover at claims stage.</p>  |   |
| 89. | 12               | Definition:<br>"short-term insurance personal lines A1" (b)        |   | "marine" is not defined in the Short Term Insurance Act.   |  See correction. |
| 90. | 10               | Definition:<br>"short-term insurance personal lines A1" (b)(ii)    |   | The reference to "sum assured" should be "sum insured"   |  See correction. |
| 91. | 17               | Definition:<br>"short-term insurance personal lines A1" (b)(v)(aa) |   | Clarity is sought as regards the reference to "exclusions" in that we are not sure whether exclusions are intended to include "conditions". Exclusion refers to what is not covered (e.g. pre-existing conditions), whereas a policy condition refers to something that must be done in order for the policy to be honoured (e.g. an immobilizer fitted to the vehicle).   | Exclusions are not intended to include policy conditions.   |
| 92. | 1                | Definition:<br>"structured deposit"                                | " <b>structured deposit</b> " means a –<br>(a) combination of a short-term deposit or a long-term deposit and another financial product; or short-term deposit or long-term deposit where the return or value is dependent on the performance of or is derived from the return or value of one or more underlying financial product, asset, rate or index, on a measure of economic value on a default event; | The Explanatory Memorandum does not contain any motivation or details or an example on what kinds of products will be regarded as structured deposits. In view of the fact that products are classified as Tier 1 and 2, it is gathered that a structured deposit is a specialised kind of deposit and attracts an increased minimum experience requirement. It will be appreciated if the FSB could provide an example of the kind of products that would fall into paragraph (a) of the proposed definition. In the absence of an example to consider while formulating comment on the Draft Notice, it was challenging to formulate suitable comment other than to indicate that paragraph (a) seems too broad and potentially vague. | Any product that meets the requirements of the definition will be regarded as a structured deposit. |


|     | Commen-<br>tator | SECTION                                      | WORDING / PROPOSED WORDING  | COMMENT   | REGISTRAR'S RESPONSE   |
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| 93. | 2                | Definition:<br>"structured deposit"          | <p><b>"structured deposit"</b> means a -</p> <p>(a) <u>combination of a short-term deposit or a long-term deposit and another Tier 1 financial product, and excluding a combination of two Tier 2 products;</u> or</p> <p>a short-term deposit or long-term deposit where the return or value is dependent on the performance of or is derived from the return or value of one or more underlying financial product, asset, rate or index, on a measure of economic value or on a default event <u>but excluding products where the capital and return is guaranteed;</u></p> | <p>We will appreciate the Regulator considering some changes to part (a) of definition in order to make provision for the operational aspects of Tier 2 product combinations. We submit that in the event of product combinations of two tier 2 products e.g. Savings account with funeral plan or Cheque account with credit life for overdraft; the product combination would already be subjective to the lower competency requirements and does not make the product more complex for the rendering of financial services by representative.</p> <p>In addition, we will appreciate the Registrar's consideration of a change to part (b) of the definition, without detracting from the REGULATOR's concerns about providing adequate consumer protection.</p> | <p>The Registrar agrees with the commentator's response as regards the proposed amendment to paragraph (a).</p> <p> See amended definition.</p> <p>The Registrar does not agree with the proposed amendment to paragraph (b) as it will defeat the purpose of the definition with regard to the determination of competency requirements.</p> |
| 94. | 1                | Definition:<br>"Tier 1 financial products"   | "Tier 1 financial products" ..... of Table 1 in Annexure 3-Three;   | <ol style="list-style-type: none"> <li>1. Alignment of reference with name of Annexure.</li> <li>2. Delete the inverted commas at the end of the definition.</li> </ol>   |  See amended definition.  |
| 95. | 1                | Definition:<br>"Tier 2 financial products"   | "Tier 2 financial products" ..... of Table 1 in Annexure 3-Three;   | <ol style="list-style-type: none"> <li>1. Alignment of reference with name of Annexure.</li> <li>2. Delete the inverted commas at the end of the definition.</li> </ol>   |  See amended definition.  |
| 96. | 10               | Definition:<br>"verifiable"                  |   | It does not seem reasonable to exclude activity towards a qualification if the qualification requirement of the Fit and Proper Regulations has already been met. This should be allowed for by amending the definition accordingly.   | See response under comment 25.   |
| 97. | 20               | Definition:<br>"verifiable"                  |   | We are concerned about the definition of verifiable as it indicates that it has to take place on a face to face basis in order to confirm identity. Also how will the assessment of the completion take place.  | <p>Noted.</p> <p>The verification of the identity of the person undertaking the CPD activity is an absolute necessity to prevent abuses. The definition does not refer to an assessment.</p>   |
| 98. | 1                | Definition:<br>"working capital requirement" | "working capital requirement" ..... to in Table B in Part 2 of this Chapter 6.  | Delete "this".  |  See amended definition and move to Chapter 6.  |
| 99. | 8                | Definitions of types of                      |   | We are concerned that the definitions used in these regulations do not align with the definitions that are at present used within the   | Noted. The Insurance Bill is not yet law and can therefore not be  |

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|   |                  | insurance policies |  | two Insurance Bills. We believe such alignment to be critical.   | referenced. However, it is the intention, as far as possible, to align with the Insurance Bill when enacted.   |
| 100.  | 8                | 5                  |  | Although we support the principle we would like some clarity on whether this will be applicable to existing representatives and in what manner. Specific reference is made to the insolvency requirement that will now be stricter than it was in the past. Will such representatives now lose their fit and proper status?  | Yes. It will apply to existing FSPs and representatives. See also section 8A of the Act that requires continued compliance with the fit and proper requirements. |
| 101.  | 20               | 6                  | 6. To qualify for authorisation as an FSP or appointment as a representative of an FSP or to remain so authorised or appointed to render financial services in respect of the financial product: Health Service Benefit, a person must be accredited as a broker <u>or</u> <u>apprentice broker</u> in terms of section 65 of the Medical Schemes Act, 1998 (Act No. 131 of 1998). |  |  See amended definition.  |
| <b>CHAPTER 2 – HONESTY, INTEGRITY AND GOOD STANDING</b> |                  |                    |  |  |  |
| 102.  | 6                | General            |  | <p>BIAC agrees strongly with the expected behaviour of FSP's who are entrusted with the clients moneys. The clients want to work with respectable and trustworthy persons. And they also support the idea of having the regulatory bodies which monitors FSP's behaviour.</p> <p>BIAC would also wish to see misrepresentation of educational qualifications as a deviation from honesty and integrity</p> | Noted.   |
| 103.  | 11               | General            |  | FPI agrees with the requirements for honesty, integrity, and good standing, which closely resembles one of FPI's criteria for membership as contained in the terms of FPI Code of Ethics and Professional Responsibility and FPI Member Regulations. Some amendments have been suggested to alleviate some concern regarding the broadness of some of the requirements.                                    | Noted.   |
| 104.  | 15               | General            |  | I did not have the time to study the rest of chapter 2, but am of the opinion that the content of this document, should be enough  | Noted.<br>The Registrar does not agree that the  |

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|      |                  |                         |                            | <p>to convince the FSB to put a halt to its intended actions with regards to the entire document and to commit to liaising with financial advisors since it is our lives and the lives of our families that stand to be unfairly ruined by it.</p> <p>I trust that my comments will be seen in a positive light and not be regarded as an 'unwillingness to co-operate". I am committed to the integrity of this industry and the people who serve in it, as I have been for the last 31 years.</p>  | <p>requirements will result in ruining the lives of financial advisors. In fact, the new requirements provides for a number of dispensations to alleviate the burden on FSPs without compromising the protection of clients.</p>   |
| 105. | 17               | General comment – 8 & 9 |                            | <p>It is our respectful submission that the Regulator's view that S8 (2) will provide sufficient protection to a person subject to a fit and proper enquiry is not correct.</p> <p>It is our view that section (8)2 and Section 9 are in fact contradictory to each other and cannot be aligned when read with Section 8(1).</p> <p>Section 9 provides for instance that would constitute <i>prima facie</i> evidence where a person does not qualify in terms of S8(1) but section 8(2) provides that in determining whether a person qualifies under S8(1) the Registrar '<b>may</b>' refer to any information in its possession or brought to its attention.</p> <p>Thus, where instances or factors are considered <i>prima facie</i> evidence, the Registrar <u>would not be required to consider any other facts in order to make his decision, but could at his discretion</u> consider additional facts. This in turn could severely prejudice the person in question, especially where the person is merely subject to '<i>pending proceedings</i>'.</p> <p>The provisions of Board Notice 106 of 2006 currently provides, under Section 2(1) (3), for criteria that is <i>prima facie</i> evidence that a FSP, key individual or representative does not comply with the honesty and integrity requirements. The criteria, is sufficient to address the goals set out under the Financial Advisory and Intermediary Services Act 37 of 2002, relating to fit and proper requirements.</p> <p>The provisions, as it currently stands, not only provides the</p> | <p>Disagree.</p> <p>The protection referred to is contained in section 9(3) that provide for criteria that the Registrar <b>must</b> take into consideration in determining a person's fitness and propriety. Section 8(2) does not restrict the ambit of section 9(3), in fact, section 9(3) limits the Registrar's seemingly wide discretion.</p> <p>The Registrar does not agree with the commentator's interpretation of section 8(2).</p> <p>It is further important to understand that '<i>prima facie</i>' as referred to in section 9(2) merely means that on the face of it, at first glance or before further examination, the evidence is sufficient to establish a fact or raise a presumption <b>unless disproved, refuted or rebutted.</b></p> <p>The factors listed under section 9(2) are further limited by the qualifying criteria in 9(3).</p> <p>The above must further be seen in</p> |

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|                  |         |                            | <p>necessary protection, but does not victimise individuals that have not been found guilty of an offence, without giving them the opportunity to defend themselves against unproven allegations, contrary to Sections 9(1)(a), (b), (h), (i), (l) and (p), that result in a “<i>guilty until proven innocent</i>” scenario.</p> <p>The principle is further entrenched in The Constitution of South Africa, under Section 34, which states the following:<br/> <i>“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”.</i></p> <p>Further to the above, by determining that a person does not comply with S8 (1) in fact diminishes a person’s capacity to be employed in the Financial Services industry, a power that is generally only reserved for the High Court to decide on.</p> <p>It is our view that this power should not be exercised by a statutory organ where a person is merely subject to ‘<i>pending proceedings</i>’ and where there is still a probability that the outcome can be in the favour of the affected person.</p> <p>The Regulator in its response maintains that the affected person would have the right in terms of PAJA to respond to any proposed decision. We need to bear in mind however, that investigations and court proceeding may take months, if not years to be finalised and, until such time the affected person will not have sufficient grounds to either respond to the FSB’s decision or to appeal the decision until such time as the matter has been finalised. This also impacts on the FSP who is deemed to institute the debarment process (where timing is of the essence).</p> <p>This could also severely prejudice an affected person and could lead to a number of labour law issues due to the fact that the affected person would effectively be unemployable until such time as the investigation of legal proceedings have been concluded.</p> | <p>light of the fact that a decision by the Registrar constitutes an administrative act and as such is subject to PAJA. The Registrar must therefore give an affected party the opportunity to make representations prior to making a decision that may adversely affect such person’s rights.</p> <p>The Registrar remains of the view that the requirements do not offend a person’s Constitutional rights. In the event that the Registrar fails to comply with the rules of natural justice or the prescripts of PAJA when exercising a public power, an aggrieved party has the remedy of review available as contemplated in section 33 of the Constitution and section 6 of PAJA.</p> <p>An aggrieved person further has a right of appeal to the FSB Board of Appeal prior to approaching the Courts. This right will be extended to representatives under the FSR Bill that provides for a right of appeal to the Appeal Tribunal against a decision of an FSP.</p> <p>The commentator’s attention is also directed to section 22 of the Constitution that provides that every citizen has the right to choose their trade, occupation or profession freely. The requirements do not limit this right since it has no impact on the right to choose a profession.</p> |

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|      |                  |         |                            | <p>We do agree with the Regulator's view that in terms of the current fit and proper requirements a representative must disclose all facts or information at the disposal of, or which may be accessible to, him/her that may be relevant for purposes of a decision by a FSP as to whether or not he/she is honest and have integrity.</p> <p>Any pending proceedings could be relevant in an assessment of a person's compliance with the fit and proper requirements, but it should not be considered as prima facie evidence as to whether a person is honest and has integrity.</p> | <p>Most importantly, section 22 provides that the practice of a trade, occupation or profession may be regulated by law. This is precisely the intended purpose of the requirements.</p> <p>As regards pending proceedings, the Registrar removed the reference to pending proceedings except where it relates to matters of solvency.</p> <p> See amended provisions.</p> <p>It is important to note that removal of the above does not mean that it should not be disclosed as per section 10 and that the Registrar may not take it into consideration in determining a person's compliance with the requirements. In addition, the requirements are intentionally not restricted to a person who, eg. was convicted or found guilty of an offence. Whether a person is fit and proper should not be dependent on it being criminally convicted. The purpose of section 8 and 9 is to assess whether is a person is honest, have integrity and is of good standing. A proper assessment requires a consideration of all factors not only those factors on which a person was convicted.</p> |
| 106. | 10               | 8(1)(b) |                            | This was queried on Draft 1 and the regulator felt the term was "... a well-established principal" On enquiry with a range of client   | Noted.<br>The Registrar remains of the view   |

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|      |                  |             |  | types our experience is that this is not the case with varying views as to what is meant ranging from following King IV to being up to date with fees at a club or association. We are of the opinion that some clarity is needed so the principal can be better understood and applied.   | that it is a well-established principle. If necessary, guidance could be provided.   |
| 107. | 2                | 8(2) & 8(3) | s8(2) In determining whether a person complies with subsection (1), the Registrar <u>or FSP</u> may refer to any information in possession of the Registrar or brought to the Registrar's attention.<br><br>S9(3) Notwithstanding subsection (1), the Registrar <u>or FSP</u> must, in assessing whether a person meets the requirements in section 8(1) have due regard to –" | We suggest the Registrar clarifies the FSPs responsibility to ensure that representatives comply with section 8(1) and 9(3) by the inclusion of "financial services provider" in subsections 8(2) and 9(3) as suggested below or alternatively in a separate subsection. This will make it clear that both the Registrar and the FSP have access to the resources described. |  See amendment.   |
| 108. | 16               | 8(2)        | "In determining whether a person complies with subsection (1), the Registrar may refer to any <u>relevant</u> information in possession of the Registrar or brought to the Registrar's attention".   | It is submitted that there should be a qualitative element to the information the Registrar may refer to in assessing whether a person complies with subsection (1). SAVCA proposes inserting the words " <i>relevant</i> " before the word " <i>information</i> ".  | Disagree.<br>The Registrar must be able to consider any information that may impact on a person's compliance with the requirements.  |
| 109. | 10               | 9           |  | We would suggest that the current FSP4 be upgraded to cater for the range of "Incidents" in S 9. We would further recommend that the FSP5 have a similar listing as this will allow the FSP's to create a better recruitment process as envisaged by S 40.   | Noted.<br>The licence application forms will be aligned to the new requirements. The Registrar does not intend to expand FSP5 as requested given the purpose of the Form. However, nothing prohibits an FSP to design its own questionnaire that is based on FSP4 that prospective representatives must complete as it is the responsibility of the FSP to ensure that it only appoints persons as representatives who are honest, have integrity and is of good standing. |

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| 110. | 8                | 9(1)   |  | We support the removal of the 5-year timeframe as certain transgressions are of such a nature that it should affect the fit and proper status of an individual for a longer period.  | Noted.   |
| 111. | 11               | 9(1)   | “Without limiting the generality of section 8(1) any of the following constitutes <i>apparent</i> evidence that a person <b>may</b> not qualify under section 8(1).” | The way that it is currently written infers that if any of the indicators are present a person will not qualify in terms of section 8(1). Changing this may indicate that before a person does not qualify in terms of 8(1) the criteria contained in 9(3) must be applied.  | Disagree.<br>See response under comment 105 regarding the meaning of ‘ <i>prima facie</i> ’. |
| 112. | 11               | 9(1)   |  | There appears to be duplication of “breach of fiduciary duty it is covered in 9(1)(a)(ii), 9(1)(c) 9(1)(e) and 9(1)(f).  | Disagree.<br>It is referenced in respect of different factors.                               |
| 113. | 8                | 9(1)<br>Pending<br>proceedings               |  | We are concerned about the constitutionality of considering pending proceedings to determine the fit and proper status of an individual. While we understand the reason behind this inclusion, we believe that allowing this will equate to the Registrar stepping into the shoes of the judiciary and deciding the guilt of the individual. We do not agree with the opinion that the Constitution only protects against criminal and not civil proceedings as the impact of both will be significant. Given the backlog in our current judicial process, a case brought by an aggrieved consumer against a representative could take years to complete. If a representative was suspended, but found not guilty after for example two years, he will have no business to return to. It is also our opinion that the Promotion of administrative Justice Act, Act 3 of 2000 will not provide sufficient protection in such instances. | Disagree.<br>See response under comment 105.   |
| 114. | 12               | 9(1)<br>Pending<br>proceedings               |  | A civil matter may take a long time and a person could be found innocent. If their Good standing had d been affected whilst waiting for such proceedings they would be unfairly prejudiced.  | Noted.<br>See response under comment 105.  |
| 115. | 11               | 9(1)(a), (b) & (j)<br>Pending<br>proceedings |  | While we understand the reasoning behind this inclusion we believe that these sections will equate to the regulator stepping into the shoes of the judiciary and deciding the guilt of a person. A proceeding, which turns out to have no merit may take years to resolve in court. If such person was found guilty under this section   | Disagree.<br>See response under comment 105.   |




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|      |                  |               |                            | and suspended, and years later is found not guilty in court, will have no business to return to.<br>Clarification is therefore sought on what would happen if the person is not convicted or found not responsible.   |  |
| 116. | 10               | 9(1)(a)       |                            | <b>The following were issues raised and responded to following Draft 1 but some of the company felt that the issues are serious enough to be raised again as the responses have not allayed the concerns on these aspects.</b> It is outside of the principles of South African law for the Regulator to declare unresolved criminal or civil proceedings as <i>prima facie</i> evidence of a breach of S8(1). The regulator has granted itself greater authority than the High Courts and this surely cannot be permitted as the necessary checks and balances must be served. | Disagree.<br>See response under comment 105.   |
| 117. | 15               | 9(1)(a)       |                            | To fully understand the potential impact of this paragraph clearly requires the knowledge and insight of an experienced lawyer. There was simply not enough time allowed to obtain the services of such a professional in order to meaningfully comment on this paragraph.  | Noted.<br>See also response under comment 105.   |
| 118. | 20               | 9(1)(a)       |                            | Provision needs to be made for unfair dismissals that may be subject to on-going CCMA or other hearings.  | Noted. The Registrar does not understand the comment and relevance of unfair dismissals in relation to the requirements. |
| 119. | 14               | 9(1)(a) & (b) |                            | While we would support not allowing the registration of someone who is the subject of current unresolved legal action it would be wrong to withdraw the registration of an intermediary unless found guilty. It is furthermore difficult to see how "civil proceedings" could even lead to a finding under the subsequent subparagraphs (i) – (iii) which are all either statutory or common law crimes. In any event the "presumption of innocence" may render this clause unconstitutional.   | Disagree.<br>See response under comment 105.   |
| 120. | 17               | 9(1)(a) & (b) |                            | To state that a person will <i>prima facie</i> be held to not be honest, lack integrity or good standing merely for being subject to pending proceedings that may lead to a conviction seems unjust and unconstitutional.   | Disagree.<br>See response under comment 105.<br><br>In addition, the word "any" in paragraphs (a) and (b) should be read |

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|      |                  |                       |                            | <p>All persons are innocent until proven guilty and in such cases there is still the possibility of a court declaring that person innocent.</p> <p>This places unfair consequences on the individual and places the company at a difficult position where it may find itself prematurely debarring individuals that are later found not guilty. We propose that these portions are reworded as proposed below, alternatively deleted.</p> <p>The inclusion of the wording “... or liable in <b>any</b> civil proceedings by a court or is the subject of <b>any</b> pending proceedings which may lead to such a conviction or finding of liability under any law in any jurisdiction of...” needs further clarification. Civil proceedings may include delictual claims for damages, which does not necessarily relate to one’s honesty, integrity or good standing and should thus not have a bearing on an individual’s fit and proper status – i.e. civil proceedings relating to divorce, maintenance or traffic offences is not necessarily an indication of a person’s ‘fit and proper’ status.</p> <p>We propose that the section be reworded to restrict it only to civil proceedings and pending proceedings related to the rendering of financial services.</p> | with the ensuing subparagraphs (i) to (iii) that limit it to specific findings as set out therein.  |
| 121. | 14               | 9(1)(a)(ii) & 9(1)(c) |                            | The inclusion of “breach of fiduciary duty” without any further qualification is too onerous and simply mentioning “negligent” and “dishonourable” in 9(1)(c) without defining what constitutes such conduct leaves the issue too uncertain.   | Disagree.<br>The reference to ‘breach of fiduciary duty’, ‘negligence’ and ‘dishonourable’ is not new requirements/concepts as it was referenced in in section 2 of Board Notice 106 of 2008. |
| 122. | 17               | 9(1)(a)(i) – (iii)    |                            | <p>The inclusion of the wording “...or is the subject of any pending proceedings which may lead to such a conviction...” under Section 9(1) (a) is problematic and should be removed.</p> <p>We recommend that only where a person has been finally convicted of an offence in Sections 9(1) (a) (i) - (iii), should the criteria apply.</p>   | Disagree.<br>See response under comment 105.  |

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|      |                  |         |                            | <p>The mere fact that a person is the subject of certain proceedings does not constitute an offence.</p> <p>The section in its current form will result in a person being the subject of a sanction, without proper determination by a competent court, regulatory or supervisory body and is contrary to the <i>audi alteram partem</i> legal principle, whereby a person is provided the opportunity to be heard and to defend himself. A “<i>guilty until proven innocent</i>” scenario will ensue.</p> |   |
| 123. | 15               | 9(1)(b) |                            | Making legislation retrospective is not only unfair but could possibly even be unconstitutional.   | The requirements do not apply retrospectively. However, your attention is directed to section 6A(4) of the Act that allows the Registrar to amend the fit and proper requirements and which section provides that FSPs, representatives, etc. must comply with such new requirements. |
| 124. | 20               | 9(1)(b) |                            | What is significant?   | The ordinary meaning of the word would apply.   |
| 125. | 8                | 9(1)(c) |                            | Section 9(1)(c) list a number of consecutive grounds that could lead to a representative not being fit and proper. It is unclear whether each one on its own, such as for example negligence, now provides a basis for the Registrar to exercise his discretion. If this is the case, we are concerned that the range of actions that could lead to an adverse assessment is too wide.   | Disagree.<br>See response under comment 105 and 121.  |
| 126. | 15               | 9(1)(c) |                            | Negligence refers to an omission and is most often committed unknowingly. To label a person as “dishonest” because of having been negligent, is totally unacceptable.  | Disagree.<br>See response under comment 105 and 121.  |
| 127. | 15               | 9(1)(g) |                            | Allow me to sketch the following scenario here – I am a director of company. The board consists of 9 directors. The company wishes to enter into a very large transaction and puts the matter to a vote by a show of hands. I am the only one to vote against it. The transaction goes ahead and a year later causes the company to be   | See response under comment 105 and 121.   |

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|      |                  |               |   | placed in liquidation or business rescue. This would now make me a dishonest person! I honestly think that we should rethink this entire document.   |  |
| 128. | 16               | 9(1)(g)       | (g) has been suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) under any law <del>or any action to achieve one of the aforementioned outcomes has been instituted against the person."</del> | An individual may have proceedings instituted against them based on untrue, unvalidated or unfounded allegations. The allegations should be tested through the instituted proceedings and only once an actual outcome has been handed down which disqualifies or removes the person from office should that fact be taken into account as being an incident which indicates that a person lacks honest, integrity and good standing. | See response under comment 105 and 121.  |
| 129. | 14               | 9(1)(h)       |   | There are many reasons why a trading licence may not be approved, suspended, or revoked which have nothing to do with 'fit and proper' in its intended sense. This clause would need to be refined further.  | See response under comment 105 and 121 and especially the reference to section 9(3).   |
| 130. | 15               | 9(1)(i)       |   | This would leave the door wide open for abuse against financial advisors. The people employed by certain professional bodies are by no means qualified to judge the integrity of someone else. Only a court of law should be allowed to judge a person, specifically where the potential impact of such judgement can be devastating to an individual and his / her family.  | See response under comment 105.  |
| 131. | 17               | 9(1)(h) & (i) |   | We note from this section, that the evidence indicating lack of fitness and propriety and good standing must relate to honesty, integrity and business conduct per 9(1)(i), but that such link is not noted in 9(1)(h). Is there any specific reason why this is not noted?<br><br>If not, we would recommend that 9(1) (h) should have a similar link as 9(1) (i) to honesty, integrity and business conduct.                       | Disagree.<br>A person's licence could be suspended for failing for eg. to submit statutory returns. Such failure will impact on a person's good standing and not necessarily on its honesty. Linking it to the factors recommended will defeat the purpose of the requirement. |
| 132. | 15               | 9(1)(j)       |   | The words "disciplined", "reprimanded" and "professional body", should be removed from this paragraph.   | Disagree.  |
| 133. | 20               | 9(1)(j)       |   | What happens after disciplining/debarment has occurred and the representative has now met the requirements for re-appointment?   | In order for a person to qualify for re-appointment it must meet the fit and proper requirements. The factors in   |



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|      |                  |         |   |   | section 9(3) must be considered.   |
| 134. | 2                | 9(1)(l) | We recommend that the section be rephrased to read:<br><u>"has failed to comply with legal, regulatory or professional requirements or standards"</u> | The inclusion of <i>"lack of readiness to comply"</i> with regulatory requirements as a factor of persons or FSPs to measure good standing is a concern <ul style="list-style-type: none"> <li>• There may be an array of factors outside of the control of a person or FSP when a regulator publishes new legislation. Sometimes compliance within timeframes is outside the FSP control.</li> <li>• The phrase lends itself to highly subjective interpretation and may result in challenges around same as well as introduce difficulty around the burden of proof required to justify failure to meet fit and proper requirements for these reasons</li> </ul>  | Disagree.<br>Section 9(3) would apply. In terms of that section the Registrar must consider the seriousness of the conduct and the surrounding circumstance.   |
| 135. | 15               | 9(1)(l) |   | The word <i>"willingness"</i> would imply that if a person is not in agreement with what he is told or forced to do, he could be found to be dishonest? In other words, I will now become a dishonest person for merely not being in agreement with everything in this proposed legislation. What happened to freedom of speech and expression?   | Disagree with commentator's interpretation and application of the word 'willingness' in context with the requirement.  |
| 136. | 17               | 9(1)(l) | <i>"(l) has demonstrated an intention not to comply with legal, regulatory or professional requirements and standards."</i>                           | It is our respectful submission that the wording <i>"has demonstrated a lack of readiness and willingness to comply..."</i> is too wide and no steps and / or procedures have been included as to how the determination will be made, to conclude that the person <i>"has demonstrated a lack of readiness and willingness to comply..."</i><br><br>The person who the allegations are made against should have the opportunity to defend himself and provide reasons why the criteria provided in Section 9(1)(n) is not applicable to such a person.<br><br>The criteria should only be enforced once a final determination has been made through a formal procedure.<br><br>This section must be aligned to the labour legislation in order to assist the FSP in managing the FAIS requirements without exposing the FSP to labour issues. | Disagree.<br>See response under comment 105.<br>See also exemption process in section 44 of the Act that is available to a person who is not able, based on reasonable grounds, to comply with a particular requirement. |

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|      |                  |            |   | We would therefore recommend that the section be reworded as indicated. This will make it less of a subjective test and remove the unfairness or potential unconstitutionality of such criteria. Further, clarification is sought as to the meaning of ' <i>readiness and willingness to comply</i> '. In some instances businesses are in the process to comply, but due to unforeseen circumstances might not in that point of time be ready to comply (i.e. system upgrades and developments; or staffing issues, etc.) not being ' <i>ready</i> ' to comply should not be interpreted as ' <i>not being willing to comply</i> ' and thus affecting one's fit and proper status. |  |
| 137. | 15               | 9(1)(m)    |   | It would be unfair and possibly unconstitutional to make legislation of this nature, retrospective.   | See response under comment 123.  |
| 138. | 15               | 9(1)(n)    |   | Allow me to sketch the following scenario here – I am a director of company. The board consists of 9 directors. The company wishes to enter into a very large transaction and puts the matter to a vote by a show of hands. I am the only one to vote against it. The transaction goes ahead and a year later causes the company to be placed in liquidation or business rescue. This would now make me a dishonest person! I honestly think that we should rethink this entire document.   | See response under comment 105 read with section 9(3).   |
| 139. | 22               | 9(1)(n)    | "has been involved or is involved as a director, trustee, member, partner..." |   |  Corrected.   |
| 140. | 12               | 9(1)(n)(i) |   | Refers to subparagraph I(ii) but no such subparagraph in section 9. Possibly J(2)?  |  References corrected.  |
| 141. | 14               | 9(1)(n)(i) |   | This clause is too wide. Simply being "a director, trustee, member partner, controlling shareholder or managing executive" of a failed business does not necessarily render an individual as being not 'fit and proper' in its intended sense. If required we could provide examples for consideration.   | Disagree.<br>This section is limited by section 9(3).  |
| 142. | 16               | 9(1)(n)(i) |   | SAVCA submits that the cross references in this paragraph are incorrect and appear to be cross references that were not amended from the previous draft of the Draft Determination.   |  References corrected.  |
| 143. | 17               | 9(1)(n)(i) |   | In terms of the section a person will not qualify in terms of Section 9(1) (n), in the event that such a person was involved or is involved in a business "...as a director trustee, member partner, controlling shareholder or managing executive, or is concerned in the management, of a business that has been ...while that person has   | Disagree.<br>See response under comment 105. It is important to note that the section is limited by section 9(3) that requires the Registrar to consider the |



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|      |                  |             |                            | <p><i>been connected with that organisation or within one year of that connection;...</i></p> <p>In light of the above amendment we still maintain that in order for the provisions to apply to such a person, it must be attributed to the direct involvement and own conduct of the person that lead to the business being the subject of subparagraphs (a), (c), (d), (j), (l)(ii), (m), (n) or (o). Such a person also has to be found guilty and a final determination should have been provided by a court, disciplinary panel, regulatory authority, professional body or any competent authority.</p> <p>A person that is a manager in a business (which could be construed as a person involved in the management of a business) does not necessarily control and / or have input in the strategic actions or decision (financial or otherwise) of a business and cannot be penalised for the actions of executive managers and or Board, which might have very well been out of his/her control or he/ she might not even been aware of.</p> <p>We thus remain of the view, that this section should be amended taking these factors into account.</p> | seriousness of person's conduct and the <b>surrounding circumstances</b> .   |
| 144. | 10               | 9(1)(n)(ii) |                            | The following were issues raised and responded to following Draft 1 but some of the company felt that the issues are serious enough to be raised again as the responses have not allayed the concerns on these aspects. The intention of holding a person responsible for their actions while in charge of a failed enterprise makes sense. However, there is no option for representation to be made on the issue other than the appeal process should the individual contest their responsibility and involvement.   | Disagree.<br>See response under comment 105.   |
| 145. | 14               | 9(1)(n)(ii) |                            | Businesses are regularly placed in liquidation or business rescue on a 'no fault basis'. The commercial failure of a business does not necessarily render any or all of its office-bearers as being not 'fit and proper' in its intended sense. In fact in terms of statute it would be an offence not to submit one's business for business rescue or liquidation. The reference to "within one year of that connection" in any event is in need of clarification. Does it mean that after one year this clause does not apply, even if the office-bearer's involvement was not 'fit and proper' in its intended  | Noted.<br>The Registrar agrees that the commercial failure of a business does not necessarily render its office bearers unfit. However, it may impact on their operational abilities and, depending on the circumstances, on their integrity.<br>See also response under comment |

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|      |                  |             |   | sense?   | 105 and specifically the reference to section 9(3). |
| 146. | 16               | 9(1)(n)(ii) | <p>SAVCA submits the provision should exclude "<i>voluntary liquidation and business rescue</i>" from the application of the provision.</p> <p>The proposed amended provision will read:<br/> "placed in liquidation, <u>other than voluntary liquidation</u>;"</p> | <p>SAVCA notes the Registrar's response to SAVCA's previous submissions in response 82 of the Regulatory Response Matrix. SAVCA however strongly believes that the fact that a person has been a director, executive manager, or even a controlling shareholder of a company that is placed in voluntary liquidation or business rescue should not be regarded as a factor that compromises or impugns that person's integrity or honesty.</p> <p>It is a reality of commerce that companies fail for a variety of reasons despite the best efforts of their directors, managers and shareholders. Particularly in the current deteriorating economic conditions.</p> <p>A person would in most cases be displaying honesty, integrity and be acting in good faith by placing a distressed entity in voluntary liquidation or business rescue in order to protect the interests of creditors and other stakeholders.</p> <p>It should also be recognised that some entities are designed from the outset to have a limited life span or are set up for a specific purpose such as a special purpose vehicle. This is the case for both the fund vehicle and the associated GP or trustee vehicle used in private equity fund structures. These entities will generally be placed in voluntary liquidation by their directors or shareholders to wind them up in an efficient and orderly manner once they have served their purpose.</p> <p>SAVCA is furthermore concerned that the inclusion of this particular factor as an indicator of a person being dishonest or lacking integrity would be especially prejudicial to those private equity firms managing venture capital or turnaround funds. These funds are established with the deliberate purpose to invest in high risk companies in the full realisation and acceptance of the fact that at least some of the companies will ultimately be placed in liquidation or business rescue.</p> <p>There is a great need for capital investing in these types of companies and, should this section be enacted into law in its current form, some fund managers may well be deterred from targeting these opportunities.</p> | See response under comment 145.                     |
| 147. | 17               | 9(1)(n)(ii) |   | We note the Regulators response to our previous comments in  | See response under comment 145.                     |


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|  |                  |         |                            | <p>respect hereof, however we reiterate that the perception that a liquidation of a company or close corporation is <i>always</i> (our emphasis) due to the inability of a person to apply the required financial discipline or standards should be guarded against and should not be taken as <i>prima facie</i> evidence that the person(s) do not comply with S8 (1).</p> <p>All circumstances that led to the liquidation should be taken into account. For example, a liquidation of an entity could be a voluntary liquidation by the entity, after all debts have been settled and the entity is no longer trading. In such circumstances no harm has been done as winding up procedures and processes have been implemented and thus no harm should have been caused to any creditors or policyholders.</p> <p>There are instances in which the liquidation could further have been due to circumstances beyond the control of the directors and / or shareholders and the liquidation could have been in the best interest of all parties. In such a situation the result does not automatically indicate a person's inability to manage the financial affairs of an entity, quite to the contrary it could be deemed to be the prudent decision to make in order to avoid future hardship or exposure not just to policyholders, but also employees.</p> <p>Further, the wording of Section 9(1) (n) (ii) applies where a business was placed in liquidation within one year of that connection. Although the wording of the section is not clear and specific it is assumed that this will apply where the person has left the business, and the business is liquidated or filed for business rescue within one year of his departure.</p> <p>In such a situation, various factors could have contributed to the demise of the business, none to be attributed to the actions of the former director, trustee, member partner, controlling shareholder or managing executive, or a person that was concerned in the management of the business. Such actions could have occurred after his departure and he played no part in the demise of the business.</p> <p>In light hereof, we remain of the view that this section should be</p> |                      |

