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FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002

GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND THEIR REPRESENTATIVES

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I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), publish a general code of conduct for authorised financial services providers, and their representatives, as contained in the Schedule hereto, which I have drafted after consultation with the Advisory Committee on Financial Services Providers.

This notice is called the Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and comes into operation on the date determined by the Minister of Finance in terms of section 7(1) of the said Act.

(signed)

J VAN ROOYEN

Registrar of Financial Services Providers

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PART I

INTRODUCTORY PROVISIONS

1. Definitions, construction and application

(1) In this Code **"the Act"** means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), a word or expression to which a meaning has been assigned in the Act shall have that meaning, and, unless the context indicates otherwise-

"advertisement", means any communication published through any medium and in any form, by itself or together with any other communication, which is intended to create public interest in the business, financial services, financial products or related services of a provider, or to persuade the public (or a part thereof) to transact in respect of a financial product, financial service or related service of the provider in an manner, but which does not purport to provide detailed information to or for a specific client regarding a specific financial product, financial service or related service;

[Definition of "advertisement" substituted by GN 706/2020 w.e.f. 26 June 2020]

"associate" -

(a) in relation to a natural person, means -

- (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
- (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;
- (iii) a parent or stepparent of that person;
- (iv) a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
- (v) a person who is the spouse, life partner or civil union partner of a person referred to in subparagraphs (ii) to (iv);
- (vi) a person who is in a commercial partnership with that person;

(b) in relation to a juristic person -

- (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
- (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
- (iii) which is not a company or a close corporation as referred to in subparagraphs (i) or (ii), means another juristic person which would have been a subsidiary or holding company of the first-mentioned juristic person-
 - (aa) had such first-mentioned juristic person been a company; or
 - (bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
- (iv) means any person in accordance with whose directions or instructions the board of directors of or,

in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;

(c) in relation to any person -

(i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph;

(ii) includes any trust controlled or administered by that person.

[Definition of "associate" inserted by BN 58/2010 w.e.f. 19 April 2010]

"company" has the meaning assigned to it in the Companies Act 2008 (Act No. 71 of 2008);

[Definition of "company" inserted by BN 58/2010 and substituted by GN 706/2020 w.e.f. 26 June 2020]

"comparative" refers to a direct or indirect comparison between providers or between financial products, financial services or related services of one or more provider or product supplier;

[Definition of "comparative" inserted by GN 706/2020 w.e.f. 26 June 2020]

"conflict of interest" means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, -

(a) influence the objective performance of his, her or its obligations to that client; or

(b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client,

including, but not limited to -

(i) a financial interest;

(ii) an ownership interest;

(iii) any relationship with a third party;

[Definition of "conflict of interest" inserted by BN 58/2010 w.e.f. 19 April 2010]

"Direct marketing", means the rendering of financial services by way of telephone, internet, digital application platform, media insert, direct or electronic mail, but excludes the publication of an advertisement;

[Definition of "Direct marketing" substituted by GN 706/2020 w.e.f. 26 June 2020]

"Direct marketer" means a provider who, in the normal course of business, provides all or the predominant part of the financial services concerned in the form of direct marketing.

"distribution channel" means -

(a) any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client;

(b) any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;

(c) any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

[Definition of "distribution channel" inserted by BN 58/2010 w.e.f. 19 April 2010]

"endorsements" refer to public statements declaring the virtues of a financial product, financial service or related service of a provider or recommending the entering into of a financial product, financial service or related service;

[Definition of "endorsement" inserted by GN 706/2020 w.e.f. 26 June 2020]

"fair value" has the meaning assigned to it in the financial reporting standards adopted or issued under the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of "fair value" inserted by BN 58/2010 w.e.f. 19 April 2010]

"financial interest" means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than -

- (a) an ownership interest;
- (b) training, that is not exclusively available to a selected group of providers or representatives, on -
 - (i) products and legal matters relating to those products;
 - (ii) general financial and industry information;
 - (iii) specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;
- (c) a qualifying enterprise development contribution to a qualifying beneficiary entity by a provider that is a measured entity;

[Para. (c) inserted by GN 706/2020 w.e.f. 26 June 2020]

[Definition of "financial interest" inserted by BN 58/2010 w.e.f. 19 April 2010]

"FSC" means the Financial Sector Code published in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, (Act 53 of 2003), as amended from time to time;

[Definition of "FSC" inserted by GN 706/2020 w.e.f. 26 June 2020]

"holding company" has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);

[Definition of "holding company" inserted by BN 58/2010 and substituted by GN 706/2020 w.e.f. 26 June 2020]

"immaterial financial interest" means any financial interest with a determinable monetary value, the aggregate of which does not exceed R 1 000 in any calendar year from the same third party in that calendar year received by -

- (a) a provider who is a sole proprietor; or
- (b) a representative for that representative's direct benefit;
- (c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;

[Definition of "immaterial financial interest" inserted by BN 58/2010 w.e.f. 19 April 2010]

"loyalty benefit" means any benefit (including a so-called cash- or premium-back bonus) that is directly or indirectly provided or made available to a client by a provider or a product supplier or an associate of the provider or product supplier, which benefit is wholly or partially contingent upon-

- (a) the financial product with that provider or product supplier remaining in place;
- (b) the client continuing to utilise a financial service of that provider or product supplier;
- (c) the client increasing any benefit to be provided under a financial product; or
- (d) the client entering into any other financial product or benefit or utilising any related services offered by that provider, product supplier or their associates;

[Definition of "loyalty benefit" inserted by GN 706/2020 w.e.f. 26 June 2020]

"measured entity" has the meaning assigned to it in the FSC insofar it relates to a qualifying enterprise development contribution;

[Definition of "measured entity" inserted by GN 706/2020 w.e.f. 26 June 2020]

"no-claim bonus" means any benefit that is directly or indirectly provided or made available to a client by a product supplier in the event that the client does not claim or does not make a certain claim under a financial product within a specified period of time;

[Definition of "no-claim bonus" inserted by GN 706/2020 w.e.f. 26 June 2020]

"new entrant" means a person who has never been authorised as a financial services provider or appointed as a representative by any financial services provider;

[Definition of "new entrant" inserted by BN 146/2014]

"plain language" means communication that-

- (a) is clear and easy to understand;
- (b) avoids uncertainty or confusion; and
- (c) is adequate and appropriate in the circumstances,

taking into account the factually established or reasonably assumed level of knowledge of the person or average persons at whom the communication is targeted;

[Definition of "plain language" inserted by GN 706/2020 w.e.f. 26 June 2020]

"provider" means an authorised financial services provider, and includes a representative;

"publish" means -

- (a) to make generally known;
- (b) to make a public announcement of;
- (c) to disseminate to the public; or
- (d) to produce or release for distribution;

and "publication" has a corresponding meaning;

[Definition of "publish" inserted by GN 706/2020 w.e.f. 26 June 2020]

"puffery" means any value judgments or subjective assessments of quality based solely on the opinion of the evaluator and where there is no pre-established measure or standard;

[Definition of "puffery" inserted by GN 706/2020 w.e.f. 26 June 2020]

"qualifying beneficiary entity" has the meaning contemplated in the FSC insofar as it relates to a qualifying enterprise development contribution;

[Definition of "qualifying beneficiary entity" inserted by GN 706/2020 w.e.f. 26 June 2020]

"qualifying enterprise development contribution" has the meaning assigned to it in the FSC;

[Definition of "qualifying enterprise development contribution" inserted by GN 706/2020 w.e.f. 26 June 2020]

"related service" means an service or benefit provided or made available by a product supplier or a provider or any associate of that product supplier or provider, together with, or in connection with, any financial product, financial service or benefit in respect of that financial product or financial service, and includes a loyalty benefit and a no-claim bonus;

[Definition of "related service" inserted by GN 706/2020 w.e.f. 26 June 2020]

"replace or replacement" means the action or process of-

- (a) substituting a financial product, wholly or in part, with another financial product; or
- (b) the termination or variation of a financial a product and the purchase, entering into, investment in or variation of another financial product-

with the purpose of meeting the same or similar needs or objectives of the client or in anticipation of, or as a

consequence of, effecting the substitution, termination or variation, irrespective of the sequence of the occurrence of the transactions;

[Definition of "replace or replacement" inserted by GN 706/2020 w.e.f. 26 June 2020]

"service supplier" means any person (whether or not that person is the agent of the provider), other than a representative, with whom a provider has an arrangement relating to the marketing, distribution, administration or provision of financial products, financial services or related services;

[Definition of "service supplier" inserted by GN 706/2020 w.e.f. 26 June 2020]

