

FSCA REGULATION PLAN

1 APRIL 2022 - 31 MARCH 2025



Financial Sector
Conduct Authority

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1. EXECUTIVE SUMMARY

One of the cornerstones of regulation is the regulatory framework, which sets the perimeter of regulation and determines the rules within which financial institutions must operate. Primary legislation 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 and the desired policy outcomes cannot be ensured.

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 is **sufficiently flexible** to position the FSCA to meet its legislated objectives and functions, particularly to **ensure that financial customers are protected and treated fairly**, and that **financial markets operate efficiently and with integrity**.

The financial sector is in the process of going through two major legislative reforms. With regards to the conduct legislative framework, the **Conduct of Financial Institutions (COFI) Bill will reshape the future conduct regulatory framework by consolidating the conduct financial sector laws into a single overarching piece of conduct legislation**, and will also bring a broad scope of **new activities within the conduct legislative framework**.

In addition, the **Financial Markets Act is currently under review** and is envisaged to not only change the current architecture of financial markets regulation, but will also **broaden the scope of coverage of financial markets legislation**, be inclusive rather than exclusive and will strengthen and increase the oversight responsibility of South Africa's regulators of financial markets. The **review of the Financial Markets Act will therefore play a critical part in shaping the responsibilities and approach of South Africa's regulators** in the context of regulating the financial markets in the coming years. Due to the imminent changing landscape, these legislative developments have a significant impact on how the FSCA will approach its regulatory framework strategy over the course of the next three years.

In this light, the FSCA's Regulation Plan (1 April 2022 – 31 March 2025) has been developed to support it in managing and navigating how it carries out ongoing legislative review and development of the regulatory framework, in line with its strategic objectives over the course of the next three years. The focus areas forming part of the Regulation Plan can be summarised along three broad categories:

1. Regulatory framework developments focused on conduct;
2. Regulatory framework developments focused on the financial markets (integrity and efficiency); and
3. Regulatory framework developments focused on a broad scope of cross-cutting-sector developments and themes.

Development of the conduct regulatory framework

Development of a new regulatory framework under the COFI Bill

A significant focus area forming part of the conduct related regulatory framework developments for the next three years is the development of a holistic, cross-sector, robust and customer-focused regulatory framework, to be given effect to under the COFI Bill. The intention behind the development of this new framework is to position the FSCA to ensure a smooth and effective transition into the COFI Bill, without too much delay. The development of this new framework will consist of 3 phases to be progressed concurrently:

- *High level design of the regulatory framework:* This phase will consider what the overall design of the regulatory framework under the COFI Bill will be and look like, including the layout; how conduct standards will be approached, positioned and grouped; naming and numbering conventions for conduct standards; etc.
- *Harmonisation of regulatory frameworks:* The Harmonisation Project that was initiated in 2020 will play a pivotal role in shaping the future framework under the COFI Bill. Based on the need to start harmonising laws administered by the FSCA to avoid fragmented supervision, regulatory arbitrage and inconsistent customer outcomes across the sector, the Harmonisation Project entails the identification of key conduct themes and the subsequent development of cross-cutting requirements for each of those themes, that will serve as regulatory frameworks that can be applied to the financial industry as a whole, regardless of the type of institution or activity rendered. It is envisaged that the regulatory frameworks developed as part of the Harmonisation Project will serve as cross-sector conduct standards imposed under the COFI Bill and that these will be supplemented by more sector specific requirements if required.
- *Transition to the COFI Bill framework:* The draft COFI Bill contains a savings provision that provides that anything done or prescribed under a section of an Act amended by the Bill remains valid and enforceable until replaced by conduct standards under that Bill. The significant body of subordinate legislation currently sitting under all the sectoral laws will therefore continue to exist after the COFI Bill has come into operation, even though the laws in terms of which they were made have been repealed, until they are replaced by conduct standards under the Bill. The third phase will focus on the transitioning of existing sectoral standards to the COFI Bill framework and will entail a significant redesign of the current framework.

Principles to be taken into account when redesigning the regulatory framework:

- Harmonising requirements across the financial sector
- Facilitating a greater shift to outcomes- and principles-based requirements and less reliance on detailed rules-based requirements
- Utilising interpretation instruments like Guidance Notices more frequently, to inform outcomes- and principles-based requirements
- Rationalising and synthesising requirements as far as possible
- Streamlining and consolidating requirements as far as possible, to avoid multiple pieces of law, thereby creating a much simpler and user-friendly legal landscape

In addition, the transition process will also be used to progress existing draft legislative proposals and policy proposals from various existing policy projects, such as the Retail Distribution Review.

Industry specific developments

The FSCA will also focus on and progress the following industry-specific developments:

- **Insurers:**
 - Joint Standard relating to Outsourcing by Insurers
 - Conduct Standard imposing requirements relating to third party cell captive insurance business

- **Financial advisors and intermediaries**
 - Draft amendments to the General Code of Conduct for Authorised Financial Services Providers and their Representatives
 - Draft amendments to the FAIS Compliance Officer Qualifications Notice
 - Amendment to the FAIS Ombud Rules
 - A final decision relating to the draft Declaration of crypto assets as a financial product under the Financial Advisory and Intermediary Services Act will be taken

- **Collective investment schemes**
 - Conduct Standard focused on enhancing the regulation of collective investment schemes, following recommendations made through the Financial Sector Assessment Program
 - Review of Board Notice 90 of 2014
 - Conduct Standard focusing on suspension and other Liquidity Management Options for collective investment schemes
 - Review of the Pro-forma Deed for collective investment schemes
 - Development of a collective investment scheme accounting framework

- **Alternative investment funds**
 - Development of a fit for purpose regulatory framework for the regulation of alternative investment fund activities

- **Retirement funds**
 - Pension Funds Financial Statements and Regulatory Reporting Standard
 - Conduct Standard – Payment of Pension Funds Contributions (Section 13A of the Pension Funds Act)
 - Conduct Standard – Conditions for investment in derivative instruments
 - Conduct Standard – Conditions for living annuities in an annuity strategy
 - Conduct Standard - Communication of Benefit Projections to Members of Pension Funds