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|      |              |             |  | amended.   |  |
| 148. | 21           | 9(1)(n)(ii) | 9.(1)(n)...<br>(i)...<br>(ii) placed in liquidation, <u>excluding the voluntary winding up of a solvent company, or business rescue;</u> ...   | Where a solvent company is dissolved by way of voluntary winding up, creditors are not prejudiced and this should therefore not impact on the honesty, integrity and good standing of a person. The Registrar has noted this point following receipt of the initial feedback. The Registrar is respectfully requested to consider the suggested wording. | See response under comment 145   |
| 149. | 17           | 9(1)(o)     | (o) has failed to disclose information required to be disclosed in terms of the Act, including a failure to <del>disclosure</del> <u>disclose</u> information in accordance with section 10.   |  |  Wording corrected.   |
| 150. | 15           | 9(2)        |  | The words “personal behaviour of its directors and key individuals” – What exactly does this encompass?  | It refers to the personal behaviour or conduct of the legal entity’s directors/key individuals.  |
| 151. | 17           | 9(2)        | (2) Without limiting subsection (1), compliance with section 8(1) by a person that is not a natural person must be demonstrated <u>through its directors and key individuals meeting the above fit and proper requirements.</u> (our proposed wording) | This may remove the inconsistent interpretation of “corporate and personal behaviour” which has not been defined.  | Disagree.<br> See inclusion of the word “conduct” and amendment of the definition to include members, trustee, partners and persons who control or govern the FSP that is a juristic person in order to ensure the requirement applies equally to all FSPs. |
| 152. | 8            | 9(3)        |  | We also understand the need for providing the Registrar with the discretion to make a finding on <i>prima facie</i> evidence. We do however believe that the importance of such an assessment is too great to provide only the limited guidelines of section 9(3). We believe that these guidelines should be developed further.                         | Disagree.<br>The limitations are sufficiently wide.  |
| 153. | 14           | 9(3)        |  | We are concerned about the wide and discretionary powers granted to the Registrar in 9(3). In addition, if discretionary powers are to be granted, there is no provision for the Registrar to exercise them in favour of registration of a person.   | Disagree.<br>Purpose of section 9(3) is to limit seemingly wide application of the factors set out in section 9(1).  |
| 154. | 16           | 10          |  | SAVCA submits that the information provided in section 10 should be limited to information which relates only to the criteria set out section 9. Section 10 is currently drafted in wide terms and it is unclear how section 10 will be interpreted in practice.   | Disagree.<br>The disclosure required under section 10 is currently a requirement in Board Notice 106 of 2008.  |

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|  |                  |         |   | Alternatively, SAVCA propose that a reasonable person test should be built into the provision to ensure that information disclosed to the Registrar is not frivolous.  |  |
| 155.                                       | 17               | 10      | <p>"An FSP and key individual must disclose to the Registrar, and a representative must disclose to its FSP, promptly, <u>annually</u> and on own initiative fully and accurately all information, not limited to information in relation to matters referred to in section 9."</p> | <p>In the past FSP's were not required to report to the FSB on whether a person meets fit and proper. FSP's would simply take the appropriate action and debar the person as the FSP under S14.</p> <p>This section is understood to mean that the FSP must do the assessment and report deviations to the FSB, who will now decide the appropriate action.</p> <p>This may have the effect of creating more obligations on the Registrar of the FSB around the fit and proper status of KI's and Reps. Is this the intention of the FSB?</p>  | <p>Disagree.</p> <p>Not sure to what new reporting requirement the commentator is referring. This section, inter alia, requires a representative to disclose to its FSP all information that might be relevant in determining compliance with the fit and proper requirements by that FSP. There is no requirement on the FSP to disclose that information to the Registrar. The FSP remains responsible for its representatives as contemplated in section 13 and 14 of the Act.</p>  |
| <b>CHAPTER 3 – COMPETENCY REQUIREMENTS</b> |                  |         |   |  |  |
| 156.                                       | 6                | General |   | <p>General Competency requires that FSP and representative must have adequate, appropriate and relevant skills, knowledge and expertise in respect of financial services, products and functions to be performed.</p> <p>This is the contribution that has always been made by insurance companies and BIAC mentioned it to the competency committee of FSB:</p> <p>The product suppliers are continuously providing training on their product offerings, and they even go an extra kilometers by inviting independent FSP's to information sharing road shows that are held every year.</p> <p>They are also making use of the Broker Consultants whose role is to give personal attention or mentorship to the FSP. They provide training to the admin staff and the FSP on their companies' products and admin systems.</p> | <p>Noted.</p> <p>See relaxation of minimum qualification requirement in respect of Tier 2 products and scripted sales execution.</p> <p>Eg. a person performing scripted sales execution is only required to have a Matric or an equivalent qualification. However, through the Exemption of Services under Supervision, a person who does not have a Matric can enter the industry whilst working under supervision and have six years in which that person must either obtain a Matric or an equivalent qualification. This will allow for access and is in support of</p> |


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|      |                  |   |  | <p>This is the role which empowers the FSP with skill, knowledge and expertise and the FSB can not turn a blind eye on the role played by these people. Outside trainers will never equal the role of the broker consultant.</p> <p>Insurance companies are already providing information with special focus to the CPD points. FSB will be advised to first check what insurance companies are doing before forcing the FSP to go for training that will increase the cash flow of some organisations.</p> <p>BIAC request is for FSB to compel insurance companies to train all FSP's who have contracts with them without discriminating according to their performance. Most FSP's for information, when they start with their independence, they focus on the products of their previous employers and over time start talking other insurance companies language to their clients. It is not an overnight thing.</p> <p>BIAC is in agreement with the minimum requirements which are being proposed. But consideration and provision should be made for the FSP's who joined the industry more than 10 to 15 years when MATRIC was not a requirement for employment. These rules suits new entrants to the industry.</p> | <p>transformation where skills development of people is a critical factor.</p> <p>In addition, SAQA allows for the recognition of prior learning in which a person who does not have a qualification is able to obtain formal recognition for knowledge gained throughout life, such as in workplaces and own reading or experiences. The recognition of such prior learning will result in that person obtaining relevant credits/qualification.</p> |
| 157. | 2                | "technical knowledge" used in Part 1 of Chapter 3 | We suggest that "technical knowledge" be defined taking into account that the requirement should not be for the KIs and representatives to have technical expertise themselves but that the FSP must have access and the support of such technical experts where required. | We note that reference is made to "technical" knowledge in a number of sections in Part 1 of Chapter 3 s13(1)(c), s13(4)(a), and s32(1)(c)(iii)(aa).   | Disagree.<br>The ordinary meaning of the word will apply. The requirement must further apply to KIs and representatives as they must have the technical skills (abilities and knowledge needed to perform a specific task) to perform their functions.  |
| 158. | 1                | 12  | <del>(1)</del> An FSP, key individual and representative must-<br>(a) .....  | Only one subparagraph, need not be numbered (1).   |  Corrected.  |
| 159. | 17               | 12(1)(a)  | 12. (1) An FSP, key individual and representative must-<br>(a) have adequate, appropriate  |  |  Corrected.  |



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|      |                  |   | and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that <del>that</del> <del>person</del> it performs; |  |  |
| 160. | 1                | 12(1)(c)<br><br>13(1)(e),<br>13(3)(b), 13(5)<br>and 13(7) |   | <p>Part 1 of Chapter 3 contains general competence requirements. Section 6A(2)(b) of the FAIS Act stipulates that fit and proper requirements may include, but are not limited to, appropriate standards relating to competence and specifies competence to include experience, qualifications and knowledge tested through examinations determined by the registrar. It is suggested that references to continuous professional development (CPD) should be removed from Chapter 3 as it does not form part of competence requirements as set out in the Act. This may also assist with interpretation as to when the CPD requirement becomes applicable. The FAIS Act defines CPD as a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act. Competency needs to be achieved before it can be maintained.</p> <p>In view of the aforementioned, ASISA members propose the following amendments to Chapter 3:</p> <ul style="list-style-type: none"> <li>• Delete paragraph 12(1)(c).</li> <li>• Delete paragraph 13(1)(e).</li> <li>• Delete the reference to CPD in paragraphs 13(3)(b) and 13(5).</li> <li>• Delete the reference to Chapter 4 in paragraph 13(7).</li> </ul> | <p>Competence and CPD is interrelated, and cannot be divorced – without CPD a person may no longer meet the competence requirements even though this person might have met these competence requirements in the past.</p> <p>The requirement that a person must maintain its competence as required in Chapter 3 is not confusing. It is still clear that CPD applies AFTER competence was achieved.</p> |
| 161. | 17               | 13(1)(a)  |   | This section seems to imply that the supervisory requirements are going to be removed. Guidance is requested if this will be the case going forward.   | Disagree.<br>The Exemption in respect of Services under Supervision will remain effective but will be updated to align with new requirements.  |
| 162. | 10               | 13(1)(f)  |   | This standard would not be relevant for certain FSP's e.g. Underwriting Managers and to Key Individuals who currently have   | Disagree.<br>The requirement references a  |

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|      |                  |          |  | no product category linked to their profile due to the role they play within the FSP. This should be made clear by amending the statement to recognise differing roles of FSP's  | financial services and/or a financial product.   |
| 163. | 17               | 13(1)(f) |  | In terms of General Code of Conduct "appropriate" is referred to when providing advice and in this case it is quite open ended leading to an interpretation that may be seen to apply to intermediary services in general.<br><br>We recommend that this be clarified to apply to circumstances where advice is given.   | Disagree.<br>Requirement aligns with TCF principles.   |
| 164. | 11               | 13(2)    |  | FPI applauds the inclusion of standards for automated advice. While we do see, automated advice being useful in closing any advice gap and as such ensuring inclusion, there is also a large risk to consumers of automated advice. FPI believes the standards set will go some way to mitigating this risk.<br><br>It may however be difficult or even impossible to find a KI who has both financial advisory and IT competence. Clarification is therefore sought as to what level of understanding is required. For instance, will it be enough for the KI to understand the flow chart of the input and output of the algorithm, or should the KI have understanding as to the coding of the algorithm? | Agree.<br> See amendment that removes requirement that FSP must have a KI that has technological knowledge. It is important to note that it remains a requirement that the FSP must have adequate and appropriate human resources that have the required technological competence as referred to in section 38. |
| 165. | 17               | 13(2)(b) | We recommend that in light of this onerous IT requirement, that the section be reworded as follows:<br>“(b) has knowledge, skills and experience to- ....”<br>Remove (i)   | We recommend that this section needs to cater for the scenario where you have a system and a rep giving advice.<br><br>We respectfully submit that the requirements for the Key Individuals are too onerous relating specifically to IT knowledge.   | See response under comment 164.  |
| 166. | 1                | 13(2)(b) | An FSP that provides automated advice must have at least one key individual who -<br>(b) has the <del>technological</del> knowledge, skills and experience to-<br>(i) understand the technology, and algorithms used to provide the automated advice;<br>(ii) understand the | Some ASISA members that are currently in the process of developing automated advice solutions have identified that the requirement of a key individual having additional technological knowledge, skills and experience is extremely onerous and it is likely to disqualify most if not all key individuals. An automated advice solution is generally developed by a project team consisting of a group of persons that collectively have the relevant knowledge, skills and expertise to successfully implement an IT solution. It is unlikely that one person will have both the specialised IT   | See response under comment 164.  |


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|      |             |          | <p>methodological approaches and assumptions embedded in the algorithms and the rules underpinning the algorithms;</p> <p>(iii) identify the risks to customers arising from the automated advice; and</p> <p>(iv) monitor and review the automated advice generated by algorithms to ensure quality and suitability of the advice and compliance of the Act.</p>  | <p>expertise and the advice and financial planning expertise. The design of an IT solution is a collaborative process. Persons with IT expertise will program an IT system according to agreed specifications. A key individual will verify that the result from the IT solution is proper. If the rules, assumptions and algorithms are not correctly automated, the result will not be proper.</p> <p>It is submitted that a key individual does not need to have specialised technological knowledge, skills and experience. A key individual needs to be able to understand the IT solution and how it works (the methodological approaches and assumptions embedded in the algorithms and the rules underpinning the algorithms), not how to transform or program those into an automated advice solution. It is thus suggested that the reference to "technological" should be deleted.</p>          |  |
| 167. | 2           | 13(2)(b) | <p>(2) An FSP that provides automated advice must have at least one key individual who-</p> <p>(a) meets the competence requirements applicable to a key individual of a Category I FSP; and</p> <p>(b) has <del>technological</del> knowledge, skills and experience to-</p> <p>(i) <del>understand the technology and algorithms used to provide the automated advice;</del></p> <p>(ii) <del>understand the methodological approaches and assumptions embedded in the algorithms and the rules underpinning the algorithms "</del></p> <p>(i) <i>understand the</i></p> | <p>(a) We are concerned about the requirement for a KI to have the level of technological knowledge, skills and experience required in s13(2)(b)(i) and (ii) as these are mostly specialist skills.</p> <p>(b) There are certain practical considerations that business have to take into account for these roles, such as succession planning requirements for prospective KIs that have never had experience in "robo-advising" and might not have technical knowledge. This KI would be supported by a technical team and as such we believe the KI doesn't need to have extensive skills as required by s13(2)(b).</p> <p>(c) We are concerned about the requirement to monitor automated advice in s13(2)(b)(iv) as it may not be not feasible due to the nature of the automated advice which is unlikely to vary, being based on a pre-populated rule set regarding the proposed target market.</p> | See response under comment 164. The commentator's concerns in paragraph (c) are noted. |

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|      |                  |          | <p><u>methodology, assumptions in the algorithms and the rules underpinning the algorithms that will be used to provide the automated advice;</u>”;</p> <p>(ii) identify the risks to customers arising from the automated advice; and</p> <p>(iii) <u>to ensure quality and suitability of the advice and compliance with the Act</u> monitor and review the automated advice generated by algorithms to ensure quality and suitability of the advice and compliance with the Act.</p> |   |  |
| 168. | 8                | 13(2)(b) |   | It is unclear from section 13(2)(b) what level of understanding is required for automated advice. We have no problem if the requirement is that the key individual needs to understand a decision tree and flowchart of the working of the technologies, algorithms, methodological approaches and assumptions. However, if it requires the key individual to be able to understand and read the coding of the automated advice solution, we believe that very few key individuals will possess the required skill. More clarity on the level of understanding is therefore required. | See response under comment 164.  |
| 169. | 16               | 13(3)    | “The FSP must be able to demonstrate and record that it has evaluated and reviewed at regular and appropriate intervals <u>or on a continuous basis, in which case records may take the form of suggestions for personal improvement made from time to time, however recorded -</u> ”   | SAVCA notes the Registrar's response to SAVCA's previous submissions in response 205 of the Regulatory Response Matrix. SAVCA understands the requirement to review at " <i>regular and appropriate</i> " intervals does not preclude the possibility of an FSP evaluating and reviewing the competence of a representative or key individual on a continuous basis, in the discharge of their day-to-day duties. As per our previous submission, we believe such an approach to be more practical and effective in a small organisation.   | Disagree. The requirement sets a minimum and does not preclude evaluation and review on a continuous basis as long as the FSP is able to demonstrate and record that it has performed such evaluation and review. It is not the intention to prescribe how the FSP must conduct the review and evaluation. |
| 170. | 20               | 13(3)    |   | Moonstone would like to know whether the FSB will be providing  | The Registrar does not intend at this  |

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|      |                  |          |                            | <p>standards or guidelines as to how this can be demonstrated and recorded as well as what would be the minimum regular and appropriate intervals would be. Also, how this would be managed for the Key Individual, particularly in the case of the sole proprietor.</p> <p>Moonstone believes that this requirement is going to be very difficult for a large number of FSPs and how they will be able to assess the skills gap. We are concerned about the implication for the situation of a single Key Individual and how this is going to be assessed and by whom.</p> | <p>stage to issue standards or guidelines.</p>   |
| 171. | 22               | 13(3)(b) |                            | <p>Since CPD will be provided by a professional body which is accredited with SAQA, an FSP may have no ability to change training providers even if the quality of the CPD training is unsatisfactory.</p>  | <p>The commentator's comment is valid insofar the provision creates the impression that the FSP must evaluate the quality and effectiveness of the training and CPD activities. The intention is that an evaluation must be conducted to determine the appropriateness of the training and CPD activities for a particular person's circumstances.</p> <p> See amendment that removes reference to quality and effectiveness and replaces it with appropriateness.</p> <p>Please note further that an FSP can change training providers any time they want to. The CPD activity will not be delivered only by professional bodies – it will be delivered by a host of different CPD providers as long as all these CPD providers are approved by one of the professional bodies. If they find the CPD activities delivered by the one CPD provider unsatisfactory, then they can at any</p> |

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|      |                  |                                     |   |  | time appoint another CPD provider.  |
| 172. | 1                | 13(4)(c)                            | The evaluation ..... in <del>subsection subparagraph</del> (3) must .... take into account (c) changes ..... to <u>financial products and legislation.</u>  | Insert "financial" before "product" for consistency.   | Agree.<br> See amendment.  |
| 173. | 13               | 13(5)                               |   | If an FSP must establish and maintain a competence register in relation to CPD, then we question the requirement (Per the definition of "CPD activity" in Chapter 1, s1) for a Professional Body to do so. In our view, this strengthens our argument against the need for a Professional Body in relation to CPD.   | See response under comment 22.<br><br><b>The</b> definition for "CPD activity" has been amended to remove the requirement that it must be tracked by a professional body. |
| 174. | 16               | 13(6)                               | "An FSP must notify the Registrar <u>within 15 days</u> after it become aware, or has information which reasonably suggests, that a key individual does not comply or no longer complies with any requirement set out in this Determination."   | SAVCA notes that the FAIS Act provides for a standard 15-day period for notifying the Registrar of various non-compliance or responses.<br>SAVCA proposes that this section is brought in line with the rest of the FAIS Act.  | Disagree given the risk to consumers.   |
| 175. | 1                | 13(7)                               | The requirements set out in Parts 2, 3, 4 and 5 of Chapter 3 <del>and Chapter 4</del> are minimum requirements and <del>compliance with these requirements does not in itself serve as evidence that a person complies with</del> <u>subject to</u> the general requirements set out in <del>section 2 paragraph 12(a).</del> | 1. Replace "Part" with "Parts".<br>2. Incorrect reference.   | Noted.<br> See editorial and reference correction.                                     |
| 176. | 1                | 13(7)<br>Responsibilities of an FSP | The requirements set out in Parts 2, 3, 4 and 5 of Chapter 3 <del>and Chapter 4</del> are minimum requirements and <del>compliance with these requirements does not in itself serve as evidence that a person complies with</del> <u>subject to</u> the general requirements set out in <del>section 2 paragraph 12(a).</del> | The proposed paragraph 12(1)(a) contains the general requirement that an FSP, key individual and representative must have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that that person performs. ASISA members understand that paragraph 13(7) intends to ensure that an FSP, key individual and representative understand that competence requirements are not limited to meeting the minimum requirements. The minimum requirements may not necessarily be adequate, appropriate and relevant as per the general requirement. The wording of | Disagree.<br>The wording is sufficiently clear.   |


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|      |                  |         |   | the proposed paragraph may however unintentionally be interpreted to mean that meeting the minimum requirements will never be evidence of compliance with the general requirement. In some cases, if the nature, scale and complexity of a business are taken into account, meeting the minimum requirements will mean compliance with the general requirements. For the sake of clarity, it is proposed that paragraph 13(7) be made subject to paragraph 12(a).   |   |
| 177. | 2                | 13(7)   | The reference to "...section 2" referred at the end of subsection 7 appears to be incorrect as section 2 relates to "the purpose of determination" which seems not to relate to intention of this subsection 7. We submit it needs to refer to section 4. | <p><i>"(7) The requirements set out in Part 2, 3, 4 and 5 of Chapter 3 and Chapter 4 are minimum requirements and compliance with these requirements does not in itself serve as evidence that a person complies with the general requirements set out in section 2."</i></p> <p>It is not clear what the intention of Registrar is with inclusion of section 13(7), if a person complies and continues to comply as provided for in Part 2, 3, 4 and 5 of Chapter 3 and Chapter 4, then that person needs to be deemed to meet the said requirements. FSPs are accountable for assessing the fit and proper requirements of their representatives as provided for in section 13 of Act and as such need to fully understand when a person meet the said requirements. FSPs need to have adequate guidance on what the Registrar's additional expectations in terms of subsection 7 are to ensure compliance with the determination.</p> <p>FSPs need to have adequate guidance on what the Registrar's additional expectations are in terms of subsection 7, to ensure compliance with the determination.</p> <p><b>PROPOSAL</b></p> <p>We suggest that the Registrar clarifies what will serve as evidence that person meet competency requirements other than stipulated in this Board Notice.</p> | <p>See response under comment 175.</p> <p>This subsection must read with subsection (3) that requires an FSP to evaluate and review at regular interviews whether its representatives have the required competence to perform their activities.</p> |
| 178. | 17               | 13(7)   |   | This section refers to general requirements as set out in section 2. However, section 2 does not set out such "general requirements". This may be a typographical error.  | See response under comment 175.   |
| 179. | 22               | 13(7)   |   | The cross reference to section 2 is unclear. Section 2 of the proposed requirements deals with the purpose of the Determination, which does not appear to be what the cross reference in section 13(7) was intended to refer to.  | See response under comment 175.   |
| 180. | 20               | 14 & 15 |   | Reference should be made to being able to operate under supervision whilst obtaining the relevant experience.   | See response under comment 161.   |



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| 181. | 17               | 15                    | "15. (1) An FSP and representative must have adequate, appropriate <del>and current</del> experience, subject to section 16, in the rendering of a particular financial service in respect of a –"  | <p>This section seems to imply that the supervisory requirements are going to be removed. Further guidance is required in respect of supervision in the future.</p> <p>We are of the view that reference to "current experience" becomes redundant as section 16 clearly indicates the period in which experience remains valid.</p>   | <p>As regards services under supervision, see response under comment 161.</p> <p> See amendment that removes the word "current".</p>   |
| 182. | 2                | 15(1) read with 16(1) | We recommend that section 15(1) be rephrased as follows, with the following insertion at the beginning of the sentence: <u>"Subject to the provisions of Section 16 (1)</u> an FSP.....must have adequate and appropriate experience in the rendering....." | <p>Not all staff employed or moved into a FAIS role would have current experience in respect of a particular financial product/ category. (The services under supervision provisions regarding experience assist in this regard as they are afforded the opportunity to gain experience under supervision.) In addition, many core bank product types remain un-amended over a period of time.</p> <p>The provisions in section 16 provide for "up-to-date" product experience by virtue of relevance over a five year period.</p>   | <p>Disagree.</p> <p>See response under comment 161 regarding the exemption relating to the rendering of financial services under supervision and the response under comment 181 regarding the word current.</p>   |
| 183. | 2                | 15(2)                 |   | <p><b>COMMENT</b></p> <p>In the current fit and proper requirements there is specific acknowledgement for the fact that key individuals manage and oversee an FSP and depending on size of FSP might or might not render financial service. We note that the new requirements do not make provision for the specific reference that was introduced in 2008. This new requirement will lead to additional requirements for key individuals that do not render financial services but only manage and oversee FSP.</p> <p>The new requirements do not take into account that the structures vary in large financial institutions, and as such may lead to FSPs only being allowed to appoint persons that meet product category experience and training as key individuals.</p> <p><b>PROPOSAL</b></p> <p>We request that the Registrar continues to allow for more than one KI in a license category, with one KI meeting the management and oversight requirements, while the other KI meets the product specific requirements.</p> <p>We are not aware that this arrangement has caused any hardship nor that it jeopardised the rendering of financial services. On the contrary, the current dispensation which allows for more than one KI per license category, facilitates proper management and</p> | <p>Disagree.</p> <p>See response under comment 186.</p> <p>In addition, a 'key individual' as defined in section 1 of the Act does not render financial services and it is not correct that the 2008 fit and proper requirements provided for such a key individual. If a key individual renders financial services it must be appointed as a representative otherwise it is in contravention of section 7 of the Act.</p> <p>In order for a person to be approved as a key individual of a <b>Category I FSP</b> he or she must have obtained experience in the management and/or oversight of the rendering of a particular financial service by a Category I FSP. Please note that the</p> |


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|  |                  |         |                            | <p>oversight coupled with the required experience and product knowledge, ensuring proper rendering of financial services. Our request is informed by the following:</p> <ul style="list-style-type: none"> <li>i. The current system allows for the most suitable candidates being afforded the opportunity to be Key Individuals, taking care of the management, oversight, product knowledge and experience within a license category. In large organisations, such as the bigger bank FSPs, having more than one KI in a license category supports proper management, proper rendering of financial services and ensuring continuity within the business.</li> <li>ii. Section 16(2) be amended or provided for in transitional requirements.</li> </ul> | <p>requirement does not extend to product experience.</p> <p>In terms of the 2008 requirements --</p> <ul style="list-style-type: none"> <li>(a) Category I key individuals were only required to have experience in the management or oversight of a business irrespective whether or not such business relates to the rendering of financial services; and</li> <li>(b) Category II, IIA, III and IV key individuals are required to have <b>both</b> management experience and experience in the rendering of financial services in respect of particular financial products.</li> </ul> <p>The Registrar is of the view that a Category I key individual with no experience of the financial services industry would not be able to appropriately and effectively fulfil his or her duties under the Act and that the proposed amendment is necessary to ensure that the key individual is competent to perform his or her functions. The Registrar further limited the experience requirement for key individuals of the other categories to the rendering of financial services in respect of the relevant category only.</p> <p>The Registrar has further removed the requirement that the FSP must at all times have at least one key individual that meets the same requirements applicable to a sole</p> |


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|      |                  |                      |   |  | proprietor.  |
| 184. | 17               | 15(2)                | (2) A key individual must have adequate, appropriate <del>and current</del> experience, <u>subject to section 16</u> , to manage or oversee the rendering of a particular financial service in respect of a particular category for which it is approved or in respect of which approval is sought.   |  | Disagree.<br>See response under comment 181.   |
| 185. | 1                | General comment – 16 |   | ASISA members reiterate that the current requirement does not provide for proportionality and does not take the permutation of services and products into account. Relevant up-to-date experience may be different if applied to different roles, services provided and in relation to different products. A principles based approach will be more suitable. ASISA members respectfully request that the Registrar reconsider the proposed deletion of paragraph 16. As an alternative, ASISA members propose that paragraph 16 be rephrased to provide for an FSP to demonstrate that the experience of an FSP, key individual or representative is still adequate, appropriate and current even if experience has lapsed.   | Disagree.<br>The Registrar has not proposed a change to the current status quo insofar it relates to the lapsing of a person's experience. |
| 186. | 1                | 16                   | <u>Proposal to delete paragraph 16:</u><br><del>(1) The experience gained by an FSP or a representative lapses when the FSP or representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category for a period of five consecutive years.</del><br><br><del>(2) The experience gained by a key individual of a Category I FSP lapses when the key individual has not managed or overseen the rendering of a particular financial service in respect of a particular category for a period of five consecutive years.</del> | ASISA members submitted the following comment on the 1 <sup>st</sup> Draft Fit and Proper Requirements:<br>"It is understood that this requirement in principle intends to ensure that experience is not outdated. ASISA members are of the opinion that a 'one size fits all' approach in respect of the assessment of the adequacy of past experience is not appropriate. The forced invalidation of experience after a specific period of time does not provide for proportionality and does not take the permutation of services and products into account. Relevant up-to-date experience may be different if applied to different roles, services provided and in relation to different products. It is strongly suggested that the paragraph be deleted. An FSP must be able to exercise discretion in respect of the assessment of the adequacy of past experience."<br><br>The regulatory response document indicates that the Registrar disagreed and that the Registrar is not proposing a change to the current status quo as regards the lapsing of | See response under comment 161 and 185.  |

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|      |                  |         | <p><u>Alternative proposal:</u></p> <p>(1) The experience gained by an FSP or a representative lapses when the FSP or representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category for a period of five consecutive years <u>unless an FSP can demonstrate compliance with paragraph 15(1).</u></p> <p>(2) The experience gained by a key individual of a Category I FSP lapses when the key individual has not managed or overseen the rendering of a particular financial service in respect of a particular category for a period of five consecutive years <u>unless an FSP can demonstrate compliance with paragraph 15(2)</u></p> | <p>experience.</p> <p>ASISA members wish to again strongly suggest that paragraph 16 should be deleted. ASISA members reiterate that the current requirement does not provide for proportionality and does not take the permutation of services and products into account. Relevant up-to-date experience may be different if applied to different roles, services provided and in relation to different products. The 2<sup>nd</sup> Draft Fit and Proper Requirements incorporates principles based requirements focused on outcomes. Although these are in addition to rules-based standards, it is believed that the 5 year rule will not achieve moving away from a tick-box compliance approach. Paragraph 15 places an obligation on an FSP, key individual and representative to have adequate, appropriate and <b>current</b> experience. Furthermore, paragraph 13(7) stipulates that the minimum requirements are subject to the general requirement in paragraph 12(a). It is submitted that paragraphs 12, 13 and 15 provide the necessary mechanisms to ensure that experience is relevant and up-to-date and the forced invalidation of experience after 5 years should be removed.</p> <p>As an alternative, if the proposal to delete paragraph 16 is not accepted, ASISA members propose that paragraph 16 be rephrased to provide for an FSP to demonstrate that the experience of an FSP, key individual or representative is still adequate, appropriate and current regardless of the 5 year period stipulated in this paragraph.</p> |  |
| 187. | 10               | 16      |  | Clarity is required as to whether the period involved in terms of 'lapsing of experience' applies retroactively or only from the date of activation of the Board Notice.  | See response under comment 185. It is not a new requirement. |
| 188. | 4                | 16      | 16(1) The experience gained by an FSP or a representative lapses when the FSP, or representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category  | This section appears to move management KIs from the requirements. We believe there is still place for such KIs and to remove them will have a negative impact on structures currently in place.  | Disagree.<br>See response under comment 183.                 |


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|      |              |         | <p>for a period of five consecutive years.</p> <p>(2) The experience gained by a key individual of a Category I FSP lapses when the key individual has not managed <u>and</u> overseen the rendering of a particular financial service in respect of a particular category for a period of five consecutive years.</p>    |  |   |
| 189. | 17           | 16      | <p>"The experience gained by an FSP, <u>key individual</u> or a representative lapses when the FSP, key <u>individual</u> or representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category for a period of five consecutive years."</p> | We note that section 2 appears to cover only CAT 1 KI experience.  |  See correction. The section should apply to all key individuals and omission was merely an oversight. Current status quo applies. |
| 190. | 22           | 16      |   | <p>The types of mandates that a corporate finance advisory firm advises on are not determined by the firm. They depend on the types of mandates that are in the market and that the FSP wins. There might be no transactions that involve certain financial products, for months at a time, or other firms may win these mandates. Under these circumstances, for experience to lapse after 5 consecutive years is unfair, especially if the FSP's KIs and Reps have been continuing to participate in CPD (assuming there are professional bodies who are able to provide CPD for corporate financiers – see below) and other relevant training.</p> <p>By way of comparison, the JSE requires its sponsors to continue to work on transactions that involve the application of the Listings Requirements, but the JSE does not specify which types of transactions its sponsors must continue to gain experience in to be able to maintain their sponsorship status.</p> <p>It would make sense to adopt the same approach to a corporate finance advisory business in the FAIS context.</p> | See response under comment 185.   |
| 191. | 2            | 17(1)   | Drafting correction: "Annexure One, <u>Table 1 in Column A</u> "  | <p><b>COMMENT</b></p> <p>We request that the Registrar considers amending the experience requirements in Table 1 for Tier2 products and experience for "Execution of sales" due to the simple nature of the product. We also request a reduction in the length of time for direct and</p>  | <p>Disagree.</p> <p>Certain competency requirements have been reduced for the type of activities referred to by the</p>   |

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|      |                  |   |   | ongoing supervision.<br><b>PROPOSAL</b><br>i. Execution of sales: maximum of 3 months per sub – category for advice. This should be 1 month direct and 2 months ongoing experience.<br>ii. All Tier 2 products experience requirements to be a maximum of 3 months for advice and 1 month for intermediary service.  | commentator. The Registrar is of the view that experience requirements must remain as is to mitigate the risk of poor customer outcomes.<br><br>The Registrar will consider the comments insofar it relates to the exemption of services under supervision. |
| 192. | 17               | 17(1)   |   | We recommend a change to the reference to the table e.g. should read as "Annexure One, Table 1 in Column A".   | Disagree.   |
| 193. | 4                | 17<br>Annexure 1<br>Table 1                     |   | Consider reducing the timelines for experience for Tier 2 products to a maximum of 3 months for advice and 1 month for intermediary or removing the need for staff only rendering intermediary service to work under supervision considering the administrative nature of the functions for tier two products.   | See response under comment 191.   |
| 194. | 16               | 15(1), 15(2),<br>16(1), 16(2),<br>17(1) & 17(2) | SAVCA suggests the words " <i>a particular</i> " are removed.<br>The amended provision in 16(2) will read: "the experience of a key individual of a Category I FSP lapses when the key individual has not managed or overseen the rendering of financial services in respect of the category for a period of five consecutive years."<br>Similar amendments are needed to each sub-clause in 15, 16 and 17. | Section 16(2) states that the experience of a key individual of a Category I FSP lapses when the key individual has not managed or overseen the rendering of a <u>particular financial service</u> in respect of the category for a period of five consecutive years.<br>It is unclear to SAVCA what is meant by the term " <i>particular financial service</i> ". The term is not defined.<br>Section 15 and 17 also refer to the term " <i>a particular financial service</i> ". |  See definition of 'particular financial service'.   |
| 195. | 17               | 18(1)   | 18. (1) A Category II FSP and its representative must in relation to a financial product referred to in Column A of Table 2 in Annexure One have the minimum experience in the rendering of Category II financial services in respect of <u>those</u> financial products as set out in column B of the Table.   |  |  See correction.   |


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| 196. | 1                | 18(1)   | ..... in respect of <del>these</del> <u>those</u> financial products .....  | Typographical error.   | See response under comment 195.  |
| 197. | 20               | 18(1)   | 18. (1) A Category II FSP and its representative must in relation to a financial product referred to in Column A of Table 2 in Annexure One have the minimum experience in the rendering of Category II financial services in respect of <u>those</u> financial products as set out in column B of the Table. |  | See response under comment 195.  |
| 198. | 1                | 20(2)   | A key individual of a Category III FSP must have at least— <u>one</u> year's experience in the management or oversight of category III financial services.  | <ol style="list-style-type: none"> <li>1. Adjust the indentation of this subparagraph (2) to align with the indentation of paragraph 20(1).</li> <li>2. Replace the hyphen between "least" and "one" with a space.</li> </ol>  |  See correction.  |
| 199. | 9                | 22      |   | <p>In terms of the representatives contemplated in paragraph 22 of the proposed amendments, we recommend they continue to be treated in a similar manner as those who currently fall within the FAIS carve out of the definition of a representative. In other words, they will not be required to be placed on the FSB representative register. The proposed amendments already require that the necessary quality controls and governance procedures be in place to facilitate appropriate monitoring.</p> <p>For any existing FSP with the above mentioned representatives, there will be a considerable increase in cost if they are required to be placed on a representative register.</p> | Disagree.<br>The carve-out of certain persons from the definition of representatives does not apply to persons performing the execution of sales. They, by virtue of selling, should already be included on FSPs representative register.  |
| 200. | 17               | 22      |   | <p>We welcome the changes made to accommodate representatives of a Category 1 FSP providing financial services in respect of Tier 2 financial products as referred to in Chapter 3 Part 4 Regulatory Examinations Paragraph 25(b)(iii); and Chapter 3 Part 5 Class of business Training and Product Specific Training contained in Paragraph 28(2)(b)(aa).</p> <p>However we note that a representative of a Category 1 FSP providing intermediary services only in respect of Tier 2 financial products appears not to have been fully considered under Chapter 3 Part 3 Minimum Qualification Paragraph 22.</p>  | The dispensation from the qualification requirements only apply to representatives rendering financial services in respect of assistance business policies and friendly society benefits, and to representatives that perform the execution of sales, subject to compliance with the requirements set out in section 22, in respect of both Tier 1 and Tier 2 products. A representative rendering |

