



Financial Sector
Conduct Authority

2023 FSCA 3-YEAR REGULATION PLAN

(1 April 2023 – 31 March 2026)

[Following the 2022/2023 review of the Regulation Plan]



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1. EXECUTIVE SUMMARY

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

The FSCA's 3-year Regulation Plan that was published on 30 June 2022 (2022 Regulation Plan) is a strategic tool used by the FSCA to assist it in carrying out ongoing legislative review and development of the regulatory framework falling within its purview, in a strategic and focused manner.

The 2022 Regulation Plan had a three-year outlook (1 April 2022 – 31 March 2025). The Regulation Plan is, however, a rolling three-year plan and is reviewed and revised on an annual basis to ensure that the Plan remains up to date, effective and continues to align to the FSCA's broader strategic objectives, also taking into account emerging risks and developments.

The 2022 Regulation Plan was subject to rigorous planning, prioritisation and internal consultation. The considerations and approach undertaken in developing the 2022 Regulation Plan, including the approach to prioritisation, is described in paragraphs 3 and 4 of the 2022 Regulation Plan. In general, because of the rigorous process that was followed in developing the 2022 Regulation Plan, coupled with the fact that the planning had a three-year outlook, the FSCA attempted to limit the number of changes for the next period. The changes made to the Regulation Plan therefore largely entail changes to timelines in respect of existing deliverables, where necessary, and the inclusion of a limited number of new projects that constitute a strategic imperative.

The 2023 review of the Regulation Plan considers

the following, which also informed the revisions to the Plan:

- The extent to which the deliverables for the period 1 April 2022 to 31 March 2023, as set out in the 2022 Regulation Plan, have been achieved;
- Whether the priorities reflected in the 2022 Regulation Plan, as well as the stipulated deliverables and timelines, are still appropriate, and making changes to deliverables and timelines, where necessary;
- Including deliverables and/or timelines in respect of existing projects running over into the 2025/2026 business year, as the 2023 Regulation Plan covers the period 1 April 2023 to 31 March 2026; and
- Whether there are new initiatives of strategic importance that should be reflected in the Regulation Plan and, if so, the inclusion of such projects together with deliverables and timelines.

Achievement of deliverables in the regulation plan for the year 2022/2023

The achievement of deliverables contained in the Regulation Plan for the business year 1 April 2022 – 31 March 2023 was satisfactory. Although there were some delays in achieving certain deliverables, in large the FSCA accomplished what it set out to achieve.

Various notable milestones were achieved which resulted in the finalisation of five regulatory instruments and the publication for public consultation or submission to National Treasury (for onforwarding to Parliament) of eleven draft regulatory instruments. One of these significant milestones include the finalisation of the "Declaration of crypto assets as a financial product" under the Financial Advisory and Intermediary Services Act, which is a significant step in mitigating emerging risks prevalent in the crypt asset environment.

The most significant delays experienced were in the financial markets environment, coupled with some delays in the retirement fund environment. The projects impacted by delays include the following:

- The implementation of phase 2 of the “Joint Roadmap for Development of a Regulatory Framework for Central Clearing in South Africa”¹ (“Joint Roadmap”): The main reason for the delay is that it became evident that the scope of the instruments giving effect to these projects will have to be expanded significantly. In particular, the Equivalence Framework in the context of the Joint Roadmap will have to be expanded to deal with the recognition of a foreign jurisdiction as equivalent for purposes of not only external central counterparties and external central securities depositories, but relevant more broadly to the regulatory framework established in terms of the Financial Markets Act, 2012, and the Credit Rating Services Act, 2012. The view is that the equivalence framework should explain the FSCA’s approach to grant equivalence to foreign jurisdictions, also for the benefit of external trade repositories, credit rating agencies, and external OTC derivative providers.
- Conduct Standard for Exchanges: The main reason for the delay is because the draft conduct standard is being meaningfully expanded to set out requirements for the conduct of all market infrastructures and not only exchanges. The revised conduct standard will set out, amongst other matters, requirements for central securities depositories, exchanges, cross trading between exchanges, requirements for establishing links, interoperable arrangements between market infrastructures, and sharing of information. The name of this Conduct Standard is also likely to change to accommodate the extended scope of the Standard.
- Conduct Standard – Conditions for investment

in derivative instruments by pension funds: The draft Standard was delayed because certain stakeholders engaged the FSCA on one issue of contention subsequent to the submission of the Conduct Standard to Parliament. That particular issue had to be reconsidered and resulted in further engagement with industry stakeholder causing a delay in finalising the Conduct Standard. The issue was, however, subsequently resolved and the final Conduct Standard was published on 11 May 2023.

- Conduct Standard – Conditions for living annuities in an annuity strategy: The Conduct Standard was delayed because of capacity constraints in progressing this instrument, taking into account the need to prioritise other projects of strategic importance priority. Notwithstanding, a final round of informal consultation on the Living Annuity Conduct Standard took place during the first quarter of 2023 and the final draft Conduct Standard will be submitted to National Treasury, for tabling in Parliament, soon.
- Conduct Standard: Communication of benefit projects to members of pension funds: The Conduct Standard was delayed because of capacity constraints in progressing this instrument, taking into account the need to prioritise other projects of strategic importance priority. The Conduct Standard will be progressed as and when resources become available noting, however, that this Conduct Standard is currently being reconsidered following certain industry engagement.

2023 Regulation Plan (April 2023 – March 2026)

The prioritisation principles and approach set out in paragraph 3 of the 2022 Regulation Plan was re-assessed and it was concluded that the approach to prioritisation that was adopted in the 2022 Regulation Plan is still appropriate. As a result, no changes in approach are proposed.

