national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

COMMENTS MATRIX

RESPONSES TO COMMENTS RECEIVED ON SHORT-TERM INSURANCE REGULATIONS

This document sets out the National Treasury's formal response to stakeholders comments received on the version of the Short-Term Insurance Act, 1998: Proposed amendment of Regulations published on 23 December 2016.

This document must be read in conjunction with the document titled "Responses to Key Issues" published together with the final Regulations.

This document was also submitted to Parliament 2 November 2017.

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PART 1: INTERPRETATION			
2(a) - definition of "'services as intermediary'	AON	Definitions – noted that definitions for "independent intermediary", "representative" and "services as intermediary" are still to be aligned to FAIS - in particular "services as intermediary" needs to make it clear that "advice" is excluded (per the FAIS definition) and also that intermediary services (that attract commission) are clearly differentiated not only from advice but also customer consulting services (that attract advice / broker fees) and all binder and outsourcing functions (that attract binder / outsource fees) as well as all activities directed towards providing such "advice and customer consulting services" and "binder and outsourcing functions". This is vital in order to clearly differentiate the activities that support the three remuneration sources (Commission, Client fees and Insurer fees) in order to facilitate costing and remuneration benchmarking. With regards to definitions it is also imperative that a more comprehensive definition of advice is discussed and agreed. In particular advice needs to differentiate between: Factual information about a policy; "Advice" as provided by an insurer directly to a customer; "Comparative advice" and "personal recommendations" provided to a customer by an intermediary (RFA) – i.e. in line with "any recommendation, guidance or proposal" as envisaged under the FAIS definition of advice; "Professional advice" provided to a customer in respect of technical aspects such as the setting of sums insured and other levels of insurance and of self-insurance limits (excesses); "Risk management advice". We have also included this in our comments on the proposed Policy Holder Protection rules. We note from the RDR Status update that an Intermediary Activity Analysis (IAA) is to be conducted by the FSB to inform this differentiation and associated	The approach to the proposed amendments to the definitions of "independent intermediary", "representative" and "services as intermediary" were explained in detail in Note 1 of Annexure C (Explanatory document supporting consultation) under "PART IV: NOTES" that was released together with the draft Regulations on 23 December 2016. Notwithstanding, the definitions will revert back to the existing definitions- please refer to the Response to Key Issues document published together with the final Regulations.

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		remuneration benchmarking. We support such an initiative and emphasize our previous recommendation that the study be an industry engagement under the auspices of the FSB, this so as to properly inform the study which to our knowledge will be the first time such a differentiation has been made internationally. This inclusive approach is likely to take longer but it will be thorough and will gain progressive buy-in from industry participants who assist the regulator through this "world first" exercise. Had this been commenced when we first suggested it in 2015 it would be complete by now. Extract from our original submission in March-2015: Based on this principle and proviso, an exercise to review all broker remuneration is supported, without any pre-judgment of the consequences. This investigation should include the possible "deregulation of commissions" a principle supported by the FSB and the majority of the STI market in 2000 as outlined in the FSB's memorandum dated 18 July 2000. As part of this exercise, the remuneration models and earning potential of global counterparts should be measured against SA to benchmark and inform sustainability levels. We strongly urge that no changes are made to any remuneration streams until completion of the IAA study so as to ensure that all compensating adjustments are understood and implemented at the same time to avoid unnecessary financial stress that many entities may not be able to withstand. Most importantly this includes the proposed introduction of fee capping. In this regard we note that the regulator still has work to do to finalise the level at which the cap will be introduced – this must be properly informed as a result of the complete IAA study.	
2(b)	SAIA	This seems to be a typographical error – The definition of insurer is inserted before "Long term policy as such it should say "insurer" not "independent intermediary."	Comment not fully understood. Notwithstanding, typographical approach revised and changes made where necessary.
2(c)- definition of "policy"	Fulcrum	We note the new definition of policy to support alignment with the Insurance Bill. We also note that a different definition of policy is proposed in the PPR. Since the PPR is intrinsic to the Act itself the existence of an identical definition that bears two different meanings may not be desirable and could cause confusion.	Disagree. The existing PPRs do not apply to commercial line policies because of the definition of "policy". The draft PPRs propose to make the PPRs applicable to commercial lines policies to a limited extent by including commercial lines policies issued to small business. The definition in

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			the PPRs can therefore not be aligned to that in the Regulations as the Regulations should apply to commercial lines policies in a different manner.
	Marsh	The definition of policy under the Policy Holder Protection Rules differs in that the PPR's aims to qualify which types of policies enjoy protection under the PPR's. The PPR's are part of the Act and we submit that consideration should be given to reconsidering the inclusion of "policy" in the PPR's and rather consider a different way of qualifying who enjoys protection under the PPR's	Disagree. Please note that this is currently the way in which commercial lines policies are excluded from the ambit of the PPRs. The definition in the PPRs is not in contradiction with the Act, it merely limits the application of the term "policyholder" to certain persons.
	Norton Rose	The word "insurance" must come out of the term "short-term insurance policy". Take out the words "short-term" in relation to "short-term policies". "Policy" is defined.	Agreed. Agreed.
2(d)- definition of "representative" 2(f)- definition of "services as intermediary"	BASA	"Proposed alignment definition - "representative" means a natural person employed or mandated by a short-term insurer to render services as intermediary only…" This proposed amendment mentions a natural person employed or mandated by an insurer to render services as intermediary only. Rendering services as intermediary has been redefined in the proposed Insurance Regulations to only include intermediary services activities similar to that in the definition of intermediary services in the FAIS Act. Advice is not included in the definition of rendering services as intermediary in the Insurance Regulations, nor in the definition of intermediary services under the FAIS Act.	Your comment stating "Rendering services as intermediary has been redefined in the proposed Insurance Regulations to only include intermediary services activities similar to that in the definition of intermediary services in the FAIS Act" is not understood. As explained in Note 1 of Annexure C (Explanatory document supporting consultation) under "PART IV: NOTES" that was released together with the draft Regulations on 23 December 2016, the intention was not to align the definitions to FAIS terminology. It is also not clear why you state that advice is not included in the definition of rendering services as intermediary in the Insurance Regulations. Advice has always been included in the definition, notwithstanding, please note that the definitions have been changed to revert back to the current definitions.
2(d) - definition of	Fulcrum	We note the insertion of a definition of representative in the Regulations.	Please refer to the detailed explanation in Note 1 of Annexure C (Explanatory document supporting

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“representative”		We also note that the Act currently has a similar definition of representative. We highlight the duplication inasmuch as the Regulations are subordinate to the Act and a definition used in the Act would need to be construed in light of the definition in the Act. The proposed definition of “representative” contemplates the representative (a natural person) as rendering services as intermediary, which seems somewhat confusing inasmuch as the representative is an agent of the insurer, which is then by necessary implication, vicariously liable for the agent’s acts and omissions. It would, in our view, be more legally correct to view this representative as an agent of the insurer rather than as an intermediary, but with disclosure obligations to clarify this status. The concept that an employee of an insurer and product supplier is an intermediary is more likely to confuse customers. The term intermediary is loaded with connotations of independence or, at least, connotations of being agents of the customer rather than the insurer. At very least, the customer may believe that the information provided by the agent is advice. Another aspect of the definition is that it raises the question of whether the representative must get its own FAIS licence if the insurer that employs or mandates it does not require a FAIS licence. If the intention behind the amended definition is to create clearer accountability of insurers for the actions, omissions, behaviours and customer outcomes of the tied agent, then it is legally – and logically - preferable for these tied agents to be recognized as employees – or quasi-employees – of the insurer rather than viewing them as intermediaries. The insurer ought to be required to ensure the disclosure of the agent/tied agent as the employee or mandatory of the insurer. This should suffice to clarify in the mind of the customer that the information, service and advice being provided by the agent is necessarily limited by the fact of the tied agent’s employment or mandated relationship with the insurer.	consultation) under “PART IV: NOTES” that was release together with the draft Regulations. As per Note 1 in Annexure C, these definitions are included in the Regulations because of the deletion of these definitions from the STIA by the Financial Services Laws General Amendment Act, 2013. On the other aspects of your comment, please note that the definition in the Regulations has been changed to revert back to the wording of the current definition contained in the Act.
	SAIA	We note that the definitions between the various legislative instruments differ, e.g. definition of “representative” in the regulation is not aligned to the definition of	Please note that a “representative” in the FAIS Act includes both an independent intermediary and a

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		"representative" in the FAIS Act. The FAIS Act defines a representative as follows: *A representative means any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service* *a) does not require judgment on the part of the latter person; or* *b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries* By defining a representative as a natural person, a juristic person is disqualified from being a "representative" and can perform only "services as intermediary" under the banner of independent intermediary. We submit that the engagement of juristic persons as representatives does not create conflict of interest, which cannot be mitigated, nor does it compromise fair treatment of customers. The engagement of juristic persons as representatives can be managed by co-branding and clarity as to who takes responsibility for the conduct of the representative concerned, in the same way an insurer would take full responsibility for the conduct of a representative who is a natural person. We therefore recommend that the definition be reconsidered with the view to permit the engagement of juristic persons as representatives along the same lines as the draft regulations under section 72 of the Long-term Insurance Act.	representative as defined in the STIA Regulations. The definition of "representative" in the STIA Regulations therefore has a very specific meaning and it can therefore not align with the definition of "representative" as contained in the FAIS Act as the definitions are used in a different context in the respective laws. In addition, please note that, in as far it relates to juristic persons, the current definition of "representative" in the Short-term insurance Act excludes juristic representatives. We prefer to perpetuate the existing provision until such time as the scope of product supplier agents as mooted in the RDR (later phases) has been finalised.
	Santam	*Representative is defined as:* *" a natural person employed or mandated by a short-term insurer to render services as intermediary only in relation to short-term policies entered into or to be entered into by the short-term insurer"* Juristic persons are thus disqualified from being a "*representative*" and can perform only perform "*services as intermediary*" under the banner of *independent intermediary*. We hold the view that that an engagement of juristic persons as	See response directly above.

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		representative does not create conflict of interest nor does it compromise fair treatment of customers. Even if it did, such concerns could reasonably be avoided or mitigated. The engagement of juristic persons as a representative can be managed by co-branding and clarity as to who takes responsibility for the conduct of the representative concerned in the same way an insurer would take full responsibility for the conduct of a representative who is a natural person. We recommend that the definition be reconsidered with the view to permit the engagement of juristic person as a representative along the same lines as the draft regulations under section 72 of the Long-term Insurance Act.	
2(f) - definition of "'services as intermediary'	Associated Compliance	2 (f) Services as intermediary (b) (iv): It is not clear what these "services" relate to that are not covered by items i, ii or iii or by a potential outsource agreement with an insurer.	Please note that the definition has been changed to revert back to the wording used in the existing definition.
	Compass	Kindly provide clarity in respect of this insertion (as highlighted). "services as intermediary" means any act performed by a person on behalf of an insurer or policyholder – (a) directed towards entering into, varying or renewing an insurance policy; or In terms of the common law principle of "agency" a person cannot serve two masters. Intermediaries (brokers), seeking quotations from insurers, are doing so on behalf of their clients which accords with their principal / agent relationship. Whilst insurers enter into service level agreements with brokers who place business with them in order to manage the rendering of such intermediary service (for which regulated commission is paid), the fiduciary relationship between the policyholder / potential policyholder should not be undermined. The policyholder and potential policyholder chooses the broker to act as his/her/its 'trusted adviser'. <u>Suggestion:</u> In the event that a person provides only: (ii) premium collection services or (iv) "administrative services" to the insurer, such a person should explicitly be mandated to do so by the insurer and the commission payable should reflect this (be reduced accordingly to move away from the flat rate notion of 12.5% / 20%).	An intermediary can act on behalf of an insurer or a policyholder. For example, an insurer can authorise an intermediary to collect premiums on its behalf. In that instance the intermediary would not be performing the service on behalf of the policyholder. Please note that the proposed wording is currently used in the definition of services as intermediary in the LTIA Regulations and in the definition of intermediary services in the FAIS Act. Notwithstanding, please note that the definition has been changed to revert back to the wording used in the existing definition. The commission percentages provided for in the Regulations are maximum amounts and represent the total commission that may be paid in respect of services as intermediary irrespective of how many intermediaries provide services in respect of the same policy. The insurer must manage same. As to the last paragraph, this may be correct, however, the FSP will essentially not be able to sell

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		To enable this construction, it is hereby suggested to insert the following: (ii) collecting or accounting for premiums, on behalf of an insurer, which is payable under; (iv) providing administrative services on behalf of an insurer, other than policy data administration services as defined in sub-regulation 5.6 in Part 5B performed on behalf of an insurer, in relation to, The importance and need for this will become evident in respect of intermediaries (brokers) who perform insurer binder functions as a “not advice” intermediary in addition to “administrative services” as an intermediary. In terms of the current proposal, the broker (who is also a non-mandated intermediary binder holder) needs only to deregister the “advice” product category from its FSP license to earn both uncapped binder fees as well as maximum commission.	policies (unless the FSP can truly evidence that it is straight execution only selling, i.e. it is doing nothing that would fall within the definition of “advice” as define under the FAIS Act). In addition, this is not inherently problematic as commission and binder fees are paid in respect of separate activities. If no advice is provided, caps on the binder fee are not necessary as there is no risk of conflicted advice. The insurer would still be required to demonstrate that the binder fee is commensurate with the actual service provided, and compliance with the more rigorous binder operational requirements would also be required.
	Clientèle	We agree with the LTIA definition aligned to the STIA definition of “service as an intermediary”. This creates certainty to the definition and consistency across the different Insurance Laws. We would like to request clarity on the word “administrative services” under section 2(f) (b) (iv). What types of services will be included in administrative services?	Please note that the definition has been changed to revert back to the wording used in the existing definition and therefore the comment is no longer relevant.
	FIA	Noted that it is intended to align this definition to that as appears in the FAIS Act once all RDR changes have been made; we trust that this will include the proposal that Premium Collection should be regarded as an “Outsourced” service if this is decided. We would mention that despite the exclusion of “policy data administration services”, the industry finds sections of the definition unclear particularly with regards the meaning behind use of the words “directed towards”. This definition requires absolute clarity in order to differentiate “services as intermediary” from other services performed by a broker. It would be deemed essential to define “advice” for the sake of clarity in the context of “product specific” advice (as specifically related to the policy) and “general” advice (such as comparative product advice, personal recommendations, risk	Please note that the definition has been changed to revert back to the wording used in the existing definition and therefore the comment is no longer relevant. Disagree. In our opinion advice falls within the definition of services as intermediary (as is currently the case). Defining different types of advice is only earmarked for Phase 3 of RDR. Disagree. Settling of claims is a binder function. The processing of claims without settling same continues to constitute services as intermediary.

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		management and professional advice) per the definition in the FAIS Act as provided by the independent intermediary, as the term "advice" is used throughout the regulations, PPR, RDR and FAIS CoBR. We would recommend that the definitions include clarity on the intention of the various tranches of remuneration being commission, client and insurer fees. 2(f)(b)(iii) Insert the high-lighted words "directed towards receiving, submitting or processing claims under, or of..." The actions comprising the processing of claims fall within the binder domain (or outsource service if no claims settlement mandate is held). This point is also taken up in terms of the PPR Chapter 7, Rule 17.4.3 where it states that receipt of a claim by an intermediary is deemed to be receipt by the insurer, a point which we do not concur with. 2(f)(b)(iv) Insert the high-lighted words "providing administration services towards entering into other than policy data administration..." Clarity is required on what is meant and / or intended by "other than policy data administration services"?	
	Fulcrum	We note the expansion of the definition of services as intermediary to include administrative services that exclude, however, policy data administration services. We also note that, since the Regulator recognized the binder function of "settling claims" that a continuum of services is contemplated for which binder fees can be earned. There is, therefore, the risk of overlap with the intermediary services definition of "receiving, submitting or processing claims". It may be prudent to draw an activity-based distinction between intermediary services "processing claims" and binder function "settling claims" since the settling of a claim necessarily implies processing a claim and the activities required to 'process' and to 'settle' are points along a continuum of activity. "Collecting or accounting for premiums" and proposal F of the RDR With regard to the premium collecting services element of intermediary services, we would like to highlight the need for certainty in this specialised segment of the insurance market. In our view the RDR proposals concerning premium collection are well considered and in line with both prudential and market-conduct developments in insurance markets world-wide. Accordingly we welcome these changes and have been	Please note that the definition has been changed to revert back to the wording used in the existing definition. Please refer to the general principles for remuneration which provides that an insurer should not remunerate an intermediary for the same service/activity twice. This requirement should mitigate some of the risk. However, we are in the process of undertaking an activity based exercise to better distinguish between intermediary services, outsourced functions, binder functions and any other activity but this is part of the RDR process earmarked for later phases. With regards to the comment relating to Proposal F of the RDR, please note that the decision has been taken that premium collection will be moved to outsourcing. However, this will only occur in

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		preparing our business to meet the proposed outsourcing regime for premium collection. However, it is neither possible nor prudent to take the necessary next steps in changing our business model, our systems and our engagements with our customers without understanding the exact intentions of the Regulator and the time-frames that will enable the move from an intermediary-facing business context to an insurer-facing business context. Apart from the impact on existing revenue models for premium collection agencies, there is an important discussion that needs to take place about the qualifying criteria for such service providers. It is our view that the qualifying criteria should not be limited to financial – or prudential – matters only but should also incorporate behavioural – or market conduct – matters, possibly in the form of conduct standards to be agreed. Any premium collection capability is governed by non-insurance regulations and requirements1 which need to be complied with and which, in our view, need to form a minimum standard for all operators in this space. This will ensure that the fair treatment of customers is central to the collection practices of insurers and that debit order abuse in the industry is minimised. In addition, the Regulator would need to consider whether it is desirable for the activity of premium collection to continue to be performed by insurance intermediaries. This will inform not only the qualifying criteria – or conduct standards – applicable to premium collection specialists – but also the management of conflicts of interest in the provision of premium collection services. A number of practical matters, such as the proposed dismantling of current IGF structures – and associated timeframes for such dismantling – require attention and legal clarity. Some insurers are beginning to consider a post-IGF world and are trying to plan accordingly and whilst this is a welcome and proactive stance, it is not feasible to adapt business models to each insurer's preferred manner to dealing with premium-collection risks. In our view it would be in the interests of all parties, but particularly of consumers, if the future premium-collection dispensation were to start taking place sooner rather than later. To this end, we would welcome engagement and	later phases of RDR as appropriate conduct standards for premium collection are still being developed.

[1] Including PASA regulations, anti debit-order abuse measures and requirements around proposed authenticated collections, to name a few

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		information-sharing to craft an appropriate framework for a modern and efficient premium-collection capability that meets the needs of stakeholders, adds value and efficiency and reduces risk for all parties.	
	Marsh	This definition includes providing administrative services other than policy data administration. There is a definition for Services as intermediary in the Act as well. Consider a single definition to avoid confusion.	Please note that the definition has been changed to revert back to the wording used in the existing definition. Please also refer to the detailed explanation in Note 1 of Annexure C (Explanatory document supporting consultation) under "PART IV: NOTES" that was released together with the draft Regulations on 23 December 2016. In short, the definition of "services as intermediary" in the STIA was repealed by the Financial Services Laws General Amendment Act, 2013, but the repeal has not yet been made effective. The repeal will be made effective before the final regulations are issued.
	Norton Rose	The inclusion of "administrative services" in the definition of "services as intermediary" means that additional work costing money has to be done within the amount provided for as commission. These cuts entirely through the business model of brokers, intermediaries, binder holders and outsource service providers and reduce their earnings for work done unjustifiably. It will discourage intermediaries from performing administrative services which will now be less efficiently done by insurers with no advantage at all to policyholders. It also means that anyone currently performing an administrative service on an outsource basis is going to have to share the commission with the brokers acting in that transaction. That is impossible to achieve. It has the effect of reducing the income of intermediaries for the traditional services as intermediary which has been in place since the 1943 act. This is done without any justification at all and no recognition of the effect it will have on the industry and on policyholders themselves. Outsource agreements are going to be outlawed by an unjustifiable pen stroke	Although we do not fully agree with the content of your comment, please note that the definition has been changed to revert back to the wording used in the existing definition.

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		without any primary examination of the needs of policyholders and the consequences to the industry.	
	Renasa	Add Paragraph 2 (f) – Definition of "services as intermediary" We believe that the proposed definition of "services as intermediary" to be problematic, for a variety of reasons, particularly in relation to commercial policies of insurance. At the outset we draw to your attention that the term "intermediary services" is defined in the Act and that it is not permissible to amend an Act of Parliament by way of regulation. Any attempt to amend the Act through regulation would be ultra vires. The current definition under the Act remains in force until repealed or amended. The proposed definition is very wide in its ambit and seeks to classify the administrative services intermediaries provide to insurers as an intermediary service. Administrative services are functions which are outsourced and are not intermediary services, bearing in mind that an intermediary, unless also engaged on an outsourced basis by an insurer/s, acts on behalf of and represent a policyholder not an insurer. A significant proportion of personal lines and commercial business, which we estimate constitutes approximately R25 billion per annum in written premium (or 25% of the entire market) is administered by intermediaries on systems which are owned independently from insurers and this situation simply cannot be changed in the short term. This broadening of the definition of intermediary services to include the provision of administrative services is likely to have far reaching implications and will undermine the viability of the independent intermediary who currently provides outsourced administrative services to insurers in addition to the services he provides as intermediary to his insured client. It will also increase the burden placed upon insurers who are not in a position, from a practical point of view, to provide these services in house themselves at short notice. Were such a change to be effected, it would require several years for the staff engaged by intermediaries in the performance of these outsourced functions to be migrated to employment by insurers who will per force of such circumstances be required to expand their administrative capacity. This entails a significant structural change to the industry. If an independent intermediary is to receive nothing more than commission for the rendering of administrative services to an insurer as contemplated in part 5A(c), the	The Regulations is not amending the STIA. The definition of "representative" in the STIA was repealed by the Financial Services Laws General Amendment Act, 2013, but the repeal has not yet been made effective. The repeal will be made effective before the final regulations are issued. Please refer to Note 1 of Annexure C (Explanatory document supporting consultation) under "PART IV: NOTES" that was published with the Regulations on 23 December 2016. On the content of the definition, please note that the definition has been changed to revert back to the wording used in the existing definition.

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		remuneration of an intermediary will have no relationship to the value of the services rendered to the insurer. Where an intermediary performs outsource functions on behalf of an insurer, the proposed definition will considerably increase the functions which such intermediary is required to perform but without any corresponding compensation for services rendered. The intermediary will receive commission only for his services as intermediary but no income for the administrative functions outsourced to him by the insurer. On the other hand, an intermediary who performs no such outsource function and where an insurer performs all the administration referred to will still earn a similar commission. The proposed definition would therefore result in a basis for business which is commercially unsound and fundamentally flawed. Where an intermediary holds a binder authority to act on behalf of an insurer, the intermediary will be remunerated for services rendered to the insurer in terms of the binder agreement. However, only a relatively small percentage of intermediaries hold binder appointments and the vast majority of intermediaries do not. Most services rendered by intermediaries to insurers are rendered in terms of outsource arrangements and not binder agreements. Furthermore, it is in fact not the exercise of the binding authority per se which accounts for most of the costs borne by intermediaries but rather the administrative functions associated with the exercise of that binding function which requires a costly infrastructure to provide. The primary function of an intermediary is to render advice to a client and to assist a client in the procurement of appropriate insurance over. However, intermediaries are also uniquely placed to administer policies taken out by policyholders. Not only do these arrangements result in greater efficiency and convenience for policyholders, but they also relieve an insurer of a considerable administrative burden in having to perform these routine tasks themselves. Most intermediaries are far better placed than insurers to perform these tasks and can do so more cost efficiently. The practice of the industry for administrative tasks to be outsourced to intermediaries has arisen for reasons of practicality. Cost savings and increased efficiency result through documentation being produced more timeously. The arrangement allows an insurer to utilize the infrastructure of an intermediary on very favourable terms.	

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		It needs to be borne in mind that insurance policies require a significant infrastructure to issue and administer. Where the intermediary does not possess a binder arrangement, the administrative tasks associated with the implementation of a policy or an amendment of an existing policy, must be performed by a person with the necessary level of skill and knowledge of the procedural requirements for the valid inception or renewal of cover. These administrative tasks may require considerable expertise and more work than is required in the mere exercise of the binder authority. To expect an intermediary, who does not hold a binder arrangement, to perform these specialized administrative tasks on behalf on an insurer without adequate compensation, is neither fair, rational nor justified. Administrative services rendered by an intermediary to an insurer as contemplated in paragraph 2(f)(b) should not, in our respectful submission, be regarded as services as intermediary, but rather as functions which may be outsourced by an insurer to an intermediary for a fee. As currently proposed, the definition of "*services as intermediary*" discriminates in favour of intermediaries who hold a binder appointment and serves to prejudice the intermediary who does not have a binder appointment but who nevertheless performs a variety of functions associated with the administration of a policy of insurance. It is not reasonable or rational to expect a broker or intermediary to perform these services on behalf of insurers with commission being their only form of compensation. In our submission the imposition of such a burden upon intermediaries would be regarded as open to a constitutional challenge. As you are no doubt aware, it is not common in the market for independent intermediaries to hold commercial binders on behalf of insurers. However, whilst insurers will commonly "*sign off*" on acceptance for proposals for commercial cover, it is usually expected of an intermediary to prepare quotations for cover for submission to an insurer and once the proposal has been accepted, for the broker or intermediary to thereafter perform all of the associated administrative functions for the inception of cover including the preparation of policy documentation. This is often a considerable job involving both times, skill and specialized insurance knowledge. In relation to commercial policies where the intermediary performs administration	

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		services on an outsource basis but without a binding authority so that the insurer binds but the intermediary administers, the associated administrative tasks and duties, whilst routine in certain respects, are nevertheless often onerous and involve both responsibility and expertise. The danger exists that if the definition of "services as intermediary" is cast too wide, intermediaries will not be willing to perform these administrative services on behalf of insurers on the basis that it is not economically viable for them to do so which will result in considerable inconvenience and harm to insurers. For insurers to "take back" the huge volume of administrative services associated with the inception and administration of policies of insurance, which we do not believe to be practical, this will not only result in inconvenience and increased overheads for insurers, but a likely poorer and less efficient standard of service to policyholders, as well as increased premium. This is not in the interests of stakeholders within the industry. In our submission, greater emphasis needs to be placed on the value of the independent advice given by intermediaries to their clients and intermediaries must be adequately rewarded for the services that they render, whether this be to their clients as policyholders, or to insurers. There should be less emphasis on the quantum of remuneration which intermediaries receive and greater emphasis upon the quality of the services that the intermediaries render to both policyholders and insurers. Intermediaries are in a unique position to render tailor made advice and to provide guidance to policyholders. They also fulfill the important role of representing policyholders in engagement with an insurer. Having regard to their knowledge of their clients' needs and the workings of an insurer they are in the best position to perform associated administrative tasks on behalf of insurers. These arrangements achieve significant cost savings and a more efficient personalized service. It is in the interests of the industry that it should be able to access and exploit the expertise and administrative capacity that intermediaries possess. This valuable resource to the industry needs to be nurtured, not eliminated. The objectives of the best service at the lowest price can, in our submission best be achieved by permitting insurers to enter into outsource arrangements with intermediaries for the performance of administrative functions.	

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		As far as the collection of premiums is concerned, it is our submission that premiums should only be paid directly to an insurer and that no other party, apart from an insurer, should be entitled to receive premium. The misappropriation of premium continues to be a major risk to insurers in terms of fraudulent conduct. An unintended consequence of the broadening of the definition of intermediary services could be the loss of employment opportunities for a large number of people within the independent intermediaries sector of the industry. It is also likely to undermine the viability of insurers who follow an outsourced business model resulting in reduced competition within the market. Direct insurers may be advantaged over the intermediated market segment, again to the detriment of consumers.	
	SAIA	We note that the previous definition included an express exclusion for insurers, which has now been excluded in the revised definition. Would this imply that an insurer may act as an independent intermediary when performing ANY act towards entering into a policy on behalf of another insurer, which in effect would constitute a binder function for which a binder agreement is to be concluded between insurers? Construed literally, the extended definition appears sufficiently wide to apply to all administrative services other than policy data administrative services as defined. It is our understanding that the intention of the extended meaning is to close a possible gap for outsourcing administration services, which may not fall within policy data administration services as defined. Thus, where an administrative service, other than a policy data administrative service, falls within the extended meaning, it cannot be remunerated otherwise than by way of commission. For illustration purposes, the extended meaning does not apply to administrative or incidental activities pertaining to settlement of claims, but will operate as a catch all for other administrative services incidental to the issuance of a policy, as may fall outside of policy data administrative services. Clarity would be appreciated in the event that our interpretation above is different from what is within the contemplation of National Treasury and the Regulator,	There is no exclusion for insurers in the existing definition of “services as intermediary” in the STIA. The prevailing position is therefore that an insurer rendering services as intermediary on behalf of another insurer is subject to the commission regulations. Please note that the definition has been changed to revert back to the wording used in the existing definition.

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		regarding what administrative services" entails, so as to understand what activities constitute "incidental activities", and also what activities may be separately outsourced under an Outsource Agreement. In addition, services as intermediary include "Processing Claims". Although sufficiently wide to include incidental activities pertaining to settlement of claims, the practice has been such that very little has been attached to this activity. We seek clarity whether the status quo in relation to incidental activities pertaining to settlement of claims remains. Whilst we do acknowledge and appreciate the work that is on-going in terms of the review and unpacking of what all these "other administrative services" are in the industry, clarity is sought on these "other" services. This uncertainty is creating an unhealthy situation in the industry which is not necessarily in the best interest of the consumers. Insurers are faced with numerous proposals from intermediaries in the market (especially the big corporate intermediaries) who "threaten" to take business away and merely move it to another insurer who is willing to pay them for these administrative services (printing of policy documents). Since proposal BBB will no longer be implemented, clarity is requested as to whether there will there be any regulations/ rules going forward that will regulate the fees being charged for the issuing of policy documents (i.e. Red Carpet business – physical printing of policies) where such functions are a outsourced as a pure administrative outsourcing and not as part of a Binder? As it stands in the market some parties charges a fee of 3% for the issuing of policy documents and then a 2% for intermediary services as policy issuing is not considered an intermediary service. We have also noted the practice of intermediaries requesting pricing models from insurers (even though the intermediary does not hold a binder) – which in effect means they intend to price the risks themselves and capture the policy onto their system , issue a policy and then charge a fee for placing the business.	
	Santam Ltd	Services as Intermediary is extended to include: "*<u>providing administrative services, other than policy data administration services as</u>*	Please note that the definition has been changed to revert back to the wording used in the existing

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		defined in sub-regulation 5.6 of Part 5B performed on behalf of an insurer, in relation to an insurance policy" Construed literally, the extended definition appears sufficiently wide to apply to all administrative services other than policy data administrative services as defined. It is our understanding that the intention of the extended meaning is to close a possible gap for outsourcing administration services as may not fall within policy data administration services as defined. Thus, where an administrative service, other than a policy data administrative service, falls within the extended meaning, it cannot be remunerated otherwise than by way of commission. For illustration purposes, the extended meaning does not apply to administrative or incidental activities pertaining to settlement of claims but will operate as a catch all for other administrative services incidental to the issuance of a policy as may fall outside of policy data administrative services. We would appreciate clarity in the event that our interpretation above is different from what is within the contemplation of the Registrar. In addition, services as intermediary include "Processing Claims. Although sufficiently wide to include incidental activities pertaining to settlement of claims, the practice has been such that very little has been attached to this activity. We seek clarity whether the status quo in relation to incidental activities pertaining to settlement of claims remains.	definition.
PART 5: REMUNERATION			
PART 5A - LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY			
5.1(1)	Marsh	The inclusion of "providing administrative services other than policy data administration services in the definition of "Services as Intermediary" may lead to confusion. Guidance is therefore sought on which administration services fall into Intermediary services.	Please refer to the Response to Key Issues document published together with the final Regulations.
	PSG Konsult	As this paragraph currently stands an intermediary cannot charge a client a retainer fee for services rendered instead of commission charged. We believe that the possibility of such a retainer should be seriously considered especially in regards to commercial insurance.	The deletion of the phrase ", in respect of short-term insurance business carried on in the Republic," in Regulation 5.1(1) facilitates alignment with the LTIA Regulations and gives

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		Limitation on Policy Fees We understand the concern about the additional fees that have become standard on most short term policies. We also agree with the principle that nobody should be remunerated twice for the same task and that there should be a clear differentiation between different fees for different tasks. (We do however question how easy or feasible it is to make a clear-cut distinction between the different tasks.) We however have two issues with the intended Regulations on additional fees. The first is based on the principle of fees (or commission) that is reasonably commensurate with the actual costs incurred, an aspect highlighted numerous times in the Regulations. Part of the problem is that the additional fees, when first introduced, was that the absolute level of commission on smaller short-term insurance policies was not commensurate with the cost of providing the services on these policies. Additional fees were the manner in which advisers could receive an income that was reasonably commensurate with the cost of the service to low premium customers. The prohibition against charging additional fees for intermediary services is in direct breach of the principle of a commensurate fee as stated by the Regulator. While we accept that Regulations will have to prevent misuse, we submit that it cannot be implemented before a detailed review of the commission on short term insurance policies including low premium policies (which is planned for the latter phases of RDR) has not been completed. The second issue is the impact that an immediate implementation of these Regulations will have. Many of the additional services that don't fall under intermediary services are already provided by advisers and they would therefore be entitled to charge an additional fee for these services. Short-term clients have been built up over a number of years. To explain and reach agreement with each client on the level of the new additional fee will require negotiations with each client individually. Realistically replacing the existing fees with a newly agreed upon fee will take several years to negotiate and conclude. Our intermediaries have on average 3 000 clients. Renegotiating the required Service Level Agreements attached to the additional fee, will require a minimum of two years if 6 negotiations are concluded per working day.	effect to Reinsurance Paper by making this part applicable to business placed directly offshore. Changes to the commission model by allowing for advice fees to be charged to a policyholder will only be addressed in further phases of the RDR. It is assumed that policy fees refer to section 8(5) fees. Section 8(5) of the STIA was repealed by the Financial Services Laws General Amendment Act, 2013, but the repeal has not yet been made effective. The repeal will be made effective before the final regulations are issued. The draft Regulation 5.10 attempted to perpetuate the section 8(5) fee in the regulations (subject to a few extra safeguards for policyholders in the form of additional requirements) pending the finalisation of the RDR. However, it was subsequently decided that as the section 8(5) emanates from an agreement between the policyholder and the intermediary, it is not appropriate to provide for this requirements in the Regulations. A similar requirement will be provided for in the amendments to the Policyholder Protections Rules and will apply where the insurer is facilitating the deduction of the fee. These additional safeguards are critical to ensure the fair treatment of policyholders. Please note that additional fees for intermediary services are unlawful. The commentator is urged to review its arrangements with intermediaries to ensure that these arrangements are lawful.

