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DEPARTMENT OF FINANCE

NO. 1585

23 DECEMBER 2016

NATIONAL TREASURY

**LONG-TERM INSURANCE ACT, 1998: PROPOSED AMENDMENT OF REGULATIONS
MADE UNDER SECTION 72**

I, Pravin J Gordhan, Minister of Finance, hereby publish for comment the proposed amendment of the Regulations made under section 72 of the Long-term Insurance Act and published under GN R. 1492 of 27 November 1998, and amended from time to time, as set out in the Schedule hereto.

The proposed amendment of the Regulations is necessary to give effect to a number of conduct of business reforms undertaken and consulted on over the last few years.

The proposed Regulations and a detailed supporting document that highlights and explains the proposed amendments to be made to the current Long-term and Short-term Regulations are available on the National Treasury's website at <http://www.treasury.gov.za> and the Financial Services Board's website at <https://www.fsb.co.za>.

Comments on the proposed Regulations may be submitted in writing on or before 22 February 2017 to the National Treasury, c/o Dr Reshma Sheoraj at iregulations.insurance@treasury.gov.za or faxed to (012) 315 5206.

**PRAVIN J GORDHAN
MINISTER OF FINANCE**

SCHEDULE**1. Interpretation**

In this Schedule "the Regulations" means the Regulations under the Long-term Insurance Act, 1998 as published in GN R. 1492 of 1998 and amended by GN R. 197 of 2000, GN R. 164 of 2002, GN R. 1209 of 2003, GN R. 1218 of 2006, GN R. 186 of 2007, GN R. 952 of 2008, GN R. 1077 of 2011, GN R. 170 of 2015.

2. Part 1 of the Regulations is hereby amended by –

- (a) the insertion in Regulation 1.1 before the definition "Part" of the following definition:
"insurer" means a long-term insurer;"
- (b) the insertion in Regulation 1.1 after the definition "Part" of the following definition:
"policy" means a long-term insurance policy and "insurance policy" has a corresponding meaning;" and
- (c) the deletion in Regulation 1.1 of the definition "SAFEX".

3. Part 2 of the Regulations is hereby amended by –

- (a) the insertion in Regulation 2.1 after the definition "rules of SAFEX" of the following definition:
"SAFEX" means the South-African Futures Exchange;"

4. Part 3 of the Regulations is hereby amended by –

- (a) the substitution below "PART 3" in Part 3 for the heading "LIMITATION ON REMUNERATION" of the following heading:
"REMUNERATION";
- (b) the substitution below "PART 3A" in Part 3A for the heading "POLICIES OTHER THAN POLICIES TO WHICH PART 3B APPLIES" of the following heading:
"LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY - POLICIES OTHER THAN POLICIES TO WHICH PART 3B APPLIES";
- (c) the deletion in Regulation 3.1 in Part 3A of the definition "administrative work";
- (d) the insertion in Regulation 3.1 in Part 3A after the definition "fund member policy" of the following definition:
"group of companies" has the meaning defined in section 1 of the Companies Act;"
- (e) the substitution in Regulation 3.1 in Part 3A for the definition "independent intermediary" of the following definition:

“independent intermediary” means a person, other than a representative, who renders services as intermediary;”

- (f) the insertion in Regulation 3.1 in Part 3A after the definition “policy benefit” of the following definition:

“Policyholder Protection Rules” means the Policyholder Protection Rules, 2016, promulgated by GN R. [—] of [—] [—] 2016;”

- (g) the substitution in Regulation 3.1 in Part 3A for the definition “premium” of the following definition:

“premium”, in relation to a premium period, means the premium which is payable by a policyholder and received under that policy in respect of every separately identifiable benefit component of that policy;”

- (h) the substitution in Regulation 3.1 in Part 3A for the definition “rendering services as intermediary” of the following definition:

“services as intermediary” means any act performed by a person on behalf of an insurer or a policyholder –

(a) directed towards entering into, varying or renewing an insurance policy;
or

(b) with a view to -

(i) maintaining, servicing or otherwise dealing with;

(ii) collecting or accounting for premiums payable under;

(iii) receiving, submitting or processing claims under; or

(iv) providing administrative services, other than policy data administration services as defined in sub-regulation 3.19 in Part 3C rendered on behalf of an insurer, in relation to,

an insurance policy, and includes any such act in relation to a fund, a member of a fund and the agreement between the member and the fund;”

- (i) the substitution in Regulation 3.1 in Part 3A for the definition “replacement event” of the following definition:

“replacement investment event” means a causal event resulting in the levying of a causal event charge in excess of 15% of the investment value or materially equivalent value of a policy, where ‘causal event’, ‘causal event charge’ and ‘investment value’ have the meanings assigned to them in Part 5A and ‘materially equivalent value’ means the value contemplated in sub-regulation 5.2(2)(b) of Part 5A;”

- (j) the substitution in Regulation 3.1 in Part 3A for the definition “replacement policy” of the following definition:

“replacement investment policy” means a multiple premium policy which is an investment policy, where the policyholder is or was either the policyholder or the life

insured in respect of any other investment policy, and where a replacement event occurs in respect of that other investment policy within a period of 4 months before or after the replacement investment policy is entered into;";

- (k) the insertion in Regulation 3.1 in Part 3A after the definition "replacement investment policy" of the following definition:

"'replacement risk policy' has the meaning assigned to it in the Policyholder Protection Rules;";

- (l) the substitution in Regulation 3.1 in Part 3A for the definition "representative" of the following definition:

"'representative' means a person employed or mandated by a long-term insurer to render services as intermediary only in relation to policies –