These principles were also re-applied to the existing projects contained in the Regulation Plan. In general, the priorities identified last year remain the same, but certain changes to deliverables and timelines were necessary.

General revisions to the Regulation Plan include the following:

- Deliverables and timelines on certain projects were revised;
- New deliverables and timelines for the period 1 April 2025 – 31 March 2026 has been included in the Regulation Plan;
- The projects that were finalised during the reporting period have been removed from the Regulation Plan; and
- New projects of strategic importance were added to the Regulation Plan.

The only new projects added to the Regulation Plan include the following:

- Draft (interim) amendments to Board Notice 90 of 2014: A need has arisen to propose interim amendments to Board Notice 90 of 2014, pending the holistic review of Board Notice 90, that are focused on addressing certain urgent issues. The draft amendments were published for public comment in March 2023 and the FSCA is intending to submit the draft Amendments to National Treasury for onforwarding to Parliament by the end of 2023.
- Amendments to Board Notice 257 of 2013: A need has arisen to address certain shortcomings identified in Board Notice 257 of 2013 (Conditions in terms of which a foreign CIS may solicit investments in the Republic). Consultation on the draft amendments will take place in due course.

- Prudential Standard – Regulation 28 quarterly reporting requirements for pension funds: Due to amendments to Regulation 28 that were promulgated by the Minister in 2022, a need has arisen to amend the Regulation 28 quarterly reporting requirements to align to the new Regulation 28. This Standard will therefore prescribe quarterly reports for pension funds in respect of Regulation 28 compliance (Pension/Retirement Funds). A draft Standard was published for public comment in November 2022 and the finalisation of this Standard is being prioritised.

Projects highlighted in the 2022 Regulation Plan have therefore been retained, except where a project has been finalised, but certain project timelines and deliverables were revised, as discussed below.

A key focus for the next three years will be progressing the work to develop a new conduct regulatory framework under the Conduct of Financial Institutions Bill.

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

² In this context the regulatory framework refers to the body of laws and supporting instruments, for which the FSCA is responsible, that govern the conduct regulation of financial institutions. The regulatory framework comprises primary laws, subordinate legislation, documents that impose legally enforceable requirements and documents that support the interpretation and implementation of financial sector laws, such as interpretation rulings, guidance notices, general directives and the like.

2. INTRODUCTION

- 2.1 The FSCA's 2022 Regulation Plan was published on 30 June 2022.
- 2.2 As was explained in the 2022 Regulation Plan, the regulatory framework² is a cornerstone of regulation as it sets the perimeter of regulation and determines the rules within which financial institutions must operate.
- 2.3 The development of the regulatory framework falling within the ambit of the FSCA's jurisdiction is informed by the FSCA's legislated objectives and functions³, and the objects of the financial sector laws regulated by the FSCA.
- 2.4 The regulatory framework must deliver and support government policy objectives for the financial sector and the FSCA therefore takes its policy direction from the National Treasury whose objectives are, in turn, informed by broader government strategic and development plans. The FSCA provides significant support to National Treasury in developing primary legislation that impacts the functioning of the FSCA. In turn, primary legislation provides the FSCA with extensive powers to impose requirements through subordinate legislation, and to further support the regulatory framework through a variety of other instruments or mechanisms.
- 2.5 Primary legislation therefore enables the FSCA to implement its policy objectives by translating such objectives into subordinate legislation through the exercise of legal authority granted to it through primary legislation. The regulatory framework also creates the foundation for supervision and enforcement and without a robust regulatory framework, effective supervision and enforcement cannot be enabled or empowered. Similarly, the desired policy outcomes cannot be ensured.
- 2.6 The ongoing review and development of the regulatory framework is therefore critical to ensure that the regulatory framework is robust, aligned with international standards, fit for purpose and sufficiently flexible to position the FSCA to meet its legislated objectives and functions.
- 2.7 The analysis and surveillance of the financial sector environment from a regulatory framework perspective is also vital to ensure that legislative gaps, regulatory arbitrage, emerging risks, inconsistencies with international standards and the like are identified, and that the FSCA proactively and effectively responds to these gaps, risks or inconsistencies in the form of new or amended regulatory instruments, where appropriate.
- 2.8 The FSCA's Regulation Plan is a strategic tool used by the FSCA to assist it in carrying out ongoing legislative review and development of the regulatory framework falling within its purview, in a strategic and focused manner. The 2022 Regulation Plan had a three-year outlook (1 April 2022 – 31 March 2025). The Regulation Plan is, however, a rolling plan and is reviewed and revised on an annual basis to ensure that it remains up to date, effective and continues to align to the FSCA's broader strategic objectives, also taking into account emerging risks and developments.
- 2.9 The 2022 Regulation Plan was subject to rigorous planning, prioritisation and internal consultation. The considerations and approach undertaken in developing the 2022 Regulation

Plan, including the approach to prioritisation, is described in paragraphs 3 and 4 of the 2022 Regulation Plan.

importance that should be reflected in the Regulation Plan and, if so, the inclusion of such projects together with deliverables and timelines.

2.10 In general, because of the rigorous process that was followed in developing the 2022 Regulation Plan, coupled with the fact that the planning had a three-year outlook, the FSCA attempted to limit the number of changes to the Regulation Plan. The changes made to the Regulation Plan therefore largely entails changes to timelines in respect of existing deliverables, where necessary, and the inclusion of a limited number of new projects that constitute a strategic imperative.