"sign-on bonus" means -

- (a) any financial interest offered or received directly or indirectly, upfront or deferred, and with or without conditions, as an incentive to become a provider; and
- (b) a financial interest referred to in paragraph (a) includes but is not limited to-
 - (i) compensation for the-
 - (aa) potential or actual loss of any benefit including any form of income, or part thereof; or
 - (bb) cost associated with the establishment of a provider's business or operations, including the sourcing of business, relating to the rendering of financial services; or
 - (ii) a loan, advance, credit facility or any other similar arrangement;

[Definition of "sign-on bonus" inserted by BN 146/2014]

"significant owner" means a significant owner as described in section 157(1) and (2) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

[Definition of "significant owner" inserted by GN 706/2020 w.e.f. 26 June 2020]

"ownership interest" means -

- (a) any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or an proprietary interest held as an approved nominee on behalf of another person; and
- (b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

[Definition of "ownership interest" inserted by BN 58/2010 w.e.f. 19 April 2010]

"subsidiary" means a subsidiary as defined in section 1 (3) of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of "subsidiary" by BN 58/2010 w.e.f. 19 April 2010]

"third party" means -

- (a) a product supplier;
- (b) another provider;
- (c) an associate of a product supplier or a provider;
- (d) a distribution channel;
- (e) any person who in terms of an agreement or arrangement with a person referred to in paragraphs (a) to (d) above provides a financial interest to a provider or its representatives

[Definition of "third party" inserted by BN 58/2010 w.e.f. 19 April 2010]

"transaction requirement" means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, a product supplier by or on behalf of a client relating to the purchase of or investment in any financial product, including any amendment thereof or variation thereto;

"variation" includes:

- (a) an acceleration of the contractual retirement date or other date on which benefits become available;
- (b) an change to the premium or other periodic investment amount payable in respect of a financial product;
- (c) making the financial product or investment paid-up;
- (d) the cessation of premiums or other periodic investment amount;
- (e) the application of the policy or investment value as premiums or other periodic investment amount payable in respect of a financial product;
- (f) the reduction or removal of any guarantee or benefit in respect of a financial product;
- (g) any act that results in a change to a material term or condition, or the contract term;
- (h) the financial product becoming static because an option to update cover, benefits, premiums or other periodic investment amounts has not been exercised;
- (i) any transfer from or of one financial product to another financial product;
- (j) a non renewal of a short-term insurance policy;

[Definition of "variation" inserted by GN 706/2020 w.e.f. 26 June 2020]

"white labelling" refers to the marketing of, or offering of, a specific financial product of a product supplier wholly or partially under the brand of another person who is not the product supplier, in terms of an arrangement between the product supplier and that other person;

[Definition of "white labelling" inserted by GN 706/2020 w.e.f. 26 June 2020]

"writing" includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and "written" has a corresponding meaning.

(2)

(a) This Code must be construed -

(i) in conjunction with the provisions of the Act and in manner conducive to the promotion and achievement of the objectives of codes of conduct as stated in section 16 of the Act; and

(ii) as being in addition to any other law not inconsistent with its provisions and not as replacing any such law.

(b) In the case of any inconsistency or conflict between-

(i) a provision of this Code and a provision of any other specific Code drafted under section 15 of the Act, the last mentioned provision shall prevail; and

(ii) a provision of this Code and a provision of any other law specifically regulating market conduct in the rendering of financial services in respect of one or more specific financial products, the last mentioned provision, unless inconsistent or in conflict with the Act, shall prevail.

(3) The provisions of this Code apply, unless stated otherwise in this Code or otherwise by law, to all financial services providers and representatives.

PART II

GENERAL PROVISIONS

2. General duty of provider

A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

3. Specific duties of provider

- (1) When a provider renders a financial service-
- (a) representations made and information provided to a client by the provider-
- (i) must be factually correct;
 - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (iii) must be adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or reasonably assumed level of knowledge of the client;
 - (iv) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;
 - (v) may, subject to the provisions of this Code, be provided orally and, at the client's request, confirmed in writing within a reasonable time after such request;
 - (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
 - (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (viii) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant financial service renders it necessary, in which case a disclosure of the changes to the client must be made without delay;
- (b) a provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;
- [Para. (b) substituted by BN 58/2010 w.e.f. 19 July 2010]
- (c) a provider or a representative must, in writing, at the earliest reasonable opportunity -
- (i) disclose to a client any conflict of interest in respect of that client, including -
 - (aa) the measures taken, in accordance with the conflict of interest management policy of the provider referred to in section 3A(2), to avoid or mitigate the conflict;

[Item (aa) substituted by BN 58/2010 w.e.f. 19 April 2011]

 - (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
 - (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and
 - (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed.
- [Para. (c) substituted by BN 58/2010 w.e.f. 19 July 2010]
- (d) the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider;
- (e) transactions of a client must be accurately accounted for; and
- (f) the provider involved must not deal in any financial product for own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with clients, or on any non-

public information the disclosure of which would be expected to affect the prices of such product.

- (2)
- (a) A provider must have appropriate procedures and systems in place to-
 - (i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act;
 - (ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and
 - (iii) keep such client records and documentation safe from destruction.
 - (b) All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.
 - (c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar's request.
 - (d) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.

(3) A provider may not disclose any confidential information acquired or obtained from a client or, subject to section 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.

- (4) A provider-
- (a) may not indicate or imply that it is authorised, regulated or otherwise supervised by the Authority in respect of business for which it is not so authorised, regulated or supervised;
 - (b) may not in any manner refer to its authorisation or name the Authority as its Regulator in any advertisement relating to products or services that are not financial products or financial services in respect of which it is authorised, in such a manner as to create the impression that its authorisation extends to such products and services or that its provision of such products or services is regulated by the Authority.

[Subs. (4) inserted by GN 706/2020 w.e.f. 26 June 2020]

- (5) A provider may not describe itself or the financial services it renders as being "Independent" if-
- (a) the provider or its associate is a significant owner of any product supplier or its associate in respect of whose products the provider renders financial services;
 - (b) any product supplier in respect of whose products the provider renders financial services or an associate of such product supplier is a significant owner of the provider or its associate; or
 - (c) the provider directly or indirectly receives or is eligible for any financial interest from a product supplier in respect of whose products the provider renders financial services, other than a financial interest referred to in section 3A(1)(a)(i), (ii), (vi) or (vii);
 - (d) any other relationship exists between the provider and any product supplier in respect of whose products the provider renders financial services that gives rise to a material conflict of interest.

[Subs. (5) inserted by GN 706/2020 w.e.f. 26 June 2020]

3A. Financial interest and conflict of interest management policy

- (1)
- (a) A provider or its representatives may only receive or offer the following financial interest from or to a third party -
 - (i) commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
 - (ii) commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);

(iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998);
 [Subpara. (iii) substituted by GN 706/2020 w.e.f. 26 December 2020]

(iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if-

(aa) the amount, frequency, payment method and recipient of those fees and details of the services that are to be provided by the provider or its representatives in exchange for the fees are specifically agreed to by a client in writing; and

(bb) those fees may be stopped at the discretion of that client;
 [Subpara. (iv) substituted by GN 706/2020 w.e.f. 26 December 2020]

(v) fees or remuneration for the rendering of a service to a third party;
 [Subpara. (v) substituted by GN 706/2020 w.e.f. 26 December 2020]

(vi) subject to any other law, an immaterial financial interest; and

(vii) a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.

[Para. (a) inserted by BN 58/2010 w.e.f. 19 October 2010]

(b) A provider may not offer any financial interest to a representative of that provider-

(i) that is determined with reference to the quantity of business secured for the provider without also giving due regard to the delivery of fair outcomes for clients; or

(ii) for giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or

(iii) for giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.

[Para. (b) inserted by BN 58/2020 and substituted by GN 706/2020 w.e.f. 26 December 2020]

(bA) For purposes of subsection (1)(b)(i), a provider must be able to demonstrate that the determination of and entitlement to the financial interest takes into account measurable indicators relating to the-

(i) achievement of minimum service level standards in respect of clients;

(ii) delivery of fair outcomes for clients;

(iii) quality of the representative's compliance with this Act;

as agreed between the provider and the representative, and that sufficient weight is attached to such indicators to materially mitigate the risk of the representative giving preference to the quantity of business secured for the provider over the fair treatment of clients;

[Para. (bA) inserted by GN 706/2020 w.e.f. 26 December 2020]

(c) For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to sections 3A(1)(b) and 3A(1)(bA), in respect of its representatives.