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		It is therefore requested that the Regulations regarding policy fees be postponed until a complete review of commissions has been completed whereafter a transition period of at least two years be allowed.	
5.3	FIA	At the time of reviewing remuneration, cognisance should be given to reviewing the current caps on commission to take into account the “low premium models” where the economies of scale do not encourage an independent intermediary to provide advice (or at best provide advice on a very limited scale) due to the level of commission being insufficient relative to the costs of providing services as intermediary. The other pertinent factor when reviewing remuneration is to consider that since the commission caps were introduced many years ago the very competitive market has seen a fall in the rate percent applied to premiums charged to customers, leading to a reduction in commissions paid in real terms because the cap has remained unadjusted. We refer to your comment at the regulatory workshop that recommendations in the current round of comments would be welcome regarding an adjustment to the commission caps however we feel this needs to be done as part of the complete intermediary activity analysis and remuneration benchmarking exercise in conjunction with other proposed changes to the definition of services as intermediary for which commission is paid.	Noted. Changes to the commission model will be addressed in further phases of the RDR.
	Norton Rose	In this amendment and throughout the proposed regulations the phrase “premium payable by a policyholder” appears. Premiums are not always paid by the policyholder. There are many examples when the premium is paid by a person other than the policyholder (group personal accident policies is but one of these examples).	Agreed. Regulations 5.3 (a) and (b) where this term is used have been amended to read “premium payable ~~by a policyholder~~ under the policy”.
	PSG Konsult	Consideration should be given to the commission on lower premium policies.	See response to the FIA’ comment at regulation 5.3 above.
	SAIA	We submit that the commission level for many low-premium policies is insufficient to adequately compensate the intermediary for the work undertaken. We request that consideration be given to permitting commission to be paid a greater level than the current statutory limit in respect of certain low-premium policies.	See response to the FIA’ comment at regulation 5.3 above.

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5.4	SAIA	It is Lloyd's understands that where business is being refunded by whichever conduit, the commission would also be refundable. Kindly confirm whether this is the correct interpretation of this regulation. If not, kindly provide clarity.	Regulation 5.4 is an existing Regulation and no amendments have been proposed thereto. The Regulation provides that if *a premium or any part thereof* is for any reason refunded by a short-term insurer or Lloyd's broker, the commission payable in terms of this Part in respect of that premium, or the part of that premium, which is so refunded, shall be refunded, to the short-term insurer by the person to whom it was paid.
5.5	SAIA	Clarity is sought as to what constitutes 'combination of policies' in this instance – a package/ combined policy/ component elements in coverage? For example, is a travel policy offering sickness and health, property and liability one policy offering 3 elements of coverage, or is it a combined policy? We request that this be defined to avoid further uncertainty.	Regulation 5.5 is an existing Regulation and no amendments have been proposed thereto. The Regulation is clear – a combination of policies is where a short-term policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1 of the Act. A travel policy offering sickness and health, property and liability benefits is one contract comprising a combination of an accident and health policy, a property policy and a liability policy. The commission and terms and conditions that apply to each of these policies must therefore still be complied with despite the fact that it is grouped into one contract.
PART 5B - LIMITATION ON REMUNERATION FOR OUTSOURCING			
5.6(1) – Definition of "Cell structure"	Norton Rose	5(e): "Cell structure" There is no reason to introduce the elaborate cell structure requirement for insurers to issue preference shares and intermediaries to own preference shares and participate in the business of insurers when they are in fact independent	The definition is required for purposes of regulation 5.9(2) (now regulation 5.8). Regulation 5.8(2) clarifies that a non-mandated intermediary with whom an insurer may enter into a cell captive

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		intermediaries or brokers. This introduces a conflict and a complexity that is unjustifiable.	arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer as this is seen as a return on investment as opposed to a profit sharing arrangement. It must be noted that a cell owner shares in both profit and loss.
5.6(1)	SAIA	We recommend that "binder function" be defined in order to avoid uncertainty, alternatively that a reference be inserted to the Binder Regulations. The incidental binder activities should be addressed in the same manner in order to avoid future interpretation issues.	Agreed. The following definition of binder function will be inserted in Part 6 of the Regulations: **"binder function"** means any of the functions or activities contemplated in section 48A(1)(a) to (e) of the Act";
5.6(2) - definition of "outsourcing arrangement"	SDK	"Outsourcing arrangement" means any arrangement of any kind….. Does this include the collection of premiums on behalf of the insurer? This is generally done by an intermediary where they have the operation ability to ensure the debit orders are correct and to enable them to communicate with policyholders immediately a debit order is returned as unpaid for whatever reason. The insurers, due to size and volume are not always able to provide information timeously. Where the intermediary is involved they are able to work with the policyholder to ensure continuous cover or correction of matters far quicker than an insurer in many cases. The Intermediary pays the collection bureau.	Please note that the definition of "outsourcing" has been deleted. Please also note that the collection of premiums is a "service as intermediary" (see the definition of "service as intermediary") and it is not clear why you would regard it as outsourcing. During further phases of the RDR this will change, but until such time it remains a service as intermediary.
	SAIA	The proposed definition of outsourcing arrangements illustrates the drafters' clear contemplation of arrangements between insurers and third parties, in terms of which a third party may be engaged to perform functions that are integral parts of insurance business. This would include binder functions and policy data administration services. However these do not include services as intermediary. For illustration purposes only, an insurer may have a data administration services agreement in place with a NMI, and in addition to the data administration services	Please note that the definition of "outsourcing" has been deleted.

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		agreement, may also outsource an incidental activity to claims settlement, such as "appointment of assessor", without the need for a formal binder arrangement being in place to settle claims. Read in conjunction with the revised definition of "intermediary services", and "incidental" activities, it is not quite clear as to what may be outsourced, other the policy data administration. A primary reason for the lack of clarity is that the outsource provisions in Regulation 5.6 appear to only apply to remuneration. The outsourcing of the function, in this instance "appointment of assessor", would be governed by Directive 159 and subject to reasonably commensurate principles as detailed in 5.12(1). We would appreciate clarity in the event that our interpretation above is different from what is within the contemplation of the drafters.	
	Renasa	It is our respectful submission, that the rendering of services under a binder agreement should not be confused with or regarded as a form of outsourcing, which should be restricted to the rendering of services of an administrative nature. When rendering binder functions on behalf of an insurer an intermediary is in fact acting as the insurer and the normal rules of principal and agency should apply. Binder arrangements are regulated by a binder agreement and should not be regarded as the mere outsourcing of functions. The binding function represents the biggest risk to an insurer, a bigger risk than the risks associated with outsourcing of administrative functions. There is a far greater cost associated with the rendering of policy associated administrative services associated with a binder function than in the exercise of the binder authority itself. The bulk of the insurance market is characterized by personal lines binder arrangements whilst outsourced agreements are mainly used in relation to commercial policies where insurers or specialist underwriting managers traditionally perform the binder function.	Disagree. Binder functions are a subset of outsourcing. Please refer to the definition of outsourcing in Directive 159.A.i (LT&ST).
	Santam	The definition of outsourcing arrangements illustrates the drafters' clear contemplation of arrangements between insurers and third parties in terms of which a third party may be engaged to perform functions that are integral parts of insurance business including binder functions and policy data administration	Please note that the definition of "outsourcing" has been deleted.

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		services. However these do not include services as intermediary. For illustration purposes only, an insurer may have a data administration services agreement in place with an NMI, and in addition to the data administration services agreement, may also outsource an incidental activity to claims settlement, such as "appointment of assessor", without the need for a formal binder arrangement being in place to settle claims. The outsourcing of the function, in this instance "appointment of assessor", would be governed by Directive 159 and subject to reasonably commensurate principles as detailed in 5.12(1). We would appreciate clarity in the event that our interpretation above is different from what is within the contemplation of the Registrar.	
5.6 (2) – Definition of "policy data administration services"	AON	The use of the word "continuous" suggests that when the defined activities are performed as an outsource service there needs to be either real time transfer or for the outsource provider to work on an insurer's own system although when this service is provided as an incidental service as part of a binder the data transfer requirement is 24 hours. We question the objective behind this difference in that the industry is framing a project to facilitate 24 hour transfer. A move to real-time transfer adds complexity, cost and delay. Whilst it would be preferable to have the same transfer rules applied to both scenarios, if there are cogent reasons why there should be a difference then we seek an exemption process for deserving models as specified elsewhere in the proposals. In addition we are not sure whether the definition includes production and dispatch to policyholder or intermediary of the policy and other associated documentation, both electronically or hard copy. If so, that we understand to be the case, then in order to avoid disparate interpretations this should be stated.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.
	Associated Compliance	5.6(2) policy data administration services (a) & (b). Clarity needed given the wide range of current systems used by outsource providers i.e. brokers with current policy issuing outsource agreements, on what "complete integration…" actually means from a IT technical perspective and does "to have continuous access…" mean that the insurer merely needs to be able to access data from a 3rd party IT platform or must data be loaded on an insurers own system to be able to comply with this requirement? 5.6(2) Where an NMI is loading data onto the UMA's in terms of what will become a	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.

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		policy data administration service will receipt by the UMA be deemed to be "continuous access' by the insurer.	
	BASA	We suggest that these services form part of the definition already provided for in the Binder Regulations. We suggest that the legal requirements set out in the POPI Act will have a significant impact on policy data administration services as the consent that must be provided by the customer will have to be duplicated. Kindly provide clarity on the impact of this definition on the Binder Regulations. Kindly provide clarity on this aspect.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.
	Compass	In accordance with Information Letter 3/2013 - Binder Regulations: Guidance on activities that constitute Binder Functions and Remuneration payable as a Binder Fee, provision was made for the insurer to authorise a binder holder to outsource "ancillary/incidental activities" and the authority to do so had to be clearly be stipulated in the binder agreement and the binder holder is then required to remunerate the third party from its binder fee received. In terms thereof, it is presently the norm for binder holder Underwriting Managers ("UMA") to pay fees to some of the intermediaries who issue and distribute policies on their behalf (deemed a non-binding / administrative and incidental function to the binder activity of entering into, varying or renewing a policy). It is however not the norm for such intermediaries to have access or integration with the UMA's (or insurers') insurance technology platform. If it is the intention to do away with the aforementioned scenario, kindly confirm whether our understanding is correct – In future it will only be permissible for the insurer to pay another person fees (capped at 2%) for the provision of "policy data and administration services" on condition that such a person's information technology system is able to fully integrate with and / or enable direct access to the insurer's insurance system platform to ensure the integrity of the policy and policyholder data at all times.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.
	CIB	Does the managing, recording and updating of policy and policyholder data include	Please note that policy data administration

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		claims data capturing? What is the meaning of the following in terms of this definition: • "complete integration" • "up-to-date" • "continued access" It is submitted that the aforementioned terms be defined to ensure clarity. It is also submitted that the industry should have agreed data exchange standards and minimum standards for system providers in order to comply with legislation.	services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.
	FIA	Clarity is sought on what is intended by "complete integration" and in particular with reference to the number, different types of, and ever-changing information technology platforms that are available for the transfer of data. We question the rationale behind "complete integration and continuous access" for the outsourced model; but 24 hour transfer of data where this is an "incidental" activity under the binder agreement. Insert the high-lighted words, "enables the insurer to have continuous, on demand, access". Clarity is required as to whether this definition includes policy issuance and despatch to policyholder or intermediary?	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations. Please refer to comments on "integration" under Part 6 below.
	Fulcrum	We note the new definition which seems to be aimed at enhancing efficiency and eliminating the unintended anti-efficiency consequences of the definitions of "enter into", "vary" and "renew" as set out in the Regulations[2]. The precise content around the meaning of the terms "complete integration" and "continuous access" is important. IT experts give different content to these terms and this is therefore likely to raise further uncertainty, which could lead to the Regulator continuing to observe poor outcomes during inspections and on-site visits.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations. Please refer to comments on "integration" under Part 6 below.

[2] Part 6 Binder Regulations.

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		We propose an alternate formulation for consideration along the following lines: "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 matter that – ensures integration between the information technology system of the insurer and the person that provides the services to enable the insurer to have access to accurate, up-to-date, complete and secure policy and policyholder data. Whatever the final formulation, we suggest that the intent should be that the insurer is able to fulfill its obligations to the policyholder throughout the lifecycle of the policy (whether at underwriting stage, claims stage, amendment stage or termination stage) without further need to apply or have recourse to the policy data administration service provider.	
	Hollard	The definition of continuous access needs to be properly defined so IT systems can be appropriately configured to comply with what the regulator is trying to achieve. We have no problem in principal to the requirement to integrate the broker's system with that of the insurer to make sure there is no duplication and that the broker is not binding but we do not believe the third party off platform systems are ready to accommodate this requirement by 1 January 2018 and certainly not by 31 July 2017. Hollard has worked hard to improve the integration potential for the line of business system within Hollard and that of the broker's off platform system. There have already been vast improvements to make sure that duplication is being eliminated but there is a strong reliance on the IT systems being able to perform the back end function for this requirement. It is a journey but unfortunately it cannot be forced at this stage until IT systems are ready. There are problems with the wording as it is not clear what the consequences are if the administrator does not have integration with the insurer's system and the insurer does not have continuous access. It is clear that this party will not then be termed as doing policy data administration services but are they also then prohibited from performing outsourced functions on behalf of the insurer with respect to policy services such as merely issuing policies on the Insurer's behalf as opposed to managing recording and updating or policy holder data only. In other words if they do slightly more will this take them out of this definition and the	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations. Please refer to comments on the access requirements under Part 6 below.

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		consequences such as a capped fee. It is not clear and examples of these functions should be provided. We recommend that the FSB to consider applies a 12 month transitional period in this regard.	
	Marsh	Clarity is required in respect of what is meant by "complete integration" and "continuous access". The capping of the fee doesn't take into account the nature of the product and the complexity of the services being rendered It is submitted that the parties should be permitted to negotiate a fee that is commensurate with the Services being rendered. It would be appreciated if the technical work is shared so that industry can understand the rationale for the setting of the cap on the fee for this Service. To the extent that further technical work will still be undertaken we would appreciate the opportunity to provide input.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations. Please refer to comments on "integration" and access requirements under Part 6 below.
	Norton Rose	There is no rational reason why a person providing policy data services can be remunerated for continuous access to data whereas there is no remuneration for someone who provides policy data administration services every 24 hours. Both carry costs and require skills.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.
	PSG Konsult	We note that the integration requirement for policy data administration services is stricter than those required under a binder agreement. This would result in intermediaries opting for a sec 48A(1)(a) binder agreement rather than the policy data administration services. It is unsure whether that is the intention.	Please see comment above.
	Renasa	The rendering of policy data administrative services may often entail significant capital investment and resource allocation. It is our submission that there should be greater regulation of the independent systems widely used in the market and that there should be greater flexibility in the determination of the remuneration, which may be provided by an insurer for these services.	Please see comment above.
	SAIA	Clarity is sought as to what activities are "incidental" to "policy data administration services", as this is unclear. It is necessary to understand what the scope of activities under this definition are in order to understand what activities will be subject to a	Please see comment above.

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		separate outsource agreement. Clarity is sought with regard to the meaning of integration and continuous access. Will guidelines be provided? Kindly provide clarity as to whether the following would considered to be policy data administration services: An information technology support service provided to the insurer on the insurer's system by a third party, which at times might entail the service provider assisting with updates of policy and policyholder data on instruction of the insurer? Whilst we do agree in principal to the requirement to integrate the broker's system with that of the insurer to make sure there is no duplication and that the broker is not binding, we request that he "continuous access" be properly defined so as to enable the appropriate configuration of Information Technology (IT) systems to comply with the desired outcome. The challenge faced by the industry is that we do not believe the third party off platform systems are ready to accommodate this requirement by 1 January 2018 and certainly not by 31 July 2017, despite some insurers working hard to improve the integration potential for the line of business system within their organisations and that of the broker's off platform system. While there have already been vast improvements to make sure that duplication is being eliminated, there is a strong reliance on the IT systems being able to perform the back end function for this requirement. This is a journey which cannot be forced at this stage until IT systems are ready. We recommend that the FSB to consider applying a 12 month transitional period in this regard. Further, clarity is sought as to what the consequences are, if the administrator does not have integration with the insurer's system and the insurer does not have continuous access. It is clear that this party will not then be termed as doing policy data administration services. Clarity is sought as to whether they are also then prohibited from performing	

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		outsourced functions on behalf of the insurer with respect to policy services, such as merely issuing policies on the Insurer's behalf as opposed to managing, recording and updating of policy holder data only? What is unclear is whether by doing slightly more, this will take them out of the definition of 'intermediary services' and consequences thereof, such as capped fees.	
	Unlimited	What is meant by "complete integration"? If the intent is to enable the insurer to have continuous access to complete and up to date policyholder data then, in our respectful submission, sub-regulation (a) is redundant (provided the insurer has continuous access to that data as provided for in sub-regulation (b)).	Please see comment above. Please refer to comments on "integration" and access requirements under Part 6 below.
5.7(1)	Clientèle	The fee referred to in section 5.7(1) must not exceed 2% of the total premium payable by policyholders in respect of policies to which the policy data administration services relate; It seems as if the policy data administration services (outsourcing fee) limit of 2% seems to apply to the total premiums payable over the terms of the policy. Will the policy data administration services fee be paid to the outsource services provider on date of capturing of the policy data administration? In instances where limits are being set as a percentage of premium, we would recommend that the FSB take cognisance of the fact that there is a significant difference between the impact on small premium business and large premium business. For instance, 2% of a R500 per month premium could be considered meaningful (R10), whereas 2% of a R100 per month premium (R2) may not. If this is not taken into account, it becomes very difficult for insurers to do certain activities, i.e. outsourcing on small premium products. The small premium products should be the type of products that insurers are encouraged to sell in South Africa, seeing that this part of the market is often not adequately serviced and is in desperate need of cover. It is recommended that commission can be paid in the form of the greater of Rand amount and the percentage. Can a single payment be made at the time of the policy data administration services being rendered, rather than regular payments as and when premiums are received? In the event that an upfront payment will be allowed for the policy administration	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.

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		services, will this outsource fee be subject to claw back if the maximum is exceeded?	
	Fulcrum	5.7(1) stipulates that the paramount consideration before an insurer pays - or a service provider accepts - fees for performing this service must be the factually established ability of the policy data administration service provider to provide the service. We agree. In our view, the capability of the service provider, together with the efficiency of the service being provided should be the first "hurdle". If, and only if, this requirement is met, should the fee be negotiated? Having said that, we observe a range across a spectrum of activity that is rendered by administrators and/or intermediaries. Given that the nature, scale and complexity of products and services will vary depending on the business in question, it may be more appropriate to have a fee that is negotiated between the parties. If the Regulator is concerned about abuses in the fees paid, then perhaps consideration should be given to a range or a parameter based on further technical work.	Please see comment above.
	SAIA	For the function of enter into, vary and renew, which includes policy data administration services, one will be able to earn 2%. However if the binder holder only provides policy data administration services, they are still entitled to earn 2% binder fee. A binder holder whose functions are limited to enter into, vary and renew, and settle claims will only be entitled to earn a fee of 4% for performing their functions and although they provide policy data administration services as well, they are unable to earn an additional fee for this. All of the above mentioned require on-going enhancements, dedicated resources and diligent management. This all comes at significant costs, which we submit cannot be covered through the proposed binder fee remuneration model as this may not be sustainable for binder holders. This may result in a negative outcome for both customers and intermediaries and further consideration should be given in respect of the proposed limitation for	Please see comment above.

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		binder fees. We recommend a 12 month transitional period be applied.	
5.7(2)	AON	Reference should be (1) not (a).	Please see comment above.
	Associated Compliance	We do not understand why the cap for policy data administration is capped at 2% when the cap for the “enter into vary renew” aspect of a binder agreement, that states policy data administration is an ancillary service within a binder that is also capped at 2%. We would see the binder function generally as having more work and responsibility thus would demand a higher cap.	Please see comment above.
	Cyan Capital	We accept that policy data administration is a limited function and should attract a limited fee payable. However clarity is sought on how this fee was determined. Is there reasonable comparison in terms of the functions performed, time taken and cost of policy data administration, for which a maximum fee payable of 2% is proposed, versus the functions of entering into, varying and renewing a policy as part of a binder function? Should both functions reasonably attract the same fee payable?	Please see comment above.
	Econorisk	We accept that policy data administration is a limited function and should attract a limited fee payable. However clarity is sought on how this fee was determined. Is there reasonable comparison in terms of the functions performed, time taken and cost of policy data administration, for which a maximum fee payable of 2% is proposed, versus the functions of entering into, varying and renewing a policy as part of a binder function? Should both functions reasonably attract the same fee payable? Clarity is sought on why both functions are seen as to be mutually exclusive and why both functions cannot attract separate fees.	Please see comment above.
	FIA	5.7(2) should refer to (1) and not (a).	Please see comment above.

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		The 2% referred to is subjective and uninformed and does not take into account on the one hand the simplicity of certain policy administration portfolios and on the other the complexity of administration of larger portfolios. The RDR Status Update states that the percentage is still under consideration and we seek clarity on this together with the detail of what has informed this percentage, which is neither market related nor representative of the actual costs involved. The rationale behind the 2% which is proposed for the "enter into, vary or renew function" which includes all incidental functions including policy data administration, versus the 2% proposed for pure policy data administration without any additional functions is questioned? We are concerned that should capping apply the industry will experience the same potential remuneration effect by premiums and hence premium-related fees will not keep up with inflation.	
	Hollard	Hollard is in principal against the capping of fees as fees should be based on the fair and reasonable cost of performing the activity to an acceptable standard. If the caps are too low, this will affect service that is provided to a policy holder. If capping is a reality, there needs to be a scientific basis to the setting of the cap or the outsourced administrator will not be able to provide the service in the way the regulation and Insurer will demand. If the fee is too low brokers will simply not be able to comply with the strict requirements set by Insurers and the legislation and the strong benefits for policy holders that arise from the broker issuing the policy on behalf of the insurer would be lost. It has been our experience that the brokers who issue policies for insurer specifically on policies where various insurers are involved or where there is a lot of amendments on the policy, the policy holder received a better turnaround of service. This is why this practice began originally, to provide a better service to policy holders.	Please see comment above.
	SAIA	Kindly provide clarity on which paragraph (a) this refers to. The majority view in principal is against the capping of fees, as fees should be based on the fair and reasonable cost of performing the activity to an acceptable standard. If the caps are too low, this may affect service that is provided to a policy holder. However, if capping is a reality, there needs to be a scientific basis to the setting of	Please see comment above.

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		the cap, failing which the outsourced administrator will not be able to provide the service in the way the regulator and insurer will demand. If the fee is too low brokers will simply not be able to comply with the strict requirements set by insurers and the legislation and the strong benefits for policy holders that arise from the broker issuing the policy on behalf of the insurer would be lost. Clarity is requested as to the method of determining the cap for rendering policy data administration services at 2%.Confirmation is requested as to whether the FSB will release its findings and basis for the proposed caps as our market indications are that the fees are not feasible in certain product classes and are actually restrictive in terms of allowing participation in the economy and development initiatives. In some instances this function is only performed at inception of the policy, thus it seems unreasonable to then pay an on-going fee for the life of the policy. We recommend that consideration be given to the fact that insurers may pay a once-off upfront fee, subject to actual costs and reasonable rate of return metrics. Further, the use of the terminology “total premium” could be problematic in that the calculation could then be based on an inflated amount due to costs included in the “total premium” such as debit order collection fees etc. The suggestion is to rather refer to the Gross Written Premium (risk premium).	
	Santam	We hold the view that the maximum fee payable for policy data administration services (i.e.2%) includes activities incidental to policy data administration services such as the generation or production or printing of policy schedules and/or the transmission of such schedules to a policyholder and/or another independent intermediary, as the case may be. Such activities are incidental to policy data administration services and therefore could not be outsourced or remunerated outside of the capped 2% fee. We seek confirmation in this regard.	Please see comment above.
	SDK	The Intermediary prepares the tapes for premium collection and pays the collection bureau to do the debit order run and reconciliations. Is the collection of premiums intended to be included in “Outsourcing”? A 2% fee would not cover the costs of this and the service is taken on by intermediaries in the interests of the clients to ensure correct debit orders and quick	Premium collection constitutes services as intermediary and not outsourcing. RDR proposes that premium collection, in future, be regarded as outsourcing, but pending this, it is part of services as intermediary. No additional fees over and

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		reaction in the event of a debit order being returned as unpaid for whatever reason. Printing: An insurer is required to provide a policyholder with a policy. This is generally done by emailing the policy to the intermediary who will then check it for correctness and any underwriting endorsements that have been made and once the insurer has corrected and re-sent the policy to the intermediary he can then send, or print and post it to the client. At the time of renewal an intermediary will print out at least the policy schedule, (the largest insurers policy schedule can be anything from 10 to 60 pages depending on the items or subject insured) and take it to the client to discuss. Clients do not want to review off an electronic copy. This is a fact despite all theories to the contrary. These printing costs which include printers, ink, paper and time are borne by the intermediary because the insurer does not have the infrastructure or resources to provide printed copies to clients if they want a printed copy. 2% is not going to cover those costs. An insurer will also avoid posting a copy to the policyholder because of the cost and the probability that the document will not be delivered, or at least take a very long time. Registered post does not work as clients do not want to accept registered mail because it could be fines or debt collection. Courier costs are too high to make this option feasible. Is it at all possible to allow for the everyday printing costs that have devolved from the insurer to the intermediary that 2% will not cover for services that a policyholder does actually want?	above regulated commission should therefore be paid. In addition, please note that where more than one intermediary renders services as intermediary, the total commission paid to all of them must not exceed the cap. So if one intermediary sells the policy (for commission) and premium collection is done by another, the total paid to both must be within the commission caps.
5.7(3)(a)	AON	In terms of the definition of representative under 1.1 a representative can only be a natural person so are the words “who is a natural person” necessary? We are not sure about the intent of this requirement. Is it to prevent an NMI that is a sole proprietorship from providing PDAS for remuneration to an insurer? Does this clause seek to differentiate between representatives who are an employee of an insurer from a representative who is mandated by an insurer? Does this have something to do with equivalence of reward? We need to understand the purpose before we can comment further.	Please note that policy data administration services have been removed from the Regulations. In this regard please refer to the Response to Key Issues document published together with the final Regulations.

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	Santam	The prohibition of fees payable for policy data administration services to a "representative that is a natural person" presupposes that such fees are payable to a representative that is a juristic person. In view of the proposed definition of a representative limited to a natural person to the exclusion of juristic person, the qualification is unnecessary as a representative is by definition a natural person. In the event that our submission for extension of representative to juristic person is considered favourably, the qualification of fees payable to representative that is a natural person may well be correct unless the prohibition applies to both natural and juristic persons.	Please see comment above.
	SAIA	The prohibition of fees payable for policy data administration services to a "representative that is a natural person" presupposes that such fees are payable to a representative that is a juristic person. In view of the proposed definition of a representative being limited to a natural person to the exclusion of juristic persons, the qualification is unnecessary as a representative is by definition a natural person. In the event that our submission for the extension of representative to juristic person is considered favourably, the qualification of fees payable to a representative that is a natural person may well be correct unless the prohibition applies to both natural and juristic persons.	Please see comment above.
5.7(3)(b)	Norton Rose	The prohibition on a binder holder accepting a fee for policy data administration services is also irrational. A binder holder who has to set up an information technology system that ensures complete integration with the underwriter and who provides continuous access to complete information bears additional costs and applies skills just as much as anyone else. The regulations recognise that there is a cost involved and give a 2% fee for providing the service. Forcing a binder holder to do it for free is an unconstitutional limitation on their right to carry on business as binder holder and unfairly discriminates against the binder holder in relation to any other party providing this service.	Please see comment above.

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5.8(1)	Fulcrum	The formulation of 5.8 is problematic and may result in unintended consequences. On our reading it provides that an insurer may pay a binder holder a fee that is reasonably commensurate with the costs of providing the binder function plus a reasonable rate of return. However, the insurer must obtain the prior approval of the Registrar if it wishes to pay an advisory NMI or the associate of an advisory NMI more than the tabulated maxima[3]. This, by necessary implication, means that a non-advisory NMI or the associate of a non-advisory NMI is not bound by this formulation or the proposed Table and therefore can be paid according to the general principle of "reasonably commensurate with costs plus a reasonable rate of return". Thus, an advisory NMI is at a substantial – and seemingly arbitrary – disadvantage over the non-advisory NMI. We strongly suggest that the intention is clarified. The linkage to advice seems unnecessary and creates the opportunity for regulatory arbitrage.	The intention behind the cap is to mitigate conflicts of interests that are inherent in advice models (i.e. conflicted advice). Where a non-adviser NMI is a binder holder, the same inherent risk does not exist and there is no need for the limitation.
5.8(2)	Hollard	We fail to see why this entity is treated differently to the NMI that is associated to an intermediary with advice on its FAIS license but does not itself. If it's an issue of there being no conflict here, they should be entitled to earn a profit share and they are still talking to the client. We believe the distinction between the NMI with the association and this NMI is artificial and the cap should not apply to either entity. This will create a situation where entities create new structures to escape the associate definition and therefore not be subject to the caps. We believe it should make no difference if the entity is associated to the intermediary with advice on its license or not, they are not being paid profit share and the cap should not exist.	See response directly above. Disagree that new structures will be set up to circumvent the requirement. This requirement is specifically there to mitigate the risk of circumvention, i.e. to avoid that an NMI registered for advice under the FAIS Act creates a different legal entity (not registered for advice) to perform the binder functions and not being subject to the binder caps.
	SAIA	Clarity is sought as to why a NMI (Non-mandated Intermediary) which is not an associate of another NMI, is treated differently to the NMI that is associated to an intermediary with advice on its' FAIS license but does not itself render the advice. If it is an issue of there being no conflict because they are not associated to an advice giver, it follows that they should be entitled to earn a profit share as a UMA	See response directly above.

[3] Enter into, vary or renew @ 2% max; Determining wording, premiums or value of policy benefits @ 2% max and settle claims @ 2% max.

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		as the distinction now with the UMA becomes very tenuous. We believe the distinction between the NMI with the association with the entity rendering advice and this NMI having no association is artificial and the cap should not apply to either entity (profit share is not being allowed so the conflict is mitigated already). This will create a situation where entities create new elaborate structures to escape the "associate" definition and therefore not be subject to the caps. Thus we believe that it should make no difference whether the entity is associated to the intermediary with advice on its license or not, they are not being paid profit share and the cap should not exist, only a provision that the fee be commensurate with the service rendered.	
	AON	The remuneration limitation by fee capping also applies to "a non-mandated intermediary not authorised to render "advice" that is an associate of another non-mandated intermediary that is authorised to provide "advice" …..". This means the remuneration limitation does not apply to entities such as: premium collection agencies, travel agents, cell phone vendors etc. provided they don't provide advice and are not associated with advice giving NMI's. We question the fairness of this. If it can be reasonably determined that the cost of providing a binder function plus a reasonable rate of return is the same for a UMA, a non-advice NMI and an advice giving NMI why will the latter be prejudiced in not being permitted to recover the cost (plus fair return)? One example of this is the 2% capping for claims settlement (that in previous iterations of the RDR was shown as from 1% to 3% depending on the functions included) where we've been reliably informed by various insurers that the cost of performing the full claims settlement function in-house is in excess of 6%. When the 2% cap is read in conjunction with the new stringent PPR's for claims management we question any binder holder being able to provide the full function at the proposed cap. Another example is that in terms of 5.7(2) an advice-giving NMI can earn 2% for providing "policy data administration services" (PDAS) yet if the same NMI has a binder to "Enter into", remuneration is capped at the same level for providing the	See response directly above.

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		whole Enter into function, that includes PDAS. When the proposed cap of 2% for claims settlement is read in conjunction with Rule 17 of the proposed new PPR's (Claims management) the full claims settlement function becomes too multifarious for NMI binder holders to operate within the restriction of the proposed cap – we would therefore expect such claims binders to be discontinued. This means the demise of NMI based claims management models where there is an existing value-proposition to clients in having claims handled on all policies by a single entity with the same service levels and service proposition. This is seen as a poorer outcome to clients (i.e. on combination products where individual sections are underwritten by different insurers). In future each insurer will handle its own claims according to its own reporting procedures and claims handling capabilities and service levels leading to less control and / or influence by intermediary who may previously have had a claims settlement binder from each insurer to provide a "one-stop" claims service to the customer. We have also commented on this in our response to the proposed amendment of regulations. There is however an opportunity for claims management companies not associated with non-advice giving NMI's to step further into this gap for uncapped (but reasonable) remuneration. In the absence of any explanation to the contrary all the above appear to be discriminatory and anti-selective. Does this mean a non-advice giving NMI with a binder (that is associated with an advice giving NMI but not in respect of the same policies) may not earn uncapped fees for policies advised on by other non-associated advice-giving NMI's? We note that more work is being done to establish capping levels. What process is informing this work and are there still engagements with the industry? We hope that the gazetting of the proposed capping levels doesn't restrict further engagement on this.	
	Alf & Sons Brokers	We kindly refer to the above proposed amendment dated 23/12/2016 in the Government Gazette with reference to "Part 5B Limitation on remuneration of outsourcing – Remuneration that may be offered or provided to a binder holder where it is proposed that a binder holder will be limited to a 2% fee.	Please refer to the Response to Key Issues document published together with the final Regulations which sets out the background and approach to binder caps.