2.11 The 2023 review of the Regulation Plan considers the following, which also informed the revisions to the Plan:

- The extent to which the deliverables for the period 1 April 2022 to 31 March 2023, as set out in the 2022 Regulation Plan, have been achieved;
- Whether the priorities reflected in the 2022 Regulation Plan, as well as the stipulated deliverables and timelines, are still appropriate, and making changes to deliverables and timelines, where necessary;
- Including deliverables and/or timelines in respect of existing projects running over into the 2025/2026 business year, as the 2023 Regulation Plan covers the period 1 April 2023 to 31 March 2026; and
- Whether there are new initiatives of strategic



³ Section 57 and 58 of the Financial Sector Regulation Act of financial sector laws, such as interpretation rulings, guidance notices, general directives and the like.

³ Section 57 and 58 of the Financial Sector Regulation Act.

3. SUMMARY OF ACHIEVEMENT OF DELIVERABLES IN THE REGULATION PLAN FOR THE YEAR 2022/2023

3.1 High-level summary

3.1.1 The achievement of deliverables contained in the Regulation Plan for the business year 1 April 2022 – 31 March 2023 was satisfactory. Although there were some delays in achieving certain deliverables, in large the FSCA accomplished what it set out to achieve.

3.1.2 Notable milestones, as reflected in the Regulation Plan, that were achieved during the period 1 April 2022 to 31 March 2023 entail the following (including 5 projects that were finalised):

- Draft Amendment of the rules on proceedings of the Office of the Ombud for Financial Services Providers: Draft published for public comment on 6 July 2022.
- FSCA Conduct Standard 1 of 2022 (RF) - Requirements related to the payment of pension fund contributions: Final version published on 19 August 2022.
- Conduct Standard – Conditions for investment in derivative instruments by pension funds: Final draft submitted to National Treasury for tabling in Parliament on 5 September 2022.
- FSCA Conduct Standard 2 of 2022 (INS) – Requirements relating to third party insurance cell captive business: Final version published on 30 September 2022.
- Amendments Joint Standard 2 of 2020 – Margin requirements for non-centrally cleared over-the-counter derivatives margin transactions: Final draft submitted to National Treasury for tabling Parliament on 6 October 2022.
- General Notice 1350 of 2002, published in Government Gazette No. 47334 – Declaration of a crypto asset as a financial product under the Financial Advisory and Intermediary Services Act: Final version published on 19 October 2022.
- Draft Prudential Standard [-] of 2022 (RF) – Regulation 28 quarterly reporting requirements for pension funds: Draft published for public comment on 4 November 2022.
- Draft Prudential Standard [-] of 2022 (RF) - Requirements related to regulatory reporting and audited financial statements for pension funds: Draft published for public comment on 9 November 2022.
- Conduct Standard [-] of 2022 (FM) – Requirements relating to the provision of a benchmark: Second draft published for public comment on 25 November 2022.
- Government Notice 2814 published in Government Gazette No. 47632 - Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2022: Final amendments published on 2 December 2022.
- Government Notice 2815 published in Government Gazette No. 47632 - Amendment of the qualifications, experiences and criteria for approval as compliance officer, 2022: Final amendments published on 2 December 2022.
- Joint Standard [-] of 2022 - Cybersecurity and Cyber Resilience Requirements: Second draft published for public comment on 13 December 2022.

⁴ Determination of securities, classes of securities, assets or classes of assets that may be included in a portfolio of a collective investment scheme in securities and the manner in which and the limits and conditions subject to which securities or assets may be so included, published under Board Notice 90 of 2014 in Government Gazette No. 37895 on 8 August 2014.

- Joint Standard [-] of 2022- IT Governance and Risk Management: Final draft submitted to National Treasury for tabling Parliament on 14 December 2022.
- Draft Notice of Amendment of Board Notice 90 of 2014: ⁴ Draft Amendment published for public comment on 6 March 2023.
- Draft Conduct Standard [-] of 2023 (GENERAL) - Requirements for financial institutions providing financial education initiatives: Draft published for public comment on 13 March 2023.
- Draft Conduct Standard [-] of 2023 (FM) - Requirements relating to the reporting and disclosure of short sales: Draft published for public comment on 13 March 2023.

3.1.3 The most significant delays experienced were in the financial markets environment, coupled with some delays in the retirement fund environment. More detail in this regard is provided in the subsequent paragraphs.

3.2 Cross-sector/cutting projects

- Support in developing critical pieces of primary legislation - Conduct of Financial Institutions (COFI) Bill Financial Markets Act (FMA) Review:

During the reporting period the FSCA actively contributed to the development of the Conduct of Financial Institutions (COFI) Bill and Financial Markets Act Review (FMAR). This included significant engagements between the National Treasury, the Prudential Authority and FSCA in resolving outstanding issues. Both these developments are, however, driven by National Treasury and the FSCA is therefore dependent on National Treasury to progress

these pieces of primary legislation.

In addition, the FSCA also supported the National Treasury in finalising the submission of the General Laws Amendment (Anti-Money Laundering and Combating Terrorism Financing) Bill (GLAB) ⁵ to Parliament. The FSCA, in particular, contributed actively to formulating proposed amendments to the Financial Sector Regulation Act to be given effect to through the GLAB.

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

In anticipation of the COFI Bill, work in relation to the development of a holistic, cross-sector, robust and customer-focused regulatory framework under the COFI Bill progressed well during the year under review. As was explained in the 2022 Regulation Plan, development of this framework comprises three phases that are being progressed concurrently. Progress made in the context of these three phases are as follows:

Phase 1: Overall design of the new framework

An initial overall design of the conduct framework has been developed and will serve as a good basis to start the development of the framework. The high-level design will, however, evolve and be refined over time as and when the transition work (Phase 3) is progressed.