Various draft developments that have the potential of resulting in misalignment with the future framework under development (especially the COFI Bill), will also be reassessed and progressed as deemed appropriate, subject to resource availability. These include –

- Draft Conduct Standard for Cooperative Financial Institutions
- Draft amendments to the Policyholder Protection Rules under the Long- and Short-term Insurance Act
- Conduct Standard relating to Governance, Fit and Proper and Other Requirements for collective investment scheme managers
- Conduct Standard setting Advertising and Marketing requirements for collective investment scheme managers
- Conduct Standard relating to Culture and Governance for pension funds

Development of the financial markets (integrity and efficiency) regulatory framework

The FSCA will focus on various high priority financial markets regulatory framework projects. A critical priority is implementation of the Joint Roadmap for Development of a Regulatory Framework for Central Clearing in South Africa that was published in February 2022, which consists of three phases. Phase 1 has been completed and work in relation to phase 2 and 3 of the Joint Roadmap will therefore be prioritised. Linked to this work, but not reflected in the Roadmap, are amendments to Joint Standard 2 of 2020, Margin Requirements for non-centrally cleared OTC derivative transactions, to facilitate, amongst other things, regulatory reporting.



The FSCA will also focus on finalising the following:

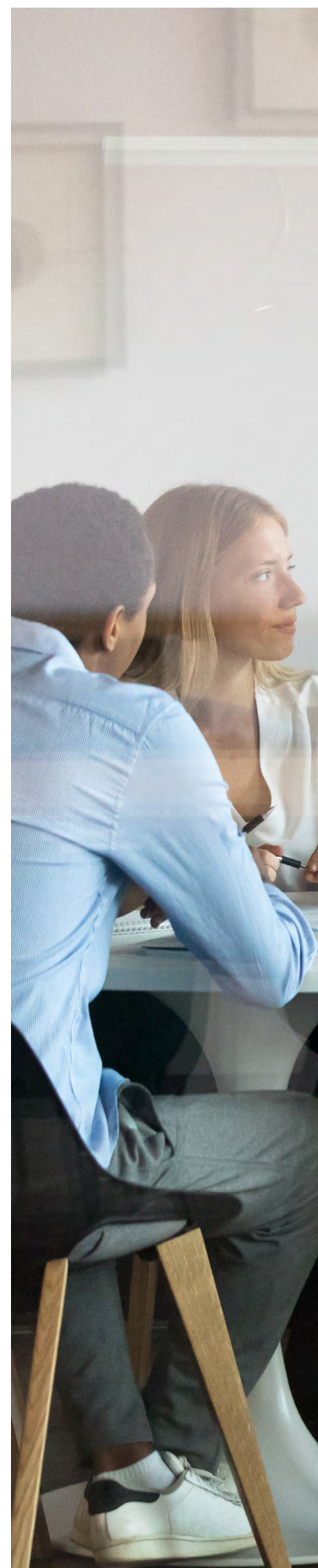
- Holistic regulatory framework to regulate the provision of benchmarks
- Reporting and public disclosure framework in relation to short sales
- The Conduct Standard for Exchanges to adequately address the consequences of market fragmentation due to competition between exchanges
- Joint Standard relating to recovery plans for market infrastructures, together with a Joint Guidance Notice containing the recommended Recovery Tools for market infrastructures

Developments surrounding securities financing transactions and culture and governance requirements for market infrastructures will also remain on the FSCA's radar, but these projects are, for now, dependent on the conclusion of other broader developments.

Regulatory framework developments focused on a broad scope of cross-cutting-sector developments and themes

Lastly, the FSCA will focus on progressing a broad scope of cross-cutting-sector developments and themes that include the following:

- Joint Standard – Culture and Governance
- Joint Standard – Information Technology governance and risk management
- Joint Standard - Cyber security and cyber resilience requirements
- Other Information Technology related Standards
- Legislative interventions relating to beneficial owners of financial institutions
- Conduct Standard relating to Financial Consumer Education Initiatives
- Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets
- Conduct Standard relating to Open Finance
- Development of cross-sector licensing forms



2. INTRODUCTION

In terms of section 57 of the FSR Act, the objectives of the FSCA are to:

- enhance and support the efficiency and integrity of financial markets; and
- protect financial customers by –
 - promoting fair treatment of financial customers by financial institutions; and
 - providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions;
- assist in maintaining financial stability.

In terms of section 58 of the FSR Act, the FSCA must, to achieve its objective, amongst other things:

- regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions;
- promote, to the extent consistent with achieving the objective of the FSCA, sustainable competition in the provision of financial products and financial services;
- promote financial inclusion;
- regularly review the perimeter and scope of financial sector regulation, and take steps to mitigate risks identified to the achievement of its objective or the effective performance of its functions; and
- monitor the extent to which the financial system is delivering fair outcomes for financial customers, with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers.

One of the cornerstones of regulation is the regulatory framework, which sets the perimeter of regulation and determines the rules within which financial institutions must operate. In this context the regulatory framework refers to the body of laws and supporting instruments,¹ for which the FSCA is responsible, that govern the conduct regulation of financial institutions. The regulatory framework comprises primary laws,² subordinate legislation,³ documents that impose legally enforceable requirements⁴ and documents that support the interpretation and implementation of financial sector laws, such as interpretation rulings, guidance notices, general directives and the like.

The regulatory framework supervised by the FSCA 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.

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 and the desired policy outcomes cannot be ensured.

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.

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.

Every year the FSCA develops a Regulation Plan 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. This year the FSCA has decided to develop its Regulation Plan for a 3-year period, to ensure closer alignment with its Regulatory Strategy 2021 – 2025.

The purpose of this document is to communicate the outcome of the FSCA's 3-year Regulation Plan to the public. Apart from supporting transparency, the intention is also to provide industry participants with an understanding of how the framework will be evolving, better enabling them to plan and prepare for upcoming developments that might impact their specific business areas.