[Para. (c) inserted by BN 58/2020 and substituted by GN 706/2020 w.e.f. 26 December 2020]

(d) A provider or its representatives may only receive or offer the financial interests referred to in subsections (a)(iii), (iv) and (v) if-

(i) those financial interests are reasonably commensurate with the service being rendered, taking into account the nature of the service and the resources, skills and competencies reasonably required to perform it;

(ii) the payment of those financial interests does not result in the provider or representative being remunerated more than once for performing a similar service;

(iii) any actual or potential conflicts between the interests of clients and the interests of the person receiving the financial interests are effectively mitigated; and

(iv) the payment of those financial interests does not impede the delivery of fair outcomes to clients.
[Para. (d) inserted by GN 706/2020 w.e.f. 26 December 2020]

(1A)

(a) A Category I provider that is authorised or appointed to give advice may not receive a sign-on bonus from any person.

(b) No person may offer or provide a sign-on bonus to any person, other than a new entrant, as an incentive to become a Category I provider that is authorised or appointed to give advice.

[Subs. (1A) substituted by BN 146/2014]

(2)

(a) Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.

(b) A conflict of interest management policy must -

(i) provide for the management of conflicts of interest as defined in section 1, and -

(aa) mechanisms for the identification of conflicts of interest;

(bb) measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;

(cc) measures for the disclosure of conflicts of interest;

(dd) processes, procedures and internal controls to facilitate compliance with the policy; and

(ee) consequences of non-compliance with the policy by the provider's employees and representatives; and

(ii) specify the type of financial interest that the provider will offer a representative and the basis on which a representative will be entitled to such a financial interest and motivate how that financial interest complies with sections 3A(1)(b) and 3A(1)(bA);

[Subpara. (ii) substituted by GN 706/2020 w.e.f. 26 December 2020]

(iii) include a list of all its associates;

(v) include the names of any third parties in which the provider hold an ownership interest;

(vi) include the names of any third parties that holds an ownership interest in the provider; and

(vii) include the nature and extent of the ownership interest referred to in subparagraph (v) and (vi); and

(viii) be drafted in an easily comprehensible form and manner.

(c) A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.

(d) A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.

(e) A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.

(f) A provider must publish its conflict of interest management policy in appropriate media and ensure that

it is easily accessible for public inspection at all reasonable times.

[Subs. (2) inserted by BN 58/2010 w.e.f. 19 April 2011]

(3) A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.

[Subs. (3) inserted by BN 58/2010 w.e.f. 19 October 2010]

(4)

(a) A compliance officer or, where the provider need not, in terms of the Act, have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.

(b) The report referred to in paragraph (a) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

[Subs. (4) inserted by BN 58/2010 w.e.f. 19 April 2010]

PART III

INFORMATION ON PRODUCT SUPPLIERS

4.

(1) A provider other than a direct marketer must at the earliest reasonable opportunity, and only where appropriate, furnish the client with full particulars of the following information about the relevant product supplier and, where such information is provided orally, must confirm such information within 30 days in writing:

(a) Name, physical location, and postal and telephone contact details of the product supplier;

(b)

(i) the contractual relationship with the product supplier (if any), and whether the provider has contractual relationships with other product suppliers;

(ii) names and contact details of the relevant compliance and complaints departments of the product supplier.

(c) the existence of any conditions or restrictions imposed by the product supplier with regard to the types of financial products or services that may be provided or rendered by the provider; and

(d) where applicable, the fact that the provider -

(i) directly or indirectly holds more than 10% of the relevant product supplier's shares, or has any equivalent substantial financial interest in the product supplier;

(ii) during the preceding 12 month period received more than 30% of total remuneration, including commission, from the product supplier,

and the provider must convey any changes thereafter in regard to such information at the earliest opportunity to the client.

(2) A product supplier which is an authorised financial services provider, and which has entered into an intermediary contract or similar contractual relationship with another provider (not being a representative) for the purpose of rendering a financial service in respect of its financial products, must within a reasonable time after being requested to do so by such other provider, provide such other provider with sufficient particulars to enable the provider to comply with the disclosure requirements of this Code relating to the furnishing of details of the product supplier and the product in question.

(3) A provider must, where the relevant licence, terms of employment or mandate enables such provider to provide clients with financial services in respect of a choice of product suppliers, exercise judgment objectively in the interest of the client concerned.

(4) Subject to subsection (5), a provider, in dealing with a client may not compare different financial services, financial products, product suppliers, providers or representatives, unless the differing characteristics of each are

made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial service, financial product, product supplier, provider or representative.

[Subs. (4) substituted by GN 706/2020 w.e.f. 26 June 2020]

(5) The requirements in section 14(10) relating to the use of comparisons in advertisements apply with the necessary changes to comparisons referred to in subsection 4.

[Subs. (5) inserted by GN 706/2020 w.e.f. 26 June 2020]

PART IV

INFORMATION ON PROVIDERS

5. Where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of the following information and, where such information is provided orally, must confirm such information within 30 days in writing:
- (a) Full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of the relevant business carried on, as well as the names and contact details of appropriate contact persons or offices;
 - (b) concise details of the legal and contractual status of the provider, including details as regards the relevant product supplier (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative in the rendering of the financial service involved and the extent to which the client will have to accept such responsibility;
 - (c) names and contact details of the relevant compliance department or, in the case of a representative, such detail concerning the provider to which the representative is contracted;
 - (d) details of the financial services which the provider is authorised to provide in terms of the relevant licence and of any conditions or restrictions applicable thereto;
 - (e) whether the provider holds guarantees or professional indemnity or fidelity insurance cover or not.
 - (f) whether a representative of a provider is rendering services under supervision as defined in the Determination of Fit and Proper Requirements; and
 - (g) the existence of a specific exemption that the Registrar may have granted to the provider with regard to any matter covered by the Act.

PART V

CONTACTING OF CLIENT

6. A provider must-
- (a) in making contact arrangements, and in all communications and dealings with a client, act honourably, professionally and with due regard to the convenience of the client; and
 - (b) at the commencement of any contact, visit or call initiated by the provider, explain the purpose thereof and at the earliest opportunity, provide the information referred to in section 5.

PART VI

INFORMATION ABOUT FINANCIAL SERVICE

- 7.
- (1) Subject to the provisions of this Code, a provider must-
[Words preceding para. (a) substituted by GN 706/2020 w.e.f. 26 December 2020]
 - (a) provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information

that would reasonably be expected to enable the client to make an informed decision;

(b) whenever reasonable and appropriate, provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider;

(c) in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:

(i) Name, class or type of financial product concerned;

(ii) nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid;

(iii) where the financial product is marketed or positioned as an investment or as having an investment component-

(aa) concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments;

(bb) separate disclosure (and not mere disclosure of an all inclusive fee or charge) of any charges and fees to be levied against the product, including-

(A) the amount and frequency thereof;

(B) the identity of the recipient;

(C) the services or other purpose for which each fee or charge is levied;

(D) where any charges or fees are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees; and

(E) where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and

[Subpara. (bb) substituted by BN 43/2008 with effect from 14 August 2008]

(cc) on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances;

(dd) any rebate arrangements and thereafter on a regular basis (but not less frequently than annually): Provided that where the rebate arrangement is initially disclosed in percentage terms, an example using actual monetary amounts must be given and disclosure in specific monetary terms must be made at the earliest reasonable opportunity thereafter: Provided further that for the purposes of this subparagraph, "rebate means a discount on the administration, management or any other fee that is passed through to the client, whether by reduced fees, the purchase of additional investments or direct payment, and that the term "rebate" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition;

[Subpara. (dd) inserted by BN 43/2008 with effect from 14 August 2008]

(ee) any platform fee arrangements, which may be disclosed by informing the client that a platform fee of up to a stated percentage may be paid by the product supplier to the administrative financial services provider concerned, rather than disclosing the actual monetary amount: Provided that for the purposes of this sub-paragraph, "platform fee" means a payment by a product supplier to an administrative financial services provider for the administration and/or distribution and/or marketing cost savings represented by the distribution opportunity presented by the administrative platform, and may be structured as a stipulated monetary amount or a volume based percentage of assets held on the platform, and that the term "platform fee" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and

the disclosure must include an explanation of the arrangement in line with this definition.

