RETAIL DISTRIBUTION REVIEW: DISCUSSION DOCUMENT ON CATEGORISATION OF FINANCIAL ADVISERS AND RELATED MATTERS

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FSCA

Financial Sector
Conduct Authority

PART A: Background and purpose

Background

The Financial Services Board's Retail Distribution Review published in November 2014 (''the initial RDR paper") put forward a number of proposals to reform the regulatory framework for distribution of financial products, aimed at ensuring distribution models that:

- Support the delivery of suitable products and fair access to suitable advice for financial customers
- Enable customers to understand and compare the nature, value and cost of advice and other services intermediaries provide
- Enhance standards of professionalism in financial advice and intermediary services to build consumer confidence and trust
- Enable customers and distributors to benefit from fair competition for quality advice and intermediary services, at a price more closely aligned with the nature and quality of the service
- Support sustainable business models for financial advice that enable adviser businesses to viably deliver fair customer outcomes over the long term.

In support of these objectives, the initial RDR paper contained a number of proposals aimed at clarifying relationships between product suppliers and intermediaries. Key among these was the proposal (initial Proposal K) to define and categorise different types of adviser, with a focus on the adviser / product supplier relationship in each adviser category. As explained in the initial RDR paper[1], the purpose of this categorisation is to ensure that:

> *The financial services customer should be in a position to clearly understand what services the intermediary with whom they are dealing, is providing, and in what capacity the intermediary is acting (i.e. the nature of the relationship between the intermediary and one or more product suppliers). This understanding is particularly important in the case of financial advice, to enable customers to evaluate the type and extent of advice they are receiving, including any limitations or restrictions on that advice, before deciding whether or not to act on it.*

The paper also highlighted the prevalence of complex and often conflicted "hybrid" distribution models that undermine the customer's ability to appreciate the capacity in which advice is provided and any potential conflicts of interest, and also undermine effective supervisory oversight. Another purpose of clear adviser categorisation is therefore to set clear structural lines between different advice models.

To meet these objectives, the **initial RDR Proposal K invited comment on a three-tier adviser categorisation model**, defining "tied financial advisers"; "multi-tied financial advisers"; and "independent financial advisers". Stakeholder feedback was in the main opposed to this three-tier model, with the "multi-tied adviser" category in particular being criticised as being vague and confusing. Accepting this feedback, the FSB published an updated adviser categorisation proposal in its November 2015 publication *Status Update: Retail Distribution Review Phase 1* ("the 2015 Phase 1 Update").

The **2015 Phase 1 Update proposed a less complex two-tier adviser categorisation model**, distinguishing between an adviser that is (i) the agent of a product supplier; or (ii) a licensed adviser in their own right (sole proprietor) or a representative of a licensed adviser firm that is not also a

[1] See page 34, paragraph 4.2 of the initial RDR paper.

product supplier. In addition, it was proposed that an adviser or adviser firm will only be permitted to provide advice in one of these capacities – the same adviser or firm will not be permitted to act in both capacities.

Purpose and structure of this document

As communicated in subsequent RDR updates, the **two-tier adviser categorisation model described in the 2015 Phase 1 Update is the FSCA's confirmed position.**

The purpose of this Discussion Document is to provide an update, and invite stakeholder views, on the FSCA's updated thinking on various practical implications of the two-tier adviser categorisation and related RDR proposals. A number of the matters consulted on in this paper are informed by helpful comments received on the 2015 Phase 1 Update and through subsequent stakeholder engagements. This paper must be read together with the 2015 Phase 1 Update and subsequent RDR updates as we do not unnecessarily repeat detail of the proposals made in previous communications.

The paper provides updates and requests input on 6 aspects of the adviser categorisation model (Sections 1 to 6). Section 7 invites further input on a previously mooted variation of the two-tier model. Specific questions are put to stakeholders in respect of different discussion points.

The **key focus areas** are:

- *Section 1:* Terminology to describe adviser categories
- *Section 2:* Practical implications of two-tier adviser categorisation
- *Section 3:* Limiting product supplier agents' advice to home group products and services
- *Section 4:* Use of the designation "independent"
- *Section 5:* Use of the designation "financial planner"
- *Section 6:* Product supplier responsibility
- *Section 7:* Considering a "multi-tied" advice model for different product classes.

PART B. Matters for consultation

Section 1. Terminology to designate adviser categories

The 2015 Phase 1 Update noted that appropriate terminology is required to designate the two proposed adviser categories, and used the terms "product supplier agent" (PSA) and "registered financial adviser" (RFA) to do so. The point was also made that although these terms could possibly be used for regulatory licensing purposes, they were not necessarily appropriate as customer facing designations, and that further work is required to identify language that will promote an understanding of the proposed categories.

During 2018, the FSCA requested an independent researcher, Confluence, to carry out consumer research in respect of consumers' understanding of terminology used to describe financial advice[2]. Twelve consumer focus groups were formed based on age, location, gender and level of engagement with financial services, to take part in the market research. The research was conducted in one urban and one rural area in Gauteng. The research findings were submitted to the FSCA in September 2018.

The FSCA's observations on these findings are:

- The level of knowledge and understanding of disengaged respondents between urban and rural disengaged respondents (i.e. respondents that have not formally engaged with the financial services industry, other than funeral policies) was similar across urban and rural respondents.
- The term "broker" was not well understood and disparate descriptions such as "someone who collects money from the debtors", "is against the law – labour broker" and "head of household" were associated with the term. The term had negative associations in the urban environment.
- The term "agent" presented other challenges, being associated with "someone who recruits people for something" ("like a sports agent").
- The term "tied adviser" generated the widest and most confused range of responses, which included "a community of forgivers", "person who works harder, busy man" and "a person who advises about your tithe (10% like at churches)".
- The term "financial adviser" was best understood by all focus groups. 50% of rural respondents understood the term and 74% of urban respondents accurately understood the term.
- The term "Financial Service Provider" was also reasonably well understood by all focus groups, more so than "insurer" and "product supplier".
- It appears a naming convention, which includes the word "financial", is seen as more descriptive and is relatively better understood.

Notwithstanding the finding that some terms are reasonably well understood by some consumer groupings, there do not seem to be any already understood terms that could readily be used to clearly distinguish between the PSA and RFA adviser categories. Instead, it is clear that whatever designations are finally adopted will require a wide-ranging consumer awareness and education campaign.

Potential designations that have been suggested, and which the FSCA would appreciate views on, include but are not limited to the following[3]:

[2] Certain other terminology not related to adviser naming conventions was also tested, but these findings are not directly relevant for purposes of this paper.

[3] Some international naming conventions include: In the United Kingdom the terms "restricted" versus "independent" are used to illustrate the relationship and availability of products that could be offered by the adviser. In Australia advisers are categorised as "aligned" versus "non-aligned".

Designations to describe PSA tier	Designations to describe RFA tier
• Product supplier agent[4] • Product supplier adviser • Tied financial adviser • Restricted financial adviser • Aligned financial adviser • Financial consultant	• Registered financial adviser • Licensed financial adviser • Non-tied financial adviser • Non-restricted financial adviser • Non-aligned financial adviser • Financial broker

In providing views on possible designations, please consider the following:

- The designations should ideally help to promote consumer understanding of:
    - The scope of products and services the adviser may recommend, and limitations on that scope. For e.g. whether a range of products of different suppliers can be offered or only those of a particular supplier or group.
    - The type of relationship between the advise and product supplier/s
    - Which entity (adviser, product supplier, or both) may be held to account respectively for the advice provided and the performance of the product concerned.
- The findings of the consumer testing as set out in Annex A, including which terms are already reasonably well understood and which are clearly not well understood.
- A few commentators have suggested that the term "financial adviser" is inappropriate to describe the role of a PSA / tied adviser because the limits on their product supplier choice precludes their recommendations from being described as "advice". The FSCA does not agree with this view. We believe that both PSA and RFA models can provide fair and appropriate financial advice, provided the status of the advice is clearly understood. This suggestion is also at odds with the current legislative definition of "advice".
- The designation for the RFA tier should not create the impression that the advice provided is "independent", as this will not necessarily be the case. (See further discussion in Section 4 below).

Over and above agreeing appropriate designations to describe each adviser category, a further regulatory option is to require financial advisers to use appropriate more "narrative" descriptions to describe their category. For example:

- Require PSAs to add the following description to all their business communications: *"[Adviser name and designation], authorised to provide advice on the financial products and services of the ABC Group."*
- Require RFAs to add the following description to all their business communications: *"[Adviser name and designation], authorised to provide advice on the financial products and services of a range of product suppliers."*

[4] The term "product supplier" is currently used in the FAIS Act. The Financial Sector Regulation Act and draft COFI Bill however use the term "product provider". It may therefore in due course be necessary to adjust the final adviser categorisation terminology appropriately.

Questions for stakeholder input:

Q1. Please provide your views on the possible adviser category designations in the Table above. Which designations would you support / not support and why, bearing in mind the FSCA's preference for terminology that will assist consumer understanding of the status of the advice provided? (Note that different combinations of the suggested designations can be proposed).

Q2. Please submit any other suggestions for designations that will support the above objectives of the two-tier adviser categorisation model?

Q3. Please provide your views on a possible requirement for additional "narrative" descriptions to describe each adviser category. Do you have any suggested language for such descriptions?

Q4. Please let us know if you have any suggestions on how best to promote consumer awareness and understanding of the adviser category designations.

Section 2. Practical implications of two-tier adviser categorisation

2.1. Either PSA or RFA – not both

To ensure clear structural distinction between PSA and RFA advice models, the FSCA confirms that the same entity or adviser may not operate as both a PSA and an RFA. Entities licensed to provide financial advice will have to indicate clearly which adviser category they will operate in, and be licensed accordingly. They will also need to ensure that the individual advisers representing them also operate in the applicable category.

Some commentators argued for exceptions to the "either PSA or RFA - not both" limitation. Exceptions were proposed for the following scenarios:

- *Advisers serving sophisticated or high net worth customers:* It was argued that these customers typically demand a wider range of products than their less sophisticated or affluent counterparts, rendering the PSA product restrictions inappropriate, and that product suppliers should not be required to create a separate RFA channel to serve these customers. The FSCA disagrees. To the extent that these customers require a different advice value proposition from that a PSA is able to provide, it is reasonable and appropriate that a separate RFA channel serve them.

- *Employee benefits (EB) advisers:* It was argued that the EB advisory businesses forming part of broader financial groups, typically recommend in-house investment offerings to their fund / employer customers, making a PSA model appropriate for investment business, but that they require a broader range of product offerings for EB risk products, particularly in order to "re-broke" risk products. The argument continues that, if PSA and RFA models must be separated, this would require these EB advisory channels to be split into two entities, which is impractical and inefficient. The FSCA is not convinced that such a splitting of entities would necessarily be required. Instead, EB advisory channels could be operated as RFAs. This would not prohibit that RFA from offering its in-house investment offerings (including external offerings offers through the group's investment platforms) where these could be shown to be appropriate to the EB customer's needs. It would however require the RFA channel to be able to offer wholly external investment products where these would be better suited to the fund / employer's needs. The FSCA does not see this as an undesirable outcome. These commentators also argued that it was appropriate to relax the "either PSA or RFA" rule in the EB space as the risks of information asymmetry and customer confusion are reduced as funds / employers are typically are less vulnerable than retail customers. Although the FSCA acknowledges that this may be the case for larger corporate customers, EB benefits (particularly through umbrella structures) are also marketed to small businesses that require greater levels of protection.

- *Business transition and continuity:* Concerns were raised that strict application of the "either PSA or RFA" rule would hamper certain transactions aimed at ensuring business continuity when an advice firm changes its contractual relationships. An example raised was where an RFA (currently an FSP) becomes a PSA of a product supplier, but the product supplier permits the adviser to retain its existing FSP licence in order to continue servicing some of its existing customer base that hold products outside of the product supplier group's range. Although the FSCA recognises that risks of inappropriate product replacement need to be mitigated in this model, we do not agree that a relaxation of the "either PSA or RFA" model is necessarily an appropriate way to achieve this. On the contrary, we are concerned that the scenario described risks the very confusion that the rule is intended to address. Please see further discussion in Sections 2.5 and 2.7.

Question for stakeholder input:

Q5. Please provide your views on the FSCA's response to the requests to relax the "either FSA or RFA – not both" approach in respect of -
(a) advisers serving sophisticated or high net worth customers
(b) employee benefits advisers
(c) business transition and continuity.

2.2. Group structures

Both PSA and RFA channels permitted in a group of companies

The "either PSA or RFA" approach does not preclude a group of companies or conglomerate from operating both adviser category models – or even more than one of each channel type - within its group structure. The FSCA confirms that it will be permissible for both PSA and RFA models to operate within the same group of companies, provided they are operated through separate legal entities[5]. This is consistent with our additional proposal that the same financial institution will in future not be permitted to hold more than one FAIS licence of the same licence category.