- (a) entered into or to be entered into by that insurer;
- (b) entered into or to be entered into by another insurer which is also part of the same group of companies that the insurer is part of;
- (c) entered into or to be entered into on or after 1 May 2017 by another insurer which has a written agreement with that insurer in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to a class of policies of that other insurer which none of the insurers referred to in paragraphs (l) and (ll) are registered to underwrite; or
- (d) entered into prior to 1 May 2017 by another insurer which concluded a written agreement with that insurer prior to 1 January 2017 in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to that other insurer's policies;";

- (m) the substitution in subregulation (4) in Regulation 3.2 in Part 3A for paragraph (b) of the following paragraph:

"(b) except in the case of a policy and benefit component of a kind specified in items 1.1, 2.1, 3.1.1, 3.2.1, and 5.1.1 and 5.2.1 of the Table;";

- (n) the insertion after subregulation (4) in Regulation 3.2 in Part 3A of the following subregulation:

"(4A) No remuneration or consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, a representative for rendering services as intermediary, otherwise than in accordance with the principle of "Equivalence of Reward" as determined by the Registrar under paragraph (5) below.";

- (o) the substitution in Regulation 3.2 in Part 3A for subregulation 5 of the following subregulation:

"(5) The Registrar may by notice determine that particular forms of remuneration or consideration, whether in cash or in kind, comply or do not comply with the principle of "Equivalence of Reward".";

- (p) the substitution in paragraph (b) in subregulation (1) in Regulation 3.3 in Part 3A for subparagraph (l) of the following subparagraph:

- (i)** in the case of a policy and benefit component of a kind specified in items 1.1, 2.1, 3.1.1, 3.2.1, 5.1.1 and 5.2.1 of the Table, primary commission may be paid and accepted in one or more amounts after the policy has been entered into:";
- (q)** the substitution in subregulation (1) in Regulation 3.4 in Part 3A for paragraph (b) of the following paragraph:
- (b)** a multiple premium policy, other than a fund policy and a group scheme, the percentage specified in column 4 of the Table to the total amount of the premium payable during the premium-paying term, calculated as if the premium payable during the first premium period were payable at that level throughout the premium-paying term of the policy, which commission may be paid and accepted in one or more amounts at the discretion of the long-term insurer: Provided that such commission shall not exceed, in the case of a policy and benefit component specified in items 1.1, 2.1, 3.1.1, 3.2.1, 5.1.1 and 5.2.1 of the Table, an amount equal to the percentage specified in column 5 of the Table of the premium payable during the first premium period of the policy; or";
- (r)** by the substitution in subregulation (1) in Regulation 3.5 in Part 3A for the words preceding paragraph (a) of the following words:
- "If the provisions of a multiple premium policy are varied so that the total amount of the premium which was payable during the premium-paying term of the policy and which was used for the purpose of the calculation of commission in terms of regulation 3.4, is, for any reason -";
- (s)** the substitution in subparagraph (i) in paragraph (a) in subregulation (2) in Regulation 3.5 for subparagraph (cc) of the following subparagraph:
- (cc)** a policy in respect of which commission has been paid only after each premium in respect of which it is payable has been received by the long-term insurer concerned (including but not limited to a replacement investment policy);";
- (t)** the substitution in subparagraph (i) in paragraph (a) in subregulation (2) in Regulation 3.5 in Part 3A for the words following subparagraph (cc) of the following words:
- "for any reason not paid on its due date, including that the policy has been made paid-up or surrendered, but excluding termination upon a health event, a disability event or the death of a life insured, during the first two premium periods in the case of a policy referred to in items 1.1, 2.1, 3.1.1, 3.2.1, 5.1.1 and 5.1.2 of the Table the commission payable in terms of this Part shall be recalculated by reference to the scale and shall not exceed the percentage of maximum commission in column A or B, respectively, and any amount of commission which has already been paid in excess of the commission as so recalculated, shall be reversed by the long-term insurer and refunded to it by the person to whom it was paid:";
- (u)** the substitution in Part 3A for Regulation 3.9 of the following Regulation:
- "Special provisions concerning replacement investment policies**

3.9 (1) Commission may only be paid in respect of a replacement investment policy as a level percentage of the premiums received, and may only be paid once the premium in respect of which it is payable has been received by the long-term insurer concerned, whether or not -

- (a) the replacement investment policy comprises more than one benefit component; or
- (b) the portion of the total premium attributable to the different benefit components of the replacement investment policy is specified in or ascertainable from the written provisions of the policy.

(2)(a) The total amount of commission paid on a replacement investment policy may not exceed the total of the primary and secondary commission that would have been payable in terms of this Part in respect of a policy other than a replacement investment policy; and

- (b) In determining such total amount, the long-term insurer concerned may include interest at 15 per cent per annum, or such other rate of interest as may be prescribed by the Registrar from time to time, compounded annually from the earliest date on which the full amount of primary or secondary commission could have been paid if the policy was not a replacement investment policy, until such full amount has been paid.

(3) In the event of commission on a replacement investment policy being paid or accepted otherwise than in accordance with subregulation (1) or (2), whether due to the fact that the long-term insurer was not aware at the time of payment that the policy in question was a replacement investment policy, or for any other reason, then any commission paid by the long-term insurer in excess of the commission payable in accordance with subregulation (2), or paid earlier than permitted in subregulation (1), shall upon identification of the excess or early payment, be reversed and refunded to the long-term insurer by the person to whom it was paid.”;

- (v) the insertion after Regulation 3.9 in Part 3A of the following Regulation:

“Special provisions concerning replacement risk policies

3.9A (1) Notwithstanding regulation 3.4, a long-term insurer must either --

- (a) not pay any commission to any person in respect of a replacement risk policy unless and until a managing executive of that long-term insurer has provided the confirmation referred to in rule [-] of the Policyholder Protection Rules; or
- (b) where the long-term insurer does pay commission to a person in respect of a replacement risk policy, reverse such payment and ensure that the payment is refunded to the long-term insurer if a managing executive of that long-term insurer is not able to provide the confirmation referred to in rule [-] of the Policyholder Protection Rules or fails to provide the confirmation within the time specified in that Rule.