[Subpara. (ee) inserted by BN 43/2008 with effect from 14 August 2008]

(iv) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and, subject to subparagraph (xiv), any anticipated or contractual escalations, increases or additions;

(v) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including-

(aa) the amount, frequency and payment method thereof;

(bb) details of the services that are to be provided by the provider or its representatives in exchange therefor; and

(cc) the client's rights in relation to terminating those obligations and the consequences of terminating or failing to meet those obligations,

which information should, wherever feasible, be included in a written agreement between the client and the provider;

[Subpara. (v) substituted by GN 706/2020 w.e.f. 26 December 2020]

(vi) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration"), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration: Provided that where the maximum amount or rate of such valuable consideration is prescribed by any law, the provider may (subject to clause 3(1)(a)(vii)) elect to disclose either the actual amount applicable or such prescribed maximum amount or rate;

(vii) concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;

(viii) any guaranteed minimum benefits or other guarantees;

(ix) to what extent the product is readily realisable or the funds concerned are accessible;

(x) any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal;

(xi) material tax considerations;

(xii) whether cooling off rights are offered and, if so, procedures for the exercise of such rights;

(xiii) any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations; and

[Para. (xiii) substituted by BN 152/2008]

(xiv) in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years;

(d) fully inform a client in regard to the completion or submission of any transaction requirement-

(i) that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility;

(ii) that if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details;

(iii) of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information; and

(iv) that the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.

(2) No provider may in the course of the rendering of a financial service request any client to sign any written or printed form or document unless all details required to be inserted thereon by the client or on behalf of the client have already been inserted.

(3) A provider must, where applicable, at the request of a client, provide the client with a statement of account in connection with any financial service rendered to the client.

(3A) A provider must at the earliest reasonable opportunity after conclusion of a transaction provide the client with all information referred to in subsections (1), (2) and (3) in writing, to the extent that any such information has not already been provided to the client in writing.

[Subs. (3A) inserted by GN 706/2020 w.e.f. 26 December 2020]

(4) A provider who has provided advice to a client or is rendering ongoing financial services to the client in respect of one or more financial products, must on a regular basis (but not less frequently than annually) provide the client with a written statement identifying such products where they are still in existence, and providing brief current details (where applicable), of -

- (a) any ongoing monetary obligations of the client in respect of such products;
- (b) the main benefits provided by the products;
- (c) where any product was marketed or positioned as an investment or as having an investment component, the value of the investment and the amount of such value which is accessible to the client; and
- (d) any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products:

Provided that such a statement need not be provided where the client is aware, or ought reasonably to be aware, that the provider concerned does not render or has ceased rendering ongoing financial services in respect of the client or the products concerned.

[Subs. (4) inserted by BN 43/2008 w.e.f. 14 August 2008]

(5) A provider who provides products or services to a client other than financial products or financial services, must disclose to the client the fact that the additional products or services are not regulated under the Act and therefore the client is not afforded the same protections in respect of those additional products or services that may apply in respect of the provision of financial products or services in terms of the Act.

[Subs. (5) inserted by GN 2814/2022 w.e.f. 2 December 2022]

7A. Forecasts, illustrations, hypothetical data or projected benefits and past performance data

(1) Subject to subsection (2) and (3), the requirements in section 14(15) relating to the use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in an advertisement apply with the necessary changes to a provider when making use of forecasts, illustrations, hypothetical data or projected benefits and past performance data in the rendering of a financial service.

(2) A provider may only make a statement regarding the past performance (including awards and rankings) of a financial product or financial service if -

- (a) the basis on which the performance is measured, is clearly stated and the presentation of the performance is accurate, fair and reasonable;
- (b) the statement is accompanied by a warning that past performance is not indicative of future performance; and
- (c) the past performance is relevant to the financial service being rendered.

(3) A provider that uses forecasts, illustrations, hypothetical data or projections when rendering financial services must -

- (a) furnish the client with support for such forecasts, illustrations, data or projections in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;

- (b) make it clear that they are not guaranteed and are provided for illustrative purposes only;
- (c) disclose, where the returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence; and
- (d) warn the client about risks involved in buying or selling a financial product based on a forecast, illustration, hypothetical data or projection.

[S. 7 inserted by GN 706/2020 w.e.f. 26 June 2020]

PART VII

FURNISHING OF ADVICE

8. Suitability

- (1) A provider must, prior to providing a client with advice-

[Words preceding para. (a) substituted by GN 706/2020 w.e.f. 26 June 2020]

- (a) obtain from the client such information regarding the client's needs and objectives, financial situation, risk profile and financial product knowledge and experience as is necessary for the provider to provide the client with appropriate advice, which advice takes into account-

- (i) the client's ability to financially bear any costs or risks associated with the financial product;
- (ii) the extent to which the client has the necessary experience and knowledge in order to understand the risks involved in the transaction; and
- (iii) where the client is a pension fund, medical scheme, friendly society, employer or other entity that is being advised on entering into a financial product or transaction aimed at providing benefits for its members, employees or other underlying natural persons, the reasonably identified collective needs and circumstances of such members, employees or other natural persons;

[Para. (a) substituted by GN 706/2020 w.e.f. 26 June 2020]

- (b) conduct an analysis, for purposes of the advice, based on the information obtained;
- (c) identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement; and
- (cA) where as a result of limitations referred to in paragraph (c) the provider is not able to identify a financial product or products that will be appropriate to the client's needs and objectives, financial situation, risk profile and product knowledge and experience, the provider must make this clear to the client, decline to recommend a product or transaction and suggest to the client that they should seek advice from another appropriately authorised provider;

[Para. (cA) inserted by GN 706/2020 w.e.f. 26 June 2020]

- (d) where the financial product ("the replacement product") is to replace another financial product ("the terminated product"), fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, full details of-

[Words preceding subpara. (i) substituted by GN 706/2020 w.e.f. 26 June 2020]

- (i) fees and charges in respect of the replacement product compared to those in respect of the terminated product;

[Subpara (i) substituted by BN 43/2008 with effect from 14 May 2008]

- (ii) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product;

[Subpara (ii) substituted by BN 43/2008 with effect from 14 May 2008]

- (iii) in the case of an insurance product, the impact of age and health changes on the premium

payable;

(iv) differences between the tax implications of the replacement product and the terminated product;

(v) material differences between the investment risk of the replacement product and the terminated product;

(vi) penalties or unrecovered expenses deductible or payable due to termination of the terminated product;

(vii) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;

[Subpara (vii) substituted by BN 43/2008 with effect from 14 May 2008]

(viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and;

[Subpara (viii) substituted by BN 43/2008 with effect from 14 May 2008]

(ix) any incentive, remuneration, consideration, commission, fee or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.

[Subpara (ix) inserted by BN 43/2008 with effect from 14 May 2008]

(e) take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and if it is such a replacement, the provider must comply with subparagraph (d).

[Para (e) added by BN 43/2008 with effect from 14 May 2008]

(2) The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.

(3) A provider providing advice to a client to replace an existing long-term insurance contract or policy with any other financial product must at the earliest practicable opportunity after providing such advice, but in any event no later than the date on which any transaction requirement is submitted to a product supplier in respect of any replacement product, notify the issuer of the existing and the replacement long-term insurance contract or policy of such advice.

[Subs (3) substituted by BN 43/2008 with effect from 14 May 2008]

(4)

(a) In performing the analysis referred to in subsection (1)(b) a provider may, in determining the extent of the client information necessary to provide appropriate advice, take into account-

(i) any specific objectives or needs of the client that the client has explicitly requested the provider to focus on, or not to focus on, in performing the analysis;

(ii) any specific objectives or needs of the client that the client and the provider have explicitly agreed to focus on or not to focus on in performing the analysis;

(iii) applicable surrounding circumstances that make it clear that the analysis can reasonably be expected by the client to focus only on specific objectives or specific needs of the client;

(iv) the fact that the client has explicitly declined to provide any information requested by the provider.

(b) Where an analysis referred to in subsection (1)(b) is performed in any of the circumstances referred to subsection (4)(a), the provider must alert the client as soon as reasonably possible that-

(i) there may be limitations on the appropriateness of the advice provided in light of such circumstances; and

(ii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs, particularly any aspects of such objectives, situation or needs that were not considered in light of the aforementioned circumstances.

(c) Where a client elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.

[Subs. (4) substituted by GN 706/2020 w.e.f. 26 June 2020]

9. Record of advice

(1) A provider must, subject to and in addition to the duties imposed by section 18 of the Act and section 3(2) of this Code, maintain a record of the advice furnished to a client as contemplated in section 8, which record must reflect the basis on which the advice was given, and in particular-

(a) a brief summary of the information and material on which the advice was based;

(b) the financial product which were considered;

[Para (b) substituted by BN 43/2008 with effect from 14 May 2008]

(c) the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives; and

[Para (c) substituted by BN 43/2008 with effect from 14 May 2008]

Provided that such record of advice is only required to be maintained where, to the knowledge of the provider, a transaction or contract in respect of a financial product is concluded by or on behalf of the client as a result of the advice furnished to the client in accordance with section 8.