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|                  |         |                            | <p>Clarity is sought as to whether this exemption applies to category I FSP representatives involved in the performance of the execution of sales in respect of both Tier 1 and Tier 2 financial products. It is noted that in so far as regulatory examinations are concerned, the exclusion is clear for both Tiers.</p> <p>22 (b) (ii) (bb) (aB): The requirement which calls for KIs to meet the “advice” competency while managing representatives operating within the execution of sales environment may prove to be problematic in so far as the competency requirements relates to experience. The key Individual will be unable to meet the requirements of section 15(2) of the notice.</p> <p>Clarity is sought as to why the FSB requires a representative performing execution only to have Grade 12 or equivalent qualification, particularly where they do not need to meet competency requirements but product training requirements.</p> <p>We believe that this may pose barriers to entry.</p> <p>We respectfully suggest that the minimum qualification requirements in respect of representatives who act on behalf of FSP’s that provide intermediary services for Tier 2 products only, be lowered to a more appropriate level of a Grade 10 National Certificate for the following reasons:</p> <ul style="list-style-type: none"> <li>➤ Tier 2 financial products require no or limited underwriting and are simple/basic financial products;</li> <li>➤ Representatives of a FSP’s registered for intermediary services only, do not furnish clients with advice and therefore consumers would not expect a representative’s qualifications to be at the same level as a representative</li> </ul> | <p>intermediary services other than the execution of sales as referred to in section 22, must have a recognised qualification.</p> <p>See  amendment.</p> <p>The section does not place additional competence requirements on the key individual and it does not require a key individual that only manages and oversees the rendering of intermediary services to have experience in the management or oversight of advice.</p> <p>The Registrar has reduced the qualification requirement from a recognised qualification to a requirement that a person must only have a Grade 12 or equivalent. Further, in order to ensure that no barriers to entry are created the Registrar intends to reduce the minimum qualification requirement for such a person to work under supervision from a Grade 12 to a Grade 10 in order to allow the person to obtain a Grade 12 or an equivalent whilst working under supervision. The Registrar is of the view that the purpose and object of the Act will be defeated if a qualification requirement lower than a Grade 12 is set. The Registrar remains committed to skills development in order to ensure a</p> |


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|  |                  |         |                            | <p>who offers more advanced products;</p> <ul style="list-style-type: none"> <li>➤ The sale of entry level products should require entry level staff to be able to communicate with the customer in his/her mother tongue and read, and write. Thus they only need entry level skills and a basic qualification of for example Grade 10;</li> <li>➤ Paragraph 22(b) (i) clearly illustrates that less onerous qualification requirements can be applied to representatives that perform basic intermediary services only.</li> <li>➤ Considering the dispensation given to representatives who fall under paragraph 22(b) (i), a similar dispensation should be considered for representatives of a FSP that provides basic Tier 2 short term insurance products only. For example Consumer Credit Insurance provided in the furniture retail industry;</li> <li>➤ A requirement for at least Grade 12 (Matric) restricts FSP's committed to employing and training previously disadvantaged persons in rural South Africa;</li> <li>➤ Communication in all our official languages should be encouraged. Particularly in rural South Africa, the pool of prospective representatives able to speak, read and write the local languages, allowing for effective communication with a consumer, are limited. The pool of prospective representatives will be further diminished by the requirement for a Grade 12 (Matric) qualification;</li> <li>➤ It is vital to our country (for job creation in particular) and in order to extend the availability of basic financial services, that the minimum qualification requirements do not create an entry level barrier to employing previously disadvantaged persons;</li> <li>➤ Previously disadvantaged persons who do not have Grade</li> </ul> | <p>safer financial services industry.</p> <p>Intermediary services, includes the act of selling, and it is believe that there should be some requirement for a qualification where this selling is done without a script to ensure client protection.</p> |

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|  |                  |         |                            | <p>12 (Matric) need to be given an opportunity to gain the knowledge and experience through entry level employment;</p> <ul style="list-style-type: none"> <li>➤ The current entry level requirement of Grade 12 (Matric) is set at too high a level and will preclude a large proportion of the rural population from working in an entry level financial services position. Whilst we recognise that financial inclusion is one of the many objectives of the FSB, we respectfully submit that the Grade 12 requirement may have the unintended consequence of defeating the current initiatives of government and industry.</li> <li>➤ This is exacerbated by the fact that Retail is one of the few industries left in many rural towns and plays an important part in keeping the economies of these small rural communities going. Any further barriers to entry will severely limit job creation in these most needy communities.</li> </ul> <p>We are of the firm view that such dispensation will not detract from the requirements of such FSP's or representatives to properly discharge their responsibilities under the Act and treat customers fairly.</p> <p>Clarity is sought as to why the execution of sales needs to be overseen by a KI approved for <b>advice</b> and requiring the KI to work at the same premises where the sales are being executed.</p> <p>This may prove to cause practical difficulties for the following reasons:</p> <ul style="list-style-type: none"> <li>- If an FSP or an area only does execution, then there is no need to have a KI approved for advice as it is not required in the circumstances. Placing such a requirement will pose a barrier to entry and leave some FSPs non-compliant if they are not able to operate.</li> <li>- Staffs that sell on execution are not all seated in a call</li> </ul> | <p> See amendment that does away with requirement that key individual's normal place of work must be at the same premise</p> |

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|      |             |           |  | centre. They may be sitting in branches and to require a KI to sit in every branch may result in a huge cost issue for FSP's.  |  |
| 201. | 20          | 22        |  | <p>Is it the Regulators intention to exempt Key Individuals of Cat I for Long-term Insurance Sub category A and Friendly Society Benefits from having to have minimum qualifications?</p> <p>Moonstone believes that entry level qualification as well as recognised qualification should be defined as part of fit and proper.</p>  | These individuals are currently exempt from the qualification requirements. The exemption has now been written into the legislation. In terms of the new fit and proper requirements the key individuals referred to by commentator are not required to have a qualification.                    |
| 202. | 2           | 22(b)(i)  | <p>s22(b) does not apply to-</p> <p>(i) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed to render financial services only in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; <b>OR</b></p> <p>(ii) a representative of a Category I FSP that is appointed to perform only the execution of sales in.....</p> | The use of "and" after 22(b)(i) can be interpreted that in order for an FSP, KI and representative to be exempted he/she must meet the requirements in subsection b(ii)(aa) and (bb) to qualify for the exemption. We recommend the replacement of "and" with "or"   | Disagree.  |
| 203. | 11          | 22(b)(ii) | 22(b)(ii)(dd)(aC) that the representative does not use the title of advisor unless they meet the competency requirements for providing advice.   | FPI is pleased to see that there are additional standards to define execution of sale only. It is important for the consumer to understand where they are only receiving product information to facilitate a sale of a financial product, and where they are receiving advice. We believe that the requirements will start to help the consumer make this differentiation. While we acknowledge advisor categorisation will be dealt with at a later stage, the suggested paragraph should be added. | The Registrar agrees with the principle but is of the view that it is not appropriate to include the requirement under the determination for fit and proper requirements. The Registrar intends to deal with requirements relating to titles and designations under the General Code of Conduct. |
| 204. | 13          | 22(b)(ii) | <i>... a representative of a Category I FSP that is appointed to perform only the execution of sales in respect of a Tier 1 financial product provided that ...</i>  | In an interactive telephone/online conversation, not everything goes according to a script and therefore we don't believe that someone can lead a person (even through the use of a script) to the purchase of a product without an understanding of the class of business and the specific products. Hence, we do not agree that the minimum competence requirements contained in this Part   | Noted.<br>The reduced requirements will not apply to persons rendering financial services that do not meet the requirements for scripted sales execution. Therefore, if it is  |

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|      |                  |                                    |   | <p>should not apply to representatives of a Category I FSP that are appointed to perform only the execution of sales. We submit that such persons (representatives) should have appropriate qualifications to deliver such a service to clients.</p> <p>In our comments above we referred to the use of the word "instruction" as having a particular meaning within the definition of execution of sales. And, we believe it should also apply in this context. If that relates to execution-only sales and here it is qualified as one that is, <i>inter alia</i>, "performed in accordance with a script" (s22(b)(ii)(bb)(aA)), then we reiterate our view that the execution only sale should be at the instance of the client/customer (iow. non-solicited).</p> <p>There can be a fine line between advice and execution. The addition of the proviso that a script should be used does raise the question whether this opens a gap for possible misuse by entities that, by all accounts, are not execution only, but choose rather use this gap to structure their operations in a way that allows them to avoid the requirements in relation to competence? If the regulator is adamant about this exception, then at the very least, we would suggest that this is limited to reps performing execution sales in respect of Tier 2 products only and therefore suggest the inclusion of "Tier 2" into a revised s22(bb)(ii).</p> | <p>impossible for a person to follow a script, it must comply with the full competency requirements.</p> <p>The requirements that a person must stick to a script is to ensure that this sales method is limited to very simple financial products. If a person cannot follow a script, the exclusion does not apply and the person must be fully compliant with all the competency requirement.</p> |
| 205. | 2                | 22(b)(ii)<br>Execution of<br>Sales | <p>We suggest the following changes:<br/>22(b)(ii)(bb) the execution of sales is performed –<br/>(aA) in accordance with a script <u>or document guidance</u> approved by a key individual <del>and the relevant governance structure of the FSP;</del> and<br/>(aB) under the <del>direct</del> oversight of a key individual who meets the competence requirements for the furnishing of advice <u>or rendering intermediary services</u> in relation to the relevant financial product and whose normal place of work is at the same premises <u>or who regularly visits the specific branch</u> where the</p> | <p>1. We obtained clarification from the Regulator about the following:</p> <ol style="list-style-type: none"> <li>The Regulator advised that "execution of sales" is an intermediary service where provision is made for instances where representatives render the services within a strict control environment which is closely supervised and monitored.</li> <li>The Regulator did indicate that where an FSP cannot comply with the strict requirements; representatives would not be able to utilize the reduced competency requirements and must comply with the requirements relating to rendering of intermediary services.</li> <li>The Regulator further clarified that the "execution of sales" dispensation would not only apply to a call center environment but also when such sales are in a branch/suite. Where sales are done telephonically the additional requirements in sub paragraph (cc) will apply.</li> </ol>   | <p>Paragraphs 1 and 2 are Noted.</p> <p> See amendment to section 13 that makes it a requirement that the FSP must ensure compliance with section 22(b)(ii).</p>  |

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|                  |         | <p>execution of sales <del>are</del> <u>is</u> performed;<br/>           (ee) the FSP on a regular basis -<br/>           (aA) reviews the recordings referred to in<br/>           (cc) and/or monitors the<br/>           representatives, to ensure that they<br/>           do not deviate from the script or<br/> <u>document guidance</u> or supplement<br/>           the script <u>or document guidance</u><br/>           with content not approved as<br/>           contemplated in (bb);</p> | <p>2. We suggest that subsections (bb) to (ee) be moved to section 13 (Responsibilities of an FSP) similar to that of “automated advice” so that the drafting and understanding of the requirements for “execution of sales” would be easier to follow.</p> <p>3. We welcome the above clarifications but remain concerned on the practical implications of several of the requirements:</p> <p>a. Subsection (aA) provides for a script approved by a KI and the relevant governance structure of the FSP.</p> <p>i. We note that the script needs to be signed off by a KI and a “governance forum”. We suggest that the sign-off of the script is the responsibility of the KI and not the responsibility of a governance forum.</p> <p>ii. We understand the Registrar’s need for requirements around a script but we do believe this may be too restrictive and would not necessarily address the concerns raised regarding the competency of the representatives. The representatives’ actions may lead clients to enter into transactions but require no judgement and is therefore very administrative of nature. We therefore suggest that we broaden the provision to include other document guidance, in addition to scripts.</p> <p>b. The requirements for representatives completing this type of simplistic intermediary service to be under “direct oversight” of a KI on the same premises is not the only mitigation factors the Registrar should consider for a large Call Centre operation to mitigate miss-selling risk. The use of “direct oversight” although not defined in the Determination is assigned by some as having the same meaning as for “services under supervision”.</p> <p>i. We suggest the removal of the word “direct” as proposed below.</p> <p>ii. Alternatively, we suggest that the Registrar clarifies “direct oversight” in this context and if the intention is to assign the meaning used in the Services Under Supervision Exemption in BN 104</p> | <p>As regards paragraph 3, the Registrar disagrees with all the comments made.</p> <ul style="list-style-type: none"> <li>- Compliance by an FSP is not only the responsibility of key individuals it is also the responsibility of senior management and were applicable the board of the FSP. Given the nature of the dispensation more oversight is required in order to ensure the protection and fair treatment of clients. Outcome 1 of the TCF requirements requires that the fair treatment of customers must be central to the corporate culture of a financial institution and must be driven from the top, in other words, from the board and senior management.</li> <li>- The Registrar is further of the view that the requirements applicable to the dispensation are not too restrictive having regard to the interests of clients.</li> <li>- The criteria of the exemption of services under supervision should not be read into these requirements. The word ‘direct’ is not defined and as such the ordinary meaning would apply.</li> <li>- See response under comment 200 regarding the requirement that the KI must be at the same</li> </ul> |


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|      |                  |                                      |   | <p>of 2008, that the section be drafted to state that intended meaning.</p> <p>c. We submit that the requirement for the KI to work from the same premises where the execution of sales is performed would affect the management structures of our branch networks adversely, and we therefore suggest that it would be sufficient for the KI to have regular oversight and to visit the branch on an ongoing basis.</p>   | premises.   |
| 206. | 1                | 22(b)(ii)(bb)<br>Application of Part | <p>The competence requirements relating to qualifications contained in this Part-(b) do not apply to-</p> <p>(ii) a representative of a Category I FSP that is appointed to perform only the execution of sales in respect of a financial product provided that -</p> <p>(aa) the representative has a Grade 12 National Certificate or an equivalent qualification;</p> <p>(bb) the execution of sales is performed –</p> <p>(aA) in accordance with a script approved by a key individual and the relevant governance structure of the FSP; <del>and</del></p> <p>(aB) under the direct oversight of a key individual who meets the competence requirements <del>for the furnishing of advice</del> in relation to the relevant financial product; and</p> <p>(aC) <u>under the direct oversight of a key</u></p> | <p>Paragraph 22(b)(ii)(bb)(aB) requires that execution of sales is performed under the direct oversight of a key individual –</p> <p>(a) who meets the competence requirements for the furnishing of advice in relation to the relevant financial product; and</p> <p>(b) whose normal place of work is at the same premises where the execution of sales are performed;</p> <p><u>In respect of (a) above</u>, the requirement of competence for the furnishing of advice does not take into account the fact that an FSP is not necessarily licensed for advice. If an FSP is only licensed to render intermediary services, none of the key individuals of such FSP will meet the competence requirements. It is understood that the rationale for the requirement is to ensure that a key individual has more experience than the representative the key individual will be supervising. In the context of all the control mechanisms (set out in paragraph 22(b)) to achieve a lesser qualification requirement for a representative performing execution of sales, it is submitted that a key individual should not be required to meet additional experience requirements. Once a key individual meets the relevant requirements and obtains FSB approval as key individual, such key individual should be competent to supervise representatives performing execution of sales.</p> <p><u>In respect of (b) above</u>, ASISA members are of the opinion that requiring a key individual to be physically present at the same premises where the execution of sales is performed does not provide for the use of modern technological</p> | <p> See amendment that does away with requirement that key individual's normal place of work must be at the same premise and that it must be competent in respect of the furnishing of advice.</p> |


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|                  |         | <p><u>individual whose normal place of work is at the same premises where the execution of sales are is performed and where a key individual whose normal place of work is not at the same premises, an FSP must demonstrate compliance with paragraph 22(b)(ii);</u></p> <p>(cc) where the execution of sales is performed by telephone, all conversations with clients are recorded and the recordings are stored and retrievable;</p> <p>(dd) the FSP has sufficient and adequate controls in place to ensure and to monitor that-</p> <p>(aA) the representative does not furnish clients with advice; and</p> <p>(aB) the sales practices and techniques employed by the representative are not misleading, false, inappropriate to the expected target clients or will not result in unfair outcomes for clients; and</p> <p>(ee) the FSP on a regular basis -</p> <p>(aA) reviews the recordings referred to in (cc)</p> | <p>mechanisms to perform oversight from a location other than the normal place of work. In the context of all the control mechanisms (set out in paragraph 22(b)), an FSP should be afforded the opportunity to demonstrate that the requirements will be met even if a key individual's normal place of work is not at the same premises where the execution of sales are performed.</p> <p>ASISA members submit that the proposals to amend paragraph 22(b)(ii)(bb) as set out above will be proportionate and fit for purpose taking into account the control mechanisms in paragraph 22(b)(ii), i.e.–</p> <ul style="list-style-type: none"> <li>• representative must have matrix;</li> <li>• execution of sales must be performed according to an approved script and under the oversight of a key individual;</li> <li>• telephone conversations must be recorded;</li> <li>• FSP must have sufficient and adequate controls in place to ensure and to monitor that no advice is furnished and that sales practices are not misleading, false, inappropriate etc.;</li> <li>• FSP must review recordings and monitor representatives to ensure that they do not deviate from or supplement the approved script; and</li> <li>• FSP must review and monitor the adequacy and efficiency of its controls and the appropriateness of the script.</li> </ul> |                      |


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|      |                  |                       | <p>and/or monitors the representatives, to ensure that they do not deviate from the script or supplement the script with content not approved as contemplated in (bb);</p> <p>(aB) reviews and monitors the adequacy and efficiency of its controls and quality assurance processes in relation to the execution of sales; and</p> <p>(aC) reviews the script for appropriateness and compliance with applicable legislation.</p> |   |  |
| 207. | 10               | 22(b)(ii)(bb)<br>(aA) | e.g. "script and/or a structured sales process using brochures and or application forms only".  | The use of the word "script" suggests this is intended for call centres only but given the overall structure of this section we are of the opinion that such an "execution of sale" can be done in a retail sales shop environment where "scripts" are not used. If this view is correct we would suggest an amendment is needed.   | Disagree.<br>The main requirement is that the service must be rendered in accordance with a script whether it is in a call centre or retail environment. The dispensation does not apply if the service is not rendered in accordance with a script. |
| 208. | 7                | 22(b)(ii)(bb)<br>(aB) |   | <p>(i) We submit that the requirement that Key Individuals meet the competence requirements for the furnishing of advice in execution of sales models will be problematic. In this regard it would be almost impossible for a KI to sustain the requirements of clause 15(2) of the Draft Board Notice bearing in mind that these are non-advice models. We accordingly propose that the reference to the competence requirements for "advice" be removed, and replaced with intermediary services. The furnishing of advice is in fact expressly prohibited – see sub-clause (dd)(Aa).</p> <p>(ii) The proposal that KI's will need to work from the "same premises where the execution of sales are performed" may very well pose substantial logistical complexities and add</p> | Noted.<br>See response under comment 206.  |

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|      |                  |                            |   | further cost. If, for example, an FSP has 25 locations this would mean 25 KI's would need to be appointed. This is even more challenging if the representatives are in-field, and dispersed. Furthermore, the proposals contained in clause 29(2) of the Draft Board Notice will add to the complexity. Provided the FSP's quality assurance activities are thorough, and are able to determine that clients are not being misled and that fair customer outcomes are not compromised, we propose that this requirement be removed. We also propose that additional measures be considered to ensure that effective oversight still takes place. In this regard the KI should be entitled to delegate his/her day-to-day oversight obligations to a suitably experienced person where the execution of sales are performed (with suitable reporting structures and monitoring processes being in place between the KI and such delegate), and provided the further requirements in clause 22(b)(ii) are in place - in accordance with the principle of proportionality. This proposal must not be construed so as to enable the KI or the FSP to avoid responsibility for their obligations. |  |
| 209. | 10               | 22(b)(ii)(bb)<br>(aB)      |   | Given the structure of many call centres and retail sales stores where it is envisaged such a process would be applicable it is unlikely a KI would be operating from the same premises. With technology and adequate supervision/reporting structures we do not see that such a limitation is necessary.  | See response under comment 206.  |
| 210. | 20               | 22(b)(ii)(dd)              | <i>Include</i><br>(aC) the sales process is not solicited.  |  | Disagree.<br>The Registrar is of the view that the governance requirements are sufficient to ensure consumer protection. In addition, if a person is not able to stick to a script the exclusion does not apply. |
| 211. | 3                | 22(b)(ii) and<br>25(b)(ii) | We recommend that the definition of "execution only" be rephrased to exclude "intermediary services" and to make clear that in "execution-only" transactions, the individual assisting the customer does not exercise any judgement.<br><b>"execution of sales"</b> means | The definition of "execution of sales" includes the words " .an intermediary service performed by a person on instruction of a client..". However s22(b)(ii), s25(b)(ii), referring to the execution of sales as well, use the word "representative".<br>Read together, the new definition results in "execution only" transactions now also including anything currently defined under a FAIS Act "intermediary service". It is our understanding that any  | Disagree.<br>The commentator's attention is directed to the Guidance Note: Intermediary Services and Representatives and the content thereof should be read into this response.                                  |

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|      |                  |         | <p>(i) a financial service performed by a person, and which service does not require judgment on the part of that person; on instruction of a client that results in the conclusion of an agreement to buy, sell, deal, invest or disinvest in, replace or vary one or more financial products.</p> <p>or</p> <p>(ii) instances where a client, by himself or herself, concludes an agreement to buy, sell, deal, invest or disinvest in, replace or vary one or more financial products, using an automated or electronic platform of an FSP.</p> | <p>person engaging with the customer will be regarded as a FAIS representative going forward.</p> <p>We submit that this new approach does not take cognisance of:</p> <p>i. the exclusions in the current definition of a FAIS representative which excludes persons who do not exercise judgement;</p> <ul style="list-style-type: none"> <li>- Example, a branch consultant will input key customer information into an automated account opening system. The system will recommend a product and the branch consultant will proceed to assist the customer to open the account without exercising judgement.</li> </ul> <p>ii persons who merely provide factual product information and who execute a client instruction without exercising judgement.</p> <ul style="list-style-type: none"> <li>- Example, a branch consultant who merely executes a customer's request for a customer account type without exercising judgement.</li> </ul> <p>In such instances, the FSP should be regarded as providing an intermediary service, rather than the branch consultant.</p> | <p>The Registrar strongly disagrees with the commentator's view that the person referred to under paragraph (i) is excluded or does not provide clients with advice. The fact that he uses an electronic tool does not mean that he is not giving advice. The Registrar is further of the view that the person's activity is not excluded as per the definition of 'representative'.</p> |
| 212. | 4                | 23      |  | BN is not updated regularly and must be updated.  | Noted.   |
| 213. | 17               | 23      |  | This section seems to imply that the supervisory requirements are going to be removed. Guidance is requested if this will be the case going forward.  | Disagree. See response under comment 161.  |
| 214. | 4                | 24      |  | <p><b>COMMENT</b></p> <p>Our concern with s24(1)(d) is that under the current requirements, the qualification list does not distinguish between advice and intermediary services whereas this split means different recognized qualifications for CAT I intermediary services vs advice. This will cause barriers to entry for people who would like to move their careers from pure intermediary service to advice. It will also become very costly for FSPs and reps to transition from one activity to another.</p> <p>Discussion with FSB ON 29 Nov 2016:<br/>The FSB confirmed that the Registrar can in future only approve qualification for either advice or intermediary services and not only linked</p> <p><b>PROPOSAL</b></p> <p>We recommend that the current status quo remain in terms of how qualifications are recognized and this section be amended</p>  | <p>Disagree. The qualification recognition process is structured in such a manner that allows for career progression. The provision further allows the Registrar to recognise qualifications for unique types of services if the need arise.</p>   |


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|      |             |                          |   | accordingly.  |  |
| 215. | 11          | 24                       |   | <p><b>Recognition of qualifications</b><br/>           One of the functions of a professional body is to provide a specialised body of knowledge and develop a curriculum and learning outcomes based on a thoroughly conducted Job Analysis Survey. As a SAQA recognised professional body is precluded from being a training provider according to regulations set for professional bodies by SAQA, a Professional Body therefore enhances the quality of education and training by setting standards via curriculum development. It is against these standards that a Professional Body then approves an Education Provider's qualifications as developed by them and approved by the relevant quality council and SAQA.</p> <p>Professional bodies standard setting activities, in cooperation with regulators can help mitigate the cost of regulation by providing this specialised body of knowledge that has evolved within the profession.</p> <p><b>We recommend</b><br/>           In addition to FSB recognising qualifications, qualifications that have been accredited by a professional body are recognised by the regulator for regulatory purposes.</p> | Noted. The current requirements do not prevent the Registrar from recognising qualifications that have been accredited by Professional Bodies. It is not an automatic recognition and application must be made to the Registrar for recognition of those qualifications. |
| 216. | 1           | 24(2)(b)                 | ..... and functions to be performed by the person i-under .....   | Typographical error, delete "i".  |  See correction.  |
| 217. | 20          | 24(2)(b)                 | (b) the curriculum, body of knowledge and learning outcomes referred to in (a) must be quantitatively and qualitatively relevant to the role of and functions to be performed by the person under the Act |   | See response under comment 216.  |
| 218. | 24          | General comment – Part 4 |   | <p>One of the challenges in the current FAIS legislation, and in the proposed amendments, relate to the cost of registration and examination of the representatives in our environment.</p> <p>One of the objectives of the amendments relate to the fit for purpose competency requirements. The proposed Regulatory Examination requirements as set out in Table 4 is in our humble opinion not fit for purpose for representatives in our environment.</p>   | Noted.<br>The commentator's attention is directed to the exclusion in section 25 that provides that the following persons are not required to complete regulatory examinations:<br>- a Category I FSP, its key individuals   |

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|      |                  |         |  | <p>Part of the challenge may be that all representatives are dealt with in one category. This is a concern because a representative in our model is only involved in offering a simple (basic?) credit life product by sharing some factual information from a brochure and they do not provide advice.</p> <p>The implication of the requirements in table 4 is that we would be required to appoint higher qualified staff that will have a higher remuneration structure associated with it. This will result in drastically increasing our cost structures, effectively making it unviable to offer these value-added products to consumers at the lower end of the market. We do agree with the current requirements for more sophisticated products where advice is offered.</p> <p>Our current staff compliment can communicate (effectively) with clients and are capable of offering non-sophisticated credit products based on many years of experience in the industry. There is however a slim likelihood of them fulfilling the requirements of the Regulatory Examination as outlined in Table 4 due to fact that our staff was recruited for fit for purpose. We also ensure with continuous training that our current staff compliment competencies are increased and improved, we believe that is sufficient to ensure our staff can function in this sector without having the necessary qualifications.</p> <p>We fully understand the need to have representatives registered with the FSB and support this notion. However the cost associated with registering representatives is currently R 553 per representative per year and the Ombud levy is R 337 per representative per year and this further inhibits the ability to be a low-cost provider of financial services.</p> <p><b>Recommendation</b></p> <p>We propose an exemption from the Regulatory Examination as proposed in Table 4, similar to the exemption that exists for Cat 1.1 (long term insurance Category A).</p> <p>We also propose a lower registration cost for this category, similar to Cat 1.1 (long term insurance category A) representatives.</p> | <p>and representatives that are authorised, approved or appointed to render financial services only in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and</p> <ul style="list-style-type: none"> <li>- a representative of a Category I FSP that is appointed to perform only the execution of sales in respect of a Tier 1 financial product provided that the requirements in section 22(b)(ii) are complied with; and</li> <li>- a representative of a Category I FSP that is appointed to render financial services only in respect of a Tier 2 financial product.</li> </ul> |
| 219. | 1                | 25(b)   | The competence requirements ..... (b) do not apply to-<br>(i) ..... and/or Friendly Society Benefits; <del>and</del> | The "and" at the end of subparagraph (i) should move to the end of subparagraph (ii).  |  See amendment.  |


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|      |                  |            | (ii) ..... requirements in section <u>paragraph 22(b)(ii)</u> are complied with; <u>and</u>   |  |   |
| 220. | 20               | 25(b)(i)   | <del>(i) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed to render financial services only in respect of the financial products: Long term Insurance subcategory A and/or Friendly Society Benefits; and</del> | Remove above as it is covered in (iii)   |  See amendment.  |
| 221. | 13               | 25(b)(ii)  |   | <p>We don't follow the rationale to exempt representatives in relation to Tier 1 financial products for execution sales from the need to write the regulatory examinations. Such Tier 1 financial products can be complex and we therefore question whether execution only provisions should be allowable for these more complex products. Although execution of sales implies that there is no provision of advice, we are concerned that representatives who are exempted in terms of the current wording, should understand the GCoC, and the regulatory examinations is one way of testing that understanding.</p> <p>Similar to our comments in relation to s22(bb)(ii), we would suggest that the exemption from the need to write the RE exams be limited to representatives of Category I FSPs that are appointed to perform the execution of sales in respect of a <b>Tier 2</b> financial products only. If this were acceptable to the regulator, then, given the wording and exemption contained in s25(b)(iii), we see no need for the entire s25(b)(ii) and it can be deleted.</p> | <p>Noted.</p> <p>The intermediary services are rendered in accordance with a pre-approved script, if not the exclusion does not apply.</p>  |
| 222. | 11               | 25(b)(iii) |   | <p>As it is presently written, this will then exclude certain representatives who are currently required to write the exams.</p> <p>Considering the definition of "financial services" in the Act, clarification is sought whether this section should apply to financial services or to intermediary services only, meaning that where advice is provided on Tier 2 products the exam will still be a requirement.</p>  | <p>Noted.</p> <p>Unless specifically defined in the Notice a word or expression to which a meaning has been assigned in the Act has that meaning. Therefore, when reference is made to 'financial service' it includes both advice and intermediary services.</p> |
| 223. | 4                | 26         | "An FSP and key individual must ..... before that person is authorized or approved by the Regulator".   | This sections does not cater for the scenario when a rep goes under supervision to meet the fit and proper requirements in the future. This will certainly place barriers to entry as no one can   | <p>Disagree.</p> <p>See response under comment 161.</p>   |

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|      |                  |         | In essence remove the representatives from this requirement as they are allowed to work under supervision to meet this requirement by a future date. | enter the industry unless they have written and passed the RE5. These requirements only make sense in the context of the FSP and KI.  |   |
| 224. | 20               | 26      |  | Moonstone believes that representatives in Cat II and Cat IIA should also have to pass the RE3 as well as RE5 as knowledge of the Code of Conduct for Discretionary FSPs is vital to the rendering of intermediary services to their clients.   | The Registrar agrees with commentator's comment and intends to require of those representatives to complete the RE3 regulatory examination after the Registrar has updated the specific applicable Codes of Conduct.  |
| 225. | 17               | 26(1)   |  | It is standard practice that all Key Individuals involved in the management of representatives also complete the RE 5 regulatory examination however; there is no specific requirement in the notice. This does not differentiate between the types of key individuals.<br><br>Clarity is sought as to whether it can be assumed that a Key Individual will only be required to complete the RE 1 regulatory examination only where such key individual will not be providing services as a supervisor? | Going forward, key individuals will only be required to complete the examinations listed for key individuals in Table A.<br>However, the Registrar will consider amending the Exemption of services under supervision to allow only those KIs who are also reps to be appointed as supervisors. |
| 226. | 8                | 26(6)   |  | At present it is possible for a representative to be appointed under supervision before he has completed the regulatory examination. From section 26(6) it would appear that this is no longer the case. Clarity on the point would be appreciated.   | See response under comment 161.   |
| 227. | 11               | 26(6)   |  | This paragraph seems to indicate that before being employed (appointed), a person must pass the regulatory exam. Our understanding is that a person can be appointed under supervision, without having passed the regulatory exam. We would like to confirm that intention of this section is not to prohibit employment, but rather that a person must work under supervision until the exam is passed.  | See response under comment 161.   |
| 228. | 17               | 26(6)   | (6) An FSP, and a key individual <del>and a representative</del> must successfully pass the applicable regulatory examinations before that person's  | It is our understanding from the comments received from the Registrar, that it is not the intention of the Registrar to repeal the current exemption which allows representatives who do not meet the competence requirements to render financial services, whilst  | See response under comment 161.<br>The Registrar further disagrees with commentator that it is necessary for the requirements to refer to the   |

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|      |                  |                          | authorisation, or approval or appointment. | <p>working under supervision.</p> <p>We recommend that this section be reworded to indicate the above as it appears not to cater for this scenario where representatives work under supervision to meet the fit and proper requirements in future.</p> <p>Further to above, we would also suggest, for clarity purposes, an inclusion of an additional section or subsection which would indicate that should a key individual also wish to be appointed as a representative of the FSP on approval, he would be required to have completed the regulatory examination prior to such approval/ appointment if he will be acting as a the sole representative.</p> <p>Only in the above instance would a representative be required to have completed the applicable regulatory examination prior to appointment.</p>   | <p>exemption.</p> <p>Key individuals must at date of appointment comply with all competency requirements applicable to it.</p> <p>See also response under comment 225.</p>   |
| 229. | 1                | General comment - Part 5 |  | <p>ASISA members strongly suggest that the introduction of requirements for class of business training and CPD for Category II, IIA and III FSPs should be excluded from the Draft Fit and Proper Requirements to allow for appropriate and adequate consultation and consideration of options to achieve the desired outcome in these categories of FSPs. The activity of investment management needs to be redefined before proportional and fit for purpose requirements could be developed. It is submitted that the risk of poor consumer outcomes in the absence of requirements is mitigated by the requirements of the FAIS Code of Conduct for Administrative and Discretionary FSPs, the proposed general requirement in paragraph 12(a) and other competence requirements, for example the 3 years' experience. Further motivation is included in the specific comments on paragraphs 28(3) and 31.</p> | <p>Disagree.</p> <p>Registrar does not dictate accept to the limited extent set out in section 29(3) what class of business training should entail. The same apply to CPD. It is the responsibility of the FSP to ensure appropriateness. See also outcome of impact assessment.</p> |
| 230. | 11               | General comment - Part 5 |  | <p>We agree with the introduction of class of business training as this will bridge a gap that exists between the approved qualification list and knowledge needed to understand the operation of financial products.</p>  | <p>Noted.</p> <p>The Registrar will monitor the quality, effectiveness and appropriateness of the class of business training as provided by</p>  |

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|  |                  |         |                            | <p>We also support that accredited providers must provide this training, as this will ensure the quality of the training provided. However, there is still a risk that the training programme may not sufficiently address the components required to give product advice and that the quality councils generally do not focus on the quality of <b>content</b> of the qualifications (in this instance Class of Business training) for approval. This is to be expected given that the QC's tend not to retain subject matter experts in <b>all</b> fields of study that they approve qualifications for.</p> <p><b>Proposed solution</b></p> <p>Professional bodies have a solid understanding of how financial advice is delivered in a variety of settings and are best qualified to understand how regulatory and environmental changes can affect financial advice professionals. With the experience of members, professional bodies can anticipate trends in the profession and consumer needs, and drive changes that benefit society.</p> <p>Through a community of experts, professional bodies are experts in the practice of financial planning and advice, and can use their understanding of the financial planning and advise process to assist policymakers and regulators in creating and implementing quality regulation. This expertise can be used to develop curriculum and competency frameworks for the profession. These are then used to set education standards and accredit qualifications offered by education providers.</p> <p>We therefore believe that professional bodies are well positioned to mitigate this risk by accrediting training programmes offered for class of business training.</p> <p>We therefore <b>recommend</b> that in addition to the programmes being offered by accredited providers, the programmes but also be accredited by a professional body.</p> <p>We <b>recommend</b> that where a representative or key individual holds a qualification, recognised by a professional bodies' certification process in obtaining a designation, that they are</p> | <p>accredited training providers and will reassess the requirements if there is evidence of the risks referred to by the commentator.</p> <p>The Registrar disagree with the recommendation that a person holding a qualification, recognised by a professional body's certification process in obtaining a designation, be exempted from additional class of business training as such training would not in all instances necessarily have been covered in his qualification.</p> <p> See amendment of 'class of business training' definition.</p> |