(2) In the event of commission on a replacement risk policy being paid or accepted otherwise than in accordance with subregulation (1), whether due to

the fact that the long-term insurer was not aware at the time of payment that the policy in question was a replacement risk policy, or for any other reason, then any commission paid by the long-term insurer shall upon identification be reversed and refunded to the long-term insurer by the person to whom it was paid.”;

(w) the substitution in Annexure 1 in Part 3A for the Table of the following Table:

Table

Item	Kind of policy or benefit component	Maximum percentage			Notes	
		Single premium policy	Multiple premium policy		Up-front payment reg 3.3(1)(b)(i) applicable	Secondary commission: reg 3.2(4)(b) applicable
			Basic percentage	Limit per proviso to reg 3.4(1)(b)		
Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	
		%	%	%		
1	Individual policy, not elsewhere specified					
1.1	not immediate annuity	3.0	3.25	85.0	yes*	yes*
1.2	immediate annuity					
1.2.1	not compulsory	1.5	not applicable	not applicable	no	no
1.2.2	compulsory, not tied	1.5	not applicable	not applicable	no	no
1.2.3	compulsory, tied	Nil	not applicable	not applicable	no	no
2	Fund member policy					
2.1	funding a retirement annuity fund					
2.1.1	upon entry, not a transfer	2.5	3.0	75.0	yes*	yes*
2.1.2	upon entry, a transfer from a fund other than a retirement annuity fund to					
2.1.2.1	a fund chosen by the member	1.5	not applicable	not applicable	no	no
2.1.2.2	a fund not chosen by the member	Nil	not applicable	not applicable	no	no
2.1.3	upon entry, a transfer from another retirement annuity fund	Nil	not applicable	not applicable	no	no
2.2	not funding a retirement annuity fund					
2.2.1	upon entry, not a transfer	2.5	3.0	75.0	yes*	yes*
2.2.2	upon entry, a transfer from another fund	1.5	not applicable	not applicable	no	no
3	Life policy					
3.1	Other than term cover only					
3.1.1	individual	3.0	3.25	85.0	yes*	yes*
3.1.2	incorporated in a group scheme					
3.1.2.1	which is a credit scheme	7.5	7.5	85.0	yes*	yes*
3.1.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
3.2	Term cover only					
3.2.1	individual	7.5	3.25	nil	no	no
3.2.2	incorporated in a group scheme					
3.2.2.1	which is a credit scheme	7.5	7.5	not applicable	no	no
3.2.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
4	Fund policy	Scale A	Scale A	not applicable	no	no
5	Health policy and disability policy					
5.1	Other than term cover only					

5.1.1	Individual	3.0	3.25	66.0	yes	yes
5.1.2	Incorporated in a group scheme					
5.1.2.1	which is a credit scheme	7.5	7.5	not applicable	no	no
5.1.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
5.2	Term cover only					
5.2.1	Individual	7.5	3.25	nil	no	no
5.2.2	Incorporated in a group scheme					
5.2.2.1	which is a credit scheme	7.5	7.5	not applicable	no	no
5.2.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
6	Sinking fund policy	3.0	3.0	nil	no	no
7	Assistance policy	-	-	-	no	no

Notes to Annexure 1:

- An asterisk (*) denotes "excluding a replacement investment policy".
- A dash (-) denotes that there is no limit.
- "nil" denotes that no commission may be paid.
- A policy, other than one that provides an immediate annuity, that is a fund member policy or a fund policy falls under item 2 or 4, as the case may be irrespective whether it can fall also under another item. A policy that provides an immediate annuity that is a fund member policy or a fund policy attracts the commission referred to in item 1.2.
- Item 2.1.2.1 applies with effect from 1 March 2007.

- (x) the substitution in Scale A in Annexure 2 in Part 3A for paragraph 1 of the following paragraph:

"1. Normal commission

MAXIMUM COMMISSION AS PERCENTAGE OF ANNUALISED PREMIUM UNDER A GROUP SCHEME OR FUND POLICY	ANNUALISED PREMIUM OF WHICH THE AMOUNT -	
	EXCEEDS	DOES NOT EXCEED
%	R	R
7,5%		200 000
5,0%	200 000	300 000
3,0%	300 000	600 000
2,0%	600 000	2 000 000
1,0%	2 000 000	UNLIMITED

- (y) the substitution in paragraph 2 in Scale A in Annexure 2 in Part 3A for subparagraph (b) of the following subparagraph:

"(b) R7 500.";

- (z) the substitution below "PART 3B" in Part 3B for the heading "INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009" of the following heading:

"LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY - INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009";

- (aa) the substitution in Regulation 3.10 in Part 3B for subregulation (1) of the following subregulation:

"(1) This Part 3B applies to –

- (a) investment policies that started on or after 1 January 2009, but except only for purposes of regulation 3.15(4), does not apply to risk components of such investment policies; and
- (b) any variable premium increase (as defined in Part 5A) in respect of a policy to which Part 5A applies.”;
- (bb) the substitution in Regulation 3.11 in Part 3B for subregulation (2) of the following subregulation:
- “(2)(a) No remuneration or consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, a representative for rendering services as intermediary, otherwise than in accordance with the principle of “Equivalence of Reward” as determined by the Registrar under paragraph (b) below.
- (b) The Registrar may by notice determine that particular forms of remuneration or consideration, whether in cash or in kind, comply or do not comply with the principle of “Equivalence of Reward”.”;
- (cc) the substitution in Part 3B for Regulation 3.18 of the following Regulation:

“Replacement investment policies

3.18 (1) Commission may not be discounted in respect of a replacement investment policy.