The FSCA will through its supervisory approach and, if necessary, through appropriate conduct standards, require the applicable governing bodies – at both group and entity level as appropriate – to be able to demonstrate that controls are in place to ensure that:

- The channels are conducted and managed (at an appropriately senior level) as separate and discrete businesses
- Any conflicts of interest arising from the operation of both adviser channels are identified, managed and mitigated
- The advisers and management of the RFA channel are free from bias in favour of the group's products and services.

As part of its supervisory approach, the FSCA will require reporting on the range of products suppliers and product types offered by RFAs, in order to help identify risks of product or product supplier bias. In the case of an RFA forming part of a group of companies that includes product suppliers, this monitoring will in particular include reporting on the proportion of "in-house" products and product suppliers supported. These regulatory reporting requirements will focus mainly on product and product supplier selection at channel level (i.e. across the RFA channel, or across sub-sets of the channel[6]). However, the RFA will be required to have controls in place to monitor product and product supplier selection at individual adviser level and respond appropriately to indications of bias, and to make this data available to the FSCA on request.

The FSCA does not at this stage propose a prohibition on any intra-group funding for the RFA channel[7]. In other words, we accept that the provision of financing to the RFA channel from other group entities (including product suppliers in the group), or the allocation of profit emerging from

[5] Note that a "Division" of a company that is not structured as a legal entity would not meet this requirement.

[6] For example where the channel comprises "sub-channels" for different market segments or different levels of adviser competence.

[7] The same applies to intra-group funding for PSA channels. In the case of both PSA and RFA channels, however, we remind financial institutions that any such funding may not be structured in contravention of the FSCA's prohibition on "sign-on bonuses", or any other remuneration standards that may be prescribed as our future RDR reforms are implemented.

other entities in the group to the RFA channel, does not automatically compromise the objectivity of the RFA channel's advice. However, the FSCA will scrutinise any such arrangements to satisfy itself that they do not directly or indirectly incentivise the RFA channel's management or advisers to promote group products.

Definition of "group of companies"

The above approach to group structures, and other references in this paper and other RDR communications, require a definition of "group of companies". The FSCA proposes to use the definition in the Companies Act, 71 of 2008, namely:

- ***"group of companies"*** *means a holding company and all of its subsidiaries.*[8]

This definition is proposed for consistency with corresponding definitions in the Financial Sector Regulation Act, 9 of 2017 (FSR Act) and sector-specific laws such as the Insurance Act and Banks Act, which also reference the Companies Act definition.

Questions for stakeholder input:

Q6. Please provide your views on the FSCA's proposed approach to:
(a) the requirement that RFA and PSA adviser channels may not operate through the same legal entity
(b) governance controls required for a group of companies to operate both PSA and RFA adviser channels
(c) monitoring of product and product supplier selection for RFA channels
(d) intra-group funding arrangements.

Q7. Do you support the proposed definition of "group of companies" for RDR purposes? Do you have any concerns that adopting the Companies Act definition could have unintended consequences or do you have alternative suggestions for an appropriate definition?

2.3. Provision of advice by juristic representatives

Proposal W of the initial RDR paper disallows the provision of advice by juristic representatives. The proposal was motivated by concerns regarding the undue complexity of these and other "hybrid" distribution models, which compromise both a customer's ability to appreciate the capacity in which advice is provided and to identify conflicts of interest, and also undermine effective oversight by the FSCA. For the reasons elaborated on in Text box 1, these concerns remain.

[8] The terms "holding company" and "subsidiary" would similarly bear their Companies Act definitions.

Text box 1: FSCA concerns regarding the use of juristic representatives (JRs):

- *Investigations of customer complaints relating to JR models indicate lack of effective oversight by the principal FSP. This in turn compromises the FSCA's ability to exercise effective oversight over these providers.*
- *Inadequate maintenance of representative registers by FSPs distorts the numbers of active representatives.*
- *In a number of cases, the JR is a large non-financial services corporate (such as a large retailer or telecoms provider), registered to a substantially smaller FSP entity. It is unrealistic to assume that the FSP can exercise meaningful oversight and control over the JR's conduct in such cases.*
- *In other cases, JR arrangements are entered into between equally substantial entities, such as large banks and insurers, to give effect to joint ventures (such as bancassurance offerings). Again, it is unlikely that in such cases one party will exercise meaningful control or oversight over the conduct of its equally substantial JR counterpart.*

These concerns are exacerbated by steady, significant growth in the number of juristic representatives. The cumulative total of registered juristic representatives has grown from 35 in 2002; to approximately 1000 in 2009; and now to over 4000 in 2019.

Of these juristic representatives, approximately one quarter of them provide intermediary services only, with the balance providing both advice and intermediary services or advice only.

Conditions for allowing a PSA to operate as a juristic representative

A practical consequence of the initial proposal W, together with the proposal that a PSA must be authorised to provide advice through the licence of a product supplier, would therefore be that a PSA channel cannot be structured as a juristic entity within the product supplier group and that all PSAs would have to be natural persons acting directly as the representatives of the product supplier concerned. Cogent arguments were made by product supplier groups that this constitutes unwarranted interference in legitimate corporate structuring arrangements, which do not give rise to the risks that motivated Proposal W.

In view of these arguments, the FSCA previously advised that we are considering partially relaxing Proposal W to permit a PSA channel to operate as a separate juristic entity, subject to certain conditions. However, further inputs were received motivating that the same corporate structuring arguments are applicable to RFA groups, and that relaxation of Proposal W should not be limited to PSA structures. Arguments were also raised that, in the advice space, juristic representative models enabled financial advisers with a financial interest in the juristic entity, to adopt a more entrepreneurial approach to their activities than in the case of more traditional "employee like" agency models.

The FSCA is therefore now inviting comment on potential relaxation of Proposal W, to allow advice to be provided by juristic representatives of either a PSA or an RFA, subject to the following conditions:

- The juristic representative entity must be a subsidiary of the holding company of the group of companies concerned or a subsidiary of one or more licensed financial institutions in the group of companies.
- Only one or more financial advisers forming part of the juristic representative entity may jointly hold a minority interest. No other shareholding or financial interests will be permitted. Arrangements must be in place to ensure transfer of adviser ownership or interests to remaining shareholders and / or to other advisers forming part of the juristic representative entity in the event of any such adviser ceasing to be part of the entity.
- The juristic representative entity must, in all its business documentation and advertising or marketing material, display the name and brand of the financial institution or group of whom it is a representative (the principal's brand). Where the group has multiple entities or brands whose offerings the entity markets, the entity must use the brand or brands that will most effectively enable financial customers to understand which entity/ies it represents. The juristic representative entity will also be permitted to have its own name and brand, provided that the name and brand of its principal is always used together with and displayed at least as prominently as the name and brand of the juristic representative.
- The juristic representative entity must be subject to all applicable group governance and risk management policies and procedures, including those applicable to access to and management of customer data.
- In the case of a juristic representative entity operating as a PSA, all other limitations and standards applicable to PSAs will apply. These include the limitation of advising on the group's own products and services only (product "gap filling" limitations), requirements relating to use of leads or referrals, and product supplier accountability and governance requirements. (See Section 3).

The FSCA's current thinking is that the above restrictions will strike a balance between allowing flexible corporate structuring and adviser ownership, while addressing our concerns regarding inappropriate use of juristic representative models between unrelated parties to avoid regulatory governance and oversight obligations.

The FSCA is aware of cases where juristic representatives are currently authorised to provide advice in relation to funeral insurance policies. The juristic representative model is typically adopted in these cases because the entities concerned face challenges in meeting the licensing requirements to operate as RFAs (currently FSPs) in their own right. The FSCA is reviewing the appropriateness of the licensing requirements for these types of providers as part of its broader aim to support inclusion and appropriately proportional frameworks in this area. Together with this review, we will also consider the impact and feasibility of imposing the above restrictions on the use of juristic representative models on these providers before taking a decision on whether to implement them in this sector. There are currently approximately 800 juristic representatives registered to provide financial services (advice and / or intermediary services) in respect of funeral and assistance business only and which would therefore potentially be affected by the above proposals.

Sole proprietors acting as representatives

Some product suppliers (and other FSPs) have advised the FSCA that they have appointed intermediaries who operate as sole proprietors, as juristic representatives. As a sole proprietor is not a juristic entity, but simply a natural person operating a business, it is unclear to the FSCA how such persons can be regarded as juristic representatives. The FAIS fit and proper requirements define a juristic representative as a representative that is ***not*** a natural person; and define a sole

proprietor, in relation to an FSP, as an FSP (not a representative) that *is* a natural person[9]. The FSCA therefore does not believe that the FAIS regulatory framework contemplates sole proprietors being juristic representatives. We will engage with the FSPs concerned to ensure appropriate classification of these representatives.

In addition, the FSCA has for some time been concerned that sole proprietorship is not an optimal business model for FSPs. Operating as a sole proprietor can compromise the robustness of the FSP's governance processes (particular where money is handled); presents challenges for business continuity and succession planning in the event of the death or incapacity of the sole proprietor or the termination of the FSP licence for any other reason; and does not provide adequate protection for representatives and employees of the FSP. On the other hand, we recognise that sole proprietorship reduces barriers to entry for individuals wishing to enter the FSP market, and that it would therefore not be reasonable to disallow sole proprietor FSPs altogether. The FSCA therefore intends to consult in due course on introducing risk-based and proportional limitations on the ability of FSPs to operate as sole proprietors.

In light of our concerns regarding sole proprietors operating as FSPs, a further question arises whether it is appropriate or necessary for PSAs to be structured as sole proprietors[10] at all (even if not regarded as juristic representatives). It is unclear to the FSCA what the advantages of such an approach would be to advisers or product suppliers, as opposed to simply appointing the PSA as an ordinary natural person. We invite input on this.

Questions for stakeholder input:

Q8. Do you agree that PSAs should be permitted to operate as juristic entities? If not, why not?

Q.9. Do you agree that the use of juristic representatives should also be permitted in RFA distribution models? If not, why not?

Q10. Please provide your views on the proposed limitations on shareholding / control of a juristic representative. If you disagree with the proposed limitation, please provide your suggestions on appropriate ownership and control of these entities.

Q11. Please provide your views on the FSCA's proposals regarding naming and branding of juristic representatives.

Q12. Please provide your views on the FSCA's approach to sole proprietors acting as representatives. Do you believe there are any specific advantages to either advisers or product suppliers in allowing a PSA to operate as a sole proprietor?

2.4. Non-advice distribution models

PSAs providing intermediary services in addition to advice

[9] See definitions of "juristic" and "sole proprietor" in the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 (BN 194 of 15 December 2017).

[10] For example by operating under their own business name; appointing their own support staff; and / or appointing or managing other representatives

To date, RDR proposals regarding adviser categorisation have – by definition - applied only to the provision of advice, not to non-advice ("intermediary services only") distribution channels.

This raises the question whether a PSA, who may provide advice only in relation to its own group's products, would be permitted to provide non-advice intermediary services in relation to "external" products or product suppliers. For example, would a PSA of group A be permitted to offer non-advice sales execution of products of group B? The question arises in relation to both natural person PSAs and juristic PSAs (as contemplated in Section 2.3).

The FSCA's initial view is that it would add undue complexity to licensing and regulatory frameworks to have different levels of product supplier scope for the same entity, depending on whether they are providing advice or an intermediary service. Such an arrangement would also perpetuate the type of "hybrid" advice model that was highlighted as undesirable in the initial RDR paper[11]. We also do not believe that there is significant demand for such a "hybrid" distribution model[12]. Where a product supplier does wish to have this flexibility (i.e. to have a tied advice channel and a non-tied "intermediary services only" channel), our view is that this should be operated through separate juristic entities.

Our current proposal is therefore that a PSA, including a juristic PSA, will be limited to providing both advice and non-advice intermediary services in respect of its home financial group's products only. It follows that any juristic entity acting as a PSA of any product supplier group for advice purposes, will not also be able to provide intermediary services in respect of any other product supplier's products on its own licence. We do however invite input on the implications of this approach.

Retirement benefits counselling

The FSCA has been asked to clarify where the activity of retirement benefits counselling, as defined in the Regulations to the Pension Funds Act, 24 of 1956, would fit into the RDR framework. We confirm that we have no intention of changing the current regulatory status of this activity, being that it entails the provision of certain factual information only and does therefore not entail the provision of advice or the rendering of intermediary services for FAIS purposes. Although retirement benefits counselling may be provided by a person who is also authorised under FAIS for the provision of advice, they would not require any additional FSCA approval to provide the counselling service and the counselling service will not form part of their regulated services. If however a person were to exceed the scope of the definition in the Regulations, and in fact provide advice, they would be subject to the applicable FAIS requirements.

We also confirm that there is no intention to change the current FAIS provision that advice given by the board of management, or any board member, of a pension fund organisation to its fund members on their membership benefits is not regarded as advice for FAIS purposes[13]. (See also the discussion in section 3.1 below regarding the inclusion of retirement funds in the ambit of "group products and services").