(d) where the financial product or products recommended is a replacement product as contemplated in section 8(1)(d)-

(aa) the comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product; and

(bb) the reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product..

[Para (d) inserted by BN 43/2008 with effect from 14 May 2008]

(1A) The Registrar may determine the format of and the matters to be addressed in the record of advice referred to in section 9(1).

[Subs. (1A) inserted by GN 706/2020 w.e.f. 26 June 2020]

(2) A provider must provide a client with a copy of the record contemplated in 9(1) in writing.

[Subs. (2) substituted by GN 706/2020 w.e.f. 26 June 2020]

PART VIII

CUSTODY OF FINANCIAL PRODUCTS AND FUNDS

10.

(1) Subject to the provisions of any other applicable Act, a provider who receives or holds financial products or funds of or on behalf of a client must account for such products or funds properly and promptly and-

(a) when documents of title are lodged with the provider on behalf of the client, the provider must immediately provide written confirmation of receipt thereof which contains a description of the documents that is sufficient to identify them;

- (b) when a provider receives funds into safe custody without the mediation of a bank, the provider must on receipt of the money, issue a written confirmation of receipt thereof;
 - (c) where the provider, or a third party on behalf of either of them, is in control of such financial products or funds, take reasonable steps to ensure that they are adequately safeguarded;
 - (d) open and maintain a separate account, designated for client funds, at a bank and-
 - (i) must within one business day of receipt pay into the account all funds held on behalf of clients;
 - (ii) ensure that the separate account only contains funds of clients and not those of the provider;
 - (iii) pay all bank charges in respect of the separate account except that bank charges specifically relating to a deposit or withdrawal of the funds of the client are for the client's own account; and
 - (iv) ensure that any interest accruing to the funds in the separate account is payable to the client or the owner of the funds;
 - (e) take reasonable steps to ensure-
 - (i) that at all times such financial products or funds are dealt with strictly in accordance with the mandate given to the provider;
 - (ii) that client financial products or funds are readily discernible from private assets or funds of the provider; and
 - (iii) that, subject to any applicable contractual or statutory provisions, a client has ready access to any amount paid into the separate account, less any deductions which are authorised, and charges and fees required or authorised to be paid by law.
- (2) Where a transaction or agreement has been recorded in writing, the provider who dealt with the client, must ensure that the original agreement is delivered to the client for safe custody.
- (3) Section 10(1)(d) is not applicable to a provider-
- (a) who receives, holds or in any other matter deals with premiums payable under a short-term or long-term reinsurance policy; or

[Para. (a) substituted by GN 2814/2022 w.e.f. 2 December 2022]

- (b) who is subject to section 45 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or section 47A of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), if the provider complies with the requirements contemplated in those sections.

[Para. (b) substituted by GN 2814/2022 w.e.f. 2 December 2022]

[Subs. (3) substituted by BN 171/2009]

PART IX

RISK MANAGEMENT

11. Control measures

A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

12. Specific control objectives

A provider, excluding a representative, must, without limiting the generality of section 11, structure the internal control procedures concerned so as to provide reasonable assurance that-

- (a) the relevant business can be carried on in an orderly and efficient manner;
- (b) financial and other information used or provided by the provider will be reliable; and
- (c) all applicable laws are complied with.

13. Insurance

A provider, excluding a representative, an insurer as defined in the Insurance Act, 2017 (Act No. 18 of 2017) or a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990) must, if, and to the extent, required by the registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

[S. 13 substituted by GN 2814/2022 w.e.f. 2 December 2022]

PART X

ADVERTISING

14.

Application

(1)

- (a) For purposes of this section, "client" includes the general public.
- (b) The principles, requirements and standards contained in this section apply regardless of the medium used to publish an advertisement.
- (c) This section applies to any advertisement published on or after the date on which this section takes effect, regardless of whether the advertisement was also previously published prior to this section taking effect.

General principles

(2)

- (a) A provider, other than a provider that is a natural person and a representative, must have documented processes and procedures for the approval of advertisements by a key person (as defined in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)) or a person of appropriate seniority to whom the key person has delegated the approval.
- (b) A provider must, prior to publishing an advertisement, take reasonable measures to ensure that the information provided in the advertisement is consistent with this section.
- (c) Where feasible measures must provide for an objective review of an advertisement other than by the person that prepared or designed it.
- (d) Where an advertisement is produced or published by another person the provider must-
 - (i) where the person producing or publishing the advertisement is the provider's representative or is otherwise acting on behalf of the provider in relation to the advertisement, ensure that the advertisement is consistent with this section and have appropriate processes in place to ensure such consistency; and
 - (ii) where the person producing or publishing the advertisement is not acting on behalf of the provider in relation to the advertisement but the provider is aware or ought reasonably to be aware of the production or publication, take reasonable steps to mitigate the risk of the advertisement not being consistent with this rule.
- (e) Where a provider becomes aware that an advertisement that relates to its business, financial services or related services, whether published by the provider or any other person, is not consistent with this section, the provider must-
 - (i) as soon as reasonably practicable correct or withdraw the advertisement; or
 - (ii) take reasonable steps to ensure that it is corrected or withdrawn; and
 - (iii) notify any person who it knows to have relied on the advertisement.

Factually correct, balanced and not misleading

(3)

- (a) Advertisements must-

- (i) be factually correct, excluding aspects of an advertisement constituting puffery;
 - (ii) provide a balanced presentation of key information; and
 - (iii) not be misleading.
- (b) An advertisement that references statistics, performance data, achievements or awards must disclose-
- (i) the source and the date thereof; and
 - (ii) the identity of the grantor of an award and must make it clear if the award is granted by an associate of the provider or product supplier.
- (c) An advertisement that refers to premiums or other periodic investment amounts must-
- (i) in the case where the premium or periodic investment amount will escalate automatically, indicate the escalation rate or basis; and
 - (ii) where the premium, in the case of an insurance policy, (with or without automatic escalations) may change at a future date, indicate the period for which the premium is guaranteed.
- (d) Descriptions in an advertisement must not-
- (i) give benefits or returns undue prominence compared with risks; and
 - (ii) exaggerate benefits or returns or create expectations regarding financial product or financial service performance or the performance of related services that the provider does not reasonably expect to achieve.
- (e) Descriptions in an advertisement, in respect of a specific financial product, financial service or related service, must include key limitations, exclusions, risks and charges, which must be clearly explained and must not be worded positively to imply a benefit.
- (f) References to a fee or cost must give a realistic impression of the overall level of fees or costs a person is likely to pay, including any indirect fees or costs.
- (g) Notwithstanding paragraph (e), but subject to all other requirements of this section, where a provider can demonstrate that, due to the nature of the medium used for the advertisement, it is not reasonably practicable for the information required in paragraph (e) to be fully included in the advertisement itself, the advertisement must indicate-
- (i) that additional information on key limitations, exclusions, risks and charges related to the financial product, financial service or related service being advertised is available; and
 - (ii) where and how the additional information in (i) may be accessed.
- (h) The information referred to in paragraph (g) must be publicly available and readily accessible to the average client targeted by the advertisement.
- (i) An advertisement, when examined as a whole, must not be constructed in such a way as to lead the average targeted client to any false conclusions he or she might reasonably rely upon.
- (j) For the purposes of (l), a provider must when constructing an advertisement consider the conclusion likely to be made by clients that are subject to the advertisement, and in doing so have regard to-
- (i) the literal meaning of the words;
 - (ii) impressions from nonverbal portions of the advertisement; and
 - (iii) materials and descriptions omitted from the advertisement.
- (k) An advertisement relating to a financial product that is targeted at a particular type or group of client must make this clear.
- (l) An advertisement must not obscure information.
- (m) Each piece of information in an advertisement must be prominent enough in accordance with subsection (14) and proximate enough to other information so as not to mislead the average targeted client.
- (n) An advertisement must not be designed to exaggerate the need for urgency which could encourage the average targeted client to make unduly hasty decisions.
- (o) Warnings, disclaimers and qualifications contained in an advertisement must-
- (i) not be inconsistent with other content in the advertisement; and
 - (ii) have sufficient prominence to effectively convey key information.

- (p) An advertisement relating to a financial service must-
 - (i) disclose any relevant limitations on the extent of the financial service and the range of financial products on which the financial service is based;
 - (ii) not create a misleading impression about the nature and extent of a provider's skills, experience, knowledge and expertise insofar it relates to the financial service; and
 - (iii) not create a misleading impression about the cost of a financial service including that it is 'free' if the service is in fact paid for by the client directly or indirectly through other costs or charges.