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|      |                  |                          |  | exempted from additional class of business training as this would have been covered in their qualification.   |  |
| 231. | 20               | General comment - Part 5 |  | <p>We are concerned that the competence of determining client's needs is not covered within the class of business training. e.g. Where is the need for estate, retirement or investment planning determined?</p> <p>We believe the cost of delivery of this requirement needs to form part of the impact assessment for the industry.</p>   | <p>See outcome of impact assessment.</p> <p>The class of business and product specific training replaces the level 2 product exams. The commentator's concern is addressed by the general competency requirement in section 12 and the FSPs responsibilities to ensure representatives have adequate appropriate and relevant skills, knowledge and expertise to render the particular financial service.</p>  |
| 232. | 4                | 28(1)                    | <p>Reword section (1) to read as follows:<br/>"Subject to subsection (2) and (3), .....<br/>Apply to all FSPs, key individuals (who are also representatives) and representatives".<br/>Remove the "or" between (aa) and (bb) and add "and/or".</p>  | <p>Application of the envisaged training in respect of KIs does not appear to be appropriate especially where they are NOT Reps. KIs are approved by the FSB and require product experience, RE and recognized qualification BEFORE appointed. There are less onerous requirements depending on whether you sell Tier1 (simple) or Tier2 (complex) products.<br/>However, we do believe the "or" is restricting an FSP/Rep that does offer simple and complex products. This appears to read as you need to either do simple OR complex to get the benefit.</p> | <p>Disagree.<br/>Replacing the "or" with an "and" will require a person to perform both activities in order to benefit from the exclusion. It is important to note that the exclusion only applies to a representative.<br/>In addition, it is important to understand that a key individual that renders financial services must be appointed as a representative in order to renders such services and must therefore comply with the requirements applicable to both functions (key individual and representative).</p> |
| 233. | 2                | 28(2)(a) and (b)         | <p>We recommend the following wording:<br/>28(2) The competence requirements relating to class of business training contained in this Part do not apply to-<br/>(a) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed to.....; <u>and OR</u><br/>(b) a representative of a Category I FSP</p> | <p>The use of "and" after 28(2)(a) can be interpreted that in order for a representative to be exempted he/she must meet the requirements of 28(2)(a) AND (b).</p>  | <p>Disagree.<br/>See introductory words of paragraphs (a) and (b).</p>   |



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|      |                  |              | that is appointed to ..”   |  |   |
| 234. | 1                | 28(2)(b)     | <p>The competence requirements relating to class of business training contained in this Part do not apply to - (b) a representative of a Category I FSP that is appointed to-</p> <p>(aa) <del>furnish advice or render an intermediary service in respect of a Tier 2 financial product; or perform only the execution of sales in respect of a Tier 1 financial product provided that the requirements in paragraph 22(b)(ii) are complied with; or</del></p> <p>(bb) <del>perform only the execution of sales in respect of a Tier 1 financial product provided that the requirements in section 22(b)(ii) are complied with.</del> <u>render financial services only in respect of a Tier 2 financial product.</u></p> | Drafting to be aligned with paragraph 25(b).   | <p>Agree.</p> <p> See amendment.</p> |
| 235. | 13               | 28(2)(b)(bb) |  | <p>We believe it is appropriate for all representatives who advise or provide intermediary services in respect of a Tier 1 financial product to undergo class of business training. And, here we include representatives involved in the execution of sales too.</p> <p>For the reasons set out in our comments in relation to sections 22(b)(ii) and 25(b)(ii), and supported by the provisions of s29(1)(a) of this part, we therefore suggest that this exemption not be extended to execution of sales in respect of Tier 1 financial products. This subsection can therefore, in our view, be deleted.</p> <p>Alternatively, if the regulator insists on this exemption, we suggest that the definition of “execution of sales” be revised in accordance with our suggestion above.</p> | See response under comments 204 and 221.  |
| 236. | 20               | 28(2)(b)(bb) | (bb) perform only the execution of sales in respect of a Tier 2 financial product provided that the requirements in section 22(b)(ii) are complied with  |  | <p>Disagree.</p> <p>See response under comments 204, 221 and 235.</p>   |

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| 237. | 1                | 28(3)   | <p>The competency requirements relating to <u>class of business and product</u> specific training contained in this Part do not apply to a Category II, Category IIA or a Category III FSP</p> | <p>In the discussions at the meetings of the FSB Market Conduct Regulatory Framework Steering Committee, the Registrar always emphasised that the requirements under discussion only relate to Category I representatives giving advice. ASISA informed its members accordingly.</p> <p>At the FSB Insurance Regulatory Seminar on 17 November 2016, the FSB (in presenting a status update on RDR) indicated that the FSB is considering redefining “investment management” as a specific licence activity to appropriately identify “true” investment management rather than the current broad reference to a discretionary mandate.</p> <p>Class of business training is to be provided by an accredited provider or an education institution. To our knowledge, FASSET (the Finance, Accounting, Management Consulting and other Financial Services SETA) offers only one accredited training programme which could potentially qualify as class of business training, i.e. National Diploma: Financial Markets. In the time available to comment, it was not possible to verify whether this programme would in fact meet the requirements of paragraph 29(3). The ASISA Academy very recently started exploring the option of SETA accreditation. A formal process has however not started. The ASISA Academy offers short courses that are endorsed by the University of Cape Town but these courses have not been analysed to determine whether they would meet the requirements of paragraph 29(3).</p> <p>In view of the aforementioned, ASISA members strongly suggest that the introduction of requirements for class of business training for Category II, IIA and III FSPs should be excluded from the Draft Fit and Proper Requirements to allow for appropriate and adequate consultation and consideration of options to achieve the desired outcome in these categories of FSPs. Once investment management is specifically defined, proportional and fit for purpose requirements could be developed. It is submitted that the risk of poor consumer outcomes in the absence of a class of business training requirement is mitigated by the requirements of the FAIS</p> | <p>Although the discussions at the Market Conduct Regulatory Steering Committee mainly dealt with advice (bucket 1) the intention was always to review the competency requirements for the different types of intermediary services (buckets 2 to 4).</p> |


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|      |                  |         |                            | Code of Conduct for Administrative and Discretionary FSPs, the proposed general requirement in paragraph 12(a) and other competence requirements, for example the 3 years' experience.  |  |
| 238. | 8                | 28(3)   |                            | Section 28(3) exempts Category II representatives from product specific training. We would caution against such an approach. Although Category II representatives do not provide advice on products, they would still purchase the different products within their discretionary mandate on behalf of consumers. This does not happen on the advice of anyone else. An incomplete or insufficient knowledge of the different products could therefore still result in significant losses for the consumer. The discretionary mandate should therefore not require a lesser product specific knowledge. The same principles would apply to the representatives of a Category IIA or III FSP. | <p>Noted.</p> <p>The Registrar agrees that Category II representatives must have an understanding of the products in respect of which they render financial services. However, the Registrar is of the view that that knowledge would be obtained through the class of business training.</p> <p>It is not practical to require of representatives in the asset management space to undergo specific product training on eg. shares as it would entail training on every specific share (local and foreign) prior to them being able to render financial services.</p> <p>In addition, the fact that no minimum product training is required does not absolve the FSP or representative from the general requirement in section 12(1) that requires that they must have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that they perform.</p> <p>However, the Registrar will monitor and will reassess the requirements when necessary. It is further important to note that the Registrar will shortly publish a proposal to</p> |


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|      |                  |         |                            |   | more clearly define the activity of investment management and the extent to which it needs to be demarcated from other forms of discretionary investment mandates.  |
| 239. | 11               | 28(3)   |                            | Paragraph 28 (3) excludes Category II, IIA and III FSP from product specific training. Certain advice practices do hold a category II license and have a discretionary mandate to make product decisions on behalf of a customer. While in general Category II licence holders do not provide advice to a consumer some do. We therefore do not recommend a blanket band for FSP in these categories.   | See response under comment 238. In addition, the exclusion only applies to a person in respect of those activities performed under eg. its Category II licence. The exclusion does not apply to that person where it renders services under its Category I licence. |
| 240. | 13               | 28(3)   |                            | We can't quite follow the rationale as to why these categories of FSPs should be exempt from product specific training. We acknowledge that if product specific training is required in the case of listed shares or derivatives for instance, we don't know whether it is practical or who would provide such training? And then, must it be per share or per sector? So, we are not 100% certain that it is practical in all instances. However, in respect of some products (eg. RAs under Cat II), we believe it would be relevant. We therefore support class of business training and even sub-class training (ie. iro some specific products). | See response under comment 238.   |
| 241. | 14               | 28(3)   |                            | We do not support the "dispensation" for Category II, IIA and category III FSPs in 28(3).   | See response under comment 238.   |
| 242. | 17               | 28(3)   |                            | Clarity is sought as to the rationale for excluding the requirement of product specific training for a Cat II. We assume that this is due to the fact that Cat II definition is so broad and includes both a normal FSP seeing clients and an investment manager.<br><br>We recommend that that Cat IIs (as they are defined now) should be required to have product specific training.   | See response under comment 238.   |
| 243. | 8                | 29      |                            | It is unclear who would be authorised to provide class of business training and who would be authorised to provide specific product training. We would caution against allowing product suppliers to develop their own training material as this could result in providers competing to provide the easiest accreditation processes. If product providers are allowed to provide their own  | Disagree.<br>See definition of 'class of business training' that provides that the training must be provided by an accredited provider or an education institution. 'Accredited provider' is  |

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|      |                  |         |                            | material, we would recommend that the material must be accredited by an independent body. This accreditation could be done by the FSB or by the professional bodies that oversee the CPD process.   | defined as a body that is accredited by the relevant QCTO.<br>Product specific training can be provided by any person including the FSP or a product supplier.<br><br>The Registrar disagrees that product training should be accredited given the nature and content of the training. However, the Registrar will monitor the implementation and application of product specific training and if any abuses are detected the Registrar will reconsider the appropriateness of the requirements. |
| 244. | 10               | 29      |                            | The need for class of business training to be accredited is noted. Has there been an assessment on the capacity of training providers given the probable high volume and vastly different requirements of product providers? In addition, those best suited to provide the training are the FSP's and product providers and there is a likelihood that many will not all able to afford development and provision of the training if it must occur through an accredited provider. Overall the training provided will be sanitised training by people not experienced in the market place (as it will also be if they are used to deliver product training) thus the opportunity to fully extract knowledge from industry leaders will be lost. | The training is not required to be accredited (which is the process followed in qualifications), only the training provider must be accredited. An FSP can become an accredited provider if it so chooses.   |
| 245. | 10               | 29      |                            | There are no standards demanded as to what constitutes a suitable level of understanding, merely that there is an assessment, surely such a standard is needed?   | Disagree.<br>The requirement is sufficiently clear.  |
| 246. | 10               | 29      |                            | The consequences of not completing the training are? If already appointed as a representative (see query below on this aspect) is a prohibition on performing a financial service sufficient? Or must formal debarment be undertaken.   | See commencement provisions.   |
| 247. | 10               | 29      |                            | We believe there should be a link from this category of training to on-going CPD by way of a minimum percentage/hours of CPD that must be spent on keeping this acquired knowledge up to date and   | Disagree.<br>The general CPD requirements require the maintenance of   |

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|      |                  |   |                            | relevant. Even if the number of hours is not specified a direct statement to keeping this knowledge "current" is needed.  | competence.   |
| 248. | 14               | 29  |                            | We would like further clarity as to who will be expected to conduct the class of business and product specific training in 29. We also seek clarity on whether the expectation is that this training should be "verified" by way of an assessment and, if so, what level of competency would be required. (Without this it is possible that the training requirements could become somewhat inconsequential.)                                 |  See amendment.<br>See response under comment 243 and also definition of "assessed" and the amended definition of 'class of business training' and 'product specific training'.<br><br>See further general requirement that requires a person to be proficient in respect of and understand the class of business and the financial product. This requirement must be read with section 12(1). |
| 249. | 20               | 29  |                            | Moonstone would like to understand how the process of having completed adequate training prior to rendering any financial service will be handled, particularly in the case of services provided under supervision.   | A person can be appointed as a representative but may not render financial services, including rendering such services under supervision, unless product specific training has been completed. The Registrar intends to allow representatives to work under supervision for specific period of time whilst completing the class of business training. The Registrar will consult shortly on the Exemption of Services under Supervision.  |
| 250. | 4                | 29(1)<br>Class of<br>business<br>training and<br>Product specific<br>training |                            | <b>COMMENT</b><br>Application of the envisaged training in respect of KIs does not appear to be appropriate especially where they are NOT Reps. KIs are approved by the FSB and require product experience, RE and recognized qualification BEFORE appointed. There are less onerous requirements depending on whether you sell Tier1 (simple) or Tier2 (complex) products.<br>However, we do believe the "or" is restricting an FSP/Rep that | Noted.<br> See amendment that removes requirement that KI's must have product specific training.<br><br>Replacing the "or" with an "and" will require a person to perform both   |



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|      |                  |         |                            | <p>does offer simple and complex products. This appears to read as you need to either do simple OR complex to get the benefit.</p> <p><b>PROPOSAL</b></p> <p>In the event that the FSB does not remove the requirement for business to carry out the training by accredited providers, then business training cannot be done before a rep starts to sell. The Reps should be given at least three months from appointment as a rep to complete this training. Product training can be done before they are allowed to render financial services on those specific products but continue for the others where they have obtained the training already.</p> <p>Split this section and deal with class of business training separately to product training.</p> <p>Reword the class of business training to read as follows:<br/>         "An FSP .... Key individuals (that are representatives) and representatives, within three months of being appointed to render any financial service in respect of a financial product are proficient in respect of, understand, and have completed adequate training on the class of business in which that product falls".</p> | <p>activities in order to benefit from the exclusion. The exclusion further only applies to a representative.</p> <p>In addition, it is important to understand that a key individual that renders financial services must be appointed as a representative in order to renders such services and must therefore comply with the requirements applicable to both functions (key individual and representative).</p> <p>The requirements do not prohibit an FSP to appoint a representative who has not completed the product specific training. However, such person may not start rendering financial services unless all training has been completed. See response to comment 249 insofar it relates to class of business training and services under supervision. See also responses under comments 249 and 246.</p> |
| 251. | 17               | 29(1)   |                            | <p>It would appear that the unintended consequence of having this requirement for the class of business training to be carried out by accredited providers, would be that business training cannot be done before a representative (rep) starts to sell.</p> <p>Whereas if the requirement for the class of business training is not to be offered by QCTO accredited providers, then FSPs will be in a position to offer this internally leading to the better practical application.</p> <p>We recommend that the reps should be given at least three months from appointment as a rep to complete this training.</p> <p>Product training can be done before reps are allowed to render financial services on those specific products but continue for the</p>   | <p>Disagree.</p> <p>The requirements do not prohibit an FSP to appoint a representative who has not completed the product specific or class of business training. See response to comment 250.</p>  |


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|      |                  |             |  | others where they have obtained the training already.   |   |
| 252. | 13               | 29(1) & (4) | We suggest that section 29(4) could be amended to read as follows:<br><i>The training and assessment referred to in subsection (1) relating to the financial product, <b>which training shall be the responsibility of each product supplier in relation to its own products, must include training and assessment ...</b></i> | All advisors should know what they're talking about and they should be able to recommend appropriate product solutions to meet customer needs, irrespective of the specific product recommended or applied. We are in favour of making product accreditation a compulsory standard before FSPs/representatives are allowed to sell/market the products of product suppliers. We believe that the current RDR proposals in relation to product provider responsibility for advice may well be a catalyst for those who are not yet applying this as a standard.<br>Therefore, we support the competency requirements for FSPs and representatives in respect of these two types of training. However, this Part 5 is silent on the responsibility in relation to the product specific training. We submit that product suppliers should be responsible for providing product specific training in relation to their products. As part of this responsibility we submit that the product supplier should keep records of such training. | Noted.<br>The Registrar agrees that product suppliers should take responsibility of product specific training. This would also align with the TCF principles. However, the FAIS Act does not currently empower the Registrar to place requirements on product suppliers. The commentator's comments will be considered under the RDR process and future market conduct requirements under the FSR Bill. |
| 253. | 22               | 29(1) & (2) |  | The class of business listed in Table 1 of Annexure 4 under the heading "securities and investments" encompasses various classes of business which have different knowledge and experience requirements. These include corporate finance, stockbroking, asset management, collective investment schemes, private equity, and hedge funds, amongst others. Therefore, "securities and investments" do not belong in one class in the same manner as, say, long or short term insurance does. For example, a corporate finance adviser would not need to have proficiency in collective investment schemes, although they are listed as falling under "securities and investments".<br>Collating all of these businesses together under one class of business called "securities and investments" is, in my view, arbitrary and should be reconsidered.   |  See amendment re reclassification of products into classes of business.   |
| 254. | 10               | 29(1)       |  | To insist on the training be provided "prior" to rendering a financial service is not practical. This training could easily be slotted into the supervision process with a requirement it must be completed with say the first 12 months. It also needs to be made clear whether a person can be appointed as a representative prior to having this training or only appointed once completed.  | See comment 250.  |
| 255. | 20               | 29(1)(a)    | (a) are <u>competent</u> in respect of,  |   | Disagree.   |

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|      |                  |         | understand, and have completed adequate training on - |  | There is a difference between competent and proficient: While both refer to knowing a skill, competency can refer to the bare minimum required for acceptability. Proficiency carries with it a level of mastery that is above the minimum. Therefore, with a competency model, you can master all the competencies and not produce the desired results on the job. In other words, all the pieces don't add up to the whole.<br>With a proficiency requirement, the end result is completely spelled out and training doesn't end until the employee becomes proficient. The result is important rather than all the pieces and parts. |
| 256. | 4                | 29(2)   | Remove this section in its entirety.                  | This will not be practical to implement also considering that KIs are approved by the FSB before they can act in such roles.   | Disagree.<br>The Registrar is of the view that key individuals must have class of business training prior to them being appointed as key individuals.<br> See amendment.<br>See also response under comment 250.   |
| 257. | 7                | 29(2)   |   | The training referred to in this clause is extensive, and has potentially onerous implications for FSP's. Who does the FSB envisage will prepare and accredit the training, as well as assess candidates?  | See responses under comments 243 and 248.   |
| 258. | 10               | 29(2)   |   | To insist on the training be provided "prior" to rendering a financial service is not practical. This training could easily be slotted into the supervision process with a requirement it must be completed with say the first 12 months. It also needs to be made clear whether a person can be appointed as a representative prior to having this training or only appointed once completed. Similar | See response under comments 246 and 249.<br><br>As regards key individuals, see response under comment 256.   |

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|      |                  |         |                            | comment applies to key individuals as the way it is written (29 (2) ) suggest that the person has already been appointed as a key individual.  |   |
| 259. | 17               | 29(2)   |                            | <p>We submit that this will not be practical to implement also considering that KIs are approved by the FSB before they can act in such roles.</p> <p>If one looks at the criteria a KI needs to meet before they are approved, they need management experience only to be a Management KI and product experience already to be an Oversight KI.</p> <p>It is our understanding that the purpose of class of business and product training was to replace the level 2 exam for reps. The KIs would need product knowledge before they are approved.</p> <p>If we are now to require them to do this training, this may translate in delays in applying for staff to be KIs, creating bigger risks for FSPs that need to replace KIs.</p> <p>CPD is required for KIs and we believe that this requirement will be achieved as required for the FSB.</p> | See response under comment 256.   |
| 260. | 4                | 29(3)   |                            | <p><b>COMMENT</b></p> <p>This requirement is for the accredited provider to meet. If FSPs are allowed to do this training rather, then our training material needs to meet these requirements.</p> <p><b>PROPOSAL</b></p> <p>Allow FSPs to develop this material and have meet a set of criteria and if need be have the material accredited by an accredited provider appointed by the FSB.</p>   | Disagree.<br>See response under comment 243 and 248.  |
| 261. | 7                | 29(3)   |                            | <p>We do not understand on what basis training should include training on the legal structures of other market participants. Furthermore, this information may not be readily available.</p>   | Noted.<br>In order to fully understand the impact of all role players/market participants it is necessary to understand their legal structures as different outcomes may be achieved depending on the applicable legal structure. |


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| 262. | 18               | 29(3)       |                            | <p>IISA agrees with this requirement. All IISA educational partners are on board to ensure alignment and that classes of short term are catered for.</p> <p>A concern however still exists about the monitoring of consistent processes and assessment procedures being consistently applied across providers. The IISA propose that providers be evaluated and monitored by Professional Bodies against the standards set out by the FSB and any other professional requirements.</p>   | <p>Disagree.<br/>The Registrar disagrees that training providers should be accredited by Professional Bodies.</p> <p>The Registrar is of the view that SAQA has appropriate oversight of accredited training providers to address the commentator's concerns. However, the Registrar will monitor the implementation and application of the requirements and if any abuses are detected or if any of the concerns expressed by the commentators materialise the Registrar will reconsider the requirements.</p> |
| 263. | 22               | 29(3)       |                            | <p>Having regard to the above and the fact that corporate finance does not involve selling or investing in products per se, the result is that not all of the training requirements listed in this sub-section are relevant or helpful in ensuring that a corporate finance adviser would be able to provide services to an adequate standard.</p> <p>Training for corporate finance purposes would rather include matters such as examination and analysis of companies' financial statements, assessing the value of a proposed transaction, analysing cost savings, and ascertaining ways to finance a transaction. Corporate finance advisors need to learn to anticipate market reaction and work in conjunction with lawyers and other professionals to bring transactions to completion. Project management is therefore another key skill that they require.</p> | <p>Noted.<br/>The Registrar is of the view that the principles set out in the section is broad enough to cater for the matters referred to by the commentator. However, the commentator's attention is directed to the introductory words of subparagraph (3) that provides that the class of business training must <u>include</u> the matters listed. The training is therefore not limited to the matters listed.</p>  |
| 264. | 17               | 29(3) & (4) |                            | <p>There is concern that the training seems to be very onerous. This would result in a costly burden on the product provider, particularly in terms of product training as products are not always generic. Clarity is sought as regards the following:</p> <ul style="list-style-type: none"> <li>- Who is going to prepare and accredit the training?</li> <li>- Will there be exams relating to this?</li> </ul> <p>There is a concern regarding training in that a provider who provides the least onerous training will create an arbitrage opportunity to attract more business, regardless of whether their</p>   | <p>Disagree.<br/>The Registrar is of the view that the training requirements are proportionate (see exclusions) and fit for purpose.</p> <p>See responses under comments 243 and 248 regarding by whom the training must be provided,</p>   |

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|      |                  |          |                            | <p>product is the best fit for client needs.</p> <p>We propose that the FSB allow FSPs to develop this material and have it meet a set of criteria accredited by the relevant authority i.e. QCTO or SETA.</p> <p>Further, clarity is required as to 29(3) (g) and (i) in respect of why training is required on the business and legal structure of other market participants is required.</p> <p>We are of the view that 29(3) (i) should form part of the Risk Management System as this requirement is too onerous for representatives and would receive better consideration at a strategic level.</p> | <p>accreditation and requirements applicable to assessment. Please note differences between class of business training and product specific training.</p> <p>See response under comment 261 regarding the requirement pertaining to legal structures.</p> <p>The Registrar disagrees that section 29(3)(i) is too onerous. Surely an advisor advising a client to purchase or sell, etc. a particular product must understand and be able to explain to the client the potential impact of the factors referred to in the section in order to enable the client to make an informed decision.</p> |
| 265. | 17               | 29(4)(a) |                            | There is a comma after the word 'specific' in s29 (4) (a) that seems out of place, is there a word missing?   | <p>Agree.</p> <p> See correction.</p>  |
| 266. | 17               | 29(4)(i) |                            | We are of the view that 29(4)(i) should form part of the Risk Management System as this requirement is too onerous for representatives and would receive better consideration at a strategic level.   | <p>Disagree.</p> <p>See response under comment 264.</p>   |
| 267. | 17               | 29(4)(o) |                            | <p>According to this section, the training and assessment of financial products needs to include amongst other items, the identity of the product supplier, including their good standing.</p> <p>Clarity is sought as to the practical meaning of good standing in this context and how will this be assessed? We request that further guidance be provided in this respect.</p>   | <p>The ordinary meaning of the concept of "good standing" would apply.</p> <p> See amendment.</p>  |
| 268. | 18               | 29(5)    |                            | <p>To avoid any unintended consequences, it is recommended that Product suppliers include the range of product names representing the same insurance contract.</p> <p>The IISA recognise that this allows for Product suppliers who have</p>  | Noted.  |


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|      |                  |             |   | registered and accredited training departments could provide class of business and product training simultaneously provided it meets the prescribed FSB and accreditation requirements.  |  |
| 269. | 4                | 29(5) & (6) | Amend the definition of class of business training to allow FSPs to develop this information and then this requirement does not need to change. | This will work if the FSP is allowed to do both types of training, which is not the case if look at the definition. It will make sense to do the training as combined training.  | Noted.<br>Some FSPs are also accredited training providers and would be able to provide both types of training.  |
| 270. | 17               | 29(6)       |   | This will work if the FSP is allowed to do both types of training, which is not the case if look at the definition.<br>It will make sense to do the training as combined training.   | See response under comment 269.  |
| 271. | 21               | 29(6)       |   | Where a financial product is a participatory interest in one or more collective investment scheme, is it the intention of the Registrar that the key individual/representative is required to undertake class of business and product specific training of each underlying financial product (e.g. shares, bonds, money market instruments) held by each collective investment scheme in relation to which a financial service is being rendered, even where the FSP is not licensed for such product sub-categories? Similarly where the financial product is a benefit provided by pension fund is the key individual/representative required to undertake class of business and product specific training of each underlying financial product held by the pension fund?<br><br><b>Recommendation</b><br>Removal of 29(6) as 29(1) already provides for financial product training and product specific training. The product specific training should be sufficient for the financial product in relation to which financial services are being rendered as the key individual/representative would understand what the financial product comprised of and understand the underlying components, but not require an in-depth knowledge of each underlying component. An in-depth knowledge of each underlying component should only be required where these are stand-alone financial products in relation to which financial services being rendered. |  See amendment that removes the requirement for product specific training. A person will be required to do class of business training in respect of the underlying products and see amendment of classes of business. |
| 272. | 22               | 29(6)       |   | The concept of an “underlying product” in relation to “securities and investments” is open-ended. New products are developed continuously, and they are often developed or tailored in order to  | See response under comment 271.  |

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|      |                  |               |  | accommodate the specific needs of a client.   |  |
| 273. | 4                | 30            | To be amended to remove KIs and only apply to KI s that are also reps. | These requirements should only apply to KIs that are also reps. No format has been provided to follow to meet this requirement. We also need to note that we will need to provide this to product supplier whose products we sell and to ex-employees as well.  | Disagree.<br>No rationale is provided why the key individual should not be subject to class of business training.<br>The Registrar intentionally did not prescribe the format of the competence register. FSPs may use a format that is most appropriate for their businesses as long as it complies with the relevant requirements. |
| 274. | 13               | 30(c)(i)      |  | <p>We believe that the product supplier should be responsible for providing product specific training in relation to its products. As part of this responsibility the product supplier should keep records of such training.</p> <p>We are comfortable that an FSP should provide confirmation to product supplier in relation to its (and/or its reps) class of business training.</p> <p>But, given our contention that product supplier should be responsible for providing product specific training and should keep records of such, we do not see the need for FSPs to provide confirmation to product suppliers in relation to product specific training.</p> <p>If this requirement is insisted upon, then we submit that a product supplier should only be allowed to request confirmation of product specific training <i>in relation to its own products</i>. If this right to request by a product supplier is not limited, we are concerned that the right to privacy of contractual arrangements of the FSP is compromised.</p> | <p>See response under comment 252.</p> <p>As regards the commentator's last comment, please note that the requirement is limited in that the FSP only have to provide the confirmation where the product supplier requires such confirmation in order to ensure <b>compliance with its own legal obligations</b>.</p>                |
| 275. | 10               | 30 & 32(3)(e) |  | <p>How are records to be kept if FSPs cease trading? Or there are acrimonious situations between employer and employee (as often seen in debarment situations) This information will also not be available on request in this event.</p> <p>It should be made the responsibility of the individuals to retain their own records in addition to any records retained by the FSP. This would allow the ease of movement within the market place without the need to rely on 3<sup>rd</sup> parties to provide proof of</p>  | It is <b>compulsory</b> for the FSP to provide the information set out section 30(c). In addition, nothing prevents the representative, in addition to the requirements in that section, to also maintain its own records.   |


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|  |                  |         |                            | competence on this level of training and would align to the proposed S40 requirements.  |  |
| <b>CHAPTER 4 – CONTINUOUS PROFESSIONAL DEVELOPMENT</b> |                  |         |                            |   |  |
| 276.   | 1                | General |                            | ASISA members strongly suggest that the introduction of requirements for class of business training and CPD for Category II, IIA and III FSPs should be excluded from the Draft Fit and Proper Requirements to allow for appropriate and adequate consultation and consideration of options to achieve the desired outcome in these categories of FSPs. The activity of investment management needs to be redefined before proportional and fit for purpose requirements could be developed. It is submitted that the risk of poor consumer outcomes in the absence of requirements is mitigated by the requirements of the FAIS Code of Conduct for Administrative and Discretionary FSPs, the proposed general requirement in paragraph 12(a) and other competence requirements, for example the 3 years' experience. Further motivation is included in the specific comments on paragraphs 28(3) and 31. | Disagree.<br>The Registrar is of the view that the Categories of FSPs referred to has to maintain their competence to ensure good outcomes for customers.  |
| 277.   | 1                | General |                            | The current Fit and Proper Determination expressly indicates that the CPD requirements become applicable once all the competence requirements are met. ASISA members respectfully request the Registrar's confirmation of the understanding that the 2 <sup>nd</sup> Draft Fit and Proper Requirements does not contain a specific "start date" for CPD as a more principles based approach is being adopted in respect of CPD. A specific "CPD start date" could differ depending on the FSP's policies and procedures on CPD (paragraph 32(2)) to achieve the requirement of <i>maintaining</i> competence and complying with minimum requirements (paragraph 32(1)).   | In terms of the new requirements all persons must at date of authorisation, approval or appointment comply with all the competency requirements. The CPD requirements, therefore, become effective immediately after such authorisation, approval or appointment. See specifically section 33(4) that deals with persons authorised, approved or appointed for a period of less than 12 months in a particular CPD cycle.<br>However, it is important to note that in terms of the Exemption of Services under Supervision, <b>representatives</b> may be appointed to work under supervision whilst they obtain the |




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|      |                  |         |                            |   | relevant <b>experience and qualifications</b> . The Registrar intends to extend that exemption to include an exemption from the CPD requirements until such time the representative has obtained the required experience and/or has completed his qualification. See also response 250 in respect of the class of business training.   |
| 278. | 6                | General |                            | <p>BIAC supports the importance of maintaining competence, skills and expertise in the execution of services to our clients.</p> <p>FSP's with a certain level of qualifications were expected to accumulate a certain number of SAQA approved credits. A large number of our members repeated qualifications unknowingly because they were offered by different institutions with different names allocated to them. That is why most of them have been told that they have only 60 credits. And the RE examinations also delayed the process.</p> <p>BIAC still maintains its stand with regards to the examinations. The organisation believes that insurance companies can handle the aspect of training with distinction and they are doing just that. They are even keeping records of our training, because there is a benefit in investing in the FSP development.</p> <p>WHY CREATE ANOTHER SITUATION THAT WILL FORCE FSP's TO LOOSE MONEY TO THE BENEFIT OF ONE OR TWO INSTITUTIONS OR ORGANISATIONS LIKE IT HAS BEEN THE CASE WITH RE EXAMINATIONS</p> | <p>Disagree.</p> <p>The CPD requirements are not new. The Registrar merely updated the current requirements to make it more principle based and to ensure that CPD activities are appropriate and fit for purpose.</p> <p>Further, CPD activities can be offered by any person including a product supplier or FSP as long as the activity is accredited by a Professional Body.</p> |
| 279. | 8                | General |                            | <p>Although we support the principles underlying the CPD process, we believe that it will require a significant development of new processes. We have long been recording the CPD of our representatives. We will now be required to identify specific needs for each representative and coordinate a tailor-made training programme for each. We therefore request that this requirement is phased-in over a period of time and is only required from the 2018 CPD cycle.</p>  | <p>Agree.</p> <p> See amendment to commencement dates.</p>  |

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| 280. | 22               | General |  | <p>No industry-specific or professional qualifications apply to corporate financiers, in South Africa or elsewhere that we are aware of. For this reason, no professional body exists for corporate finance advisors.</p> <p>Whilst many of Rothschild's current front office employees are chartered accountants (ten out of eighteen), and are therefore eligible for SAICA membership, which would allow them to undertake CPD via SAICA, approximately half do not belong to a professional body. Of those, two hold the CFA qualification. We understand that the CFA Institute offers a voluntary programme as a framework for CPD.</p> <p>However, even if the CPD programme could be followed, six of our employees do not belong to a professional body that offers CPD.</p>  | See Impact Assessment. It is further important to note that membership to a professional body is not required. |
| 281. | 1                | 31      | <p>(1) Subject to <del>subsection</del> <u>subparagraphs (2) and (3)</u> the fit and proper requirements relating to CPD contained in this Chapter apply to all FSPs, key individuals and representatives.</p> <p>(2) The fit and proper requirements relating to CPD contained in this Chapter do not apply to-</p> <p>(a) a representative of a Category I FSP appointed to render financial services only in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and</p> <p>(b) a representative of a Category I FSP that is appointed to only-</p> <p>(i) furnish advice in respect of a Tier 2 financial product; and/or</p> <p>(ii) render an intermediary service in</p> | <p>Please refer to the comment on paragraph 28(3) above in respect of the proposed postponement of the introduction of class of business training requirements for Category II, IIA and III FSPs.</p> <p>In addition to those comments, it is highlighted that ASISA members are not aware of any professional bodies recognised by SAQA that would be able to accredit CPD activities specifically for the purposes of Category II, IIA and III. ASISA members, in respect of CPD requirements, also strongly suggest that the implementation of CPD requirements for Category II, IIA and III FSPs must be postponed to allow for appropriate and adequate consultation and consideration of options in respect of the specific types of FSPs. As indicated in the comment on paragraph 28(3) above, It is submitted that the risk of poor consumer outcomes in the absence of CPD requirements is mitigated by the requirements of the FAIS Code of Conduct for Discretionary FSPs, the proposed general requirement in paragraph 12(a), other competence requirements (for example the 3 years' experience) and the general competitive nature of an investment management business.</p> | Disagree.<br>See response under comment 237, amended commencement dates and Impact Assessment.                 |