¹ <https://www.fsc.co.za/News%20Documents/FSCA%20Regulatory%20Strategy%202021-2025.pdf>.

3. APPROACH TO PRIORITISING OUR REGULATORY FRAMEWORK PLAN

The FSCA's Regulation Plan focuses on the conduct regulatory framework and the market integrity and efficiency regulatory framework, supplemented by the FSCA's supportive financial stability mandate.

This plan is informed by balancing resources spent on completing "historic" regulatory instruments i.e., those initiated before the establishment of the FSCA and that don't necessarily align to the new conduct framework under the COFI Bill, with those emerging through more recent developments, for example informed by international standard setting bodies and the COFI framework. The FSCA wants to avoid a situation resulting in unnecessary increased cost for industry participants due to legislative changes upon legislative changes. The challenge, therefore, is to find an appropriate balance between mitigating pressing prevailing risks whilst managing the potential impact on industry participants.

The FSCA has very carefully considered how to approach its regulatory framework workplan, to prioritise its projects in a balanced and risk-based manner that supports the FSCA objectives. In doing so, the FSCA applied the following principles:

1. Specific items reflected in the FSCA Annual Performance Plan, Business Plan and Regulatory Strategy was deemed high priority and resulted in automatic inclusion in the Regulation Plan. In addition, work related to the COFI Bill and developing the future framework was deemed critical and therefore also prioritised as high.
2. Secondly, existing joint initiatives with the Prudential Authority (PA) were also deemed high priority as both the FSCA and PA have already committed to these initiatives and will continue to progress them as deemed appropriate.
3. Thirdly, matters that are very close to finalisation have been flagged as "quick wins" regardless of their priority. These include matters where the next step in the process is to submit the draft regulatory instrument to Parliament before it is made, or to wait for the Parliamentary period to elapse (where a regulatory instrument has already been submitted to Parliament) so that the final regulatory instrument can be made.
4. Lastly, in prioritising the remaining regulatory initiatives, it was considered whether the regulatory initiative:
 - i. is aimed at addressing misalignment with international standards.² If so, it was regarded as a high priority for inclusion in the Regulation Plan;
 - ii. is aimed at mitigating emerging risks as reflected on the FSCA's Emerging Risk Register. If so, it was regarded as a high priority for inclusion in the Regulation Plan;

² Including recommendations emanating from the Financial Sector Assessment Program.

- iii. has any dependency on or overlaps with the development of the future conduct framework under the COFI Bill. If so, the dependency had to be assessed and unpacked in more detail to determine whether it is viable to proceed with the instrument at this time or whether the instrument should rather be incorporated into the COFI Bill framework development process; and
- iv. is informed by any other external urgency justifying a high priority and inclusion in the Regulation Plan.

The items in the FSCA's Regulation Plan discussed below therefore reflect the outcome after the above principles were applied.

The paragraphs that follow set out the regulatory framework initiatives that the FSCA will focus on over the course of the next three years. The initiatives are grouped as follows:

- Section 4 focuses on the regulatory framework initiatives that will inform the development of the conduct framework;
- Section 5 focuses on the regulatory framework initiatives that will inform the development of the financial markets (market efficiency and integrity) framework; and
- Section 6 focuses on cross-cutting/sector regulatory framework initiatives.



4. DEVELOPMENT OF THE CONDUCT REGULATORY FRAMEWORK

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

The COFI Bill will reshape the future conduct regulatory framework by consolidating the conduct financial sector laws into a single overarching piece of conduct legislation. The COFI Bill process seems to be progressing well. To ensure COFI Bill readiness, it is critical that the FSCA starts positioning itself to ensure a smooth transition into the new framework.

It is envisaged that the development of the regulatory framework under the COFI Bill will consist of three phases, noting that these phases do not necessarily have to occur in sequence, such that all three phases can be progressed concurrently.

PHASE 1 – *High level design of the regulatory framework*

This phase considers what the overall design of the regulatory framework under the COFI Bill will be and look like. For example, the layout of the framework; how conduct standards will be approached, positioned and grouped; naming and numbering conventions for conduct standards; and the like. It will also consider the role of instruments that will support the framework, such as interpretational rulings, guidance notices, FSCA Notices and the like. Identifying the overall design is important, because it will inform how the regulatory frameworks are developed and positioned.

PHASE 2 – *Harmonisation of regulatory frameworks*

The Harmonisation Project will play a pivotal role in shaping the future framework under the COFI Bill.

The Harmonisation Project was initiated based on the need to have harmonised laws administered by the FSCA to avoid fragmented supervision, regulatory arbitrage and inconsistent customer outcomes across the sector. The Harmonisation Project entails the identification of key conduct themes and the subsequent development of cross-cutting requirements for each of those themes, that will serve as regulatory frameworks that can be applied to the financial industry as a whole, regardless of the type of institution or activity rendered.

The Harmonisation Project was also initiated in anticipation of the COFI Bill, and one of the objectives of the Project is to ensure COFI Bill readiness. It is therefore envisaged that the regulatory frameworks developed as part of the Harmonisation Project will serve as cross-sector conduct standards imposed under the COFI Bill, and that these will be supplemented by more sector specific conduct standards where necessary. The Harmonisation Project, if executed, will therefore contribute significantly to establishing a high-level outcomes and principles-based framework that can be applied across all financial institutions that are subject to the COFI Bill.

PHASE 3: *Transition to the COFI Bill framework*

The draft COFI Bill provides that anything done or prescribed under a section of an Act amended by the COFI Bill remains valid and enforceable until replaced by conduct standards under the COFI Bill. The significant body of subordinate legislation currently sitting under all the sectoral laws will therefore continue to exist after the COFI Bill has come into operation. However, the body of subordinate legislation under the existing sectoral laws will need to be transitioned into the COFI Bill framework to embrace the cross-sector and activity-based approach, as opposed to the current sectoral-based approach.