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		We as a binder holder would like to comment on the proposed Regulation/s: For us as broker, client service is of utmost importance. Since we started doing business with some of the insurers we represent, we used to forward amendments, cancelations etc. to the insurers. Upon receipt of the policy schedules from the insurers, after the amendments has been done, it came to our attention that some of the amendments has not been done, some has only been done halfway and it was very frustrating to say the least. With negotiations with the insurer we were offered the option to do the administration ourselves for a fee, payable by the insurer. The cost to company was established by the insurer, thus it is now only payable to us as broker and has no influence on the cost to the client. We as a broker feel that we do more than what is expected and what is available in the market by other brokers. Some of our services, to name but a few, include the following: We do risk management. Annual renewal. We visit the clients on an annual basis to ensure the cover is still sufficient for the client's needs. We do an inventory to establish the correct replacement value of the client's contents – this also assist with claims. We take photographs of the clients' contents – this also assist with claims. We negotiate and obtain quotations for replacement valuations on buildings – this also assists with claims. We negotiated discounted prices for clients to have their jewellery valuated, in some cases we event take the clients jewellery for the valuations – this also assists with claims. In the event of a client having a vehicle accident, we take the vehicle for the assessment at the insurer and sometimes even to the repairer and also return the vehicle to the client. We have the following expenses with regards to the administration being done by	

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		ourselves: Cost of ADSL line in order to be able to connect to the insurer's internet system. Cost for paper Cost for printer cartridges Cost for maintenance and repair of the printer Postage fees. Personnel salaries. Etc. Once the binder function was in place, personnel were appointed to do the amendments in order to ensure professional client service to our clients. Should we receive a query or amendment on a client's policy, the amendment is done immediately and a policy schedule is forwarded to the insured on the same day. While in the past, when the insurer did the amendments, it sometimes took weeks for a client to receive his amended schedule as the amendment/query was not done correctly and we had to go back to the insurer to ensure that the amendment was done correctly.	
	Associated Compliance	5.8(2) "table" Why is "Determine the policy wording…" binder function allowed given the FSB's concerns on skills at broker level?	Please refer to the Response to Key Issues document published together with the final Regulations.
	BASA	It should be recognised that binder fees can legally be paid for the function of "entering into a policy" without commission also being payable. The following assumption made in the Retail Distribution Review Paper of 2014 (Proposal ZZ, page 61) is incorrect and there are many instances where binder fees are payable where no commission is paid. "Most of the administrative work involved is already performed by the non-mandated intermediary as part of "any act directed towards entering into, maintaining or servicing a policy" (i.e. intermediary services as currently defined) for which commission is already payable."	Please refer to the Response to Key Issues published together with the final Regulations. In our opinion it is not practical to determine two maximum rates for entering into, one for where commission is payable in respect of the same service, and another higher limit for where no commission is payable for the service. Binder functions and services as intermediary are two separate and distinct matters. Whether or not

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		Therefore, in situations where the only fee payable for the function of "entering into a policy" is a binder fee, we believe the 2% fee would be wholly insufficient to cover the cost of rendering that service. Although the provision in 3.21(3) is welcomed, where approval may be provided by the Registrar to pay fees in excess of this limit, we believe this will be a pervasive issue in the industry, especially where the services of outsourced call centre functions are used and for this reason, we believe it would be appropriate to set a higher fee in the Regulations for the binder function of "entering into a policy". We note in the December 2016 Status Update on RDR that the quantum of the cap is still subject to consultation and that technical work is underway, which is welcomed. The following comments should be considered in the process: A recommendation is to determine two maximum rates for entering into, one for where commission is payable in respect of the same service, and another higher limit for where no commission is payable for the service (we have no view on what the appropriate % would be under those circumstances). In determining the binder fee when commission is not payable, one should have regard to the Commission Regulations where roughly 85% of total premium is allowed as first year commission. However, not all the provisions would apply to binder fees (like claw backs) so we propose that a portion of the fee would be an appropriate base, which we believe can be determined by way of information that can be provided by the relevant insurers that pay such fees. The reason is that similar types of services are rendered when the function of "entering into a policy" is performed under a binder arrangement as intermediaries perform under the Commission Regulations. The basis for the calculation of the 2% fee is not disclosed and therefore one has to assume that the cost of performing this service is what should be used as a basis. The commercial reality is that binder services for the function of "entering into a policy" costs significantly more than 2% of first year premiums. As the basis for calculating the binder fee is merely expressed as "…a percentage of the aggregate of the total premiums payable by the policyholders in respect of the policies to which the binder function relates…", it is not clear if it relates to monthly premium, annual premium or total premium over the lifetime of the policy. Should it be the monthly or annual premium, 2% is not sufficient to cover the actual cost of distributing	a binder holder also performs services as intermediary is not relevant for purposes of the binder fee. The binder functions and fee is unrelated to any services as intermediary that may or may not be performed by that binder holder. The binder regulations are silent on when binder fees may be paid. However, the amount paid must still comply with the prescribed binder cap. Insurers must apply their mind as to how best to structure the payment of binder fees. It relates to the premium payable. In other words, if it is a monthly premium a monthly 2% may be charged, if it is an annual premium, an annual fee of 2% can be charged and so forth. See our comment above regarding upfront fees.

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		products through binder agreements. Should it relate to total premium over the lifetime of the policy, the question is if this can be determined upfront based on actuarial assumptions used for products of this nature, which could produce more realistic distribution costs.	
	Brolink	Regulation 5.8(2)(a) & (2)(b) – [The 2% fee cap per binder activity on binder fees payable to non-mandated intermediaries who are licenced to provide advice] Before the introduction of the Binder Regulations, Brolink conducted business as an "Insurance Administrator". Brolink performed all the administrative functions in relation to short-term insurance policies that were normally performed by an insurer. Following the implementation of the Binder Regulations, Brolink chose to continue its activities as a non-mandated intermediary with binder agreements from a number of insurers. The parties involved in the distribution channel are: the policy holder; non-mandated intermediary (broker earning commission); non-mandated intermediary binder-holder (Brolink earning binder fees only); and, product provider. Brolink plays the same role as an underwriting manager. The only respect in which they differ from an underwriting manager is that they do not share in underwriting profits. This means that Brolink has absolutely no influence over the placement of business. The policyholder cannot be prejudiced through the selection by Brolink of products or product providers on which higher fees are earned in the same way that this kind of prejudice is absent where an underwriting manager is involved. The detriment sought to be prevented by the fee caps and the limitation on number of binder functions that may be performed is not possible in our model. From 22 years' experience in the handling of the full spectrum of functions associated with short-term policy administration, Brolink is of the view that the limitation on binder fees is not realistic, i.e. neither the scope of the functions performed nor the associated costs have been taken into account. Furthermore, the 2% caps are not achievable if one wants to adhere to the service level standards that meet TCF principles. Please find attached a presentation to the Financial Services Board in June 2016. Refer in particular to the section under the heading "Nature of Services and Functions Performed".	The binder caps only apply to NMI's that are authorised for advice as this is the inherent conflict of interest (advice risk) that the cap intends to mitigate. If Brolink has no influence over the placement of business it is assumed that Brolink does not provide (and should not be authorised to provide) advice. If Brolink is not authorised to provide advice it will not be subject to the binder caps.

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	Compass	Kindly clarify the position under 2(a) – is it the intention to cap such binder fees only if the intermediary is not registered to render the "advice" in order to mitigate conflicts? If this is indeed correct, it may lead to some unintended consequences, for example the envisaged scenario explained above – As soon as a non-mandated intermediary binder holder is deregistered from the "advice" function, such an intermediary may have unlimited earning potential ability in terms of both uncapped binder fees as well as maximum commission. Even though fees payable for "outsourcing" must be 'commensurate and reasonable' it is hereby respectfully averred that it is simply not possible to prevent or successfully curb in all instances where the possibility to make money is unlimited.	Correct. You are also correct that a "non-adviser" NMI is not subject to the cap, the reason being that there is no inherent conflict of interest (advice risk) that needs to be mitigated in such a scenario. However, in our opinion the requirement that binder fees must be reasonable and commensurate will still ensure that "non-adviser" NMI's do not charge exorbitant fees.
	Cyan Capital	Does this then imply that if the binder holder is a non-mandated intermediary that is not registered as authorised to give advice that following application by the insurer and subsequent approval by the Registrar that the binder holder may then be paid in excess of the 6% as set out in the Table of the propose breakdown of fees? If so then clarity is sought on the basis of this proposal. As long as the fees are reasonably commensurate with the actual costs incurred, and the actual functions being performed are the same, then why / how should the rate of remuneration for such services differ? If the fees being earned / paid are determined on the basis of the functions being performed then there should be no distinction irrespective of status of registration of the non-mandated intermediary.	A "non-adviser" NMI is not subject to the cap, the reason being that there is no inherent conflict of interest (advice risk) that needs to be mitigated in such a scenario. However, in our opinion the requirement that binder fees must be reasonable and commensurate will still ensure that "non-adviser" NMI's do not charge exorbitant fees.
	Cyan Capital	Further clarity is sought as to how the figures as set out in the Table were arrived at. Are the fee's payable for the functions as described, paid irrespective of whether the functions are performed in part or in full? If the intention is that fee's as set out in the Table are commensurate with the functions being performed then by implication that means that the Insurers would then themselves be able to perform such functions for the specified fee. What	Please refer to the Response to Key Issues document published together with the final Regulations. The Table sets out the maximum fee. If only a part of the functions are performed the insurer may (and should if the principle of reasonable and

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		consultation has been done or process followed in order to determine if this is in case the fact. If the fees payable are not fair and reasonable there exists the possibility that binder holders may relinquish their binder agreements and pass the functionality back to the insurer. Consideration then needs to be made to see if firstly the insurer is able to take the functionality in house and secondly are they able to then perform the functions at the same proposed cost. If not then surely this is damaging to the industry as a whole and will ultimately then affect the policy holder either in terms of service or cost – mostly likely both.	commensurate is applied) pay such a binder holder less than the capped %.
	Econorisk	5.8(2)(a) - Does this then imply that if the binder holder is a non-mandated intermediary that is not registered as authorised to give advice, that following application by the insurer and subsequent approval by the Registrar that the binder holder may then be paid in excess of the 6% as set out in the Table of the propose breakdown of fees? If so then clarity is sought on the basis of this proposal. As long as the fees are reasonably commensurate with the actual costs incurred, and the actual functions being performed are the same, then why / how should the rate of remuneration for such services differ? If the fees being earned / paid are determined on the basis of the functions being performed then there should be no distinction irrespective of status of registration of the non-mandated intermediary.	A “non-adviser” NMI is not subject to the cap, the reason being that there is no inherent conflict of interest (advice risk) that needs to be mitigated in such a scenario. However, in our opinion the requirement that binder fees must be reasonable and commensurate will still ensure that “non-adviser” NMI’s do not charge exorbitant fees.
	Econorisk	5.8(2)(b) Further clarity is sought as to how the figures as set out in the Table were arrived at. Are the fee’s payable for the functions as described, paid irrespective of whether the functions are performed in part or in full? If the intention is that fee’s as set out in the Table are commensurate with the functions being performed then by implication that means that the insurers would then themselves be able to perform such functions for the specified fee. What consultation has been done or process followed in order to determine if this is in case the fact. If the fees payable are not fair and reasonable there exists the possibility that binder holders may relinquish their binder agreements and pass the functionality back to	Please refer to the Response to Key Issues document published together with the final Regulations. The Table sets out the maximum fee. If only a part of the functions are performed the insurer may (and should if the principle of reasonable and commensurate is applied) pay such a binder holder less than the capped %.

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		the insurer. Consideration then needs to be made to see if firstly the insurer is able to take the functionality in house and secondly are they able to then perform the functions at the same proposed cost. If not then surely this is damaging to the industry as a whole and will ultimately then affect the policy holder either in terms of service or cost – most likely both. Clarity is sought on why it is viewed that a non-mandated intermediary that is registered to give advice may not be paid a binder fee for performing those functions. What malice is there in the non-mandated intermediary giving advice and performing the functions? In fact the client is better served.	
	FIA	Remuneration that may be offered or provided to a binder holder We understand that the proposed percentages are under review and request the underlying principles and detail utilised to determine these percentages be advised. 5.8(3) - what is regulation 3.21(2)? Suggest that this should refer to 5.8(2). We recommend that the same principle for the approval of Binder fees to be paid in excess of the caps should also apply for Outsourced Policy Administration activities. 5.10 (e) – request that the intention of "in writing" be clearly defined so as to confirm inclusion of the Electronic Communications Act and any other relevant medium. A reasonable implementation timeline will need to be allowed for completion of this exercise due to the high volumes per of policies affected and will take at least one full annual cycle to be completed.	✎ Agreed. Incorrect reference will be corrected. Please note that policy data administration services have been removed from the regulations. The Electronic Communications Act applies irrespective of whether or not it is stated in the Regulations. Please refer to the new Part 8 for details on transitional provisions.
	Fulcrum	On a more technical note, 5.8(2) (a) links a NMI with advice as defined in FAIS. Section 48A of the Short-term Insurance Act and the related Binder Regulations define a NMI but FAIS does not. Similarly FAIS draws the clear distinction between advice and intermediary services, whereas the STIA doesn't. The wide range of binder fees currently paid in the market has given rise to justifiable concerns of abuse of the flexibility of the regulatory regime with respect	Noted.

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		to binder arrangements, and particularly the fees paid for binder functions. The evidence gathered by the FSB[4] suggests that some insurers have used the opportunity to grow – or to defend – their market share whilst some binder holders have used their ability to move books of business to the 'highest bidder'. Simultaneously, those insurers and intermediaries who do not engage in this conduct are left at a competitive disadvantage. This behaviour by some insurers and some binder holders has been identified and should, in our view, be systematically eliminated by taking supervisory or regulatory action against both parties. Until remedial action is taken in a clear and definitive way, our sense is that current behaviour is likely to continue. It remains difficult to manage remuneration in a hybrid system where some remuneration is fixed and some is not. The temptation – and the observed tendency – has been to migrate to channels of remuneration that are not fixed. This behaviour falls short of the standard required by FAIS. Enforcement action should be the natural consequence of the reportedly egregious abuse of binder fees by certain market participants. If enforcement action is not taken, the risk is that the market will see poor behaviour rewarded and good behaviour rendered futile, if not counter-productive.	
	Hollard	5.8(2)(a) - We are against capping of fees and believe fees should be paid according to costs incurred by the binder holder. Standardising fees does not eliminate conflict if the costs are different for the functions the binder holder is required to perform. This is a new principle with respect to the "advice" component acting as an obstacle to the binder holder performing commercial functions. Hollard would welcome the opportunity to discuss this with the regulator. The requirement will simply force brokers to acquire a second FAIS license under the custodianship of another associate company. The issue of commercial binders as we have explained before is around the skill of the staff sitting in the broker entity and not the existence of FAIS representatives providing advice. The distinction of small commercial to personal lines is not a large one in terms of skill and the small commercial space is highly commoditised in today's market where many insurers are playing. Hollard has managed commercial binders for over 25 years with strict and well enforced	Noted. Please refer to the Response to Key Issues document published together with the final Regulations. Please note that the prohibition stretches to associates and therefore your assertion that an adviser FSP will simply set up an associated company to circumvent the requirements is misplaced.

[4] As part of the Binder Thematic Review

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		mandates and guidelines and we are concerned that these entities will have to acquire new associate companies and FAIS licenses to carry on. We would rather not have to apply for exemptions for all these entities as there are many. We also believe that if the FSB wishes to prohibit commercial binders which have advice on their FAIS license, this should only apply to binder function 2,3 and 4 but not to function 5 which is the settling of claims which has become very prevalent in the industry and will prove to be a large shock to the system. The skill required to settle a motor personal lines claim is the same as that of a commercial claims. There are many commercial claims binders in the market which will need to be cancelled unnecessarily in our view. These claims binders allow the smaller commercial entities to have their claims settled quickly which allows the clients to continue trading. We note PPR will also apply to small commercial, this should also apply in this binder space where at least. Is a NMI not providing advice not limited to the table? In addition would an NMI also not associated to someone who is giving advice?	
	Hollard	For the function of enter into, vary and renew, which includes policy data administration services, one will be able to earn 2%. However if the binder holder only provides policy data administration services, they are still entitled to earn 2% binder fee. A binder holder whose functions are limited to enter into, vary and renew, and settle claims will only be entitled to earn a fee of 4% for performing there functions and although they provide policy data administration services as well, they are unable to earn an additional fee for this. All of the above mentioned require ongoing enhancements, dedicated resources and diligent management. This all comes at significant cost. These costs cannot be covered through the proposed binder fee remuneration model as this may not be sustainable for binder holders. This may result in a negative outcome for both customers and intermediaries and further consideration should be given in respect of the proposed limitation for binder fees. We recommend a 12 month transitional period is applied. Again we do not support the proposed cap or capping in general as described above. See above that we believe the fee should be based on the cost of the activities being	Please refer to the Response to Key Issues document published together with the final Regulations. Please refer to the new Part 8 for details on transitional provisions.

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		performed and secondly even if there was a cap introduced, we have always been of the view that the level of the caps should be sufficient for the performance of the activities required competently and professionally and there is no empirical evidence that 6% is the right level. In fact previous RDR proposals had different levels specifically with claims where the proposed fee was 3% as a maximum for claim. What changed for this draft regulation to now suggest 2%. Our experience is it not a one size fits all and there should a strong adherence to using actual cost as the guideline. Different binder holders also have different levels of success in customer satisfaction. The binder holders with better quality staff and systems charge more for their services but there are less complaints and a better customer experience. The insurer will not inflate fees simply to keep the binder holder happy as the Insurer also needs to be financially solvent. If the cap is inevitable it must be at sustainable levels and one must avoid the situation where all binder holders get paid the default cap even if they are not incurring that cost of performing the full function. This is always the danger when caps are introduced. It becomes the norm and those binder holders providing a service on a large scale binder or with better customer outcomes get caught in the net.	
	Infinity	We are of the opinion that proposed binder fees on personal lines do not provide adequate income for binder holders to maintain service levels to policyholders or to continue to employ competent staff to perform the binder functions (which we consider to be a service such binder holders are best placed to provide). The cap is seemingly arbitrary in nature; no justifiable basis for the respective 2% values has been provided; and the proposed caps do not appear to take cognizance of the actual cost of performing the functions.	Please refer to the Response to Key Issues document published together with the final Regulations.
	Kayser Baird	Comments on the proposed capping of binder fees and restriction on Commercial Binders With the proposed changes to binder fees, a new entrant to the market would be unable to structure an intermediary business such as our business is structured today. We are a business with a 30 year track record of competitive pricing, exceptionally high standard of service and year on year underwriting profitability from the insurers perspective. Our business has evolved in a free market where consumers are well informed about short term financial products and have unrestricted access to many different models of insurance, some of which are	Please refer to the Response to Key Issues document published together with the final Regulations. Disagree with the statement that the draft regulations are extremely vague in a number of areas and this unfairly prevents forward planning. The areas that are asserted to be vague have not been highlighted to allow for their consideration.

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		aligned with our model and some which directly oppose the intermediated model. We support the removal of binder fee capping, removal of the restriction on commercial binders and the freedom for the insurers to transfer administration functions to the intermediary in return for a reasonable fee, commensurate with the work being performed. The draft regulations are extremely vague in a number of areas and this unfairly prevents us from forward planning. The draft regulations are a “one size fits all” approach which is unsuitable for the significant range of different intermediary models operating in South Africa. For example our business is one of only 3 brokers countrywide that has our specific model of engagement with Santam yet the regulations do not cater for the different types and complexity of intermediary models. The regulations state that the binder holder should be allowed a “reasonable rate of return” yet by capping the binder fees there can be no proportionality to this rate of return between different types of binder holders. The regulations appear to be a concerted effort by legislators to restrict basic free market principles. Many of the insurers that we deal and in particular the insurers that we have binders with, do not have the requisite skills or operational capacity to provide the same technical or administrative services as we provide to our clients. As an intermediary we have an obligation under FAIS to ensure correctness of our client’s policies and the many processes encompassed in incepting and managing these policies. Many of the processes that we use to meet these obligations are binder or incidental functions and apply to both personal lines and commercial lines of business. The regulations will protect the consumer only where there are “undesirable practices” being carried out – where the intermediary is adding value the consumer will lose out on any innovation and / or efficiencies that the intermediary has been able to implement. Our loyal clients deal with us because they prefer our business model to direct to consumer models, the new regulations will prevent us from offering the same value	Disagree with the statement that the regulations appear to be a concerted effort by legislators to restrict basic free market principles. The need for appropriate policyholder protection cannot be outweighed by free market principles. The Statement that the regulations favour direct to consumer insurers has not been substantiated.

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		proposition to our clients and advantage the direct to consumer insurers who many policy holders actively avoid because of poor service delivery. The regulations provide an opportunity to direct to consumer insurers without them having to improve their value proposition, they are being placed in a better position by limiting choices to the consumer.	
	Moonstone	Our understanding of regulation 5.8(2) is that an intermediary binder holder, who is licensed to provide advice or has an associate relationship with another intermediary who is licensed to provide advice, will be subject to the binder fee caps as provided for in the table. We understand the caps as a measure to mitigate potential conflict of interests. In this instance the potential conflict is that an intermediary who holds a binder agreement and who can advise on short-term insurance products will channel business to the insurer with whom the intermediary holds the binder agreement. Our concern is that the caps apply irrespective of whether the intermediary or its associated intermediary furnishes advice in respect of the specific product to which the binder agreement relates to. Many intermediary binder holders provide binder functions in respect of policies sold through other independent intermediaries and we respectfully submit that cognizance was not taken of this fact in the current proposals. It would appear unfair to make the fee caps applicable to business originating from other channels where the intermediary is not involved in the advice process at all, and the only reason for the cap to be applied is that the binder holder is an associate of an intermediary licensed to provide advice. In our view this leads to almost a “guilty by association” situation. Our concerns are perhaps more accurately positioned by way of example: *FSP A is and intermediary that has not entered into any binder relationships. The FSP acts solely as a short-term insurance brokerage. FSP B is an FSP which is not licensed for advice and performs administration by virtue of an intermediary binder agreement with Insurer X. The two FSPs are associates of one another by virtue of having the same shareholder owning 100% of both.* *At present the business submitted by FSP A to FSP B amounts to less than 5% of the*	Please refer to the Response to Key Issues document published together with the final Regulations. We are of the view that the ability to apply for an exemption from the caps addresses the concern raised.

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		total business done by FSP B. The remaining 95% of business is submitted to FSP B through other independent intermediaries. The result of the current proposals is that FSP B's total earning potential is being stifled purely because of its association with FSP A. We acknowledge the potential conflicts of interest which are present where an intermediary holds a binder agreement and can provide advice in respect of those policies. However, we respectfully submit that the conflict can be better managed by means of a prohibition on bona fide administrators (FSPs licensed for intermediary services only) conducting business with associated FSPs in respect of the policies for which they hold binder agreements. Referring back to our example, we believe the conflict would be better managed where FSP B was simply prohibited from accepting business from FSP A in respect of those policies for which FSP B holds a binder agreement. We believe the same result is achieved in respect of underwriting managers and associated intermediaries as per regulation 6.2 (3) of the Short-Term Insurance Act. It is understood that where the intermediary is licensed for advice and performing the binder functions that a cap of the binder fee will apply as the only reasonable method to limit conflicts of interest. With regards to the percentage caps per individual binder function, we believe industry will put forward much comment as to how the regulator arrived at these percentages. Very little information was shared to industry by the Financial Services Board on this point. We believe that while 2% per function may be fair in respect of certain types of policies, it may not be so in respect of others. Consider for a moment, the example of cell phone insurance. Generally, premiums for these policies amount to approximately R20 to R30 per month. If in respect of these policies an intermediary binder holder, who is licensed to provide advice, or is associated with such FSP, performs binder functions (a) and (e), the fee payable would be 4% or R1, 20 per policy. We believe that many binder holders would argue that this remuneration model is not sustainable in respect of low premium policies. If one were again to refer to our example of FSP A and FSP B above, and assumed that FSP A does not provide financial services in respect of the cell phone insurance policies in respect of which FSP B holds a binder agreement for, it raises the absurdity as to why FSP B has to be subjected to fee caps in respect of *all* policies. It	

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		again illustrates the "guilty by association" principle alluded to previously. This approach, which we believe is an unintended consequence, should be avoided.	
	Norton Rose	The process for procuring fees exceeding the cap Draft Regulation 5.8 also regulates advice-giving NMIs' practice of their occupation, trade or profession, by capping the fees that they may charge for the limited binder functions that they can perform, and permitting those fees to be increased only with the approval of the Registrar. Such regulation may be irrational. The fee caps imposed by Draft Regulation 5.8(2) permit advice-giving NMIs to collect a 2% fee for each of the binder functions performed under section 48A(1)(a), (c) and (e) of the Act – that is, for entering into, varying or renewing a policy, for determining the wording of a policy or for settling claims. But in terms of Draft Regulation 6.2(1A) and(1B), advice-giving NMIs can only perform the binder functions identified in section 48A(1)(a) and (e). They are not permitted to determine the wording of a policy, and can never claim the fee stipulated for that function. It means that the Draft Regulations are internally inconsistent, suggesting a failure properly to consider the regime in full. Moreover, Draft Regulation 5.8(3) empowers the Registrar to permit an advice-giving NMI to be paid a higher fee if: "(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 ." Treasury's media release accompanying the publication of the Draft Regulations explains that the limits on who may enter into binder agreement and the remuneration they may be paid are designed to "address conflicts of interest",	The rationale for why the cap may be irrational is not provided. We disagree that it is irrational. Limitations on business and who may conduct certain business has been acknowledged by the Constitutional Court as constitutional. The rational for the cap is to limit untenable conflicts of interest that result in unfair treatment of policyholders. The insurer that is a party to the binder agreements must be convinced that an exemption should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. In addition, please note that the binder holder acts as the agent of the insurer and it is the insurer that is accountable for compliance with the Regulations. As such, only the insurer is able to apply for this exemption. There is nothing stopping an intermediary or UMA motivating to the insurer why it believes is should earn a higher fee and requesting the insurer to motivate the exemption to the Registrar, but only the insurer can apply for the exemption. Please also refer to the Response to Key Issues document published together with the final Regulations.

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		presumably whilst also ensuring the intermediaries performing binder functions are properly and commensurately remunerated. Draft Regulation 5.8 may be incapable of achieving that aim because it reserves the right to apply for an increased fee to an insurer, instead of affording it to the NMI. This is problematic for two reasons: First, rather than managing conflicts of interest, it creates them. An NMI draws its fee from the premium that is paid to the insurer. The lower the fee paid to an NMI, the greater the amount received by the insurer. The insurer may thus operate under a conflict of interest when it applies for permission to pay an increased fee to an NMI. Second, in assessing the "nature, scale and complexity of the insurance business to which the relevant binder function relates", the Registrar presumably seeks to ensure that the NMI obtains an appropriate fee. The costs associated with operating the NMIs business and the margin needed to ensure a reasonable rate of return is, in our view, relevant to that assessment. But such information is confidential to the NMI and commercially sensitive. Indeed, there may be competition law constraints that preclude an NMI from disclosing such information to an insurer that sometimes performs binder functions itself. It means that the insurer may lack material information necessary for the Registrar properly to consider and determine an application for increased fees. A regulation that prevents materially relevant information from being provided to the decision-maker is likely irrational. In our view, then, Draft Regulation 5.8(2) may also be constitutionally problematic.	
	PSG Konsult	Limitation on binder fees The comment of the Regulator on this matter is again indicative of the fact that the process has not been completed and that these Regulations are also premature. The Regulations refer to fees that are reasonably commensurate with the actual costs incurred. With the 2% cap on each of the three binder functions it would however seem that this rule is being ignored by the Regulator With each of the binder functions differing significantly in their nature and types of activities, the proposed fee and split is not in line with this principle and seems arbitrary to have an equal	Please refer to the Response to Key Issues document published together with the final Regulations.

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		cap (2%) on all three levels of binder activities. We want to state that PSG currently operates its platform business (where we have several binders) at a financial loss. This is with current binder fee levels in excess of the proposed max of 6%. This is done to ensure that PSG delivers an optimal service to its clients and PSG advisers. But if fee levels are to drop to the proposed maximums, it will become significantly uneconomical to continue with the binder functions, ultimately to the detriment of PSG clients. Our understanding is that a number of FIA members opened their binder business to the scrutiny of the Regulator and proved that they were subsidising their binder functions at the current rates, levels that are already in excess of the proposed. It would be totally uneconomical to operate binders at the proposed 6% max fee. The fact that the Regulator is aware that these fees are not commensurate with the cost is further carried out by the ability of other binder agreements to charge a higher fee than the maximum 6%. Such a distinction can only be argued if non-mandated intermediaries providing advice are able to provide these services cheaper, a position which is clearly not the case. If the public available financial results of insurers are studied it is clear that the costs of the functions included in the binder varies between 15% and 25% of premium income. In discussions with many of these insurers 6.5% was the level used as the costs for claims only. All indications are that the proposed regulatory activities required to perform these functions have not been clearly defined in the necessary detail to assign costs to them. Therefore any fees proposed lack substance. The Regulator also regularly refers to efficiencies and argued that with binders there is a duplication of costs and that only those functions that aren't duplicated could be outsourced under a binder. This is a total misconception of the purpose of binders. Although there are areas where costs efficiencies are achieved, it is the control over the underwriting and more importantly the claims process that benefits the end consumer. Even if the possibility exists that the activities could be performed cheaper by the insurer, the quality and the speed will be less. If the insurer wishes to increase the speed and quality to the level of the binder holder it would almost certainly lead to increased costs. Efficiencies should therefore be done in collaboration with speed, effectiveness and overall quality and value for money for the insured.	

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		We therefore submit that the current proposed 6% in fees is significantly below the cost of providing these services and it appears that the Regulator utilised the capping of fees to address issues that could be more effectively addressed in a different manner that would lead to an enhanced outcome for the policyholder. If this is not the case a more accurate level of fees needs to be determined. To assist in determining this level of binder fees, we request the Regulator to provide the detailed information from its Thematic Review as well as the basis for its calculations of the fee split 2/2/2. As the process around the setting of the fees is not yet completed, the proposed fees are not commensurate with the cost of the services. The impact of these levels will have dire implications for existing binder holders. We request that these limitations are withdrawn until the Regulator has completed its fee assessment work, and a correct fee limit is determined.	
	Renasa	It is our submission that binder fees should be aligned to the costs of providing the service to an insurer and that the proposed caps are too inflexible. In our view, the rendering of advice by intermediaries, should be encouraged and regulated. The remuneration for the providing of advice, should not be confused with the rendering of binder functions. Advice is a critical component in appropriate consumer outcomes and its importance should not be undermined. The rendering of professional advice must also be adequately rewarded. Those rendering advice usually hold RE qualifications and experience. The capping of binder fees, if unrealistically low, may have the unintended consequence of incentivizing intermediaries not to perform binder functions on behalf of insurers, which in turn, may increase costs and inconvenience to both policyholders and insurers. In our view, requiring insurers to approach the Registrar, to grant approval to pay a binder fee in excess of the capped fee, creates an unnecessary burden upon insurers and will increase costs. It is unfair and unreasonable to expect intermediaries to have to rely upon the intervention of an insurer when seeking increased compensation for performing binder functions. It would be preferable for insurers to be permitted to pay fees in excess of the cap limit, where it can be demonstrated that this is justified. In other words, an insurer should not be expected to do more than to notify the Registrar that an arrangement has been concluded with an intermediary for the payment of a fee in excess of the cap, but to then fully set out	Please refer to the Response to Key Issues document published together with the final Regulations.

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		the reasons for this and to justify the remuneration payable. These arrangements will, naturally, continue to be subject to other supervisory and control measure, including disclosure to holders.	
	SAIA	5.8(2)(a) - We submit that standardising fees does not eliminate conflict, if the costs are different for the functions the binder holder is required to perform. This is a new principle with respect to the "advice" component acting as an obstacle to the binder holder performing commercial functions. We welcome the opportunity to further discuss this with the Regulator and Treasury, as the unintended consequence of this requirement may be that it will simply force brokers to acquire a second FAIS license under the custodianship of another associate company. The issue of commercial binders as we have explained before is around the skill of the staff sitting in the broker entity and not the existence of FAIS representatives providing advice. The distinction of small commercial to personal lines is not a large one in terms of skill and the small commercial space is highly commoditised in today's market. Companies have adequately managed commercial binders for years, with strict and well enforced mandates and guidelines and are concerned that these entities will have to acquire new associate companies and FAIS licenses to continue business. We recommend that if the FSB wishes to prohibit commercial binders which have advice on their FAIS license, this should only apply to binder function 2,3 and 4 but not to function 5 which is the settling of claims which has become very prevalent in the industry and will prove to be a large shock to the system. The skill required to settle a motor personal lines claim is the same as that of a commercial claim. There are many commercial claims binders in the market which will need to be cancelled unnecessarily in our view. These claims binders allow the smaller commercial entities to have their claims settled quickly which allows the clients to continue trading. We note PPR will also apply to small commercial, this should also apply in this binder space where at least those entities should be included in binder mandates	Please refer to the Response to Key Issues document published together with the final Regulations which addressed several of the aspects raised in your comment. Please note that the prohibition stretches to associates and therefore your assertion that an adviser FSP will simply set up an associated company to circumvent the requirements is misplaced.

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		for brokers, to make sure the approach is consistent to include small commercial with personal lines policies.	
	SAIA	The draft regulations effectively introduces two (2) levels of fees for binder functions: (a) uncapped fees for UMAs or NMIs that are not authorized to provide advice or are not associates of NMI's authorized to provide advice; and (b) capped fees at maximum of 6% for NMIs authorized to provide advice or who are associates of NMIs that are authorized to provide advice. We are of the view that authority to provide advice in terms of FAIS alone does not give rise to conflict, or potential conflict of interest. To be specific, conflict of interest, if any, stems from the actual provision of advisory services by a NMI in respect of business for which it also performs binder activities on behalf of an insurer. For substantially the same reason, a binder holder is not conflicted solely because its associate NMI is authorised to provide advice. If any, a binder holder is conflicted in respect of business, for which it or its associate NMI does provide advice. It is the actual provision of advice by a binder holder or its associate NMI, or the obligation to provide advice that creates conflict or potential conflict of interest and not registration to provide advice. It is therefore proposed and recommended that the capped fee be limited to business for which the NMI provides or is obligated to provide advice or for which its associate NMI provides or is obligated to provide advice. The business on which another NMI, that is not an associate of the binder holder provides advice, does not create conflict or potential conflict of interest. There is thus no compelling reason(s) to limit the fee in respect of such business to the proposed capped fees. The limitation of binder fees payable to NMIs that are authorised to provide advice or to a NMI that is an associate of another NMI authorised to provide advice, will result in the emergence of independent administration houses with no authority to provide advice and with no associate relationship with an NMI that is authorised to	✎ Please refer to the Response to Key Issues document published together with the final Regulations. We are of the view that the ability to apply for an exemption from the caps addresses the concern raised.