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|      |                  |                  | respect of a financial product.<br>(3) <u>The fit and proper requirements relating to CPD contained in this Chapter do not apply to a Category II, Category IIA or a Category III FSP.</u>         |  |  |
| 282. | 4                | 31               | Amend this section to confirm that it only applies to oversight KIs. Subsection (2) should also not apply to the FSPs and KIs that manage and oversee the activities mentioned in this subsection. | Need to remove management KIs for this section as they focus on the operational ability of the FSP and the oversight KIs that have the product knowledge to over the FAIS operations and rep activity should do CPD. We also note that subsection (2) only exempts reps from CPD. As these are simple products businesses, it would be reasonable to also apply his requirement to FSPs and KIs.   | Disagree.<br>Neither the Act nor the fit and proper requirements distinguish between different types of key individuals. All key individuals must have management experience and experience in the management of a particular financial service. No product experience is required. It is further not appropriate to extend the exclusion to key individuals given their responsibilities under the Act. |
| 283. | 20               | 31               |  | If Key Individuals of Long-term Insurance subcategory A and/or Friendly Society Benefits are exempt from having a qualification, then they should be exempt from CPD. Unless the exemption on qualification is incorrect.  | Agree.<br> See amendment.   |
| 284. | 13               | 31(1) & 31(2)(b) |  | This section provides no exemption for Category II FSPs, key individuals and reps in respect of CPD requirements. If this section is accepted as it is and a rep of a Category I FSP that is appointed to only render intermediary services (which could include execution only), then we question why representatives appointed to Category II FSPs only should be expected to meet the CPD requirements as they too will also only render an intermediary service (without an advice component). However, similar to our comment above we believe that there is merit in requiring all reps to maintain a certain level of CPD in line with the level of financial service for which they are appointed.<br>However, if the FSB follows the Professional Body approach to CPD activities as defined in the draft, then requiring this of a rep appointed only in respect of Category II may prove difficult as there is no Professional Body currently for this type of FSP. | See response under comment 276.<br>The type of intermediary services rendered by a Category II FSP differs from that of a Category I FSP in that they exercise discretion.<br><br>See also Impact Assessment.  |

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| 285. | 13               | 31(2)        |   | We do have some reservations about the blanket exemption from CPD requirements for some reps of a Cat I FSP. Even though they may render limited financial services, we believe that there is merit in ensuring that they maintain a certain professional standard aligned to the level of services which are rendered. However, in the current proposed CPD activity structure the benefit of CPD may be outweighed by the cost impact on these representatives. Should the FSB review the proposal for a CPD activity to be accredited and tracked by a Professional Body (in line with our comments above), then we believe that these representatives should be able to be incorporated into the CPD requirements without placing unnecessary burden on them or the FSPs which they represent and it will, in our view, ensure a better outcome for customers. | See response under comment 284. The Registrar is of the view that the requirement is proportional to the associated risks. |
| 286. | 10               | 31(2)(b)(i)  |   | We do not understand why an intermediary service does not warrant a CPD requirement. Many licenced as such – which include UMA's and soon Insurers - is a responsible skill for many of the current representatives and not just a process as envisaged by the new "execution of sales" and as such warrants an on-going CPD requirement. A CPD standard is warranted for Tier 2. Whilst simple a degree of on-going competency is needed.   | See responses under comment 284 and 285.   |
| 287. | 2                | 31(2)(b)(ii) | Recommend that the section be amended to include representatives performing execution of sales. | Although the section includes exemption of all representatives that render intermediary services in respect of a Category I FSP it does not specifically reference "execution of sales". To facilitate clarity, we recommend that the section also includes representatives performing execution of sales.   | Disagree.<br>The exclusions are sufficiently clear.  |
| 288. | 10               | 31(2)(b)(ii) |   | We do not understand why an intermediary service does not warrant a CPD requirement. Many licenced as such – which include UMA's and soon Insurers - is a responsible skill for many of the current representatives and not just a process as envisaged by the new "execution of sales" and as such warrants an on-going CPD requirement.  | See responses under comment 284 and 285.   |
| 289. | 17               | 32           |   | It is unclear how the Reps will ensure that the content of the CPD activities will meet the requirements under (c) as such we recommend that subsection (c) be reworded to only be the role of the FSP and the KIs.  | Disagree.<br>Representatives must take responsibility for compliance with all relevant requirements.                       |
| 290. | 4                | 32(1)        | Subsection (c) should be reworded to only be the role of the FSP and the KIs.                   | Unclear why and how the Reps will ensure that the content of the CPD activities will meet the requirements under (c) below.  | Disagree.<br>A person, inter alia, must be able to   |

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|      |                  |                             |   |   | identify gaps in its own knowledge and understanding. In fact, he is the best place to do that.  |
| 291. | 1                | 32(1)(c)(iii) (bb)          | An FSP, key individual and representative must- (c) ensure that .... (iii) addresses .... (bb) <del>in</del> the generic knowledge .... | Delete "in" at the beginning of subparagraph (bb).  | Agree.<br> See correction.  |
| 292. | 22               | 32(1)(c) as read with 33(3) |   | <p>The definition of CPD activities results in the need for each Key Individual ("KI") and Representative ("Rep") to belong to a professional body that is recognised by SAQA. This will not work for KIs and Reps who do not belong to a professional body or who belong to a professional body that is not yet recognised or is unable to obtain recognition by SAQA.</p> <p>It could have the consequence that KIs and Reps will have to obtain new qualifications and/or apply for membership of a professional body that is not relevant to the corporate finance industry. They may even not be able to obtain membership, which would have the effect of their being unable to work in the industry, despite having met all the other requirements. For example, it is possible that the professional body that is most relevant to corporate finance is SAICA. It is not possible to become a member of SAICA unless one has served articles and passed the relevant board exams. It might also be impossible to obtain articles with an accounting firm if one has been working already. If this is the case, corporate finance KIs and Reps may be unable to find a professional body that is able to assist them.</p> <p>Under these circumstances, and given that an FSP must ensure that CPD that is undertaken is relevant and addresses any needs or gaps, it may be impossible to comply with the Requirements if the professional bodies that Reps belong to are not relevant to the specific services that an FSP provides.</p> <p>We do not believe that the CPD construct that has been proposed is viable to our type of business and believe that it should be reconsidered.</p> <p>In our view, if no professional body is available, the FSP itself should be responsible for determining which CPD is relevant and applicable to its type of business.</p> | <p>Disagree.</p> <p>There is no requirement that KIs and representatives must be a member of a Professional Body. They must merely ensure that the CPD activities they undertake is accredited and tracked by a Professional Body who has confirmed that they do not require membership in order to track CPD activities.</p> <p>The intention is that if no suitable professional body exist that industry takes the initiative to form a body that is appropriate and suitable for their needs.</p> <p>See also Impact assessment.</p> |
| 293. | 2                | 32(3)                       | Change reference to section <u>34</u> .   | Section 32(3)(a)(ii) incorrectly refers to section 35.  | Agree.   |

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|      |                  |              |   |  |  See correction.  |
| 294. | 10               | 32(3)(a)     |   | We would suggest that the proposed competence register be maintained on an on-going basis  | Disagree. Nothing prevents an FSP to maintain the register on an ongoing basis.  |
| 295. | 13               | 32(3)(a)     |   | If the FSB goes ahead with the Professional Body model, then we believe that there is an unnecessary duplication of recording and tracking if this must be done by both the FSP and the Professional Body. Apart from our views that Professional Bodies are not needed for the CPD tracking, we would otherwise be comfortable with the FSP keeping such records.   |  See amendment that removes tracking.   |
| 296. | 1                | 32(3)(a)(ii) | An FSP ..... (a) within ..... (ii) reduction ..... in <del>section 35</del> paragraph 34; | Incorrect reference.   | Agree.<br> See correction.  |
| 297. | 17               | 32(3)(a)(ii) | “reduction of CPD hours of a representative as contemplated in <u>section 34</u> ”        |  | See response under comment 296.  |
| 298. | 11               | 33(1)        |   | <p>We are pleased to see requirements for CPD being introduced. This will assist further with professionalising the advice industry.</p> <p>As it is left largely up to the FSP to determine the type of CPD to complete, we do not believe that it is necessary for different number of hours to be set depending on class of business licensed for. To protect the consumer and the integrity of the profession the CPD hours should be the same for all advisers at 30 hours per annum. Our reasoning is:</p> <ol style="list-style-type: none"> <li>1) The time commitment is not large. After allowing for weekends, public holidays and leave CPD would require about 2% of an advisor's time. (2.5 hours per calendar month)</li> <li>2) Competence does not just refer to knowledge but also to skills and abilities. While we acknowledge that the FSP will be responsible for ensuring that the hours undertaken are sufficient, we believe that limiting the hours based on products approved for may not provide for the need to keep skills and abilities updated</li> <li>3) The knowledge required relates not only to the product licensed for, but also to the environment that an advisor operates in. This environmental knowledge will be similar</li> </ol> | <p>Noted.</p> <p>In determining the number of required CPD hours the Registrar has taken into consideration the requirements applicable to qualifications, regulatory examinations, class of business training and product specific training. The Registrar is of the view that given all the above mentioned requirements that the number of required CPD hours are sufficient in order for a person to maintain its knowledge, especially because product specific training including amendments thereto, are excluded from CPD.</p> <p>However, the Registrar will monitor and, in line with good regulatory practices, will assess the appropriateness of the requirements at a later stage.</p> |


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|      |                  |   |                            | <p>regardless of which product class licenced for.</p> <p>4) Research conducted by SAQA and FPI in 2015 found that the CPD requirements for various registered designations belonging to the same Professional Body do not distinguish between levels of designations and are exactly the same for each designation.</p>  |   |
| 299. | 12               | 33(1)(a) /<br>Annexure 4                  |                            | <p>.....single "sub-class" of business;</p> <p>The Short Term Act defines the Classes of Business in the same manner as Annexure Four.</p> <p>However Table 1 "Classes of Business" classifies these within the Personal Lines and Commercial as Sub-Classes of Business and it appears that "Personal Lines" and "Commercial" are the classes of business for the purposes of this Table.</p> <p>Please can there be consistency of terminology between the Acts to ensure clarity and avoid misunderstanding.</p> <p>Perhaps these could be named using the FAIS definition of Financial Product Sub-category (i.e. Short Term Insurance Personal Lines or Commercial), to ensure consistency of definitions.<br/>e.g. "Sub-Category Class of Business. "</p> | <p>Noted.</p> <p>We have aligned as far as possible with the Insurance Bill and will continue to do so when they it is enacted.</p>   |
| 300. | 10               | 33(1)(a)(b)(c) /<br>Annexure 4<br>Table 1 |                            | <p>Does it not make sense to mirror the approved licence category to the CPD category as envisaged by the CPD standards? To manage two levels (1 FAIS licence category and 1 CPD category) is likely to create confusion by all and extra work by the KI and/or compliance officer to ensure the correct work is being followed at CPD level.</p>   | <p>Disagree.</p> <p>The CPD requirements are directly linked to the extent of a person's exposure to particular products.</p>   |
| 301. | 18               | 33(2)                                     |                            | <p>IISA propose that the FSB consider extending the record keeping requirements to 30 days from the 31<sup>st</sup> of May each year.</p> <p>It is also recommended that the FSB consider a grace period to allow for finalising of uploads of activities that happen up to and on the 31<sup>st</sup> of May, or for particular incidents or applications that may prevent a person from completing their CPD requirement.</p>   | <p>Noted.</p> <p>The requirements provide that an FSP must within 30 days after expiry of a CPD cycle record the activities undertaken. A CPD cycle is defined as a period of 12 months commencing on 1 June of every year and ending 31 May of the following year. The FSP therefore has until 30 June of each year to update its records.</p> |
| 302. | 17               | General                                   |                            | <p>"Reporting requirements" should be removed as this is not a</p>  | <p>Disagree.</p>  |

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|  |                  | comment - 34 |   | section under Chapter 4. The numbering from section 35 to 52 is incorrect.   | Section 34 does not refer to 'reporting requirements.  |
| 303.                                   | 10               | 34(3)        |   | Recognition is needed for periods where a reduction in CPD hours is warranted that overlap CPD cycles.   | Agree.<br> See amendment.   |
| <b>CHAPTER 5 – OPERATIONAL ABILITY</b> |                  |              |   |  |  |
| 304.                                   | 2                | General      |   | We welcome the additional operational ability requirements provided for as clarity of the status of the Treating Customers Fairly principles. We however suggest that the additional requirements are aligned to the current requirements in the FAIS Act as well as to other Financial Regulations (Banks Act and Insurance Acts) to avoid repetition and overlap of different sections. We also note the possible implications of Directive 159 on a Long-Term insurer that is an FSP.   | Noted.<br>The requirements relating to fair treatment of clients are aligned to the general requirement set-out in section 2 of the General Code of Conduct. The Registrar has as far as possible and where appropriate aligned the requirements to other financial laws. However, it is important to note that the requirements in the FAIS Act are separate and in addition to other laws.           |
| 305.                                   | 6                | General      |   | BIAC is in support. It is a call for good admin and management systems that must be implemented by all to the benefit of the client and the FSP.   | Noted.   |
| 306.                                   | 10               | General      |   | The current requirement for "suitable guarantees or professional indemnity..." has not been included here. Is it the intention to deal with this requirement elsewhere?  | It is dealt with under section 13 of the General Code of Conduct.  |
| 307.                                   | 2                | 36           | The suggested rewording below facilitates a partial amalgamation of sections 36 and 37:<br>"36.<br>(1) An FSP must-<br>(a) have the operational ability to effectively function as a particular category of FSP and to render the financial services in relation to the financial product for which it is authorised; and | (a) Section 36(2) specifically introduces frameworks, policy and risk management principles which are currently applied in a different context to embed the treating customers fairly principles. We suggest that the drafting of s36(2) is reconsidered to ensure and facilitate the introduction of principles, as opposed to rules on governance structures and associated documentation.<br>(b) Section 36(2)(d) and section 37(1)(b)(x) set requirements for making significant and material decisions. Prudent decision making relates to several considerations and cannot only be informed by an internal "decision making" policy document. | Noted.<br> See amendment.<br>The Registrar remains of the view that it is necessary for the prudent management of an FSP that it develops policies and procedures in respect of the matters listed in section 37. The Registrar does not prescribe what must be contained in the policies but rather the outcomes |

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|  |                  |         | <p>(b) adopt, document and implement an effective governance framework that provides for the fair treatment of clients and prudent management and oversight of the financial services provided by it.</p> <p>(2) The governance framework must -</p> <p>(a) be proportionate to the nature, scale and complexity of the business of the FSP;</p> <p>(b) be integrated as part of the overall enterprise governance and risk management frameworks of the FSP and specifically include an effective system of:</p> <p>(i) corporate governance,</p> <p>(ii) conduct risk management,</p> <p>(iii) internal controls and</p> <p>(iv) contingency planning.</p> <p>(c) provide for the development, implementation and maintenance of the required frameworks, policies, standards or procedures that clearly define and support the oversight and governance of the financial services rendered and the fair treatment of clients, and specifically:</p> <p>(i) define the roles and responsibilities of persons accountable for the management and oversight of the FSP;</p> <p>(ii) be designed to secure compliance with decisions and procedures at all levels</p> | <p>The onus is on senior management to ensure that decision-making is sound, but not to set detailed requirements for same. We excluded these subsections in the suggested wording below.</p> <p>(c) Specific requirements as set out in section 37 need to be included in overarching frameworks and we included same in the suggested wording to achieve clarity and to avoid duplication.</p> | <p>to be achieved by the policies. The commentator's attention is further directed to section 37(1) that provides for proportionality.</p> |

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|  |                  |         | <p>of the FSP;</p> <p>(iii) define procedures for risk assessment, which identify the risks relating to the FSP's activities, processes and systems, and set the level of risk tolerated by the FSP;</p> <p>(iv) ensure accurate, complete and timeous processing of data, reporting of information and the assurance of data integrity;</p> <p>(v) provide for the detection of any risk of failure by the FSP to comply with the Act and other applicable legislation, and put in place measures and procedures to minimise such risk of legal or regulatory sanctions, financial loss or reputational damage;</p> <p>(vi) provide for compliance with the Financial Intelligence Centre Act, 2001, and other applicable anti-money laundering or terrorist financing legislation, in the case of FSPs who are accountable institutions as defined in that Act;</p> <p>(vii) provide for proprietary trading by the FSP, its officers, employees, key individuals and representatives, where applicable.</p> |         |                      |



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|  |                  |         | <p>(viii) provide for corrective actions to be taken in respect of non-compliance, weak oversight, failure of controls or lack of sufficient management;</p> <p>(d) provide for regular monitoring and evaluation of the adequacy and effectiveness of its frameworks, policies, standards, controls, procedure, systems and processes and measures to address any deficiencies and to determine whether it serves reasonably ensure:</p> <p>(i) risk detection and compliance with applicable legislation,</p> <p>(ii) the integrity of the FSP's practices, including the treatment of all clients with due care and in a fair, honest and professional manner;</p> <p>(iii) appropriate segregation of key duties and functions, particularly those duties and functions which, when performed by the same individual, may result in undetected errors or may be susceptible to abuses which expose the FSP or its clients to inappropriate risks;</p> <p>(e) provide for sound and sustainable remuneration policies and practices which:</p> <p>(i) promote the alignment of</p> |         |                      |



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|      |                  |          | the interests of the FSP with those of its clients and<br>(ii) avoid unfair treatment of customers and excessive risk taking."   |   |   |
| 308. | 20               | 36(2)    | (2) The governance framework, <u>where applicable</u> , must -   |   | Disagree.<br>See response under comment 307.  |
| 309. | 16               | 36(2)(c) | "define the roles and responsibilities of persons accountable for the management and oversight of the FSP by clarifying who possesses legal duties <u>under the Companies Act, where such act is applicable to the FSP</u> , and powers to act on behalf of the FSP and under which circumstances."  | SAVCA considers that the legal duties criteria prescribed under 36(2)(c) to be subordinate to the requirements set out in the Companies Act in the case of FSPs which are companies. SAVCA proposes inserting the words " <i>under the Companies Act</i> ", where such act is applicable to the FSP, after the word " <i>duties</i> " to provide clarity in interpreting the provision.   |  See removal of subsection.  |
| 310. | 2                | 37       | <b>37.</b><br>(1) Without limiting section 36, an FSP must -<br>(a) at all times have-<br>(i) a fixed physical business address from where the business is operated or controlled;<br>(ii) adequate access to communication facilities, including a full-time telephone or cell phone service, as well as typing and document duplication facilities;<br>(iii) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence; and<br>(iv) a bank account with a registered bank, including, where required in the Act, a separate bank account for | (a) We suggest that the requirements in section 37 are aligned to the overarching principle based approach introduced in section 36. We therefore made certain suggested changes to align the sections.<br>(b) We removed section 37(1)(b)(iii)(aa) from the suggested wording. We do not agree that an assessment of "integrity" of an FSP's practices can or should be measured by monitoring and evaluation. To retain this phrase would move the accountability for fair customer treatment away from senior business management (first line of defense) to a compliance monitoring function (second line of defense). Business leaders currently accept accountability to set the tone and culture for fair customer treatment without the requirement for compliance to monitor or measure integrity. | See response under comment 307.<br>The Registrar disagrees with the commentator insofar it relates to the comment in paragraph (b) because the general requirement is that an FSP must have a governance framework that provides for the fair treatment of clients and the prudent management and oversight of its business. Section 37 merely lists some aspects that must be included in the governance framework eg. the requirement that compliance with the fair treatment requirement is monitored. It is further not a new requirement because previously FSPs had to have systems and procedures in place to ensure compliance with the Act that includes section 2 of the General Code of Conduct that provides that an FSP must rendering financial services honestly, fairly, with due care and skill, and in the interest of clients and the integrity of |





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|  |                  |         | <p>client funds;</p> <p>(b) establish, implement and maintain -</p> <p>(i) a <del>business</del> plan setting out the aims and scope of the business, the business strategies and related matters;</p> <p>(ii) an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;</p> <p>(iii) adequate and appropriate human, technical and technological resources necessary for the proper functioning and management of the FSP;</p> <p>(iv) an adequate business continuity and recovery policy and process aimed at ensuring:</p> <p>(aa) in the case of an interruption to its systems and procedures, that any losses are limited,</p> <p>(bb) the preservation of essential data and functions, and</p> <p>(cc) the maintenance of its regulated activities, or</p> <p>(dd) where that is not possible, the timely recovery of such data and functions, the timely resumption of</p> |         | <p>the financial services industry. It is further important to note that an FSP's governance framework is not limited to the matters listed in section 37.</p> |

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|  |                  |         | <p>those activities, the restoration of its financial situation following a significant deterioration and a viable resolution plan setting out options for the orderly resolution of the FSP in the case of failure;</p> <p>(v) systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information; including-</p> <p>(aa) electronic data security and internal and external cybersecurity;</p> <p>(bb) physical security of assets and records;</p> <p>(cc) system application testing;</p> <p>(dd) back-up and disaster recovery plans and procedures for systems and electronic data;</p> <p>(vi) accounting policies and procedures to enable the FSP to record, report and deliver in a timely manner to the Registrar financial reports which reflect a true and fair view of its financial position and which comply with the applicable reporting and accounting standards and</p> |         |                      |

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|      |              |              | requirements;  |   |   |
| 311. | 7            | 37(1)(a)(iv) |  | We assume that the reference to " <i>client funds</i> " excludes premium, which is an asset of the insurer and is reflected on the insurer's balance sheet. We also refer in this regard to the distinction drawn in clause 45 of the Draft Board Notice between client assets and premium.   | A client is defined in the Act as a person to whom a financial service is rendered.   |
| 312. | 13           | 37(1)(b)(iv) |  | We accept the principle of proportionality in terms of the application of the specific requirements set out in s37(1), but we don't follow the requirement set out in subsection (b)(iv).   | An FSP must have in place a plan that provides for the processes, procedures and strategy the FSP intends to follow to restore its financial situation following a significant deterioration due to whatever reason.  |
| 313. | 16           | 37(1)(b)(iv) | "a recovery plan for the restoration of its financial situation following a significant deterioration and viable resolution plan setting out options for the orderly resolution of the FSP in the case of failure <u>in line with the requirements of the Companies Act;</u> "   | SAVCA notes the Registrar's response to SAVCA's previous submissions in response 174 of the Regulatory Response Matrix. SAVCA however strongly believes that the provisions of the Companies Act, 2008 dealing with business rescue and insolvency will supersede the implementation of the proposed recovery plan. In instances of business rescue or insolvency, the insolvency provisions of the Companies Act, 2008 would <i>inter alia</i> remove the directors' authority to oversee the execution of such plans, thereby rendering moot the contents of any such plan. Whilst an FSP could theoretically prepare a plan for another FSP to take over their client base – which is very different from "the restoration of its financial situation" - any disposal of client contracts will still require the approval of the appointed liquidator or business rescue practitioner in practice. | Noted.<br>The purpose of the plan is to set out the applicant's strategy for the rapid and orderly resolution of its business in the event of a failure. If the strategy is to apply for business rescue the plan must stipulate the process that must be followed, when it must be put in action, etc. |
| 314. | 16           | 37(1)(b)(vi) | "a system of controls, processes and supervision sufficient to ensure the FSP, its directors, partners, members, trustees, as the case may be, key individuals and representatives comply with the Act <del>and other applicable laws</del> and to reduce its risk of legal or regulatory sanctions, financial loss or reputational damage;" | The FSB does not have the legislative power to monitor or supervise legislation which has not been assigned to it. The conduct of the FSB in this regard may potentially be perceived as <i>ultra vires</i> .   | The intention is not for the FSB to monitor an FSP's compliance with other laws but to monitor whether it has systems and processes in place to ensure compliance with laws applicable to the FSP. See current requirements in General Code of Conduct.   |
| 315. | 16           | 37(1)(b)(ix) | SAVCA proposes replacing the wording " <i>with applicable legislation</i> " by " <i>with the Act</i> ".  | The FSB does not have the legislative power to monitor or supervise legislation which has not been assigned to it. The conduct of the FSB in this regard may potentially be perceived as  | See response under comment 314.   |


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|      |              |                      | The proposed amended provision will read:<br>"adequate policies and procedures designed to detect any risk of failure by the FSP to comply <u>with the Act</u> , and put in place measures and procedures to minimise such risk;"  | <i>ultra vires.</i>  |  |
| 316. | 20           | 37(1)(b)(x)          | (x) decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities, <u>where applicable</u> ;  |  | See response under comment 307.  |
| 317. | 1            | 37(1)(b)(xii)        | Without limiting <del>section</del> <u>paragraph</u> 36, an FSP must – (b) establish ..... (xii) systems and procedures that are adequate to safeguard .....<br>(aa) electronic data .....;<br>(bb) physical security .....;<br>(dd) system application .....;<br>(ee) back-up and disaster .....; | Numbering of subparagraphs incorrect, no (cc).   |  See correction.  |
| 318. | 14           | General comment – 38 |  | We welcome the inclusion of specific mention of "automated advice" in 38.  | Noted.   |
| 319. | 17           | 38                   |  | This should read "In addition to the requirements set out in section 37", instead of section 38.<br><br>The advisor is a separate licensed FSP, but they are using a Financial Needs Analysis (FNA) tool that the insurer provides.<br><br>In the event that the advice is challenged, who should the complaint be made against – the FSP, the insurer or both?<br><br>Aggregators do not provide advice. Clarity is sought as to whether they will be excluded as per the definition. |  See correction.<br>It is important to note that an advisor using an FNA tool when advising a client would not be providing automated advice. For advice to qualify as automated advice it must be furnished, inter alia, without the direct involvement of a natural person. |
| 320. | 8            | 38(1)                |  | It is unclear what the level of understanding is that is required by section 38(1). More clarity would be appreciated.   | The requirement is that the person must have the necessary skills and experience to enable him to  |

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|      |                  |                      |  |   | understand the matters referred to under (1)(a) eg. the person must understand the rationale, risks and rules behind the algorithms underpinning the automated advice.         |
| 321. | 20               | 38(1)                | <b>38.</b><br>1) In addition to the requirements set out in section <del>37</del> , an FSP that provides automated advice must-  |   |  See correction.  |
| 322. | 1                | 38(1)(a)             | <del>(1)</del> In addition to the requirements set out in <del>section 38</del> paragraph 37, an FSP ..... must (a) have .....<br>(i) understand the technology ..... advice; <del>and</del><br>(ii) understand the methodological ..... | 1. Incorrect reference.<br>2. Only one subparagraph, need not be numbered<br>3. Delete "and" at end of subparagraph (a)(i).   |  See corrections.   |
| 323. | 11               | 38(1)(b)(ii)         |  | Automated advice could include a behavioural insights app, debt management, education savings, estate planning or tax planning. When considering the requirements for whom automated advice is not suitable it seems to relate more to advice regarding the buying and selling of products.<br>While we understand that advice is currently defined as the recommendation of a product we must be cognisant of the fact, for future purposes, that that financial planning advice, could also be provided by automated means. | Noted.   |
| 324. | 8                | 38(1)(c)             |  | Section 38(1)(c) requires that the FSP is able to control, monitor and reconstruct any changes to algorithms. It is unclear what is expected with regards to reconstruction. After multiple updates to an algorithm it would be unlikely to 'roll-back' the algorithm to a previous version. More detail is necessary on what would be required.  | The FSP must be able to reconstruct an algorithm applicable at the time that advice was provided to a particular client in the event of a subsequent complaint by that client. |
| 325. | 21               | General comment – 39 |  | We note that the proposals contained in the Collective Investment Schemes Control Act Draft Board Notice on the Determination of Requirements Applicable to the Delegation of Administration Functions which was issued in early December 2016 are generally aligned with the proposals contained in section 39.<br>The development of an oversight model for outsourcing can have a significant cost implication for stakeholders if a standard  | Noted.   |

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|      |                  |                  |   | <p>approach is not adopted.</p> <p>The degree of oversight required should be commensurate with the nature, scale and complexity of the functions which are being delegated.</p> <p>We propose that an industry working group be formed to identify practical measures to address the outsourcing requirements proposed in both the FAIS and CISCA legislation and develop agreed standards/principles for industry.</p>  |   |
| 326. | 17               | 39               |   | We suggest that there be a requirement inserted under subsection 2 indicating that an FSP should prior to outsourcing any of its functions to another person, ensure that it has the requisite mandate to do so where this is required in terms of any applicable law.  | See section 39(2)(a)(i). In addition, see requirement that outsourcing arrangement may not result in key decision making responsibilities being removed from the FSP.   |
| 327. | 1                | 39(1)            | An FSP must exercise ..... -<br>(a) a function ..... way <del>of</del> <u>or</u> by a particular person;<br>(b) a function ..... is authorised; or                      | Typographical errors. Replace "of" with "or". Insert semicolons at the end of subparagraph (a) and after "authorised" in subparagraph (b).  |  See corrections.  |
| 328. | 1                | 39(2)<br>(b)(iv) | An FSP, where it outsources ..... must –<br>(b) have a written contract .....<br>(iv) addressing<br><del>confidentially</del> <u>confidentiality</u> ,<br>privacy ..... | Typographical error.  |  See corrections.  |
| 329. | 8                | 40               |   | Section 40 requires that an FSP must ensure that the persons it appoints as representatives have not been declared insolvent. What does this mean for the existing representatives of the FSP who are rehabilitated insolvents? Do they also cease to be fit and proper? Does insolvency now become a permanent disqualification with regards to competency? If this is the case, how does it compare against fraud which has a time limit to it, especially if one remembers that it is possible to be declared insolvent without any fault on your part. Insolvency does not necessarily equate to mismanagement of finances. |  See amendment.  |
| 330. | 20               | 40               |   | <p>The regulation needs to be clear as to the requirements for natural persons as representatives. There is no reason why an un-rehabilitated insolvent could not be appointed as a representative.</p> <p>Consideration could also be given to not appointing a representative where that representative has incurred debt as a</p>  |  See amendment.<br>The intention is that only a person who is insolvent or provisionally insolvent should not be appointed as a representative.<br>Rehabilitation is whereby the |



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|      |                  |             |   | result of commission clawback and has not agreed to settle the debt as agreed in their previous employment contracts.  | insolvent is relieved of the legal implications of being insolvent and put back into a legal position of someone who is / was not declared insolvent. A rehabilitated insolvent could therefore be authorised or appointed.   |
| 331. | 4                | 40(1)       | (a) (i) to (iii) should be removed for reps or clarify that this applies only to juristic reps.<br>(b) (i) and (iii) have duplicated wording regarding the fair treatment of clients. | Requiring reps to meet financial soundness will cause barriers to entry considering the number of people that are not able to manage their debt beyond their controls in many instances and are insolvent. This requirement will affect current staff as well and not only new staff. More staff will become not fit and proper and we will be forced to terminate their employment. This will not assist the objectives of government to reduce the unemployment rate. We support the requirement to be met by juristic reps. | See response under comment 330. In addition, the representative must merely have financial resources to perform the activities for which it is appointed.   |
| 332. | 17               | 40(1)       |   | Clarity is sought as to whether there is a time period allowed after a person has been declared insolvent where they would be eligible to be a representative again? i.e. they can be regarded as rehabilitated.<br><br>Requiring reps to meet financial soundness will cause barriers to entry considering the number of people that are not able to manage their debt and are under debt review.<br><br>(i) to (iii) should be removed for reps or clarify that this applies only to juristic reps.                          | See response under comment 330. A rehabilitated insolvent can any time after rehabilitation be appointed as a representative.<br><br>Representatives are not required to meet financial soundness requirements – they are only required to have financial resources to perform the activities for which they are appointed. |
| 333. | 10               | 40(1)(a)    |   | The wording as it stands i.e. “the FSP must ensure.....the person has not been declared insolvent...” This suggests that the FSP cannot employ such a person which is both unfair on a person who seeks employment at a time when they probably need it most and potentially contradicts how an FSP would deal with an existing staff member who falls on similar hard times i.e. would not be debarred/fired. It should rather seek to put the FSP on-guard to ensure no risks are presented and/or are managed.              | See responses under comments 330, 331 and 332.  |
| 334. | 2                | 40(1)(a)(i) | Remove section 40(1)(a)(i).   | We suggest the removal of section 40(1)(a)(i) relating to insolvency requirements for natural persons that are appointed as representatives. The inclusion adds barriers of entry and has since the inception of the FAIS Act been specifically excluded for natural   | See response under comment 333.   |

|      | Commen-<br>tator | SECTION     | WORDING / PROPOSED WORDING  | COMMENT  | REGISTRAR'S RESPONSE  |
|------|------------------|-------------|---|--|---|
|      |                  |             |   | person representatives.  |   |
| 335. | 11               | 40(1)(a)(i) | Paragraph 40 (1)(a)(i) should read:<br>Is not an unrehabilitated insolvent, currently under debt review or debt administration. | Section 40 requires that an FSP not appoint a person who has been declared insolvent. It is unclear from this section if this is an unrehabilitated insolvent, or someone who was declared insolvent in the past. Clarity is sought on this issue.<br><br>This section also refers to the appointment of a representative. Clarity is sought on the obligations of an FSP where a representative becomes insolvent after appointment.                          | See response under comment 330.   |
| 336. | 14               | 40(1)(a)(i) |   | Under this clause provision should be made to allow someone who is a rehabilitated insolvent to be employed. This is especially necessary if the requirement is meant to apply to existing FSPs, some of whom may be rehabilitated insolvents. Furthermore it would be appropriate to consider introducing some leniency with regard to someone who may have become insolvent through circumstances which became unavoidable or were not of his or own making. | See response under comment 330.   |
| 337. | 13               | 40(2)       |   | One person's " <i>reasonable and commensurate</i> " is not necessarily the same as another's and therefore it is a subjective assessment/view.<br>While we are comfortable with the provision in s40(2)(b), we believe the provision of " <i>reasonable and commensurate</i> " contained in s40(2)(a) is vague and difficult to judge. Therefore, in our opinion, it should not form part of the operational requirements/abilities placed on an FSP.          | Disagree.<br>What is reasonable and commensurate will depend on the circumstances.                        |
| 338. | 17               | 40(2)       |   | We recommend that this clause be deleted for the following reasons: <ul style="list-style-type: none"> <li>◦ The inclusion of regulating remuneration in the fit and proper requirements is misplaced and can cause confusion with application of the RDR proposals and Insurance Act remuneration regulations.</li> <li>◦ As such we propose that it is deleted and dealt with appropriately in the applicable overarching legislative documents.</li> </ul>  | Disagree. Requirement relates to good governance and does not intend to regulate prescribed remuneration. |
| 339. | 10               | 40(2)(a)    |   | How is an FSP meant to determine what is " <i>reasonable and commensurate</i> " Surely an FSP can pay what it deems correct given its own profile and need not justify salary levels and simply rely on paragraph (b).   | See response under comment 338.   |

|      | Commen-<br>tator | SECTION  | WORDING / PROPOSED WORDING  | COMMENT  | REGISTRAR'S RESPONSE  |
|------|------------------|----------|---|--|---|
| 340. | 14               | 40(2)(b) | (b) is not structured in a manner that <b>will</b> increase the risk of unfair treatment to clients.  | It can be said that any remuneration or fee paid to a representative may increase the risk of unfair treatment of clients. The very reason for the appointment of a representative and his/her management is intended, by the FSP, to grow the business of the FSP. We suggest the word 'may' be replaced by 'will'.                                 | Disagree. The requirement relates to unfair treatment of clients and not conflict of interest. A conflict of interest should never result in an unfair treatment of the client.   |
| 341. | 17               | 40(4)    |   | Clarity is sought as to what is meant by outsourcing and sub-delegation? Is this referring to internal delegation to a subordinate?  | The ordinary grammatical meaning applies.   |
| 342. | 16               | 41(1)    |   | It is unclear to SAVCA what is meant by operational ability in this context and whether this differs between a juristic representative and a natural person representative. Clarification is required.   | It is a person's ability to perform the relevant functions and includes, capacity, processes, resources, technologies, etc.   |
| 343. | 10               | 41(2)    |   | The opportunity should be taken to clarify the appointment criteria for approval for a key individual of a juristic representative. If to be approved by the regulator or by the FSP and if approved by the FSP we would suggest the requirements to be stated and ideally a separate name given to this role to avoid any misunderstandings.        | The responsibility is that of the FSP and not that of the Regulator.  |
| 344. | 16               | 42(1)    |   | It is unclear to SAVCA what is meant by operational ability in this context. Clarification is required.  | See response under comment 342.   |
| 345. | 16               | 42(3)    | "An FSP must, on a regular basis, assess the ability of its key individuals to adequately and effectively perform their functions taking into account individual circumstances, the nature, scale, range and complexity of the FSP's financial services related activities and whether the key individuals are approved as key individuals or appointed representatives of other FSPs. <u>For the avoidance of doubt the overall responsibility for assessing the operational ability of key individuals' rests with the governing body or board of directors of the FSP.</u> " | SAVCA notes the Registrar's response to SAVCA's previous submissions in response 210 of the Regulatory Response Matrix SAVCA suggests that this section be amplified to specifically indicate that it is the governing body of the FSP that is responsible for assessing the operational ability of key individuals in order to avoid any confusion. |  See amendment that provides that the FSP must ensure that it has adequate and appropriate key individuals. In addition, due to the removal that key individuals must undergo class of business training and product specific training in respect of ALL products for which the FSP is authorised, it is necessary to make it clear that the FSP must at least have one KI per class of business although the same person can be approved for multiple classes of business.<br><br>The requirements are placed on the FSP. |