The transition will entail a significant redesign of the framework, specifically in the light of the fragmentation that exists in the existing frameworks and the need to shift to a more consolidated outcomes- and principles-based framework. The following principles will underpin the redesign of the framework:

- To the extent possible and practical, **frameworks should be harmonised** so that they can apply across the entire sector. This will avoid fragmentation and ensure more consistent customer outcomes across the sector as a whole. It will also support the FSCA to more rapidly respond to conduct risk, as it avoids a "start from scratch" approach for each financial sector activity.
- Frameworks should demonstrate a **greater shift to outcomes- and principles-based requirements** and less reliance on detailed rules-based requirements. A shift to a more outcomes- and principle-based framework is critical in enabling proportional application of the law, providing greater flexibility to both the FSCA as well as regulated persons.
- **Guidance Notices should be used more frequently** to inform outcomes- and principles-based requirements, thereby providing some level of consistent application of the legislated outcomes and principles.
- Industry specific rules can and will still be provided for, and will be necessary, but an **overuse of rules should be limited** as far as possible. Instead of providing for detailed rules, a greater reliance should be placed on outcomes, principles and guidance where possible.
- **Requirements should be rationalised** and synthesised as far as possible. Requirements should not be perpetuated/repeated merely for the sake of repeating. A requirement should only be perpetuated/repeated if a clear, real and important need to have a specific requirement in a conduct standard under the COFI Act exists. This will relieve undue regulatory burden.
- Where possible, **requirements should be streamlined and consolidated** into a single conduct standard as far as possible as to avoid multiple pieces of law, thereby creating a much simpler and easier to navigate legal landscape. This will also relieve undue regulatory burden.

Other policy projects, including the Retail Distribution Review (RDR): In addition to the above, the transition project also opens up an opportunity to incorporate draft legislative proposals flowing from various existing policy projects into the process. Put differently, the transition process, and consultation that will occur as part of the transition process, can be used to consult on and further refine existing policy proposals.

With regards to the RDR specifically, following the publication of the "RDR: General Status Update as at December 2019" and various RDR related discussion papers, further technical work on the outstanding proposals has been undertaken. Also, some proposals flowing from the RDR were scheduled to be incorporated into pending regulatory instruments, for example:

- Enabling the payment of advice fees in the insurance context, i.e. allow for the payment of advice fees separately from commission;
- Carving out remuneration for policy data administration services and determining maximum allowable fees for such services;
- Principles and reporting requirements related to Equivalence of Reward, and remuneration or consideration not compliant with the principle of equivalence of reward;
- Incorporation of the Remuneration Dispensation for Savings and Investment Products for the Low-Income Market (Proposal TT);
- Premium collection framework enhancements.

However, as discussed below, these pending regulatory instruments will not be progressed in the current format, which means that the abovementioned RDR proposals will not continue as initially planned. The proposals will, however, be incorporated into the development of the new framework through the transition process and consulted on in due course. Apart from the specific RDR proposals referred to above, the transition process might also be used to consult on other RDR proposals, provided that the necessary technical work relating to such proposals has been concluded.

The RDR proposals remain a priority for the FSCA and integrating these into the wider regulatory reform is considered imperative for alignment and regulatory efficiency.

Consultation and timelines

Drafting of the harmonisation frameworks are currently underway and it is expected that drafting will continue throughout 2022, and consultation on the frameworks should occur during 2023.

Technical analysis of the transition work will then commence. However, the transition process will require extensive analysis, judgment, planning and drafting and is expected to take multiple years before the entire transition process is complete. As and when possible, frameworks finalised as part of the transition process will be consulted on and given effect to as the rest of the process continues, i.e. a phasing in process is likely to unfold.

The FSCA is considering setting up industry reference groups to serve as consultation and discussion forums for progressing this work, the latter will especially be relevant in the context of the harmonisation work.

³ For example amendments to the Policyholder Protection Rules and Regulations under the Long- and Short-term Insurance Acts as referred to in paragraph 4.3.

⁴ See paragraph 4.3.

4.2 Industry specific high priority conduct focused developments

Banks

The FSCA published the Conduct Standard for Banks, 2020 (Banking Standard) in July 2020. Since then, the focus has been on implementing and supervising the Banking Standard rather than developing further regulatory framework interventions. As such, no banking specific interventions are earmarked for completion within the next three years. However, the banking sector will be impacted by various broader developments such as the design of the new framework under the COFI Bill, licensing requirements under the COFI Bill, some of the financial markets regulatory framework developments as well as various of the cross-cutting/sector projects.

Insurers

Joint Standard – Outsourcing by Insurers

In September 2021, the FSCA and the PA published draft Joint Standard – Outsourcing by Insurers for public comment. The main purpose of the Joint Standard was to convert Prudential Standard GOI 5 – Outsourcing by Insurers into a joint standard on outsourcing in order to give the FSCA jurisdiction to regulate outsourcing by insurers more holistically. The draft Joint Standard remains a priority for the FSCA and PA, and the Authorities will continue to finalise this Joint Standard during the course of 2022.

Conduct Standard - Requirements relating to third party cell captive insurance business

The draft Conduct Standard setting requirements relating to third party cell captive insurance business (“Cell Captive Conduct Standard”) is already far progressed and a final version of the Cell Captive Conduct Standard was submitted to Parliament on 12 May 2022. The final Cell Captive Conduct Standard will be made shortly after the Parliamentary period has elapsed.

Financial advisers and intermediaries

Draft amendments to the General Code of Conduct for Authorised Financial Services Providers and their Representatives and Compliance Officer Qualifications Notice

The FSCA will be progressing draft amendments to the General Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003 and the Compliance Officer Qualifications Notice previously consulted on. These amendments are minor in nature and have already been submitted to Parliament, and it is expected that the amendments will be finalised soon. Minor draft amendments to the Determination of Fit and Proper Requirements, 2017 that was also consulted on previously will not continue, and these amendments will be incorporated into the process of transitioning into the COFI Bill framework.