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		provide advice, in order to take advantage of uncapped binder fees. Specifically, there is an opportunity for broking firms to structure ownership of administration houses in a manner which allows them to fall below the thresholds for associates in order to maximise revenue from binder functions. Similarly, there is an opportunity for insurers to establish administration houses that employ staff within the brokers' office to perform binder functions on behalf of that broker for costs higher than the capped fee the broker would otherwise have been able to earn for that function. Clarity is sought whether this is by design or simply an unintended consequence.	
	SAIA	There is support for the principle that 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. However, we submit that the capping of binder fees to 2% on the performance of the entering into, varying and renewing binder function, as well as the claims settling binder function by a Non-Mandated Intermediary binder holder does not sufficiently provide for the expenses which will be incurred by the binder holder in the performance of such binder function/s. We believe that the caps are inappropriate specifically for start-up firms which will create barrier to entry and negatively impact transformation. It is also not clear whether the cap is to include the rate of return. A single rate for the different types of business activities that binder holders may be involved in (i.e. they may reference a separate rate of return for their core non insurance business to that for their insurance activities etc.) which adds to the complexity. The caps do not specifically take into consideration the impact of size. As a binder holder increases in size the fixed overhead costs becomes a smaller fraction of the total cost. (Economies of scale). In addition, due to some insurers who operate in terms of an outsourced model, any restrictions with respect to binder activities will have to be phased in over time to	Please refer to the Response to Key Issues document published together with the final Regulations. We are of the view that the ability to apply for an exemption from the caps addresses the concern raised. The caps do not apply to NMIs not authorised for advice. The issue raised in respect of admin houses not registered for 'advice' representing a number of smaller intermediaries and where the intermediary's "qualifying stake" is kept under 15% is noted. However, we are of the view that a qualifying stake of less than 15% and the requirement that binder fees must be reasonable and commensurate will appropriately mitigate any conflict of interest.

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		allow the insurer to either take the prohibited binder activities in-house or to appoint UM's to perform these activities. Insurers are in the process of reviewing the binder functions it outsources and the fees paid in respect thereof and shall thus be in a position to put forward a suggested cap in due course and would appreciate an opportunity to engage further with the Regulator and Treasury in this regard. Clarity is sought as to the status of administrative houses(admin houses) Does NMI that is registered for 'advice' include admin houses? What about admin houses not registered for 'advice'? (Refer to 6.2.1 1A), as insurers have noted a new practice of Admin companies being formed again, representing a number of smaller intermediaries and where the associate's "qualifying stake" (as per Part 6 (e)) is kept under 15% – this could be an unintended consequence in drafting the wording as is.	
	SAIA	As mentioned earlier, the majority view of the industry is against the proposed cap or capping in general as described. We believe that the fee should be based on the cost of the activities being performed and secondly, even if there was a cap introduced, the level of the caps should be sufficient for the performance of the activities required competently and professionally. Industry has not had sight of empirical evidence that 6% is the right level. The minority suggest being able to vary the fee within a range of 1% – 4% for enter into vary, and renew depending on the value of the service provided and have suggested that there may be minimum rand values that can be applied too – so that certain of the smaller schemes can still offer some value to the industry if the insurer chooses to accept them. We note that the previous RDR proposals had different levels specifically with claims where the proposed fee was 3% as a maximum for claim. Clarity is sought as to the reason for the further reduction in fee to 2%. Confirmation is requested as to whether the FSB will release its findings and basis for the proposed caps as our market indications are that the fees are not feasible in certain product classes and	Please refer to the Response to Key Issues document published together with the final Regulations.

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		are actually restrictive in terms of allowing participation in the economy and development initiatives. Different binder holders also have different levels of success in customer satisfaction. The binder holders with better quality staff and systems charge more for their services but there are less complaints and a better customer experience. If the cap is inevitable, we recommend that it must be at sustainable levels and one must avoid the situation where all binder holders get paid the default cap even if they are not incurring that cost of performing the full function. This may prove to be the danger when caps are introduced. It becomes the norm and those binder holders providing a service on a large scale binder or with better customer outcomes get caught in the net. With respect to single premium policies for example “travel insurance”, clarity is sought as to whether the same caps in respect of binder fees and policy data administration services apply? Our view is that this should not be the case since the binder holder does not have the benefit of earning over the life of the policy and premium in respect of these policies are relatively insignificant, although the cost of compliance is the same as any other short term policy.	
	Santam	The draft regulations effectively introduces two (2) levels of fees for binder functions: (a) uncapped fees for UMAs or NMIs that are not authorized to provide advice or are not associates of NMIs authorized to provide advice; and (b) capped fees at maximum of 6% for NMIs authorized to provide advice or who are associates of NMIs that are authorized to provide advice. We hold the view that authority to provide advices in terms of FAIS alone does not give rise to conflict or potential conflict of interest. To be specific, conflict of interest, if any stems from the actual provision of advisory services by an NMI in respect of business for which it also performs binder activities on behalf of an insurer. For substantially the same reason, a binder holder is not conflicted solely because its associate NMI is authorised to provide advice. If any, a binder holder is conflicted in respect of business for which it or its associate NMI does provide	See response to SAIA’s comment above which is similar in nature to this comment.

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		advice. It is the actual provision of advice by a binder holder or its associate NMI or the obligation to provide advice that creates conflict or potential conflict of interest and not registration to provide advice. It is therefore proposed and recommended that the capped fee be limited to business for which the NMI provides or is obligated to provide advice or for which its associate NMI provides or is obligated to provide advice. The business on which another NMI that is not an associate of the binder holder provides advice does not create conflict or potential conflict of interest. There is thus no compelling reason(s) to limit the fee in respect of such business to the proposed capped fees. PART 5B – 5.8 – Limitations on remuneration for binder functions The limitation of binder fee payable to NMIs that are authorised to provide advice or to an NMI that is an associate of another NMI authorised to provide advice, will result in the emergence of independent administration houses with no authority to provide advice and with no associate relationship with an NMI that is authorised to provide advice, to take advantage of uncapped binder fees. Specifically, there is an opportunity for broking firms to structure ownership of administration houses in a manner that results in them falling below the thresholds for associates in order to maximise revenue from binder functions. Similarly, there is an opportunity for Insurers to establish administration houses that employ staff within the brokers' office to perform binder functions on behalf of that broker for costs higher than the capped fee the broker would otherwise have been able to earn for that function. Clarity is sought whether this is by design or simply an unintended consequence. PART 5B – 5.8 – Limitations on remuneration for binder functions Possible circumvention of capped fee The capped fees are specifically applicable to binder functions (plus incidental activities when performed pursuant to a binder agreement). On the premise that incidental activities performed without a binder can be outsourced as "other" outsourced arrangements (other than services as intermediary or policy data administration services), it is possible that the capped fee can be circumvented by outsourcing incidental activities (in terms of Directive 159) without a binder and attract a fee above the caps provided same is commensurate with the actual	

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		services plus a fair return. Ideally, incidental activities performed without a binder should also remain within the cap to avoid circumvention. Notably, the fees above the caps for outsourced arrangements which qualify as incidental activities with or without a binder agreement are not subject to prior approval by the Registrar. Clarity is sought whether this is by design or unintended consequence. PART 5B – 5.8 – Limitations on remuneration for binder functions Application to the Registrar We agree that an application for approval of a fee above the caps be made by an insurer. We, however, are concerned that varying fee policies or philosophies may result in one insurer not supporting a proposal for an application while another is amenable to such an application. This may pit one insurer against the other. An application, whether successful or not is likely to be viewed as support for a binder holder to the detriment of an insurer who chooses not to support an application. This may lead to migration of businesses for wrong reasons. In addition, the Registrar's consistent application of the criteria for approval of fees above the caps is key, particularly where the motivation for approval is substantially the same. Inconsistent application may prejudice an insurer whose application was considered unfavourably.	
	TD Admin	Despite requiring that any Binder Agreement between an Insurer and a binder-holder must make provision for fees that are reasonably commensurate based on actual costs incurred, the Regulations then prohibits fees from exceeding the value listed in the table below under Part 5B, paragraph 5.8 (2) (b) – Short Term or Part 3B paragraph 3.21 (1) (b) – Long Term, where that binder holder is a non-mandated intermediary or an associate of another non mandated intermediary that is authorised to render "advice" as defined in the FAIS Act. We administer, the majority of our book attracts a premium under R100.00; but we do have products that have been costed as little as R11.50 (gross, per month). To appreciate what effect the capping of fees will do, consider the following:	Please refer to the Response to Key Issues document published together with the final Regulations.

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		<table><tr><td>Product</td><td>Monthly Premium</td><td>Proposed Fee (%)</td><td>Proposed Fee (R)</td></tr><tr><td>Survivor Level 1</td><td>R20.00</td><td>6%</td><td>R1.20</td></tr></table> As indicated earlier, just the debit order cost amounts to R1.40. Clearly this indicates that to maintain these policies is not a viable proposition. No analysis was done, no transparency was given and no explanation was provided as to how the Minister arrived at the maximum percentage payable as a fee for each of the binder functions. The proposed fees do not take cognisance of the fact that some products are more labour intensive to administer (claims and policy administration) than others – no allowance has been made to cater for this. As a result we have suggested that the fees be determined between the Insurer and the Binder Holder who are in possession of all the facts. Due consideration in other parts of the Regulations was given to maximum fees payable to intermediaries whereby such fees seem more commensurate for the services provided. Of note is that the Minister takes into consideration the probable Rand value when dealing with other fees which have low maximum commission values. The Minister then includes a tiered table that increases the percentage of the maximum commission values proportionately as the value of the premium decreases. The unfair declaration of Binder fees reason together with Part 6, Paragraph 6(i) of these Regulations renders these Regulations unfair and against the letter and spirit of the National Development Plan. The Minister must consider that many of these binder holders provide two key aspects that give rise to the intentions of the National Development Plan and South African transformation in general; one being that very often innovation is provided by such binder holders and two, that it is these very binder holders who provide services in all South African languages. It is these products and services that typically have a low premium value.	

<table>
<tr><th>SECTION</th><th>REVIEWER</th><th>ISSUE</th><th>RESPONSE</th></tr>
<tr><td></td><td>Unlimited</td><td>The maximum binder fees (2%) set out in the Table are unreasonable given the fact that the premiums payable for many products, in particular those aimed at lower LSM customers, are relatively low. For example, the premium for R 30,000 death cover is R 23.00 per month for the principal insured and spouse. In the circumstances a binder holder would be restricted to earning no more than R 1.38 per month in binder fees in respect of such a product. The proposed cap will, in respect of such products, not be commensurate with the service provided by binder holders, taking into account the administrative and regulatory requirements that must be complied with including, inter a/ia, those set out in the Financial Advisory and Intermediary Services Act, 2002, including TCF. The proposed cap will ultimately prejudice the consumer as it is likely that these products will no longer be commercially viable and will be taken off the shelves — it will simply not be feasible for intermediaries to market and service these policies. This will ultimately frustrate Treasury’s attempts to improve access to financial services.

In the circumstances we recommend that a sliding scale be set along the lines of what was implemented in the Demarcation Regulations, potentially as follows:

<table>
<tr><td>Monthly premium band</td><td>Maximum Binder Fee</td></tr>
<tr><td>Above R 1,200</td><td>2% per binder function</td></tr>
<tr><td>R 601 to R 1,200</td><td>8% per binder function</td></tr>
<tr><td>R 300 to R 600</td><td>15% per binder function</td></tr>
<tr><td>R 301 to R 100</td><td>20% per binder function</td></tr>
<tr><td>Less than R 100</td><td>30% per binder function</td></tr>
</table>

Ultimately it is critical that the fees payable in respect of low premium products provide for a reasonable rate of return in accordance with the principle of being commensurate with the function performed.</td><td>Please refer to the Response to Key Issues document published together with the final Regulations.</td></tr>
<tr><td>5.8(3)</td><td>AON</td><td>We note that this deviation process applies to remuneration under binders. We request that the same applies to outsourcing fees for PDAS.

Reference to 3.21(2) should be 5.8(2).</td><td>Please note that policy data administration services have been removed from the regulations. Comment therefore no longer relevant.

Agreed. Incorrect reference corrected.</td></tr>
</table>

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5.8(3)	Associated Compliance	5.8(3) The reference to "regulation 3.21 (2) is not correct as this refers to the Life regulations	Agreed. Incorrect reference corrected.
	Fulcrum	At 5.8 (3) there is reference to regulation 3.21(2) which we could not find and which appears to be a referencing error.	Agreed. Incorrect reference corrected.
	Hollard	If caps are legislated (which we oppose) we would strongly support the notion of an exemption application as there are Hollard binder holders that handle complex binder and have developed infrastructure to administer and run such binders. Their costs and processes are well documented and Hollard would introduce strict qualifying criteria before such exemptions would be applied for. These would apply to the binder functions being performed, the costs and the activities and systems required to be maintained in order that the current policy holders on those schemes would not be prejudiced. TCF outcomes would also be taken into account. We would like some more detail as to how this would factually occur such as how long does the approval last for, is it subject to ongoing review, are there guidelines as to how the insurer must determine such a fee and how long would the registrar take to process the approval.	Conditions relating to a specific exemption will be set out in the exemption approval. The Registrar will publish its service level commitment in due course.
	Norton Rose	This regulation precludes a broker from approaching the Registrar to get approval to be paid a reasonable binder fee in excess of the regulated fees. It is unfair and irrational to require intermediaries to use insurers to negotiate their fees with the Registrar. They carry on business as separate entities and full disclosure of their business and financial affairs to insurers is objectionable and insupportable. The phrase "such a fee will not impede the fair treatment of policyholders" is too vague to be a justifiable delegation of authority to the Registrar.	Disagree. The insurer that is a party to the binder agreements must be convinced that an exemption should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. In addition, please note that the binder holder acts as the agent of the insurer and it is the insurer that primarily accountable for compliance with the binder related Regulations. As such, only the insurer is able to apply for this exemption. There is nothing stopping an intermediary or UMA motivating to the insurer why it believes is should earn a higher fee and requesting the insurer to motivate the exemption to the Registrar, but only the insurer can apply for the exemption. It would

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			be nonsensical for the Registrar to grant an exemption requested by the binder holder without the insurer being party to it. We disagree that the phrase “such a fee will not impede the fair treatment of policyholders” is too vague.
	SAIA	In the event that caps are legislated we would strongly support the notion of an exemption application as there are Insurers with binder holders that handle complex binders and have developed infrastructure to administer and run such binders. Their costs and processes are well documented and strict qualifying criteria would be applied to the binders before such exemptions would be applied for. These would apply to the binder functions being performed, the costs and the activities and systems required to be maintained in order that the current policy holders on those schemes would not be prejudiced. TCF outcomes would also be taken into account. Clarity is sought as to how the exemptions would factually occur such as how long does the approval last for, is it subject to ongoing review, are there guidelines as to how the insurer must determine such a fee and how long would the registrar take to process the approval? There is concern that varying fee policies or philosophies may result in one insurer not supporting a proposal for an application while another is amenable to such an application. This may pit one insurer against the other. An application, whether successful or not is likely to be viewed as support for a binder holder to the detriment of an insurer who chooses not to support an application. This may lead to migration of businesses for wrong reasons. In addition, the Registrar’s consistent application of the criteria for approval of fees above the caps is vital, particularly where the motivation for approval is substantially the same. Inconsistent application may prejudice an insurer whose application was considered unfavourably.	Conditions relating to a specific exemption will be set out in the exemption approval. The Registrar will publish its service level commitment in due course.

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	TD Admin	DISPENSATION Whilst we acknowledge that the amendments to the regulations (Part 5 B Paragraph 5.8(3) i.r.o Short Term; allows for an insurer to apply to the Registrar to grant dispensation to increase fees, we feel that in order to create a stable environment the decision to allow a Binder Holder to charge higher fees should be determined by the Insurer – they have, after all, determined the actuarial cost of the product and are aware of the risks and the costs involved and what specific skills and infrastructure it would take to administer the product. In the event that a policy is priced with too high a margin for administration costs, this product will ultimately be uncompetitive – a fact that the insurer will take into account when pricing a particular product. Part 5B, paragraph 5.8(3) provides that on application by the Insurer, the Registrar may grant dispensation to increase fees. Such is on condition that: 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 such a fee will not impede the fair treatment of policyholders; no conflict of interest or potential conflict of interest exists; or any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders. This provision for dispensation does not guarantee that a law-abiding, fit and proper, reliable binder-holder who is paid a commensurate fee, and provides innovative insurance solutions will always survive these regulations. This is so even if: Such insurance solutions that can only be classified as “right insurance products available and accessible to all South Africans”; and Such insurance solutions support the National Development Plan, because they are model products that transform the sector into a more inclusive one. I hereby declare that many such binder holders personify South Africans who should be able to participate in the insurance sector as suppliers. The provision allowing for dispensation is dependent on the Insurer deciding to	The insurer that is a party to the binder agreements must be convinced that an exemption should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. In addition, please note that the binder holder acts as the agent of the insurer and it is the insurer that primarily accountable for compliance with the binder related Regulations. As such, only the insurer is able to apply for this exemption. There is nothing stopping an intermediary or UMA motivating to the insurer why it believes is should earn a higher fee and requesting the insurer to motivate the exemption to the Registrar, but only the insurer can apply for the exemption. It would be nonsensical for the Registrar to grant an exemption requested by the binder holder without the insurer being party to it.

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		apply for such dispensation and the Registrar approving such application whereby the listed criteria for allowing such dispensation can only be regarded as final and therefore ultra-virus.	
5.8(5)	Hollard	Should other fees payable to those that aren't non-mandated intermediaries e.g. providing policy data administration services, not be disclosed?	Policy data administration services have been removed from the regulations. Comment therefore no longer relevant.
	BASA	"…which disclosure must be included in the disclosures contemplated under regulation 6.3(1)(g)." The reference to "regulation 6.2(1)(g)" in this regulation is incorrect and should be replaced with "regulation 6.3(1)(g)". We also request clarity whether the exact fee amount must be disclosed to the policyholder or if it can simply be disclosed that the non-mandated intermediary earns a binder fee for services rendered (where the amount of the fee is not stipulated).	Agreed. Incorrect reference will be corrected. Regulation 5.8(5) provides that "any fee ………. must be disclosed.". Merely disclosing the fact that a fee is earned will therefore not suffice for purposes of this regulation.
5.9 (general comment)	SAIA	The LTIA includes a provision expressly providing for underwriters to share in profits; however in the STIA it has been omitted. Was this the intention of the Regulator and Treasury?	The omission of this provision was an oversight - it will be reinserted.
5.9(1)	Innovation	There is no mention of an underwriting manager sharing in the profits of an insurer.	See response directly above.
5.9(2)	Associated Compliance	5.9 (2): We note that this conflicts with previous FSB communications which prohibited an NMI for cell ownership. Is this provision correct?	The prohibition on NMI's from being a cell owner is still under consideration as part of the cell captive position paper.
	AON	Does NMI mean both advice-giving NMI's and non-advice giving NMI's?	Yes.
	Hollard	Will this option be exercised by most binder holders that are limited by the 2% fee to increase their remuneration structures? Therefore insurers that are allowed to enter into cell captive arrangement will benefit greatly from this. We strongly recommend that the Regulator must issue a cell captive paper immediately as it prejudices those insurers who have not been able to obtain cell	We do not foresee this as a significant risk given the corporate finance and long term implications of entering into a cell arrangement. These arrangements are seen as a return on investment as opposed to a profit sharing arrangement. It

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		captive licenses following the Registrar's decision to freeze further licenses.	must be noted that a cell owner shares in both profit and loss. In addition, future reforms in respect of cell insurance could further mitigate this risk.
	Norton Rose	Preference shares We note that Draft Regulation 5.9(2) permits NMIs to share an insurer's profits through the payment of dividends associated with preference shares issued to the NMI. The purpose of the provision must be to enable NMIs to share profits, since this is an innovation introduced by the Draft Regulations. But requiring profits to be shared through the payment of dividends may be an inappropriate mechanism for achieving this objective. We are instructed that insurers presently hold binder agreements with a number of different intermediaries at any given time. Underwriting managers are allowed to share the profits associated with the particular policies that they have been instrumental in concluding or managing. Because there is a link between the binder services provided and the profits shared, an insurer need not cap the number of underwriting managers with whom it concludes binder agreements and associated profit sharing arrangements. The same is not true of the issue of preference shares. The issue of preference shares to a third party affords it a role in the company and an entitlement to dividends when these are declared. An insurer is likely to be less willing to issue preference shares than it is to conclude a contractual profit-sharing arrangement. In any event, in terms of section 23 of the Act, it must procure the Registrar's approval before it can issue such shares. Requiring profit-sharing to be based on the issue of preference shares is therefore likely to result in insurers sharing profits with fewer intermediaries, and may result in fewer NMIs performing binder functions. This, in turn, may undermine competition among intermediaries, to the detriment of the short-term insurance market generally and consumers in particular. It is not clear to us that this was an intended consequence of the regulation of profit-sharing mechanisms.	The definition is required for purposes of regulation 5.9(2). Regulation 5.9(5) clarifies that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer. This is seen as a return on investment as opposed to a profit sharing arrangement. It must be noted that a cell owner shares in both profit and loss.

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	SAIA	This option may be exercised by most binder holders that are limited by the 2% fee to increase their remuneration structures. Insurers that are allowed to enter into cell captive arrangement will benefit greatly from this. We therefore strongly recommend that the Regulator issue a cell captive paper as a matter of urgency as it prejudices those insurers who have not been able to obtain cell captive licenses following the Registrar's decision to put a hold on further licenses being issued.	We do not foresee this as a significant risk given the corporate finance and long term implications of entering into a cell arrangement. These arrangements are seen as a return on investment as opposed to a profit sharing arrangement. It must be noted that a cell owner shares in both profit and loss. In addition, future reforms in respect of cell insurance could further mitigate this risk.
PART 5C: REMUNERATION PAYABLE BY POLICYHOLDER TO INDEPENDENT INTERMEDIARY OR REPRESENTATIVE			
Part 5C	Fulcrum	Part 5C – Remuneration payable by policyholder to independent intermediary or representative The provision for advice fees is to be welcomed, especially in light of the RDR proposals that seek to broaden consumers' access to affordable advice, and in particular to independent advice. Some practical questions arise including: the manner of collection of these advice fees. Whilst it will be more efficient and cost-effective to allow the collection through a single debit-order, this may undermine the ability of the policyholder to dispute the advice component of the deduction without affecting the premium component	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be removed from the Regulations. Please also note that the purpose of the initially proposed Part 5C was not to "provide for advice fees". Advice currently still falls within the definition of "services as intermediary" and there the fee referred to in Part 5C referred to fees other than fees for services as intermediary (which includes advice) and binder fees.
5.10	AON	A general concern is that 8(5) fees may have been charged by some brokers for policies with relatively small premiums and hence brokerage so as to subsidise the cost of the intermediary service. This is likely to have been done without a complete activity based costing and has been charged at values more in line with market norms. The industry needs time to recalibrate its remuneration streams in line with the new regulatory regime. Again this will be best informed by the IAA approach suggested earlier to at least establish activity segmentation on which costings can then be performed.	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be removed from the Regulations.

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	AON	5.10(e) - We have assumed “writing” includes call logging per FAIS definition. Here we would mention that when requesting information in writing from a personal lines client, we experience less than a 5% response rate. Even if call-logging is acceptable this notification and explicit agreement is onerous if not impossible to achieve for existing business by 31 December 2017. Whilst it could be argued that much of this is already a regulatory requirement and should therefore be in place, uncertainty surrounding the segmentation of intermediary activity has detracted from there being a clear and complete understanding of what supports a broker fee and many fees will need to be re-worked. We recommend that this should be an outcome of the IAA and then a full annual cycle be allowed for implementation.	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be removed from the Regulations.
	Associated Compliance	5.10 (e) Is it expected that the insurer has the responsibility to ensure this is the case for each and every policy? Or would a more general “sample” basis assurance be acceptable?	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be removed from the Regulations.
	Hollard	This is between the intermediary and the client and we have no stand on this proposal save to say that we support the broker’s right to charge the client a separate fee if the client is prepared to pay it.	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be removed from the Regulations.
	Renasa	Policyholders should be encouraged to seek the services of independent intermediaries, who are far better equipped than persons of limited knowledge in call centers to assist them and who are aligned to vested interests. Professional advice is required to navigate through the complexities of insurance contracts. Subject to appropriate controls and measures to curtail conflicts of interests, intermediaries should in turn, be entitled to both enter into arrangements with their clients for the rendering of professional services as negotiated and agreed upon between the parties and at the same time provide outsourced administrative services to insurers. The current binder and outsource regulations have worked well in practice and enable intermediaries to serve the interests of all stakeholders.	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be removed from the Regulations.
	SAIA	The general principles governing remuneration payable to independent intermediaries or representatives by policyholders are noted. We are concerned	Please refer to the Response to Key Issues document published together with the final Regulations - the initially proposed Part 5C will be

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		that these principles alone may not achieve intended results. It is anticipated that the reduction of revenue for NMIs who provide advice or associated with NMIs that provide advice, where applicable, may lead to attempts or practices to make-up for losses of revenue through advice fees. For illustration purposes only, insurers may be requested to pass the saved binder fees to NMIs as advice fees payable by Policyholders. We will appreciate the Registrar's views and comments on possible practices where insurers are requested to forego the benefit of reduced fees on the basis that the client has agreed to a fee on condition that it does not affect his/her/its overall financial commitments. In light of the requirement that remuneration must be commensurate – This fee is charged by the intermediary. Clarity is sought as to whether the obligation to ensure commensuration is that of the entity charging the fee, this instances the intermediary and not the insurer. This clause allows for a fee in addition to any remuneration contemplated in Parts 5A and Part 5B if certain requirements are met. One of the requirements is for the policyholder to explicitly agree to this fee in writing. We suggest that it should be allowed for the policyholder to agree to this on a recorded line as well. It is therefore our suggestion to remove the words "in writing" from this requirement.	removed from the Regulations. Please note that the intention of the proposed Part 5C was not to cater for advice fees- also see response to Fulcrum's comment above.
	Santam	The general principles governing remuneration payable to independent intermediaries or representatives by policyholders are noted. We, however, are concerned that these principles alone may not achieve intended results. It is anticipated that the reduction of revenue for NMIs who provide advice or associated with NMIs that provide advice, where applicable, may lead to attempts or practices to make-up for losses of revenue through advice fees. For illustration purposes only, insurers may be requested to pass the saved binder fees to NMIs as advice fees payable by Policyholders. We will appreciate the Registrar's views and comments on possible practices where insurers are requested to forego the benefit of reduced fees on the basis that the client has agreed to a fee on condition that it	See response to comment directly above.

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		does not affect his/her/its overall financial commitments.	
PART 5D - GENERAL PRINCIPLES FOR DETERMINING REMUNERATION			
5.11 and 5.12	Associated Compliance	5.11 &12: This is written in such a way as to suggest that this would include payments made in terms of contracts of employment but surely it must only be restricted to services offered in terms of a binder and/or outsource from insurers OR payment of fees from a policy holder?	Please refer to the Response to Key Issues document published together with the final Regulations – this Part will now only apply to binder functions.
5.11(2)(d)	AON	5.11(2)(d) read with 6.1 definition of "incidental" means any activity that is necessary or expedient for the performance of a binder function;" – clarity is require around "activity that is necessary or expedient". We view this as comprising activities that are necessary or expedient for the performance of the binder functions under mandate. These would exclude separately negotiated services such as envisaged under 3.1(e) second last bullet point of the RDR Status update. Here again this can only be properly informed under the proposed approach to the IAA	See responses to the comments relating to the term "incidental" under Part 6 below.
5.12	SAIA	We respectfully submit that the inclusion of commensurate principle for the payment of commission is premature and may prove to be problematic at this stage, given that the activity based assessment of intermediary services has not been completed yet. In light hereof we suggest that this be limited to premiums in excess of X amount (for example R10 000 pm) initially if FSB is adamant to implement now.	Please refer to the Response to Key Issues document published together with the final Regulations – this Part will now only apply to binder functions.
5.12(1)(b)	Unlimited	We understand this sub-regulation to mean that a person cannot be paid more than once for the same function rendered by that person, for example, in its capacity as an independent intermediary and in terms of an outsource arrangement. We also understand that this does not prohibit a person from being paid on an on-going basis for services rendered, for example in its capacity as a binder holder in renewing a policy. Please can this be clarified as the current wording is open to misinterpretation.	Your understanding is correct. This is to avoid that a person, for example, receives commission for certain services as intermediary rendered and then positions similar services as binder functions in order to again be remunerated for those services. ✐ See slight amendments to wording.
PART 6: BINDER AGREEMENTS			

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Part 6	Innovation	There is no definition for juristic person.	✐ The following definition will be provided for (which definition is the same as the definition in the Financial Sector Regulation Bill, 2016): ‘‘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; (c) a trust or trust fund;
6.1 – Definition of “commercial lines business”	PSG Konsult	Please consider that commercial lines business could also relate to a business operating as a sole proprietor. Limiting the definition to only those policies where the policyholder is a legal person would therefore be incorrect. Also note that the definition is not alphabetically placed.	The definition is an existing definition; no amendments are proposed. The definition was informed by the definition of “personal lines business” in the STIA that is defined as “means short-term insurance business in respect of which the policyholder is a natural person;”. Noted. The definition will be moved to the correct place alphabetically.
6(a) - Definition of “’associate”	CIB	This definition of associate is different from what is proposed in the Insurance Bill and does not take into account the intricate nature of certain business structures. In many instances entities operate independently of each other with no conflict of interest. The Treating Customers Fairly (TCF) framework further mitigates any potential conflict of interest. The industry will be required to unbundle various structures which may result in high costs. We are of the view that the disclosure requirements already prescribed in FAIS and	The draft Binder Regulations that were published on 11 July 2014 for public comment until 1 September 2014 proposed an amendment to this definition to limit potential conflicts of interest (identified through supervision) inherent in certain binder function-related relationships by extending the scope of prohibited business relationships. Numerous commentators raised concerns with paragraph (b) of the then proposed definition of “associate”. Subsequently the proposed amendment to the definition was reconsidered

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		the TCF framework adequately mitigates any potential conflict of interest. We therefore recommend that there should be no amendment to the definition of associate.	and no longer includes reference to a "managing executive", but only to significant owners and directors. Where no conflict of interest exists or an existing conflict of interest may be appropriately mitigated, an exemption from this limitation may be sought under Regulation 6.5. The definition differs from the definition of "associate" in the Insurance Bill (the latter refers to the IFRS definition of associate) because the definition in the regulations is used in a different context than that of the definition in the Insurance Bill.
	Cyan Capital	This definition of associate does not take into account the intricate nature of certain business structures. In many instances entities operate independently of each other with no conflict of interest. The Treating Customers Fairly (TCF) framework further mitigates any potential conflict of interest. The industry will be required to unbundle various structures which may result in high costs and job losses. We are of the view that the disclosure requirements already prescribed in FAIS and the TCF framework adequately mitigates any potential conflict of interest. We therefore recommend that there should be no amendment to the definition of associate.	See response directly above.
	Econorisk	This definition of associate does not take into account the intricate nature of certain business structures. In many instances entities operate independently of each other with no conflict of interest. The Treating Customers Fairly (TCF) framework further mitigates any potential conflict of interest. The industry will be required to unbundle various structures which may result in high costs and job losses. What consideration has been given to a person's rights to have investments in commercial operations? We are of the view that the disclosure requirements already prescribed in FAIS and the TCF framework adequately mitigates any potential conflict of interest. We	See response directly above.

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		therefore recommend that there should be no amendment to the definition of associate. In group structures where there are associate relationships that will be affected by the proposed changes, surely this potential conflict should be able to be mitigated by full and transparent disclosure of the group structures to the FSB?	
	FIA	This definition of associate does not take into account the intricate nature of certain business structures that operate independently of each other with no conflict of interest. This could be particularly inherent in large group structures where potential conflicts can be identified and mitigated by the appropriate disclosures to the FSB? The current FAIS and TCF regimens should adequately mitigate any potential conflicts. We do not recommend that changes be made to the current definition which then keeps it consistent and in alignment with that of the definition in the FAIS Act and avoids any confusion.	See response directly above.
	Norton Rose	The definition of "associate" incorporates the meaning in the General Code of Conduct under the FAIS Act. This is impermissible. The Minister makes regulations. The General Code is passed by the FAIS Registrar. The Minister cannot delegate the authority to make regulations to the FAIS Registrar. The appropriate definition of associate must be incorporated in the regulations.	It is acceptable drafting practice to incorporate terms and the like by reference. No delegation of the authority to make regulations is made - it is the Minister that decides that the FAIS definition is appropriate for purposes of the Regulations and this is well within his powers. Whether the FAIS definition is incorporated into the regulations or whether the definition in the regulations cross-references to the FAIS definition makes absolutely no difference to the substance. If the FAIS definition changes and the Minister is no longer satisfied with the definition, the Regulations may be amended.
	SAIA	We note that the definition of "associate" is extended. The extended meaning in (b) (i) and (ii)) are conjoined by the word "and" as opposed to "or". Clarity is sought whether the intention is for both (i) and (ii) to apply or whether it is sufficient that	The current use of "and" is correct. The word "and" implies that both of the persons referred to in (i) and (ii) would fall within the definition of "associate". It does not mean both scenarios must

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		either of them is applicable. In addition, the threshold for control or the exercise of control is effectively set at 15% equity or right to exercise control over 15% of the voting rights in a business. This is a departure from control or exercise of control provisions under the Companies Act. Clarity is sought for the basis for such departure as ownership structures may have or have been designed in line with the Companies Act. This may result in businesses having to relinquish interests in entities which may requires time lines that may become impossible if regard is had to the projected time lines for the commencement of the regulations. For illustration purposes, the "first options" provisions in shareholders agreements may be such that it would effectively take longer time to effectively dispose of interest to other shareholders which may push the process beyond the proposed time for compliance with the draft regulations. This may be an unintended consequence which may disrupt the operations in some businesses.	apply to the same person. In other words, an associate in respect of a juristic representative will include (i) and it will include (ii). The requirement of 15% aligns with the criteria in the Financial Sector Regulation Bill insofar as it relates to significant owners.
	Santam	The definition of "*associate*" is extended. The extended meaning in (b) (i) and (ii)) are conjoined by the word "and" as opposed to "or". Clarity is sought whether the intention is for both (i) and (ii) to apply or whether it is sufficient that either of them is applicable. In addition, the threshold for control or the exercise of control is effectively set at 15% equity or right to exercise control over 15% of the voting rights in a business. This is a departure from control or exercise of control provisions under the Companies Act. Clarity is sought for the basis for such departure as ownership structures may have or have been designed in line with the Companies Act. This may result in businesses having to relinquish interests in entities which may requires time lines that may become impossible if regard is had to the projected time lines for the commencement of the regulations. For illustration purposes, the "first options" provisions in shareholders agreements may be such that it would effectively take longer time to effectively dispose of interest to other shareholders which may push the process beyond the proposed time for compliance with the	Please see response directly above.