Phase 2: Harmonisation/themed frameworks

The development of the harmonisation frameworks progressed well and the initial frameworks, for FSCA internal purposes, have been drafted. These frameworks are now undergoing further internal review and it is envisaged that targeted industry consultation on the draft frameworks will occur during the second half of 2023, and that draft frameworks will formally be

⁵ The GLAB was initiated in response to the Financial Action Task Force Mutual Evaluation Report.

published for public comment during the first half of 2024.

It was also identified that the harmonisation frameworks need to evolve to “themed frameworks”. The original harmonisation frameworks were developed per conduct theme and the intention was to develop requirements within these frameworks that applies cross-sector and are harmonised across the sector as a whole (i.e. cuts across all financial institutions).

Although this will still be the case, the harmonisation frameworks will be expanded to also include sector specific requirements per theme, where necessary. As an example, a framework for “disclosure” will be developed containing high level cross-sector disclosure requirements that apply across all financial institutions (e.g. as a Chapter), but the framework will also contain additional Chapters that contain industry specific requirements pertaining to disclosure, e.g. Chapters dealing with collective investment scheme disclosure, asset manager disclosure, financial advisor disclosure, and the like. As the focus of these frameworks are no longer focused on harmonisation only, referring to these frameworks as “themed frameworks” is thus more appropriate.

Phase 3: Transition work

The existing financial sector laws that will be repealed through the COFI Bill, as well as regulatory instruments that have been pended⁶ as a result of overlap with the COFI Bill transition process, have been assessed to determine which requirements, in the respective laws and draft laws, can be deleted and incorporated into the themed frameworks forming part of Phase 2. The requirements that remain are in the process of being assessed to determine if and how these requirements should be transitioned into the new framework under the COFI Bill, taking into account the principles explained in the 2022 Regulation Plan⁷.

In addition, it is also under consideration how other ongoing policy projects, such as proposals emanating from the Retail Distribution Review and FSCA Discussion and Position Papers, can be incorporated into the transition work⁸.

The Phase 3 work will continue throughout 2023, with the intention of having initial formal proposals ready in the first half of 2024. However, it must be noted that these proposals may be consulted on and implemented on a staggered basis over the course of a number of years. How and when this work will be consulted on and implemented will be informed by priority. Notwithstanding, detail surrounding this process and how it will be implemented will be communicated in due course to ensure clarity and transparency in the process.

- Other cross-sector/cutting projects
All the deliverables of the remaining cross-sector/cutting projects were achieved, noting that the publication of the Draft Conduct Standard - Requirements for financial institutions providing financial education initiatives for public comment was slightly delayed. The reason for the delay was because a need was identified to engage the Financial Sector Transformation Council on the draft Conduct Standard before it is published for public consultation. Work on the cross-cutting Joint Standard relating to Culture and Governance progressed well and targeted consultation is envisaged to take place during the second half of 2023. The Joint Standards pertaining to Information Technology Governance and Risk Management, and Cyber Security and Cyber Resilience Requirements, also progressed well and should be finalised during the course of 2023.

3.3 Financial markets projects

⁶ See paragraph 4.3 of the 2022 Regulation Plan.

⁷ See the discussion on page 12 of the 2022 Regulation Plan under the heading: “PHASE 3: Transition to the COFI Bill framework”.

⁸ Such as the FSCA Discussion Paper titled “A framework for unclaimed financial assets in South Africa” and FSCA draft Position Paper relating to Open Finance that will be published soon.

3.3.1 Good progress was made in progressing certain financial markets projects, such as establishing a framework for the regulation of benchmark administrators, giving effect to amendments to Joint Standard 2 of 2022 (Margin Requirements for non-centrally cleared over-the-counter derivatives margin transactions), developing a framework pertaining to recovery plans for market infrastructures, and developing a reporting and public disclosure framework in relation to short sales.

3.3.2 However, significant delays were experienced in the implementation of Phase 2 of the “Joint Roadmap for Development of a Regulatory Framework for Central Clearing in South Africa”⁹ (“Joint Roadmap”) and the Conduct Standard for Exchanges.

3.3.3 One of the main reasons why these projects were delayed is because it became evident that the scope of the instruments giving effect to these projects will have to be expanded significantly. In particular, the Equivalence Framework in the context of the Joint Roadmap will have to be expanded to deal with the recognition of a foreign jurisdiction as equivalent for purposes of not only external central counterparties and external central securities depositories, but relevant more broadly to the regulatory framework established in terms of the Financial Markets Act, 2012, and the Credit Rating Services Act, 2012. The view is that the equivalence framework should explain the FSCA’s approach to granting equivalence to foreign jurisdictions, also for the benefit of external trade repositories, credit rating agencies, and external OTC derivative providers. In respect of the Conduct Standard for Exchanges, the draft conduct standard is being meaningfully expanded on to set out requirements for the conduct of all market infrastructures and not only exchanges. The revised conduct standard will set out, amongst

other matters, requirements for central securities depositories, exchanges, cross-trading between exchanges, requirements for establishing links, interoperable arrangements between market infrastructures, and sharing of information.

3.3.4 The deliverables and timelines for these projects were therefore reconsidered, taking into account the extended scope and work required, and the 2023 Regulation Plan factors in these changes.

3.3.5 Further, work in relation to the formulation of proposals pertaining to securities financing transactions also progressed, and a draft Conduct Standard should be finalised in due course.

3.4 Collective Investment Schemes

All collective investment scheme (“CIS”) project deliverables contained in the 2022 Regulation Plan were achieved. These include commencing the Review of Board Notice 90 of 2014; publication of draft (interim) amendments to Board Notice 90 of 2014;¹⁰ and continuing work in developing a CIS accounting framework. Work on several other CIS projects reflected on the 2022 Regulation Plan also occurred. However, deliverables for those projects were not earmarked for completion in the 2022/2023 business year and will only become relevant in subsequent business years.