Use of juristic representatives in non-advice models

Proposal W of the initial RDR paper, also discussed in section 2.3 above, dealt with using juristic representatives to provide advice. It did not affect the use of juristic representatives in non-advice

[11] See paragraphs 2.3.6, 3.3.4 and 4.2.5 of the initial RDR paper.

[12] We are aware of call centre business models where the call centre acts as a juristic representative for multiple product suppliers for different "sales campaigns", but our understanding is that this typically entails a non-advice execution of sales service.

[13] See section 1(3)(a)(iii)(aa) of the FAIS Act.

models. The FSB did however note in the 2015 Phase 1 Update that concerns remain regarding the quality of governance and oversight being exercised by FSPs operating through these juristic representatives. The FSCA's concerns as set out in Text Box 1 above apply equally to these models.

The FSCA therefore now proposes to extend certain of the controls proposed for juristic representatives providing advice, as set out in section 2.3 above, to also apply to non-advice juristic representative models. We invite comment on applying the following limitations to juristic representatives that do not provide advice – i.e. "intermediary services only" juristic representatives:

- The juristic representative entity must be a subsidiary of the holding company of the group of companies concerned (i.e. the group to whose products or services the intermediary services being provided by the juristic representative relate) or a subsidiary of one or more licensed financial institutions in that group.
- The juristic representative entity must, in all its business documentation and advertising or marketing material, display the name and brand of the financial institution or group of whom it is a representative (the principal's brand). Where the group has multiple entities or brands whose offerings the entity markets, the entity must use the brand or brands that will most effectively enable financial customers to understand which entity/ies it represents. The juristic representative entity will also be permitted to have its own name and brand, provided that such name and brand is always used together with and displayed at least as prominently as its principal's name and brand.
- The juristic representative entity must be subject to all applicable group governance and risk management policies and procedures, including those applicable to access to and management of customer data.

Also note that our views in paragraph 2.3 above regarding the inappropriateness of sole proprietors acting as juristic representatives also apply to non-advice distribution models.

Questions for stakeholder input:

Q13. Do you agree that a PSA should be limited to providing both advice and non-advice intermediary services in respect of its home group of companies' products only? If not, why not? Examples of current business models that would be impacted by this approach will be appreciated.

Q14. Please provide your views on the FSCA's approach to retirement fund benefit counselling for RDR purposes.

Q15. Please provide your views on the proposed limitations for juristic representatives providing intermediary services only. Examples of current business models that would be impacted by this approach will be appreciated.

2.5. Disallowing an adviser from operating on more than one licence

Proposal Y of the initial RDR paper is that advisers may not act as representatives of more than one adviser firm. This remains the FSCA's position, subject to limited exceptions discussed below. A change to the FSCA's standard setting powers is required to give effect to this limitation. Depending on the timing of the COFI Bill legislative process, the necessary change is to be made either through the COFI Bill or an appropriate amendment to the FAIS Act. Once this provision comes into operation, an appropriate regulatory instrument will be consulted on.

Note that Proposal Y only applies to advisers. It does not apply to intermediaries operating only in

the non-advice, “intermediary services only” space.

Exceptions to Proposal Y

The FSCA intends to permit the following exceptions to the Proposal Y limitation:

Exception (a): Adviser development

An adviser will be permitted to act as representative on more than one FSP licence where this is necessary for the adviser to acquire experience for purposes of expanding the range of products they are authorised to advise on.

In practice this exception will apply where:
- the adviser operates as a sole proprietor FSP, or is a representative of an FSP;
- the adviser wishes to start providing advice on a product category that he or she is not currently authorised to advise on;
- the adviser does not have the required experience for the new product category and therefore needs to provide advice under supervision; and
- such supervision cannot be provided under the existing FSP licence because the existing FSP licence does not include authorisation for the product category concerned.

In this case, the adviser concerned will be permitted to be appointed as a representative of an additional FSP that holds the necessary product category authorisation, provided that:
- the adviser renders services under supervision of the new FSP;
- both FSPs must ensure that financial customers are provided with clear information that the adviser acts for both FSPs, which FSP will be responsible for the advice provided in which cases, and the fact that the adviser is under supervision in respect of the product/s concerned;
- the adviser will only be permitted to be a representative of both FSPs for the duration of the prescribed supervision period – thereafter the Proposal Y limitation will come into effect and the adviser will only be permitted to operate on one FSP’s licence; and
- this dispensation remains subject to the “either PSA or RFA – not both” rule. In other words, this dispensation is only available where both of the FSPs concerned are RFA channels – it is not available to advisers operating as PSAs[14].

Exception (b): Group structures

In cases where a group of companies comprises more than one FSP, individual advisers will be permitted to be appointed as representatives on more than one FSP licence within the same group. This remains subject to the “PSA or RFA – not both” limitation. Where a group has both PSA and RFA channels, no adviser may operate in both capacities.

Impact of Proposal Y

The FSCA has analysed FAIS authorisation records to assess how many individuals are appointed as representatives on more than one FSP licence, to gauge the potential impact of implementing Proposal Y. Our records show that approximately 8 700 representatives are registered as representatives of more than one FSP[15]. Of these, over 6000 are representatives of multiple FSPs falling within the same group of companies, and would thus potentially qualify for exception (b) above. Note however that the “either PSA or RFA – not both” limitation discussed in paragraph 2.1

[14] This is because (subject to the possible “multi-tie” exception discussed in section 7 below) a PSA can in any event not act for more than one product supplier group.

[15] Note however that these numbers do not distinguish between representatives authorised for advice or for intermediary services, or both.

would still apply.

In light of this data, we believe that implementation of Proposal Y will appropriately achieve our intended purpose of reducing unduly complex and potentially conflicted business models, without unduly disrupting business models that do not trigger these concerns.

Extending Proposal Y to key individuals

The FSCA has for some time been concerned regarding the extent to which key individuals of FAIS licensed FSPs (KIs) are in fact effectively performing their regulated functions. Concerns include: So-called "rent a KI" practices, where individuals with the requisite qualifications are appointed as KIs of FSPs with which they do not have any actual business relationship and do not in fact provide meaningful KI oversight; and instances where the same individual is appointed as KI for multiple FSP licences, to the extent that it is not meaningful to exercise effective oversight over the number of representatives ad range of activities concerned.

These concerns have been mitigated to a degree through a provision in the FAIS Fit and Proper standards requiring a KI who acts as such for multiple FSPS to have the required operational ability to adequately oversee all such FSPs.[16] However, the FSCA believes that extending the ambit of Proposal Y to KIs would further mitigate risks of ineffective KI oversight.

We therefore propose that a KI should be disallowed from being appointed as KI for more than one licensed FSP. Similarly to our approach in respect of representatives on multiple licenses, an exception to this limitation will be considered for group structures, so that where a group of companies comprises multiple FSPs, the same individual will be eligible to be appointed to more than one FSP in the group[17]. Despite this exception, we propose that where a group of companies includes both PSA and RFA advice channels, the same KI should not be able act for both channels. This is consistent with our the position we have set out in section 2.2 above, requiring clear distinction between the PSA and RFA operations.

Arguments have been presented that a further exception should be made for business continuity and succession planning, where a KI of one FSP (FSP A) is appointed by another FSP (FSP B) as an additional KI, so that FSP B's KI can "step into the shoes" of FSP A's KI if that KI is no longer able to perform their duties for any reason. The argument is that such an arrangement will avoid disruption of FSP A's business in the event of the unavailability of its initial KI. The FSCA's concern with this arrangement is that, unless or until FSP A's initial KI in fact becomes unavailable, the additional KI (FSP B's KI) is typically not in practice performing the necessary KI management and oversight of the activities of FSP A. Accordingly, it is not appropriate for them to be recorded as a KI of FSP A. On the other hand, we do recognise that the unexpected unavailability of a suitably qualified KI can cause significant disruption to an FSP's business. The FSCA will therefore consider a dispensation where an FSP may notify the FSCA that it has entered into a business continuity arrangement with another individual who meets the necessary fit and proper requirements to be appointed as a KI of the business – in effect a "reserve KI". This "reserve KI" would not yet be appointed as KI of the FSP, but the FSCA would grant an "in principle" pre-approval of that person, allowing their actual appointment as a KI to be "fast tracked" in the event of the existing KI's services becoming unavailable.

[16] See section 42(2) of BN 194 of 2017 (Determination of Fit and Proper Requirements for Financial Services Providers, 2017)

[17] The FAIS Fit and Proper controls referred to above would of course still apply.

Questions for stakeholder input:

Q16. Please provide your views on the FSCA's proposed exceptions to Proposal Y in respect of -
(a) adviser development
(b) group structures
(c) any other exceptions that should be permitted, with reference to actual business models that would be impacted if such an exception were not permitted.

Q17. Please provide your views on the proposed extension of Proposal Y to key individuals, including the proposed exception for group structures. Do you foresee any unintended consequences of disallowing a KI from acting for more than one FSP?

Q18. Please provide your views on the feasibility of a possible "reserve KI" dispensation for business continuity purposes. Do you foresee any unintended consequences?

2.6. Licensing / authorisation implications

Licensing in the future COFI Act framework

The COFI Act will introduce an activity-based licensing framework under which each financial institution will hold a conduct licence[18], which will in turn authorise the financial institution to perform one or more specifically defined activities. One of these defined activities is "advice"[19]. The COFI licensing framework will therefore require any entity that provides advice (as defined) to be authorised for that activity. Another defined activity will be "providing a financial product".

From an adviser categorisation perspective, a product supplier that appoints PSAs to provide advice on its behalf will require a COFI licence authorising that product supplier for both the activities of providing a financial product and advice. The individual PSA advisers will not hold their own COFI licence, but will operate as representatives on the advice licence of the product supplier. The same will apply where the PSA is structured as a juristic representative of the product supplier, where permitted (see paragraph 2.3 above).

In light of our proposal that certain service providers (for example discretionary investment managers – see paragraph 3.1 below) should also be permitted to appoint PSA's, such providers will similarly need to hold a COFI licence authorising them both for advice and for any other financial service they perform (for example discretionary investment management). For purposes of this paragraph, all references to product suppliers operating PSA advice models should also be read to include a discretionary investment manager (i.e. a Category II or IIA FSP) or potentially a LISP platform provider (Category III Administrative FSP).[20]

An entity operating as an RFA will require its own COFI licence, with authorisation for the activity of advice.

[18] Note that the COFI licence will be required in addition to any other licence that may be required by another regulatory authority (such as the Prudential Authority or the National Credit Regulator) under sector specific laws.

[19] Also note that the proposed definition of "advice" in the draft COFI Bill is somewhat wider than the current FAIS Act definition.

[20] The question whether LISP platform providers could potentially appoint their own tied advisers has been put to stakeholders in the separate document *RDR: Second Discussion Document on Investment Related matters*, also published in December 2019.

Further detail of the adviser categorisation implications of the COFI licensing framework will be consulted on as that framework evolves.

Implications for the current FAIS licensing framework, pending implementation of the COFI framework

Pending the enactment of the COFI Bill and its overarching conduct licensing framework, the FSCA is considering how the current FAIS licensing framework can be adapted to give effect to some or all of the adviser categorisation proposals.

The current FAIS framework would need to be adapted to provide for:

- The particular adviser category an FSP will be operating in. An applicant for an FSP licence for advice will need to indicate whether it intends to operate a PSA advice model or an RFA advice model. As discussed in more detail in paragraph 2.1, the same entity will not be able to act as both.
- Whether the FSP is also a product supplier. The current FAIS framework does not differentiate between FSPs that are also product suppliers, and those that are not. In order to be able to differentiate between RFA and PSA models, an indicator to this effect in the FSCA's records would be necessary[21].

Specific FAIS licensing requirements for PSA advice models

The following specific additions would need to be made to the FAIS licensing framework to accommodate PSA advice models:

- Only an FSP that is also a product supplier[22] will be eligible to operate a PSA advice model.
- The individual advisers that will be acting as PSAs for the product supplier will need to be registered on the product supplier FSP's representative register. Representative registers will also need to be adapted to include an RFA / PSA indicator.
- The product supplier FSP will be required to identify at licence application stage any other product suppliers or service providers in its group in respect of whose products or services the PSA representatives will be providing advice. The product supplier will need to keep the FSCA informed of any changes in this regard. Such representatives will be limited to providing advice and intermediary services in respect of products and services provided by the identified group entities only (see more detail in Section 3).
- It follows that the PSA representatives will on an ongoing basis need to meet all applicable fit and proper requirements in relation to the group products and services concerned.
- A requirement for the product supplier FSP to provide details of the governance arrangements in place in its group of companies to ensure that all applicable product suppliers take appropriate responsibility for the advice provided by the PSA representatives.
- Where the product supplier intends allow its PSAs to refer financial customers to other product suppliers or RFAs, details of the governance arrangements for such leads or referrals (as discussed in paragraph 3.2.)