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		draft regulations. This may be an unintended consequence which may disrupt the operations in some businesses.	
6(d) - Definition of “incidental”	FIA	We submit that the intention and application of this definition needs to be reviewed as “incidental (meaning having a minor role/not essential) means any activity that is necessary or expedient...” is a contradiction in terms and for example, the policy issuance and despatch which may be deemed to incidental is anything but that. Perhaps “Ancillary services” describes this better. We also request that a cost activity exercise be carried out in order to calculate the accurate costing of “incidental” activities versus that of the act of “enter into”.	Definition of “incidental” has been deleted as well as Regulation 6.3(1)(cA) and the existing approach in the Regulations insofar as it relates to incidental activities has been retained.
	Norton Rose	The requirement that incidental activities are those which are “necessary or expedient for the performance of a binder function” is impossibly vague. The word “expedient” has no ascertainable meaning in the context. There is a multitude of things that may be expedient for the performance of a binder function that are not incidental to it in the ordinary meaning of the word “incidental”. This amendment is too vague to be enforceable and should be deleted.	See response directly above.
	PSG Konsult	We understand that the definition should not be too prescriptive to allow room for a flexible interpretation. It is however clear that the interpretation of incidental will also lead to significant legislative uncertainty. Should the current definition remain we request that the Regulator provides interpretation notes in future to provide the necessary clarity.	See response directly above.
	Renasa	It is often difficult to identify all activities that are incidental to or associated with the performance of binder functions. These activities should as far as possible, be identified and binder fees should adequately cover the costs of providing all incidental services to an insurer. Allowance needs to be made for individual circumstances when assessing fees.	See response directly above.
6(g) - The definition of “significant owner”	Brolink	The definition of “significant owner” (used in the extended definition of “associate”) is informed by the meanings of “related and inter-related persons” and “subsidiary relationships”, presumably as explained in the Companies Act of 2008. Please advise whether the drafters of the proposed amended regulations interpreted the meaning of “subsidiary” to be limited to first tier subsidiaries only or, whether it extends to	It is envisaged that second and further tier subsidiaries are included. The definition must be read with regulations 6.2 – the limitation only applies in respect of the same policies of the insurer. In addition, where no

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		second and further tier subsidiaries. If it extends further than first tier subsidiaries then the scope of "associate" is too wide. The conflict of interest sought to be prevented could be managed by other governance mechanisms such as reporting thereon in annual compliance reports. Please advise whether the conjunctive ("and") used between paragraph (b)(i) and (b)(ii) in the extended definition of "associate" was erroneously used and should in fact have been "or". In other words, was it intended that an entity will be considered to be an associate of a juristic person if the relationships in both paragraphs (b)(i) and (b)(ii) of the definition of "associate" under paragraph 6.1 apply or, if the relationship in either of the either of the two paragraphs apply.	conflict of interest exists or an existing conflict of interest may be appropriately mitigated, an exemption from this limitation may be sought under Regulation 6.5. ✎ The terms inter-related and related will be defined as follows: *''inter-related'' has the meaning defined in section 1 of the Companies Act;* *''related'' has the meaning as defined in section 1 of the Companies Act;* Paragraph (b) of the definition of "associate": The word "and" implies that both of the persons referred to in (i) and (ii) would fall within the definition of "associate". It does not mean both scenarios must apply to the same person. In other words, an associate in respect of a juristic representative will include (i) and it will include (ii).
6.1(h)– Definition of "underwriting manager"	AON	We submit that in allowing "flexible interpretation", arrangements may be put in place that are out of line with regulatory intent and will lead to unnecessary compliance breakdowns and penalties. See also comments against 5.11(2)(d) above. We inquire whether it is intended that the more detailed definition provided in the annexures to IL 03/2013 will still provide guidelines? In particular what is the intention regarding the performance of limited Determinations under functions b), c) and d) as set out in the first bullet points under those sub-sections of Annexure B.2 to the above IL? In this regard and in our view such limited Determinations are an integral part to the Enter-into function and should be allowed and should attract the combined 2% over and above the 2% for Enter-into.	Information Letter 3 of 2013 provides guidance on what are incidental activities as it sets out how the Registrar will interpret the Regulations for regulatory purposes.
	Associated Compliance	(h) Definition of an underwriting manager: Our view is that the current definition better restricts the UMA from conducting business with a policyholder. The amended definition prohibits a UMA from doing the very activity it is appointed to	Disagree. The wording in paragraph (b)(i) of the definition of "underwriting manager" is similar to the wording in paragraph (a) of the definition of

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		do as they have to conduct 'acts" that do ultimately lead to the entering into etc. by a policyholder, albeit via an NMI.	"services as intermediary". The intention is to not allow an underwriting manager to sell policies (i.e. interact with potential policyholders / policyholder for purposes of selling policies). The intermediary service relating to performing an act that results in another person entering into a policy is distinctly different from the "entering into" binder function, the latter which entails the actual entering into the policy on behalf of the insurer.
	AON	Definition of "underwriting manager" point b)(i) – these are words from the definition of services as intermediary – also needs to include "… provide advice or …" before "perform any act …." so as to prevent UMA's from consulting with and advising clients. This is as envisaged in the regulator's previous stance that a UMA is not client facing. More particularly to prevent UMA's providing advice to clients to take their products that are then intermediated by non-associated non-advice giving NMI's. Also to apply to sub clause (c).	Advice constitutes services as intermediary. Advice is therefore included in the definition of services as intermediary and therefore UM's may already not advise policyholders.
	Hollard	Definition of relationship under (c) is required. "underwriting manager" means a person that - (a) performs one or more of the binder functions referred to in section 48A(1)(a) to (e); and (b) if that person renders services as an intermediary as defined in Part 1 of the Regulation, - Page 10 of 13 (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; 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 <u>relationship</u> with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of	Disagree that "relationship" needs to be defined. The grammatical meaning of the term "relationship" applies. In addition, the provision explains what types of relationship are envisaged.

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		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";	
	SAIA	Clarity is sought regarding the definition of 'relationship' under (c).	See comment directly above.
6.2(1)	AON	(1A) and (1B) - These have been read to mean that a non-advice giving NMI can perform these binders / functions on the same policies even where owned by an advice-giving NMI BUT the remuneration capping will apply. This seems to be incongruent with the comment that for 1A "We are therefore considering a proposal to disallow binder agreements with advisers for commercial lines business, in the absence of compelling reasons why such binder agreements would be in the best interest of policyholders" and for 1B "The FSB is questioning the value of allowing insurers to enter into binder agreements with advisers (as opposed to underwriting managers) for purposes other than the "enter into, vary or renew" and "claims settlement" functions. If this is the case then we question the necessity of such arrangements having to be put in place together with associated set-up and operational costs. The risks can be just as well managed within the same entity. However we believe that this was not the intention of the drafter and that the wording will be changed to make it clear that a non-advice giving NMI that is associated with an advice-giving NMI is prohibited from performing functions under 6.2 (1A) and (1B). Regarding 6.2 (1A) Commercial binders – there is still a need to define and segment commercial binders. See our previous recommendations regarding a core segmentation being General Commercial (typically multi-cover lines for small to medium size businesses and Specialised Commercial (for complex cover lines). We agree that for both segments a higher level of technical expertise is required than for Personal lines binders in the Enter-into function including the limited Determinations and agree that standards need to be set in this regard. However such Commercial binders or outsource arrangements handled competently can and	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted. 6.2(3): The definition of "associate" must be read with regulations 6.2 – the limitation only applies in respect of the same policies of the insurer. In addition, where no conflict of interest exists or an existing conflict of interest may be appropriately mitigated, an exemption from this limitation may be sought under Regulation 6.5.

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		do provide more efficient solutions than offered by many insurers and will mitigate certain coverage risks such as transposition, they are cost effective and deliver enhanced solutions to customers. Regarding 6.2 (1B) Determination functions – it has always been our view that in order to Enter-into, a binder holder needs to consider and select applicable clause wordings, benefits and premium computations relative to the individual policy being compiled. This is inherent in the Enter-into function and was previously regarded by most insurers we have dealt with as “restricted determinations” as set out in IL 3/2013. We are not sure of the regulators intent regarding these functions. It should be mentioned here that Personal lines binders generally afford a higher opportunity for automation of these functions than for Commercial and certainly Specialty binders where the personal technical competencies and experience of the binder signatory is more necessary and more costly – hence the need for differentiated binder fees. See our comments under 6.1 above 6.2 (3) This definition of associate does not take into account the intricate nature of certain business structures. In many instances entities operate independently of each other with no conflict of interest. The Treating Customers Fairly (TCF) framework further mitigates any potential conflict of interest. The industry will be required to unbundle various structures which may result in high costs and job losses. We are of the view that the disclosure requirements already prescribed in FAIS and the TCF framework adequately mitigates any potential conflict of interest. We therefore recommend that there should be no amendment to the definition of associate.	
	Cyan Capital	(1A) - By implication does this mean that an Insurer will then be able to enter into a binder agreement with a non-mandated intermediary that is registered as such and not as authorised to give advice? Non-mandated intermediaries (currently registered as such or as authorised to give	Please refer to the Response to Key Issues document published together with the final Regulations– subregulations (1A) and (1B) as published have been deleted.

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		advice) performing commercial lines binder functions have acquired the necessary skills since inception of the binder regulations in 2012. In order for the intermediary to be granted a binder in the past it was a pre-requisite that they have the required level of skill and management ability in order to perform such binders. Why then would the stance change? Not allowing non-mandated intermediaries (authorised to give advice) to perform these functions will have unintended consequences for the industry and individuals employed by said intermediaries that will result in job losses. It is recommended that non-mandated intermediaries whether they are registered as authorised to give advice or not, are allowed to perform commercial lines binder functions.	
	CIB	(1A) and (1B) - Non-mandated intermediaries performing commercial lines binder functions have acquired the required skills since inception of the binder regulations in 2012. It is submitted that non-mandated intermediaries are allowed to perform the following commercial lines binder functions: • Enter into, vary and renew; • Settle claims only when the insurer has signed off on the broker's skill level. 1B - What is the reasoning behind this restriction?	Please refer to the Response to Key Issues document published together with the final Regulations– subregulations (1A) and (1B) as published have been deleted.
	Cyan Capital	(1B) - The response to the proposed changes are the same as noted above. It is recommended that non-mandated intermediaries whether they are registered as authorised to give advice or not, are allowed to perform and be remunerated for all the personal lines binder functions as set out in the Table of proposed functions.	Please refer to the Response to Key Issues document published together with the final Regulations– subregulation (1B) as published has been deleted.
	Econorisk	6.2(1A) By implication does this mean that an insurer will then be able to enter into a binder agreement with a non-mandated intermediary that is not registered to give advice? Non-mandated intermediaries (currently registered as such or as authorised to give advice) performing commercial lines binder functions have acquired the necessary skills since inception of the binder regulations in 2012. In order for the intermediary to be granted a binder in the past it was a pre-requisite that they have the required	Please refer to the Response to Key Issues document published together with the final Regulations– subregulations (1A) and (1B) as published have been deleted.

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		level of skill and management ability in order to perform such binders. Why then would the stance change? Commercial risks are complex and need skilled individuals to give the advice. The insured then makes the necessary decisions and gives instruction based on the advice received as to what covers or changes to covers that they require to the person giving them the advice. Surely that person is then in a far better position to perform the necessary functions of inception g the covers, making the necessary changes etc after directly consulting with the client and understanding their requirements as opposed to relaying the information to a third party that has no context or understanding of what the client has asked for or been advised on. Not allowing non-mandated intermediaries (authorised to give advice) to perform these functions will have unintended consequences for the industry and individuals employed by said intermediaries that will result in job losses. It is recommended that non-mandated intermediaries whether they are registered as authorised to give advice or not, are allowed to perform commercial lines binder functions. 6.2 (1B) The response to the proposed changes are the same as noted above. It is recommended that non-mandated intermediaries whether they are registered as authorised to give advice or not, are allowed to perform and be remunerated for all the personal lines binder functions as set out in the Table of proposed functions.	
	Econorisk	6.2(1A) By implication does this mean that an insurer will then be able to enter into a binder agreement with a non-mandated intermediary that is not registered to give advice? Non-mandated intermediaries (currently registered as such or as authorised to give advice) performing commercial lines binder functions have acquired the necessary skills since inception of the binder regulations in 2012. In order for the intermediary to be granted a binder in the past it was a pre-requisite that they have the required level of skill and management ability in order to perform such binders. Why then would the stance change? Commercial risks are complex and need skilled individuals to give the advice. The insured then makes the necessary decisions and gives instruction based on the	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted.

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		advice received as to what covers or changes to covers that they require to the person giving them the advice. Surely that person is then in a far better position to perform the necessary functions of inception g the covers, making the necessary changes etc after directly consulting with the client and understanding their requirements as opposed to relaying the information to a third party that has no context or understanding of what the client has asked for or been advised on. Not allowing non-mandated intermediaries (authorised to give advice) to perform these functions will have unintended consequences for the industry and individuals employed by said intermediaries that will result in job losses. It is recommended that non-mandated intermediaries whether they are registered as authorised to give advice or not, are allowed to perform commercial lines binder functions. 6.2 (1B) The response to the proposed changes are the same as noted above. It is recommended that non-mandated intermediaries whether they are registered as authorised to give advice or not, are allowed to perform and be remunerated for all the personal lines binder functions as set out in the Table of proposed functions.	
	FIA	<u>Commercial (refer to Annexure B: FIA FSB Proposal ZZ Commercial Binders FIA comments to FSB Feb 2017)</u> (1A).This conflicts with RDR Status Update page 9 foot-note 8 which states that the FSB will carry out furt her work and consultation on this issue. At the FSB workshop on 14 February 2017 it was stated that “no compelling reasons had been submitted to enable the FSB to reconsider the proposal”. There has been no feedback on the presentations made to the FSB by the industry motivating for the continuation of commercial binders, nor to the attached paper sent to the FSB on 22 July 2016. An updated version (Annexure B) is attached for consideration and debate. In view of the reasons given in the RDR Status update 2015 for the proposal not to allow commercial binders, we find it mystifying to understand how this exclusion applies to a non-mandated intermediary registered to give advice –which implies that a non-mandated intermediary registered for “intermediary services” (no	Please refer to the Response to Key Issues document published together with the final Regulations– subregulations (1A) and (1B) as published have been deleted.

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		advice) is permitted to have a commercial binder? (1B). We question the rationale behind the disallowing personal lines binders to non-mandated intermediaries who are registered to give advice from carrying out functions contemplated in section 48A(1)(b) to (d) of the Act; but by implication allowing intermediaries registered for intermediary services as defined in the FAIS Act to carry out these functions? Are there examples and what the "conflict" is? We furthermore submit that it is not possible to "enter into, vary or renew" without exercising a level of the "determining" functions in terms of selection of policy wordings, benefits, terms conditions and premium levels. This was envisaged under Annexure B.2 to IL 3/2013 and we enquire whether this still has application?	
	Fulcrum	6.2.1A prohibits commercial binders outright. No further information is provided to contextualise this prohibition. Our experience is that a number of commercial binder-holders seem to operate efficient binders that are mutually beneficial for customers and for insurers. On those grounds, we would encourage further thought, and technical work, to understand more fully the efficiency and overall value proposition of commercial binders.	Please refer to the Response to Key Issues document published together with the final Regulations subregulation (1B) as published has been deleted.
	Hollard	Hollard believes strongly that non mandated intermediaries should continue to bind insurers on commercial policies but with very specified mandates and oversight from insurers. We understand that the regulator was making the proposal to illicit comments from the industry and we hope that the unified stance that the industry has taken in calling for commercial binders to be maintained will influence the regulator with respect to this proposal. Hollard has been managing binders with brokers for longer than 20 years now. The model clearly evolved over time and it became apparent to us shortly after our binder model was launched that Hollard needed to expand its offering into the small to medium commercial space to allow the broker to fully capitalize on the benefits the binder offered. Hollard's commercial binders have constantly produced very few complaints from clients and these binders have been well underwritten. We intervene less in the commercial space than we do with personal lines policies and clients given that in many cases the cover is easier to understand and apply. It is	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted.

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		true that a skilled underwriter is required to understand the risk in terms of the rating and whether to enter into the risk but the cover itself and the claims are no more difficult than the personal lines policies. Traditionally the Hollard commercial binder covered the highly commoditized and high volume (with the Multi-Mark policy wording) commercial market with a sum insured of a maximum of R20 million for all classes combined. The binder functions could be done equally effectively here than personal lines by the binder broker with the strict limits and referral facilities in pace. Motor and property claims in the commercial space follow the same procedures as the personal lines space and there would be no reason we can see to prohibit the brokers being involved in these claims. Our experience has shown us that the strong client need for quick service is no different in the small-medium commercial offering. Small to medium businesses require confirmation of cover for their company motor vehicles and new offices and equipment the same way as personal lines clients do and the settlement of claims given loss of profits and the need to carry on trading can be far more urgent than that of domestic clients. Commercial entities are also more capable of dealing with potential conflicts that may face the broker as they are more educated consumers. They are better at making the choice as to whether to use a binder broker or a broker with our binders with when they read the relevant disclosures. Hollard believes strongly that it is not merely an issue of the Insurer being better than the broker when it comes to underwriting and claims on commercial policies. The issue is more about where the skill sits not necessarily the entity that the skill sits in. If the Insurer performs a comprehensive due diligence and the broker has the system and skill to perform the function we believe it should be able to as they have been since the advent of the Binder regulations. Ironically Hollard intervenes less often on the commercial binders than the personal lines binders. We do not believe it is true to say that an Underwriting Manager (also an independent entity from the insurer) is necessarily more skilled to handle binder functions than a non-mandated intermediary. It depends on the processes and skills of the people concerned which can only be discerned by proper due diligences and ongoing oversight. The fact that the entity has chosen to become a Underwriting Manager instead of a broker does not automatically make it better equipped to handle the binder functions	

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		specifically on the more generalist classes of business. The systemic impact on the industry will be a large one if non-mandated intermediaries are prohibited from binding insurers in the commercial space. As stated above the majority of the commercial binders are the most commoditized parts of the commercial market and area where there are high volumes of policies and claims. The binder holders have spent large amount of money gearing themselves up to perform these functions in terms of the regulations legislated at the end of 2011 in terms of systems and employing staff whereas the insurers have bulked their capacity on the more specialist areas of the commercial and corporate market leaving the smaller to medium clients to the binder holders. Complicated personal lines high net worth policies can be more difficult to underwrite, determine premiums and settle claims on than a standard small to medium commercial policy. It appears the line drawn at commercial policies in general appears to be arbitrary. Perhaps certain classes in commercial such as Engineering, Marine, specialist liability and corporate is a more fitting place to draw the line. The small commercial polices are now and have been launched by the direct players as well, areas which traditionally commercial underwriting to the experts to illustrate the commoditized nature of the product as opposed to the strong underwriting skill required. The market is really treating these types of policies the same as it deals with personal lines aside from the wordings which are suited to a company as opposed to an individual. We reiterate it is much more logical to draw the line with binders after the small to medium commercial policies than between personal lines and commercial as a whole. Please find attached our commercial underwriting guidelines and mandates and referral rules which we believe has worked well over the last 15 to 20 years. It has stood the test of time and suits the client, binder holder in ourselves in providing a good turn around service to the client without undue risk being taken. Please keep these documents confidential from other Insurers and brokers as it constitutes considerable intellectual capital on our side but it gives you a good idea of how seriously we have considered the segmentation and mandate issue. There are very limited amount of non-mandated intermediaries where due diligences have revealed that the skill exists in their brokerages because of them	

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		employing experts where we have given limited Engineering, Marine and Specialist Liability binders, mainly in the entering into, varying and renewing space where brokers were embedding these products into their offerings and binders were required. If they there are strict rating tables, we do not believe there is significant risk in these types of binders and we would urge the regulator to consider allowing specialist binders with binder function 1 to allow brokers to embed specific products for these classes of business. Finally even if the Regulator was adamant that the NMI is not capable for underwriting the risk appropriately, which we do not believe is the case, we do not believe this approach should extend to claims. The claim, specifically within the lower limits should be able to be handled by the binder holder so as to give the client quick service. It has been acknowledged by the Regulator with the new amendments to the PPR that small commercial is now part of the PPR definitions and it should follow that claims for such entities should be able to be settled by the binder holder specifically in the motor, buildings combined and office contetns areas which do not differ to personal lines claims in any way. Customers will be affected here in the same way as personal lines customers.	
	Infinity	Proposed Regulation 6.2(1A) provides that an insurer may not enter into a commercial lines binder agreement with a non-mandated intermediary authorised to render “advice” as defined in the FAIS Act. We cannot agree that the arguments in support of personal lines binders (i.e. efficiency, ease and speed of service) do not apply to commercial business (where “commercial business” by our definition refers to businesses where the combined assets and gross profit are less than R300 million; above this level, we refer to business as “corporate”). Our reasoning is as follows: Typically, the insurance on these accounts is placed by the financial director (“FD”) or manager of the business or business owner. In these circumstances, the placing of insurance is only a small part of the function of the FD/manager/owner. It stands to reason that commercial business requires the services of a binder holder to attend to the requisite insurance with the necessary level of diligence. Just as with personal insurance, commercial insurance is well suited to a binder holding broker being able to: meet with a client, determine the client’s needs, and	Please refer to the Response to Key Issues document published together with the final Regulations – subregulation (1A) as published has been deleted.

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		provide immediate costing and confirmation of terms and conditions of cover; absent a binder, the broker can merely conduct the needs analysis and must refer to the insurer for a quotation and terms, which introduces delays and inefficiencies. Furthermore, the underwriting and issuing of smaller commercial policies is often executed by junior staff within insurance companies, resulting in errors and time delays that cause significant frustration to policyholders and brokers alike; in contrast, an experienced and credible commercial binder holder is more likely to execute these functions without error or delay. The proposed prohibition of commercial binders is likely to lead to a drop in service levels to policyholders, as it will not be economically viable for the incumbent binder holders to provide the same service levels for no consideration. Furthermore, given that the policy wordings and construction of commercial cover generally follow the SAIA approved wording closely, the skills required are general rather than specialist. As with personal lines binders, provided that the insurance company exercises the necessary control and oversight over the binder holder, there is no increased underwriting and reinsurance risk. Further still, brokers provide efficiency of service: provided there is no duplication of the functions performed by the binder holder and the insurer, the binder is a more cost effective way of delivering service to policyholders. Our experience indicates that the binder functions performed by brokers cannot be insourced at a better price than current commercial binder levels, particularly in the smaller regions where there is not critical mass. It follows that the contemplated prohibition of commercial binders will not result in a cost saving to policyholders. In our opinion, commercial binders should be permissible, but we suggest that Policyholder Protection Rules be extended to apply to commercial lines as defined above. We fully agree that intermediaries registered to give advice should not be granted binders on corporate business which is distinct from commercial business (per our definition above).	
	Marsh	Our understanding of the proposal is that an NMI that also provides advice is precluded from entering into a Binder Agreement with the Insurer for both	Please refer to the Response to Key Issues document published together with the final

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		Commercial Lines and Personal Lines business (where that NMI provides the services contemplated in Section 48 A b-d).	Regulations – subregulations (1A) and (1B) as published have been deleted.
	Norton Rose	The backhanded method of forcing non-mandated intermediaries to abandon their authority to give "advice" is contrary to the requirements of sections 22 and 25 of the Bill of Rights. It is an improperly motivated regulation. It has no benefit for policyholders who are deprived of the assistance of advice from their chosen non-mandated intermediary despite the relationship set out in detail at the beginning of these submissions. The regulations are required to be rational and reasonable and to fulfill the other tests under the Promotion of Administrative Justice Act. This is one of the many examples where the regulations do not do so nor can it be justified on behalf of the fair treatment of policyholders because it is unfair to policyholders. It is suggested that policyholders must now have two brokers, one of whom gives advice and the other who performs intermediary services. It is hard to think of anything less rational for policyholders in this context.	Limitations on business and who may conduct certain business has been acknowledged by the Constitutional Court as constitutional. We strongly disagree with your comment. However, please note that the prohibitions in Regulation 6.2(1A) and (1B) have been deleted. Please refer to the Response to Key Issues document published together with the final Regulations.
	PSG Konsult	Again it appears as if the Regulator is focusing on those few intermediary exceptions that do not perform commercial binder functions with the necessary diligence and care and do not provide credit to those binder holders that do perform these functions with distinction. PSG operates a large platform and has accumulated extensive experience (more than 10 years) in performing commercial binder activities (enter into and vary, administration, underwriting and claims management). The healthy growth in commercial business under binder of the last couple of years is testimony to its ability to service commercial clients as a binder holder. In addition to our platform, we also have several PSG advisers that specialise in very specific commercial areas, and have been able to use this specialist knowledge in developing niche commercial products, to the benefit of clients. For example game farmers, aviation and Harley Davidson motorbikes. We invest heavily in experienced staff that we train and upskill in terms of a structured and continuous training program. Our superior performance of this function compared to the product providers is that the loss ratio of commercial business on our platform is lower compared to the business direct with the Insurer. From the comments provided by the Regulator it is clear that the work on this matter has not been completed. Including it into the Regulations is premature and brings the consultation process into question. To limit the ability of a binder on the	Please refer to the Response to Key Issues document published together with the final Regulations– subregulation (1A) as published has been deleted.

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		basis of the classification of the product can also not be supported. The risks inherent in the product and the quality of the service is not determined by this classification, but by the capabilities of the binder holder. Commercial insurance covers any insurance that isn't applicable to a person in his private capacity. It could however range in insurance for a sole proprietor up to the complicated cover of large entities or unique specialised insurance. A large part of commercial insurance is no more complicated than personal. Similar to advisers specialising in personal lines, many advisers also specialise in specific commercial areas. This specialised knowledge of the risks and requirements of the cover, place them on par or superior to that of the insurer. It therefore remains our contention that one of the main pillars of the Binder Regulations and the only determinant of whether a commercial binder should be provided to a binder holder or not, should be the capability of that binder holder to properly execute the functions under that binder agreement. This capability should be determined by the insurer and overseen on a regular basis. We submit that none of the objections raised in the comments to the proposed Regulations justify a distinction to be made on the basis of whether the intermediary provides advice or not. In addition the highly specialised nature of certain types of commercial insurance policies results in significant expertise sitting in the hands of the intermediary, a skill-set the insurer depends on when underwriting those risks. We therefore request the prohibition on commercial binders to non-mandated intermediaries that provide advice to be removed.	
	PSG Konsult	(1B) - The proposed Binder Regulations prohibits an insurer from concluding binder functions with non-mandated intermediaries registered to provide advice where that binder function pertains to the underwriting of policies (Sec49A(1)(b) – (d) of the Long-Term Insurance Act and Sec48A(1)(b) to (d) of the Short-Term Insurance Act respectively). The comments provided states that the Regulator is questioning the value of such binder agreements. No further reasons for this prohibition are provided. We submit that questioning the value of the service is not a sufficient ground for prohibiting the service. Our experience has shown that both the underwriting	Please refer to the Response to Key Issues document published together with the final Regulations– subregulation (1A) as published has been deleted.

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		process and the provision of advice can to a large extent benefit from each other. Understanding and providing underwriting under a binder agreement leads to significantly better advice being provided to a client and ensures the intermediary can negotiate the best outcome for the client. The advice and interaction with the client also provides the necessary insight to underwrite the correct risks more appropriately. This prohibition could furthermore not have been proposed on the basis of conflict of interest as it has no more of a conflict than any of the other binder functions. The only probable reason for this prohibition could therefore be the risk of incorrect underwriting. This risk is however not dependent upon the fact whether the non-mandated intermediary is providing advice or not, but whether the intermediary has the capabilities to execute the relevant function properly. Requiring the insurer to have systems in place to properly monitor these capabilities together with the insurer's right to decide whether it will issue and underwriting binder or not, will address this risk sufficiently. As questioning the value of this service doesn't form sufficient ground for this prohibition and as no other grounds can exist, we request the removal of this prohibition from the Regulations.	
	SAIA	(1A) and (1B) - There is a strong view amongst industry that non mandated intermediaries should continue to bind insurers on commercial policies but with much specified mandates and oversight from insurers. We understand that the Regulator was making the proposal to illicit comments from the industry, and we hope that the unified stance that the industry has taken in calling for commercial binders to be maintained will influence the Regulator with respect to this proposal. The commercial binder model clearly evolved over time. Commercial binders have produced fewer complaints from clients and these binders have been well underwritten. Less intervention by insurers and their client has been required in the commercial space than with personal lines policies, given that in many cases the cover is easier to understand and apply. It is true that a skilled underwriter is required to understand the risk in terms of the rating and whether to enter into the risk, but the cover itself and the claims are no	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted.

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		more difficult than the personal lines policies. The strong client need for quick service is no different in the small-medium commercial offering. Small to medium businesses require confirmation of cover for their company motor vehicles, new offices and equipment in the same way as personal lines clients do. The settlement of claims given loss of profits and the need to carry on trading can be far more urgent than that of domestic clients. There is an overwhelming view in the industry that it is not merely an issue of the insurer being better than the broker when it comes to underwriting and claims on commercial policies. The issue is more about where the skill sits, not necessarily the entity that the skill sits in. The success of commercial binders depends to a large extent on the processes and skills of the people concerned, which can only be discerned by proper due diligences and ongoing oversight. The fact that the entity has chosen to become an underwriting manager instead of a broker, does not automatically make it better equipped to handle the binder functions, specifically on the more generalist classes of business. The systemic impact on the industry will be a large one if non-mandated intermediaries are prohibited from binding insurers in the commercial space. As stated above the majority of the commercial binders are the most commoditized parts of the commercial market and area where there are high volumes of policies and claims. The binder holders have spent large amounts of money gearing themselves up to perform these functions in terms of the regulations legislated at the end of 2011, in terms of systems and employing staff, whereas the insurers have bulked their capacity on the more specialist areas of the commercial and corporate market leaving the smaller to medium clients to the binder holders. Complicated personal lines high net worth policies can be more difficult to underwrite, determine premiums and settle claims on than a standard small to medium commercial policy. It appears the line drawn at commercial policies in general appears to be arbitrary. Perhaps certain classes in commercial such as Engineering, Marine, a specialist	

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		liability and corporate are a more fitting place to draw the line. We reiterate that it is much more logical to draw the line with binders after the small to medium commercial policies than between personal lines and commercial as a whole. The small commercial polices have been launched by the direct players as well, in areas which traditionally commercial underwriting was left to the experts to illustrate the commoditized nature of the product as opposed to the strong underwriting skill required. The market is really treating these types of policies the same as it deals with personal lines, aside from the wordings which are suited to a company as opposed to an individual. In the event that the Regulator believes that the NMI is not capable of underwriting the risk appropriately, which we do not believe is the case; we do not believe this approach should extend to claims. The claim, specifically within the lower limits should be able to be handled by the binder holder so as to give the client quick service. It has been acknowledged by the Regulator with the new amendments to the PPR that small commercial is now part of the PPR definitions and it should follow that claims for such entities should be able to be settled by the binder holder specifically in the motor, buildings, combined and office contents areas which do not differ to personal lines claims in any way. Customers will be affected here in the same way as personal lines customers. We remain of the view that commercial binders do not prejudice policy holders where capped fees apply and we argue that 4% will be inadequate to sustain outsourced Personal Lines models and/or quality services to Policyholders. Commercial binders in our view enhances broker effectiveness and efficiencies such as standardised processes across businesses irrespective of the carrier, improved work flow, quick decision making or turn-around time for policyholders. It also enables bespoke solutions. In addition disallowing binder functions for NMIs outright will result in non-policy administrative activities being outsourced through outsourcing arrangements at what are arguably uncapped fees. We would rather manage the conflict or potential conflict through the binder regulatory regime and regulations.	

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		It is anticipated that in the future two distinct models will evolve – the first being one in which the insurers have invested in their own systems and seek to maximize efficiencies through volume and scale, by only issuing policies off their own platform and controlling the entire value chain. The second model we see evolving is the fully outsourced environment with third party system investment being deployed to administrators who provide underwriting incl. enter, vary renew and claims mandates. This would enable an insurer to operate with a lean back office and manage profitability via the administrator/ broker who may or may not be a UMA, mandated intermediary. Furthermore, we have noted the amendment of the definition of Personal Lines Policies in the Insurance Bill which makes it clear that crop insurance policies are Commercial Policies because of their purpose. It is our humble submission that crop insurance policies require special expertise from either a broker, or representative selling such policies to the consumers. Due to the specialised skills required, there are very few brokers and Underwriting Managers that have the skills to sell and/or assess and administer these types of policies. If non-mandated intermediaries are stopped from performing binder functions, these NMIs will find it commercially unviable to provide binder functions without being registered, or provide advice given the proposed capping of the binder fees payable to NMIs. The above situation will create a gap in the market, wherein insurers may not be able to provide these crucial policies to the market without the expertise of these NMIs. This will have a negative impact to food security in South Africa because farmers will not get finance to plant without insurance to their crops. We request that this amendment be reviewed and that the clause be amended to allow NMIs who are registered for advice to provide binder functions but instead the FSB impose stricter measures of conflict avoidance by prescriptive monitoring of the activities of NMIs by insurers in order to ensure that customers are protected. Further we note that Regulation 6.2(1A) seems to be contrary to Regulation	

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		5.8(2)(a): *5.8(2)(a): 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 short-term insurance policies;* Vs. *6.2(1A): (1A) An insurer may not enter in respect of commercial lines business into a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies* It would appear as though binder arrangements may only be entered into with non-mandated intermediaries (in certain circumstances) and underwriting managers. Application to the Registrar can be done by the Insurer to receive exemption from some of the above requirements, but the insurer must evidence that certain conditions are met. From 5.8(2) (a) it appears as though, with the Registrar's approval, binder fees in excess of the capped amount may be paid to a non-mandated intermediary that is authorised to render advice, irrespective of the class of business they render the advice in. Where, in 6.2(1A), an insurer is prohibited from entering into a binder agreement with a non-mandated intermediary who is registered to render advice on commercial short-term policies. Clarity is sought in respect of this distinction.	
	SAIA	Same comment as (1A) on (1B)	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted.