(2) In the event of commission in respect of a replacement investment policy having been paid otherwise than in accordance with this Part, whether because the insurer at the time of the payment was not aware that the policy in question was a replacement investment policy, or for any other reason, then any commission paid by the insurer in excess of the maximum that may be paid in accordance with this Part, or paid earlier than permitted in this Part, must, upon identification of the payment, be reversed and paid back to the insurer by the person to whom it was paid.”;

- (dd) the insertion after Part 3B of the following Part:

**“PART 3C
LIMITATION ON REMUNERATION FOR OUTSOURCING**

Application of this Part 3C, and definitions

3.19 (1) This Part 3C applies to any outsourcing by an insurer of a binder function or policy data administration services.

(2) In this Part 3C, unless defined differently in this Part 3C or unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 6 has the meaning assigned to it in that Part, and -

“cell structure” means an arrangement under which a person (cell owner) -

- (a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares;

- (b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and
- (c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up;

“outsourcing” means any arrangement of any form between an insurer and another person, whether that person is regulated or supervised under any law or not, in terms of which that party performs a function that is integral to the nature of the insurance business that an insurer provides, which would otherwise be performed by the insurer itself in conducting long-term insurance business, and includes rendering services under a binder agreement and rendering policy data administration services, but excludes rendering services as intermediary;

“policy data administration services” means the managing, recording and updating of policy and policyholder data of an insurer on behalf of that insurer in a manner that –

- (a) ensures complete integration between the information technology system of the insurer and the person that provides the services; and
- (b) enables the insurer to have continuous access to accurate, up-to-date, complete and secure policy and policyholder data.

Remuneration relating to outsourcing of policy data management services

Limitation on remuneration for policy data administration services

3.20 (1) An insurer or any other person must only offer or pay a fee for policy data administration services to any person, and that person must only accept such a fee, if that person has the operational capability to provide such policy data administration services.

(2) The fee referred to in paragraph (a) must not exceed 2% of the total premium payable by policyholders in respect of the policies to which the policy data administration services relate.

(3) Despite subregulation (1) above, an insurer or any other person must not offer or pay a fee for policy data administration services to –

- (a) a representative that is a natural person, and that representative must not accept such a fee; or
- (b) a binder holder, and that binder holder must not accept such a fee, if that binder holder has a binder agreement with the insurer to perform the service or function contemplated in section 49A(1)(a) of the Act.

Limitation on remuneration to binder holder

Remuneration that may be offered or provided to a binder holder

3.21 (1) An insurer may pay a binder holder a fee for the services rendered under the binder agreement, which fee must be reasonably commensurate with the actual costs incurred by the binder holder associated with rendering the services under the binder agreement, with allowance for a reasonable rate of return for the binder holder.

(2) Despite subregulation (1), an insurer must not without the prior approval of the Registrar referred to in subregulation (3) pay a binder holder a fee for the services rendered under the binder agreement that exceeds the value listed in the Table below, reflected as a percentage of the aggregate of the total premiums payable by policyholders in respect of the policies to which the binder function relates, if that binder holder is --

- (a) a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of long-term insurance policies;
- (b) a non-mandated intermediary that is an associate of another non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of long-term insurance policies.

Table

BINDER FUNCTION	MAXIMUM FEE PAYABLE
Enter into, vary or renew a policy – section 49A(1)(a)	2%
Determine the wording of a policy – section 49A(1)(b), determine premiums under a policy – section 49A(1)(c) or determine the value of policy benefits under a policy – section 49A(1)(d), or any combination of the above	2%
Settle claims under a policy – section 49A(1)(e)	2%

(3) The Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer grant approval to the insurer to pay a binder holder a fee in excess of the fees referred to in regulation 3.21(2) if the Registrar is satisfied that:

- (a) such a fee is appropriate taking into account the nature, scale and complexity of the insurance business to which the relevant binder function relates; and
- (b) such a fee will not impede the fair treatment of policyholders;
- (c) no conflict of interest or potential conflict of interest exists; or
- (d) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders.

(4) Any fee referred to under subregulation (1) payable to a non-mandated intermediary that may perform the service or function contemplated in section 49A(1)(e) of the Act under a binder agreement, may not constitute or be based on a percentage of the difference between an amount claimed or the maximum

value of policy benefits payable under a policy and the policy benefits actually provided to a policyholder in settlement of a claim.

(5) Any fee referred to under regulation 3.20 or this regulation 3.21, payable to a non-mandated intermediary that is a binder holder, must be disclosed to a policyholder, which disclosure must be included in the disclosures contemplated under regulation 6.2(1)(g).

Participation by a binder holder in profits attributable to the policies referred to in a binder agreement

3.22 (1) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(2) Subregulation (1) does not prohibit a non-mandated intermediary that is a binder holder and entered into a cell structure with an insurer from receiving dividends in respect of shares held in that insurer as part of that cell structure.

(3) An administrative FSP or underwriting manager, in respect of the services rendered under the binder agreement, may share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement."; and

(ee) the insertion after Part 3C of the following Part:

"PART 3D GENERAL PRINCIPLES FOR DETERMINING REMUNERATION

Application of this Part 3D, and definitions

3.23 (1) In this Part 3D, any word or expression to which a meaning has been assigned in any other Part has the meaning assigned to it in that Part.

