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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NATIONAL TREASURY

NOTICE 808 OF 2018

DRAFT CONDUCT OF FINANCIAL INSTITUTIONS BILL, 2018: PUBLICATION FOR PUBLIC COMMENT

The National Treasury publishes the draft Conduct of Financial Institutions Bill, 2018 (the Bill) for public comment. A copy of the Bill is available on the National Treasury's website, www.treasury.gov.za/twinpeaks, accompanied by an explanatory policy paper that sets out the policy rationale that informed the development of the Bill.

The Bill is the next phase of the Twin Peaks legislative reform process for market conduct. Whilst the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) is regulator-facing, as it deals with the regulatory architecture of the twin peaks model, the Bill is primarily a financial institutions-facing legislative proposal, as it sets requirements that financial institutions under the jurisdiction of the Financial Sector Conduct Authority must meet and the outcomes they are expected to deliver. The Bill aims to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will:

- a) Protect financial customers;
- b) Promote the fair treatment of financial customers by financial institutions;
- c) Support fair and efficient financial markets;
- d) Promote innovation and the development of and investment in innovative technologies, processes and practices;
- e) Promote competition;
Promote financial inclusion; and
- f) Promote transformation of the financial services sector.

The Bill aims to streamline the legal landscape for conduct regulation in the financial services sector, and give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. The Bill further aims to ensure that the TCF principles are legally binding and enforced on all financial institutions. The Bill proposes to replace the conduct requirements in existing financial sector laws. It is designed to be:

- **Principles-based:** A principles-based approach seeks to set principles that specify the intention of regulation, rather than set rules detailing requirements of a financial institution. A focus on principles should see a shift in both industry and the regulator toward ensuring that their actions are geared toward driving the attainment of certain principles in the financial sector, not only on technical compliance with the law.
- **Outcomes-focused:** Linked to the above, outcomes-focused supervision allows the supervisor to test financial institutions on their delivery of the actual outcomes, testing the financial sector's effectiveness not only in providing the correct customer outcomes, but in supporting the real economy, too.
- **Activity-based rather than institutionally driven:** Shifting away from the institutionally-driven approach, the law will look at defining the activities undertaken in the financial sector. The same regulation will apply to similar activities, regardless of the institution performing the activity. This will create level playing fields amongst stakeholders.
- **Risk-based and proportionate:** the new framework will enable the regulator to monitor the financial sector, identify areas that pose greatest market conduct risks, and use proportionate regulatory capacity to address these risks. Proportionality will affect the regulator's supervisory approach, the standards it sets, and the enforcement action it takes.

Furthermore, the Bill aims to better support transformation of the financial sector by supporting participation of black businesses in the provision of financial products and services, and strengthening protection of vulnerable consumers. Because it will apply to all financial institutions, it is well placed to support the Financial Sector Code issued under the Broad Based Black Economic Empowerment (BBBEE) Act, 2001 (Act No. 53 of 2003) by requiring financial institutions to comply with that Code.

Comments on the Bill will be accepted until 1 April 2019. Comments can be sent to marketconduct@treasury.gov.za