3.5 Insurance

All insurance project deliverables contained in the Regulation Plan were achieved. These include the Joint Standard – Outsourcing by insurers (albeit slightly delayed) and the publication of final Conduct Standard - Requirements relating to third party cell captive insurance business. As per the 2022 Regulation Plan, other insurance related projects have been incorporated into the COFI Bill transition work.

⁹ Published on the websites of the FSCA and Prudential Authority in February 2022.

¹⁰ Note that this item was not included in the 2022 Regulation Plan that was published. However, subsequent to publication of the Regulation Plan it became apparent that certain interim amendments are necessary and must be prioritised.

3.6 Financial Advice and Intermediary Services (FAIS)

All FAIS project deliverables contained in the Regulation Plan were achieved. These include: draft amendments to FAIS Ombud Rules that were published for comment; Amendment of the General Code of Conduct and Compliance Officer qualifications Notice under the FAIS Act; and finalisation of the Declaration of crypto assets as a financial product.

3.7 Co-operative Financial Institutions

As per the 2022 Regulation Plan, the Conduct Standard – Requirements for Co-operative Financial Institutions has been pended in the light of the COFI Bill and COFI Bill transition work. There are consequently no deliverables to report on.

3.8 Section 13B (Pension Fund Benefit) Administrators

The 2022 Regulation Plan indicated that the Conduct Standard – Conditions prescribed for pension fund benefit administrators (section 13B) will be pended in the light of the COFI Bill and COFI Bill transition work and therefore there are no deliverables to report on. However, a slightly different approach is being proposed in respect of this Conduct Standard. This approach is explained in paragraph 4 below.

3.9 Pension/Retirement Funds

3.9.1 High priority retirement fund focused deliverables were achieved, i.e. the finalisation of the Conduct Standard – Payment of Pension Funds Contributions (Section 13A); publication of draft Prudential Standard – Requirements related to regulatory reporting and audited financial statements for pension funds; and publication of draft Prudential Standard - Regulation 28 quarterly reporting requirements for pension funds.

3.9.2 *There were, however, some delays in the pension/retirement fund environment in relation to the following projects that were flagged in the 2022 Regulation Plan as “quick wins”, but with a low to medium priority:*

- Draft Conduct Standard – Conditions for investment in derivate instruments by pension funds (“Derivatives Conduct Standard”);
- Draft Conduct Standard – Conditions for living annuities in an annuity strategy (“Living Annuity Conduct Standard”); and
- Draft Conduct Standard – Communication of benefit projects to members of pension funds (“Benefit Projections Conduct Standard”).

3.9.3 The Derivatives Conduct Standard was delayed because certain stakeholders engaged the FSCA on a critical issue subsequent to the submission of the Conduct Standard to Parliament. That particular issue had to be reconsidered and resulted in further engagement with industry stakeholders, causing a delay in finalising the Conduct Standard. The issue was, however, subsequently resolved and the final Conduct Standard was published on 11 May 2023.

3.9.4 The Living Annuity and Benefit Projections Conduct Standards were delayed because of capacity constraints in progressing these instruments, taking into account the need to prioritise other projects of strategic importance. Notwithstanding, a final round of informal consultation on the Living Annuity Conduct Standard took place during the first quarter of 2023 and the final draft Conduct Standard will be submitted to National Treasury, for tabling in Parliament, soon. The Benefit Projections Conduct Standard will be progressed as and when resources become available noting, however, that this Conduct Standard is currently being reconsidered following a submission from an industry stakeholder.

4 2023 REGULATION PLAN

The prioritisation principles and approach set out in paragraph 3 of the 2022 Regulation Plan were re-assessed and it was concluded that the approach to prioritisation that was adopted in the 2022 Regulation Plan is still appropriate and accordingly no changes in approach are proposed.

These principles were also re-applied to the existing projects contained in the Regulation Plan. In general, the priorities identified last year remains the same, but certain changes to deliverables and timelines were necessary.

General revisions to the 2023 Regulation Plan include the following:

- Deliverables and timelines on certain projects were revised;
- New deliverables and timelines for the period 1 April 2025 – 31 March 2026 have been included in the 2023 Regulation Plan;
- The projects that were finalised during the reporting period have been removed from the 2023 Regulation Plan; and
- New projects of strategic importance were added to the 2023 Regulation Plan (see discussion below).

4.1 CONDUCT REGULATORY FRAMEWORK

Primary legislation

The FSCA will continue to support National Treasury in developing the COFI Bill and believe that good progress has been made in preparing the Bill for submission to Parliament. The COFI Bill is a critical development that will shape the future conduct framework and many of the FSCA's current conduct regulatory framework projects are highly dependent on the promulgation of the COFI Bill. Notwithstanding

this dependency, the FSCA is preparing for all potential scenarios that may unfold in respect of the COFI Bill and will ensure that the conduct framework it is designing, which is intended to transform the regulatory environment to one that is more outcomes- and principles-based, can be given effect to through other means should there be significant issues or delays impeding the promulgation of the COFI Bill.