Public interest

(4)

An advertisement must not disparage or make inaccurate, unfair or unsubstantiated criticisms about any financial product, financial service, product supplier or provider.

Identification of product supplier or provider

(5)

- (a) An advertisement relating to a financial product or financial service must clearly and prominently in accordance with subsection (14) identify the product supplier or provider or both, as applicable.
- (b) An advertisement must not use the group or parent company name or the name of any other associate of a product supplier or provider, or the name of another person, to-
 - (i) create the impression that any person other than the product supplier or provider, as the case may be, is financially or otherwise liable in relation to a financial product or financial service;
 - (ii) mislead or deceive as to the true identity of the provider or product supplier.
- (c) An advertisement relating to a financial product that is subject to a white labelling arrangement must clearly and prominently in accordance with subsection (14) identify the product supplier.

Appropriate language and medium

(6)

- (a) An advertisement must use plain language.
- (b) Terms must be defined or explained if the average targeted client could not reasonably be expected to understand them.
- (c) A provider must consider the appropriateness of the medium to be used to publish any advertisement in relation to the complexity of the features of the financial product or financial service or other information being communicated.

Record keeping of advertisements

(7)

- (a) A provider must keep adequate records of all advertisements.
- (b) All records referred to in subsection (7)(a) must be kept for a period of at least 5 years after publication.

Negative option marketing

(8)

A provider or any person acting on its behalf may not offer to enter into any agreement in respect of a financial product or financial service on the basis that the agreement will automatically come into existence unless the client explicitly declines the provider's offer to enter into agreement.

Unwanted direct advertising

(9)

- (a) Where a provider or any person acting on its behalf uses a telephone or mobile phone call, voice or text message or other electronic communication for an advertisement, it must allow the client during that call or within a reasonable time after receiving the message, the opportunity to demand that the provider or other person does not publish any further advertisements to the client through any of these mediums.
- (b) A provider or any person acting on its behalf may not charge a client a fee or allow a service supplier to charge a client any fee for making a demand in terms of paragraph (a).

Comparative marketing

(10)

- (a) Where a survey or other financial product or financial service comparison informs a comparative advertisement, the survey or other product or service comparison-
- (i) must be undertaken by an independent person or, if it is not reasonably practicable that it is undertaken by an independent person, the advertisement must be so qualified;
 - (ii) must be conducted at regular intervals if relied on or referenced on an on-going basis;
 - (iii) must ensure that financial products, financial services or related services being compared have the same or similar characteristics;
 - (iv) must take account of comparable features across the financial product, financial service or related service offerings included in the sample to ensure that not only the price (e.g. the Rand value of premiums or investments) is being compared, but also the benefits provided under the financial products, financial services or related services concerned;
 - (v) in particular, in the case of comparisons between financial products that are insurance policies, must ensure that price comparisons are based on policies with equivalent terms and conditions, including insured events, cover levels, exclusions, waiting periods and other key features;
 - (vi) may not focus on the price of a financial product, financial service or related service to the exclusion of the suitability of the financial product, financial service or related services or its delivery on client expectations; and
 - (viii) must ensure that the information used in comparisons is current, complete and accurate.

[Editor's note: Numbering of subparagraphs as published in GN 706/2020]

- (b) The survey or other comparison source and date thereof must be referenced in the advertisement and the methodology applied must be publicly available and readily accessible to the public in an easily understandable format.

Puffery

(11)

Advertisements that include puffery must be consistent with the provisions relating to puffery in the Code of Advertising Practice Issued by the Advertising Regulatory Board as amended from time to time.

Endorsements

(12)

- (a) Testimonials and third person endorsements used in an advertisement-
- (i) must be the genuine opinion and actual experience of the person making the testimonial or endorsement and be properly attributed to such person;
 - (ii) must be based upon actual statements made for testimonial or endorsement purposes; and
 - (iii) may use a pseudonym instead of the real name of the person making the testimonial or endorsement, provided this is stated in the advertisement concerned.
- (b) If the person making the testimonial or endorsement, or their employer or principal or any associate, has any financial interest or relationship to the-
- (i) provider or any associate of the provider or person acting on behalf of the provider; or
 - (ii) product supplier or any associate of the product supplier or person acting on behalf of the product supplier where the advertisement relates to a financial product,
- or will or has been compensated for the endorsement by any person (other than through reimbursement of actual costs incurred by the person making the endorsement), this must be disclosed in the advertisement.
- (c) Any endorsement in an advertisement must clearly and prominently in accordance with subsection (14) state that the endorsement does not constitute financial advice.

Loyalty benefits or bonuses

(13)

- (a) An advertisement that references a loyalty benefit (including so-called cash- or premium-back bonuses in relation to insurance policies) or no-claim bonus must not create the impression that such benefit or bonus is free and must

adequately-

- (i) indicate if the loyalty benefit or no-claim bonus is optional or not; and
 - (ii) regardless of whether or not the loyalty benefit or no-claim bonus is optional, express the cost of the benefit or bonus including, where applicable, the impact that such cost has on the premium or investment amount, unless the impact is negligible; and
 - (iii) identify the grantor of the benefit or bonus.
- (b) For purposes of subsection (13)(a)-
- (i) the impact is deemed to be negligible if the cost of the loyalty benefit or no-claim bonus comprises less than 10% of the total premium or investment amount payable under a financial product;
 - (ii) where the impact of a loyalty benefit or no-claim bonus is not negligible and where the advertisement refers to the actual premium or investment amount payable-
 - (aa) the cost of the benefit or bonus must be shown as a percentage of that premium or investment amount; and
 - (bb) the provider must be able to demonstrate that the premium or investment amount and benefit cost used in the advertisement presents a true reflection of the cost impact for the average targeted client; and
 - (iii) where the impact of a loyalty benefit or no-claim bonus is not negligible and where the advertisement does not refer to the actual premium or investment amount payable, the average cost of the benefit or bonus as a percentage of premium or investment amount must be provided.
 - (c) Where an advertisement highlights a loyalty benefit or no-claims bonus as a significant feature of a financial product or financial service and makes reference to a projected loyalty benefit value or no-claim bonus value that is payable on the expiry of a period in the future, it must also express the value of the projected benefit or bonus in present value terms, using reasonable assumptions about inflation.
 - (d) An advertisement must clearly state whether the availability or extent of a loyalty benefit or no-claims bonus is contingent on future actions of the client or any factors not within the client's control.
 - (e) An advertisement may not create the impression that the bonus or benefit is guaranteed or more likely to materialise than the provider or product supplier reasonably expects for the average targeted client.

Prominence

(14)

- (a) In determining prominence, whenever information must be disclosed prominently as required by this section, consideration must, as appropriate, be given to-
 - (i) the target audience of the advertisement;
 - (ii) the likely information needs of the average targeted client;
 - (iii) prominence in the context of the advertisement as a whole;
 - (iv) positioning of the text and audibility and speed of speech;
 - (v) the duration of displays of key information;
 - (vi) background;
 - (vii) colour; and
 - (viii) font size.
- (b) A statement or information in an advertisement is not regarded as being prominent if, amongst other things, the statement or information is-
 - (i) obscured through the close proximity of promotional illustrations and/or additional text;
 - (ii) difficult to read due to the use of small font sizes, unclear type styles or the duration for which it is displayed;
 - (iii) likely to be overlooked due to its position;
 - (iv) superimposed across a coloured or patterned background which lessens its visual impact; or
 - (v) difficult to hear or understand due to the volume or speed at which speech is delivered.

- (c) Subject to paragraph (d), in an advertisement relating to a financial product that is subject to a white labelling arrangement, the name of the product supplier must be as frequently mentioned, as audible or as visible as that of the white label and, in respect of written media, must be at least the same font size as that of the white label.
- (d) Paragraph (c) does not apply to an advertisement relating to a financial product that is subject to a white labelling arrangement where-
 - (i) the white label arrangement is with a product supplier that is part of the same group of companies that the provider is part of;
 - (ii) the advertisement uses the brand of the product supplier; and
 - (iii) all requirements of subsection (5) and paragraphs (a) and (b) are complied with in relation to the identification of the product supplier.