Declaration of crypto assets as a financial product under the Financial Advisory and Intermediary Services Act

In November 2020, the FSCA published a draft notice proposing to declare crypto assets as a financial product under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS Act). The proposed Declaration was envisaged to be an interim step towards protecting customers in the crypto assets environment, pending the conclusion of broader policy developments surrounding crypto assets. Following the publication of the draft Declaration, the FSCA commenced further technical work to formulate a draft licensing and regulatory framework that will be applicable to the rendering of financial services in relation to crypto assets under the FAIS Act.

However, due to broader developments surrounding the regulation of crypto assets unfolding, including proposals to include crypto asset related activities holistically within the scope of the COFI Bill, the draft Declaration was placed on hold until further clarity on these broader developments is obtained, including envisaged timelines for implementing these broader proposals. In the interim the FSCA initiated further work in understanding the crypto asset landscape, and in particular in the advisor and intermediary environment. As such, the FSCA issued a survey (Request for Information) to Financial Services Providers to identify the involvement of existing advisers and intermediaries in the crypto asset environment. The outcome of the survey will be considered in conjunction with the broader developments surrounding crypto assets and will ultimately inform a decision regarding whether the FSCA will proceed to make the Declaration.

The regulation of crypto assets remains a high priority for the FSCA and the FSCA will continue to monitor the environment and formulate policy responses as deemed appropriate.

Amendment to the FAIS Ombud Rules

Following the World Bank Group recommendations contained in its Financial Ombud System Diagnostic that was published on 29 July 2021, the FSCA will be proposing amendments to the FAIS Ombud Rules, specifically to increase the current jurisdictional limit of the FAIS Ombud. The current limit has not increased since 2004 and is misaligned to the limits of other comparable Ombuds. This amendment will be consulted on in due course.

Collective investment schemes

Various high priority projects within the collective investment schemes (CIS) environment will be focused on during the course of the next three years:

Enhanced regulation for CISs

Recommendations emanating from a recent Financial Sector Assessment Program ("FSAP") has highlighted certain areas in the CIS environment which requires improvement to further align with international standards. To address these recommendations, the FSCA will be initiating a process to develop a single conduct standard aimed at addressing the identified shortcomings.

The development of this conduct standard will be preceded by technical work that will inform the content of the conduct standard. The technical work is envisaged to commence soon and will continue throughout the first half of 2023. A draft Conduct Standard will be consulted on in due course.

Review of Board Notice 90 of 2014

The FSCA will be undertaking a review of Board Notice 90 of 2014⁵ (BN 90) to ensure the requirements remain relevant and are aligned to international standards. The review is likely to be done on a joint basis with the PA and it is envisaged that BN 90 will ultimately be issued as a Joint Standard under the FSR Act. The review is earmarked to commence at the end of 2022.

⁵ "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"

Suspensions and other Liquidity Management Options for CISs

Board Notice 573 of 2003 (BN 573)), which deals with suspension of repurchase of participatory interests by manager of collective investment scheme in securities, is significantly outdated and very limited in its application, whereas there is an international demand for implementation of tools to manage sudden illiquidity and the impact on financial stability following redemption runs on portfolios. As such, the FSCA will be initiating a review relating to suspensions and other liquidity management options for CISs, which will include a review of BN 573. The purpose of this review is therefore to update BN 573 and to provide for more effective tools to manage liquidity issues in portfolios. The review is, however, to some extent dependent on the finalisation of the review of BN 90 discussed above, and timelines for completion of this review is therefore difficult to determine at this point in time. Timelines for this review will therefore be determined once the review of BN90 is close to finalisation.

Review of Pro-forma Deed for CISs

The Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002) requires a Deed for each CIS, which is its founding document for approval by the FSCA and regulates the day-to-day administration of a CIS, especially between the CIS Manager and the Trustee (Fiduciary). The current Pro-Forma Deed is considerably outdated and the 2014 FSAP review recommended an offering document that is more aligned to the international prospectuses. The purpose of this review is therefore to review the current pro-forma deed and to make proposals to update the deed.

However, 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 therefore 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

The purpose of this project is to develop a fit for purpose accounting framework for CIS managers and the CIS's they manage (including portfolios). Technical work on the development of this framework will continue during the course of 2022 and 2023 and informal consultation on the draft framework will take place in due course. However, it is likely that this framework will only be consulted on formally once the COFI Bill has been promulgated, as the COFI Bill creates the enabling framework to issue such standards. It will also be considered whether this framework, or a part of it, should be issued as a Joint Standard between the FSCA and the PA.

Alternative investment funds

Although the alternative investment fund (AIF) environment has been largely unregulated to date, the COFI Bill will bring AIF activities within the scope of financial sector regulation. Therefore, in anticipation of the COFI Bill, the FSCA will be conducting technical work focused on developing a fit for purpose regulatory framework for AIF activities. The technical work is envisaged to begin in 2023 followed by the publication of a draft regulatory instrument in due course, dependent on the promulgation of the COFI Act.

Retirement funds

Pension Funds Financial Statements and Regulatory Reporting Standard

The regulatory reporting requirements for retirement funds, including the formats for reporting, are to some extent outdated. In March 2018 and 2019 the Independent Regulatory Board for Auditors ("IRBA") approved two new illustrative auditor's reports to be used by registered auditors. Despite the new formats approved by IRBA, Board Notice 77 of 2014 (BN 77) still prescribes the outdated formats. The only way in which the FSCA could facilitate the use of these new formats was by issuing an exemption. This is but one example of where the requirements contained in BN 77 were no longer appropriate and needs to be updated. The intention of this Standard is to update the current requirements and replace them with a new standard. Technical work on the reporting requirements is ongoing and the FSCA will published the proposed reporting requirements for public comment in due course.