|  | Commen-<br>tator | SECTION | WORDING / PROPOSED WORDING | COMMENT  | REGISTRAR'S RESPONSE   |
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| <b>CHAPTER 6 – FINANCIAL SOUNDNESS</b> |                  |         |                            |  |  |
| 346.                                   | 6                | General |                            | <p>BIAC is in support. Financial management needs to start with the FSP so that the clients' confidence can be won. However provision must also be made for bad business year because business can not always be good for the FSP. It has happened to the FSP who whose client base was MARIKANNA.</p> <p>They experienced a high rate of lapses, which resulted in cash flow problems. BIAC recommends the need for flexibility in applying the rules.</p>  | <p>Noted.<br/>See amendment that reduces soundness requirements for Category I FSPs that does not hold, receive or otherwise deal with client assets or premium.<br/>In addition, section 45 of the FAIS Act provides for the flexibility as referred to by the commentator in that it enables the Registrar to grant exemptions to persons if good cause exist. In fact, the Registrar has granted an FSP temporarily exemption from the soundness requirements because the FSP averred that it was experiencing financial difficulties because its' client base was in Marikana.</p> |
| 347.                                   | 23               | General |                            | <ol style="list-style-type: none"> <li>1. The financial section of the fit and proper requirements should be focused on the sustainability and security of the company. However, if the financial requirements are not conducive to good business practices and management, then the very provisions attempting to create sustainability and security will in fact achieve the opposite.</li> <li>2. When considering the financial criteria, the most important facts to consider is the risks to the consumer. A FSP is required to have sufficient indemnity insurance, and any assets held or premiums collected from the consumer is not part of the FSP's assets and liabilities. In fact, the assets held or premiums collected should be held in trust. Where the premiums relate to a service, the period of service delivery and premium receipt will be short and on-going. Where the premiums relate to investments, the underlying investments are separate from that on the FSP's assets and liabilities. This means that the risks of the FSP's company stability is in regards to the representative capacity, which the consumer</li> </ol> | <p>Noted.<br/>The purpose of the financial soundness requirements is to ensure that FSPs remain solvent and that they at all times have adequate financial resources to fulfil their short-term and long-term financial obligations as and when these fall due. Being financially sound reduces the risk of an FSP becoming unable to meet its liabilities during periods of FSP specific or industry wide liquidity stress.</p> <p>The soundness requirements are, inter alia, determined having cognisance of the risks associated with a specific category of FSP and</p>           |



|  | Commen-<br>tator | SECTION | WORDING / PROPOSED WORDING | COMMENT   | REGISTRAR'S RESPONSE  |
|--|------------------|---------|----------------------------|---|---|
|  |                  |         |                            | <p>could change at any point in time.</p> <p>3. Do the unmitigated risks to the consumer justify the harsher solvency and liquidity requirements, when compared with the Companies Act requirements (considering that those requirements apply for private and public companies, including large public and listed companies)?</p> <p>4. The excessive cash holdings are unproductive, and take no account of debtors and the collection terms or historical risk. Surely the requirement that the FSP must be in a position to settle its current and foreseeable debts when it becomes due should be adequate, allowing the company to use its cash resources productively and not merely stockpiling cash to meet the requirements. Also, there is a risk that the FSP would be forced to utilise debt and credit facilities to fund cash-flow needs, while ring-fencing is cash to merely meet the requirements.</p> <p>5. In testing a company's ability to pay its debts when due, you cannot ignore the debtors to be collected (after adjusting for potential risks and bad debt), credit and overdraft facilities, and credit terms. These are part of any good cash-flow management in a successful and well-managed company.</p> | <p>the impact of those risks on consumers.</p> <p>Liquidity is a critical element for the ongoing viability of any FSP. Liquidity requirements are imposed, inter alia, to ensure that an FSP is able to meet unforeseen liquidity needs and to accomplish, where necessary, orderly resolution of the business of an FSP without prejudicing the interests of clients.</p> <p>If an FSP holds less liquid assets than is required to meet its obligations particularly in stressed circumstance, its financial stability may be placed at risk which in turn increases the risk to consumers.</p> <p>However, the Registrar recognised that the solvency test applicable to Category I FSPs that do not hold, receive or otherwise deal with client assets or premiums might not be proportionate to the risks and possible impact on consumers. As such, the Registrar amended the solvency requirement to align with the solvency requirement in the Companies Act.</p> <p>Some of the amendments made under this Chapter are to ensure to ensure alignment, on a proportionate basis and having cognisance of our particular circumstances, with international standards.</p> |

|      | Commen-<br>tator | SECTION | WORDING / PROPOSED WORDING | COMMENT   | REGISTRAR'S RESPONSE   |
|------|------------------|---------|----------------------------|---|--|
|      |                  |         |                            |   |  See amendment.   |
| 348. | 8                | 43      |                            | <p>We are concerned that the requirement for the FSP as well as its juristic representatives to meet the liquidity requirements equates to double counting as the FSP is already required to hold the necessary liquid assets. Our position is that where the juristic FSP receives all its income from the FSP, it is not required to meet any additional requirements.</p> <p>If this is not conceded, it is necessary to indicate whether it is only those juristic representatives of an FSP that meet the requirements in section 45 that need to comply or whether, once the FSP met the requirements, all its juristic representatives are now required to comply as well.</p> | <p>Disagree.</p> <p>See response under comment 347 regarding the purpose of the solvency and liquidity requirements.</p> <p>The solvency requirement (assets must exceed liabilities) applies to all FSPs and juristic representatives. The liquidity requirements only apply to the persons listed under Part 3.</p>  |
| 349. | 17               | 43(b)   |                            | Clarity is sought as to whether the financial soundness exemptions for FSP's extend to the Juristic Representatives of the FSP as well.   | No.  |
| 350. | 17               | 44      |                            | We respectfully submit that the requirements relating to juristic reps may be onerous and recommend that compliance with the requirements should be proportional to the nature and services of the juristic rep.  | The Registrar disagrees that the requirements are too onerous. The Registrar is further of the view that the requirements have been determined having cognisance of the risks associated with a specific category of FSP, the activities the Categories of FSPs perform and whether or not they are holding, receiving or otherwise dealing with client assets or premium. |
| 351. | 22               | 44(1)   |                            | It is not possible to ensure that there is <i>no</i> risk that liabilities cannot be met when they fall due. These risks should be monitored, managed and mitigated. The wording in section 44(3) is more appropriate.  |  See amendment.   |
| 352. | 11               | 44(2)   |                            | <p>The exclusion of all goodwill from the definitions of assets will prevent FSP's from expanding their businesses. This is specifically a problem for smaller independent FSP's and so may impact on their ability to compete in a fair and equitable market.</p> <p><b>Example to demonstrate the problem created by excluding all goodwill.</b><br/> <b>Before acquiring</b> another business :</p>  | See response under comment 347 that refers to the amended solvency requirement applicable to Category I FSPs that do not receive, hold or otherwise deal with client assets or premium.  |


|   | Commen-<br>tator | SECTION     | WORDING / PROPOSED WORDING | COMMENT   | REGISTRAR'S RESPONSE            |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
|---|------------------|-------------|----------------------------|---|---------------------------------|----|--|----------------------|--|-------------|---------------------|--|--|-----------|----|-----------|---------------|--|--|----|--|--|---|--|----------|----------------|--|--|----------------------|--|-----------|---------------------|--|--|-----------|----|-----------|--|
|   |                  |             |                            | <p style="text-align: right;">Balance Sheet</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Current Assets</td> <td style="width: 20%; text-align: center;">Dr</td> <td style="width: 20%;"></td> </tr> <tr> <td style="padding-left: 20px;">Bank account balance</td> <td></td> <td style="text-align: right;">R 1,000,000</td> </tr> <tr> <td>Current Liabilities</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Creditors</td> <td style="text-align: right;">Cr</td> <td style="text-align: right;">R 500,000</td> </tr> </table> <p><b>Solvency test = Pass</b><br/> R1,000,000 less R500,000 = R500,000 (solvent and financially sound)</p> <hr/> <p><b>After acquiring</b> a fee generating business for R 700,000:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="3" style="text-align: right;">Balance Sheet</td> </tr> <tr> <td colspan="3" style="text-align: center;">Dr</td> </tr> <tr> <td>Goodwill (fee generating business acquired)</td> <td></td> <td style="text-align: right;">R700,000</td> </tr> <tr> <td>Current Assets</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Bank account balance</td> <td></td> <td style="text-align: right;">R 300,000</td> </tr> <tr> <td>Current Liabilities</td> <td></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Creditors</td> <td style="text-align: right;">Cr</td> <td style="text-align: right;">R 500,000</td> </tr> </table> <p><b>Solvency test = Fail</b><br/> R1,000,000 less R700,000 less R500,000 = - R200,000 (Not Solvent and Not financially sound)</p> <p>For a Category 1 FSP, that does not hold or receive monies in respect of a financial product, we feel that the risk to the consumer in including goodwill is low, in fact consumers may benefit due to economies of scale that can be applied in a growing practice.</p> <p>We recommend that in a scenario where an FSP has met the requirements immediately prior to the acquisition of another business, is still solvent after the acquisition and meets the liquidity requirements, that as opposed to being non complainant should provide a business plan to the register showing how that will comply. This plan should be reported on together with the report contained in paragraph 46 (2).</p> | Current Assets                  | Dr |  | Bank account balance |  | R 1,000,000 | Current Liabilities |  |  | Creditors | Cr | R 500,000 | Balance Sheet |  |  | Dr |  |  | Goodwill (fee generating business acquired) |  | R700,000 | Current Assets |  |  | Bank account balance |  | R 300,000 | Current Liabilities |  |  | Creditors | Cr | R 500,000 |  |
| Current Assets                              | Dr               |             |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Bank account balance                        |                  | R 1,000,000 |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Current Liabilities                         |                  |             |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Creditors                                   | Cr               | R 500,000   |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Balance Sheet                               |                  |             |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Dr  |                  |             |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Goodwill (fee generating business acquired) |                  | R700,000    |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Current Assets                              |                  |             |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Bank account balance                        |                  | R 300,000   |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Current Liabilities                         |                  |             |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| Creditors                                   | Cr               | R 500,000   |                            |   |                                 |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |
| 353.  | 19               | 44(2)       |                            | The exclusion of all goodwill from the definitions of assets will   | See response under comment 352. |    |  |                      |  |             |                     |  |  |           |    |           |               |  |  |    |  |  |   |  |          |                |  |  |                      |  |           |                     |  |  |           |    |           |  |

|   | Commen-<br>tator | SECTION | WORDING / PROPOSED WORDING | COMMENT   | REGISTRAR'S RESPONSE            |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
|---|------------------|---------|----------------------------|---|---------------------------------|--|----------------|----|----------------------|-------------|---------------------|----|-----------|-----------|---------------|--|--|----|---|----------|----------------|--|----------------------|-----------|---------------------|----|-----------|-----------|--|
|   |                  |         |                            | <p>prevent FSP's from expanding their businesses and infringes on their right to do businesses in a fair and equal market. This is specifically a problem for smaller independent FSP's.</p> <p><b>Example to demonstrate the problem created by excluding all goodwill.</b></p> <p><b>Before acquiring</b> another business :</p> <table border="0" style="width: 100%;"> <tr> <td colspan="2" style="text-align: right;">Balance Sheet</td> </tr> <tr> <td>Current Assets</td> <td style="text-align: right;">Dr</td> </tr> <tr> <td>    Bank account balance</td> <td style="text-align: right;">R 1,000,000</td> </tr> <tr> <td>Current Liabilities</td> <td style="text-align: right;">Cr</td> </tr> <tr> <td>    Creditors</td> <td style="text-align: right;">R 500,000</td> </tr> </table> <p><b>Solvency test = Pass</b><br/>R1,000,000 less R500,000 = <b>R500,000</b> (solvent and financially sound)</p> <hr/> <p><b>After acquiring</b> a fee generating business for R 700,000:</p> <table border="0" style="width: 100%;"> <tr> <td colspan="2" style="text-align: right;">Balance Sheet</td> </tr> <tr> <td></td> <td style="text-align: right;">Dr</td> </tr> <tr> <td>Goodwill (fee generating business acquired)</td> <td style="text-align: right;">R700,000</td> </tr> <tr> <td>Current Assets</td> <td></td> </tr> <tr> <td>    Bank account balance</td> <td style="text-align: right;">R 300,000</td> </tr> <tr> <td>Current Liabilities</td> <td style="text-align: right;">Cr</td> </tr> <tr> <td>    Creditors</td> <td style="text-align: right;">R 500,000</td> </tr> </table> <p><b>Solvency test = Fail</b><br/>R1,000,000 less R700,000 less R500,000 = - <b>R200,000</b> (Not Solvent and Not financially sound)</p> <p>The above clearly illustrates that not all goodwill can be excluded from the definition of "assets" as per Chapter 1.</p> <p>We recommend that goodwill generated in respect of the purchase of another fee generating business be included in the definition of "assets".</p> | Balance Sheet                   |  | Current Assets | Dr | Bank account balance | R 1,000,000 | Current Liabilities | Cr | Creditors | R 500,000 | Balance Sheet |  |  | Dr | Goodwill (fee generating business acquired) | R700,000 | Current Assets |  | Bank account balance | R 300,000 | Current Liabilities | Cr | Creditors | R 500,000 |  |
| Balance Sheet                               |                  |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Current Assets                              | Dr               |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Bank account balance                        | R 1,000,000      |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Current Liabilities                         | Cr               |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Creditors                                   | R 500,000        |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Balance Sheet                               |                  |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
|   | Dr               |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Goodwill (fee generating business acquired) | R700,000         |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Current Assets                              |                  |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Bank account balance                        | R 300,000        |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Current Liabilities                         | Cr               |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| Creditors                                   | R 500,000        |         |                            |   |                                 |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |
| 354.  | 23               | 44(2)   |                            | Section 44(2) prescribes that the assets of the FSP and a juristic representative must be at all times exceed the liabilities of the FSP  | See response under comment 352. |  |                |    |                      |             |                     |    |           |           |               |  |  |    |   |          |                |  |                      |           |                     |    |           |           |  |

|      | Commen-<br>tator | SECTION                   | WORDING / PROPOSED WORDING | COMMENT  | REGISTRAR'S RESPONSE   |
|------|------------------|---------------------------|----------------------------|--|--|
|      |                  |                           |                            | and juristic representative respectively. This section applies to all FSP categories. This means that even a category I FSP that does not hold or receive monies in respect of a financial product must ensure that its assets, which would exclude goodwill, intangible assets, and investments in and loans to related parties, must exceed its liabilities. Surely the solvency and liquidity requirements as prescribed in terms of the Companies Act would be appropriate! The exclusion of investments in and loans to related parties from "assets" in regards to category I FSP that does not hold or receive monies is too onerous, when considering the little risk to the consumer. |  |
| 355. | 13               | 44(4)(a)                  |                            | This subsection does not refer to a rehabilitated insolvent and we would therefore suggest that the definition of a "person who is declared insolvent" is a person who is <u>currently</u> insolvent rather than a person who <u>has been</u> insolvent. We suggest that a "rehabilitated insolvent" should not be a "person who is declared insolvent" and therefore such a rehabilitated insolvent should not be disqualified from being appointed as a representative.  | The wording is sufficiently clear to indicate that only a person who is insolvent or provisionally insolvent cannot be authorised or appointed as contemplated in the Act. Rehabilitation is whereby the insolvent is relieved of the legal implications of being insolvent and put back into a legal position of someone who is / was not declared insolvent. A rehabilitated insolvent could therefore be authorised or appointed. |
| 356. | 14               | 44(4)(c) &<br>44(4)(d)(i) |                            | This clause is too wide and the phrase 'pending proceedings' could be seen as vexatious or without merit. It is quite possible that no action follows the 'pending proceedings' against the FSP; so by suspending trade the regulations would have placed the FSP's business in the very jeopardy that the clause seeks to limit.  | Disagree.<br>The section is limited by the factors set out in section 9(3).<br> See also amendment.   |
| 357. | 20               | 45(1)(iii)                |                            | We are concerned over the ability of Cat IV FSPs to monitor the financial soundness of juristic representatives where the juristic representatives are funeral parlours.   | Noted.<br>FSPs who are unable to comply with their oversight duties should refrain from appointing juristic representatives.   |
| 358. | 10               | 46(2)                     |                            | We would suggest that the need to assess the solvency be made a requirement of the monthly management account process to force a review at management level on an on-going basis.  | See requirement in section 46(1) that requires persons to comply 'at all times'.   |



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| 359. | 20               | 46(2)   |   | What are the requirements for Cat IV FSPs?  |  See section 46 and amended section 48.   |
| 360. | 17               | 46(3)   |   | <p>Clarity is required as to whether the content must be provided from audited financial statements or management accounts. If management accounts are sufficient, then this 30 day timeline is attainable.</p> <p>As an alternate to the above, we recommend that the CAT II reports be submitted with the bi-annual compliance officer reports (February and August each year) as this report will support the financial soundness questions in the compliance officer's report.</p> <p>We recommend the removal of the requirement for the KI to sign off the report. They are not finance experts. We recommend that the chief financial officer completes and signs the report, and the KI only signs that he is aware of the report being submitted (similar to the compliance officer report declaration for the KIs).</p> | <p>See requirement in section 48(1) that requires persons to comply 'at all times'. The information in Annexure 6 must be provided based on the date of the liquidity calculation and on the FSPs/representative' actual assets on that date.</p> <p>Disagree. The Registrar requires more frequent and up to date reporting depending on the FSPs financial year-end.</p> <p>See Management Declaration at the end of Annexure 6 that requires sign-off by the Chief Financial Officer, in the absence of such a person, a person of equivalent status, or the provider in the case of a provider by a sole proprietor.</p> |
| 361. | 16               | 46(4)   | "(4) The form referred to in subsections (2) and (3) must be submitted within <b>45</b> days after every half year-end of the FSP or juristic representative as the case may be." | <p>SAVCA respectfully submits that a FSP would only be in a position to report on the requirements set out in section 46(4) once the management accounts are complete. Most private equity FSPs do not run real time MIS systems and will require up to 30 days to prepare monthly accounts. An additional 15 days after the 30 days is proposed to allow sufficient time to prepare and submit Form A.</p> <p>SAVCA understands the reference to "half-yearly basis" to mean interim financials.</p>   | <p>See response under comment 360.</p> <p> See also amendment.</p>   |
| 362. | 16               | Table B |   | <p>SAVCA respectfully submits that a liquidity requirement based exclusively on the annual expenditure recorded in the previous year's financial statements would be highly prejudicial to an FSP that has downsized its operations and reduced its expenditure.</p> <p>SAVCA would accordingly suggest that an FSPs should have the</p>  | No, essential to rely on financial statements as budgets are open to manipulation.   |


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|      |                  |         |  | option of rather using its budgeted expenditure for the year in progress, motivated if necessary with a letter to the Registrar explaining why expenditure will be lower than in the previous year.  |   |
| 363. | 1                | 47      | <p>(1) An FSP referred to in <del>section paragraph 45</del>(1)(a) must, in writing, immediately notify the Registrar when <u>an FSP becomes aware</u> -</p> <p>(a) <u>that</u> the assets of the FSP or that of its juristic representative exceed the liabilities by less than 10%;</p> <p>(b) <u>that</u> the current assets of the FSP or that of its juristic representative exceeds the current liabilities by less than 10%;</p> <p>(c) <u>that</u>, in respect of a Category IIA and III FSP and juristic representatives of that FSPs, the additional assets of the FSP or that of its juristic representative exceeds the minimum requirement by less than 10%;</p> <p>(d) <u>that</u> the FSP or its juristic representative does not meet any of the requirements in this Chapter; or</p> <p>(e) <del>the FSP becomes aware</del> of an event or situation that may or will result in the effect contemplated in paragraphs (a), (b) and (c).</p> <p>(2) The notification referred to in <del>subsection</del> <u>subparagraph</u> (1) must be certified by the chief executive officer, controlling member, managing or general partner, or</p> | <p>An FSP appointing a juristic representative will have to put measures in place to ensure that the juristic representative complies with the early warning requirements set out in subparagraph (1) to enable the FSP to, in turn, comply with the same requirements. Some ASISA members are concerned that the current wording of subparagraphs (1) and (3) will have the effect of an FSP automatically becoming non-compliant when a juristic representative does not comply with the requirements without an FSP being aware of such non-compliance.</p> <p>Subparagraph (1) requires an FSP to immediately notify the Registrar if, for example, the assets of its juristic representative exceed its liabilities by less than 10%. Subparagraph (3) requires a juristic representative to immediately notify the FSP in such case. From a practical point of view, an FSP will only be able to notify the Registrar if the juristic representative informs the FSP. For the sake of clarity and to provide legal certainty to FSPs, it is suggested that subparagraph (1) be rephrased so that an immediate notification is required when an FSP becomes aware of the events listed in subparagraph (1).</p> | <p>Disagree.</p> <p>The requirement aligns with section 13(2)(a) of the Act that requires an FSP, <b>at all times</b>, to be satisfied that its representatives are when rendering a financial service on behalf of the provider competent to act, and comply with the fit and proper requirements.</p> |


|      | Commen-<br>tator | SECTION  | WORDING / PROPOSED WORDING  | COMMENT  | REGISTRAR'S RESPONSE   |
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|      |                  |          | trustee, of the FSP as the case may be.<br>(3) The requirements set out in <del>subsection subparagraph</del> (1) apply, with the necessary changes to a juristic representative referred to in <del>section paragraph 47(1)(a)(iii)</del> <u>45(1)(a)(iii)</u> , provided that the notification referred to in that <del>subsection subparagraph</del> must be made to the FSP of the juristic representative. |  |  |
| 364. | 2                | 47       | We suggest that the stakeholders (underlined) be defined, or reference to applicable legislation be included.   | Not all the stakeholders mentioned in section 47 have been defined and it may therefore be unclear what the full impact will be. E.g. Section 47(2) - The notification referred to in subsection (1) must be certified by the <u>chief executive officer, controlling member, managing or general partner, or trustee</u> , of the FSP as the case may be  | Disagree.<br>The ordinary meaning of the expressions applies.  |
| 365. | 16               | 47(1)    | "An FSP referred to in section 45(1)(a) must, in writing notify the Registrar, <u>within 15 days of the FSP becoming aware that-</u> "  | SAVCA notes that the FAIS Act provides for a standard 15-day period for notifying the Registrar of various non-compliance or responses.<br><br>SAVCA proposes that this section is brought in line with the rest of the FAIS Act. SAVCA proposes replacing the word " <i>immediately</i> " with the words " <i>within 15 days of the FSP becoming aware that</i> " to provide clarity in interpreting the provision. | Disagree.<br>The Registrar requires immediate notification in order to supervise more proactively.   |
| 366. | 12               | 47(1)(e) |   | Would this include a potential Professional Indemnity claim? And only when intimated to the PI Carrier or proven by the claimant?  | The paragraph is intentionally wide and includes any event or situation that <b>may</b> result in the effect contemplated in subsection (1). |
| 367. | 1                | 47(3)    | The requirements set out in <del>subsection subparagraph</del> (1) apply, with the necessary changes to a juristic representative referred to in <del>section paragraph 47(1)(a)(iii)</del> <u>45(1)(a)(iii)</u> , provided that the notification referred to in that <del>subsection subparagraph</del>  | Incorrect reference.   |  See correction of incorrect reference.                 |



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|                                  |                  |                          | must be made to the FSP of the juristic representative. |   |   |
| 368.                             | 4                | Chapter 6 and Annexure 6 |   | <ul style="list-style-type: none"> <li>- We require clarity on whether the content must be provided from audited financial statements or management accounts. If management accounts are sufficient, then we will be able to meet the 30 day timeline;</li> <li>- As an alternate to the above, we recommending that the CAT II reports be submitted with the bi-annual compliance officer reports (February and August each year) as this report will support the financial soundness questions in the compliance officer's report in any event;</li> <li>- We recommend the removal of the requirement for the KI to sign off the report. They are not finance experts. We recommend that the chief financial officer completes and signs the report, and the KI only signs that he is aware of the report being submitted (similar to the compliance officer report declaration for the KIs).</li> </ul> | Seer response under comment 360.  |
| <b>CHAPTER 7 – MISCELLANEOUS</b> |                  |                          |   |   |   |
| 369.                             | 6                | General                  |   | <p>BIAC is in support of the recognition of the role played by the survivors of the insurance industry, the PDI FSP. The organisation supports the need for the new entrants to undergo the class of business training.</p> <p>The only caution which BIAC would like to throw in the wind is that the role of the Broker Consultant must not be lost to the industry. They are important to our clients and our family income.</p>   | Noted.  |
| 370.                             | 10               | General                  |   | BN 104 of 2008 must surely need to be amended in line with these changes?   | Agree.<br>The Registrar will consult shortly on the proposed amendments to BN 104 of 2008.  |
| 371.                             | 2                | 50                       |   | <p>We request the Registrar to consider the following regarding transitional provisions:</p> <ol style="list-style-type: none"> <li>1. The budgeting process for 2017 has been completed and the banks have not budgeted for any development/changes that will follow in 2017 as a result of the amendments. Budgeting for the amendments will commence early 2017 or as soon as the amendments are finalised.</li> </ol>   | In general the Registrar disagrees with the recommended effective dates. The Registrar is of the view that an effective date of 1 March 2018 should be sufficient for those requirements that are already effective in some form or manner. |







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|  |                  |         |                            | <p>2. Due to the size and nature of many FSPs (including computer, recording and other systems) we request the Registrar to consider a transition period as described below:</p> <ul style="list-style-type: none"> <li>a. Section 10 disclosure information on honesty and integrity: 12 months for changes to existing documentation, establishment of processes and awareness.</li> <li>b. Section 13(1) general policies and procedures: 12 months for implementation.</li> <li>c. Section 13(2) and 38 on automated advice: 12 months for appointment of representatives and establishment of policies and procedures.</li> <li>d. Section 13(3) &amp; (4) regular evaluations and reviews: 12 months for establishment of processes.</li> <li>e. Section 13(5), 30 and 33 competency register: 24 months is required as it involves system development and integration into various existing systems to be able to ensure compliance.</li> <li>f. Section 22(b)(ii)(dd) and (ee) Execution of sales controls and monitory: 6 months to ensure all procedures can be updated.</li> <li>g. Sections 28 to 30 Training requirements: 24 months to ensure development and delivery of training, assessments and recording systems.</li> <li>h. Section 50 (7) refers to a lead period of 12 months for class of business training for representatives under supervision, but this will not be sufficient as this training still needs to be designed and delivered. We therefore ask that the s50(2) time period be extended to 24 months.</li> <li>i. Chapter 4: 24 months to provide for the implementation of policies, procedures and processes as well as accreditation of CPD programmes and recording thereof.</li> <li>j. Chapter 5 (Section 36,37, 39 and 40) changes to operational ability: 6 months to provide for aligning of frameworks, policies, procedures etc. where there are current requirements.</li> <li>k. Chapter 6: 12 months for implementation of reporting</li> </ul> | <p>This is so because the requirements are not new and FSPs should already have systems and processes in place to ensure compliance. Eg. the disclosure referred to in (a) is a current requirement – see section 2(4) of the 2008 Fit and Proper Requirements which requirement must be read with sections 8A and 13(2) of the Act.</p> <p>As regards the new competency requirements – see amended effective dates that were informed by the impact assessment.</p> <p>As regards comment 3, the commentator’s attention is directed to subsection (8) that provides that the Registrar will amend the licence of an FSP who was authorised at date of commencement of the Notice for the products referred to in Column A of Table C to include the products referred to in Column B. The Registrar does not understand why such FSP would be at a disadvantage. In addition, the commentator is referred to subsection (9) that require the FSP to update its representative registrar to correctly reflect which representative will render services in respect of which product. It cannot be an automatic process because a person may only wish to be appointed for the Tier 2 product instead of its Tier 1 equivalent in order to benefit from the reduced competency</p> |

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|      |                  |         |                            | <p>and early warning requirements.</p> <p>3. FSPs that have different B1 and B2 subcategories (respectively) as well as Short Term Personal Lines may be at a disadvantage regarding the competency of their existing staff. We therefore request that the experience gained in these subcategories be automatically recognized for the additional subcategories for the representatives, KIs and compliance officers. The automatic recognition will alleviate the burden on the FSP and the FSB alike to apply for and then process such applications. The automatic approval will eliminate unnecessary delays and interruptions for FSPs to render financial services to their customers.</p> <p>4. Section 5 should be amended to state that all representatives and KIs (who are representatives) approved before the effective date of the new fit and proper BN are deemed to have completed class of business and product training. These staff are already in their roles and CPD will address any potential risks.</p> <p>5. Section 6 should be amended to state that the FSPs have 24 months to comply with class of business training for new staff from the effective date on this BN. This is because accredited providers/education institutions and FSPs that want to offer such training will need to time to develop the training and get same approved under the NQF framework and then accredited by the relevant SETAs.</p> <p>We recommend that we take the current transitional periods and amend same for the new requirements being introduced herein with timelines that will be practical to implement.</p> | <p>requirements.</p> <p>The Registrar disagrees with the comment expressed in paragraph 4.</p> <p>See new effective dates for class of business and product training and CPD which dates were informed by the outcome of the impact assessment.</p> <p> See new transitional requirement re class of business training.</p> <p>The Registrar has grandfathered all persons, excluding representatives working under supervision, from the class of business training, inter alia, because of their experience in the industry.</p> |
| 372. | 7                | 50      |                            | <p>On what basis has a distinction been drawn between KI's appointed before and after 1 January 2015? We propose that the class of business training requirement becomes applicable on the effective date of the Board Notice. In this regard KI candidates may be discouraged from writing the KI exam until those requirements are finalised, potentially putting an FSP at risk.</p>  | <p>See new effective dates.</p>   |
| 373. | 13               | 50      |                            | <p>The transitional provisions are silent on the process to be followed for 3 of the new product categories, ie. Hedge Fund CIS, Structured Product, Securities and Instruments. As there may be FSPs which are currently rendering financial services in respect of one or more of these products, is the intention that the full</p>   | <p>Agree.</p> <p> See new transitional requirement.</p>  |


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|      |                  |  |  | application process for a new product category to be added to the licence be followed, including payment of the applicable fee? If this is the case, we would like to suggest that some leniency is granted (ie. the FSP is allowed to continue to render financial services in respect of the financial product) until such time as the application is either approved or declined.   |   |
| 374. | 12               | 50(4)                                      |  | Please can "product update or change" be further defined to indicate what type of change? An endorsement to a policy could change the cover substantially and may apply to only one or a small section of policy holders. Or it could be an adjustment to excesses which could be an annual event.   |  See amendment to ensure alignment with section 29(1)(ii). |
| 375. | 22               | 50(4)                                      |  | The list of "securities and instruments" is not definitive. It is therefore unrealistic to exclude updates and changes to such products from the deeming provision.<br>The effect of this section appears to nullify section 50(3), with the result that KIs and Reps who have already been authorised or appointed in relation to these products may need to complete the product specific training.<br>Please could the regulator reconsider this aspect? Would CPD not deal with updates and changes?                                 | Disagree. See responses above relating to concern.  |
| 376. | 17               | 50(5)                                      |  | It is unclear why staff appointed after 1 Jan 2015 have to meet the requirement to do class of business requirement.<br>We believe that the requirements should only apply to reps coming in after the effective date of this BN.<br><br>Section 5 should be amended to state that all reps and KI approved before the effective date on this BN are deemed to have completed class of business and product training.<br><br>These staff are already in their roles and CPD will address any risk that the Regulator is concerned about. | See response under comment 371.   |
| 377. | 20               | 50(5)                                      |  | Why is this date 1 January 2015 and not the effective date of the Board Notice?  | See response under comment 371.   |
| 378. | 1                | 50(5) and 50(6)<br>Transitional provisions | (5) An FSP, key individual or representative, excluding a representative working under supervision, authorised, approved or appointed prior to 1 January | The Explanatory Memorandum does not provide an indication of the rationale for requiring an FSP, key individual or representative authorised, approved or appointed after 1 January 2015 to complete class of business training. If the Registrar is of the view that a person that has been compliant   | See response under comment 371.   |





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|      |                  |         | <p><del>2015 on a date more than one year prior to commencement of this Notice</del> is deemed to have completed the class of business training contemplated in Part 5 of Chapter 3 for the financial products for which they were so authorised, approved or appointed.</p> <p>(6) An FSP, key individual or representative, <del>excluding a representative working under supervision,</del> authorised, approved or appointed <del>on or after 1 January 2015 but prior to the commencement of this Notice</del> has <del>12 months from the date referred to in section 52 to</del> on a date one year or less than one year prior to the commencement of this Notice <u>must comply</u> with the class of business training contemplated in Part 5 of Chapter 3 for the financial products for which they were so authorised, approved or appointed within two years from the commencement date of this Notice.</p> | <p>with the current fit and proper requirements for less than 2 years still requires class of business training, ASISA members suggest that paragraph 50(5) should be amended to provide for a more reasonable period of 1 year prior to the commencement date of the Notice.</p> <p>Paragraph 50(6) should be amended accordingly to ensure alignment with paragraph 50(5). Furthermore an FSP, key individual and representative should have at least 2 years from the commencement date of the Notice to complete the class of business training. It must be borne in mind that an FSP needs to budget for the training and the requirements for the training must first be implemented by an FSP. Please also refer to the general comment in respect of the commencement date of the Notice.</p> |  |
| 379. | 2                | 50(6)   | <p>We propose the wording to read as follows:<br/>50(6) An FSP, key individual or representative authorised, approved or appointed on or after 1 January 2015 but prior to the commencement of this Notice has 12 months from the date referred to in section <del>52-3</del> to comply with the class of business training contemplated in Part 5 of Chapter 3.</p>   | <p>The reference to section 52 in s50(6) should read section 51.</p>  | <p> See correction.</p> |


|      | Commen-tator | SECTION                          | WORDING / PROPOSED WORDING   | COMMENT  | REGISTRAR'S RESPONSE  |
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| 380. | 10           | 50(6)                            | Should this not be amended to state"....authorised, approved or appointed <u>for the first time on or after..."</u>  |  |  See amendment.  |
| 381. | 20           | 50(6)                            | (6) An FSP, key individual or representative authorised, approved or appointed on or after 1 January 2015 but prior to the commencement of this Notice has 12 months from the date referred to in section <u>51</u> to comply with the class of business training contemplated in Part 5 of Chapter 3.   |  |  See correction. |
| 382. | 22           | 50(6)                            |  | It is unclear what class of business training could be undertaken that would encompass all securities and investments, since this list is not definitive and also because it covers a wide array of different products and businesses.   | Noted.  |
| 383. | 1            | 50(7)<br>Transitional provisions | A representative working under supervision at commencement of this Notice <del>has 12 months from the date referred to in section 52 to</del> <u>must comply with the class of business training contemplated in Part 5 of Chapter 6 3 for the financial products for which they are working under supervision –</u><br><u>(a) by 30 June after the expiry of 72 months from the date of first appointment as a representative;</u><br><u>or</u><br><u>(b) within two years from the commencement date of this Notice where the period referred to in paragraph (a) ended on a date one year or less than one year prior to the commencement of this Notice.</u> | Paragraph 4(6)(e)(iii) of the Exemption of Services under Supervision (Board Notice 104 published on 15 October 2008, as amended) requires that a representative working under supervision must successfully complete the relevant second level regulatory examination(s) by 30 June after the expiry of 72 months from the date of first appointment as a representative. Class of business training is replacing the second level regulatory exams. The time periods within which a representative working under supervision must complete the first level regulatory exam and obtain a qualification is structured similarly.<br><br>ASISA members suggest that the time periods in the transitional provision for class of business training should coincide with the other requirements for representatives working under supervision. From a practical perspective, differing requirements are inefficient. The apparent misalignment supports a point in case for the inclusion of requirements for services under supervision in the new Fit and Proper Requirements.<br><br>Please also refer to the comment on paragraphs 50(5) and 50(6) above. Further amendments are proposed to ensure | Disagree. The Registrar is of the view that the proposal will overly complicate the requirements.   |