(2) This Part 3D, applies to any remuneration offered or provided, directly or indirectly, by or on behalf of a long-term insurer, a policyholder or any other person, or accepted by any other person, for –

- (a) rendering services as intermediary;
- (b) providing policy data administration services;
- (c) performing a binder function or incidental activity under a binder agreement; or
- (d) rendering any other services under any other outsourcing arrangement.

General principles for determining any remuneration

3.24 (1) Remuneration paid to any person for the rendering of any service, activity or function performed by that person, must –

- (a) be reasonably commensurate with the actual service, function or activity performed;
- (b) not result in any service, function or activity referred to in regulation 3.23(2) being remunerated again;
- (c) not be structured in a manner that may increase the risk of unfair outcomes for policyholders; and
- (d) not be linked to the monetary value of claims for policy benefits repudiated, paid, not paid or partially paid.

(2) Subregulation (1) applies in addition to any specific requirements relating to remuneration for specific services, activities or functions set out in these regulations."

5. Part 4 of the Regulations is hereby amended by -

- (a) the substitution in Regulation 4.1 for the definition "excess premium" of the following definition:

"'excess premium' means a premium which is received by, or which becomes due to, a long-term insurer during a premium period, and which -

- (a) by itself exceeds;
- (b) when aggregated with all premiums already received, and still to be received, during that premium period, exceeds; or
- (c) is the first of increased recurrent premiums which, if it had been received by the long-term insurer at that increased rate during that premium period, would have caused the total value of the premiums received by the long-term insurer during that premium period to exceed,

by a rate of more than 20 per cent, the higher of the total value of the premiums received by the long-term insurer during any one of the two premium periods immediately preceding that premium period: Provided that if a premium is increased during the second premium period, the percentage increase shall be determined in relation to the first premium period only;"

- (b) the substitution in Regulation 4.1 for the definition "fund member policy" of the following definition:

"'fund member policy' means a long-term policy other than a fund policy -

- (a) of which a fund is the sole policyholder;
- (b) under which a specified member of the fund (or the surviving spouse, child, dependent or nominee of the member) is the life insured; and
- (c) which is entered into by the fund for the purpose of exclusively funding the fund's liability to that member (or the surviving spouse, children, dependants or nominees of the member) in terms of the rules of the fund;"

- (c) the substitution in Regulation 4.1 for the definition "policy" of the following definition:

"policy" means a long-term policy, whether entered into before or after the commencement of this Act, excluding -

- (a) a reinsurance policy;
 - (b) a fund policy;
 - (c) a fund member policy, for as long as no right under the policy is transferred by the fund to a life insured under the policy, or is transferred to any person except another fund for the direct or indirect benefit of a life insured under the policy; or
 - (d) a living annuity as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (d) the substitution in subregulation (1) in Regulation 4.2 for paragraph (b) of the following paragraph:

"(b) upon the full or partial surrender of a policy during an extended restriction period -

- (i) if the policy has previously been partially surrendered during the extended restriction period concerned, any further consideration; or
- (ii) if the policy has not been previously partially surrendered during the extended restriction period concerned, any consideration the value of which exceeds the restricted amount less the capital (excluding capitalised interest) of a loan already provided in respect of the policy during that extended restriction period:

Provided that where the policy is fully surrendered and the full value of the consideration to be provided thereupon exceeds the amount thus determined by not more than R10 000 the full consideration may be provided;

- (e) the substitution in Regulation 4.2 for subregulation (2) of the following subregulation:

"(2) Subregulation (1)(a) shall not apply to a policy benefit which is to be provided and is provided under the policy upon -

- (a) the life of a life insured having ended;
 - (b) the life of a life insured having begun;
 - (c) a health event occurring;
 - (d) a disability event occurring;
 - (e) retrenchment occurring.";
- (f) the insertion after Regulation 4.2 of the following Regulation:

"Maximum fees, penalties or any other charges on loans

4.2A (1) Where the terms of a loan on the security of a long-term policy provide for the charging of interest at a stated fixed rate, whether simple or compound interest, an insurer may only apply such interest to the capital amount of the loan and not to any other cost or loss in respect of the loan.

(2) Where the terms of a loan on security of a long-term policy do not provide for the charging of interest, an insurer may not impose any fees, penalties or other charges in respect of the loan in excess of an amount equal to the maximum causal event charge that the insurer would have been permitted to charge if the capital amount of the loan had been the amount surrendered in terms of a causal event referred to in paragraph (d) or (f) of the definition of causal event in Part 5A."

6. Part 5 of the Regulations is hereby amended by -

- (a) the insertion in Regulation 5.1 in Part 5A after the definition "this Part" of the following definition:

"universal whole of life policy" means a policy other than a fund member policy that is a whole-life policy that is not an excluded policy and -

- (a) that provides risk benefits and has an investment value or a materially equivalent value referred to in regulation 5.2(2)(b); and
- (b) in respect of which the underlying actuarial basis of the policy, whether or not the actuarial basis has been expressly incorporated in the policy, provides that, at inception of the policy, not less than eighty five percent (85%) of the total premium payable by the policyholder is allocated towards the risk benefits;"

- (b) the insertion in Regulation 5.1 in Part 5A after the definition "values" of the following definition:

"variable premium increase" means an increase in an existing recurring premium payable by a policyholder under a policy, which increase is not a regular contractual premium increase provided for and specified in the policy at the start of that policy.";

- (c) the substitution in Regulation 5.3 in Part 5A for subregulation (3) of the following subregulation:

"(3) Where a causal event occurs in respect of a fund member policy on or after the effective date but before 1 January 2018, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (4).";

- (d) the insertion after subregulation (4) in Regulation 5.3 in Part 5A of the following subregulations:

"(5) Where a causal event occurs in respect of a fund member policy during a period referred to in column 1 of Table A below, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum percentage set out in the corresponding line in column 2 of Table A below.