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	Santam	(1A) and (1B) - In terms hereof, an insurer may not enter into a binder agreement in respect of Commercial Lines Business with an NMI authorised to provide advice and may not enter into a binder agreement in respect of Personal Lines in respect of the functions contemplated in section 48A(1)(b) to (d). Effectively, commercial binders for an NMI providing advice are not allowed and for Personal Lines will be capped at 4%. We continue to argue commercial binders do not prejudice policy holders where capped fees apply and we argue 4% will be inadequate to sustain outsourced Personal Lines models and/or quality services to Policyholders. Commercial binders in our view enhances broker effectiveness and efficiencies such as standardised processes across businesses irrespective of the carrier, improved work flow, quick decision making or turn-around time for policyholders. It also enables bespoke solutions. In addition disallowing binder functions for NMIs outright will result in non-policy administrative activities being outsourced through outsourcing arrangements at what are arguably uncapped fees. Rather the conflict or potential is managed through the binder regulatory regime. We therefore believe that the conflict or potential thereof is better managed or mitigated through regulations. We request the Registrar to share with the industry the basis for the proposed levels of capped fees. In our view, fee caps at the following levels will sustain outsourcing model and ensure quality service to Policyholders: A. Personal Lines Business (a) Enter into vary or renew = 2% (b) Determination of premium, wording and value of benefits = 2% (c) Settlement of Claims = 4% B. Commercial Lines Business (a) Enter into vary or renew = 2% (b) Determination of premium, wording and value of benefits = 1% (c) Settlement of Claims = 3% Subject to the Registrar's substantiation of the basis for the proposed levels of fee caps and based solely on our internal costs for these activities, we believe the fee caps recommended above are appropriate and will ensure sustainability of	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted.

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		outsourced model and quality service to Policyholders.	
	Marsh	FAIS contains a definition of Advice whereas no such definition exists under the Short-term Insurance Act. The definition is FAIS is very broad and includes a recommendation, guidance or proposal. There are, in our experience, very few NMI's if any that do not qualify as providing advice and therefore if the inclusion of 'Advice remains in regulation 6 we believe that the binder regulation will serve little if any purpose as it would only regulate binders where the NMI does not also provide advice. If the intention is to discourage binders altogether then the intention should be made clear to the industry. We submit that in our experience innovation in the Insurance Industry has been lacking and we are often faced with clients who have specific needs that the market hasn't even thought about developing a product for yet. As a result of this lack of innovation by insurers in South Africa Marsh has and continues to: go great lengths to research what is available in the market locally and internationally; develop bespoke wordings and cover to address client needs; lobby with the various markets for enhanced cover at completive rates to benefit our clients; negotiated with market on issues such as claims philosophy adopted by insurers; Negotiate with the Insurers for enhanced service especially with regard to turn around times, and claims. A binder arrangement allows Marsh to create a facility for a group of clients that allows clients to participate in an insurance programme at a competitive rate and facilitates speed of execution. In exchange for this we should be entitled to earn a fee for these services. A Binder arrangement allows for speed of transaction and provides the client with cover immediately. A further basis for our preference that the commercial lines binders be permitted is as a result of the inconsistency in the market in terms of available cover. Having a binder in place allows us to negotiate better rates for our clients as well as ensuring	Please refer to the Response to Key Issues document published together with the final Regulations – subregulations (1A) and (1B) as published have been deleted.

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		that we have the best cover. As an example Marsh invests significantly in developing bespoke wording for our commercial clients that we have developed in response to a lack of appropriate cover being offered by Insurers. To that end we are able to offer cover that is best of breed and able to meet the needs of our commercial clients. A binder arrangement on such a policy recognises that the Intellectual property in respect of the policy wording vests with Marsh and allows Marsh to offer speedy execution of the policy contract with the Client. These bespoke wordings allow us to offer consistently sound advice based on intimate knowledge of a bespoke product wording aimed at addressing a particular need. We are supportive of the principle that the fee paid by each insurer should be fair and reasonable; however, we remain of the view that capping of fees is not going to result in the outcome envisioned and fail to take into account the expertise brought to the table by certain intermediaries. Binders benefit the consumer as they ensure efficiency of service delivery between the insurers and brokers. It also reduces the risk of error by standardisation of policy wording and schedules. A negotiated fee is in our view a better approach as it allows an intermediary who brings a higher level of expertise to the table to earn a fee that is commensurate to the service and expertise offered, which is for the benefit of the client. The Lloyds market is an important market and denying Binders will restrict access to this Market. Not allowing Commercial binders would be denying access to this important market which in the long-term will impact the choice available to consumers in terms of product offerings. Brokers often are faced with the technical challenge of sourcing different types of cover from different Insurers to ensure that a client's particular needs are met. A Commercial binder provides the Broker with the ability to ensure that the document/s issued are accurate and timeously advise clients on the terms and conditions of each policy and sections thereof and ensure that the client is presented with a clear and accurate policy, premium and advice and provides contract certainty. We welcome further engagement on this important issue and suggest that this	

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		provision is deleted until further engagement has occurred. We are also willing to participate in the technical assessment and to assist with the scoping required for this exercise. It is our view that Binders in the commercial space benefit the consumer as it allows for continuous innovation and added value for clients, with Intermediaries often driving this innovation.	
6.3(1)(cA)	SAIA	Information Letter 3 of 2013 provides guidance to insurers on activities that constitute binder functions and activities that are incidental to binder functions. Are these still applicable or will a new guideline be issued?	Information Letter 3 of 2013 provides guidance on what are incidental activities as it sets out how the Registrar will interpret the Regulations for regulatory purposes.
	Norton Rose	As pointed out above, it is literally impossible to specify the activities that are expedient for the performance of a binder function and the word "expedient" must be deleted. It is also unfair to binder holders to force them to perform administrative and other services without charge where anyone else doing so would be entitled to be remunerated.	Please note that regulation 6.3(1)(cA) has been removed. Please refer to our response to your previous comment in this regard.
6.3(1)(p)	AON	We note the reduction from 60 days to 24 hours and continue to question this requirement in line with the rationale behind a binder and in particular the overall value-proposition for a binder-holder to be able to commit an insurer's balance sheet within an agreed mandate before the knowledge of the insurer. This change goes to the core of this principle that has been a feature of the STI business in South Africa for decades and in respect of Lloyds cover-holder business for over a hundred years. Not having seen the detail behind the thematic review we are not able to comment on the regulators observation that "fee generation remains the primary motivation for the provision of binder mandates to advisers, often at the expense of operational efficiencies, resulting in higher costs to customers". From our own global model we know this is not the case and our binder and outsource models bring significant value-add to hundreds of thousands of clients globally. Whilst we support the move to review the content for data transfer and to improve quality and timeliness this should be left as a business imperative to those insurers and binder holders who's models are properly deployed. It should not be regarded as a	Noted. We maintain that the change from 90 days to 24 hours is necessary due to undesirable outcomes that have occurred in the past. Appropriate transitional provisions will be provided for in Regulation 8.2(b). Also refer to the Response to Key Issues document published together with the final Regulations.

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		regulatory tool to stop potentially non-compliant binder holders or PDMS outsource suppliers from operating. The knock-on effect to binder holders having all the other capabilities in making this a regulatory requirement is enormous and non-proportional to the risk in this sector. Having said this we will continue to work with the regulator on the Short-term Insurance Data Requirements Project with a view to effecting reasonable change in an orderly manner in the best possible timeframe.	
	Associated Compliance	6.2 (4) (l). Clarity is needed on the meaning of "…provide the insurer at least every 24 hours…" as it is unclear if an insurer by having access to a UMA's IT platform, as is often the case, would meet this requirement or must the data actually be provided each and every day?	✎ Access (which would include amongst other things actual data transfer and access to the IT platform of the binder holder) will suffice if such access meets the integration requirements contained in Regulation 6.2A(2). This will include providing an insurer with unfettered access to a cloud-based system. See amendment.
	BASA	The requirement of integrated services regarding data administration services is very onerous. The interpretation applied at the moment is that it would require integration of IT services which would increase cost of compliance. The requirement of 24 hour submission is very onerous and it would be difficult to meet, given the dependencies regarding system availability and consolidation that would need to take place. Additionally, additional costs may have to be incurred, which would not necessarily be recoverable under the proposed capped commissions. Currently the files are submitted weekly to Insurers. It is not clear what other functions can be "outsourced". <u>Proposal</u> We request clarity on what is meant with "integrated services" and an understanding of why it is important to have integrated services as opposed to manual submissions which take place on a monthly basis. We propose the removal of the 24 hour requirement and replacing same with a	See response to comment directly above.

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		weekly requirement. We suggest that “allowable outsourced functions” “fees/commissions that may be charged for it” are defined and elaborate on. We suggest that the Regulations must incorporate the Outsourcing Directive 159A to provide clarity. We submit that 24 hours will not be sufficient time to provide the insurer with the required information and we request that the time period be extended to 48 hours to accommodate for month-end processes.	
	Brolink	Regulation 6.3(1)(p) [The requirement that binder holders have to provide insurers with data at least every 24-hours] The industry has progressed a long way towards secure and standardised data exchange between financial service providers and product providers through the STRIDE Switch (acquired by Astute STE (Pty) Ltd in January 2016). However, the work with Astute has not been finalised yet and we believe the implementation date of 31 May 2017 will not be achieved. We propose that the implementation date be determined once the standards have been agreed and that a 12 month transition period be allowed.	See response to comment directly above.
	Cyan Capital	The requirement that the binder holder must provide the insurer at least every 24 hours with timely, comprehensive and reliable data is impractical and onerous. Consideration needs to be given as to the extent of the data as well as the format in which it is to be presented. Since there is no industry standard a binder holder might then find themselves in a position where they have to provide several sets of data in a different formats to different insurers. Not only is this highly inefficient but it will also then place a lot of pressure on system providers to accommodate these data transfers. In addition to this some of the insurers may not be able to access / import the data since they simply do not have their own internal systems. This would then merely be performing a function to satisfy a requirement that may not then add any value or mitigate the associated risks any further. Regulation 6.2(2)(j) already provides for the insurer to have continued access to policyholder and policy information. It is submitted that the current requirement is	See response to comment directly above.

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		sufficient.	
	Econorisk	The requirement that the binder holder must provide the insurer at least every 24 hours with timely, comprehensive and reliable data is impractical and onerous. Consideration needs to be given as to the extent of the data as well as the format in which it is to be presented. Since there is no industry standard a binder holder might then find themselves in a position where they have to provide several sets of data in a different formats to different insurers. Not only is this highly inefficient but it will also then place a lot of pressure on system providers to accommodate these data transfers. In addition to this some of the insurers may not be able to access / import the data since they simply do not have their own internal systems. This would then merely be performing a function to satisfy a requirement that may not then add any value or mitigate the associated risks any further. Consideration needs to be given to the considerable cost of ~~108~~standardizing reporting standards as well as the time period required. Regulation 6.2(2)(j) already provides for the insurer to have continued access to policyholder and policy information. It is submitted that the current requirement is sufficient.	See response to comment directly above.
	FIA	Whilst we support the transfer of relevant data and have been an active participant in the Data workgroup we do not believe that the 24 hour requirement can be achieved within the timeframes set out in the proposed amendments. This should align with the FSB/Industry Data Work Group outcomes with particular reference to the timelines for transitional and final timelines. How can the effective date in the proposed regulations be 1 May 2017 for new contracts and 1 January 2018 for existing contracts when the results of the work group cannot see practical implementation of same prior to 1 January 2019 for personal and 1 January 2020 for commercial, albeit that transitional actions will be proposed?	See response to comment directly above.
	Fulcrum	The current requirement in the binder regulations for data to be uploaded into the insurer's systems at least every 60 days has been significantly reduced to every 24	See response to comment directly above.

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		hours. Whilst it is in everybody's interests to achieve this standard, and both customer service and efficiency would require this as an important milestone in the journey towards the goal of real-time data exchange, this should be achieved in an orderly manner that does not disrupt operations or introduce new risks. Accordingly we believe that a realistic transitional period must be put in place to enable this journey to happen in a disciplined and responsible manner that does not expose insurers or consumers to additional risks.	
	Hollard	This will be a significant IT challenge both for Hollard and our binder holders as this will involve enhancements to processes, systems and will require significant investment. We request a longer transitional period in order to comply with this regulation. The Insurance industry is in the hands of the IT service providers and we believe this clause can be phased in but over a longer time period. We agree this is the final destination but we must be careful how we get there that is its sustainable and that Insurers and binder holders will not be forced to spend large amount of money for short term solutions jus to comply with this wording but not have a sustainable solution. Good progress has been made and is being made but the roadmap is not realistic in terms of the time lines now being suggested. With regard to Group Policies, data is received from the employer. Such data is received on a monthly basis therefore there are no daily changes that occur. Therefore such data integration will not be possible due to the reliance on other parties for data. We recommend a transitional period which should be aligned to the data stream work group.	See response to comment directly above.
	Marsh	This will require changes to systems and processes and consideration should be given to a transitional period to ensure alignment that extends beyond what is currently proposed.	Please note that a transitional period of 24 months has been provided before this requirement takes effect.
	Renasa	Requiring a binder holder to provide an insurer with data every 24 hours is in conflict with the requirement that insurers have continuous access to accurate, up	On alignment with policy data administration services, please refer to the Response to Key

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		to date, complete and secure policy and policyholder data, as required by the definition of "policy data administration services". It would be desirable for insurers to have continuous access to data on systems employed by intermediaries, but this is unrealistic in the short term. The ultimate objective should be the total integration of systems employed in the industry but until this is achieved the exchange of data on a 24 hour basis should be sufficient.	Issues document published together with the final Regulations. ✎ Appropriate transitional provisions have been provided for in Regulation 8.2.
	SAIA	Industry supports and commends the initiative to secure access to updated data at 24 hour intervals. We are, however, concerned that the industry will not be ready to implement the proposal within the projected time lines for implementation of the regulations. For illustration purposes only, in respect of facilities implemented after the date of publication for comments of the regulations and before the effective date of the regulations, access to updated data must be implemented on or before 31 July 2017. Clarity is sought regarding the actual timeline to be met in terms of data access i.e. is the requirements on a 24-hour basis, or is it to be continuous (real-time). Is the intention that the insurer should have access to the information on demand. The answer to this question will influence the level of system investment and integration. We do take cognisance of the RDR data workgroup, but given the level of decisions required in terms of system investment, certainty on the required timelines need to be addressed as a priority. With regard to Group Policies, data is received from the employer. Such data is received on a monthly basis therefore there are no daily changes that occur. Therefore, such data integration will not be possible due to the reliance on other parties for data. We also draw Treasury and the Regulators attention to industry driven data sharing initiatives which will not be ready for implementation by that date. We request that the time lines for implementation of this proposal be extended in consultation with the industry. The insurance industry is largely dependent on IT service providers and we believe	Please note that a transitional period of 24 months has been provided before this requirement takes effect.

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		this clause can be phased in, but over a longer time period. We submit that though this is the final destination, we must ensure that it is sustainable and that insurers and binder holders will not be forced to spend large amounts of money for short term solutions in order to comply with this wording. We recommend a transitional period which should be aligned to the data stream work group which has made good progress to date. For illustration purposes only, in respect of facilities implemented after the date of publication for comments of the regulations and before the effective date of the regulations, access to updated data must be implemented on or before 31 July 2017. It is proposed that the date for implementation be extended to January 2019 to allow sufficient time to review binder arrangements and to align its processes and systems with the regulatory data management requirements. Further we suggest that this extension be applicable in respect of personal lines business only.	
	Santam	We support and commend the initiative to secure access to updated data at 24 hour intervals. We are, however, concerned that the industry will not be ready to implement the proposal within the projected time lines for implementation of the regulations. For illustration purposes only, in respect of facilities implemented after the date of publication for comments of the regulations and before the effective date of the regulations, access to updated data must be implemented on or before 31 July 2017. We believe this is not achievable. We also draw the Registrar's attention to industry driven data sharing initiatives which will not be ready for implementation by that date. We request that the time lines for implementation of this proposal be extended in consultation with the industry.	Please note that a transitional period of 24 months has been provided before this requirement takes effect.
	TD Admin	Part 6, paragraph 6(l) forces 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;". It is of concern that in the event data is not provided within 24 hours we will be in breach of the Act, even if the cause of this breach was as a result of Force Majeure. To try and achieve this milestone will take a significant amount of time (years, not months); expense (both in system related costs and development; additional staff	The Regulations prescribe what must be provided for in the binder agreement and places a positive obligation on insurers to ensure compliance with binder agreements. Part of the requirements is contingency requirements. The latter should address force majeure circumstances.

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		costs and broadband development – to facilitate the transfer of this data) and would probably involve the employment of a specialist to manage and oversee this project. Whilst we concur that it is essential that the insurer is in possession of meaningful data, and this does form part of our administration and binder agreements with the insurers, the above obligation is un-necessary. What is of great interest to us is that in one section of the proposed amendment revenue streams are to be reduced to unrealistic figures yet the same proposed amendment suggests that we need to incur significant (and in our opinion un-necessary) expenditure to comply with the regulations.	
	Unlimited	If the insurer has access to policyholder data held by the binder holder, then this requirement is irrelevant. In such an event we propose that the obligation to provide the insurer with the specified data be no more than every calendar month.	Please refer to amendments to the data exchange and operational requirements in as far as it related to binder functions.
6.3A (1)	Norton Rose	There is no reason why the obligation to provide comprehensive data every 24 hours should not be remunerated when the continuous supply of information is remunerated. Both carry a cost.	Your comment is unclear. A binder holder is remunerated through a binder fee.
6.3A(2)	Hollard	What time period is regarded as regularly? How detailed must this assessment be? Specifically relating to the binder agreement and the binder function being performed or the entire binder holder. We recommend a 12 month transitional period. (b) Does this refer to the fit and proper requirements?	It is in the discretion of the insurer to assess what is appropriate in the context of its particular arrangements. Please note that the governance and oversight requirements align to similar requirements in Directive 159.A.i. An insurer will have to demonstrate that regular appropriate and sufficiently detailed assessments have been done.
	SAIA	Please clarify what would be deemed as "regularly" – If read with CBR report requirements, would this "regular" ultimately be considered to be quarterly? Clarity is sought regarding the level of detail of the assessment and whether it should specifically relate to the binder agreement and the binder function being performed or the entire binder holder. In terms of the draft regulations, the insurer will have to assess the binder holder's fitness and proprietary. What does proprietary mean?	See response to comment directly above.

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		b) Does this refer to the fit and proper requirements? A twelve month transitional period is requested.	
6.3A(3)	BASA	We submit that non-adherence to binder agreements must be managed by the insurer as well as the binder holder in line with the binder agreement in place and the Binder Regulations.	Agreed. The binder agreement must therefore provide for measures to be taken on non-compliance therewith.
6.4	Infinity	The present Regulation 6.4(4) provides that a UMA may share in the profits of the insurer attributable to the type of kind of policies referred to in the binder agreement. The proposed deletion of the existing Regulation 6.4 in its entirety has the effect of removing the express right of UMA's to share in profit and losses. There is no proposed regulation that expressly provides UMA's with this specific right. We therefore note a discrepancy between the proposed regulation and the intended purpose as noted in the commentary provided under the "Explanatory Document Supporting Consultation". The tracked changes under this document numbered [IRDF128] allude to the fact that UMA's are indeed allowed to share in profits and losses. We consider that the proposed regulation should expressly the set out the right of a UMA to share in profits and losses, particularly in the light of the general context of the proposed regulations, which is the limitation of remuneration. If, in spite of the commentary in the "Explanatory Document Supporting Consultation", it is the intention of the regulator <u>not</u> to allow UMA's to participate in profit and loss, we would question the wisdom of such a prohibition, particularly given that a UMA cannot deal directly with a client and therefore no conflict of interests can exist. UMA's act purely for the underwriter and therefore their success should be rewarded on the same basis as an insurers success is rewarded. If, in spite of the commentary in the "Explanatory Document Supporting Consultation", it is the intention of the regulator not to allow UMA's to participate in profit and loss, we would question the wisdom of such a prohibition, particularly given that a UMA cannot deal directly with a client and therefore no conflict of interests can exist. UMA's act purely for the underwriter and therefore their success should be rewarded on the same basis as an insurers success is rewarded.	Regulation 6.4 was deleted because it has been provided for in Part 5 which deals with all forms of remuneration. Please note that the current regulation 6.4(4) was erroneously omitted from the draft regulations and will be reinserted.

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	Norton Rose	Nothing in the regulations is more contrary to fair administrative justice, irrational and unreasonable than these five words deleting regulation 6.4. These five words draw a line through the entire underwriting management business model which was established in 2012 after lengthy submissions by the industry and underwriting managers including submissions made to Parliament on behalf of many roleplayers. By one stroke the concept of underwriting management is destroyed putting underwriting managers on a par with non-mandated intermediaries and requiring them to persuade insurers to give them preference shares if they are entitled to profit shares. This is sure to be set aside on a PAJA challenge. It is also worth recording that this deletion is made without any prior warning or proper consultation with those affected including product providers, policyholders, underwriting managers and other intermediaries.	Regulation 6.4 was deleted because it has been provided for in Part 5 which deals with all forms of remuneration. Please note that the current regulation 6.4(4) was erroneously omitted from the draft regulations and will be reinserted. Regulation 5.9(5) clarifies that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of shares owned by it in an insurer as this is seen as a return on investment as opposed to a profit sharing arrangement. It must be noted that a cell owner shares in both profit and loss.
6.5(2)	AON	Exemption approval process in respect of 6.1A and 6.1B. We welcome this and will seek to motivate our global model via the local insurers with whom we operate. However it occurs to us that many applications may be received and we question the regulator's capacity to handle this within the implementation time-frame. We also suggest that a more detailed check list of criteria needs to be provided to eliminate spurious applications and at the same time demonstrate fairness.	Please note that regulations 6.2(1A) and 6.2(1B) have been deleted from the regulations. Comment therefore no longer relevant.
	CIB	In terms of this regulation only an insurer may apply for exemption subject to the requirements. It is recommended that underwriting managers in conjunction with the insurer be allowed to apply for exemption subject to the requirements.	Disagree. The insurer that is a party to the binder agreements must be convinced that an exemption should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. In addition, please note that the binder holder acts as the agent of the insurer and it is the insurer that primarily accountable for compliance with the binder related Regulations. As such, only the

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			insurer is able to apply for this exemption. There is nothing stopping an intermediary or UMA motivating to the insurer why it believes is should earn a higher fee and requesting the insurer to motivate the exemption to the Registrar, but only the insurer can apply for the exemption. It would be nonsensical for the Registrar to grant an exemption requested by the binder holder without the insurer being party to it.
	Cyan Capital	In terms of this regulation only an insurer may apply for exemption subject to the requirements. It is recommended that non-mandated intermediaries, mandated intermediaries and underwriting managers be allowed to apply for exemption subject to the requirements.	See response directly above.
	Econorisk	In terms of this regulation only an insurer may apply for exemption subject to the requirements. It is recommended that non-mandated intermediaries, mandated intermediaries and underwriting managers be allowed to apply for exemption subject to the requirements.	See response directly above.
	PSG Konsult	The Regulations were amended to extend the matters for which exemptions may be given, but placed it mainly in the hands of the Insurer. We need significantly more clarity on when exceptions will be permitted by the Regulator as this is currently subjective with no clear criteria that will be applied by the Regulator to permit or not.	The criteria or basis on which exemption may be granted are set out in paragraphs (a) – (c) of Regulation 6.5. In our opinion the criteria are sufficient and we therefore disagree that it will be a subjective determination.
	SAIA	Clarity is sought regarding the intention behind the exemption process and what the criteria is for receiving an exemption? We are concerned that the aim of a level playing field and ruling out of undesirable practices would not necessarily be achieved, if we have a scenario of one insurer being able to motivate the exemption application or not, as it will be very subjective.	Conditions relating to a specific exemption will be set out in the exemption approval. The Registrar will publish its service level commitment in due course. Disagree. The insurer that is a party to the binder agreements must be convinced that an exemption

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		While we do support the suggestion previously made of increased requirements for controls and monitoring on all insurers as this would level the playing field and take away the uncertainty created by a "manage by exemption" method, how would the transfer of a book of business be facilitated – would the new insurer first need to apply for exemption to grant the binder? If insurer 1 cancels the binder due to bad underwriting results/performance of the portfolio of business and the binder holder cannot find another insurer willing to take on the book of business, would these clients not be prejudiced as the intermediary will not be able to place the business elsewhere as a binder holder until such time as a new binder has been approved. There are a number of practicalities that need to be addressed in terms of transitional arrangements, such as the status of current commercial binder holders and the potential retrenchment of underwriting and claims staff currently employed in these broker's offices etc. If an insurer applies for the exemption, would it be safe to assume that the current binder holder can continue to conduct business in such manner until the exemption application has been approved or declined? What is the anticipated time frame for processing of the exemption applications?	should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. Cancellation of the binder agreement does not necessarily result in the cancellation of the policies to which the binder agreement relates. The insurer remains responsible for ensuring that policyholders are informed of any cancellation of policies.
	Unlimited	The ability to apply for an exemption must not be restricted to an insurer. It should also be available to the other affected parties, i.e. an intermediary or underwriting manager – provided the insurer is notified of the application. The interests of such affected parties should be catered for in accordance with the principles of administrative justice.	Disagree. The insurer that is a party to the binder agreements must be convinced that an exemption should apply as it has a responsibility to ensure that conflicts of interest that may impact on its policyholders are avoided or mitigated. In addition, please note that the binder holder acts as the agent of the insurer and it is the insurer that primarily accountable for compliance with the binder related Regulations. As such, only the insurer is able to apply for this exemption. There is nothing stopping an intermediary or UMA motivating to the insurer why it believes is should earn a higher fee and requesting the insurer to motivate the exemption to the Registrar, but only the insurer

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			can apply for the exemption. It would be nonsensical for the Registrar to grant an exemption requested by the binder holder without the insurer being party to it.
PART 7: TITLE AND COMMENCEMENT			
7.1	Hollard	We believe these timelines are too tight and not equitable in the circumstances. New provisions are raised here which require a large amount of planning and in some cases new companies being formed and new FAIS licenses being applied for. The issue of the advice being on the FAIS license was only raised now for the first time as well as the 24 hour and continuous access data clauses. These operationally take time to institute and new agreements and fees will also require negotiation and planning. Where exemptions need to be applied for this again will take delays before budgets can be agreed with binder holders. With respect to the data clauses, work groups were set up and strong progress was being made with the regulator with roadmaps and requirements that had realistic end goals. This should have been continued. In effect this nullifies the work performed in those work streams and the time lines which all parties agreed were realistic. We believe that the timelines recommended on our comments at on 6(2)(1) (l) should apply in order to align with the results of the work streams.	Disagree that the issue of being authorised to render advice is only raised for the first time. These limitations have been communicated on numerous occasions through the Retail Distribution Review process (including the RDR 2014 and all updates that were published). Notwithstanding, see new Part 8 for details on additional transitional provisions.
7.1	Econorisk	In terms of this regulation the industry is only allowed until the end of 2017 to facilitate the possible required changes to structures, contracts, processes etc. When considering the scale of the changes that might need to be made in terms of company structures, implementation of IT systems and renegotiation of several contracts, this is clearly not sufficient time for implementation. It is recommended that the industry is allowed 12 months (at a minimum) after the adoption of the regulations to implement the proposed regulations.	See new Part 8 for details on transitional provisions.
7.1	Treasury WC	It is the understanding that the original agreements or arrangements relating to matters addressed in Part 3 and 6 will be valid until the amendments of the regulations come into operation. The agreements or arrangements aligned with the amended regulations will come	Your comment is not clear. Notwithstanding, see new Part 8 for details on transitional provisions.

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		into effect on the date that the amended regulation comes into operation.	
7.2	AON	We understand this to mean: New remuneration requirements per Part 5 (not Part 3 as printed) - including binder capping agreements and arrangements: Existing before gazette date (23 December 2016) 31 December 2017 Commenced after gazette date but before 1 May 2017 31 July 2017 Commenced on / after 1 May 2017 1 May 2017 New binder requirements per Part 6 - including changes re Commercial binders and Personal re determination functions as well as the Data transfer period: Existing before 1 May 2017 31 December 2017 Commenced on /after 1 May 2017 1 May 2017 Re a) if it intended that insurers price the saving on binder fees back into the product premium, which then gives the opportunity for a binder holder to motivate and charge a commensurate fee so the overall cost to client remains roughly the same, then at least a full annual cycle will be necessary to allow for appropriate implementation and communications (across hundreds of thousands of policy holders who are likely to be affected). Re b) we note the deadlines are out of line with the recommendations of the STI Data Requirements Project Steerco being Jan-19 for Personal lines business and Jan-20 for Commercial lines business. Earlier implementation will be impossible across the industry and if legislated would halt new arrangements and eliminate most existing arrangements. We urge that the minimum implementation period be set around the recommended timeframe.	✎ See new Part 8 for details on transitional provisions.
	CIB	In terms of this regulation the industry is only allowed until the end of 2017. This is not sufficient time for implementation. It is recommended that the industry is allowed 12 - 24 months for implementation.	See new Part 8 for details on transitional provisions.
	Cyan Capital	In terms of this regulation the industry is only allowed until the end of 2017 to	See new Part 8 for details on transitional

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		facilitate the possible required changes to structures, contracts, processes etc. When considering the scale of the changes that might need to be made in terms of company structures, implementation of IT systems and renegotiation of several contracts, this is clearly not sufficient time for implementation. It is recommended that the industry is allowed 12 months after the adoption of the regulation for implementation at the very least.	provisions.
	FIA	7.2 (a) - Should the reference to Part 3 not be to Part 5? 7.2 (b) - Implementation for Data transfer - refer comments in 6.3(p)	✎ See new Part 8 for details on transitional provisions.
	Norton Rose	There are huge changes required by these regulations which cannot be put in place between 1 May 2017 and 31 December 2017. Hundreds of underwriting management agreements are affected, thousands of intermediary agreements are affected and binder agreements need to be renegotiated and redrawn. Memorandums of incorporation have to be amended and preference share structures established and approval has to be obtained to issue the shares. It is even more irrational to suggest that agreements entered into since 23 December 2016 must be amended by 31 July 2017. The effect of this is to bind people to laws which were not in force and which are still subject to public comment.	✎See new Part 8 for details on transitional provisions. In respect of your comment relating to memoranda of incorporation that have to be amended, preference share structures established and approval having to be obtained to issue the shares, as explained above: • the deletion of the existing regulation 6.4(4) was an oversight; and • Regulation 5.9(5) (now regulation 5.8) clarifies that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer, as this is seen as a return on investment as opposed to a profit sharing arrangement. It must be noted that a cell owner shares in both profit and loss. Considering the above, we do not believe that the

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			concern raised is relevant. Binder agreements entered into after 1 January but before effective date: Please note that on numerous occasions in the past we have witnessed that between the publication date of draft legislation and the effective date of such legislation there is an influx of new agreements/arrangements to ensure that such arrangements are captured under the existing law to avoid that such arrangements being subject to the new laws. For this reason measures have been put in place to address the potential for such regulatory arbitrage.
	SAIA	We believe these timelines should be reviewed as they do not appear to be equitable in the circumstances as new provisions are raised here which require a large amount of planning and in some cases, new companies being formed and new FAIS licenses being applied for. These operationally take time to institute and new agreements and fees will also require negotiation and planning. Where exemptions need to be applied for, this again will take delays before budgets can be agreed with binder holders. With respect to the data clauses, work groups were set up and strong progress was being made with the regulator with roadmaps and requirements that had realistic end goals. We believe that the timelines recommended on our comments at on 6(2)(1)(l) should apply in order to align with the results of the work streams. The proposed deadline for alignment of the agreements, that being the 31st of December 2017 for facilities predating the date of publication of the draft regulations, should be reconsidered in light of the aforementioned comments. We request the Registrar to consider a period of 12 months from the commencement date of the regulations as the proposed phase in period will in our view put a lot of strain on both insurers and NMIs resources.	See new Part 8 for details on transitional provisions.

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	Santam	7.2(a)(i) - The proposed deadline for alignment of the agreements, to wit, 31 December 2017 for facilities predating the date of publication of the draft regulations is in our view stretched and we request the Registrar to consider a period of 12 months from the commencement date of the regulations. The proposed phase in period will in our view put a lot of strain on both insurers and NMIs resources.	See new Part 8 for details on transitional provisions.
	SAIA	7.2 (a) – We note a typographical error in that the reference to "Part 3" should be "Part 5"? The effective dates are unclear as they relate to aligning arrangements or agreements prior to publication of the amendment to the regulations for public comment and not to the date of the final regulations. Due to the impact on insurers' systems and processes, sufficient time should be provided for implementation of the regulations once enacted. The transitional arrangements are affected by the date of publication of the amendment to the regulations for public comment. We submit that the date of publication of the final regulations should be the date utilised for the transitional arrangements.	See new Part 8 for details on transitional provisions.
TRANSITIONAL ARRANGEMENTS			
8 – Transitional arrangement	PSG Konsult	Most of the proposed Regulations require complex changes to existing structures and businesses. Some of the practical implications include complex and time-consuming renegotiations with product providers, policy holders, employees, system providers and several other stakeholders. The business needs to be repositioned and would incur severe financial losses as investments made to date will need to be written off due the ongoing unsustainability of the business as a result of the current proposed Regulations. To implement these Regulations without sufficient phasing in will be unfeasible from a practical and financial view point resulting in significant hardship to all involved. We therefore request that the Regulation that is ultimately introduced be phased-in over at least a 24 month period.	See new Part 8 for details on transitional provisions.