Finalisation of various retirement fund regulatory framework developments

Various regulatory framework developments within the retirement fund environment are in the last phase of finalisation in that the conduct standard has either been submitted to Parliament or is very close to being submitted to Parliament. These developments include the following:

- *Conduct Standard – Payment of Pension Funds Contributions (Section 13A of the Pension Funds Act):* This Conduct Standard has already been submitted to Parliament and is expected to be finalised soon. The FSCA is also working closely with National Treasury to ensure that the repeal of Regulation 33 of the Pension Funds Act, which will be replaced by this conduct standard, coincides with the effective date of the Conduct Standard.
- *Conduct Standard – Conditions for investment in derivative instruments:* It is expected that a final version of this Conduct Standard will be submitted to National Treasury for onforwarding to Parliament during the third quarter of 2022. The final Conduct Standard will be made shortly after the Parliamentary period has elapsed.
- *Conduct Standard – Conditions for living annuities in an annuity strategy:* This Conduct Standard is undergoing final refinements and it is expected that it will be submitted to National Treasury for onforwarding to Parliament during the last quarter of 2022. The final Conduct Standard will be made as shortly after the Parliamentary period has elapsed.
- *Conduct Standard - Communication of Benefit Projections to Members of Pension Funds:* This Conduct Standard is undergoing final refinements and it is expected that it will be submitted to National Treasury for onforwarding to Parliament during the last quarter of 2022. The final Conduct Standard will be made as shortly after the Parliamentary period has elapsed.

4.3 Conduct regulatory framework developments under consideration as a result of overlap with the development of the future conduct framework

As explained above, many existing developments overlap with various aspects that form part of the development of the future conduct framework that will be given effect to under the COFI Bill, creating a potential risk of misalignment

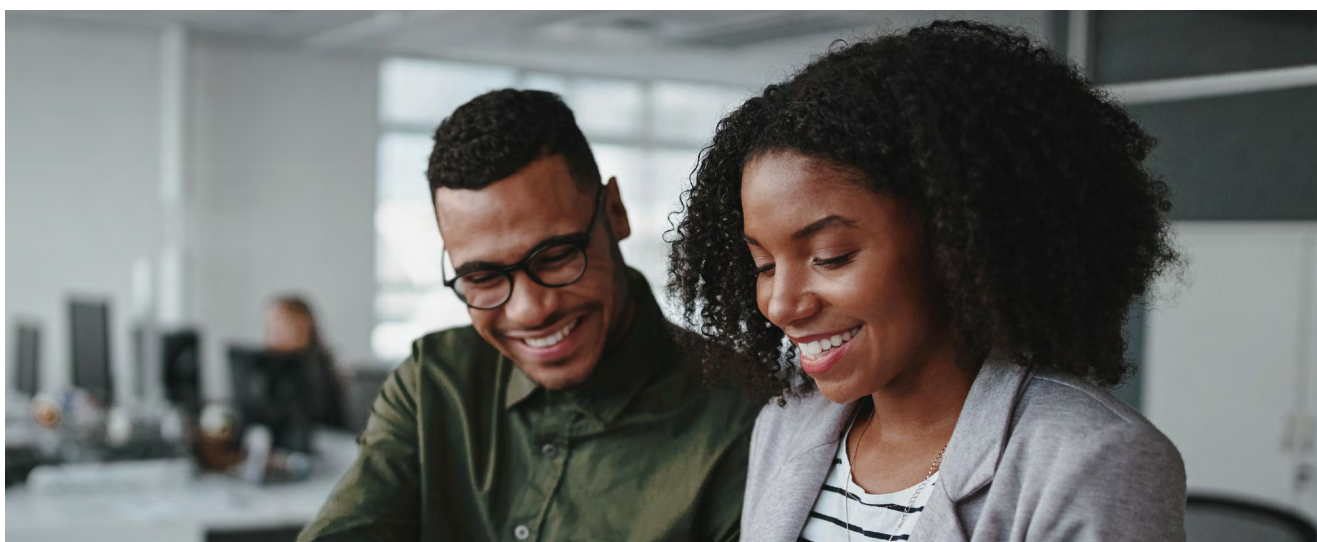
between the now, and then.

These existing developments include a 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, a draft Conduct Standard relating to Governance, Fit and Proper and Other Requirements for CIS Managers, a draft Conduct Standard relating to Advertising and Marketing Requirements for CIS Managers and a draft Conduct Standard relating to Culture and Governance for pension funds ("draft Instruments").

Although some elements of these draft Instruments are of a relatively high priority, the FSCA is of the view that the risk in progressing these draft Instruments in their current form, as explained above, should rather be avoided. However, the FSCA is in the process of analysing these draft instruments to identify whether alternative options exist for progressing some of this work. This could entail, for example, amending certain of the draft Instruments to ensure closer alignment to the COFI Bill, harmonisation-, and transition work; removing requirements that are misaligned and that cannot be amended to align at this stage; elevating certain requirements to a higher level as to avoid potential misalignment; and implementing alternative mechanisms such as Guidance Notices to address some of the risks.

As many of the requirements in the draft instruments deal with similar issues⁶, another option currently being considered by the FSCA is to potentially develop a single "Omnibus-type" Conduct Standard that deals with many of the issues contained in the current draft Instruments. This consolidated Conduct Standard could serve as an interim measure to deal with many of the issues, whilst avoiding any potential misalignment.

Although the FSCA will continue to explore options, the regulatory framework developments highlighted in paragraphs 4.1, 4.2, 5 and 6 will enjoy priority and work related to the draft Instruments will only be progressed as and when resources become available. Timelines for conclusion of this work is therefore uncertain.



⁶ "E.g. requirements pertaining to TCF principles, culture and governance requirements, advertising, disclosure, complaints management and the like.

5. DEVELOPMENT OF THE FINANCIAL MARKETS REGULATORY FRAMEWORK

The **Financial Markets Act Review** currently underway⁷ will not only change the current architecture of financial markets regulation, it will also, amongst other things, broaden the scope of coverage of financial markets legislation, be inclusive rather than exclusive and will strengthen and increase the oversight responsibility of South Africa's regulators of financial markets. The Financial Markets Act Review will therefore play a critical part in shaping the responsibilities and approach of South Africa's regulators in the context of regulating the financial markets in the coming years. The FSCA is providing substantial technical support to National Treasury in progressing the Review and will continue doing so throughout the process. The FSCA is looking forward to the legislative interventions that will flow from this work and how these will shape the future of financial markets regulation.