Timing of causal event	Maximum if causal event is one contemplated in the following paragraph of the definition "causal event":		
	for purposes of paragraph (a), (c), (f) or (g), the maximum percentage below of the investment value immediately before the causal event:	for purposes of paragraph (b), the maximum percentage of the investment value immediately before the causal event equal to percentage below multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced:	for purpose of paragraph (d) or (e), the maximum percentage below of the amount by which the investment value immediately before the causal event has been reduced:
On or after 1 January 2018 but before 1 January 2019	20%	20%	20%
On or after 1 January 2019 but before 1 January 2020	18%	18%	18%
On or after 1 January 2020 but before 1 January 2021	16%	16%	16%
On or after 1 January 2021 but before 1 January 2022	14%	14%	14%
On or after 1 January 2022 but before 1 January 2023	12%	12%	12%
On or after 1 January 2023 but before 1 January 2024	11%	11%	11%
On or after 1 January 2024 but before 1 January 2025	10%	10%	10%
On or after 1 January 2025 but before 1 January 2026	9%	9%	9%
On or after 1 January 2026 but before 1 January 2027	8%	8%	8%
On or after 1 January 2027 but before 1 January 2028	7%	7%	7%
On or after 1 January 2028 but before 1 January 2029	6%	6%	6%
On or after 1 January 2029	5%	5%	5%

- (e) the substitution in Regulation 5.4 in Part 5A for subregulation (3) of the following subregulation:

"(3) Where a causal event occurs in respect of a policy other than a fund member policy on or after the effective date but before 1 January 2018, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (4).";

- (f) the insertion after subregulation (4) in Regulation 5.4 in Part 5A of the following subregulations:

(5) Where a causal event occurs in respect of a policy other than a fund member policy, but that is not a universal life policy, during a period referred to in column 1 of Table A below, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum percentage set out in the corresponding line in column 2 of Table A below.

Timing of causal event	Maximum in respect of a causal event contemplated in the following paragraph of the definition "causal event":		
	for purposes of paragraph (a), (c), (f)), the maximum percentage below of the investment value immediately before the causal event:	for purposes of paragraph (b), the maximum percentage of the investment value immediately before the causal event equal to percentage below multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced:	for purpose of paragraph (d), the maximum percentage below of the amount by which the investment value immediately before the causal event has been reduced:
On or after 1 January 2018 but before 1 January 2019	20%	20%	20%
On or after 1 January 2019 but before 1 January 2020	18%	18%	18%
On or after 1 January 2020 but before 1 January 2021	16%	16%	16%
On or after 1 January 2021 but before 1 January 2022	14%	14%	14%
On or after 1 January 2022 but before 1 January 2023	12%	12%	12%
On or after 1 January 2023 but before 1 January 2024	11%	11%	11%
On or after 1 January 2024 but before 1 January 2025	10%	10%	10%
On or after 1 January 2025 but before 1 January 2026	9%	9%	9%
On or after 1 January 2026 but before 1 January 2027	8%	8%	8%
On or after 1 January 2027 but before 1 January 2028	7%	7%	7%
On or after 1 January 2028 but before 1 January 2029	6%	6%	6%
On or after 1 January 2029	5%	5%	5%

(6) Where a causal event occurs in respect of a universal whole of life policy during a period referred to in column 1 of Table A below, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum percentage set out in the corresponding line in column 2 of Table A below.

Timing of causal event	Maximum in respect of a causal event contemplated in the following paragraph of the definition "causal event":		
	for purposes of paragraph (a), (c), (f), the maximum percentage below of the investment value immediately before the causal event:	for purposes of paragraph (b), the maximum percentage of the investment value immediately before the causal event equal to percentage below multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced:	for purpose of paragraph (d), the maximum percentage below of the amount by which the investment value immediately before the causal event has been reduced:
On or after 1 January 2018 but before 1 January 2019	20%	20%	20%
On or after 1 January 2019 but before 1 January 2020	19%	19%	19%
On or after 1 January 2020 but before 1 January 2021	18%	18%	18%
On or after 1 January 2021 but before 1 January 2022	17%	17%	17%
On or after 1 January 2022 but before 1 January 2023	16%	16%	16%
On or after 1 January 2023	15%	15%	15%

(g) the deletion in Part 5A of Regulation 5.7;

(h) the substitution in Part 5A for Regulation 5.8 of the following Regulation:

"Amendments to actuarial basis and values

5.8 (1) An insurer must, before giving effect to an amendment made to the actuarial basis of a policy, where that amendment will have the effect of reducing the values or benefits of that policy, inform the Registrar of the amendment. The insurer must also provide the reasons for the amendment.

(2) The Registrar may, if he or she is of the opinion that an amendment contemplated in subregulation (1) was affected to directly or indirectly reduce the impact on the insurer of complying with this Part, direct the insurer to review that amendment.

(3) An insurer must keep a record of amendments contemplated in subregulation (1), which record must be made available to the Registrar on request."