[21] Such an indicator would also be generally useful to assist the FSCA in identifying and monitoring potential conflicts of interest arising from intra-group relationships.

[22] Or, as indicated above, certain service providers.

FAIS licensing requirements for RFA advice models

The licensing requirements for an FSP to operate an RFA advice model will be similar to the current FAIS Category I licensing framework, supplemented by the additional general requirements discussed in the next paragraph.

General RDR implications for the FAIS licensing framework

Additional matters that will need to be addressed through the licensing framework in light of our RDR adviser categorisation proposals include:

- Appropriate information to ensure that the same FSP will not operate both PSA and RFA advice models.
- Evidence of appropriate controls to ensure that representatives and key individuals do not operate on more than one FAIS licence, subject to permissible exceptions (see paragraph 2.5 above).
- Where the FSP is part of a group of companies including both PSA and RFA advice models, evidence of appropriate governance arrangements to manage potential conflicts of interest (see paragraph 2.2 above).
- Where the FSP intends to appoint a juristic representative, information to confirm compliance with the limitations discussed in paragraphs 2.3 or 2.4 above (for advice based and non-advice distribution models respectively).
- Obligations on FSPs to advise the FSCA and update relevant records when details applicable to the various adviser categorisation requirements discussed in this Section change.
- Additional licensing categories, and related fit and proper requirements, as a result of the proposed new investment managements sub-activities proposed in the FSCA's *RDR: Second Discussion Document on Investment Related Matters*, also published in December 2019.[23] [24]

Appropriate transitional arrangements will be consulted on in due course, where necessary, to allow existing FAIS licensed FSPs to conform to any new licensing frameworks – whether imposed through amendments to the FAIS licensing framework or through the future COFI licensing framework.

Question for stakeholder input:

Q19. Please let us know if you have any comments on the licensing implications of the RDR adviser categorisation framework. Are there any additional licensing implications that you would like to bring to the FSCA's attention?

2.7. Changes in contractual relationships

The adviser categorisation model put forward in this document has implications for advisers who change their contractual relationships with the advice firms and / or product suppliers they

[23] This will be required if the proposals in that Discussion Document are implemented in the current FAIS framework.

[24] Note that the use of the designations "financial planner" and "independent" will be subject to the criteria discussed in Sections 4 and 5 respectively, but will not constitute new licensing categories.

represent, and the resultant services they offer their financial customers. Particular questions arise around the extent to which advisers who change their contractual relationships will be able to continue to service existing customers and around their entitlement to ongoing remuneration.

Remuneration implications recognise the underlying RDR principles for intermediary remuneration as set out in the initial RDR paper.[25] These principles include (but are not limited to) requirements that remuneration must be reasonable and commensurate with the services rendered; that ongoing remuneration should only be payable if ongoing services are rendered; and that remuneration should not be paid twice for the same service.

In addition, advisers are reminded of the pending change to the FAIS General Code of Conduct confirming that, where an adviser is unable to identify a suitable financial product due to contractual limitations, the adviser must make this clear to the customer, decline to recommend a product, and suggest to the customer that they should seek advice from another appropriately authorised adviser[26]. This is particularly relevant to advisers switching to, or switching between, PSA channels.

Also note that in all the scenarios discussed below the existing obligations imposed on FSPs by s.20(c) of the FAIS General Code of Conduct to consult with and notify affected customers and product suppliers when a representative stops acting for them, will also apply.

Various contractual relationship change scenarios need to be considered:

Scenario 1: PSA becoming a PSA of a different product supplier

An individual PSA[27] will typically be an employee or mandated agent of a product supplier. In light of our RDR proposals, PSAs are only permitted to provide advice on the products and services of the home product supplier and its group of companies[28]. If the adviser ends their PSA relationship with a product supplier to instead become a PSA of a new product supplier that is not part of the former supplier's group of companies, it follows that the adviser will no longer be able to provide advice on the former supplier's products, and will now be limited to advising only on the new product supplier's (and its group's) products.

What does this mean for the adviser's ability to continue servicing existing customers who still hold the former supplier's products? The FSCA's current thinking is as follows:

- The adviser should be able to continue accessing factual information on the existing products from the former product supplier, regardless of the termination of the PSA relationship[29]. This

[25] See page 47, paragraph 4.3 of the initial RDR paper.

[26] See new section 8(1)(cA) of the FAIS General Code of Conduct.

[27] In current frameworks, this refers to an individual representative (as defined in FAIS) of an FSP that is a product supplier. In the insurance sector, these representatives are typically also representatives (as defined in the LTIA or STIA) of the insurer concerned.

[28] See further discussion on the "gap filling" limitation in section 3 below. Also note that, in the case of long-term insurance policies, this limitation is already in place due to recent tightening of the LTIA Regulations.

[29] In the case of insurance policies, this information access is provided for by Rules [insert references] of the Policyholder Protection Rules. Similar provisions would be required for other types of product suppliers.

will assist the adviser in being able to take the existing product features into account when providing advice to the customer on their overall product portfolio.

- The adviser will not however be permitted to provide actual advice in relation to the existing products. The adviser will therefore not be permitted to recommend additional transactions (for example an increase in cover) in relation to the existing products.
- Currently, the adviser would also be precluded from recommending a replacement of the existing product, as this would by definition constitute providing advice on the existing product – which the PSA would not be permitted to provide. The FSCA will consider a dispensation whereby a replacement recommendation may be based on the provision of factual information regarding the replaced product, including information regarding the extent to which an existing product may be amended rather than replacing it, without constituting provision of actual advice on the replacement product. Advisers are reminded however of the rigorous replacement disclosure requirements (including the requirement to provide reasons why the replacement product was considered to be more suitable than retaining or modifying the terminated product) and replacement controls provided for in pending changes to the FAIS General Code of Conduct[30], and in the case of long-term insurance policies, in the Policyholder Protection Rules and LTIA Regulations.
- PSAs who make this type of shift between product suppliers will be required to clearly explain the implications of the change to their existing customers, including explaining that they should consider carefully whether they require the services of a different adviser in relation to their existing products.

From a remuneration perspective, movement of a PSA from one product supplier to another would have the following implications:

- Where any ongoing product supplier commission was payable on the existing products, this commission flow should cease on termination of the PSA's contract with the former product supplier. This is consistent with the principle that ongoing remuneration should be reasonably commensurate with services rendered and that ongoing remuneration should only be provided for ongoing services.
- It is our understanding that, in practice, most intermediary contracts already currently provide for termination of ongoing commissions in these cases[31]. Our proposal would be to make such a provision mandatory in all PSA agreements. Where any existing intermediary agreements provide for ongoing commissions to be payable after cessation of the intermediary agreement, these will need to be phased out appropriately.
- As the adviser will no longer be able to provide advice on the existing products, it follows that any ongoing advice fees in respect of those products would also cease[32]. Where the product supplier had been facilitating the deduction of advice fees, the product supplier will be required to stop such deductions immediately on termination of the advice fee, and advise the customer accordingly.

[30] See new definition of "replace or replacement" and new section 9(1A) of the FAIS General Code of Conduct.

[31] This is in particular common practice in the insurance industry, where commission-based remuneration is most common.

[32] Currently, the Regulations governing commission on insurance policies do not provide for advice fees. In the case of insurance, this bullet point would therefore become applicable once such advice fees are provided for in the regulatory framework.

- The FSCA is aware of arrangements where product suppliers agree with one another to allow PSAs to "keep open" their intermediary contracts with the former product supplier, in order to allow the adviser to continue earning ongoing commissions from existing products. Such arrangements are inconsistent with the remuneration principles described above, and with the requirement that an adviser may not operate through more than one licence. These arrangements will therefore be disallowed.

Scenario 2: PSA becoming a representative of an RFA

Where an adviser terminates its PSA relationship with a product supplier and becomes a representative of an RFA[33], the product range restrictions previously applicable to the adviser will fall away. Instead, the adviser will now be able to provide advice in respect of whatever products the new RFA firm is authorised to provide advice – subject of course to the adviser also meeting any applicable Fit and Proper competency requirements and also subject to any contractual limitations in the agreement between the individual adviser and the new RFA firm.

Our view of the practical consequences of such a change in respect of existing customers is as follows:

- Subject to the same provisions as apply in Scenario 1, the adviser should be able to continue accessing factual information on the existing products from the former product supplier, regardless of the termination of the PSA relationship.
- Unlike Scenario 1, the adviser will be permitted to provide further advice to customers on the existing products – provided of course the necessary product authorisations and adviser competency requirements are in place. It follows that the adviser will also be permitted to provide replacement advice in respect of the existing products, subject to all applicable replacement related requirements.
- Practical challenges to providing advice on the existing products may however arise where the new RFA firm / FSP that the adviser joins does not have an intermediary agreement with the former product supplier[34]. In particular, in order to provide advice on the existing products, the adviser will need to ensure that their product specific training on the products concerned remains up to date as required. This will require the adviser and its new RFA / FSP to make appropriate arrangements with the product supplier or otherwise to attain such competence, notwithstanding the lack of an intermediary agreement.

From a remuneration perspective:

- The payment of ongoing product supplier commission on the existing products would not be prohibited. In the case of insurance products, this would be subject to the adviser's new RFA /

[33] In current framework, this would occur where a representative of an FSP that is a product supplier and operates on a "tied" advice basis, instead becomes a representative of another FSP that is authorised to provide advice on the products of multiple product suppliers (i.e. that does not operate on a "tied" basis).

[34] This situation may, in particular, arise in respect of the distribution of insurance policies, where the Policyholder Protection Rules require the insurer to enter into an intermediary agreement with any intermediary providing services as intermediary in relation to the insurer's policies. Also note s.13(1)(c) of the FAIS Act, which requires contracts in relation to financial services to be entered into in the name of the FSP concerned, not its representative.

FSP entity having an intermediary agreement with the insurer concerned. Absent such an agreement, ongoing insurance commission flows would cease.

- The entitlement to any ongoing commission would however lie with the new RFA / FSP firm, as this is the level at which the intermediary agreement must be in place – not at the level of the individual adviser[35]. The extent to which the adviser itself receives such ongoing commissions is a matter to be contracted between the adviser and RFA / FSP as its principal.
- It must also be noted that the Regulations under the Long-term Insurance Act have specific provisions regarding redirecting of commissions on insurance investment policies.[36] In terms of these, a policyholder may at any time instruct the insurer to stop paying further commission on these policies, provided the policyholder also instructs the insurer to redirect those ongoing commissions to either an independent intermediary (RFA) nominated by the policyholder; a representative of the insurer (PSA) nominated by the policyholder; or a representative of the insurer nominated by the insurer to provide ongoing services to the policyholder[37]. In all these cases, the PSA or RFA to whom the commission is redirected must have an intermediary agreement with the insurer. Accordingly, as the Regulations currently stand, in the scenario where a former PSA becomes a representative of an RFA, the customer could use this mechanism to enable commission on an existing investment policy to continue being paid to the adviser, via the adviser's new RFA firm, provided the new RFA firm has an intermediary agreement with the insurer concerned.
- The FSCA's current thinking is that the Regulation referred to in the preceding bullet point is unduly restrictive and inconsistent with our RDR principle that ongoing remuneration should be coupled with an ongoing service. It is feasible that the policyholder may no longer receive or require ongoing service from an intermediary in relation to their policy, and should therefore be able to instruct the insurer to stop paying ongoing commissions – rather than limiting them to redirecting the ongoing commissions to a new intermediary whose services that may not want or need. An appropriate transition period will be consulted on to phase out existing arrangements.[38]
- The proposal in the preceding bullet point raises a further question: Why should a policyholder's ability to redirect or stop commission flows be limited to investment policies? We therefore invite input on a possible further amendment to the applicable Regulations for all types of insurance policies where ongoing commissions are payable (including both long-term and short-term insurance policies), to allow the policyholder to instruct the insurer to either redirect ongoing commissions to another intermediary or to stop paying them altogether. In such a case, redirection to another intermediary would only be permitted where the new intermediary is a PSA of the insurer or an RFA firm that has an intermediary agreement with the insurer, and where the policyholder has consented to receiving service from any specific individual who may receive some or all of the redirected commission flow.

[35] See footnote 21.

[36] See Regulation 3.16 of the LTIA Regulations. These provisions do not only apply when contractual changes to the status of an intermediary take place (policyholders can exercise their commission redirection rights at any time).

[37] Note that the Regulations do not provide for the option to redirect commissions to an adviser who becomes a representative of another insurer.

[38] Once RDR Proposal MM, prohibiting the payment of product supplier commission on investment products, is implemented, this scenario will no longer be applicable for investment products – other than in the case of the proposed special dispensation allowing commissions to remain payable on certain investment products in the low-income market (RDR Proposal TT).