In addition to providing technical support to National Treasury in progressing the Financial Markets Act, the FSCA will also be focusing on the following high priority financial markets regulatory framework projects:

- **Development of a Regulatory Framework for Central Clearing in South Africa**
Implementation of the Joint Roadmap for Development of a Regulatory Framework for Central Clearing in South Africa⁸ ("Roadmap") remains a critical priority for the Authorities in the financial markets context. Implementation in accordance with the Roadmap is progressing well and proposals relating to Phase 2 and 3 of the Roadmap will be consulted on in due course.
- **Amendments to Joint Standard 2 of 2020 - Margin Requirements for non-centrally cleared OTC derivative transactions**
Subsequent to implementation of Joint Standard 2 of 2020 - Margin Requirements for non-centrally cleared OTC derivative transactions ("Margin Requirements"), the Authorities identified a need to give effect to amendments to the Margin Requirements, amongst other things to make provision for regulatory reporting and enable the imposition of appropriate risk mitigation requirements by providers wanting to make use of non-cash collateral. These draft amendments will be consulted on in due course.
- **Regulatory framework for the regulation of provision of benchmarks**
Following the publication of draft Regulations by the Minister of Finance⁹ proposing to designate the provision of benchmarks as a financial service under the FSR Act in September 2021, the FSCA published a draft Conduct Standard in February 2022 setting out requirements relating to the provision of a Benchmark. The intention is that the draft Conduct Standard will serve as a holistic regulatory framework regulating

⁷ http://www.treasury.gov.za/comm_media/press/2020/FINANCIAL%20MARKETS%20ACT%20REVIEW.pdf

⁸ <https://www.fscsa.co.za/Regulatory%20Frameworks/Temp/Joint%20Roadmap%20for%20the%20development%20of%20a%20regulatory%20framework%20for%20Central%20Clearing%20in%20SA.pdf>

the provision of benchmarks once the Benchmark Regulations have been finalised. The FSCA also support National Treasury in responding to the comments received on the Benchmark Regulations and making further refinements thereto. It is expected that the Benchmark Regulations will be finalised soon, and it is therefore critical that the FSCA finalises the Conduct Standard as soon as possible thereafter. The FSCA might publish a revised version of the Conduct Standard for a second round of public consultation, but it will depend on the nature of the comments received on the first version that was published and the extent of the changes that has to be made to the Conduct Standard.

- **Framework for Reporting and Public Disclosure in relation to Short Sales**

Short sale transactions remain unregulated in South Africa. The FSCA is of the view that the introduction of a reporting and public disclosure framework for short sale transactions will improve transparency of short sale transactions in South Africa resulting in numerous benefits for a variety of stakeholders (investors, market participants, regulators and the like). It would also ensure closer alignment of the South African regulatory framework with international standards, in particular, principle 37 of the objectives and principles of securities regulation issued by the International Organisation of Securities Commissions (IOSCO). As such, the FSCA will continue to develop a framework for the reporting and public disclosure of short sale transactions. As a first step, the FSCA is intending to publish a Position Paper setting out its proposals. The Position Paper will be followed by a draft Conduct Standard published for public comment in due course.

- **Conduct Standard for Exchanges**

Following the publication of a draft Conduct Standard for Exchanges in 2021, the FSCA remains of the view that interventions are necessary to adequately address the consequences of market fragmentation due to competition between exchanges. The complexities and challenges arising from an environment where the same authorised users participate, and the listing and the trading of the same securities across multiple South African exchanges must be specifically addressed. The FSCA will therefore progress this Conduct Standard and it is envisaged that a revised Conduct Standard will be published for a second round of public consultation.

- **Joint Standard Recovery Plans for Market Infrastructures**

The Authorities are in the process of finalising a draft Joint Standard that aims to prescribe the minimum requirements for recovery plans for market infrastructures. In addition to the draft Joint Standard, a Joint Guidance Notice containing the recommended Recovery Tools for Market Infrastructures is also under development. The Authorities intend to consult on the draft Joint Standard and draft Joint Guidance Notice in due course.

Other projects on the FSCA's radar include developments surrounding securities financing transactions and culture and governance requirements for market infrastructures. However, these projects are dependent on other broader developments¹⁰ and decisions relating to if and how to progress these projects will be made as and when there are greater clarity surrounding the broader developments.

⁹ <https://www.gov.za/speeches/publication-draft-regulations-designating-provision-benchmarks-financial-service-public>

¹⁰ Such as the Financial Markets Review, transition to the COFI Bill process and the joint governance work currently under development.

6. CROSS-CUTTING/SECTOR REGULATORY FRAMEWORK DEVELOPMENTS

The FSCA is initiating and progressing various cross-cutting/sector regulatory framework developments. The cross-cutting/sector regulatory framework development discussed below are all viewed as a high priority and will be focused on during the course of the next three years.

Joint Standard - Culture and Governance

Culture and governance remain a critical priority area for both the FSCA and PA and the Authorities are currently in the process of developing a high-level Joint Standard relating to Culture and Governance which is envisaged to be published for public consultation during the course of 2023.

Joint Standard - Information Technology governance and risk management

The Joint Standard relating to Information Technology governance and risk management has progressed well. Following a robust public consultation process on the draft Joint Standard, the FSCA and PA is busy with final refinements to the Joint Standard, and it is expected that the Joint Standard will be submitted to National Treasury for onforwarding to Parliament by the end of 2022 or beginning of 2023.

Joint Standard - Cyber security and cyber resilience requirements

The draft Joint Standard relating to cyber security and cyber resilience requirements was published for public comment in December 2021. Further refinement of the Joint Standard took place, and it is envisaged that a second version of the draft Joint Standard will be published for public consultation in due course.

Other Information Technology related Standards

The FSCA and PA are currently busy with technical work focused on other IT related topics such as cloud computing, outsourcing of IT functions and the like. The outcome of the technical work might translate into legislative proposals that will be consulted on during the course of the next three years.

Beneficial owners of financial institutions

Following recommendations made by the Financial Action Task Force relating to beneficial ownership, the FSCA is considering how best to address the recommendations relating to beneficial owners of financial institutions through policy and legislative interventions. The proposed interventions will be consulted on as and when they are ready.

