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FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL,
ADDRESS TO THE NATIONAL ASSEMBLY BY THE HONOURABLE
MINISTER OF FINANCE,
TREVOR A MANUEL, MP
24 JUNE 2008

Madam Speaker, the Financial Services Laws General Amendment Bill, 2008, being debated in this House today addresses urgent technical and regulatory issues in a number of our financial sector laws.

I trust the House will forgive me, but in order to complete the formalities, I am required to mention that the Bill amends the following statutes: the Pension Funds Act, the Friendly Societies Act, the Financial Services Board Act, the National Payment System Act, the Short-term and Long-term Insurance Acts, the Financial Institutions – Protection of Funds – Act, the Financial Advisory and Intermediary Services Act, the Collective

Investment Schemes Control Act, the Securities Services Act and the Co-operative Banks Act.

The proposed amendments are required in order to update existing legislation, to close regulatory gaps in existing statutes, and importantly, to provide for increased enforcement capabilities of the Financial Services Board (FSB) in terms of the laws administered by it.

Some high profile cases of abuse, such as the Fidentia matter, have highlighted the need for tighter financial sector laws, better enforcement capability and improved co-ordination between various regulators and statutory bodies in the financial sector. National Treasury has commenced a process whereby lacunae in statutes and co-ordination between regulators can be improved. This work is on-going, but there are a number of important interventions which can be made at present in order to provide consumers with increased peace of mind and protection.

Madam Speaker, I must mention that none of what is proposed impedes our criminal justice process, and in fact assists it. It is my unwavering belief that white collar criminals who steal from all and sundry, but especially from blue collar workers, must spend time in jail!

In terms of the Bill before the House, it is an accepted principle of financial regulation that supervisors need the power to take action against those who are not compliant with the law. The Bill proposes the establishment of an Enforcement Committee, building on

the model ratified by this House when passing the Securities Services Act in 2004. Under that Act, the Enforcement Committee's scope is limited to cases of market abuse and insider trading. Proposed in the Bill is an extension of that model to all the laws under the administration of the FSB.

This implies that Registrars at the FSB will be able to refer matters to the Enforcement Committee. That Committee, as is currently the case under the Securities Services Act, will have the ability to impose administrative sanctions and grant compensation orders to those identified who have suffered loss. Protecting the fundamental rights enshrined in our Constitution, access to court is not impeded. A party aggrieved with the decision of the Enforcement Committee may take the matter to Court.

Madam Speaker, the establishment of this enforcement mechanism is a major step forward in the architecture of our regulatory system, but is not the only improvement proposed in terms of the operation of the FSB. As members of this House are aware, the FSB has, in terms of statute, an independent Appeal Board which hears appeals against decisions made by the respective Registrars at the FSB.

Since the establishment of the Appeal Board, the regulatory scope of the FSB has been significantly extended by the passing of legislation such as the Financial Advisory and Intermediary Services Act, which has brought some 14 000 intermediaries into the net. This inevitably has meant that the number of appeals against a decision of whichever Registrar have increased, and accordingly implies that the structure of the Appeal Board needs to be reviewed so that matters referred to it are heard timeously.

The Bill therefore proposes a re-structured Appeal Board which will be sufficiently resourced to deal expeditiously with matters placed before it, by being able to hear a number of appeals concurrently.

Madam Speaker, in the time allotted I would now like to turn to some of the key proposals contained in the Bill, which seek to reinforce the principle of consumer protection embedded in our financial sector laws.

Firstly, in terms of the Pension Funds Act, the Bill establishes “beneficiary funds” which will be entitled to receive benefits following the death of a member. These monies often previously went into trusts not under the supervision of the FSB and where little oversight was possible. In future Madam Speaker, our widows and orphans entitled to such monies will be afforded the protection of the Registrar of Pension Funds and the Pension Funds Adjudicator.

Secondly, with respect to the National Payment System Act, the Bill proposes the inclusion of non-bank clearing system participants who are currently outside the supervision of the South African Reserve Bank. This enabling provision in the Bill is a step towards improved competition in banking, and the regularisation of the affairs of the PostBank under the watchful eye of the Reserve Bank.

Thirdly, the House will remember that in 2002, the Financial Advisory and Intermediary Services Act was passed. Sufficient time has elapsed since then so that we are in a position to assess and review the provisions of that Act, following the intensive

registration and licensing process. Great strides have been made by the Ombud for Financial Services Providers in providing affordable and independent recourse to the consumer.

The Bill's focus however is on greater enforcement of the provisions of the FAIS Act and it therefore proposes the tightening of a number of provisions dealing with the suspension and withdrawal of a financial services provider's licence, the "naming and shaming" of wrong-doers, and stronger provisions regarding inspections and on-site compliance visits by the regulator.

Madam Speaker, in closing, let me re-iterate that the Bill bolsters a number of our financial sector laws. It vitally provides the FSB with the necessary claws and teeth whereby to pursue its prey, and is a crucial step forward in the protection of the financial services consumer.

I would like to convey my special thanks to the Portfolio Committee on Finance, under the chairmanship and steady hand of Mr Nlanhla Nene. The Committee consistently provides an insightful review of legislation placed before it for consideration.

Madam Speaker, I hereby request that the House pass the Financial Services Laws General Amendment Bill, 2008.