- To the extent that the original adviser is able to provide ongoing advice on the existing products (which would include replacement advice), it follows that they are also entitled to receive ongoing advice fees in respect of those products[39]. Again, however, the advice fee arrangement, although based on advice provided by the individual adviser, is entered into between the customer and the RFA / FSP concerned.
- Where any advice fee arrangement existed under the former PSA relationship, this arrangement would similarly have operated between the customer and the former product supplier (in its capacity as the adviser's principal). Accordingly, on termination of the PSA relationship, the payment of any further advice fees will need to be renegotiated with the customer. The product supplier would be required to cease the facilitation of any further advice fees unless and until it receives new instructions from the customer.
- In the event that the customer instructs the product supplier to maintain advice fee payments to the adviser (now via the new RFA firm), the product supplier will be required to do so.

Scenario 3: Representative of an RFA becoming a PSA

This scenario has similar implications for existing customer relationships to Scenario 1:

- The adviser will no longer be able to provide advice on any existing products held by customers, unless those products are products of the new product supplier (or its group of companies) that has appointed the adviser as its PSA.
- The adviser will however be able to continue accessing factual information on existing products of other product suppliers, to a similar extent as for Scenario 1.
- The position in respect of providing advice to replace any existing products of other product suppliers will be similar to that in Scenario 1.
- Also as for Scenario 1, advisers who make this type of shift from an RFA advice model to a PSA advice model, will be required to clearly explain the implications of the change to their existing customers, including explaining that they should consider carefully whether they require the services of a different adviser in relation to their existing products held with other product suppliers.

Remuneration implications for this scenario however differ somewhat from those in Scenario 1:

- Any ongoing product supplier commissions in respect of existing products would continue to be payable to the adviser's former RFA firm (FSP), as the intermediary arrangement with the product suppliers concerned operates at RFA firm level, not as between the product suppliers and the individual adviser. (However, see our request for input under Scenario 1 on the possibility of allowing the policyholder to instruct the insurer to stop or redirect ongoing commissions. Note though that any ability to redirect commission will in any event not apply to the original adviser in this Scenario 3, as they will not be able to render services in relation to the existing policy due to their PSA status – unless the last bullet point in this list applies).
- The individual adviser would no longer be entitled to ongoing product supplier commissions on the existing products[40]. The FSCA is aware of arrangements where product suppliers agree to

[39] This is subject to the current restriction on payment of advice fees for insurance policies.

[40] Unlike Scenario 4 below, the parties concerned would not be able to contractually agree to the adviser continuing to earn these commissions, as the PSA product restrictions will preclude the adviser from being able to provide any ongoing services in exchange for this commission.

allow newly appointed PSAs to "keep open" their former RFA licences (existing FAIS FSP licences) in order to allow the adviser to continue earning ongoing commissions from existing products through that otherwise "dormant" licence. Such arrangements are inconsistent with our RDR remuneration principles regarding reasonably commensurate remuneration and that ongoing remuneration is not permitted without an ongoing service being provided. They are also inconsistent with the requirement that an adviser may not operate through more than one licence. These arrangements will therefore be disallowed.

- In line with our RDR remuneration principles the former RFA firm will, in order to remain entitled to the ongoing product supplier commissions, need to ensure that it indeed provides the requisite services to the customers concerned – typically through appointing a new representative to service such customers. The FSCA also proposes that, in such a case, the payment of ongoing product supplier commissions to any new representative should be subject to the customer's explicit consent.
- As the previous individual adviser will be precluded from providing advice on any existing products of suppliers outside its (new) product supplier group, it follows that the individual adviser will no longer be permitted to earn any ongoing advice fees in respect of such existing products. Customers will however be free to appoint another adviser (including another representative of the new RFA firm) to receive ongoing advice fees on these existing products – provided of course ongoing advice is in fact provided.
- In this Scenario 3, it is possible that some of the existing products concerned are already products of the product supplier that has now appointed the adviser as its PSA[41]. In this case the adviser is able to continue servicing these customers, as the "gap filling" prohibitions will not apply. Customers will therefore be able to authorise the payment of ongoing advice fees to the PSA for such existing products – always assuming ongoing advice is in fact provided. Where ongoing product supplier commission on these existing products is concerned, the product supplier would currently typically be contractually obliged to continue paying such commission to the adviser's former RFA (see first bullet point above). However, if we were to proceed with a possible proposal that the policyholder be able to instruct the insurer to either stop or redirect ongoing commissions, the policyholder could invoke the commission redirection Regulations discussed under Scenario 2, in order to redirect ongoing commissions to the newly appointed PSA. Any resulting contractual disputes would need to be resolved between the product supplier, the PSA and the RFA firm.

Scenario 4: Representative moving from one RFA to another

This scenario is relatively less complex than Scenarios 1 to 3 as the regulatory product limitations imposed on PSAs in those scenarios do not come into play. More particularly:

- The adviser can continue serving and advising existing customers on existing products (including providing replacement advice), subject only to the new RFA firm holding the necessary FAIS product authorisations and any applicable contractual limitations imposed on the adviser by the new RFA.
- Practical challenges to providing advice on the existing products may however arise where the new RFA firm / FSP that the adviser joins does not have an intermediary agreement with the former product supplier – see discussion of this point under Scenario 1.

[41] This is highly probable, as a product supplier is more likely to recruit an RFA adviser to become its PSA where such adviser already supports that product supplier's products and they have an existing shared customer base.

- Currently, product supplier commissions on existing products will typically continue to be contractually payable to the adviser's former RFA firm, as this is the level at which the contractual arrangement with product suppliers operates, as explained in the other scenarios. Again, this presupposes that the former RFA continues to provide the requisite services to customers.
- However, notwithstanding the preceding bullet point, if we were to proceed with a possible new proposal that the policyholder be able to instruct the insurer to either stop or redirect ongoing commissions, the policyholder could invoke the commission redirection Regulations discussed under Scenario 2, in order to redirect ongoing commissions to the individual adviser via the new RFA entity – provided the new RFA entity has an intermediary agreement with the insurer/s concerned.
- To the extent that the adviser is able to provide ongoing advice on the existing products, it follows that they are also entitled to receive advice fees in respect of those products. Again, however, the advice fee arrangement, although based on advice provided by the individual adviser, is entered into between the customer and the new RFA / FSP concerned.
- As for Scenario 2, where any advice fee arrangement existed under the former RFA relationship, this arrangement would similarly have operated between the customer and the former RFA firm. Accordingly, on termination of the former RFA relationship, the payment of any further advice fees will need to be renegotiated with the customer. The former RFA will not be entitled to continue to earn advice fees on existing products unless or until it has appointed another of its representatives to advise the customer concerned, and the customer has agreed to ongoing payment of the advice fee to that new representative. The former RFA will need to engage with the product supplier/s concerned to ensure that it does not receive any ongoing advice fees unless and until such new advice fee arrangements with the customer are in place.
- Alternatively, the customer may elect to continue receiving advice from the previous adviser. In this case, the customer will need to enter an advice fee contract with the adviser's new RFA firm. Where the advice fees are to be facilitated by a product supplier, the new RFA firm will be required to pass the advice fee authorisation on to the product supplier, who will then need to pay future ongoing advice fees in accordance with the new authorisation.

Customer consent

All of the above contractual change scenarios entail a change in the advice licence (currently FAIS FSP licence) under which the adviser operates. Accordingly, assuming the adviser concerned intends to continue providing advice to existing financial customers, this will in effect require the customer concerned to agree to be served by the new entity (currently an FSP) the adviser is now acting for – being either a product supplier (for tied / PSA models) or an RFA firm (for non-tied / RFA models).

Each individual customer will therefore need to give formal informed consent to such a change. The FSCA also proposes that, where some or the entire advice fee is payable to an individual adviser (in accordance with an agreement between the RFA firm and its individual adviser), the customer must consent to that particular adviser receiving the remuneration concerned. As indicated in the various scenarios outlined in this Section, customer consent should also be required for any payment of ongoing product supplier commission flows to a new individual intermediary.

However, in instances where the entities concerned satisfy the FSCA that the contractual change and / or change in advice licence concerned was driven primarily by regulatory requirements (i.e. required mainly as a result of our RDR reforms), the FSCA will consider a pragmatic dispensation to allow such customer consent to be obtained on an appropriate "bulk" basis. Any such dispensation would need to satisfy the FSCA that the customer is afforded the opportunity to make an informed

decision regarding any change in the legal entities they are dealing with.

Where advice fees will be payable to the adviser in their new contractual capacity, it will also be necessary for the advice licence holder / FSP and the customer to enter into the necessary advice fee contract and authorisation.

Insurance product pricing implications

The FSCA has for some time been concerned about the current practice of both life and non-life (long-term and short-term) insurers in some cases continuing to include the cost of intermediary commissions in product charges, where no commission is actually payable to any intermediary in respect of the policy concerned. This practice takes different forms: In some cases, premiums are calculated on the assumption that commission (presumably at maximum regulated levels) will be payable in respect of the policy, regardless of whether any commission is in fact paid on the policy, and where commission is paid, regardless of the actual level of commission paid. In other cases, premiums are calculated taking into account the actual commission levels initially payable when the policy is entered into, but are not adjusted when ongoing commissions on the policy cease to be payable – for example because the intermediary agreement between the insurer and the intermediary concerned has been terminated. The practical effect is that customers carry the cost of these commissions, directly or indirectly, even where the insurer does not in fact incur such cost. Some critics of the practice have described it as "the insurer paying commission to itself".

Insurers have defended this practice in various ways. Some have argued that commission costs, as with other operating costs, are spread across the broader book of policies, so that policyholders of policies where full commission is paid effectively cross-subsidise (to varying degrees) those where commission is not paid or less commission is paid. In this way, the impact of commission variations on product pricing – over which variations policyholders do not always have control – is made less variable and volatile. The FSCA has also heard the view that, in cases where the commission earning intermediary's relationship with the insurer ends, the insurer incurs different expenses to service the policyholders concerned, such as making call centre services available to the policyholder. The argument goes that the ongoing charging of commission costs against policies is necessary to cover the cost of these alternative customer service models.

Similar practices apply in respect of insurance binder fees or other outsourcing fees, where product charges include the cost of these fees, but no pricing adjustment takes place when the binder or outsourcing arrangements are terminated or the fees are adjusted.

The FSCA is concerned that these practices are inconsistent with our RDR remuneration principles outlined elsewhere in this document, and are not in line with our expectation that all product charges, including the purpose and recipient of the charge, should be transparent to financial customers. The FSCA there intends to carry out a fact-finding exercise to fully understand the extent and impact of these practices, with a view to deciding whether they should be prohibited or made subject to other regulatory controls.

Implications for investment advisers

In the FSCA's separate document, *RDR Second Discussion Document on Investment Related Matters*, also published in December 2019[42], we have proposed that the future regulatory framework should cater for distribution models where an adviser is "tied" to an investment manager – in other words to recognise that it is possible for an investment manager to appoint a PSA to provide advice on its behalf. In such a model, the adviser would be able to recommend the entering into of a discretionary investment mandate with an investment manager in its own group of

[42] Please see that Discussion Document for further details.

companies, in addition to the products of any product supplier in the group. The document also requests feedback on the possibility of advisers acting as PSAs to a LISP investment platform[43].

The implications of the contractual change scenarios discussed above in the investments space will require further consideration once stakeholder responses to proposals in the *RDR Second Discussion Document on Investment Related Matters* have been received and reviewed.

Contractual arrangements

The FSCA will develop, and consult on, appropriate regulatory instruments – where necessary – to deal with the implications of contractual changes such as those in the scenarios above. Provided they do so within any applicable regulatory constraints, product suppliers, RFA entities and individual advisers will remain free to deal with the practical and commercial implications of the above types of scenarios through contractual arrangements between them. The FSCA will however seek to ensure that the regulatory framework will not allow regulated entities to enter into contracts that have the effect of unreasonably limiting.

- A customer's freedom of choice in relation to who they wish to receive advice from, and who and how they wish to pay for that advice. For example, a contract preventing an individual adviser who terminates their relationship with a product supplier (in the case of a PSA) or with an RFA firm from being entitled to earn ongoing advice fees from previous customers where they would otherwise legally be able to do so will not be acceptable.
- An adviser's ability to offer services to new or existing customers.
- A product supplier (in the case of PSAs) or an RFA firm's ability to protect financial customers against the risk of being serviced by unscrupulous or incompetent individuals.

Questions for stakeholder input:

Q20. Do you agree with the FSCA's summaries of the implications of each of the following contractual relationship scenarios? If not, where do you disagree?
(a) Scenario 1: PSA becoming a PSA of a different product supplier
(b) Scenario 2: PSA becoming a representative of an RFA
(c) Scenario 3: Representative of an RFA becoming a PSA
(d) Scenario 4: Representative moving from one RFA to another.