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

- As discussed above, the initial high-level design of the new framework (Phase 1) has been finalised, noting however that this design will evolve and be refined over time as the development of the new framework progresses.
- Targeted consultation on the themed frameworks (Phase 2) will start in the second half of 2023.
- The work focussed on transitioning the existing sectoral laws to the COFI Bill (Phase 3) will continue throughout 2023 with the intention of having initial formal proposals ready in the first half of 2024. As mentioned in the 2022 Regulation Plan, the transition work will also consider how to incorporate current policy projects such as the Retail Distribution Review and draft regulatory instruments into the new framework, in particular the following draft regulatory instruments that were placed on hold:
 - draft Conduct Standard for Cooperative Financial Institutions;
 - draft amendments to the Policyholder Protection Rules under the Long- and Short-term Insurance Acts;
 - draft amendments to the Regulations under the Long- and Short-term Insurance Acts;
 - draft Conduct Standard relating to

Governance, Fit and Proper and Other Requirements for CIS Managers;

- draft Conduct Standard relating to Advertising and Marketing Requirements for CIS Managers; and
- draft Conduct Standard relating to Culture and Governance for pension funds (“draft Instruments”).

Staggered consultation and implementation will, however, occur and further detail surrounding the development and implementation process will be communicated in due course to ensure clarity and transparency in the process.

Banks

No banking specific interventions are earmarked for completion within the next three years. However, certain areas within the banking environment are under consideration, as informed by the Retail Banking Diagnostic published by National Treasury in June 2018, as well as concerns identified in respect of certain industry practices (e.g. bank account closures). Work in this regard will continue and could ultimately lead to legislative interventions (e.g. through the transition process or otherwise).

Insurers

- The Joint Standard – Outsourcing by Insurers remain a priority and it is envisaged that this Joint Standard will be submitted to National Treasury for onforwarding to Parliament during the second half of 2023.
- As the final version of the Conduct Standard - Requirements relating to third party cell captive

insurance business was published during the reporting period, this regulatory instrument has been removed for purposes of the 2023 Regulation Plan.

- No other insurance specific interventions are earmarked for completion within the next three years. However, as explained in the 2022 Regulation Plan, various insurance related matters will be considered as part of the process focused on transitioning the existing sectoral laws to the COFI Bill framework.

FAIS

- The final versions of the following instruments were published during the reporting period and has therefore been removed for purposes of the 2023 Regulation Plan:
 - Amendments to the General Code of Conduct for Authorised Financial Services Providers and their Representatives;
 - Amendments to the Compliance Officer Qualifications Notice; and
 - Declaration of crypto assets as a financial product under the Financial Advisory and Intermediary Services Act. In this regard, the FSCA’s focus has now shifted to the licensing and supervisory approach in relation to crypto asset FSPs.
- The draft Amendment to the FAIS Ombud Rules that was published for public comment during the reporting period has been reconsidered, as it was subsequently identified that the Ombud Council, established in terms of section 175 of the Financial Sector Regulation Act, is better placed to progress amendments

to the FAIS Ombud Rules. In this regard see FSCA Communication 18 of 2023 (FAIS).

The draft amendments to FAIS Ombud Rules have therefore been removed from the 2023 Regulation Plan.

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

Collective investment schemes

- The CIS related projects listed in the 2022 Regulation Plan, and accompanying explanations, remain relevant. These include the following:
 - Conduct Standard focusing on enhancing the regulation of CIS, particularly in the context of shortcomings identified through a recent Financial Sector Assessment Program. The FSCA is intending to address these shortcomings through the aforementioned single conduct standard.
 - Review of Board Notice 90 of 2014: A Joint Working Group between the FSCA and Prudential Authority was established during the reporting period and the technical work has commenced. The scope of the Review of Board Notice 90 of 2014 has also been extended to include a review of Board Notice 52 of 2015 (Determination on the Requirements of Hedge Funds). It is also being considered whether the project focused on reviewing suspensions and other liquidity management options for CISs (which includes a review of Board Notice 573 of 2003) should be collapsed into the BN 90 review. A decision

in this regard will be made in due course. It is likely that a draft Joint Standard replacing the existing Board Notice 90 will only be published for comment during the course of 2024.

- Suspensions and other Liquidity Management Options for CISs: As explained in the 2022 Regulation Plan, the timelines for this review, which includes a review of Board Notice 573 of 2003, will only be determined once the review of BN 90 is at a more mature stage. This project, therefore, has a longer-term outlook.
- Review of Pro-forma Deed for CISs: As explained in the 2022 Regulation Plan, because the review of the Pro-Forma Deed has dependencies on various CIS regulatory framework developments and on the outcome of the COFI Bill and future framework, timelines for the completion of the review is unclear and will be determined once the other related CIS and COFI Bill developments have progressed well.
- Development of a collective investment scheme accounting framework: Work on the draft accounting framework has progressed well during the reporting period. Although the 2022 Regulation Plan indicated that it is likely that formal consultation on this draft framework will only take place once the COFI Bill has been promulgated, the FSCA has decided that it might consult on this framework before then, through either informal or formal consultation.
- Two new CIS related projects have been added to the 2023 Regulation Plan. These include the following:

- Draft (interim) amendments to Board Notice 90 of 2014: A need has arisen to propose interim amendments to Board Notice 90 of 2014, pending the holistic review of Board Notice 90, that are focused on addressing three specific issues. The draft amendments were published for public comment in March 2023 and the FSCA is intending to submit the draft Amendments to National Treasury for onforwarding to Parliament by the end of 2023; and
- Amendments to Board Notice 257 of 2013: A need has arisen to address certain shortcomings identified in Board Notice 257 of 2013 (Conditions in terms of which a foreign CIS may solicit investments in the Republic). Consultation on the draft amendments will take place in due course.

Alternative investment funds

Technical work that will inform the development of a fit for purpose regulatory framework for alternative investment funds, as explained in the 2022 Regulation Plan, is likely to commence later in 2023. As was mentioned in the 2022 Regulation Plan, the promulgation of such framework is largely dependent on the promulgation of the COFI Bill.