(i) the insertion after Regulation 5.8 in Part 5A of the following Regulation:

"Variable premium increases in respect of policies to which this Part applies

5.9 Despite anything contained in this Part or the regulations, any variable premium increase on or after 1 May 2017 in respect of a policy to which this Part

applies is subject to Part 3B and Part 5B and must be regarded as constituting a separate policy for purposes of the application of those Parts.”; and

- (j) the insertion after Part 5B of the following Part:

**“PART 5C
PRINCIPLES FOR CALCULATION OF CAUSAL EVENT CHARGES**

General principles for the calculation of causal event charges

5.1 (1) For purposes of compliance with Parts 5A and 5B, an Insurer must consider all causal event charges that arose after 1 January 2001.

(2) When calculating causal event charges in respect of policies referred to in Part 5A and Part 5B, an insurer must –

- (a) take into account the cumulative effect on a policy’s investment value of charges that have already been deducted in respect of previous causal events;
- (b) on the occurrence of a second or subsequent causal event on a policy, determine the causal event charge for that second or subsequent event by taking into account the cumulative effect of that charge and all prior causal event charges on the policy’s investment value;
- (c) ensure that the cumulative effect of multiple causal event charges during the life of a policy does not result in the policy’s investment value at any time being reduced by a greater portion than would have been the case if, at the time of the first causal event, the maximum causal event charge has been deducted.

(3) For purposes of subregulation (2)(b), the calculation of the cumulative causal event charges and the impact on the policy’s investment value may take into account the time value of money, but any simplification applied in the calculation methodology may not result in a reduced policy investment value.

(4) For purposes of subregulation (2)(c), the maximum causal event charge means the lower of –

- (a) the highest charge the insurer applies to any one causal event for the type of policy concerned according to the insurer’s actuarial basis; and
- (b) the highest causal event charge, at the time of the first causal event, provided for in Part 5A, Part 5B or for the type of policy concerned.

(5) In applying the principles in subregulation (2), an insurer must apply the same method of calculation to all policies of the same type.

(6) An insurer must, where the actuarial basis provides for a charge percentage that is less than the maximum prescribed charges, apply the lesser percentage in calculating causal event charges and in determining their cumulative effect.

(7) An insurer must, prior to adjusting the actuarial basis for policies to ensure that these bases are not inconsistent with the minimum principles

contained in this Part, inform the Registrar of the proposed amendment and the reasons therefore.”.

7. Part 6 of the Regulations is hereby amended by -

- (a) the substitution in Regulation 6.1 for the definition “administrative FSP” of the following definition:

“**administrative FSP**” has the meaning assigned to it in the Codes of Conduct for administrative and discretionary FSPs published in Board Notice No. 79 of 8 August 2003, and amended from time to time, under the FAIS Act;”;

- (b) the substitution in Regulation 6.1 for the definition “associate” of the following definition:

“**associate**”.

(a) has the meaning assigned to it in the General Code of Conduct; and

(b) in addition to paragraph (a), includes, in respect of a juristic person, --

(i) another juristic person that has a significant owner or member of the governing body of such other person that is also a significant owner or member of the governing body of such other person of the first mentioned juristic person; and

(ii) another juristic person that has a person as a significant owner or member of the governing body who is an associate (within the meaning of paragraph (a)) of a significant owner or member of the governing body of the first mentioned juristic person;”;

- (c) the insertion in Regulation 6.1 after the definition “enter into” of the following definition:

“**FAIS Act**” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);”;

- (d) the insertion in Regulation 6.1 after the definition “FAIS Act” of the following definition:

“**General Code of Conduct**” means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the FAIS Act;”;

- (e) the insertion in Regulation 6.1 after the definition “General Code of Conduct” of the following definition:

“**governing body**” means; a person or body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of the financial institution, directs its affairs or has the authority to exercise the powers and perform the functions of the financial institution, and includes—

- (a) the general partners of an *en commandite* partnership or the partners of any other partnership;
- (b) the members of a close corporation;

- (c) the trustees of a trust; and
 - (d) the board of directors of a company;";
- (f) the insertion in Regulation 6.1 after the definition "governing body" of the following definition:

"'Incidental' means any activity that is necessary or expedient for the performance of a binder function;";

- (g) the insertion in Regulation 6.1 after the definition "insurer" of the following definition:

"'Juristic person' includes—

- (a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere;
- (b) an association, partnership, club or other body of persons of whatever description, corporate or unincorporated; or
- (c) a trust or trust fund;";

- (h) the insertion in Regulation 6.1 after the definition "policy" of the following definition:

"'qualifying stake' means in respect of a person that -

- (a) is a company, that another person, directly or indirectly, alone or together with a related or interrelated person -
 - (i) holds at least 15% of the issued shares of the first mentioned person;
 - (ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the first mentioned person;
 - (iii) has the ability to dispose of or control the disposal of at least 15% of the first mentioned person's securities; or
 - (iv) holds rights in relation to the first mentioned person that, if exercised, would result in that other person, directly or indirectly, alone or together with a related or interrelated person -
 - (aa) holding at least 15% of the securities of the first mentioned person;
 - (bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the first mentioned person; or
 - (cc) having the ability to dispose of or direct the disposal of at least 15% of the first mentioned person's securities;
- (b) is a close corporation, that another person, directly or indirectly, alone or together with a related or interrelated person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;