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	SAIA	With regards to new arrangements post the effective date of the amendments, we do not believe that an extended period of time is required to align to the revised requirements, and these can transition in a relatively short period of time. However, consideration must be given to possible dependence on third parties for system developments/enhancements etc. Existing relationships will require substantial renegotiation with 3rd parties, possible system developments, internal distribution changes and business case remodelling. These all have a significant impact on business and its ability to perform. In these scenarios we suggest a minimum 12 month alignment period, with the ability to approach the regulator in specific situations where an extension is required (backed by sufficient motivation and progress plans etc.) It is anticipated that there will be numerous Applications for Exemptions in terms of Regulation 6.5, which will place substantial demands on the resources of the FSB to process. In establishing suitable transitional arrangements, consideration should be given to the necessary time which may be required to process Applications for Exemption.	See new Part 8 for details on transitional provisions.
GENERAL COMMENTS			
General	AON	We find many of the changes affecting the intermediated model for short-term insurance (STI) to be either *inappropriate* or *disproportionate* to the risks within this sector. We are not satisfied with the *level of transparency* providing evidence of the systemic nature of the risks nor are we satisfied that sufficient work has been done on an overarching economic impact analysis or on understanding the activities, practices and value-add of the intermediated model. The proposals go to the heart of a model developed over hundreds of years where previous changes have been on an incremental basis and are generally adopted internationally. This intermediated model is still deployed in most other countries in which Aon operates (some 120 across the world). The intrusive nature of these proposals will take the South African STI market *out of line with international practice*. Having said this we recognize the global shift towards the Twin Peaks model for	It is incorrect that sufficient work has not been performed. A significant amount of work has been performed prior to the issuing of the Retail Distribution Review, 2014 and a significant amount of work has been performed post issuing. We maintain that the principles proposed in the RDR phase 1 proposals relating to how the activities that advisers render should be restricted to avoid conflicts of interest are sound. Please also refer to the Response to Key Issues document published together with the final Regulations.

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		regulatory oversight and within the Market conduct peak, the TCF principles. We support this move particularly where poor treatment is pervasive and originates from a systemic cause, however we feel that too much emphasis has been placed on *pre-emptive, proactive and comprehensive* aspects to the detriment of *appropriateness and proportionality* – i.e. the regulations have become too rules based around "one-case-fits-all" principles in the unfounded assumption that manifestations of risks within overarching principles is the same in the STI industry as in other sections of the financial services sector. Our caution here is that the more rules that are put in place the more that will need to be put in place – resulting in a regulatory vortex. Our constant submission since first commenting on the RDR and still is to generally leave existing regulations in place and only make changes where significant market conduct risks of a systemic nature are identified and then on an incremental and evolutionary basis. However this needs to go hand in hand with increased supervisory monitoring, enforcement and corrective action. If cases of regulatory non-compliance or conduct abuse are addressed promptly and severely and cases and outcomes communicated to the industry the industry will be better informed and positioned to self-regulate. The current regulatory regime, if better enforced by the regulator, would in many respects achieve the desired outcomes behind the current draft proposals. The right balance needs to be found between competition (market forces) and regulation. The italicised words above are extracts from National Treasury's 8 overarching principles that should be applied in designing the future regulatory and supervisory approach. There is a belief at the regulator's office that insurer outsourcing through the issue of binders to intermediaries is fairly unique to South Africa and that this is not done for the right reasons of adding process efficiency and in creating customer value, but rather with a conflicted view to added remuneration. We cannot dispute that there may be some arrangements like this in existence that need to be identified and addressed. We know from Aon's own global operations that binders in the form of work transfer arrangements are well established internationally and are extant across some 40% of Aon's global premium throughput. In this regard we also refer	Please note that the figures quoted relate to Lloyd's and is not appropriate given the nature of Lloyd's business model vis a vis binder agreements entered into in South Africa.

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		to the Lloyds cover holder model that has operated for well over 100 years, currently extending to some 8400 registered binding authorities globally, generating about £7.8bn premium to Lloyds in 2016. In a recent report on cover holder activity, Lloyds listed South Africa at 18th (29.16%) out of the top 25 in the cost of business acquisition (comprising a combination of commission and work transfer fees) as follows: Acquisition Costs 2013 – 2015 (Top 25)	

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		This image cannot currently be displayed. These statistics provide reasonable evidence that the outsource model is not unique to South Africa and that South African cover holders are by no means out of line regarding remuneration. We believe that most South African outsource arrangements and binders with local insurers apart from those with Lloyds operate	

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		well within this general range. Our international experience is that South African intermediaries in general do not operate a conflicted “cash cow” in the South African STI market and most are already pressed to make a reasonable profit. We reiterate that if there are miscreants to eliminate from the system this needs to be done but by means available under the existing regulations, not by imposing a one-case-fits-all approach that will force many players out of the market. Our final word under General is to stress that if the regulator is intent on increasing the level of regulation around intermediary activity and in particular to further restrict remuneration then this needs to be properly informed by means of a thorough, holistic and properly represented intermediary activity analysis and remuneration benchmarking exercise. This is commented on in more detail in point 3 below. This will be a first of a kind internationally. Many of the proposed amendments particularly those relating to outsourcing and binders and limitations on remuneration should be put on hold until this is complete. Finally whilst we support the TCF principles and understand the overarching ideology, we are deeply concerned about the regulatory approach being followed that is likely to eliminate or marginalise many enterprises because of the intrusive, non-proportionate and broad brush methods. We remain of the view that the proposed amendments are premature and misplaced for the reasons stated above and should be deferred for further consideration.	
PART A (General Comments)	BASA	PART A 1. General comments We note a few comments below, some of which are repeated and expanded on in the specific comments. 1.1 Binder fees It should be recognised that binder fees can legally be paid for the function of	Please refer to the Response to Key Issues document published together with the final Regulations. As to 1.1: It is not practical determine two maximum rates for entering into, one for where commission is payable in respect of the same service, and another higher limit for where no commission is payable for the service.

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		"entering into a policy" without commission also being payable. The following assumption made in the Retail Distribution Review Paper of 2014 (Proposal ZZ, page 61) is incorrect and there are many instances where binder fees are payable where no commission is paid. *"Most of the administrative work involved is already performed by the non-mandated intermediary as part of "any act directed towards entering into, maintaining or servicing a policy" (i.e. intermediary services as currently defined) for which commission is already payable."* Therefore, in situations where the only fee payable for the function of "entering into a policy" is a binder fee, we believe the 2% fee would be wholly insufficient to cover the cost of rendering that service. Although the provision in 3.21(3) is welcomed, where approval may be provided by the Registrar to pay fees in excess of this limit, we believe this will be a pervasive issue in the industry, especially where the services of outsourced call centre functions are used and for this reason, we believe it would be appropriate to set a higher fee in the Regulations for the binder function of "entering into a policy". We note in the December 2016 Status Update on RDR that the quantum of the cap is still subject to consultation and that technical work is underway, which is welcomed. The following comments should be considered in the process: A recommendation is to determine two maximum rates for entering into, one for where commission is payable in respect of the same service, and another higher limit for where no commission is payable for the service (we have no view on what the appropriate % would be under those circumstances). In determining the binder fee when commission is not payable, one should have regard to the Commission Regulations where roughly 85% of total premium is allowed as first year commission. However, not all the provisions would apply to binder fees (like claw backs) so we propose that a portion of the fee would be an appropriate base, which we believe can be determined by way of information that can be provided by the relevant insurers that pay such fees. The reason is that similar types of services are rendered when the function of "entering into a policy" is performed under a binder arrangement as intermediaries perform under the Commission Regulations.	Binder functions and services as intermediary are two separate and distinct matters. Whether or not a binder holder also performs services as intermediary is not relevant for purposes of the binder fee. The binder functions and fee is unrelated to any services as intermediary that may or may not be performed by that binder holder. The binder regulations are silent on when binder fees may be paid. However, the amount paid must still comply with the prescribed binder cap. Insurers must apply their mind as to how best to structure the payment of binder fees. As to 1.2: The limitation on profit share relates to a non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement. Regulation 5.9(5) clarifies that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the shares owned by it in an insurer as this is seen as a return on investment as opposed to a profit sharing arrangement. However, a formal position on NMI's and cell arrangement will be addressed through the future cell captive framework. It must be noted that a cell owner shares in both profit and loss. With regards to your comment on subsidisation within groups, please note that this is an RDR issue- it has been made clear that there should be no cross-subsidisation as this creates a conflict of interest and an un-level playing field.

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		The basis for the calculation of the 2% fee is not disclosed and therefore one has to assume that the cost of performing this service is what should be used as a basis. The commercial reality is that binder services for the function of "entering into a policy" costs significantly more than 2% of first year premiums. As the basis for calculating the binder fee is merely expressed as "…a percentage of the aggregate of the total premiums payable by the policyholders in respect of the policies to which the binder function relates…", it is not clear if it relates to monthly premium, annual premium or total premium over the lifetime of the policy. Should it be the monthly or annual premium, 2% is not sufficient to cover the actual cost of distributing products through binder agreements. Should it relate to total premium over the lifetime of the policy, the question is if this can be determined upfront based on actuarial assumptions used for products of this nature, which could produce more realistic distribution costs. It is therefore proposed that the following types of binder fees be considered where no commission is payable: At least 50% of total first year premiums; An appropriate % of total premiums over the lifetime of the policy. This lifetime must be the duration that the insurer expects the policy to be on the book after accounting for all lapse, mortality and morbidity assumptions at pricing stage; The fee can be determined with reference to the sum assured i.e. not more than 5% of the sum assured under the policy; The fee must only be paid after the insurer has received the first premium due under the policy. We request an opportunity to discuss the commissions structure and caps with the Regulator. 1.2 Profit sharing It is noted that a non-mandated intermediary and insurer can enter into a cell structure and the non-mandated intermediary can receive dividends in respect of shares held in that insurer as part of that cell structure. In a group, an insurer and a non-mandated intermediary (that is a binder holder of such insurer) may share a common holding company, and so would be associates of each other. In this scenario, the profits of each company in the group may generally	The costs and activities should be remunerated by way of commission/fees.

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		be distributed by the holding company throughout the group, in which case the non-mandated intermediary could indirectly receive profits that were generated by the insurer. We will appreciate clarity if this scenario is permitted.	
General	FIA	At the outset the FIA restates its support for rational, reasonable and enforceable regulation that promotes the sustainability of business models providing beneficial advice, innovation and efficient outcomes for customers. We also confirm our support for the broad principles set out by National Treasury as crucial for the formulation of the future regulatory and supervisory approach, including that regulation must be: Transparent; Comprehensive and consistent; Appropriate; Outcomes based; Risk-based and proportional; Pre-emptive; A credible deterrent to misconduct; and Aligned with applicable international standards. In this regard, we are concerned with a number of issues arising from the proposed amendments to the insurance regulations as well as others contained in the RDR Phases 2 and 3 that appear to depart from some of the above principles and / or are unnecessarily biased towards granular detail, invasiveness and prohibition. This seems excessive and out of place in an industry that is recognised globally for being progressive, robust and reliable, adding distinct value to customers across the spectrum. We are also concerned about industry participation in crucial studies currently underway. For example the FSB have stated that they are preparing an Intermediary Activity Analysis (IAA) to provide a detailed assessment of all intermediary activities. Apart from three FIA members presenting to the regulator on their binder models (only) and our participation in the FSB's Data Workgroup we have not been included	Please refer to the Response to Key Issues document published together with the final Regulations which addresses the need for binder caps and the process that was followed to determine the caps.

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		in such overarching analysis and were in fact unaware of further developments in this regard. Such an investigation is fundamental in support of the proposed changes and would therefore request that the FIA participate in the IAA and that the outcomes from the IAA be made known prior to the introduction of the proposed amendments and further regulations. The proposed amendments to the insurance regulations – in particular those of material and critical importance such as data timelines and the establishing of 'capped' fees – are to the best of our knowledge, incomplete. It is not possible to support proposed changes that are qualified with the phrase "ongoing work with outcomes to be decided". We question both the rationale and haste in enacting such changes at this time.(Should this be a new paragraph?)We are also unclear as to how fair outcomes will be achieved without full and proper consultation and access to the reasoning behind such decisions as will eventually be arrived at. In this regard and by way of example, we question the rationality of addressing 'remuneration' in parts, with binder and outsource fees in RDR Phase 1 and commission in RDR Phase 2. Remuneration needs to be looked at holistically in order to make informed decisions across the remuneration spectrum and create and enable business certainty, which the current proposals work against. Fair remuneration (under the principle of "cost plus reasonable rate of return") is of utmost importance to FIA members. Apart from other considerations we note that the existing regulations relating to binders were only introduced into the market some five years ago. In addition to arrangements extant at the time further significant investments have since been made to improve, create, maintain and operate compliant platforms – all of which will be at risk depending on the willingness of insurer partners to submit motivations to the regulator for the approval of the payment of fees in excess of capping levels. This introduces further uncertainty vis-a-vis the willingness of the regulator to consider and approve such applications. In the event such approval is denied then both these platforms and the jobs they support will simply become redundant. The outcomes of the implementation of the restriction on remuneration as stated in	

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		the draft insurance regulations will cause hardship and loss of employment, particularly in the middle to lower earning brackets. The effects of this, alongside the additional expenditure required to give effect to increasing regulation, being both operational (for example the restriction on remuneration and IT system changes) and governance and compliance, (for example the now onerous Policyholder Protection Rules and FAIS Conduct of Business Reporting) will see the demise of many small to medium size intermediary practices. This outcome contradicts the principles contained in government's National Development Plan (NDP) and will place further pressure on an already stressed economy. The uncertainty pertaining intermediary business models will have an adverse impact on new intermediaries entering into the market, inhibiting transformation in the sector. It is our concerned view, that there has been no transparency or demonstration as to how the capped fee percentages have been arrived at. We again enquire whether an Economic Impact study has been carried out in order to assess the up and down sides to both the intermediary community and the greater insurance industry. Can the regulator demonstrate that the intended benefit to the customer outweighs the costs thereof? And if not we ask: "What has informed the decisions proposed in these amendments?" We are particularly concerned about the sustainability of independent intermediaries who are able to genuinely stand on the side of the customer and scan the market for the most appropriate solutions to their needs. Smaller intermediaries will increasingly find refuge in the employ of one or other product provider in order to escape the regulatory stranglehold. We are also concerned that the proposed amendments appear to favour a few large insurers at the expense of smaller insurers, some of whom only operate by way of binder and outsource models whilst playing a meaningful role in the market. The Lloyds market, whose well-established international model depends on the 'binder' model and with it the operational capabilities of local binder holders or outsource service providers, could also take strain. We fear the advent of 'oligopolies' which will be to the detriment of our customers and their choices advised on by intermediaries.	

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Remuneration	FIA	In the absence of evidence of any in-depth studies and findings of prevailing remuneration models we submit that it is irrational to view the remuneration of the numerous activities performed by an independent intermediary and non-mandated intermediary in the context of Binding Authorities piecemeal and that this exercise should be undertaken looking at the principle holistically and allowing for proportionality of the different types and sizes of intermediary models and customer portfolio's. By doing this it will create a climate of business certainty for all stakeholders and a more settled trading environment. We reiterate our previous submissions in that we do not support the capping of outsource / binder fees and question the logic and fairness behind this as the underlying principle of this form of outsourcing as stated in 5.8(1) states that "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 reasonable rate of return* for the binder holder". Capping would mean that no form of proportionality is recognised and that all business models are deemed to be the same. It potentially has the effect that where fees are not commensurate with the actual costs incurred a negative rate of return for the binder holder could result. Little regard is given to innovation and efficiencies and the employment and development of human capital skills. The loser will undoubtedly be the customer, where service delivery standards will become mediocre. The potential loss of a large number of jobs in the binder and outsource functions – and the effect of these losses on employees and their dependants at a time when the national economy can least afford retrenchments – must also be considered. In addition the capital employed in setting up the infrastructure to manage the functions will have to be written off at great cost to FIA members and other industry stakeholders. There has been no substantiation of where / how customers have been negatively affected by the fee structures where binder and outsource models have been deployed. To the contrary most customers have enjoyed the benefits of an efficient delivery of product and service (something that is not always available from the insurers) with the freedom to select from a competitive market place and with no	Please refer to the Response to Key Issues document published together with the final Regulations which explains, amongst other things, the process that was followed to determine the caps.

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		barriers to exit an existing policy contract. We support the principle of fees “being reasonably commensurate with the actual costs incurred with an allowance for a reasonable rate of return”. We however question the rationale and fairness that the capping of fees will apply to “non-mandated intermediaries registered for advice” in terms of Binding Authorities and “independent Intermediaries registered for advice” in terms of Outsourcing contracts; but not to UMAs and Independent Intermediaries / Non-mandated Intermediaries *not* registered for advice and *not* associated with another NMI / UMA. The fee structures are open-ended, but the same activities are carried out? In addition UMAs are entitled to receive profit shares in addition to fees – this to our minds creates more of a conflict of interest than NMI binder fees, in particular when it comes to impartiality of claims settlements. We furthermore question the rationale and require detailed facts as to what informs the proposed capped percentages and also the “fairness” thereof, as it is known to both insurers and binder holders that the insurers will not be able to carry out these functions for the stated percentages. We refer to *3.3 (c): Non-life (short-term) insurance* of the RDR Status update 2016 (third and fourth paragraphs of page 33) which refers to the FSB undertaking “consultation with insurers and intermediaries, carrying out technical work to determine the types of activities for which intermediaries are currently remunerated.” “The framework will then be used as a basis to determine how and by whom intermediaries should be remunerated for each of the identified services.” The FIA and to our knowledge our members have not been involved in the in-depth exercise proposed, apart from individual presentations made by three members, despite comments made on page 34 referring to the preliminary key findings. The section is concluded with “this technical work will continue and will be expanded to the long-term sector”. This supports our view that the remuneration regimen should be addressed in its entirety and not piecemeal and only once the underlying technical work project has been completed enabling an informed and constructive approach. To make our position clear we strongly disagree that just one segment of broker activities is singled out for limitation before the whole intermediary model is properly considered and understood particularly that an analysis of all activities and	

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		associated remuneration principles and benchmarks are established. *We request that the Phase 1 restrictions on remuneration be deferred until completion of this exercise and that the FIA is actively involved in this study.*	
General	Integrisure	1. ISG Background ISG is a group related though shareholding that has existed originally as Integrity since 1998 and in 2000 registered as a company IntegriSure Brokers PTY LTD. It forms a full administrating (direct marketing) broker group. The bulk of our business is personal lines policies (27 000) with combined value added products that further enhance our client's service experience. We specialize in PL for the responsible market typically being over 50. We also hold binding agreements for portions of our commercial fulfillments. Our total annual client payment on all classes is in the region of R345m pa. The business has grown organically and every single client was marketed, advised, placed and administrated one by one. We have over the years of growing the business been always been true to our name and have always been in close understanding and adherence to the Insurance act and all of its regulations. We have on two occasions been asked by the FSB to participate in a better understanding of the FSB of how our value-add outsource model works. Once in preparation of the writing of the now Binder regulations where a team of the FSB visited our offices for five days and the second time when we presented our cost structures to the FBS on the request of the FSB and FIA during the middle of 2016. During both the visits we gladly took part in demonstrating the value our current model brings to the consumer and on both occasions we were complimented on our achievements be it short of having an insurance license. A rather huge investment over many years always directed by the prescriptions of the law ensured a solid business where clients get what they otherwise do not get in the market. We ensure that our clients, being chosen for their responsible lifestyle and managed by us to be just that, are awarded with a better combination of price, product and service. On average our premium is 25% less than that offered to our niche. This would not have been possible for our niche market should we have relied on	Please refer to the Response to Key Issues document published together with the final Regulations which explains, amongst other things, the need for binder caps and the process that was followed to determine the caps.

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		the vanilla offering and service delivery by insurers over the years up until this day. In order to do this, we developed our own delivery process, administrative systems and management procedures. We run on many pieces of software culminating in a client-centric architecture of delivery on all of the current client delivery technology platforms where record keeping of voice, data, image and all communication is done integrated and on a 24/7/365 basis. The capital deployed to make this a reality is huge, not only in IT but also business process, control and human resource development and management. All of our staff are selected though a scientific and proven selection process and each are subjected to a psychological test battery and panel interviews. Each one of our staff have a personal development plan, as best advising our clients on how to protect their assets, is the cornerstone of our business. To that our client can attest. Since we have been doing the full administration of claims under a binder and for the period (2012 -2016) we administered 74 794 claims of which 209 (or 0.279%) was referred to the OSTI. During that period only 12 OSTI referrals (or 0.0160% of all claims administered) have been overturned. We have had 10 cases referred to the FAIS OMBUD of which none have been ruled on in favor of the complainant. We manage conflict of interest that could possibly arise from the administrative binders we hold by ensuring that binders for the same market are exactly the same and is always justified though our and the insurers activity based costing studies and business plans. We compete in a highly competitive market where our clients buy form us only when comparing with their existing and in 80% of the cases with two other offerings in the market. Our model evolved during the years by simply being better in our understanding of the needs and by ensuring that we deliver comprehensive, cheaper and more effective that our competition. This cannot and would not have been able by merely making use of the current insurer offerings. 2. Value Chain The value chain where brokers have since the beginning of insurance (Short Term	

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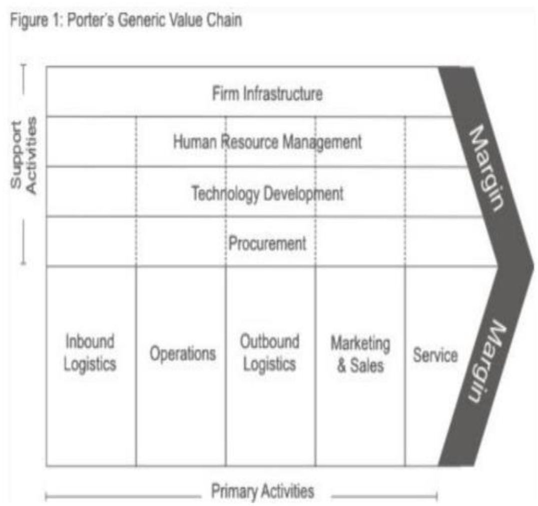
		Insurance) have been doing client delivery and proses of administrative fulfilment evolved to what we currently have in South Africa. The business concept of the value chain was however only formally studied and documented in the early eighties, the first business study being documented by Harvard business professor "Porter". The simple figure below demonstrates the generic value chain principal of adding value.  The invent of Porter's value chain documenting gave rise in the late 80's early 90's to the in depth study of the costs where the modern Activity Based Costing came to be. The history of broker's Backward integration (i.o.w. closer to the Insurer) was a natural occurrence and has happen in leaps and was mostly driven by the need for greater efficiency, speed and the fierce competition that exists in the South African STI market. This against the backdrop of the total inability of Insurers to progress in their Forward Intergradation (i.o.w. closer to the client). The evolution of the STI value chain is depicted in Annexure A hereto.	

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		The chart in Annexure A is only a shortened version. The full expanse of which have been presented by ISG during the Binder cost discussions at the FSB in 2016. The fact that this process was better regulated with the invention of the recent Binder Regulations was the first step to better understand the processes used in the delivery of the product to the client. Any intermediary that is and has been a serious about its client delivery had and still has no choice but to get involved in the seamless delivery of client service by taking over the critical portions of the administrative & innovative delivery to its clients. This simply because the insurers are unable to provide the ability on their own. Legislation that prohibits this method of delivery or more so starve the delivery of current delivery mechanisms will have severe consequences not only on the delivery mechanism and the capital and people so deployed but will rob the consumer of the competitive nature in the free market system of insurance delivery in South Africa. 3. Acquisition cost and churn The term acquisition used by insurers and other business in their financial statements refers to the landing cost without which one cannot do the sale. In the STI industry this term is also used to describe the landing costs of business and is allowed to be reported in financials as such. However, the term does not really fit in when acknowledgement is given to an ongoing as and when service delivery of already written (or acquired) clients. This in a direct insurer would be calculated differently. The SA insurance market currently spend in excess of R1.5b per annum on advertisements drumming up leads to quote on. Because of the fierce competition in the market the accepted lead to quote ratio is around 50%. Of that the accepted policy written to quote ratio is around 34%. Advertising spent is expressed as the number of month premiums one has to spend for the average client written form a campaign. This is also referred to as the P-Factor. Number of monthly premiums spent to land one client. The current average P-Factor is around 3.5. On an average premium of R1,200.00 pm the cost of landing the client is typically R4,200.00. For the broker competing in this without large scale and high efficiency delivery is obviously impossible at the current commission rates. The break-even point on initial advertising capital layout without internal cost would	

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		be past 23.33 months. That without the cost of having to service the client during the break even period. It therefore amazes that STI insurers still refer to the broker's total commission as the acquisition cost and do so on a monthly basis. A large portion but not all of it is actually an "as-and-when" still on the books payment to make good the up-front capital expenditure by the broker to acquire the client. Small brokers do not know this as they do not do the activity based cost calculations and the larger brokers get this done only by havening a firm grip on the following main drivers: Their attrition percentage is much lower than that of the insurers especially the direct insurers. Every client written and then lost costs you the next client's commission for 23 months to replace. Attrition differences between dedicated client centric brokers and direct writers are as much five times bigger in direct insurers. They understand the modern consumer need for immediate and correct action on every single contact. Gone are the days where one can wait for the principal (in this case the Insurer) to react in their time and with their outdated systems and processes. Their delivery mechanism is very efficient and build around personal client contact and advice. Clients know, experience and witness this delivery keeping insurers honest when it comes to claims determination and in keeping premiums in line. That also being the main reason that claims experience would be less in the direct market than the intermediated. With the above as background it begs the question, why would it benefit the consumer by starving the current highly competitive administrating broker market leaving the consumer with the eventual and only option but to go to the few large and thus protected insurers. 4. Barriers to enter The history of administrative outsource as depicted in the value chain evolution in	

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		Annexure A took place over many years spanning the Insurance acts, amendments and regulations as well as the FAIS act and more specifically the recent Binder Regulations. During this time and especially since the early 1980's with the utilization of the first main frame computer systems brokers started to take on more and more of the delivery value chain mostly because of the insurers being comfortably in their spot of providing risk capital in exchange for an investor return. The wave of legislative changes since the introduction of the FAIS act and continuance of regulatory reform left the old commission remuneration structures inadequate especially in an environment where brokers were and are doing the total delivery and fulfilment. This left the opportunity for new insurers to acknowledge the cost creep of delivery and fulfilment by being prepared to pay for same. Many insurers grew their books vastly, some even doubling market share in certain markets by merely acknowledging the cost and paying for it. The structures used for this in the last ten years varied form UMA's to separate mind and body company structures within the delivery channel. The industry assisted the regulator in formalising this delivery by implementation of the current Binder Regulations. The fierce competition between insurers to gain market share by acknowledging the value added by binder holding intermediaries and paying for the services so gained in their delivery and fulfilment became rife during the period after the Binder Regulations came into effect and all insurers participated by changing their cost structures to that of the more efficient broker binder deliveries. Whilst the consumer became more demanding and the only way to live up to the ever increasing demand for product and best delivery and fulfilment, larger binding holding brokers from their prior investment and experience of delivered consumer needs, became successful and powerful block solutions to insurers for marketing and delivery of insurance to the consumer. Established large market-share insurers came under attack in that their competition identified the success reaped from their broker outsource binder models. New entrants wanted a share of the pie and competed for that.	

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		The established market leader insurers started lobbying the regulator on the premise that the practice of acknowledging the real cost and being prepared to pay for it is unfair to the consumer. This tactic, although underhanded and self-centric with no regard to the consumer, we all purport to protect, is a well-documented phenomenon of all spheres of business where market leaders (sometimes refer to as monopolistic players) drum up (some times in groups of two or three) support for regulatory intervention into normal free market mechanisms in order to protect their market dominance. When a regulator allows regulation to create barriers to enter for new players let alone allow uneven playing fields the consumer end up with regulatory allowed Oligopolies where the consumer is left with less choice and eventually a higher cost. Starving the cost of delivery and fulfilment by capping costs for certain portions of the delivery channel and not for others leaves those outside of the net (in this case insurers and associated UMA's) with a license to rob the consumer with no mechanism other than to eventually regulate their detail costs too. Price fixing through regulation is normally best left for National Strategic and Scarce Resources like oil and gas, electricity, telecommunication and alike. These structures of price administration take vast, ongoing and expensive government structures. In the highly competitive SA insurance market the price and product and its delivery is well controlled by the consumer where in STI consumers vote with their two feet. (See point 3 above). 5. Need for holistic approach Reviewing the remuneration structures of STI is long overdue. To meet the demands of the modern consumer with advent of technology combined with the fact that insurance is cheaper in real terms. Cheaper today that ten years ago. This topped with the in evident professionalisation and its regulatory demands have rendered the current levels of remuneration inadequate. In order to revisit cost structures one cannot do it piece by piece. No comments on any piece can be given without a full and holistic study of the total cost structure of all insurance delivery mechanisms. This will have to start with the definitions, followed by an in depth Activity Cost (ABC) study followed by an Economic impact study.	

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		Measuring the cost of any piece of STI is sometimes confused with the cost incurred at the beginning of a long term investment. STI is measured on the risk, the price and the claims fulfilment and the cost of delivery is merely a function of the cost of the total product for the short term period. Should the need to investigate the cost of STI let alone the sub sections thereof be embarked on because one believes that a cost above a predetermined level is bad for the consumer then the same would apply irrespective of the channel used for the delivery of that portion. Level playing fields. To our knowledge neither study nor economic impact study should the remunerations levels of portions of the delivery be capped have been done nor presented in argument justifying the current proposed fazed implementations thereof. 6. Incorrect assumptions There are numerous seemingly incorrect assumptions that without empiric proof are being used in presentations, used in discussions and is used as the foundation of pieces of the current envisaged legislation. Some examples are: That the worst customer outcomes is in the binder model. *Despite numerous requests to provide proof of such empiric study showing how that informs this notion none have been provided*. The consumer does not check a broker's STI quote against other offerings. *In the highly advertised and competitive STI market there is no logical reason to jump to this conclusion other than doing a broad study in this regard. To the best of our knowledge no industry wide study has been done or shown to support this notion.* The consumer does not buy STI on the bottom line i.o.w on what goes of his bank. *In the highly advertised and competitive STI market there no logical reason to jump to this conclusion other than doing a broad study in this regard. To the best of our knowledge no industry wide study has been done or shown to support this notion.*	

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		The broker involve itself with administration in order to get more income *This generalisation is unfounded and no study indicating this has been done nor produced. The fact of the matter is that each and every successful larger broker could only be successful in taking on the delivery where insurers either did not have any delivery of failed the efficiency which is needed to serve consumers on a level with which one can compete at all.* Everything a broker does is incidental to him being a regulated commission earner. *For as long as the holistic cost study of everything in the value chain has not been done this is the only escape goat that exist for explaining away the not yet visited costs. All of what is being performed cannot possibly still be tied to the rather old definitions and commission levels in the act and regulations.* A broker will seek the highest premium and fees irrespective of the consumer's outcome. *To the contrary the extraordinary high marketing and sales acquisition cost ensure that a broker would rather keep a lower paying client than to lose him only to be replaced by a next one where the premium in a highly competitive market cannot be sold.* *A broker's biggest headache is the non-delivery of insurers and brokers actively seek the most client focused client delivery and fulfilment. That ensures a higher retention and that against the P-Factor is the real money in the bank.* Brokers are conflicted by fees. *Again a broker's biggest headache is the non-delivery of insurers and brokers actively seek the most client focused client delivery and fulfilment. That ensures a higher retention and that against the P-Factor is the real money in the bank.* The insurer has superior knowledge *If this was true brokers would not exist. Insurers might and naturally will claim this but a broad assumption is clearly uninformed and unfair.* The insurer has superior delivery fulfillment and systems. *If this was true there will be no outsource agreements nor the current sideway*	

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		integrations of insurers into system providers MUA's, aggregators and alike. The insurer can do the delivery and fulfillment cheaper than anyone else *If this was true, there would be no outsourcing whatsoever. Insurers take a fully informed decision every time they give an outsource binder. No one is forced into doing business.* Broker clients OSTI cases are higher per 1000 claims handled than direct *Apart from this not been proven and no study in this regard has been done and or produced one have to also take into account that an intermediated client has an advisor on his side and part of the advice and help is also to assist their client though the processes created for the purpose*. TCF outcomes for insurance consumers are not good *From the figures of the OSTI it is clear that outcomes for clients are very good. The number of OSTI cases is miniscule when compared to the number of claims processed by the industry in a year. One should not be misled by the acknowledged need of any OMBUD's for marketing and promulgating itself as a solution should a consumer not be treated fairly.* *The same goes for FAIS referrals that should be measured against all the pieces of advice given*. Premium collection is incidental and can easily be moved back to insurers *Premium collection may have been incidental in the early days of insurance and when policies were annual and getting the cheque at the same time of getting the application form. It is however today supported by a vast proses, real time integrated systems with checks and balances backed by ACB (Bankserv) guarantees as well as premium guarantees in systems that split the payments to different insurers combined into one offering for a client.* *The cost of the above in a modern world can't simply be made off as incidental anymore*. Data is held back by brokers who is unwilling to participate *In the first place and over many years' insurers in their ill delivery left absolutely*	

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		everything to the broker who built systems and processes to make it all happen. Insurers merely relied on a bordereau to ensure they know what their return on risk capital would be. *In the buildup to the obvious need to know what they are on risk for, many data dumps populating the insurer data warehouse have and are still being done. Most analysis is done for the insurer on the outsourced binder holding brokers systems.* *During the industry switch effort by the industry brokers and insurers were unsuccessful, mainly because insurers never wanted to force the delivery of data and where delivery took place the receiving side was always the most problematic. Insurers are just tot geared to receive the data they need and use to populate their reports, let alone populate an operational policy administration system for that purpose.* Insurers have no way of walking away from a bad broker book. *No one is forced to do business and if an outsource offering is too expensive and will not yield a profit in return on risk capital you can walk away. Insurers are playing a game with the regulator that they are in negotiations unfairly forced into doing business that will yield no return and that will harm the consumer in its cost structure. It seems that the regulator is now yielding to these cries for protection in helping these insurers against unsustainable offerings.* Most current laws and regulation is ineffective *To erect another stop street if you cannot enforce the first is not a sustainable strategy. In many cases applying the current law would do the job. Regulating business away because the volume of something is too big for your current infrastructure is not the wisest of ways to serve the consumer especially against the stated intentions of the current reforms*.	
General	Moonstone	Firstly, we commend the regulator on the concessions made in the draft regulations from what was originally positioned in the RDR proposals. We refer specifically to the provisions which permit intermediary binder holders, who are not licensed to provide advice, to hold binder agreements in respect of commercial lines business as well as permitting them to negotiate a commensurate binder fee with the insurer.	Please see our response to the same comment made under regulation 5.8(2).