Principles relating to forecasts, illustrations, hypothetical data or projected benefits and past performance data

(15)

- (a) No projected benefits (including but not limited to future investment values and, in the case of insurance policies, maturity, income, death, disability or full or partial surrender benefits) may be included in advertisements, if the benefits depend on future unknown investment performance, unless used to demonstrate the benefits of savings generally.
- (b) Any reference to projected benefits, investment performance or returns must clearly reflect the effect that fees and costs may have on actual returns or benefits.
- (c) When past investment performance is provided for or referred to in an advertisement-
 - (i) all information must be accurate and must be provided in the correct context, and the provider must be able to substantiate all claims made; and
 - (ii) a statement must be included that past performance cannot be extrapolated into the future and is not an indication of future performance.
- (d) If tax advantages are referenced in an advertisement such advantages must be explained, and any key restrictions, penalties, and mitigating circumstances must be disclosed.
- (e) Any reference to guaranteed elements or features must indicate whether the guarantee is subject to any requirements and conditions and where disclosure of those requirements and conditions can be found.
- (f) Where a financial product comprises participatory interests in an underlying collective investment scheme referred to in the Collective Investment Schemes Control Act No. 45 of 2002, or where a financial product provides for investment of client's funds into collective investment scheme portfolios, any advertisement must, in addition to the applicable requirements of this subsection, comply with any determination of advertising and marketing requirements for collective investment schemes made under the Collective Investment Schemes Control Act No. 45 of 2002.

[S. 14 substituted by GN 706/2020 w.e.f. 26 December 2020]

15.

- (1) A direct marketer must, when rendering a financial service to or on behalf of a client, at the earliest reasonable opportunity furnish the client with the following particulars:
 - (a) the business or trade name of the direct marketer;
 - (b) confirmation whether the direct marketer is a licensed financial service provider and details of the financial services which the direct marketer is authorised to provide in terms of the relevant license and any conditions or restrictions applicable thereto;
 - (c) telephone contact details of direct marketer (unless the contact was initiated by the client);
 - (d) telephone contact details of the compliance department of the direct marketer;
 - (e) whether the direct marketer holds professional and indemnity insurance;

Provided that where the direct marketer is a representative, the information contemplated in sub-paragraphs (a) to (c) above must be provided in respect of the provider to which the representative is contracted.

(2)

[Subr. (2) amended by BN 43/2008 and deleted by GN 706/2020 w.e.f. 26 December 2020]

(3)

[Subr. (3) deleted by GN 706/2020 w.e.f. 26 December 2020]

(4)

[Subr. (4) substituted by BN 43/2008 and deleted by GN 706/2020 w.e.f. 26 December 2020]

(5) A direct marketer must record all telephone conversations with clients in the course of direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings.

[Subr. (5) substituted by GN 706/2020 w.e.f. 26 December 2020]

(6) Notwithstanding the above, a direct marketer must at the earliest reasonable opportunity after conclusion of a transaction provide, in writing, the client with all information referred to in sections 4 and 5 of this Code, to the extent that any such information has not already been provided to the client in writing.

[Subr. (6) substituted by GN 706/2020 w.e.f. 26 December 2020]

(7) A provider must, on request of the client, make recordings of telephone discussions available to the client.

[Subr. (7) inserted by GN 706/2020 w.e.f. 26 December 2020]

PART XI

COMPLAINTS MANAGEMENT (ss 18 - 19)

16. Definitions

In this Part-

"client query" means a request to the provider or the provider's service supplier by or on behalf of a client, for Information regarding the provider's financial products, financial services or related processes, or to carry out a transaction or action in relation to any such product or service;

"complainant" means a person who submits a complaint and includes a-

- (a) client;
- (b) person nominated as the person in respect of whom a product supplier should meet financial product benefits or that persons' successor in title;
- (c) person whose life is insured under a financial product that is an insurance policy;
- (d) person that pays a premium or an investment amount in respect of a financial product;
- (e) member;
- (f) person whose dissatisfaction relates to the approach, solicitation marketing or advertising material or an advertisement in respect of a financial product, financial service or related service of the provider,

who has a direct interest in the agreement, financial product or financial service to which the complaint relates, or a person acting on behalf of a person referred to in (a) to (f);

"complaint" means an expression of dissatisfaction by a person to a provider or, to the knowledge of the provider, to the provider's service supplier relating to a financial product or financial service provided or offered by that provider which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a client query, that-

- (a) the provider or its service supplier has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the provider or to which it subscribes;
- (b) the provider or its service supplier's maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or
- (c) the provider or its service supplier's has treated the person unfairly;

"compensation payment" means a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of a provider to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the provider's contravention, non-compliance, action, failure to act, or unfair treatment forming the basis of the complaint, where the provider accepts liability for having caused the loss concerned, but excludes any-

- (a) goodwill payment;
- (b) payment contractually due to the complainant in terms of the financial product or financial service concerned; or
- (c) refund of an amount paid by or on behalf of the complainant to the provider where such payment was not contractually due;

and includes any interest on late payment of any amount referred to in (b) or (c);

"goodwill payment" means a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of a provider to a complainant as an expression of goodwill aimed at resolving a complaint, where the provider does not accept liability for any financial loss to the complainant as a result of the matter complained about;

"member" in relation to a complainant means a member of a-

- (a) pension fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act 52 of 1956);
- (b) friendly society as defined In section 1(1) of the Friendly Societies Act,1956 (Act 25 of 1956);
- (c) medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998); or
- (d) group scheme as contemplated in the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act, 1998, and section 55 of the Short-term Insurance Act, 1998;

"rejected" in relation to a complaint means that a complaint has not been upheld and the provider regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint and includes complaints regarded by the provider as unjustified or invalid, or where the complainant does not accept or respond to the provider's proposals to resolve the complaint;

"reportable complaint" means any complaint other than a complaint that has been-

- (a) upheld immediately by the person who initially received the complaint;
- (b) upheld within the provider's ordinary processes for handling client queries in relation to the type of financial product or financial service complained about, provided that such process does not take more than five business days from the date the complaint is received; or
- (c) submitted to or brought to the attention of the provider in such a manner that the provider does not have a reasonable opportunity to record such details of the complaint as may be prescribed in relation to reportable complaints; and

"upheld" means that a complaint has been finalised wholly or partially in favour of the complainant and that-

- (a) the complainant has explicitly accepted that the matter is fully resolved; or
- (b) it is reasonable for the provider to assume that the complainant has so accepted; and
- (c) all undertakings made by the provider to resolve the complaint have been met or the complainant has explicitly indicated its satisfaction with any arrangements to ensure such undertakings will be met by the provider within a time acceptable to the complainant.

[S. 16 substituted by GN 706/2020 w.e.f. 26 December 2020]

17. Complaints management framework

Establishment of complaints management framework

(1)

- (a) A provider, excluding a representative, must establish, maintain and operate an adequate and effective complaints management framework to ensure the effective resolution of complaints and the fair treatment of complainants that-
 - (i) is proportionate to the nature, scale and complexity of the providers business and risks;
 - (ii) is appropriate for the business model, policies, services, and clients of the provider;
 - (iii) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants;
 - (iv) does not impose unreasonable barriers to complainants; and
 - (v) must address and provide for, at least, the matters provided for in this Part.
- (b) A provider must regularly review its complaints management framework and document any changes thereto.

[Subs. (1) substituted by GN 706/2020 w.e.f. 26 December 2020]

Requirements for complaints management framework

(2)

- (a) The complaints management framework must at least, provide for-

- (i) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the provider;
- (ii) appropriate performance standards and remuneration and reward strategies (internally and where any functions are outsourced) for complaints management to ensure objectivity and impartiality;
- (iii) documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended;
- (iv) documented procedures which clearly define the escalation, decision-making, monitoring and oversight and review processes within the complaints management framework;
- (v) appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to executive management, the board of directors and any relevant committee of the board or in the absence of a board the governing body on-
 - (aa) identified risks, trends and actions taken in response thereto; and
 - (bb) the effectiveness and outcomes of the complaints management framework;
- (vi) appropriate communication with complainants and persons representing complainants on the complaints and the complaints processes and procedures;
- (vii) appropriate engagement between the provider and a relevant ombud;
- (viii) meeting requirements for reporting to the Authority and public reporting in accordance with this Part;
- (ix) a process for managing complaints relating to the provider's representatives and service suppliers, insofar as such complaints relate to services provided in connection with the provider's financial products, financial services or related services, which process must-
 - (aa) enable the provider to reasonably satisfy itself that the representative or service supplier has adequate complaints management processes in place to ensure fair treatment of complainants;
 - (bb) provide for monitoring and analysis by the provider of aggregated complaints data in relation to complaints received by its representatives and service suppliers and their outcomes;
 - (cc) include effective referral processes between the provider and its representatives and service suppliers for handling and monitoring complaints that are submitted directly to either of them and require referral to the other for resolution; and
 - (dd) include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint; and
- (x) regular monitoring of the complaints management framework generally.