Q21. In particular, please provide your views on the feasibility and potential implications of allowing policyholders to instruct the insurer to either redirect ongoing commissions or to stop paying ongoing commission altogether, in respect of all types of insurance policies where ongoing commission is payable. If you are opposed to the proposal to allow a policyholder to instruct the insurer to stop ongoing commissions, please explain why you believe it is appropriate for commission to continue to be payable where the intermediary's services are no longer provided or required.

Q22. Please provide your views on the FSCA's concerns relating to the practices discussed under the heading "Insurance product pricing implications". Are the practices correctly described? Do you agree that such practices are inconsistent with RDR remuneration principles?

[43] The FSCA recognise that the term "product supplier agent" (PSA) will not be appropriate in such models, as investment managers and LISP platforms are not product suppliers. See discussion in Section 1 above regarding terminology to describe advisers.

Section 3. **Limiting PSA advice to home group products and services – limitation on "gap filling"**

3.1. Defining "group products and services"

The two-tier RDR adviser categorisation model entails that advisers in the PSA category will only be permitted to provide advice in respect of financial products provided by the product supplier to whom the adviser is appointed as PSA, and in respect of financial products provided by other product suppliers forming part of the product supplier's group of companies. As we will discuss in more detail below, the FSCA now proposes to extend the offerings on which PSAs may provide advice to also include certain financial services (as opposed to financial products)[44] provided by financial institutions forming part of that group of companies. In the rest of this section, we will use the term "home group products and services" to describe these entities and offerings.

The two-tier model also entails that, for reasons explained in the 2015 Phase 1 Update and subsequent RDR communications, where a PSA determines that it is not able to identify a product or service of its home group of companies that is not appropriate to a customer's needs, the PSA may not instead provide advice on a product or service of another supplier outside its home group[45]. This limitation is sometimes referred to as the "no gap filling" limitation.

This approach requires a definition of "group of companies" and clarity on the range of financial products and services qualifying as home group products and services. We have proposed a definition in section 2.2 of this paper – namely to adopt the definition used in the Companies Act.

Products and services comprising "group products and services"

The FSCA's current thinking is that the range of products and services on which a PSA may provide advice, will comprise any of the following, where provided by a financial institution that is a member of the same group of companies (as defined above) as the product supplier that has appointed the adviser as its PSA:

Financial products:

- Any financial product defined as such in the FSR Act[46]. This includes, but is not limited to, financial products as currently defined in the FAIS Act, as well as a financial product that may in future be designated as such in terms of the FSR Act.

Financial services:

- At this stage, the FSCA proposes to include discretionary investment management services within the scope of home group products and services. We have also invited further input on the extent to which the investment administration services provided by LISP platforms (administrative FSPs) should be within that scope. In the current regulatory framework, this refers to the services provided by FAIS Category II and IIA (and potentially Category III) FSP licensees. As proposed in our 2018 *RDR Discussion Document on Investment Related Matters*, read with updates set out in the *RDR Second Discussion Document on Investment Related Matters*, published in December 2019, the FSCA intends to further refine the scope and definition of Category II investment management services. Further detail regarding the adviser

[44] The FSCA is considering the extent to which, if aspects of our two-tier adviser categorisation model were to be implemented prior to the promulgation of the COFI Act (see discussion in section 2.6 of this paper), this approach may require changes to the current definition of "advice" in the FAIS Act.

[45] Also see new section 8(1)(cA) of the FAIS General Code of Conduct.

[46] See section 2 of the FSR Act.

categorisation implications of this approach is provided in the *RDR Second Discussion Document on Investment related Matters*, which investments sector stakeholders should read and respond to together with this document.

- We will consult further on whether and when it may be appropriate to extend the scope of home group products and services for adviser categorisation purposes to other types of financial services defined in the Financial Sector Regulation Act. Potential future examples include certain securities services, payment services and services related to the provision of credit.

Retirement funds

The FSCA has been asked to provide clarity on how retirement funds will be viewed for adviser categorisation purposes. The FAIS and FSR Act definitions of "financial product" include benefits provided by a pension fund organisation (as defined in the Pension Funds Act, 24 of 1956) to its members. It follows therefore that the pension fund organisation (retirement fund) is a product supplier. However, although a retirement fund is a juristic entity, it is not a "company" for purposes of the definition "group of companies", raising a question of which retirement fund benefits can be regarded as home group products. This question needs to be viewed from two angles: Advice *about* retirement fund benefits and advice *to* retirement funds.

Advice about retirement fund benefits

The FSCA proposes that, for adviser categorisation purposes, benefits provided by retirement funds where a financial institution in the group of companies concerned is the sponsor of that retirement fund, will be regarded as a home group product. This will typically occur where a financial institution establishes (and usually administers) retirement funds as a commercial offering to potential individual members or employers.

This means that a PSA will be able to provide advice regarding membership of or the establishment of retirement funds (including participation in an umbrella fund) where the fund is or will be sponsored by a financial institution in the PSA's home group of companies. We recognise that this approach will in due course require consultation on a definition of "sponsor", which is being considered for inclusion in the COFI Bill.

Advice to retirement funds

A further question arises regarding advice <u>to</u> retirement funds (i.e. where the retirement fund is the financial customer receiving the advice), as opposed to advice <u>about</u> retirement fund benefits (where the retirement fund benefit is the product being advised on). Where advice is provided to a retirement fund, such advice will typically relate to financial products the fund should purchase or invest in (such as insurance policies or various types of investment vehicles) to fund benefits to its members. It follows that a PSA providing such advice to a retirement fund will be limited to advice on products and services offered by financial institutions in its own group of companies.

Insurance cell captives

The RDR adviser categorisation implications for cell captive businesses need to be considered together with the regulatory proposals set out in the FSCA's *Position paper: Final policy proposals for conduct related requirements applicable to third party cell captive insurance business*, also published in December 2019 ("the cell captive position paper"). The cell captive position paper explains that, going forward, the owners of cell structures[47] who are so-called "non-mandated intermediaries" (NMIs) (as defined in the insurance laws), will not be permitted to operate as juristic representatives of the cell captive insurer, but will be required to be licensed as Category I financial

[47] As defined in the Insurance Act, 2017.

services providers under the FAIS Act in their own right. In addition, such NMI cell owners will only be permitted to render services as intermediary in relation to insurance policies underwritten within the cell structure/s owned by that NMI cell owner. An NMI cell owner will be permitted to own one life insurance cell structure and one non-life insurance cell structure.

For RDR framework purposes, this will mean that an NMI cell owner that also provides advice on or distributes the insurance policies offered through the cell structure/s concerned, will be categorised and licensed as an RFA and will not be able to operate as a juristic PSA of the cell captive insurer. This is also consistent with the limitations on juristic representative models discussed in sections 2.3 and 2.4 above. These RFA's will however be subject to an additional special limitation of not being permitted to provide advice on or distribute insurance policies other than those offered through the cell structure/s owned by them, for the reasons set out in the cell captive position paper.

As an FSP / RFA in its own right, the NMI cell owner may appoint its own individual representatives. It follows that these representatives will be subject to the same limitation of providing services only in relation to insurance policies underwritten in the cell structure/s concerned as the FSP / RFA cell owner itself. The individual representatives will operate as representatives on the FSP / RFA's licence, not the licence of the cell captive insurer. Accountability for the advice provided by these representatives will, in the normal course for a licensed FSP / RFA, lie with the FSP / RFA itself. As set out in the cell captive position paper, the cell captive insurer – in its capacity as product supplier - will be accountable for product development and related governance obligations in respect of the cell structure. The responsibilities of the cell captive insurer in respect of any advice provided by the NMI cell owner and its representatives, will be in line with the general product supplier responsibilities in relation to RFAs, as discussed in Section 6.2 of this paper.

Are any exceptions required to the "no gap filling" limitation?

In previous RDR communications, the FSCA and former FSB raised the question whether any exceptions should be permitted to the "no gap filling" limitation – in other words whether there are specific types of products or services, falling outside the scope of " home group products and services" as described in this section, which PSAs should be permitted to advise on. We are not persuaded that any such exceptions are required. Instead, we believe that the referral and lead mechanism discussed in Section 3.2 below will allow sufficient flexibility to ensure fair customer treatment in PSA advice models.

The current definition of "representative" in Part 3 of the Regulations to the Long-term Insurance Act in effect provides two exceptions to the "no gap filling" limitation in the long-term insurance space. It does do by allowing insurer representatives to render services as intermediary in respect of (i) insurance product classes that the insurer concerned is not licensed for; and (ii) types of policy that the FSCA may in future allow exceptions for. The FSCA now proposes to delete exception (i) above, subject to consultation on appropriate transition measures to phase out existing arrangements. We will at this stage retain exception (ii) in the event that we identify any need in the future to allow limited gap filing for identified products.

Questions for stakeholder input:

Q23. Please provide your views on the proposed approach to the products and services comprising "home group products and services".

Q24. Please provide your views on the proposed approach to retirement funds for adviser categorisation purposes. Suggestions for a definition of "sponsor" for these purposes would be appreciated

Q25. Please provide your views on the proposed approach to cell captive insurers for adviser categorisation purposes. Practical examples of cell captive business models that would be impacted by this approach would be appreciated.

Q26. Please provide your views on the proposed removal of the current "no gap filling" exception for insurance policies in a class of products for which the insurer is not licensed. Practical examples of distribution arrangements that would be impacted by this change would be appreciated.

3.2. Use of referrals and leads by PSAs

In light of the "no gap filling" limitation to be imposed in the PSA advice model, the question arises as to what options are available to a PSA who is not able to identify an appropriate product or service for a financial customer outside of its own home group products and services. As noted in section 2.7 above, a pending change to the FAIS General Code of Conduct will confirm that where an adviser is unable to identify a suitable financial product due to contractual limitations, the adviser must make this clear to the customer, decline to recommend a product, and suggest to the customer that they should seek advice from another appropriately authorised adviser[48].

The FSCA has however previously communicated that, in this situation, we would consider allowing the PSA to use a referral process to refer the customer to another product supplier (outside its group of companies) or to an RFA advice channel, that is able to provide or recommend a product or service potentially better suited to the customer's circumstances. The FSCA confirms that this remains our thinking and proposes that such referrals be permitted subject to certain controls:

Referrals to a product supplier or service provider outside the PSA's home group of companies

A PSA will be permitted, after explaining to the customer that the PSA is not in a position to recommend a suitable product or service, to refer the customer to a product supplier or service provider[49] outside its home group, provided that:

- The individual PSA adviser may not select the alternative product or service supplier (referee supplier). The referee supplier must have been pre-selected by the PSA's home product supplier as eligible for a referral in the applicable circumstances (see discussion under *"Selection of referees"* below).
- The PSA must make it clear to the customer:

[48] See new section 8(1)(cA) of the FAIS General Code of Conduct.

[49] See discussion in paragraph 3.1 above proposing the inclusion of discretionary investment management services and, potentially, LISP services in the scope of "home group products and services".

  - that the referral does not constitute financial advice regarding the referee supplier's products or services;
  - that the customer is in no way obliged to act on the referral;
  - that the customer should consider obtaining advice from an appropriately authorised financial adviser before making a decision to enter into any transaction; and
  - where the PSA will continue providing advice to the customer on any other products or services (i.e. those of its home group of companies), what the scope of the PSA's advice is as opposed to any advice the customer may receive from another adviser regarding the referee supplier's products or services.
- The PSA must at the time of making the referral disclose the existence and amount of any referral fee that the PSA may directly or indirectly receive for the referral (see discussion under *"Remuneration for referrals"* below) to the financial customer.
- Where the PSA facilitates the customer's introduction to the referee supplier, it must ensure that all necessary customer consents are obtained before providing the referee supplier with the customer's contact details or any other personal information.

Referrals to an RFA

A PSA will be permitted, after explaining to the customer that the PSA is not in a position to recommend a suitable product or service, to refer the customer to an RFA advice channel, either inside or outside its home group of companies, provided that:

- The individual PSA adviser may not select the referee RFA. The referee RFA must have been pre-selected by the PSA's home product supplier as eligible for a referral in the applicable circumstances (see discussion under *"Selection of referees"* below).
- The PSA must make it clear to the customer:
  - that the customer is in no way obliged to act on the referral;
  - where the PSA will continue providing advice to the customer on its home group products ad services, what the scope of the PSA's advice is as opposed to any advice the customer may receive from the referee RFA; and
  - where applicable, that the referee RFA is part of the same group of companies as the PSA.
- The PSA must at the time of making the referral disclose the existence and amount of any referral fee that the PSA may directly or indirectly receive for the referral (see discussion under *"Remuneration for referrals"* below) to the financial customer.
- Where the PSA facilitates the customer's introduction to the referee RFA, it must ensure that all necessary customer consents are obtained before providing the referee supplier with the customer's contact details or any other personal information.