- (c) is a trust, means that another person has, directly or indirectly, alone or together with a related or interrelated person -
- (i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;
 - (ii) the power to appoint at least 15% of the trustees; or
 - (iii) the power to appoint or change any beneficiaries of the trust;";
- (l) the substitution in Regulation 6.1 for the definition "representative" of the following definition:
- "representative" has the meaning assigned to it in regulation 3.1, but excludes any natural person;";
- (j) the insertion in Regulation 6.1 after the definition "settle a claim" of the following definition:
- "significant owner" means a person that, directly or indirectly, alone or together with a related or interrelated person, has the ability to control or influence materially the business or strategy of another person. A person has the ability referred to in that subsection if -
- (a) the person, directly or indirectly, alone or together with a related or interrelated person, has the power to appoint 15% of the members of the governing body of the other person;
 - (b) the consent of the person, alone or together with a related or interrelated person, is required for the appointment of 15% of the members of a governing body of the other person; or
 - (c) the person, directly or indirectly, alone or together with a related or interrelated person, holds a qualifying stake in the other person;";
- (k) the substitution in Regulation 6.1 for the definition "underwriting manager" of the following definition:
- "underwriting manager" means a person that -
- (a) performs one or more of the binder functions referred to in (1)(a) to (e); and
 - (b) if that person renders services as an intermediary as defined in Part 3A of the Regulation,-
 - (i) does not perform any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder (including the performance of such an act in relation to a fund, a member of a fund and the agreement between the member and the fund); and
 - (ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and

- (c) does not have any relationship with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of that person's infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees *de facto*, directly or indirectly, performing any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder; and";
- (l) the substitution of Regulation 6.2 for the following Regulation:
- "Requirements, limitations and prohibitions relating to binder holders**
- 6.2 (1) An insurer, subject to regulation 6.5, may have a binder agreement with one or more of the following persons only -
- (a) subject to subregulations (1A), (2) and (3), a non-mandated intermediary;
 - (b) subject to subregulations (3) and (4), an underwriting manager; or
 - (c) an administrative FSP.
- (1A) An insurer may not have a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of long-term insurance policies relating to the binder functions contemplated in section 49A(1)(b) to (d) of the Act.
- (2) A non-mandated intermediary referred to under subregulation (1)(a) may not conduct any business with any mandated intermediary that is an associate of that non-mandated intermediary in relation to the same policy or policies of an insurer.
- (3) An underwriting manager referred to under subregulation (1)(b) may not conduct any business with a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary, or an administrative FSP that is an associate of that underwriting manager in relation to the same policy or policies of an insurer.
- (4)(a) An underwriting manager referred to under subregulation (1)(b) who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing.
- (b) Paragraph (a) does not apply if an underwriting manager enters into a binder agreement with an insurer during a termination period referred to in regulation 6.3(1)(e) in respect of a binder agreement with another insurer and that underwriting manager may not perform any binder functions on behalf of that other insurer during that termination period.";
- (m) the insertion after paragraph (c) in subregulation (1) in Regulation 6.3 of the following paragraph:

"(cA) specify the activities that are incidental to the performance of the binder function or functions, and the level and standard of service that must be rendered in respect of such activities;"

- (n) the substitution in subregulation (1) in Regulation 6.3 for paragraph (d) of the following paragraph:

"(d) require that the binder holder at all times is fit and proper, and has appropriate governance, risk management, internal controls and information technology systems in place to render the services under the binder agreement;"

- (o) the substitution in subregulation (1) in Regulation 6.3 for paragraph (p) of the following paragraph:

"(p) require the binder holder to provide the insurer at least every 24 hours with timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements;"

- (p) the insertion after Regulation 6.3 of the following Regulation:

"Governance, oversight and record keeping requirements

6.3A (1) An insurer must before concluding a binder agreement and thereafter, on an ongoing basis, identify, assess, measure and manage the risks associated with conducting insurance business through binder agreements to ensure the consistent delivery of fair customer outcomes.

- (2) An insurer must regularly assess a binder holder's adherence to the binder agreement, specifically also the binder holder's –

- (a) governance, risk management and internal controls;
- (b) fitness and propriety;
- (c) ability to comply with applicable laws and the binder agreement; and
- (d) operational and financial capability, including but not limited to the binder holder's capability to provide access to timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements.

- (3) An insurer must promptly take reasonable steps to rectify any non-adherence to a binder agreement.

- (4) An insurer must retain a copy of a binder agreement for a period of at least 5 years from the date on which a binder agreement is terminated."

- (q) the deletion of Regulation 6.4;

- (r) by the substitution for Regulation 6.5 of the following Regulation:

"Exemption

6.5 Despite regulation 6.2(1A), (2) or (3), the Registrar may on application from an insurer referred to in regulation 6.2(1A), (2) or (3) or an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(1A), (2) or (3), exempt, subject to such conditions as the Registrar may impose, the insurer or such person from regulation 6.2(1A), (2) or (3), if the Registrar is satisfied that –

- (a) no conflict of interest or potential conflict of interest exists; or
- (b) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders; and
- (c) the person has the operational and financial capability to perform the binder function or to conduct such business.”; and

(s) by the deletion of Regulation 6.7.

8. Part 7 of the Regulations is hereby amended by the substitution for that Part of the following Part:

**“PART 7
TITLE AND COMMENCEMENT**

7.1 These regulations are called the Regulations under the Long-term Insurance Act, 1998.

7.2 An insurer must, in respect of the amendment to these regulations that came into operation on 1 May 2017, ensure that -

- (a) any agreements or arrangements relating to matters addressed in Part 3 concluded -
 - (i) before the publication of the amendment to the regulations for public comment in the *Gazette* on [-], are aligned with the regulations as amended by no later than 31 December 2017;
 - (ii) between the publication of the amendment to the regulations for public comment in the on [-] and 1 May 2017, are aligned with the regulations as amended by no later than 31 July 2017;
- (b) any agreements relating to matters addressed in Part 6 concluded before or on 1 May 2017 are aligned with the regulations as amended by no later than 31 December 2017.

Transitional arrangements

9. The amendment to the Regulations takes effect on 1 May 2017 *