Pension fund benefit administrators (section 13B)

Although the 2022 Regulation Plan indicated that the draft Conduct Standard relating to pension fund benefit administrators will likely be collapsed into the COFI Bill transition work, this project was reprioritised as problems in the section 13B administrator environment persist and are exacerbated by the lack of an appropriate framework. As an alternative this project will be progressed in some form. This could entail that the FSCA proceeds with a slightly “watered down” version of the Conduct Standard that

addresses critical deficiencies in the framework, but still avoids, as far as possible, potential misalignment with the future framework to be promulgated under the COFI Bill which is currently under development (i.e. the COFI Bill transition work). Further communication in this regard will follow in due course.

Retirement funds

- The final version of the Conduct Standard – Requirements related to the payment of Pension Funds Contributions (Section 13A of the Pension Funds Act) was published and has therefore been removed from the 2023 Regulation Plan.
- The other retirement fund related projects listed in the 2022 Regulation Plan, and accompanying explanations, remain relevant. These include the following:
 - Conduct Standard – Conditions for investment in derivative instruments by pension funds: The final version of this Conduct Standard was published on 11 May 2023 (i.e. in the new reporting period).
 - Prudential Standard - Requirements related to regulatory reporting and audited financial statements for pension funds: Work on this Standard is on track, and it is envisaged that this project will be finalised during the course of 2024.
 - Conduct Standard – Conditions for living annuities in an annuity strategy: As explained above, this Conduct Standard was subject to delays, but will be progressed in due course.
 - Conduct Standard - Communication of Benefit Projections to Members of Pension Funds: As explained above, this Conduct Standard was subject to delays, but will be progressed in due course.

- The following new retirement fund related project was added to the 2023 Regulation Plan:
 - Prudential Standard – Regulation 28 quarterly reporting requirements for pension funds: Due to amendments to Regulation 28 that was promulgated by the Minister in 2022, a need has arisen to amend the Regulation 28 quarterly reporting requirements to align to the new Regulation 28. This Standard will therefore prescribe quarterly reports for pension funds in respect of Regulation 28 compliance (Pension/Retirement Funds). A draft Standard was published for public comment in November 2022 and the finalisation of this Standard is being prioritised.
- Work in respect of a draft Standard focused on conditions for securities lending for pension funds has been placed on hold pending the finalisation of broader work focused on securities lending transactions generally.

4.2 FINANCIAL MARKETS REGULATORY FRAMEWORK

Primary legislation

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

Subordinate legislation

The financial markets related projects listed in the 2022 Regulation Plan, and accompanying explanations, remain relevant. These include the following:

- Development of a Regulatory Framework for Central Clearing in South Africa: As explained above, implementation of the Central Clearing Roadmap was subject to delays but will be progressed according to the schedule proposed in Annexure A.
- Amendments to Joint Standard 2 of 2020 - Margin Requirements for non-centrally cleared OTC derivative transactions: The final amendments were published in June 2023.
- Conduct Standard – Requirements relating to the provision of a benchmark: A draft Conduct Standard has been published for public consultation twice. This work has therefore progressed well and is expected to be finalised during the course of 2024.
- Draft Conduct Standard - Requirements relating to the reporting and disclosure of short sales: Following the consultation process on the draft Conduct Standard, it seems likely that a draft Conduct Standard will be published for a second round of public consultation at the end of 2023, with the aim of finalising this project during the course of 2024.
- Conduct Standard for Exchanges: As explained above, implementation of this Conduct Standard was subject to delays, but will be progressed in due course. A second version of the Conduct Standard, reflecting a broader scope, is expected to be published during the course of 2023. As mentioned above, the name of this Conduct Standard is

likely to change given the extended scope of the Standard.

- Joint Standard - Recovery Plans for Market Infrastructures: It is envisaged that a draft Joint Standard will be published for public comment during the second half of 2023.
- Work focusing on securities financing transactions and culture and governance requirements for market infrastructures are also continuing and is likely to result in formal legislative proposals that will be published for public comment.

4.3 CROSS-CUTTING/SECTOR REGULATORY FRAMEWORK DEVELOPMENTS

The cross-cutting/sector regulatory framework projects listed in the 2022 Regulation Plan, and accompanying explanations, remain relevant. These include the following:

- Joint Standard – Culture and Governance: Work progressed well and remains a priority. An initial framework has been developed and the Authorities are intending to embark on target consultation during the last quarter of 2023.
- Joint Standard – Information Technology governance and risk management: This Joint Standard has already been submitted to Parliament and is therefore expected to be finalised soon.
- Joint Standard - Cyber security and cyber resilience requirements: The Joint Standard has been subject to two rounds of public consultation and will be submitted to Parliament in due course.
- Other Information Technology related Standards: Work in relation to the other Information Technology related Standards are continuing in conjunction with the Prudential Authority and will be consulted on in due course, likely during the course of 2024.
- Draft Conduct Standard - Requirements for financial institutions providing financial education initiatives: The Conduct Standard was published for public consultation in March 2023 and next steps will be determined and communicated once the public comments have been considered.
- Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets: Policy work in respect of this project is underway, ¹¹ but formal legislative proposals will only follow at a later stage. The 2022 Regulation Plan indicated that formal draft legislative proposals are only expected to be published during the first quarter of 2024, but now it seems more likely that legislative proposals will only be published during the course of 2025.
- Conduct Standard relating to Open Finance: Policy work in respect of this project is underway, ¹² but formal legislative proposals will only follow at a later stage which will likely be in 2024, as indicated in the 2022 Regulation Plan.
- Beneficial owners of financial institutions: The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 which was promulgated at the end of 2022 introduced, amongst other things, a Chapter in the Financial Sector Regulation Act pertaining to beneficial owners. The FSCA also supported National Treasury in drafting this Chapter. This new Chapter dealing with beneficial ownership has provided more clarity on the way forward and the FSCA is intending

to develop a Standard pertaining to beneficial ownership which will be published for public consultation in due course. The FSCA is also in discussions with the Prudential Authority to determine whether the beneficial owner Standard should be a joint initiative between the FSCA and the Prudential Authority taking on the form of a Joint Standard.