Selection of referees

As discussed above, referrals by a PSA to an alternative product supplier, service provider or to an RFA may only take place where the referee supplier or RFA concerned has been pre-selected by the home product supplier concerned. The home product supplier (or group) will be required to have a documented governance process in place governing the referral process. The governance process - which must be appropriately monitored and updated from time to time in accordance with the home supplier's overall governance arrangements - should set out the following:

- The particular types of customer need justifying the use of referrals by PSAs to an RFA or to suppliers outside the home group of companies. These must be based on identified material gaps or limitations in the range or type of products and services offered by the home group, rendering the home group products and services incapable of reasonably meeting the customer

need[50]. Referrals may not be used where the home supplier does offer products designed to meet similar customer needs to the referee's product or service, but where the customer expresses a preference for the referee supplier's products or services or where the home supplier recognises that its own product or service is less competitive than those of the referee.
- The RFAs and / or product suppliers or service providers (and their particular products or services) that have been selected as best positioned to meet the above-mentioned customer needs and fill the gaps concerned, together with an explanation of the rationale for this selection[51].
- The due diligence steps taken to reasonably satisfy the home supplier that the referee has the necessary regulatory authority and operational capability to meet the needs of referred customers.
- Oversight arrangements over the use of referrals by PSAs to ensure fair treatment of customers and compliance with the referral process.
- Appropriate administrative arrangements between the PSAs concerned, the home supplier and the referees to ensure referrals will be handled efficiently and fairly.
- Details of any remuneration arrangements between the parties regarding referral fees (See *"Remuneration for referrals"* below).
- Identification of any actual or potential conflicts of interest arising from the referral arrangements, including how these are to be mitigated and disclosed in accordance with the home supplier's conflict of interest management policy.
- Where referrals are made to an RFA in the home supplier's group of companies, appropriate measures to ensure that the referral arrangement is subject to the controls referred to in section 2.2 above (under the heading *"Both PSA and RFA channels permitted in a group"*.)

Remuneration for referrals

The FSCA invites comment on a proposal that referrals made by PSAs, as described in this section, should be subject to the following remuneration related requirements:

- As a referral does not constitute advice, and as referrals will occur in cases where the PSA is unable to provide appropriate advice to the customer, neither the PSA making the referral nor its principal (the home product supplier or group), may receive any advice fees in relation to the referral or any product or service the customer may enter into as a result of the referral.
- The home product supplier and the referee may enter into an arrangement – to be included in the documented referral governance process referred to above – that the referee will pay the home product supplier an agreed referral fee in respect of referrals to it. The parties may, but are not obliged to, agree that the referral fee is contingent upon the referred customer acquiring a product or service from the referee.
- Details of the referral fee arrangement between the home product supplier and the referee must be agreed when a referral arrangement is entered into and must be set out in the referral fee governance process document described above. Although referral fee arrangements can be renegotiated from time to time in the normal course, they should not be negotiated in an *ad hoc*, case-by-case manner. The individual PSAs concerned should not be party to the referral fee negotiations.
- The home product supplier may, but is not obliged to, pay a portion of any referral fee received

[50] This also applies to referrals to an RFA. Referral to an RFA should not be used where the customer simply expresses a preference for non-tied advice. Referral to an RFA should be based on the fact that the PSA cannot provide appropriate advice because its home group of companies does not offer a suitable product or service.

[51] The FSCA has no expectation that the home product supplier or its PSA must satisfy itself that the selected referee and its products / services will meet the individual needs of particular referred customers. The expectation is simply that the home supplier must take reasonable steps to select suppliers (and their offerings) that can reasonably be expected to be appropriate to customers with certain categories of needs that the home supplier is unable to satisfy.

to the individual PSA making the referral. Again, any such arrangement between the home product supplier and its PSA must be included in advance in the referral governance process described above – and in the applicable agency or employment contract between the home product supplier and the PSA – and should not be negotiated on an ad hoc or cases-by-case basis.

- Note that, where the customer enters into a financial product with the referee as a result of the referral, the referral fee is not to be regarded as product supplier "commission" payable to the referring product supplier or its PSA. This is because the referral does not constitute "selling" of the product concerned[52]. This is the case even if the parties agree to calculate the referral fee with reference to the amount of product supplier commission that may be payable in respect of the transaction concerned.[53]
- The cost of any referral fee may not directly or indirectly be charged to the financial customer concerned. The referral arrangement is an arrangement between the home product supplier and the referee concerned by virtue of the "no gap filling" limitation imposed on PSAs. It is a benefit to the referee, who acquires business it would otherwise not have secured, and should be paid for by the referee. It is not a service provided to the customer for which the customer should be required to pay.

Question for stakeholder input:

Q27. Please provide your views on each of the following sets of proposed requirements relating to referrals by PSAs:

(a) Referrals to a product supplier or service provider outside the PSA's home product supplier group;
(b) Referrals to an RFA;
(c) Selection of referees;
(d) Remuneration for referrals.

Input regarding existing business models or practices that are likely to be impacted by these proposals will be appreciated.

[52] The FSCA will also consider an appropriate amendment to the Regulations to the LTIA and STIA confirming that the provision of referrals falls outside the scope of "rendering services as intermediary" for purposes of those Regulations.

[53] Also note, in light of the RDR principle that remuneration should not be paid unless a service is in fact provided, commission should only be paid to an intermediary where it is in fact earned – i.e. where an intermediary (not the referring PSA) has in fact been involved in the "selling" of the product.

Section 4. Use of the designation "independent"

4.1. Amendments to the FAIS General Code of Conduct

The FSCA published draft amendments to the FAIS General Code of Conduct for public comment in November 2017. Final amendments to the General Code, taking account of comments received, have been submitted to National Treasury to facilitate tabling in Parliament in November 2019. As indicated in the explanatory documents accompanying the amendments, a number of the changes to the FAIS General Code were informed by our RDR reforms. RDR related changes include new section 3.5 of the General Code, which disallows any FAIS licensed FSP or its representative ("provider") from describing itself or the financial services it renders as "independent" in the following situations:

(i) 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;
(ii) 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;
(iii) 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); or
(iv) 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.

We take this opportunity to elaborate on some of the implications of this provision:

- *Sub-paragraphs (i) and (ii):* It is important to read this sub-paragraph with sections 157(1) and (2) of the FSR Act, which set out the scope of significant ownership. Importantly, significant ownership arises wherever there is an ability to materially control or influence a financial institution's business or strategy – it is not limited to shareholding percentages and the ability to make board appointments. The test for significant ownership also takes account of the roles of related and inter-related entities in determining the existence of such control or influence.
- *Sub-paragraph (iii):* For avoidance of doubt, this subparagraph means that any FSP or representative that directly or indirectly earns <u>any</u> financial interest directly or indirectly from a product supplier other than regulated insurance or medical schemes commission, immaterial interests, or interests that the FSP or representative has in fact paid fair value for, may not use the designation "independent". It follows that earning any binder fees or outsourcing fees will disqualify the use of the "independence" designation.
- *Sub-paragraph (iv):* The FSCA will, without limiting the generality of this sub-paragraph, consider issuing formal guidance on arrangements likely to fall foul of it.

Question for stakeholder input:

Q28. Do you have any suggestions on the types of arrangements that constitute conflicts of interest that should disqualify use of the designation "independent" under paragraph 3.5 of the FAIS General Code of Conduct, where the FSCA could usefully issue formal guidance? In particular, please let us know whether you believe the setting of volume or production based targets by product suppliers for RFAs should be treated as a conflicted arrangement that will disallow use of the designation "independent".

4.2. The designation “independent” in the investments sector

The criteria for use of the designation “independent”, as set out in the recent amendments to the FAIS General Code of Conduct discussed in paragraph 4.2 above, only apply to relationships directly or indirectly involving product suppliers[54]. They therefore currently do not address relationships between financial advisers and investment managers (FAIS Category II FSPs).

The FSCA will in due course consider and consult on extending these criteria to cover relationships between an RFA and an investment manager and / or LISP, taking into account proposals set out in the *RDR Second Discussion Document on Investment Related Matters.*

[54] Note however that a CIS management company is already a “product supplier” for FAIS purposes and is also expected to be a product supplier under the future Conduct of Financial Institutions Act. Accordingly any arrangements between advisers and CIS management companies will have the same adviser categorisation implications as arrangements with other types of product suppliers.

Section 5. Use of the designation "financial planner"

As noted in the initial RDR paper, one of the desired outcomes of our RDR reforms is to enhance standards of professionalism in financial advice and intermediary services to build consumer confidence and trust. To this end, the FSCA confirms our intent to acknowledge the professional status of qualified financial planners by reserving the use of the designation "financial planner" for those holding a formal professional designation in this discipline. Persons designated as a CFP™ professional, who therefore meet the standards and requirements set by the Financial Planning Standards Board (FSPB), would meet this criterion. Note that this includes persons meeting the FSPB standards as adapted by organisations that have licensing and affiliation agreements in place with the FPSB to operate the CFP™ certification program in their territory. In South Africa, the relevant organisation is the Financial Planning Institute, which is also recognised by the South African Qualifications Authority as the professional body for the financial planning profession in South Africa.

The point has been raised that advisers that are not formally designated as CFPs, in performing customer needs analyses and formulating financial recommendations, may nevertheless follow processes and methods similar to those followed by their professionally qualified counterparts. This raises the question whether non-CFP advisers should be permitted to describe their services as "financial planning" and / or to describe their recommendations as a "financial plan". A suggestion was made that non-CFPs should still be able to use the "financial planner / plan / planning" terminology where they perform these activities, but should be distinguished from CFPs by applying the additional term "certified" financial planner or "accredited" financial planner (or similar) in the case of CFPs.

The FSCA has considered these arguments, but we believe that allowing this type of language to be used by advisers that are not professionally qualified in financial planning will undermine the effectiveness of reserving the "financial planner" designation for professionals. Our proposal therefore is that not only the designation "financial planner", but also the terms "financial plan", "financial planning" or other derivatives be reserved for use by qualified CFPs. Non-CFP advisers will need to use appropriate alternative terms to describe their services and recommendations. It also follows that distribution channels describing themselves as, for example, the "financial planning division" of an entity, will not be permitted to do so unless all advisers operating in that channel are in fact duly qualified.

The FSCA also received a limited number of comments that the term "financial planner" was not appropriate to advisers operating in PSA / tied advice models, in view of the potential restrictions on the scope of their recommendations. We disagree. PSA advisers holding a CFP qualification are entitled to describe themselves as financial planners. There are adequate existing FAIS measures and planned RDR measures to ensure that financial customers are able to understand and make informed decisions on the type of adviser they wish to be served by.

Question for stakeholder input:

Q29. Please provide your views on the proposal to disallow advisers who do not hold a professional financial planning designation (and who therefore will not be permitted to use the designation "financial planner") from describing their services as "financial planning" and describing their recommendations as a "financial plan".

Section 6. Product supplier responsibility

The FSCA confirms that our overall approach to a product supplier's responsibility for financial advice provided on its products, is that the degree of responsibility should be commensurate with the degree to which the relationship between the product supplier and the adviser has the potential to influence the advice provided in favour of the product supplier or its group's products. The same approach applies where advice relates not to a financial product but to recommendations to use a particular financial service.[55]

6.1. Product supplier responsibility for PSAs

In line with the above general approach (and ordinary common law principles of agency), it follows that a product supplier or service provider that appoints an adviser to provide advice as its PSA will be fully responsible for the quality and suitability of any such advice. In addition to being responsible for the advice provided, the product supplier or service provider is also responsible – in that capacity - directly to its financial customers for the financial products and services it provides.

For purposes of the FSCA's Treating Customers Fairly protection framework, this means that where a financial customer enters into a financial transaction based on the "tied" advice of a PSA, the same financial institution is responsible for ensuring that all TCF outcomes are met throughout the product lifecycle – from product design and advice, to ongoing service, and through to benefit realisation stage.

As explained in detail in Section 3, advisers in the PSA category will only be permitted to provide advice in respect of financial products or services provided by the product supplier / service provider by whom the adviser is appointed as a PSA, and in respect of financial products or services provided by other financial institutions forming part of the group of companies concerned. The licensing framework will not require an individual PSA (or juristic PSA where permitted) to be appointed as a representative on the licenses of all such product / service providers. However, the FSCA will require the group of companies concerned to have governance arrangements in place to ensure that all such product / service providers take appropriate responsibility for the advice the PSA provides on their products or services. (Also see paragraph 2.6 in relation to the licensing implications of PSA advice models in groups of companies.) The FSCA will regard any situation where an aggrieved financial customer is sent from "pillar to post" between group entities in relation to a complaint regarding advice and / or a product or service provided by any part of a group as a governance failure.

6.2. Product supplier responsibility for RFAs

Unlike the situation in the PSA advice model, a product supplier whose products are recommended to customers by an RFA or its representatives is not directly responsible for the advice provided, as the RFA is not its agent. However, as the FSCA has consistently communicated, our TCF approach means that a product supplier may not simply abdicate all responsibility for poor customer outcomes that may arise from the conduct or suitability of the distribution model that the product supplier uses to distribute its financial products and services.

