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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NATIONAL TREASURY

NOTICE 519 OF 2020

SECOND DRAFT CONDUCT OF FINANCIAL INSTITUTIONS BILL, 2020: PUBLICATION FOR PUBLIC COMMENT

The National Treasury invites public comments on the second draft of the Conduct of Financial Institutions (COFI) Bill. The first draft of the Bill was published for comment in December 2018. Key changes made between the first and second drafts of the COFI Bill include the following:

- **Application of the COFI Bill in relation to existing legislation:** Proposed consequential amendments to the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) are included, to enable the Financial Sector Conduct Authority (FSCA) to better exercise its powers in conjunction with other relevant legislation, and other regulators with jurisdiction in the financial sector.
- **Approach to conduct standards:** The enabling provisions for conduct standards that were contained in various Chapters of the first draft of the CoFI Bill have been removed, and the standard-making provisions in the FSR Act are proposed to be strengthened through consequential amendments to the FSR Act. The FSCA is proposed to be empowered through the conduct standard making provisions in the FSR Act to set conduct standards under the COFI Act.
- **Refined approach to licensing:** The licensing chapter has been significantly refined. Provisions in the licensing Chapter in the FSR Act are proposed to be expanded and strengthened through consequential amendments in the CoFI Bill to provide for a more comprehensive licensing framework. It is proposed that an entity will require a license issued under the COFI Act, but the provisions that set out the framework for licensing will be those in the FSR Act.
- **Focusing transformation to tangible targets:** The revised draft of the COFI Bill attempts to strengthen the transformation in the financial sector. The requirement for financial institutions to have transformation policies are refined to require the policies to more closely align to the achievement of tangible targets. The revised draft also allows for the FSCA to issue directives in relation to transformation policies and clarifies that the FSCA may use its supervisory and enforcement powers to ensure that a financial institution's governance frameworks – including in relation to transformation – are adequate and adhered to.
- **Approach to medical schemes sector:** The first draft of the COFI Bill envisioned the application of conduct requirements in relation to medical schemes and medical scheme administrators. References to medical schemes and medical scheme administrators have been removed from the revised draft Bill, pending the conclusion of the work of a task team between the National Treasury, the Council for Medical Schemes, the Prudential Authority and the FSCA.
- **Alignment to financial markets review:** The potential for overlap between the revised draft COFI Bill and the envisaged new Financial Markets Act (FMA) was further considered. Activities defined in Schedule 1 of the Bill (Licensing Schedule), capture certain of the new activities proposed to be regulated through the FMA review.
- **Application to the non-retail market:** A new license activity of corporate advisory services has been included, to better capture the activities undertaken by institutions such as investment banks, such as arrangement of debt and equity issues, advisory services (for example in relation to mergers and acquisitions activities), and on- and off-balance sheet financing of transactions. A new license activity (called 'lending') has been added to capture the provision of non-retail credit, i.e. lending agreements that are not regulated in terms of the National Credit Act, 2005 (Act No. 35 of 2005).

The second draft of the CoFI Bill, along with a Response Document that explains the changes made in Bill in greater detail, are available on the treasury website: www.treasury.gov.za/twinpeaks.

Comments on the Bill will be accepted **until 30 October 2020**. Comments can be sent to marketconduct@treasury.gov.za.

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