- Cross-sector licensing forms: Cross-sector licensing forms in anticipation of the COFI Bill has been developed. However, the finalization of the forms is highly dependent on the conclusion of other relevant regulatory framework projects that will inform the content of the final forms, such as the themed frameworks (in particular the competency requirements), licensing framework under the COFI Bill, Standard pertaining to beneficial ownership, issues pertaining to transformation, and the like. As such, the FSCA will not, at this stage, finalise the forms and will continue to refine the forms as and when the relevant interdependent projects are finalised.

4.4 SUMMARY / HIGH-LEVEL OVERVIEW

Annexure A below itemises the regulatory framework projects that will be focused on over the course of the next three years (1 April 2023 to 31 March 2026) as contained in the 2023 Regulation Plan, as discussed above, together with deliverables and when technical work and drafting will occur. It is reiterated that:

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

The projects and specifically the timelines indicated in

Annexure A are therefore a broad estimate, not fixed and subject to change.

5. REVIEW OF REGULATION PLAN AND CLOSING

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

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



¹¹ See the following publication: <https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Discussion%20Paper%20-%20A%20Framework%20for%20Unclaimed%20Financial%20Assets%20in%20South%20Africa%202022.pdf>

¹² See the following publication: <https://www.fsc.co.za/Regulatory%20Frameworks/Temp/FSCA%20Discussion%20Paper%20-%20A%20Framework%20for%20Unclaimed%20Financial%20Assets%20in%20South%20Africa%202022.pdf>
A Final Position Paper in respect of Open Finance will also be published soon.

ANNEXURE A

Deliverable due
Technical or drafting work or input required
No work required
Completed

RP#	SECTOR	INITIATIVE	2023/2024 BP YEAR				2024/2025 BP YEAR				2025/2026 BP YEAR			
			Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
			Apr - Jun '23	Jul - Sep '23	Oct - Dec '23	Jan - Mar '24	Apr - Jun '24	Jul - Sep '24	Oct - Dec '24	Jan - Mar '25	Apr - Jun '25	Jul - Sep '25	Oct - Dec '25	Jan - Mar '26
1	CC ¹³	Conduct of Financial Institutions (COFI) Bill												
2	CC	Financial Markets Act Review												
3	CC	Development of a regulatory framework under the COFI Bill												
4	CC	Development of cross-sector licensing forms												
5	CC	Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets published												
6	CC	Conduct Standard on Open Finance												
7	CC	Joint Standard – Beneficial Owners of Financial Institutions												
8	CC	Draft Conduct Standard - Requirements for financial institutions providing financial education initiatives												
9	CC	Joint Standard – Information Technology Risk Management												
10	CC	Joint Standard – Cyber security and cyber resilience requirements												
11	CC	Joint Standard – Culture and Governance												
12	FM ¹⁴	Joint Standards - Exemption Criteria for external Central Counterparty (CCPs), Trade Repositories (TRs) and Central Securities Depositories (CSD)												
13	FM	Equivalence Framework												
14	FM	Determination setting requirements relating to external CCP or external TR licence												
15	FM	Eligibility Criteria for central clearing												
16	FM	Joint Standard Recovery Plans for Market Infrastructures												
17	FM	Amendment to Joint Standard 2 of 2020 – Margin Requirements												
18	FM	Conduct Standard – Requirements relating to the provision of a benchmark												
19	FM	Conduct standard for exchanges ¹⁵												
20	FM	Draft Conduct Standard - Requirements relating to the reporting and disclosure of short sales												
21	FM	Conduct Standard - Securities Financing Transactions												
22	CIS ¹⁶	Enhanced regulation for CIS's												
23	CIS	Draft (interim) Amendments to BN 90 of 2014												
24	CIS	Review of BN 90 of 2014 and BN 52 of 2015												
25	CIS	Amendments to Board Notice 257 of 2013												
26	CIS	Development of a CIS accounting framework												
27	CIS	Review of Pro-forma Deed for CIS												
28	CIS	Suspensions and other Liquidity Management Options for CIS, including review of Board Notice 573 of 2003												
29	AIF ¹⁷	Regulatory Framework Proposal for the Regulation of AIF's												
30	INS ¹⁸	Joint Standard – Outsourcing by Insurers												
31	13B ¹⁹	Conduct Standard – Section 13B (Pension Fund Benefit) Administrators												
32	RF	Conduct Standard – Conditions for investment in derivative instruments by pension funds												
33	RF ²⁰	Conduct Standard – Conditions for investment in derivative instruments												
34	RF	Conduct Standard – Living Annuities												
35	RF	Conduct Standard – Communication of Benefit Projections												
36	RF	Prudential Standard - Requirements related to regulatory reporting and audited financial statements for pension funds												
37	RF	Prudential Standard – Regulation 28 quarterly reporting requirements for pension funds												

¹³ Cross-cutting/sector

¹⁴ Financial Markets As mentioned above, the name of this Conduct Standard is likely to change given the extended scope of the Standard.

¹⁶ Collective Investment Schemes

¹⁷ Alternative Investment Funds

¹⁸ Insurance

¹⁹ Retirement funds administrators (section 13B)

²⁰ Retirement Funds



FSCA

Financial Sector
Conduct Authority