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|      |              |             |   | alignment with these paragraphs.   |   |
| 384. | 1            | 50(7)       | A representative ..... Notice <del>has 12 months from the date referred to in section 52 to</del> <u>must</u> comply ..... in Part 5 of Chapter <del>6</del> <u>3</u> .....   | Incorrect reference.   |  See correction.                     |
| 385. | 10           | 50(7)       |   | This refers to Section 52 but there is no such section.  |  See correction.                     |
| 386. | 17           | 50(6) & (7) |   | These sections make reference to S52 whereas S52 does not exist, it should reference S51.<br><br>We recommend that a 2 year period be afforded due to the possibility of a high volume of the training.  |  See correction.                     |
| 387. | 4            | 50(8)       | This sections needs to include the other new subcats being securities and instruments, structured deposits as well as hedge funds and these automatically recognized for the FSP, KIs, Reps and CO s who already have deposits, other securities and instruments as well as CIS on their licenses (CAT I and CAT II and/or CAT III). This is because is the new subcats split out products from the existing subcats to create more specific subcats that the FSB would like to monitor better. | The table does not cater for the other new subcategories/splits in subcats like securities and instruments, structured deposits and participatory interest in hedge funds.<br>FSPs, KI, Reps and Cos need the recognition for these added subcats. Not to deem that they have the experience will leave gaps in the industry and FSPs being non-compliant from the date this BN becomes effective.   |  See new transitional requirements.  |
| 388. | 16           | 51          |   | SAVCA proposes that at least a 6-month transitional period be inserted into section 51 to allow FSPs, key individuals and representatives sufficient time to implement the new requirements imposed by the Draft Determination.  |  See new transitional requirement.   |
| 389. | 22           | 51          |   | A reasonable period of time needs to be provided in order for FSPs to be able to prepare for compliance with the new requirements in this Notice e.g. the governance framework as one example.<br>We suggest a period of six months to a year in view of the fact that the governance framework would have to be approved within the Rothschild & Co group and by the board of directors of Rothschild, who meet three times a year (half of whom are non-executive and have very full schedules). |  See new transitional requirement. |


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| <b>TABLES AND ANNEXURES</b> |                  |  |                            |  |   |
| 390.                        | 20               | Annexure 1   |                            | Can you confirm that this coding structure will be adjusted to take into account existing representative register updates?   | The online representative register will be aligned to the product categories set out in Annexure One.           |
| 391.                        | 2                | Annexure 1 –<br>Table 1<br>Minimum<br>experience<br>table for Cat I –<br>Sub-categories<br>1.21 to 1.26 are<br>new |                            | We believe sub-category 1.25 is the same as sub-category 1.8-1.13. We will appreciate the Regulator's input in this regard.<br>We submit that dividing Derivatives into sub-categories 1.11 and 1.13 is confusing and there is only one examination for derivatives – why 2 separate categories?   | See definitions of respective products and responses under comments 82, 83 and 84.                              |
| 392.                        | 17               | Annexure 1<br>Table1   |                            | We propose the relaxation of the experience requirements in the table for individuals selling in a call centre environment (low advice/execution sales).<br><br>We believe that this should be limited to a maximum of 3 months per sub-category for advice – 1 month direct and 2 months ongoing provided the controls on the call script are in place and maximum of 1 month for execution sales scenario.<br><br>Consideration is also to be given to the additional sub cats in insurance where the products carry less risk and the reps need to meet less onerous fit and proper requirements. We suggest reducing the time period to a maximum of 6 months.<br><br>We propose the reduction of the timelines for experience for Tier 2 products to a maximum of 3 months for advice and 1 month for intermediary, or removing the need for staff only rendering intermediary service to work under supervision, considering the administrative nature of the functions for tier two products. | Due to other concessions it is necessary to retain the experience requirement to ensure good customer outcomes. |
| 393.                        | 17               | Annexure 1<br>Table 2  |                            | We note that there is no mention of the requirements for Category III, IV and IIA. This was also not in the old legislation and created confusion.<br><br>It would be ideal if the FSB could specify the requirements for  | Disagree.<br>See sections 19, 20 and 21 for experience requirements.  |

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|      |                  |   |                            | these FSPs.   |   |
| 394. | 7                | Annexure 3 – Tier 1 and Tier 2 Financial Products |                            | We propose that the experience requirements for representatives marketing products in execution of sales models, and in relation to Tier 2 products in particular, be reduced. In this regard we propose a 3-month period. The remaining controls, as set out in clause 22(b)(ii), will substantially mitigate the risk of poor customer outcomes.  | See response to comment 392.  |
| 395. | 11               | Annexure 3 Product Tiers                          |                            | We do not agree that a long-term insurance policy providing disability or sickness cover is a Tier 2 product. It is not the limited underwriting that adds to the complexity of the product, but rather the claims definitions. Therefore, recommend that products offering only life cover are in tier two. Any product offering disability or sickness benefits is placed in Tier One.  | The new requirements follow the current exemptions that, as far as the Registrar is aware, havenot resulted in poor customer outcomes.  |
| 396. | 17               | Annexure 3  |                            | For the benefit of Financial Service Providers (FSP's) who make use of call scripts in the direct marketing environment, recommendation is made that these representatives (reps) be placed in the Tier 2 category and that clarity is to be provided regarding what their specific requirements are to be. We note that there are many exclusions from the Tier 1 applications, but nothing on the Tier 2 requirements.  | See definition for "execution of sales" read with section 22(b)(ii).  |
| 397. | 10               | Annexure 4  |                            | The class of business includes "reinsurance" yet the primary licence category does not reflect this. FSP's acting as reinsurance brokers already find themselves as the proverbial square peg in a round whole with regard to many of the Act and GCoC requirements and whilst the classes of business potentially recognises CPD at Class of Business level the sub classes do not. There is an opportunity to address their current licencing plight.   | Disagree.<br><br>See definitions of subclasses which include reinsurance.   |
| 398. | 11               | Annexure 4 Class of Business                      |                            | A retirement annuity, pension preservation fund and provident preservation fund are tax wrappers for what is essentially an investment product. A retirement annuity for instance cannot be sold without having knowledge of collective investment schemes. As such, we recommend the following changes to the class of products:<br><br>1) Retirement is renamed employee benefits and only include Pension fund benefits<br>2) Retail pension benefits is a sub class of securities and investments | Agree.<br><br> See inclusion of Retail Pension Benefits under the Investment Class of business.<br>Given the specific nature of Forex Investments, the Registrar remains of the view that it should be a separate class. |

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|      |                  |                       |  | We also do not believe that Forex Investments should not be a class on its own, but rather a subclass of securities and investments.  |  |
| 399. | 12               | Annexure 4<br>Table 1 |  | Annexure 4 Defines the Classes of Business according to the Short and Long Term Act and Annexure Three Table 1 defines the Financial Products according to FAIS.<br><br>The same comment applies to the other sections within Table 1 "Class of Business in conjunction with their relevant Acts.<br><br>Please can there be consistency of terminology between the Acts to ensure clarity and avoid misunderstanding.  | Noted. The Registrar has and will align as far as possible.  |
| 400. | 16               | Annexure 4<br>Table 1 |  | Table 1 includes a partial circular reference for <u>Class of Business</u><br>5. Securities and Investments<br><u>Subclasses</u><br>5.6 Securities and instruments<br>To avoid confusion, either the class or the sub-class should be renamed.  | Agree.<br> See amendment.   |
| 401. | 18               | Annexure 4<br>Table 1 |  | It is recommended that the Class of Business categories be split between Personal Lines and Commercial Lines to two separate classes due to the knowledge and skills of insurance contracts, sources of information and business requirements are very different between personal lines clients and commercial clients also requiring a totally separate skill and knowledge of advice and processes.<br><br>It is further proposed that the FSB provide clarity on the products provided under the Short Term Insurance category: Miscellaneous as the current definition seems very open to interpretation.<br><br>These categories should also be considered in line with the new proposed categories as listed in the Insurance Bill. | Agree.<br> See amendment.<br><br>The subclass 'Personal lines: Miscellaneous policy' is defined with reference to the definition of a 'miscellaneous policy' in the Short-term Insurance Act. |
| 402. | 1                | Annexure 5            | Annexure Five Table 1 Task No 1 -<br>different fonts | The Knowledge (K) and Skill (S) indicators in respect of Qualifying Criteria 2 to 7 appear to be in a different font than the rest of the indicators in Table 1.  |  See correction.  |
| 403. | 1                | Annexure 5            | Annexure 5 Table 2 Heading -<br>typographical error  | TABLE 2: REGULATORY EXAMINATION: FSPs AND KEY INDIVIDUALS IN CATEGORIES II AND IIA FSPs <del>1</del>  |  See correction.  |

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| 404.                    | 12               | Annexure 5<br>Table 1<br>Task 1.6                  |                            | Surely the format of communication would depend on the reason for the communication and the possible formats could be exceptionally difficult to have prescribed knowledge of?   | Disagree. Act requires that communication must be in writing.   |
| 405.                    | 12               | Annexure 5<br>Table 1<br>Task 3.28                 |                            | To date there has been no documented process for an on-site visit other than that which is communicated to the FSP immediately prior to the on-site visit.   | The criteria test a person's knowledge on the requirements in the Financial Institutions (Protection of Funds) Act, insofar it relates to the FSPs responsibilities and rights.   |
| 406.                    | 2                | Annexure 6<br>Form A –<br>Liquidity<br>Calculation |                            | <ul style="list-style-type: none"> <li>The form does not provide space for “other assets”, i.e. it only caters for liquid assets (including assets capable of being converted to cash within a certain time frame). We are now satisfied that the “other assets” we were concerned about would be capable of being converted into cash. We can therefore leave out this comment, but include the one below.</li> <li>What if you have Cat I, Cat II and Cat IIA, would you do one submission for the highest requirement or one for each category?</li> </ul>  |  See amendment to clarify that a person authorised for more than one category must submit only a single Form based on the calculation of the most onerous liquidity requirement. |
| 407.                    | 10               | Annexure 6   |                            | We would suggest that this annexure be released in Excel or “App” format that allows for the calculation to be automated within the tool so as to achieve consistency in calculations.   | Agree.  |
| <b>GENERAL COMMENTS</b> |                  |  |                            |  |   |
| 408.                    | 11               | General  |                            | <p><b>About FPI</b><br/>Financial Planning Institute of Southern Africa (FPI) a SAQA-recognised professional body is pleased to give comments on The Financial Service Boards Draft Fit and Proper requirements. FPI, alongside 25 other countries is a member of the Financial Planning Standards Board (FPSB), the global standards setting body for the financial planning profession.</p> <p>FPI's mission is to benefit the public by establishing, upholding and promoting professional standards in financial planning. FPI creates relevant professional standards so that:</p> <ul style="list-style-type: none"> <li>The public can identify qualified, competent and ethical financial planners;</li> <li>Practitioners can distinguish themselves as qualified, competent and ethical financial planning professionals;</li> </ul> | Noted.  |

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|  |                  |         |                            | <p>and</p> <ul style="list-style-type: none"> <li>Consumers, regulators and other key stakeholders can have confidence in the financial planning profession and in financial planning professionals, and recognize the benefits financial planning offers to individuals and society.</li> </ul> <p>FPI's interest is in protecting the public and fostering positive outcomes for consumers engaging financial intermediaries in an effort to improve their financial wellbeing.</p> <p><b>Regulatory approach</b></p> <p>FPI submits that the <i>standards of professionalism</i> for financial planners and advisers, the <i>competency</i> of individuals offering financial planning and the <i>process</i> financial planners use to engage clients and understand their goals, needs and objectives before the delivery of financial planning recommendations is paramount and a focus should be placed on this.</p> <p>The financial planning process consists of developing strategies to assist clients in managing their financial affairs to meet life goals, and can involve reviewing all relevant aspects of a client's situation across a large breadth of financial planning activities (including inter-relationships among often conflicting objectives).</p> <p>While products play a key role in the implementation of a financial plan, financial planners only recommend products after a financial plan and/or financial planning strategies are in place and may refer their clients to other financial practitioners for those products. Additionally, a financial planner's recommended strategy for a client may not involve the need to purchase or sell financial products.</p> <p>We believe that the principle reasons a financial intermediary or firm provides a customer with an unsuitable product are:</p> <ol style="list-style-type: none"> <li>a lack of knowledge of one's own abilities and obligations to the customer;</li> <li>a lack of understanding of the client's goals, needs and</li> </ol> |                      |

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|      |                  |         |                            | <p>objectives (and to a lesser extent risk tolerance);</p> <p>(c) a lack of knowledge of the product and its potential to impact the customer's financial situation negatively; or</p> <p>(d) the product seller's external obligations or motivation for personal gain (resulting in an unsustainable conflict of interest), which compromises the duty of care owed to the customer purchasing the product.</p> <p>The situations described in (a), (b) and (c) above speak to the practitioner's professionalism, competence, an understanding of his or her own abilities, obligations to the customer, and an understanding of the customer's needs and the products being sold. We believe the proposed Fit and Proper requirement will address these concerns</p> <p>The situation in (d) speaks to an insufficient duty of care afforded to the customer by those whose personal interests or external obligations conflict with public expectations and the customer's needs, which can be exacerbated by the absence, or by a limited form, of remuneration or other disclosures.</p> <p>FPI will respond to FSB's call for comment on the proposed amendments through the rubric of financial planning—a client-centric, process-driven professional practice that can help (re)build trust and restore consumer confidence in financial intermediaries, provide a suitable context for the distribution of products and ultimately support better outcomes for South Africans engaging the financial services marketplace.</p> |   |
| 409. | 11               | Index   |                            | In the index section 34 is titles Reporting requirements. This section is not in the determination and subsequent numbering therefore does not match the index.  |  See correction. |
| 410. | 1                | General |                            | ASISA members thank you for the opportunity to provide comments on the 2 <sup>nd</sup> Draft FAIS Determination of Fit and Proper Requirements for Financial Services Providers. The publication of the regulatory responses is also appreciated. In general, the simplification and restructuring of the requirements are welcomed. It will greatly assist with the interpretation of the requirements. We trust that the Registrar will receive the comments in the positive spirit in   | Noted.<br>The comments will be considered.  |

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|      |                  |  |                            | <p>which they are intended and that ASISA and its members will be afforded an opportunity to discuss these comments with the Registrar. We wish to highlight the following matters:</p> <p>In its submission on the 1<sup>st</sup> Draft, ASISA members strongly suggested that the requirements in respect of services under supervision currently contained in an exemption published as Board Notice 104 of 15 October 2008 should be incorporated in the Fit and Proper Requirements. The inclusion of the supervision requirements in the Fit and Proper Requirements (as opposed to separate requirements in an exemption) will greatly assist FSPs, key individuals and representatives to interpret and implement requirements on a holistic basis. The complete exclusion of supervision requirements (including a reference thereto as it is included in the current Fit and Proper Requirements) causes uncertainty. The regulatory response document indicates that the current exemption contained in Board Notice 104 will be amended simultaneously with the coming into operation of the proposed Determination of Fit and Proper Requirements. In that case, ASISA members respectfully request the Registrar to reconsider its decision not to incorporate supervision requirements in the Determination of Fit and Proper Requirements.</p> |   |
| 411. | 1                | New financial product subcategories                                |                            | It is suggested that the FSB publish guidance in respect of the process to be followed to amend licences in respect of new product categories and also guidance in respect of how past experience could be assessed in relation to the new product categories.   | Noted.  |
| 412. | 1                | Commence-<br>ment date of<br>new Fit and<br>Proper<br>Requirements |                            | An implementation date of 1 March 2017 is neither reasonable nor feasible. The Notice needs to be finalised and published before an FSP will be in a position to assess compliance with the requirements and implement systems, processes and procedures to comply with new requirements. Even though many requirements have not changed, the responsibilities placed on an FSP are more principles based and although this is welcomed, it does mean more intensive scrutiny of current processes and procedures to determine compliance and more detailed consideration of processes and   | Noted. See amendments and outcome of impact assessment. |

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|      |                  |                           |                            | <p>procedures to comply with new requirements.</p> <p>An FSP will have to review all its current processes and procedures to assess whether it still ensures compliance with the requirements. Where changes are necessary, these need to be effected by changing IT systems and relevant processes and procedures. In larger financial services organisations, these efforts need to be co-ordinated across different business entities. Systems, processes and procedures must be devised and implemented for the new general and specific requirements in respect of execution of sales, automated advice, class of business and product specific training, CPD, governance frameworks (which incorporate a number of matters to be addressed), outsourcing, juristic representatives and financial soundness requirements. Budgets need to be renegotiated to cover the costs of implementation. The significant impact of the implementation of requirements should not be underestimated. ASISA members estimate that implementation will in all likelihood only be achieved 18 months to 2 years after the publication of the Notice.</p> <p>Furthermore, the Registrar indicated that an impact analysis will test the Registrar's assumption that a balance has been achieved between the likely cost to the industry in respect of the current requirements <i>viz-a-viz</i> the costs likely to be incurred as result of the proposed new requirements. It is submitted that the new requirements cannot be finalised before the results of such an impact analysis is available.</p> |                      |
| 413. | 1                | General drafting comments |                            | <p><b>Section vs paragraph</b></p> <p>In view of the fact that an Act of Parliament consists of sections, it is again suggested that a Board Notice consists of paragraphs. All references to "section" or "subsection" in this Notice should be replaced with "paragraph" or "subparagraph".</p> <p><b>Arrangement of sections</b></p> <p>The arrangement of paragraphs should be updated. Paragraph 34 Reporting Requirements is incorrectly</p>   | Disagree.            |

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|      |                  |                                      |                            | <p>included.</p> <p><b>Definitions</b><br/>The definitions in paragraph 1 are not in alphabetical order.</p>  |  |
| 414. | 2                | Content of KI Regulatory Examination |                            | <p>We commend the Regulator on the efforts that went into the substantive reform of the fit and proper requirements. In particular, we note that the Regulator considered the realities and operational requirements in the financial service industry since the inception of the FAIS Act, which includes the changes being effected to the original thinking about the level two regulatory examination.</p> <p>We therefore urge the Regulator to also consider providing only one examination for Key Individuals that will include the qualifying criteria as per the current RE1 examination, combined with the qualifying criteria of the most onerous product category that the KI is approved for. For example, KIs that only look after CAT I FSPs should write the RE1 examination; KIs that look after CAT I and CAT II FSPs should only need to write the RE3 examination, and KIs that look after CAT III FSPs should only need to write the RE4 examination.</p> | Noted.   |
| 415. | 2                | Regulatory Examinations              |                            | <p>We request the Regulator to reconsider the practice of the Regulatory Examinations to be delivered by examination bodies only. We submit that the approach adopted in respect of the level 2 exams (ability to offer in-house product training) be extended to the level 1 exam, with the ability of the FSP to provide internal training programmes (which include formal assessments) against the Regulator's prescribed level 1 knowledge criteria for the level 1 exam.</p>  | Disagree.  |
| 416. | 2                | Services under Supervision           |                            | <p><b>General comment – Chapter 3 read with transitional provisions in Chapter 7</b></p> <p>(a) We note that unlike the current fit and proper requirements, no deadline dates are prescribed to meet certain competency requirements such as experience, regulatory exams and qualifications.</p> <p>(b) While Chapter 7 makes provision for grandfathering, which we welcome, the continued application of the current deadline dates as provided for in Exemption for Services under Supervision (Board Notice 104 of 2008) are not</p>  | In terms of the 'current' fit and proper requirements (excluding the transitional provisions) all persons authorised, approved or appointed must comply with the competency requirements at date of such authorisation, approval or appointment. The deadlines referred to are set out in the Exemption of services under supervision. The new |

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|  |                  |         |                            | <p>included in the draft amendments. The Registrar did clarify that Board Notice 104 of 2008 will be revised to provide for similar requirements for representatives to obtain their experience, qualifications and regulatory examinations. For example, those representatives who still have a two year period from DOFA to complete exams and a six year period from DOFA to complete their qualifications, will be afforded time to do so.</p> <p>(c) We also recommend that the Registrar considers the practical implications of appointing a representative that will work under supervision and provide the representative the opportunity to,</p> <ol style="list-style-type: none"> <li>i. over period of at least 6 months, complete the Classes of Business training.</li> <li>ii. over a period of two months complete product specific training, with direct supervision (which may be prescribed by the Regulator) by a supervisor in this period.</li> </ol> <p>(d) We note the Registrar's intention to reconsider the level of supervision necessary while a person only has a qualification outstanding and we welcome a more practical approach than having to keep a person under supervision for a prolonged period of up to 6 years.</p> <p><b>PROPOSAL</b><br/>We recommend that the Registrar provides the following exemption:</p> <p>(a) new entrants entering into a FAIS role post promulgation of the amended fit and proper will be afforded time as per the application of the current deadline dates as provided in Board Notice 106 of 2008:</p> <ol style="list-style-type: none"> <li>i. Two years for regulatory examinations</li> <li>ii. Six years for qualifications</li> <li>iii. Experience as per Table A and B</li> <li>iv. Six months for Classes of Business Training</li> <li>v. Two months for product specific training</li> </ol> <p>(b) We recommend that the Registrar clarifies in Chapter 3 that new entrants into a FAIS role post promulgation of the</p> | <p>requirements retain that status quo.</p> <p>As regards paragraph (c)(i) see comment 249. A person can be appointed as a representative but may not render financial services, including rendering such services under supervision, unless all training has been completed.</p> <p>The Registrar will consider the commentator's proposal and recommendations, other than those relating to class of business and product specific training, when revising the Exemption of services under supervision.</p> <p>As stated before, the Registrar, in terms of good regulatory practices, intends to revise the Exemption of Services under Supervision inter alia to align with the new fit and proper requirements and to facilitate access by new entrants into the market</p> |

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|      |                  |             |                            | <p>amended fit and proper requirements, will be able to enter into a representative role while working under supervision.</p> <p>(c) We recommend that the Registrar clarifies that the dates for qualifications and regulatory exams of representatives currently working under supervision remain in force.</p> <p>(d) We recommend that the Registrar confirms that the supervision Board Notice 104 of 2008 provisions still apply to all existing representatives to avoid any uncertainty.</p> <p>We confirm that the supervision Board Notice 104 of 2008 provisions still applies which allows for supervision while experience is being obtained (2004 to 2009 DOFA dates) and while exams, qualifications are being obtained (2010 DOFA dates). This should be included in the Transitional Requirements to avoid any uncertainty.</p> | <p>without compromising on the objects of the Act.</p> <p>The Registrar disagrees that it is necessary to insert a reference of the exemption into the fit and proper requirements. The purpose of an exemption is to exempt a person from a specific requirement, the effect of which is that the person does not have to comply with the requirement subject to any conditions the Registrar may impose.</p> |
| 417. | 12               | Supervision |                            | Will a supervision exemption be issued specifying time frames for meeting the requirements?  | Please see the transitional requirements and the response under comment 416 insofar it relates to representatives rendering services under supervision.  |
| 418. | 17               | Supervision |                            | We note that the issue of supervision is not addressed with sufficient detail in the current draft. We would recommend that it be addressed more explicitly in terms of competence and operational ability in particular and brought into these draft proposals.   | See response under comment 416.  |
| 419. | 4                | RE2         |                            | For completeness please add confirmation of exemption for affected FSPs.   | Not sure to what commentator is referring.   |
| 420. | 17               | RE2         |                            | We recommend that for the sake of completeness, confirmation of the exemption for affected FSP's should be included in a memorandum/ explanatory note.   | Noted.   |
| 421. | 6                | General     |                            | <p><b>Introduction</b></p> <p>BIAC has been introduced to the Financial Services Board (FSB) leadership as an organ of practising Financial Services Providers who are still falling into the definition of the previously disadvantaged individuals (PDI). Our formative stages are currently faced with issues that can be responded to by established organisations that are well funded by the insurance companies. And their financial muscle enables them to appoint dedicated admin staff members who are responsible for all admin matters.</p>  | Noted.   |

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|      |                  |         |                            | <p>Black Insurance Advisers Council (BIAC) does not have those benefits that will enable the organisation to have the admin back up of qualified staff members whose salary packages are paid by the organisation.</p> <p>This is our handicap and it is a disadvantage. BIAC members are all financial services providers, and they are jointly being affected by decisions made without our input.</p> <p><b>BIAC comment on proposed amendment</b><br/> BIAC strongly supports regulators good intentions of trying to bring respect to our profession by regulating its players and those who would like to join the profession. The organisation has already made the regulator aware of the companies that are using pyramid schemes as a form of the cheapest mechanism of increasing cash flows with unregistered and gainfully employed PDI in government and other industries.</p> <p>They are still using these channels and now some of them are establishing broker divisions after they had made their millions through cheapest labour.</p> <p>BIAC has also brought the issue of forcing people who have been in the industry for more than 20years to write exams, with some of them not having MATRIC , as very unfair and destructive to the relationships the poor FSP has developed and nursed over the years with clients. And when they are supposed to reap the rewards of their hard labour, their income is thrown down the drain.</p> <p>And it is very sad because the insurance companies have been the ones to benefit from the exodus of the PDI FSP, because no further commission was payable and their client base turned into orphan cases.</p> |                      |
| 422. | 7                | General |                            | <p>We refer to the Draft Board Notice and associated Explanatory Memorandum published by the Financial Services Board. Firstly, thank you for the consultative approach adopted by the FSB and the opportunity to comment. The Direct Marketing Association of</p>   | Noted.               |

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|      |                  |         |                            | <p>Southern Africa is willing to engage the Regulators on its submission in due course.</p> <p>As a general comment we support the FSB's approach to ensure that the FAIS Fit and Proper requirements are proportionate to the risk faced by clients. In this regard we thank the FSB in particular for the recognition of non-advice execution of sales models, and the simplification of fit and proper requirements relative to those models.</p>   |                      |
| 423. | 8                | General |                            | <p>PSG supports the principles behind the amendments to the Fit and Proper Requirements. We believe it will lead to a more professional industry and assist in improving the trust of consumers. There are however a number of changes that we are concerned about or that we believe require additional clarification.</p>  | Noted.               |
| 424. | 9                | General |                            | <p>We have included our comments pertaining to the above mentioned. As we are part of an insurance group the comments below are on behalf of the following entities:</p> <ul style="list-style-type: none"> <li>- Clientele Limited,</li> <li>- Clientele Life Assurance Company Limited (FSP 15268); and</li> <li>- Clientele General Insurance Limited (FSP 34655).</li> </ul> <p>We welcome and support the proposed amendments by the Regulator and want to thank the Regulator for the well written document and progress made in this draft.</p> <p>Overall we support the proposed amendments.</p>  | Noted.               |
| 425. | 13               | General |                            | <p><b>INTRODUCTION</b></p> <p>The Masthead Financial Advisors Association ("the Association") is an association of ±1'750 independent financial advisor FSPs with more than 4'300 representatives. What makes the members of Masthead independent is the fact that they work for themselves and they act directly under FSB issued licences. Independent financial advisors ("advisors") represent or are mandated to act for an authorised Financial Services Provider through which they provide advice and/or intermediary services to customers.</p> <p><b>GENERAL COMMENTS</b></p> <p>We fully support the intent to improve and maintain "competence" as defined in s1 of the draft regulations.</p> <p>Further, when introducing any regulation (whether new or</p> | Noted.               |

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|      |                  |         |                            | <p>revised) we believe that it should be (1) easy to implement, (2) easy to administer once implemented, (3) cost effective for users, (4) easy to access, broad-based.</p> <p>In order to achieve the objective of promoting sustained economic growth and development, National Treasury states (In its policy document <i>"A Safer Financial Sector to Serve South Africa Better"</i>, February 2011) that South Africa needs a stable financial services sector that is accessible to all. In pursuing this objective, we are mindful of the need for legislation to accommodate and support small businesses which are well positioned to provide financial services to the broader population. We also recognise and agree with the need to professionalise the financial services industry to ensure that customers can be confident that they are dealing with advisors who respect the interests of their clients and are competent to render suitable financial services in a professional way with skill and expertise.</p> <p>A large percentage of the FSPs which form part of the Association are smaller in size and in some cases may consist only of an advisor and one or two staff members. As such, we support a proportional approach that considers the specific circumstances of these types of FSP, especially when it comes to the impacts of time and money. Reference is made (In the "Invitation to Comment" published in October 2016, p5) to the regulator having considered the regulatory and financial impacts of the proposed requirements and being satisfied that there is a balance between cost of the current requirements vs the costs likely to be incurred in respect of the new requirements.</p> <p>We are concerned about additional cost in the system and have reservations about the benefit to be gained relative to such costs in respect of some of the proposals. Therefore, we support the regulator's undertaking to test its assumption (of balance) through an impact analysis. We further urge that this impact-analysis should be included sooner in the process so that the results/output can help shape the ultimate outcome, rather than later (or at the end of the process), which may be too late to revise the proposed course of action. Thank you for the opportunity to provide input and commentary.</p> |                      |
| 426. | 14               | General |                            | The protection of consumers of financial products from "miss-selling" is paramount. We encourage legislative measures which  | Noted.               |

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|      |                  |  |                            | <p>ensure that consumers have access to both financial products and advice relating to financial products that meet their needs.</p> <p>Intermediaries, uniquely, are able to place multiple solutions / products in front of a prospective consumer, enabling an informed decision. The harder it is to trade as an intermediary, the more the threat that;</p> <ul style="list-style-type: none"> <li>○ Consumers will not consume vital financial products or,</li> <li>○ Consumers will consume the single product which is most compellingly placed in front of them through advertising and other pure marketing channels which carry no advice component. This product may or may not be the most appropriate, leading to potential economic loss to the consumer.</li> </ul> <p>As an example relevant to this proposed regulation; a considerable amount of funeral insurance / assistance business is sold by juristic representatives, who are arguably the driver of significant protection of impoverished 'entry level' consumers. It is also widely accepted that this market is bigger than the formal life insurance market in terms of contracts entered into.</p> <p>We are concerned that the requirements of paragraph 44 in particular, would present an insurmountable barrier to many of the individuals behind these juristic representatives. The representatives and their staff also provide the biggest potential drivers of transformation in the South African advice space as these individuals, alongside their clients, grow into more comprehensive consumers of financial products which will protect families and grow inter-generational wealth.</p> |  |
| 427. | 14               | Definitions and classification of business in Annexure 3 and 4 |                            | <p>We have a concern that several of the definitions proposed in this piece of legislation as well as the classification of business as set out in annexures 3 and 4 do not correlate with what is proposed in the Insurance Bill, tabled earlier this year.</p> <p>For example, under the definition of "short-term" personal lines AI" we would point out that there is no definition of "marine policy" in the current Short-term Insurance Act. We would also question why engineering policies are mentioned here as they</p>   | The Registrar intends to align the fit and proper requirements with the provisions of the Insurance Bill once that Bill becomes law. |

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|      |                  |         |                            | <p>would normally fall under commercial rather than personal lines business. Marine policies are, however, listed as a class of business in the Insurance Bill. Similarly, while "assistance business" is defined in the current Long-term Insurance Act, the Bill addresses the concept under "micro-insurance" and reverts to using the term "funeral insurance" as a descriptor.</p> <p>Reference back to the current Short-term and Long-term Insurance Acts is not seen to be appropriate and we would urge that consideration be given to aligning the fit and proper document structure with the final class definitions in the Insurance Bill.</p>  |  |
| 428. | 15               | General |                            | <p>Allow me to start with the matter regarding the timing of the proposed legislation:</p> <p>The draft was sent to us approximately two and a half months ago. We are financial advisors, not lawyers. This document is of a very technical nature and certainly requires the insight of a lawyer for correct interpretation. For a very long time, financial advisors trusted product providers and professional bodies to act on their behalf when it came to matters such as the one on hand. This situation can no longer be tolerated due to an obvious conflict of interest (the evidence of which is written all over current legislation as well as in the document in question). This type of legislation affect mainly the lives of financial advisors and we should therefore be afforded an opportunity to form our own group / organisation, where we can speak as a collective, for ourselves. Until now financial advisors and specifically IFP's were to scared to speak out, but we have reached the point where we have little left to lose. The time allowed to comment on the proposed legislation, is simply not enough and the timing (15 December) also appears to be very suspect.</p> <p>I therefore request extension until the end of March 2017, for comment on the proposed legislation.</p> <p>I did not have the time to study the entire document, since as financial advisors our first priority is to attend to the needs of our clients and fulfilling our obligations towards them. You are aware that the last quarter of the year is not only a short one but also a</p> | Noted. Please see responses to comments received on Chapter 2. |

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|      |                  |         |                            | <p>very busy one. Hence my concerns about the timing of this document. I did however read through chapter two (Honesty, Integrity and Good Standing) of the document and was shocked at the potential abuse of power which this document intends to legalise. I therefore need commented on paragraph 9 of chapter 2 of the document.</p>   |  |
| 429. | 15               | General |                            | <p>I also wish to bring it to your attention that currently IFA's are reliant upon product providers and professional bodies to speak on their behalf. This has proved to be an unhealthy situation for IFA's, due to a clear conflict of interest specifically and more so on the part of product providers. As a result of this, financial advisors' interests have been deliberately overlooked or brushed aside. Financial advisors therefore do not have their own voice when it comes to FSB related matters and have to rely on these mentioned institutions who undoubtedly has a double agenda.</p> <p>Current legislation needs to be revisited with direct input from Financial Advisors, speaking for themselves. I understand that the FSB cannot be expected to accommodate the views of each and every IFA, but I do think that the FSB should allow us time to form our own representative body, with no links to professional bodies or product providers, and to refrain from instituting legislation which affects the lives of financial advisors and their families, until such time that we have an unbiased voice of our own. For instance, RDR is in an advanced stage, but I have yet to see any suggestions regarding product providers' obligation to remunerate financial advisors for marketing their products (a cost which should form part of their running expenses). This is probably the only industry in the country where the very people who are responsible for growing the product provider's business, do not receive any form of remuneration for their work. I have very workable suggestions in this regard. Suggestions that will be for the benefit of all parties including the most important party namely the client. Once again, because we have to rely on representation by these mentioned institutions, such suggestions will never reach the table, because it will most definitely cost them money. I will welcome the opportunity to discuss these issues with you, should you afford me the opportunity to do so.</p> | <p>The consultation process followed by the Registrar in respect of all legislative amendments, including the fit and proper requirements, is not limited to industry bodies or product suppliers but comment is invited from all members of the public which includes independent advisors as can be demonstrated by your submission and the responses thereto. In addition, the Registrar informs all authorised FSPs via their registered e-mail address with the FSB, industry associations and compliance officers of the invitation to comment on proposed amendments.</p> <p>The Registrar welcomes any input and invites the commentator to share its views, recommendations or concerns with the Registrar.</p> |