Conduct Standard relating to Financial Consumer Education Initiatives

Following the FSCA's Discussion Document titled "Ensuring appropriate financial consumer education initiatives" that was published in June 2020¹¹, the FSCA is developing a draft Conduct Standard that will require all financial institutions to take reasonable steps to ensure appropriate standards of behaviour, put in place governance and oversight arrangements when developing financial education content, and to implement, monitor, evaluate and report on consumer financial education activities. The FSCA will be consulting with the Financial Sector Transformation Counsel on the draft Conduct Standard before it is published for public comment.

Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets

The treatment of lost accounts and unclaimed assets within the financial sector remains a significant concern. In the retirement sector alone, unclaimed assets stood at R47.3 billion in 2021. To mitigate risks relating to lost accounts and unclaimed assets more effectively, the FSCA will be developing policy proposals surrounding the treatment of lost accounts and unclaimed assets with the ultimate goal of proposing legislative interventions through a Conduct Standard. The policy work, that will inform legislative proposals, will take place during the course of 2022 and 2023 and may entail public consultation on Discussion, Position and/or Policy Papers. Formal draft legislative proposals are only expected to be published during the first quarter of 2024 and finalised during mid-2025.

Conduct Standard relating to Open Finance

Following the FSCA's Consultation and Research Paper titled "Regulating Open Finance" that was published in 2020¹², the FSCA is continuing doing technical work aimed at formulating policy proposals surrounding open finance. It is envisaged that further Discussion and/or Position papers will be published, with the ultimate goal of proposing legislative interventions through a Conduct Standard. Policy work will therefore continue during the course of 2022 and 2023 and it is likely that a draft Conduct Standard will only be published for public comment during the first half of 2024.

Development of cross-sector licensing forms

In an attempt to ensure a consistent approach to licensing across the sector, and also in anticipation of the licensing framework to be given effect to under the COFI Bill (through consequential amendments to the FSR Act), the FSCA will be developing cross-sector licensing forms. The cross-sector licensing forms is expected to be finalised during 2023.

¹¹ <https://www.fsc.co.za/Regulatory%20Frameworks/Pages/General-FSCA-Legislation.aspx>

¹² <https://www.fsc.co.za/Regulatory%20Frameworks/FinTechDocuments/Regulating%20Open%20Finance%20Consultation%20and%20Research%20Paper.pdf>

7. HIGH-LEVEL OVERVIEW OF THE 3-YEAR REGULATION PLAN

Annexure A below sets out an illustration of the regulatory framework projects that will be focused on over the course of the next three years as discussed above, together with deliverables and when technical work and drafting will occur. Projects are, however, dependent on various external and internal dependencies which could influence timelines. Also, 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.

8. REVIEW OF REGULATION PLAN AND CLOSING

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

The FSCA is committed to developing and establishing a robust regulatory framework that promotes the fair treatment of financial customers and the efficiency and integrity of financial markets, and that is aligned to international standards, yet fit for purpose considering the domestic context. However, the FSCA also acknowledges that to achieve this, stakeholder engagement and consultation is critical. The FSCA therefore calls on industry stakeholders to participate in this process of regulatory change and we look forward to constructive stakeholder engagement as we shape the future of the financial sector for the benefit of South Africa as a whole.

#	REGULATORY FRAMEWORK PROJECT	2022			2023			2024			2025			
		Apr – Jun	Jul – Sept	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sept	Oct – Dec	Jan – Mar	Apr – Jun	Jul – Sept	Oct – Dec	Jan – Mar	
21	Development of a Regulatory Framework for Central Clearing in South Africa: Phase 2 ¹			Consultation			Submit to National Treasury / Parliament		Finalise					
22	Development of a Regulatory Framework for Central Clearing in South Africa: Phase 3					Consultation				Finalise				
23	Amendments to Joint Standard 2 of 2020 - Margin Requirements for non-centrally cleared OTC derivative transactions	Consultation					Submit to National Treasury / Parliament		Finalise					
24	Regulatory framework for the regulation of provision of benchmarks Regulations			Consultation				Submit to National Treasury / Parliament		Finalise				
25	Framework for Reporting and Public Disclosure in relation to Short Sales			Position Paper	Consultation				Submit to National Treasury / Parliament		Finalise			
26	Conduct Standard for Exchanges			Consultation			Submit to National Treasury / Parliament		Finalise					
27	Joint Standard Recovery Plans for Market Infrastructures		Consultation				Submit to National Treasury / Parliament		Finalise					
28	Joint Standard – Culture and Governance				Consultation				Finalisation					
29	Joint Standard – Information Technology governance and risk management		Submit to National Treasury / Parliament		Finalisation									
30	Joint Standard - Cyber security and cyber resilience requirements		Consultation				Submit to National Treasury / Parliament		Finalisation					
31	Legislative interventions relating to beneficial owners of financial institutions	* Finalisation and Timelines uncertain												
32	Conduct Standard relating to Financial Consumer Education Initiatives			Consultation				Submit to National Treasury / Parliament		Finalisation				
33	Conduct Standard regarding industry practices and treatment of lost accounts and unclaimed assets								Consultation				Submit to National Treasury / Parliament	
34	Conduct Standard relating to Open Finance								Consultation					
35	Development of cross-sector licensing forms				Finalise									

¹ These timelines differ slightly from the initial estimated timelines communicated in the Roadmap and the FSCA Annual Performance Plan due to unforeseen delays with the development of the draft Joint standard, the equivalence framework and draft determination.

In addition to the above, the following projects will be considered further, as explained in paragraph 3.3 of the Regulation Plan, subject to resource availability:

36 Conduct Standard for Cooperative Financial Institutions

37 Draft amendments to the Policyholder Protection Rules

38 Conduct Standard relating to Governance, Fit and Proper and Other Requirements for CIS Managers

39 Conduct Standard relating to Advertising and Marketing Requirements for CIS Managers

40 Conduct Standard relating to Culture and Governance for pension funds



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