[Subs. (2) substituted by GN 706/2020 w.e.f. 26 June 2021]

Allocation of responsibilities

(3)

- (a) The board of directors or in the absence of a board the governing body and key Individuals of the provider, excluding a representative, is responsible for effective complaints management and must approve and oversee the effectiveness of the Implementation of the provider's complaints management framework.
- (b) Any person that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must-
 - (i) be adequately trained;
 - (ii) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of customers, the subject matter of the complaints concerned and relevant legal and regulatory matters;
 - (iii) not be subject to a conflict of interest; and
 - (iv) be adequately empowered to make impartial decisions or recommendations.

[Subs. (3) substituted by GN 706/2020 w.e.f. 26 December 2020]

Categorisation of complaints

(4)

- (a) A provider, excluding a representative, must categorise reportable complaints in accordance with the following

minimum categories-

- (i) complaints relating to the design of a financial product, financial service or related service, including the fees, premiums or other charges related to that financial product or financial service;
- (ii) complaints relating to information provided to clients;
- (iii) complaints relating to advice;
- (iv) complaints relating to financial product or financial service performance;
- (v) complaints relating to a service to clients, including complaints relating to premium or investment contribution collection or lapsing of a financial product;
- (vi) complaints relating to financial product accessibility, changes or switches, including complaints relating to redemptions of investments;
- (vii) complaints relating to complaints handling;
- (viii) complaints relating to Insurance risk claims, including non-payment of claims; and
- (ix) other complaints.

(b) A provider must, in addition to the categorisation set out in paragraph (a), consider additional categories relevant to its chosen business model, financial products, financial services and client base that will support the effectiveness of its complaint management framework in managing conduct risks and effecting improved outcomes and processes for its clients.

(c) A provider must categorise, record and report on reportable complaints by identifying the category contemplated in paragraphs (a) and (b) to which a complaint most closely relates and group complaints accordingly.

[Subs. (4) substituted by GN 706/2020 w.e.f. 26 June 2021]

Complaints escalation and review process

(5)

- (a) A provider, excluding a representative, must establish and maintain an appropriate internal complaints escalation and review process.
- (b) Procedures within the complaints escalation and review process should not be overly complicated, or impose unduly burdensome paperwork or other administrative requirements on complainants.
- (c) The complaints escalation and review process should-
 - (i) follow a balanced approach, bearing in mind the legitimate interests of all parties involved including the fair treatment of complainants;
 - (ii) provide for internal escalation of complex or unusual complaints at the instance of the initial complaint handler;
 - (iii) provide for complainants to escalate complaints not resolved to their satisfaction; and
 - (iv) be allocated to an impartial, senior functionary within the provider or appointed by the provider for managing the escalation or review process of the provider.

[Subs. (5) substituted by GN 706/2020 w.e.f. 26 December 2020]

Decisions relating to complaints

(6)

- (a) Where a complaint is upheld, any commitment by the provider to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.
- (b) Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any applicable escalation or review processes, including how to use them and any relevant time limits.

[Subs. (6) substituted by GN 706/2020 w.e.f. 26 December 2020]

Record keeping, monitoring and analysis of complains

(7)

- (a) A provider must ensure accurate, efficient and secure recording of complaints and complaints-related information.

[Para. (a) substituted by GN 706/2020 w.e.f. 26 December 2020]

- (b) The following must be recorded in respect of each reportable complaint-

- (i) all relevant details of the complainant and the subject matter of the complaint;

[Subpara. (i) to be substituted by GN 706/2020 w.e.f. 26 December 2020]

- (ii) copies of all relevant evidence, correspondence and decisions;

[Subpara. (ii) substituted by GN 706/2020 w.e.f. 26 December 2020]

- (iii) the complaint categorisation as set out in subsection (4); and

[Subpara. (iii) substituted by GN 706/2020 w.e.f. 26 June 2021]

- (iv) progress and status of the complaint, including whether such progress is within or outside any set timelines.

[Subpara. (iv) substituted by GN 706/2020 w.e.f. 26 December 2020]

- (c) A provider must maintain the following data in relation to reportable complaints categorised in accordance with subsection (4) on an ongoing basis-

- (i) number of complaints received;

- (ii) number of complaints upheld;

- (iii) number of rejected complaints and reasons for the rejection;

- (iv) number of complaints escalated by complainants to the internal complaints escalation process;

- (v) number of complaints referred to an ombud and their outcome;

- (vi) number and amounts of compensation payments made;

- (vii) number and amounts of goodwill payments made; and

- (viii) total number of complaints outstanding.

[Para. (c) substituted by GN 706/2020 w.e.f. 26 June 2021]

- (d) Complaints information recorded in accordance with this subsection must be scrutinised and analysed by a provider on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for its clients, and to prevent recurrences of poor outcomes and errors.

[Para. (d) substituted by GN 706/2020 w.e.f. 26 June 2021]

- (e) A provider must establish and maintain appropriate processes for reporting of the information in subsection (7)(d) to its governing body or executive management.

[Para. (e) substituted by GN 706/2020 w.e.f. 26 December 2020]

Communication with complainants

(8)

- (a) A provider must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the provider's clients.

- (b) A provider may not impose any charge for a complainant to make use of complaint processes and procedures.

- (c) All communications with a complainant must be in plain language.

- (d) A provider must, wherever feasible, provide clients with a single point of contact for submitting complaints.

- (e) A provider must disclose to a client-

- (i) the type of information required from a complainant;

- (ii) where, how and to whom a complaint and related information must be submitted;

- (iii) expected turnaround times in relation to complaints; and

- (iv) any other relevant responsibilities of a complainant.
- (f) A provider must within a reasonable time after receipt of a complaint acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including-
 - (i) contact details of the person or department that will be handling the complaint;
 - (ii) indicative and, where applicable, prescribed timelines for addressing the complaint;
 - (iii) details of the internal complaints escalation and review process if the complainant is not satisfied with the outcome of a complaint;
 - (iv) details of escalation of complaints to the office of a relevant ombud and any applicable timeline; and
 - (v) details of the duties of the provider and rights of the complainant as set out in the rules applicable to the relevant ombud.
- (g) Complainants must be kept adequately informed of-
 - (i) the progress of their complaint;
 - (ii) causes of any delay in the finalisation of a complaint and revised timelines; and
 - (iii) the provider's decision in response to the complaint.

[Subr. (8) substituted by GN 706/2020 w.e.f. 26 December 2020]

18. Engagement with ombud and reporting

Engagement with ombud

(1)

- (a) A provider must-
 - (i) have appropriate processes in place for engagement with any relevant ombud in relation to its complaints;
 - (ii) clearly and transparently communicate the availability and contact details of the relevant ombud services to complainants at all relevant stages of the relationship with a client, including at the start of the relationship and in relevant periodic communications;
 - (iii) display and/or make available information regarding the availability and contact details of the relevant ombud services at the premises and/or on the web site of the provider;
 - (iv) maintain specific records and carry out specific analysis of complaints referred to them by the ombud and the outcomes of such complaints; and
 - (v) monitor determinations, publications and guidance issued by any relevant ombud with a view to identifying failings or risks in their own policies, services or practices.
- (b) A provider must-
 - (i) maintain open and honest communication and co-operation between itself and any ombud with whom it deals; and
 - (ii) endeavour to resolve a complaint before a final determination or ruling is made by an ombud, or through its internal escalation process, without impeding or unduly delaying a complainants access to an ombud.

[S. 18 substituted by GN 706/2020 w.e.f. 26 December 2020]

19. Reporting complaints information

A provider must have appropriate processes in place to ensure compliance with any prescribed requirements for reporting complaints information to any relevant designated authority or to the public as may be required by the Registrar.

[S. 19 substituted by GN 706/2020 w.e.f. 26 December 2020]

[Part XI substituted by GN 706/2020 w.e.f. 26 December 2020 and 26 June 2021]

PART XII

TERMINATION OF AGREEMENT OR BUSINESS

20. Subject to the Act, and sections 3(2) and (3) of this Code-

- (a)
- (i) a provider must, subject to any contractual obligations, give immediate effect to a request of a client who voluntarily seeks to terminate any agreement with the provider or relating to a financial product or advice;
 - (ii) where the client makes the request on the advice of the provider, the provider must take reasonable steps to ensure that the client fully understands all the implications of the termination;
- (b) a provider, other than a representative who ceases to operate as such, must immediately notify all affected clients accordingly and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to ensure that any outstanding business is completed promptly or transferred to another provider; and
- (c) where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.

PART XIII

WAIVER OF RIGHTS

21. No provider may request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of any provision of this Code, or recognise, accept or act on any such waiver by the client, and any such waiver is null and void.

PART XIV

SHORT TITLE AND COMMENCEMENT

22. This Code is called the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and comes into operation on the date determined by the Minister under section 7(1) of the Act.