Our minimum expectations of product suppliers (and, where applicable, financial service providers) in relation to RFAs providing advice on their offerings are that:

[55] For example, where a financial adviser recommends that a financial customer enter into a discretionary mandate with a particular investment manager, the investment manager's responsibility for that recommendation should take into account any relationship between the adviser and the investment manager that is likely to influence the recommendation.

- They should have effective governance arrangements in place to ensure that the distribution models they adopt are appropriate to the products, services and targeted financial customers concerned;
- They respond appropriately when they become aware of poor customer outcomes arising from these distribution models; and
- They have reasonable measures in place to proactively avoid the risk of such poor customer outcomes, particularly in business models where the relationship between the product supplier and the RFA is such that the product supplier has the potential to exercise a degree of influence over the RFA's advice.

Examples of responsibility requirements in respect of all RFAs – including RFAs that are "independent" of the product supplier

The following minimum requirements are proposed in respect of all RFAs, including where the RFA concerned meets the criteria for the designation "independent", as discussed in Section 4, insofar as they apply to the relationship between the RFA and the particular product supplier concerned. There may be situations where an RFA may not use the designation "independent" because its relationship with Product Supplier A includes one of the disqualifications in section 4. However, if none of those disqualifications applies to the RFA's relationship with Product Supplier B, then Product Supplier B would not be expected to exercise a greater level of responsibility than where the RFA were an "independent" RFA.

- Product suppliers will be expected to have "red flag" risk indicators in place to identify transactions in respect of their products or services that pose a high risk that they may have been based on inappropriate advice. These "red flags" would vary depending on the nature and risks of the product or service concerned[56]. Examples would include products purchased by customers clearly not falling within the type of target market the product is designed to be suitable for; changes made to a product soon after it is entered into; an unusually high number of changes made to a product during its lifetime; early terminations or withdrawals; multiple purchases of similar products by the same customer; customer requests to terminate an adviser's appointment or adviser fees; unusually high advice fees being charged; and customer complaints regarding the advice provided.
- The product supplier's complaints management framework should ensure that customer complaints regarding RFAs are adequately investigated and responded to, and that customers are supported in obtaining appropriate resolution. Customer complaints should not be taken less seriously where they relate to an RFA than when they relate to a PSA. Such investigation should include engagement with the RFA itself and, where it appears there has been poor conduct by the RFA, taking appropriate action. Such action might include, depending on the severity of the misconduct, terminating an intermediary agreement with the RFA, alerting the RFA's principal (where applicable) to the conduct concerned, assisting the customer in making contact with the applicable Ombud, bringing concerns to the attention of the FSCA for investigation and enforcement, or instituting criminal proceedings.
- Before entering into an intermediary agreement with an RFA in relation to its products or services, or before accepting an instruction from a customer to facilitate advice fees to an RFA,

[56] Some of these "red flags" would be catered for as part of the customer service model put in place at product design stage.

the supplier will be required to confirm that the RFA and, where applicable, its representatives, meet the prescribed fit and proper competency requirements.[57] In particular, product suppliers will be expected to ensure that any "product specific training" the RFA has undergone on its own products is of an adequate standard.

Examples of responsibility requirements in respect of RFAs that are <u>not</u> "independent" of the product supplier

Where the relationship between a product supplier and an RFA includes one or more of the features that disqualify the RFA from using the designation "independent" (see Section 4), there is an increased potential for the RFA's advice to be influenced by or biased in favour of the product supplier. The FSCA would therefore expect product suppliers to take a proportionally greater level of responsibility for the advice provided by such RFAs on their own products and services in such situations, over and above the types of measures discussed above that apply in relation to all RFAs.

The appropriate steps to be taken by the product supplier in these cases will differ depending on the nature of the business relationship with the RFA. Our expectation would be that particular care would be taken where there is a significant ownership relationship in place. Examples of responsibility requirements include[58]:

- The product supplier having processes in place to monitor the "red flag" indicators suggested above for all RFAs, on an ongoing basis at RFA level. In other words, over and above detecting these indicators at customer level, a product supplier would be expected to monitor the prevalence of these indicators and associated behaviour trends at adviser level.
- Product suppliers to conduct an appropriate due diligence of the RFA entity before entering into the relationship concerned to satisfy itself that the RFA has adequate operational capacity and competency to mitigate the risks of poor customer outcomes.
- Ensuring adequate processes are in place for access to and sharing of applicable customer data between the RFA and the product supplier.
- The product supplier ensuring that the RFA's complaints management framework supports appropriate co-operation in resolving customer complaints relating to the product supplier's products or services.
- The product supplier generally having appropriate processes in place to monitor the extent to which the relationship with the RFA delivers fair customer outcomes.

FSCA oversight of product supplier influence in financial groups

In line with the FSCA's risk-based approach to conduct supervision, relationships between product suppliers and advisers that pose a greater risk of conflicted advice will attract more intensive supervisory scrutiny than less conflicted business models. In particular, where the relationship between a product supplier and an RFA entails one or more of the features that would disqualify the RFA from using the designation "independent" (see Section 4), the FSCA's supervisory approach

[57] This is already a requirement where the product supplier is an insurer, in terms of the Policyholder Protection Rules under the LTIA and STIA.

[58] These high level requirements should be read together with any specific requirements contained in regulatory instruments governing the relationships concerned, such as requirements under Insurance laws for binder and outsourcing agreements, Collective Investment Schemes requirements in relation to 3rd part co-branded portfolios, etc.

will take into account the heightened risk of product supplier influence over the advice provided, or bias in favour of the product supplier's products or services. A similar approach will apply to vertically integrated business models generally, where a combination of advice, other financial services and financial products are provided by entities in the same group of companies.

Features of our supervisory approach in these cases will include scrutiny of:

- Group structures and intra-group relationships, with a "follow the money" focus on financial incentives in place between group entities and for individual decision-makers.
- Governance processes in place to mitigate intra-group conflicts of interest, including a focus on ensuring adequate functional separation between RFA and PSA advice channels in the same group. This will include taking particular note of the use of referrals and leads from the group's PSA channel to its RFA channel.
- Information regarding the spread of products and product suppliers recommended by RFAs to detect risks of inappropriate bias in favour of group products and services. Where a high proportion of recommendations are in favour of group offerings, this is likely to trigger further scrutiny to establish whether conflicted incentives are in place.

Question for stakeholder input:

Q30. Please provide your views on the proposed approach to product supplier responsibility for RFAs. In particular, do you agree with the proposed distinction between product supplier responsibilities for RFAs that are "independent" of the product supplier and those who are not?

Q31. Please provide your views on the FSCA's proposed approach to supervising product supplier influence in financial groups.

Section 7. Considering a "multi-tied" advice model for different product classes

7.1. Why consider this model?

The 2015 Phase 1 Update invited input on a possible variation of the two-tier adviser categorisation model – in effect a "multi-tied" advice model - positioned at the time as follows:

> *Consideration will be given to permitting an adviser to act as the product supplier agent for one additional product supplier / group of companies per line of business. In such a case, each product supplier would be fully responsible for the advice provided by the agent, to the extent the advice relates to the products of the supplier concerned. An appropriate "line of business" delineation will need to be developed, informed by the future conduct licensing framework, future product segmentation under the proposed Insurance Act, and the work being done on revising the adviser competency model (currently under FAIS). If this approach is to be pursued, the following factors – among others - would also need to be considered:*
>
> - *Does one of the product suppliers act as "lead" supplier for licensing and regulatory purposes, or is the adviser simply registered as a product supplier agent in the same way for all product suppliers concerned?*
> - *Is there any requirement for the respective product suppliers to be notified of and / or approve the adviser's appointment by the other product suppliers?*
> - *What disclosure standards will need to apply in relation to the adviser's status?*

As explained in the 2015 Phase 1 Update, although this model would be a partial deviation from our two-tier categorisation approach, it is worth considering as it potentially allows some degree of flexibility around the otherwise strict "no gap filling" limitation, while avoiding the legal complexity and potential conflicts of interest in allowing a tied adviser to also offer products of competing principals. This type of conflict is avoided as the products concerned will meet different needs and the products and product suppliers do not compete with one another. The risk of overlapping product supplier accountability is also reduced by the fact that the products will be in different lines of business, and will therefore not be addressing similar needs.

Responses to this proposal were mixed. Commentators in support of the concept were mainly from the financial adviser community, while the product supplier community was generally more circumspect. Some argued that such a model would introduce unnecessary complexity, while others welcomed its potential flexibility.

One industry association proposed a variation of the model, suggesting that one of the product suppliers concerned shoud act as a "lead supplier" and should be accountable for the advice provided by all product suppliers whose products are marketed by the PSA concerned, but would not be acountable for the quality of the actual products themselves. The FSCA does not support this approach, as it is inconsistent with our view that in a "tied" advice model the same entity (or entities in the same group of companies) should be responsible for both the advice provided and the products or services to which that advice relates.

Most commentators pointed out that they would be in a better position to comment on the model if further detail were provided on practical aspects of how the regulator envisages it to operate.

The FSCA acknowledges that such a "multi-tied model" would add a degree of complexity to our adviser categorisation framework. As such, we do not believe it should be pursued unless there is

sufficient appetite for it. In light of the inconclusive views expressed previously, we therefore now invite another round of comment on this proposal, supported by further proposals on its practical operation.

7.2. Practical implications of the "multi-tied" model

In assessing the viability of this "multi-tied" advice model, stakeholders should take the following practical implications into account:

- The FSCA does not believe there will be demand for this model in relation to advice on investments or transactional banking products. This is in light of the widespread availability of "open architecture" solutions in the investments space, and the fact that transactional banking products are typically not distributed through advice-led channels. We therefore propose that the model only be considered in relation to advice on the following three broad product categories: (i) Life (long-term) risk insurance policies; (ii) short-term (non-life) insurance policies; and (iii) medical schemes.

- It follows that an adviser that is a PSA in a group of companies that offers either transactional banking or investment products, and provides advice on such products, will not be eligible for the multi-tied model.

- The "multi-tied" dispensation will only be available in respect of product categories falling outside the range of products offered by each product supplier group respectively. In other words, the product sets issued by each group will need to be mutually exclusive. For example, if a PSA is a representative of an entity in a group of companies that offers long-term insurance policies and medical scheme policies, but does not have a short-term insurer in the group, the adviser may choose to act as the PSA of the first-mentioned group in relation to long-term insurance and medical schemes advice, and also act as the PSA of a second product supplier for purposes of short-term insurance advice. Importantly however, this will only be possible where the second product supplier (the short-term insurer) in turn does not have any long-term insurer or medical scheme in its group.

- The "either PSA or RFA - not both" limitation will still apply. Advisers choosing this model will therefore be PSAs of each product supplier concerned, and will not be able to also act as an RFA in respect of some product categories. This model will however require an exception to the rule that an adviser may only act as a representative on one advice licence holder. They will be representatives on the advice licence of each product or service provider for whom they act as PSA.

- In order to reduce the complexity and risk of customer confusion that would arise if this model were open to juristic representative PSAs, the FSCA further proposes that it only be available to PSAs who are natural persons.

- In this model, each applicable product supplier would be fully accountable for the advice provided by the PSA in relation to its own products, in the normal course for the PSA adviser model. This does raise the question of where liability will reside in the event that it is not necessarily the suitability of any particular product recommendation that is challenged, but rather the combination of products recommended. The FSCA believes however that, in light of the distinct needs met by long-term insurance, short-term insurance and medical schemes, and the fact that we do not propose to extend this model to investment advice, this type of advice risk is mitigated.

- The adviser concerned would be required to inform each product supplier of its intent to operate on a multi-tied basis, and obtain each product supplier's consent to do so. We will however require that such consent not be unreasonably withheld or withdrawn.

Questions for stakeholder input:

Q32. Do you believe there is sufficient appetite for the above "multi-tied" adviser model, on the practical basis described? If yes, please provide details of the types of distribution models / product combinations where you believe such a model would be likely to be adopted.

Q33. Please provide your views on the proposed practical application of the "multi-tied" model in relation to:
(a) Product class delineation;
(b) Limitation to natural persons;
(c) Licensing and product supplier responsibility implications.

Q34. In particular, do you agree that the "multi-tied" model should not be available in respect of advice on transactional banking or investment products? For example, what would the implications of this exclusion be for "bancassurance" business models?

Q35. Are there any further implications of such a model that you would like to bring to the FSCA's attention?

PART C. Stakeholder input and next steps

Stakeholders are invited to provide input on the FSCA's proposals as set out in this document, using the Feedback Template attached as *Annexure A*. Feedback received will inform further consultation or the development of draft formal regulatory instruments – which will in turn be subject to our ordinary prescribed consultation processes.

Please submit feedback to FSCA.rdrfeedback@fsca.co.za by **no later than 31 March 2020**.