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|      |                  |         |                            | I am currently speaking on my own behalf, but am sure that I am echoing the sentiments of many IFA's out there.  |  |
| 430. | 16               | General |                            | <p><b>Introduction</b></p> <ol style="list-style-type: none"> <li>1. The invitation extended by the Registrar of Financial Services Providers (the "Registrar") to interested parties to comment on the proposed amendments to the Determination of Fit and Proper Requirements for Financial Services Providers, 2015 (the "Draft Determination") that was published on 24 October 2016 has reference. The first publication of the Draft Determination was published on 17 December 2015 and stakeholders were invited to submit comments to the Registrar by 15 March 2016. SAVCA submitted comments on the first draft of the Draft Determination.</li> <li>2. SAVCA notes that at the time these comments are submitted to the Registrar, there is still not a specific Financial Services Provider ("FSP") license category and code of conduct available to the private equity industry.</li> <li>3. SAVCA notes the Registrars' response to several of SAVCA's comments as set out in the Regulatory Response Matrix. In particular responses 211, 212 &amp; 215 confirming the Registrar's intention regarding the development of a specific code of conduct and licence category applicable to private equity managers. SAVCA anticipates that this code and licence category will deal with industry specific considerations.</li> <li>4. On this basis, SAVCA has provided both industry specific and general comments on the Draft Determination. SAVCA supports the need for robust fit and proper criteria for FSPs. SAVCA however, wishes to highlight that unfortunately several of the requirements in the Draft Determination are inappropriate for the private equity industry and in certain instances will not be able to be practically implemented. SAVCA respectfully contends that the specific private equity industry considerations may not be appropriate to be included in the Draft Determination, but rather should be dealt with under the proposed new private equity code of conduct.</li> <li>5. However, should the Draft Determination become law before the proposed private equity code of conduct</li> </ol> | <p>Noted.</p> <p>The Registrar will engage directly with SAVCA regarding their specific concerns and requests.</p> |

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|   |  |         |                            | <p>and license category is in effect, the requirements would be applicable to entities in the private equity industry. In this regard, we wish to indicate SAVCA's intention to apply for an exemption from certain sections of the Draft Determination should the Draft Determination in its current form become effective. We refer the Registrar to our previous engagements and submissions including various relevant correspondence attached to this submission.</p> <p><b>Proposed Exemption</b></p> <p>6. In particular, SAVCA will seek an exemption from the following provisions of the Draft Determination for the reasons set out below.</p> <table border="1" data-bbox="972 603 1695 1422"> <thead> <tr> <th data-bbox="972 603 1205 671">CHAPTER, PART &amp;<br/>SECTION</th> <th data-bbox="1205 603 1695 671">SAVCA COMMENT</th> </tr> </thead> <tbody> <tr> <td data-bbox="972 671 1205 1422">Chapter 3:<br/>Competence<br/>Requirements:<br/>Part 3: Section 24</td> <td data-bbox="1205 671 1695 1422">SAVCA notes the Registrar's response to SAVCA's previous submissions in response 136 of the Regulatory Response Matrix. SAVCA welcomes the amendment from the previous draft. SAVCA however contends that although the Registrar has made provision in the Draft Determination for specific applications to be made in respect of academic qualifications, the application process would be prejudicial to the private equity industry. The previous QA 1 form is cumbersome and restrictive and does not allow for a general application for additional academic qualifications as would be required by the private equity industry. SAVCA respectfully requests an exemption from Section 23 and 24 of the Draft Determination until a Financial Services Provider ("FSP") license category and code of conduct is in effect for the private equity industry.<br/>If the above is not acceptable to the</td> </tr> </tbody> </table> | CHAPTER, PART &<br>SECTION | SAVCA COMMENT | Chapter 3:<br>Competence<br>Requirements:<br>Part 3: Section 24 | SAVCA notes the Registrar's response to SAVCA's previous submissions in response 136 of the Regulatory Response Matrix. SAVCA welcomes the amendment from the previous draft. SAVCA however contends that although the Registrar has made provision in the Draft Determination for specific applications to be made in respect of academic qualifications, the application process would be prejudicial to the private equity industry. The previous QA 1 form is cumbersome and restrictive and does not allow for a general application for additional academic qualifications as would be required by the private equity industry. SAVCA respectfully requests an exemption from Section 23 and 24 of the Draft Determination until a Financial Services Provider ("FSP") license category and code of conduct is in effect for the private equity industry.<br>If the above is not acceptable to the |  |
| CHAPTER, PART &<br>SECTION                                      | SAVCA COMMENT  |         |                            |  |                            |               |   |  |  |
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|  |                  |         |  | <p>Registrar, SAVCA propose to make a general letter submission to the Registrar, requesting additional academic qualifications to be considered for private equity members only. These qualifications will not be applicant, subject or institution specific, but will include a minimum NQF level, and be in specialty areas, including, but not limited to</p> <ul style="list-style-type: none"> <li>☐ healthcare/biotechnology: medicine, biology;</li> <li>☐ infrastructure: civil engineering;</li> <li>☐ renewable energy: electrical engineering, mechanical engineering and chemistry; and</li> <li>☐ venture capital, sciences, engineering, information technology.</li> </ul> <p>SAVCA proposes that this list of private equity academic qualifications remain in effect until a Financial Services Provider ("FSP") license category and code of conduct is in effect for the private equity industry.</p> |                      |
|  |                  |         | Chapter 3: Competence Requirements: Part 4: Section 25, 26, 27 | <p>SAVCA has previously made submissions to the Registrar, SAVCA refers the Registrar to the comments made on regulatory exams submitted on 20 May 2011 and 22 September 2009 and approved by the FSB in Board notice 102 of 2012 which resulted in an exemption being granted from the Regulatory examinations.</p> <p>SAVCA respectfully propose that this exemption continues until the intended private equity code of conduct and licence category are effective. SAVCA believes that the arguments made in the submission are still valid and applicable.</p>   |                      |

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|  |                  |         |                            | <p>Chapter 3: Competence Requirements: Part 5: Section 28, 29, [30]</p> <p>Chapter 4: Continuous Professional Development ("CPD"): Section 31, 32, 33, 34</p> <p>Chapter 5: Operational Ability: Section 40(1)(c)(v)</p> | <p>Chapter 3 requires all FSPs, key individuals and representatives undergo class of business and product specific training. Class of business training needs to be provided by an accredited provider. Private equity is currently not a defined product category in terms of the FAIS Act. It is therefore not clear how class of business nor product specific training would be applied in the private equity context. The private equity industry currently does not have a registered Professional Body or similar institution which is accredited by SAQA which can provide the proposed training. We are unaware of any formal training requirements specific to private equity practitioners in other countries and are of the view that their introduction in South Africa would not be in line with common international practice prevailing in the private equity industry.</p> <p>The CPD provider as set out in Chapter 4 is required to be accredited by a Professional Body and verifiable. Private equity is currently not a defined product category in terms of the FAIS Act. The private equity industry currently does not have a registered Professional Body or similar institution which is accredited by SAQA which can provide the proposed training.</p> <p>SAVCA submits that the requirement that appointments do not result in key decision making responsibilities being removed from the FSP would be inappropriate in the private equity context where in regards to Category II private equity FSPs,</p> |

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|  |                  |         |                            | <p>the general partner or trustee of a fund is typically appointed as a juristic representative, and in this structure, it is the general partner or trustee who makes the investment decisions.</p> <p>If an exemption from this requirement is not possible, then we would ask the Registrar to confirm (preferably by notice) that a category II private equity FSP has no obligation to appoint the GP or trustee of a fund (to which the FSP renders discretionary financial services) as its juristic representative.</p> <p>Chapter 6:<br/>Financial Soundness:<br/>Section 43(a)(ii)<br/>Section 46(2) and 46(3) in respect of juristic representatives.</p> <p>The Draft Determination has extended the financial soundness criteria to include juristic representatives as set out in section 43. This extension is impractical in the private equity context.</p> <p>As noted above, most general partners and trustees of private equity funds are juristic representatives for Category II private equity FSPs. This arrangement was implemented by most private equity FSPs pursuant to a requirement by the Registrar of Pension Funds in Board Notice 1 of 2012 that private equity FSPs managing pension fund assets must hold a discretionary license.</p> <p>The general partners and trustees of funds are almost always entities with no personnel and limited assets that in practice rely heavily on the substance of the FSP to fulfil their obligations towards the fund.</p> <p>As a result, SAVCA respectfully submits that in practice the nature of each General Partner or Trustee entity is fundamentally at odds with the liquidity requirements of a full FSP license and would result in</p> |                      |

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|  |                  |         |                            | <p>immediate and enduring non-compliance from the date the Draft Determination becomes effective. Moreover, because the GP or trustee is invariably a subsidiary of the private equity FSP, we are of the view that the financial soundness of the FSP is far more relevant from a risk perspective than that of the GP or trustee. If an exemption from this requirement is not possible, then we would ask the Registrar to confirm (preferably by notice) that a Category II private equity FSP has no obligation to appoint the GP or trustee of a fund (to which the FSP renders discretionary financial services) as its juristic representative.</p> <p>Chapter 6: SAVCA refers the Registrar to the comments made in respect of Category II Financial Soundness: liquidity requirements in paragraph Table B 2(b)(iii) of our exemption submission Liquidity Requirement: dated 16 April 2012 (attached). The Category II Registrar subsequently granted an interim exemption in respect of these liquidity requirements for private equity FSPs, which has been renewed every year since it was first issued.</p> <p>Whilst SAVCA's first choice is to continue to be exempted, at least until such time as a specific licence category becomes available for private equity, should this no longer be acceptable to the Registrar, then we would request that any liquidity requirement for private equity FSPs should be calculated on the average cash balance over, for example, the last 6 months where the FSP (fund manager) has the right to make draws on a six-monthly basis as per standard private equity industry practice.</p> |                      |

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|      |                  |             |                            | <p>SAVCA believes that the arguments made in the submission on the 16 April 2012 are still valid and applicable.</p> <p>Should the Registrar grant the exemptions SAVCA has suggested in section 2 above, SAVCA propose that these exemptions become effective at the same date as the Draft Determination.</p> <p>7. SAVCA would welcome an opportunity to engage further with the Registrar on the proposed specific FSP license category and code of conduct for the private equity industry. SAVCA would also welcome an opportunity to engage with the Registrar on our proposed interim exemptions as set out above. SAVCA will continue to engage with the Registrar to put in place a specific FSP license category for the private equity industry and to ensure that the ongoing compliance requirements flowing from such FSP license category are appropriate and suitable for its members.</p> <p>8. SAVCA trusts that the above comments will be considered favourably. In the event that this submission gives rise to any questions, please do not hesitate to contact the writer hereof using the contact details provided below.</p> |   |
| 431. | 17               | Definitions |                            | We recommend that the alphabetical arrangement of the definitions be reviewed.   | Noted.  |
| 432. | 17               | General     |                            | Clarity is sought as to where the Code for Professional Clients will fit in? Would FSP's require a separate license for same under FSR? We further recommend that consideration be given to one point of reference for definitions for the Financial Services industry i.e. FSR Bill, FAIS Act, General Code, STIA, LTIA and Insurance Bill.   | As previously explained, the Registrar does not intend to implement the Code of Conduct for FSPs conducting business with Professional Clients. It was decided to rather deal with it as part of the Conduct of Financial Institutions Bill. Therefore, the provision of the Act would apply to a person rendering financial services to a so-called professional client unless that person is specifically exempted. |
| 433. | 17               | General     |                            | We recommend that the numbering be reconsidered as it is very difficult to follow the requirements.  | Noted.  |
| 434. | 17               | General     |                            | We recommend that prior to the acronym being used that this be   | Noted.  |

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|      |                  |                         |                            | defined. This will apply to all other similar acronyms used in the document.   |                      |
| 435. | 17               | General                 |                            | The SAIA maintains its support of regulatory interventions for the broader implementation of fair consumer treatment, the protection of insurance consumers, financial awareness and the integrity of the financial system. The SAIA appreciates the consultative approach by the FSB to date and welcomes the opportunity to engage further with the FSB on the 2 <sup>nd</sup> Draft of the Proposed Amendments to the Fit and Proper Requirements for Financial Services Providers and Representatives, 2016.   | Noted.               |
| 436. | 20               | General –<br>background |                            | <p><u>Background</u></p> <p>The FSB published a Draft Determination of Fit and Proper Requirements for Financial Services Providers 2016 on 21 October 2016 for comment.</p> <p>Our comments take into account the Financial Sector Regulation bill and the objectives of the FSR. We believe that the Fit and Proper Requirements need to take these objectives into account and be in line with the FSR. The objectives of the FSR are:</p> <div style="border: 1px solid black; padding: 5px;"> <p>“To establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority, and conferring powers on these entities; to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank; to establish the Financial Stability Oversight Committee; <b>to regulate and supervise financial product providers and financial services providers; to improve market conduct in order to protect financial customers;</b> to provide for co-ordination, co-operation, collaboration and consultation among the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the National Credit Regulator and other organs of state in relation to financial stability and the functions of these entities; to establish the Financial System Council of Regulators and the Financial Sector Inter-Ministerial Council; to provide for making regulatory instruments, including prudential standards, conduct standards and joint standards; to make provision for the licensing of financial institutions; to make comprehensive provision for powers to gather information and to conduct</p> </div> | Noted.               |

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|  |                  |         |                            | <p>supervisory on-site inspections and investigations; to make provision in relation to significant owners of financial institutions and the supervision of financial conglomerates in relation to eligible financial institutions that are part of financial conglomerates; to provide for powers to enforce financial sector laws, including by the imposition of administrative penalties; to establish the Ombud Regulatory Council and confer powers on it in relation to ombud schemes; to require financial product and financial service providers to be members of, or be covered by, appropriate ombud schemes; to establish the Financial Services Tribunal as an independent tribunal and to confer on it powers to review decisions by financial sector regulators, the Ombud Regulatory Council and certain market infrastructures; to establish the Financial Sector Information register and make provision for its operation; to provide for information sharing arrangements; to create offences; to provide for regulation making powers of the Minister; to amend and repeal certain financial sector laws; to make transitional and savings provisions; and to provide for matters connected therewith.”</p> <p>We have <b>highlighted</b> the specific objective. In order to achieve this, s58 of the FSR Bill, indicates:</p> <div style="border: 1px solid black; padding: 5px;"> <p>58. (1) In order to achieve its objective, the Financial Sector Conduct Authority must—</p> <ul style="list-style-type: none"> <li>(a) regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions;</li> <li>(b) co-operate 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;</li> <li>(c) co-operate with the Council for Medical Schemes in the handling of matters of mutual interest;</li> <li>(d) <b>promote</b>, to the extent consistent with achieving the objective of the Financial Sector Conduct Authority,</li> </ul> </div> |                      |

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|      |                  |         |                            | <p><b>sustainable competition in the provision of financial products and financial services</b>, including through co-operating and collaborating with the Competition Commission;</p> <p>(e) <b>promote financial inclusion</b>;</p> <p>(f) regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions;</p> <p>(g) administer the collection of levies and the distribution of amounts received in respect of levies;</p> <p>(h) conduct and publish research relevant to its objective;</p> <p>(i) monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a <b>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</b>; and</p> <p>(j) formulate and implement strategies and programs for financial education for the general public.</p> <p>We have again <b>highlighted</b> specific sub-components relating to the Financial Sector Conduct Authority, which we believe need to be addressed in the Determination of Fit and Proper Requirements for Financial Services Providers (DF&amp;PR)</p> <p>Where we feel that a particular component of the DF&amp;PR is not fully in line with the objectives of the FSR Bill, we have indicated using the following:</p> <p>(d) Sustainable competition [§ D]</p> <p>(e) Promote financial inclusion [§ PFI]</p> <p>(i) Fair treatment of customers [§ TCF]</p> |   |
| 437. | 20               | General |                            | <p>An Impact Analysis is needed</p> <p>We feel strongly that before the draft Fit &amp; Proper is implemented that a comprehensive impact analysis needs to be undertaken. The impact analysis needs to cover, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>- What will be the cost to industry to implement the draft Fit &amp; Proper? <ul style="list-style-type: none"> <li>o Specifically, what will be the impact of the Class of business training and Product specific training</li> </ul> </li> </ul>   | <p>Noted. See outcome of impact assessment.</p> <p>In terms of the FSRA the FSB will for the first time have a specific inclusion and transformation mandate. The FSB is in the process of finalising its policy and strategy it intends to apply</p> |

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|      |                  |                                |                            | <p>on FSPs? Of concern is the additional cost for the small and Sole Proprietor FSP.</p> <ul style="list-style-type: none"> <li>- Solvency requirements for different FSPs including Juristic Representatives</li> <li>- What impact will this cost have on the consumer in terms of products becoming more expensive?</li> <li>- What impact will there be on industry in terms of development of new entrants; representatives, key individuals and FSPs?</li> <li>- What impact will there be on existing small FSPs and their ability to be able to compete with the larger FSPs and indeed the large product suppliers who are also registered as FSPs with their own distribution force?</li> <li>- What additional cost burden will be placed on FSPs who provide a comprehensive financial planning service and are predominantly authorised for Tier 1 products compared to FSPs who are only authorised for Tier 2 products? Could they become less competitive?</li> <li>- What impact might there be on the loss of smaller FSPs and hence the loss of the provision of financial services to the consumer?</li> <li>- What impact will there be on the consumer in terms of the overarching requirement of TCF? <ul style="list-style-type: none"> <li>o As an example, the simple products by their very nature will be more costly for the consumer. A simple life policy without underwriting will be more costly to the client than a life policy with underwriting. If the system allows simple products to be sold without adequate competency, then it is likely that more representatives will be selling these products which will have an overall negative impact on the consumer.</li> </ul> </li> </ul> <p>What impact will there be in terms of expanding financial inclusion, particularly in the unbanked and uninsured market with low income?</p> | <p>to ensure compliance with its new mandate.</p>                          |
| 438. | 20               | General comment – Execution of |                            | <p>Execution of Sales (not fully in line with the objectives of the FSR Bill – SC; TCF)<br/>Moonstone is concerned that this is in conflict with the definition</p>   | <p>Noted. See responses under comments relating to execution of sales.</p> |

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|  |                  | sales   |                            | <p>of an intermediary service as provided for in the FAIS Act. We are also concerned that providers can structure their sales process to ensure that ALL sales can be seen as execution of sales so long as a the sale is provided in accordance with a script approved by a key individual and the relevant governance structure of the FSP. We believe that execution of sales must be an <u>unsolicited instruction</u>.</p> <p>Execution of Sales and the easing of requirements will have unintended consequences:</p> <ul style="list-style-type: none"> <li>a) The product suppliers are likely to structure their products to meet the requirements and use the loopholes provided, particularly with regard to Tier 1 products. Taking into account the definition of Execution Only Sales, a representative can follow a script (without using a telephone) to sell a client a derivative, shares or debentures etc.</li> <li>b) The easing will also mean that FSPs will no longer have to meet S8 and S9 of the General Code of Conduct, which will reduce the client protection with regards to advice and records of advice. It is not possible to perform 8.1(d) of the General Code of Conduct regarding replacement without providing advice.</li> </ul> <p>Moonstone understands the need to cater for certain less complex sales where standardised scripts are used and that staff turnover is high without imposing additional regulatory competence requirements. We also understand the need to ease the requirements for simple product sales, but industry experience has taught us that financial services will move to the lowest possible regulatory requirements which will not be in the interests of the end consumer. [§ TCF] To this end, we believe that the easing of requirements for Execution Only Sales should be for Tier 2 products ONLY.</p> <p>We strongly believe that Execution of Sales should only allow for an in-bound operation and only for Tier 2 products where the client calls in for a specific product. We are concerned that out bound scripts can create the situation where the client acknowledges that they are asking for an execution of sale when they may not fully understand the implications.</p> |                      |

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| 439. | 20               | General comment – Key individuals                 |                            | <p><b>Key Individual</b> (not fully in line with the objectives of the FSR Bill – SC)</p> <p>The draft Fit &amp; Proper does not take into account that there are key individuals who do not give advice (they are not representatives) and only manage and oversee. These key individuals will not be able to perform some of the activities required in this legislation, such as:</p> <p>s13 (4) the evaluation and review contemplated in subsection (3) must, inter alia, take into account-</p> <p>(a) technical knowledge and its application;</p> <p>(b) skills and expertise; and</p> <p>(c) changes in the market, to products and legislation.</p> | <p>Disagree.</p> <p>The requirement referred to is placed on the FSP and it must therefore ensure that it is able to comply with the requirements. The Registrar is not prescribing who must perform the review or assessment merely that it must be done. The key individual, if unable to perform the review must be able to demonstrate that a review has been conducted and he is satisfied with the quality and the outcome.</p> |
| 440. | 20               | General comment – Tier 2 products                 |                            | <p><b>Tier 2 Products</b> (not fully in line with the objectives of the FSR Bill – TCF)</p> <p>We are concerned about the planning risk of clients investing in long-term and short-term deposits due to the lack of training and reduced regulatory requirements. Some bank deposit terms are as long as 60 months. There is also the risk of capital loss in the event of a bank default which is not disclosed to clients at all. This impact to the client should be evaluated as part of the impact study.</p>   | <p>Disagree.</p> <p>The FSRA provides that regulation must be proportionate to the nature, scale and complexity of a person's activities. The Registrar is of the view that the requirements relating to Tier 2 products aligns with the abovementioned requirement having considered the risks to consumers.</p>   |
| 441. | 20               | General comment – examinations and qualifications |                            | <p><b>Competence requirements including qualifications and Regulatory Examinations</b> (not fully in line with the objectives of the FSR Bill – SC; TCF)</p> <p>Moonstone is concerned about the blanket exemptions provided as a large number of FSPs may use the basis of marketing only specific products to exclude them from having to meet the full competence requirements. We believe that the overall professionalization of the financial services industry should set the standards which need to be met and allow for selective exemptions with set time frames in which representatives will need to develop themselves.</p>                     | <p>See response under comment 440.</p>  |
| 442. | 20               | General comment - CPD                             |                            | <p><b>CPD</b> (not fully in line with the objectives of the FSR Bill – SC; PFI)</p> <p>Moonstone is concerned about the conflict regarding the accountability of FSPs to ensure CPD and the accreditation and tracking by a Professional Body. The regulator has to be cognisant of the fact that current Professional Bodies are already involved in provision of CPD activities for own commercial gain.</p>  | <p>Disagree. See responses above under comments relating to CPF and Impact Assessment.</p>  |

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|  |                  |         |                            | <p>Having a Professional Body who itself has commercial vested interests in providing CPD activities, approve and accredit CPD activities by competitors is uncompetitive. The provision of CPD activities will constitute massive commercial opportunities for parties wishing to partake in this and there can be no justifiable reason for the regulator to appoint parties as preferred suppliers and by implication exempt them from the requirements other CPD providers will be subjected to. We submit that in pursuing this route, the regulator is performing activities which may be deemed administratively unfair to other parties. Cognizance must be taken of the fact that SAQA does not allow for more than one profession body per industry. Also there is no professional body for Cat II and Cat III FSPs.</p> <p>Concerns that we have are:</p> <ul style="list-style-type: none"> <li>a) Anti-competition issues with a Professional Body as stated above</li> <li>b) Storage of CPD activities</li> <li>c) Consistency / quality and management of CPD activities</li> <li>d) CPD as defined does not take into account on-line CPD activities. In order to verify the identity, this might need to be face to face. What is required and proposed in terms of being verifiable?</li> <li>e) Costs to belong to a Professional Body for the CPD activities. There are no controls to manage the costs by the FSB.</li> <li>f) Conflict of interest between CPD activity provider and CPD activity approval</li> <li>g) Geographic availability of CPD activities. How will this impact FSPs who operate in rural areas or smaller towns where the costs of obtaining CPD points (due to travel and accommodation costs) could become prohibitive.</li> <li>h) Risk of continued study on a finite subject (repeating the same material over and over again)</li> <li>i) Ensuring no overlap of CPD activities (similar to managing the overlap of credit programmes. Doing the same activity a second time should not be qualify for CPD activity)</li> <li>j) Centralised storage of CPD records</li> </ul> |                      |

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|  |                  |         |                            | <p>k) How will the FSB ensure that individuals are not penalized in obtaining CPD credits</p> <p>l) CPD requirements for professional designation vs CPD activities for FAIS requirements. There is an inherent bias in this.</p> <p>m) Who will be providing the oversight of the CPD activities? Who checks the quality?</p> <p>n) Are the defined CPD activity hours required valid and can they actually be met with the current business pressures within FSPs? Will this be reviewed as part the impact assessment?</p> <p>We feel that CPD needs reviewing and that the following should be in place:</p> <ul style="list-style-type: none"> <li>- CPD accreditation should be handled an independent body</li> <li>- The CPD accreditation body MAY NOT provide courses or training which provide CPD activities</li> <li>- CPD tracking should be by the independent body and the charging for this needs to be determined as part of the industry impact analysis that is to be undertaken.</li> <li>- Activities performed towards obtaining further academic qualifications should be allowed for CPD activities. This excludes obtaining the minimum qualification requirements.</li> <li>- CPD Activities should be able to be achieved through on-line activities</li> <li>- CPD Activities should not prejudice FSPs who are not in the main urban centres</li> <li>- Provision needs to be made for non-verifiable CPD points (perhaps at 25% of total requirements)</li> <li>- There should be a simple system for uploading of CPD points</li> <li>- CPD can be verifiable by the Compliance Officer / on-site audits</li> <li>- Should be owned by the FSB and not a professional body</li> <li>- Standards should be set for training providers who can request to be authorized for CPD activities</li> </ul> |                      |

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| 443. | 20               | Definition:<br>"CPD activity",<br>13(3) & 32(1) |                            | <p>We have identified the following conflicting requirements in the draft Fit &amp; Proper:</p> <p>"CPD activity" means an activity that is-</p> <p>(a) accredited and tracked by a Professional Body;</p> <p>(b) allocated a hour value by that Professional Body; and</p> <p>(c) verifiable, and excludes-</p> <p>(i) an activity performed towards a qualification; and</p> <p>(ii) product specific training;</p> <p>13.(3) An FSP must be able to demonstrate and record that it has evaluated and reviewed at regular and appropriate intervals-</p> <p>(a) its representatives' and key individuals' competence and has taken appropriate action to ensure that they remain competent for the activities they perform; and</p> <p>(b) the quality and effectiveness of the training and CPD referred to in subsection 1(d) and (e).</p> <p>32. (1) An FSP, key individual and representative must-</p> <p>(a) maintain the required competence to render the financial services that the FSP, key individual and representative are authorised, approved or appointed to render;</p> <p>(b) comply with the minimum CPD requirements set out in this Chapter;</p> <p>(c) ensure that the type and combination of CPD activities undertaken -</p> <p>(i) are relevant to the functions and role of the FSP, key individual and representative.</p> | Disagree. See responses to comments above re matters raised by commentator and amendments made. |
| 444. | 22               | General   |                            | <p><b>General comment</b></p> <p>It is noted that the proposed amendments are designed to meet the <i>consumer</i> protection objectives of FAIS and that the current categorisation of financial services providers ("<b>FSPs</b>") will be addressed through the <i>Retail</i> Distribution Review. This indicates</p>   | Noted.  |

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|  |                  |         |                            | <p>that the Requirements are designed to apply to retail intermediaries and advisors.</p> <p>It is clear that much thought has been given to fit and proper requirements relating to retail advisors and intermediaries, such as insurance brokers and retail client financial advisers. However, some of the proposed fit and proper requirements do not necessarily work when applied to the complexity and breadth of the types of business that “securities and investments” covers. This “class of business” encompasses a wide array of entities and different types of businesses, including those which have the “merchant banking” exemption (i.e. as contained in Board Notice 103 of 2004), and those which were subsequently granted the same or similar exemption, as listed each year in a board notice (currently Board Notice 13 of 2016).</p> <p>We note that the FSB is developing a code of conduct that will apply to private equity funds. In my view, this type of approach needs to be considered for other businesses that fall within the class of “securities and investments”.</p> <p><b>Introduction</b></p> <p>Rothschild forms part of the global advisory division of Rothschild &amp; Co, which is listed on the Euronext exchange in Paris.</p> <p>Rothschild conducts a purely advisory business in South Africa (no intermediary services). It does not advise retail clients. As a result, it does not deal with, invest in, or advise on the investment of clients’ assets or funds, nor does it provide loans to clients. It also does not own, sell, distribute, or lend financial products or receive commission in relation to financial products. Since the business model is based on independence, Rothschild does not distribute or sell financial products to third parties, whether as agent or principal. Its sole source of revenue is fees received from clients for providing advisory services.</p> <p>Rothschild’s services include advising on corporate strategy, mergers &amp; acquisitions, initial public offerings and other listings, corporate restructuring, debt and/or capital restructuring, debt and/or capital raising, stakeholder engagement, and Broad-Based Black Economic Empowerment transactions. Because of the need to interact with the JSE on many of these transactions, Rothschild is also a JSE Sponsor.</p> <p>Thus the financial advice given is not the type of advice which a</p> |                      |

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|      |                  |         |                            | <p>financial advisor or asset manager would typically give to private persons (or even corporates) regarding their savings, investments, insurance needs and estate and retirement planning. Financial products are usually incidental to the matters in relation to which advice is provided, e.g. the acquisition of a business might involve a purchase of shares, but the purchase of shares would not be the focus of the transaction, as Rothschild's advice would relate to the strategic rationale for acquiring the business, the valuation of the business being acquired, how to finance the acquisition, and how to approach regulatory matters such as Competition Commission approval.</p> <p>It is in the context of the above that I wish to comment on the proposed fit and proper requirements ("<b>the Requirements</b>").</p>  |                      |
| 445. | 23               | General |                            | <p>The South African Institute of Professional Accountants (SAIPA) would like to thank Financial Services Board for the opportunity to provide comments on proposed amendments of fit and prosper requirements for financial services providers and representatives, 2016. We trust that our submission will receive your favourable consideration.</p>  | Noted.               |
| 446. | 24               | General |                            | <p><b>Background on Thuthukani</b></p> <p>Thuthukani is a traditional micro lending company registered under the National Credit Act with the National Credit Regulator. The products that we offer fall in the Short-term [Regulation 39(2)] and Developmental Credit [NCA Section 1 – Definitions, and Sect 10] categories of the National Credit Act. We are a medium sized company that has 140 employees.</p> <p>We typically serve individuals from the lower LSM market with financial services that they traditionally could not access through the formal financial institutions such as banks and corporates. We are positioned to serve blue collar workers and other less sophisticated consumers, who often feel uncomfortable in the more formal high-street institutions. Our business model is based on offering high volume of small price tag items to the mentioned target markets. We therefore appoint individuals from those local communities who can communicate with consumers in their language and idiom.</p> <p>To be successful in high volume small price tag products, it is essential to operate from a low-cost base. This may be part of the reason why some of the more formal institutions have been</p> | Noted.               |

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|      |                  |         |                            | <p>challenged in serving the lower LSM consumers. We therefore strive to keep our cost structures fit for purpose in the market that we serve.</p> <p>We are primarily a credit provider, and as a value add, also offer credit insurance and funeral insurance to our customer base. Therefore 97% of our business activity relate to credit.</p> <p>We are an active member of:</p> <ul style="list-style-type: none"> <li>• the Industry Association MFSA (Micro Finance South Africa) where our CEO serves as Vice Chair;</li> <li>• SACRRA (South African Credit and Risk Reporting Association) where our CEO serves as a Management Committee Member, and previously acted as Chairperson for three years;</li> <li>• Our CEO has also actively participated in various technical committees of the National Credit Regulator and was involved in the development of various legislative changes.</li> </ul> <p><b>FSP License</b></p> <p>Under our FSP license we offer the following products:</p> <ul style="list-style-type: none"> <li>• Credit Life Insurance (Cat 1.2 Short-term Insurance);</li> <li>• Credit Life Insurance (Cat 1.3 Long-term Insurance);</li> <li>• Funeral Insurance (Cat 1.1).</li> </ul> |  |
| 447. | 25               | General |                            | <p>Baillie Gifford Overseas Limited (BGO) is a wholly owned subsidiary of Baillie Gifford &amp; Co, an independent fund management firm based in Edinburgh, UK. BGO is a limited liability company established under the laws of Scotland and is authorised and regulated by the Financial Conduct Authority (FCA) in the UK. It provides discretionary investment management and advisory services to institutional clients based outside the UK, and performs this service on a cross-border basis. BGO is licensed as a Category I Foreign Financial Service Provider (FSP) in South Africa (FSP number 44870) to provide intermediary services.</p> <p>BGO applies exemptions to certain Fit and Proper requirements permitted under Board Notice 166 of 2011 (BN166). The relevant exemptions to the Fit and Proper Requirements are within paragraphs 2(5), 3(4), 3(5), 3(6) and 3(7) of BN166 and are in</p>   | <p>The FSB intends to review the exemption granted to foreign FSPs to ensure appropriateness and will consult shortly with stakeholders.</p> |

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|  |                  |         |                            | <p>respect of: recognised qualifications, local regulatory examinations, continuous professional development and equivalent qualifications for Compliance Officers.</p> <p>It is our understanding that BN166 has not been repealed as part of the proposed amendments to the Fit and Proper Requirements. As BN166 has not been repealed, our expectation is that the current exemptions provided by it will continue to be applicable to the new Fit and Proper Requirements with no impact to our existing registrations for Key Individual, Representatives and Compliance Officer. If, however, there are plans to make changes to the exemptions, or if there are any additional requirements envisaged that Foreign FSPs applying the exemptions must adhere to under the new Fit and Proper regime, we would ask the FSB to outline these at the earliest possible opportunity, and provide appropriate transitional periods for implementation.</p> <p>We are in favour of the exemptions provided by BN166 being retained. The exemptions allow Foreign FSPs, subject to obtaining an appropriate South African licence, entry into the South African market without having to apply duplicated regulation to that which they must comply with in their home jurisdiction. The exemptions also allow South African wholesale investors greater access to offshore investments allowing them to diversify their portfolios with Foreign FSPs, in the knowledge that such Foreign FSPs, where they do not have to comply with certain local South African Fit and Proper Requirements, will be required to comply with similar standards by their local regulator (in BGO's case, the FCA in the UK). Repeal of, or significant changes to, BN166 may lead to fewer Foreign FSPs offering such services to South African wholesale investors.</p> |                      |

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| 448. | 26               | General |                            | <p>1. <u>Comment on the amendments</u></p> <p>The Institute of Bankers in South Africa (IOB), as the registered Professional Body for the Banking sector, supports the proposed amendments to the Determination of Fit and Proper Requirements for Financial Services Providers, 2016.</p> <ul style="list-style-type: none"> <li>• Supports the role of Professional Bodies in "CPD activities". The IOB has a draft CPD policy and this would be amended in line with the requirements of the FSB in the amended legislation, once approved. It would undertake to do the CPD verification for the banking sector</li> <li>• It supports the retention of the RE examinations for advisers.</li> <li>• Supports the segmentation into Tier 1 and 2 advisers.</li> <li>• Honesty and Integrity and Good Standing are a requirement for all FSP's key individuals and representatives. The Institute of Bankers in South Africa has a Code of Conduct by which all members abide. This would cover the requirement in Chapter 2, 9(i) and (j), which is also a requirement of the current Fit and Proper requirements. <b>We support this ongoing requirement.</b></li> </ul> <p>2. <u>Compliance with the new proposed amendments</u></p> <p>The timeline for the implementation on 1 March 2017 of the "CPD activities" with regard to:</p> <ol style="list-style-type: none"> <li>(a) Accredited and tracked by a Professional Body</li> <li>(b) Allocated an hour value</li> <li>(c) Verifiable</li> </ol> <p>is regarded as challenging. It would therefore like to request that this amendment be granted an extension to March 2018 for full implementation, or for at a period 6 months. This will allow for the consultation with the sector and the development of the necessary integration of systems before full implementation.</p> | Noted.               |