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		We believe that these concessions allow the so-called “Administrators” to continue to perform the valuable work that they do, whilst also ensuring that the requirement that they not be licensed to provide advice, manages the potential conflict of interest which the regulator was concerned about. Our understanding of regulation 5.8(2) is that an intermediary binder holder, who is licensed to provide advice or has an associate relationship with another intermediary who is licensed to provide advice, will be subject to the binder fee caps as provided for in the table. We understand the caps as a measure to mitigate potential conflict of interests. In this instance the potential conflict is that an intermediary who holds a binder agreement and who can advise on short-term insurance products will channel business to the insurer with whom the intermediary holds the binder agreement. Our concern is that the caps apply irrespective of whether the intermediary or its associated intermediary furnishes advice in respect of the specific product to which the binder agreement relates to. Many intermediary binder holders provide binder functions in respect of policies sold through other independent intermediaries and we respectfully submit that cognizance was not taken of this fact in the current proposals. It would appear unfair to make the fee caps applicable to business originating from other channels where the intermediary is not involved in the advice process at all, and the only reason for the cap to be applied is that the binder holder is an associate of an intermediary licensed to provide advice. In our view this leads to almost a “guilty by association” situation. Our concerns are perhaps more accurately positioned by way of example: FSP A is and intermediary that has not entered into any binder relationships. The FSP acts solely as a short-term insurance brokerage. FSP B is an FSP which is not licensed for advice and performs administration by virtue of an intermediary binder agreement with Insurer X. The two FSPs are associates of one another by virtue of having the same shareholder owning 100% of both. At present the business submitted by FSP A to FSP B amounts to less than 5% of the total business done by FSP B. The remaining 95% of business is submitted to FSP B through other independent intermediaries. The result of the current proposals is	

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		that FSP B's total earning potential is being stifled purely because of its association with FSP A. We acknowledge the potential conflicts of interest which are present where an intermediary holds a binder agreement and can provide advice in respect of those policies. However, we respectfully submit that the conflict can be better managed by means of a prohibition on bona fide administrators (FSPs licensed for intermediary services only) conducting business with associated FSPs in respect of the policies for which they hold binder agreements. Referring back to our example, we believe the conflict would be better managed where FSP B was simply prohibited from accepting business from FSP A in respect of those policies for which FSP B holds a binder agreement. We believe the same result is achieved in respect of underwriting managers and associated intermediaries as per regulation 6.2 (3) of the Short-Term Insurance Act. It is understood that where the intermediary is licensed for advice and performing the binder functions that a cap of the binder fee will apply as the only reasonable method to limit conflicts of interest. With regards to the percentage caps per individual binder function, we believe industry will put forward much comment as to how the regulator arrived at these percentages. Very little information was shared to industry by the Financial Services Board on this point. We believe that while 2% per function may be fair in respect of certain types of policies, it may not be so in respect of others. Consider for a moment, the example of cell phone insurance. Generally, premiums for these policies amount to approximately R20 to R30 per month. If in respect of these policies an intermediary binder holder, who is licensed to provide advice, or is associated with such FSP, performs binder functions (a) and (e), the fee payable would be 4% or R1, 20 per policy. We believe that many binder holders would argue that this remuneration model is not sustainable in respect of low premium policies. If one were again to refer to our example of FSP A and FSP B above, and assumed that FSP A does not provide financial services in respect of the cell phone insurance policies in respect of which FSP B holds a binder agreement for, it raises the absurdity as to why FSP B has to be subjected to fee caps in respect of all policies. It again illustrates the “guilty by association” principle alluded to previously. This	

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		approach, which we believe is an unintended consequence, should be avoided.	
General	Norton Rose	Introductions These submissions are made on behalf of a group of 16 important broking firms who wish to remain anonymous. The submissions are made on the basis of instructions received from them regarding the effect on their businesses. Time for submissions The proposed regulations make massive inroads into the existing broker, binder and underwriting management model. Despite this, the regulations were published on 23 December 2016 in the sure knowledge that people would not have a chance to look at them properly before mid-January 2017. Time for comment was limited to 22 February 2017 despite the proposed introduction of massively intrusive regulations from 1 May 2017. The time for comment on regulations which have such major inroads into the business of insurance is far too short. The right is reserved to challenge the proposed regulations on the ground of insufficient consultation. This is exacerbated by the fact that the FSB was still holding industry workshops in February 2017. These workshops reveal that the FSB has not completed their own work on, for instance, binder caps and commercial binders and the limitations on personal binders. Far more time is required by the industry to consult and discuss the adverse effects these regulations will have on their business. Insufficient time was allowed having regard to the date on which the regulations were published and the short time given for comment followed by the short time within which the submissions will be considered. These regulations are neither transparent nor proportional and offend against the principles of legality, rationality and fair administrative process. More time was needed to deal with these issues. Adverse effect The draft regulations will have the following adverse effect on the broking industry:	Time for submissions: Please note that the closing date for comments were 22 February 2017. This represents an 8-week comment period. The purpose of the workshops (which was clearly communicated) that were held in February 2017 were to afford the industry an opportunity to clarify certain proposals in the draft regulations and PPRs. We disagree that the regulations are neither transparent nor proportional and offend against the principles of legality, rationality and fair administrative process. This allegation is not substantiated in the comment. It is therefore not possible to appropriately respond to the assertion. On the other concerns raised: Please note that the purpose of the Regulations is to protect policyholders. Where relationships and arrangements prevailing in the industry negatively impact on policyholders it is the duty of the Minister and Registrar to address same. Please refer to the Response to Key Issues document published together with the final Regulations which explains, amongst other things, the need for binder caps and the process that was followed.

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		Brokers who are currently fairly remunerated for providing administrative services on behalf of insurers will be expected to do administrative work which costs them money to do without payment. Brokers will be prevented from being binder holders in relation to commercial lines policies if they retain FAIS authorisation to give advice and commercial lines policyholders will be deprived of the choice of brokers. Brokers who are authorised under the FAIS Act to give advice will not be entitled to perform binder functions under section 48A(b), (c) and (d) despite the role they have always played in the industry in this connection. Broker commission will remain capped at 12.5% (motor) and 20% (other) and a sliding scale for accident and health policies despite brokers doing additional administrative services at their own cost. Commission is incorrectly limited because it is calculated on premiums payable "by a policyholder under a policy". Not all premiums are paid by the policyholder. The regulations will prohibit the entire basis under which underwriting managers perform binder functions for insurers "only" coupled exclusively with the right to receive a share of profits. The essential services provided by underwriting managers to the industry are undermined. Binder functions will be capped at a maximum of 4% despite the Financial Services Board (FSB) confessing that it has not yet completed consultation and technical work on the appropriate binder fee caps. This is not rational law-making. Profit shares can now be paid to non-mandated intermediaries as well as to underwriting managers (making underwriting managers as a class of business irrelevant and undercutting their business model) by means of preference shares in an insurer under a cell arrangement which insurers are not likely to want. There is no reason whatsoever to complicate the business of insurers by adding preference share shareholders to their members and preference shares to their securities creating all sorts of new obligations by both the insurers themselves and their preference shareholders. This can easily be achieved (as it is now) contractually. There is no process for brokers to approach the Registrar of Insurance to increase	

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		their remuneration if they can demonstrate that the capped or limited amounts are not commensurate with the services, functions and activities they perform. Only an insurer can make such an application. The brokers cannot be obliged to share their detailed confidential commercial information with insurers nor anyone else, except the regulator in confidence. The various regulations that are aimed at compelling brokers to abandon their authorisation to give advice to their clients in order to earn certain remuneration offend against the principle of legality. The proposed amendments to the regulations interfere with the existing contractual rights between brokers and their clients and offend against the principle of legality and the rights of policyholders and intermediaries and insurers. The proposed regulations that cut across the business models of brokers are also unconstitutional under section 22 of the Bill of Rights because the proposed regulations affect the brokers choice of trade, occupation or profession and the proposed regulations are not proportionate to any justifiable limitation or its purpose. They also unconstitutionally deprive brokers of statutory and contractual rights in contravention of the property section, namely section 25 of the Bill of Rights. A binder holder will not be entitled to perform policy data administration services if they enter into, vary or renew policies as a binder function on behalf of insurers. There is no rational basis for that prohibition because policy data administration services as defined carry costs and brokers are entitled to be remunerated for performing this function without being forced to give up their right to advise policyholders who are their clients. This also cuts across the rights of their clients as policyholders. There is no basis on which the regulations can deprive policyholders of their right to advice from full service brokers. The definition of “incidental” which refers to an activity that is “expedient” for the performance of a binder function is too vague and imprecise and unrelated to what is an “incidental” activity. There is no basis in section 48A for such a vague and disproportionate limitation. The proposed regulations will prevent many activities that are performed by brokers. A true broker who intermediates between two contracting parties has	

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		been known in our common law for centuries and this works extremely well in the insurance industry for the benefit of policyholders. There is no evidence of any economic impact assessment having been done before the regulations were published. It is clear from the latest FSB workshop that the economic impact of the regulations has not been assessed to justify the discrimination against brokers who provide advice and for instance commercial broking services. The balance of power has been shifted completely away from the policyholder who chooses to work through an experienced and trusted broker. This is contrary to the principle of treating customers fairly. Brokers benefit policyholders, product providers and the industry and their role is being undermined in ways which will destroy those benefits. Benefits to consumers protected by brokers For as long as anyone can remember, the brokers in South Africa have played a major and positive role on behalf of policyholders. The massive inroads into the broking industry proposed by the latest draft regulations will not treat customers fairly. Set out below are many of the innumerable ways in which policyholders are protected by brokers to the considerable advantage of policyholders and the insurance industry. A binder holder and a broker can place cover immediately according to the client's needs and they can advise policyholders which risks are not insurable. The system of placing business by a binder holder is far more efficient than any hold-covered arrangement. Brokers assist their clients on an urgent or immediate basis to increase insured limits or add new insured property in a manner that gives the policyholder full recourse against the insurer. Brokers negotiate their own particular policy wordings to suit the policyholders on their books.	

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		Endorsements on standard policies are scrutinised and endorsements are customised or drafted by brokers to fit each client's specific needs which protects the interests of policyholders far more than the standard set of endorsements would. Clients are protected by the fact that policies are more likely to be issued correctly by the broker who has consulted with and advised the client. It is less costly for the client to have the broker issue the policy because of speed and efficiency of service. A quote from a binder office is done immediately by the broker staff. Obtaining a quote from a large insurance company can take 28 to 48 hours to generate. The client has full recourse against the insurer if the broker, who issues policies on behalf of the insurer does not do what the client requires, according to the law of agency so policyholders have personal service and recourse. Policies which do not enjoy the intervention and services of a broker or binder holder tend to have more onerous conditions of cover which expose clients less fairly. Clients cannot be deprived of the right to get better conditions assisted by an experienced broker of their choice at no cost to them. Commercial clients (juristic persons) come in all shapes and sizes. Smaller commercial clients need the assistance of brokers. Major commercial clients choose to use brokers for giving advice and performing complex intermediary services. Commercial clients specific needs cannot be serviced promptly, efficiently and personally by an insurer's head office. Brokers consult on-site with commercial clients where necessary. In so doing they apply valuable information to fair premium determination as well as ensuring risks and exposures are properly covered. The broker has more contact with the client and better input in regard to required cover, ensuring that the client makes full disclosure thus reducing risks of policy avoidance. The brokers input in negotiating cover ensures proper eyes-on rating which protects both insured and insurer.	

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		A broker's ability to weed out poor risks or to see that the risks are reduced and to turn away unsatisfactory potential policyholders creates huge benefits for the remaining clients within the portfolio who do not have to carry the losses of the careless and the dishonest. Brokers negotiating claims as brokers intermediating between insurer and insured protect clients against rejected losses which are sometimes turned down by insurers with no knowledge of the circumstances, the fairness, the expectations of clients and the particular circumstances of particular broker clients. The latest proposed Policyholder Protection Rules have a section on claims management. Many of the things that the FSB wants insurers to put in place are already in place in brokers' offices. Clients know the contact details of the person processing their claims for instance and have direct recourse to the person in charge of the brokerage if they are not happy. What are the chances of a policyholder getting direct recourse to the CEO of a major insurance company? Clients enjoying the benefit of the additional negotiating power of a broker who places business with the insurer. The broker's role in administering and settling claims reduces the claims settlement time significantly which protects clients against losses caused by settlement delay. A binder mandate or broker mandate gives the broker an opportunity to look for the most cost-effective way to settle claims thus limiting losses, client loss ratios (and therefore reducing excesses and future premiums) and excess payments. When claims are settled the broker can use input from the insured thus bringing the client's wishes into the equation. The broker's role in settling claims leaves the clients feeling that their circumstances have been fairly considered (for example when a vehicle is on the borderline of a right-off or a repair or a replacement and all the circumstances can be taken into account instead of relying on book values and general principles). Brokers away from the larger cities provide insurers with the opportunity to conduct business there without the cost of having a branch and using local knowledge and input. This leads to cost savings for consumers and the fairer treatment of consumers who are not dealing with a remote office of an insurer but with the local	

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		intermediating broker. Binder functions are performed in many broking offices. The proposed restrictions on the brokers performing advice functions and broker functions will lead to retrenchments on a large scale if broking and binder holding functions cannot be performed economically and commercial lines broking cannot be done at all. Insurance brokers are true brokers intermediating between the parties, sometimes acting for one and sometimes the other with the consent of both. This has considerable advantages for the policyholder especially as the broker is sometimes the agent of the insurer. It is well-known that brokers play an important role to ensure the fair treatment of policyholders in relation to policy avoidance and claim rejections. These are not conflict situations. These are situations where the policyholder gains every advantage of having their own chosen broker. Brokers who underwrite business on a binder authority or acting as true full service brokers assist clients in managing risks by advising clients on things such as: Vehicle logistics; Vehicle tracking; Security; Fidelity prevention methods; Polygraph services; Perimeter control; Many other risk mitigating ideas. These functions hold considerable advantages for policyholders. There is no basis for undermining the role of brokers in the market. There is no legal basis for forcing intermediaries to forgo their right to give advice to their clients in order to earn a fair remuneration. This is entirely contrary to the FSB's expressed intention of treating customers fairly. The client's claims cost are reduced by brokers, particularly binder holders, who play	

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		a role in the following: Negotiating with suppliers and repairers; Investigating damage and salvageable items; Sourcing replacement articles or parts; Arranging for discount on swiftly settled invoices; Personally obtaining multiple quotes for selection. Because the broker is in closer contact with the client, claims can be handled more quickly and the administration and processing of claims can be done without delay. This includes personally obtaining not only standard claim forms but also witness statements, CCTV footage, accident reports, police dockets, identity documents, drivers licences, alarm reports, etc. If these are obtained on behalf of the insurer, the policyholder has protection if anything is overlooked. Policyholders feel protected and safer when they are able to discuss matters with a familiar, chosen broker rather than with one of many unknown people in a head office claims department or a call centre. Claims often arise from traumatic events and the personal contact with a familiar broker is all-important to the policyholder. Brokers often manage claims recoveries through known local attorneys which improve the odds of success and the costs of pursuing the claims. This assists the policyholder greatly, often resulting in repayment of the excess which may be lost in the wash of a major insurer's head office or an insurer's busy claims department. Brokers are available to constantly monitor claims and recoveries and give the clients the feedback they need in regard to claims and the prospect of recoveries. There are many more examples of the importance of full broker services to policyholders and limiting their role in the industry by curbing their activities and fair remuneration is unjustified. The effect on broker business One of the brokers has given the following account.	

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		In recent years brokers have given up or sold off their personal lines book and only kept the key clients because, even under the existing remuneration structure, personal lines is simply not generating sufficient revenue for the time, risk and capital associated with it. Limited personal lines divisions mainly provide this service as an accommodation to ensure key clients are provided with the level of service they require. These clients are not clients who are prepared to be on hold on call centres or spend hours reading and understanding the complexities of a personal lines policy its conditions and warranties. These clients demand high levels of personalised service and providing this requires detailed attention to both their policies and at times their lifestyles so brokers can ensure they have the correct cover. Some brokers do not target this business because to do so and to provide this service at these levels is not feasible on a large scale. A limited personal lines portfolio ensures brokers maintain a good relationship with commercial clients. One of the brokers gives the following illustrative example of the economics of personal lines business: Income: Monthly premium income = R 600 000 Number of clients = 500 Average commission at 15% = R 90 000 Average Fees generated at 8% = R 48 000 Expenses: Number of admin staff : 4 Underwriters 2, total salary expense approx. R 40 000 per month Claims staff 1 : monthly expense approx. R 20 000 per month Junior admin back up : monthly salary R 6 000 per month Rent at 25sqm per staff @ R 150psm = R 15 000 per month	

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		Executives costs / over 1500 clients = R 20 000 per month Capacity: Irrespective of whether the brokers or insurer handles the administration function to provide the service, their underwriters are limited to between 250 & 400 clients depending on size and complexity of the clients. Staff need to be fit and proper and you cannot pay salaries of R10 000pm as you would in a call centre. Claims clerks could service about 400 clients but you are running thin at these levels as you need backup staff to pick up work load when staff are sick, on leave, in training etc. The executive costs provided are low in proportion. For an executive to oversee 1 500 clients is hard work and to obtain the services of an executive at a cost of R60 000 pm including salary, petrol, cellphones etc is not extreme when taking into account that regulations require a certain calibre of person. The above example is a position in time and there will never be a perfect staff to client ratio as the above example allows for the underwriters to take on clients, but in the case of claims, additional clients requires additional staff because at current levels the claims clerk is stressed and other areas pick up the burden. These costs are the costs which are directly associated with these clients and do not take into additional business expenses such as auditing , accounting salaries, telephones, compliance and regulatory costs, insurance costs etc. The list goes on. If insurers take over the administration, brokers will still be required to service the clients and will be required to have the same staff. This is certain because previously an insurer took the over the administration on a particular facility due to its loss ratio and the administration in the broker's office increased due to the duplication of work. A broker is expected to take enormous responsibility in ensuring covers are correct, advice is accurate and data is captured in accordance with the clients instruction. This means more steps are now required to monitor insurers as errors created by insurers are significant and reflect poorly on brokers. The result is as follow:	

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		Small to medium businesses will shut down when they should be protected as they have a high employment to revenue ratio and perform an important client services that no one else does. Large business might survive but will be forced to cut staff which again defeats the object. Clients will not be able to get personal service and only call centre type business models will be available. Insurers will more easily increase their premiums as it is brokers that canvas the market and ensure that prices remain low But: Corporate insurance companies will place clients onto direct platforms resulting in low employment but high margins.Corporate insurance companies will feel far less pressure to pay claims as there is no intermediary standing up for the clients Simply compare underwriting profits between Outsurance, Santam & M&F and give consideration to who will be the winner in this. In summary personal lines divisions will not be sustainable and will be closed, companies that focus specifically on personal lines or small business will shut as the proposal does not provide the ability to recoup the costs of being in an industry that commands professional service and accountability. Brokers support regulation but the latest proposal will be disastrous. Particular remarks regarding commercial lines clients Commercial lines clients are generally more financially aware than private clients and will always want protection against excessive premiums (which are not always standard in commercial lines business), limits and excesses. They often act through their well-informed financial managers or people with business skills. There can be no data proving or even suggesting that scrapping commercial binders will protect or be better for commercial clients in any way. All the reasons set out above should be persuasive. There are no good reasons why commercial clients must be deprived of broking coupled with binding services and advice. Commercial binders exist to improve the service experience of the commercial	

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		consumer. Doing away with commercial binders is in direct contrast to Treating Customers Fairly principles which have been driven by the FSB. Cancellation of commercial binders will with 100% certainty lead to job losses because binder brokers have staff employed to perform these functions. The proposed regulations show no recognition of the true nature of the association between policyholders and brokers and the role that brokers pay as true brokers intermediating between policyholders and insurers and giving policyholders value and fair personal treatment they would not otherwise enjoy. At the industry workshop in February 2017, the FSB asked for compelling reasons why binder agreements are in the best interests of commercial policyholders. We have set out above reasons why commercial binder agreements and personal lines binder agreements are in the best interests of policyholders. If the FSB are going to draw a line through these commercial binder relationships after they have been in place for generations, it is up to the FSB to produce compelling reasons why they should do so. This is a requirement of section 22 of the Bill of Rights as read with the limitation clause and the general principles of legality. It is contrary to constitutional principles to draw a line through ways of doing business which were set up by the FSB themselves only a few years ago and then to challenge those affected to give reasons why they should not be put out of business. Anti-competitive consequences The many limitations that the proposed regulations will impose on brokers will have the effect of driving business to the largest insurers in the country because they have the infrastructure, staff and resources that can do the job that is done by binder holders and underwriting managers. This is highly anti-competitive and highly prejudicial to job creation and personal client service. A product supplier cannot give the same advisory service to policyholders who choose rather to use a broker known to them and accountable to them. Brokers exist throughout the country and no major insurer can provide the same service countrywide. Major insurers can be represented in more places than smaller insurers. It is anti-competitive to drive business away from smaller insurers	

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		who fill a necessary place in the insurance industry and ensure that competition is kept alive. In any examination of anti-competitive practices, the preservation and creation of jobs is an essential component. The adverse effect that the proposed regulations will have on job preservation and job creation is contrary to the principles upon which the Competition Act, 1998 is based. The effect on employment will be particularly noticed in smaller centres which is exactly where jobs need to be preserved and decentralisation needs to be encouraged. Once these jobs and skills are lost they will never come back again. The massive interference by the FSB in the business of broking, binding and intermediary services is already having an effect on broking companies being driven into insurer groups and has a chilling effect on the business and the creation and expansion of intermediary services. Financial effect on policyholders Policyholders choose full service brokers for all the reasons given above. Personal lines policyholders are bombarded all the time by special insurance offerings especially by direct insurers. Many people choose to ignore those offers because of the satisfactory relationship they have with and through their brokers and the FSB has no right to limit this right. Because of aggressive marketing and direct marketing of insurance products, premiums are market-related and even kept low because of the forces of the market and of competition. This means that the premiums remain within the market-related bands. Where work is done by brokers and binder holders and underwriting managers the fee that is paid to them for efficient services given to policyholders is borne within the premium. The policyholder who chooses to use a broker is no financially worse off than a policyholder who chooses not to do so. The premium is no more but the client is much better off as a policyholder than anyone who is not intermediated. The cost of insurance will not come down if the broker model is trampled upon. The cost of insurance is more likely to go up and the service given to clients will go	

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		down. Nature of regulation *The Twin Peaks model offered transparent and proportional regulations.* On the contrary, the proposed regulations are out of proportion and opaque. No evidence has been put up to justify the massive interference with the broker market. The FSB has confessed that they do not have primary evidence regarding capping nor primary evidence justifying drawing a line through commercial binders for instance. *Broker fees* Broker fees are negotiated and determined between the client and the broker. Provided there is properly informed consent as to the amount charged there is no reason why the broker fee should not be recovered and this is recognised in the proposed regulations. What is not recognised is that the more you drive broker services out of the broker relationship for proper remuneration paid by insurers, the more you drive it into the broker fee to the considerable disadvantage of clients. The many ways in which brokers service their clients whilst being paid by the insurer set out above is good for the policyholder. Policyholders should not have to pay for this assistance out of their own pockets. EXTRACT RELATING TO THE PROPOSED AMENDMENTS TO STIA REGULATIONS FROM NORTON ROSE LEGAL OPINION ADVICE BY SHORT-TERM INSURANCE INTERMEDIARIES 27. As we have indicated, NMIs are entitled, under the Act and the current regulations, to provide advice to policyholders and to perform binder functions for insurers. But the Draft Regulations restrict the power of an advice-giving NMI to perform binder functions: 27.1. Regulation 6.2(1A) precludes an advice-giving NMI from entering into any binder agreements in respect of a commercial lines business – that is, in relation to short-term insurance business where the policyholder is a legal entity.	

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		27.2. Regulation 6.2(1B) permits an advice-giving NMI to enter into a binder agreement in respect of personal lines business (that is, where the policyholder is a natural person) only for the purpose of concluding, renewing or varying a policy, or for settling claims under a policy. It cannot conduct any of the other binder functions. 27.3. In terms of regulation 5.8(1), a binder holder is entitled to a fee for performing binder functions that is reasonably commensurate with its actual costs, allowing for a reasonable return. But under regulation 5.8(2), the binder fee of an advice-giving NMI is capped at 2% of the aggregate of the total premiums payable by policyholders, for each of the (two) functions that the NMI can perform. Its fees may only exceed these caps if the insurer obtains approval from the Registrar of Short-Term Insurance for a larger fee. 28. In our view, these provisions may amount to the impermissible regulation of the trade of NMIs, for two reasons: 28.1. The first is that the Draft Regulations disincentivise NMIs from registering and providing advice to policyholders under FAIS. But that may undermine the purpose of the Draft Regulations, namely to protect policyholders and to ensure that they obtain suitable short-term insurance cover. 28.2. The second arises from permitting only insurers (and not NMIs) to apply to the Registrar for the approval of higher binder fees. It means that only a party with an interest in maintaining a lower fee for binder services can apply for exemption from the cap, in circumstances where it may lack the information to properly do so. *The constitutional regulation of a trade, occupation or profession* 29. Section 22 of the Constitution provides: "Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law." 30. The ambit of section 22 was considered in Affordable Medicines Trust and Others v Minister of Health and Another. The Constitutional Court held that: 30.1. Section 22 protects every citizen's right "to choose their trade, occupation or profession freely". Any law which prohibits a trade, profession or occupation altogether, or bars a citizen's entry into it, limits this right.24 The limitation will be	

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		unconstitutional and invalid unless it can be justified in terms of section 36 of the Constitution. 30.2. But section 22 does not generally safeguard the manner in which a trade, occupation or profession is practised. The state may freely regulate the practice of a trade, occupation or profession as long as it does not prohibit it altogether, or exclude citizens from it. As the Constitutional Court explained: "Limitations on the right to freely choose a profession are not to be lightly tolerated. But we live in a modern and industrial world of human interdependence and mutual responsibility. Indeed we are caught in an inescapable network of mutuality. Provided it is in the public interest and not arbitrary or capricious, regulation of vocational activity for the protection both of the persons involved in it and of the community at large affected by it, is to be both expected and welcomed. These considerations are reflected in the text of section 22." 31. Section 22 of the Constitution thus asks whether the conduct complained of creates barriers to entry into the trade, occupation or profession, or whether it merely regulates its practice. If the latter, the question is whether such regulation is rational. That requires that the regulation is rationally related to a legitimate government objective. Where it is not, the regulation will limit section 22 of the Constitution, and is unlikely to be justifiable under the limitations clause contained in section 36 of the Constitution. It will therefore be unconstitutional. *The disincentive to providing advice* 32. The Draft Regulations that limit the functions and fees available to advice-giving NMIs may operate to prevent NMIs from entering or remaining in their trade, practice or occupation if their effect is to prevent NMIs from earning enough to be remain viable. That is particularly so if they cannot make up the shortfall in fees through profit-sharing with an insurer (a topic we address below). Once that is so, the relevant provisions would amount to an impermissible barrier to entry to the trade, occupation or profession and would infringe section 22. 33. By at a minimum, these measures regulate the practice of an NMI's occupation, trade or profession. They need only be rationally connected to the purpose	

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		underlying their adoption to be rational. 34. But it appears that the limitations imposed on advice-giving NMIs may undermine the objective underpinning those regulations, rather than promoting it. 35. Treasury explained the purpose of the Draft Regulations, among others, in a media statement that accompanied their publication for comment. It stated: "The proposed amendments to Regulations and PPRs are steps Government is taking to improve market conduct in the insurance sector. They aim to ensure that the industry treats its customers fairly, and that incentives are aligned to ensure that less complex, good-value products are provided to consumers to help deal with unforeseen life events like a car accident or retrenchment. Hard working families are often hit by uncontrollable "shocks", and without insurance protection can readily fall into economic hardship and poverty. These Regulations and PPRs support Government's objective to ensure that the right insurance products are available and accessible to all South Africans to mitigate these risks." It also referred to the need to "curb poor advice and intermediary practices". 36. The purpose of the Draft Regulations, then, is to ensure consumers are aware of and take up the short-term insurance that is available to them and appropriate to their needs. 37. The Draft Regulations restricting the powers of advice-giving NMIs arguably undermine that object, rather than promoting it. That is because by (a) severely restricting the kinds of binder agreements that advice-giving NMIs can conclude, and (b) limiting the fees that they can claim, the Draft Regulations serve to disincentivise NMIs from registering to provide advice. That, in turn, may mean that advice is generally less available to potential policyholders. Few NMIs are likely to elect to give advice, rather than to capitalise on their ability to enter into binder agreements (since the latter function pays more fees and restricts them less than the latter), and there are relatively few mandated intermediaries that can perform this role. 38. Short-term insurance is a complex field that is difficult for a layperson to understand. In the absence of experts to advise them, consumers are unlikely to procure the	

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		“right insurance products . . . available and accessible” to them. 39. The Draft Regulations restricting the powers and functions of an advice-giving NMI may therefore undermine the objective of promoting consumer protection and choice, and amount to an irrational regulation of the trade, occupation or profession of an NMI. If so, it infringes section 22 of the Constitution. *The process for procuring fees exceeding the cap* 40. Draft Regulation 5.8 also regulates advice-giving NMIs’ practice of their occupation, trade or profession, by capping the fees that they may charge for the limited binder functions that they can perform, and permitting those fees to be increased only with the approval of the Registrar. 41. Again, such regulation may be irrational. 42. The fee caps imposed by Draft Regulation 5.8(2) permit advice-giving NMIs to collect a 2% fee for each of the binder functions performed under section 48A(1)(a), (c) and (e) of the Act – that is, for entering into, varying or renewing a policy, for determining the wording of a policy or for settling claims. But in terms of Draft Regulation 6.2(1A) and(1B), advice-giving NMIs can only perform the binder functions identified in section 48A(1)(a) and (e). They are not permitted to determine the wording of a policy, and can never claim the fee stipulated for that function. 43. It means that the Draft Regulations are internally inconsistent, suggesting a failure properly to consider the regime in full. 44. Moreover, Draft Regulation 5.8(3) empowers the Registrar to permit an advice-giving NMI to be paid a higher fee if: “(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 polic yholders .”	

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		45. Treasury's media release accompanying the publication of the Draft Regulations explains that the limits on who may enter into binder agreement and the remuneration they may be paid are designed to "address conflicts of interest", presumably whilst also ensuring the intermediaries performing binder functions are properly and commensurately remunerated. 46. Draft Regulation 5.8 may be incapable of achieving that aim because it reserves the right to apply for an increased fee to an insurer, instead of affording it to the NMI. This is problematic for two reasons: 46.1. First, rather than managing conflicts of interest, it creates them. An NMI draws its fee from the premium that is paid to the insurer. The lower the fee paid to an NMI, the greater the amount received by the insurer. The insurer may thus operate under a conflict of interest when it applies for permission to pay an increased fee to an NMI. 46.2. Second, in assessing the "nature, scale and complexity of the insurance business to which the relevant binder function relates", the Registrar presumably seeks to ensure that the NMI obtains an appropriate fee. The costs associated with operating the NMIs business and the margin needed to ensure a reasonable rate of return is, in our view, relevant to that assessment. But such information is confidential to the NMI and commercially sensitive. Indeed, there may be competition law constraints that preclude an NMI from disclosing such information to an insurer that sometimes performs binder functions itself. 46.3. It means that the insurer may lack material information necessary for the Registrar properly to consider and determine an application for increased fees. A regulation that prevents materially relevant information from being provided to the decision-maker is likely irrational. 47. In our view, then, Draft Regulation 5.8(2) may also be constitutionally problematic PROFIT-SHARING 48. The current regulations permit underwriting managers to share the profits attributable to the binder functions that they perform, with an insurer. Regulation 6.4(4) states:	

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		"An 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." 49. We are instructed that, in practice, binder agreements provide for underwriting managers to be paid a percentage of the premium arising from any policy in respect of which they performed binder functions. Under the current regime, NMIs are not entitled to share an insurer's profits. They are only entitled to a commensurate fee for the binders functions they perform. 51. The Draft Regulations propose to invert this arrangement. 51.1. Draft Regulation 6(n) will repeal regulation 6.4(4), without replacing it. Under the Draft Regulations, then, underwriting managers have no entitlement to profit share at all. 51.2. NMIs will be allowed to share an insurer's profits, but only through the payment of dividends. Draft Regulation 5.9 states: "(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." 5.1.3. A cell structure is defined as: "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),	

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		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". 51.4. In other words, NMIs are permitted to obtain preference shares in an insurer that entitles them to dividends. 52. In our view, this change in the profit-sharing regime raises three potential constitutional issues, which we address in turn. *The arbitrary deprivation of the underwriting managers' right to profits* 53. Section 25 of the Constitution protects against the arbitrary deprivation of property. It states: "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property." 54. In First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Services, the Constitutional Court formulated the test for determining whether a law infringes the right in section 25. It asks: 54.1. Does the law or conduct complained of affect "property"? 54.2. Has there been deprivation of property? 54.3. Is the deprivation arbitrary? 54.4. If the deprivation is arbitrary, is such deprivation justified under section 36 of the Constitution? 55. Section 25(4)(b) states that "property is not limited to land". In FNB, the Constitutional Court declined to define what would constitute property for the purposes of the right, stating that "[a]t this stage of our constitutional jurisprudence it is…practically impossible to furnish – and judicially unwise to attempt – a comprehensive definition of property for purposes of s 25." 56. However, it has since accepted that property must be broadly construed to include not only real rights in property, but also incorporeal property, the right to restitution of money paid, and the right to performance by another. Most recently, a majority of the Constitutional Court found that a grocer's wine licence constituted property under section 25 because it was clearly definable and identifiable, of value,	

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		transferable, sufficiently permanent, and holding it could facilitate an individual's self-fulfilment and dignity. 57. In our view, an underwriting manager’s statutory right to share in the profit generated by its performance of a binder function, or the contractual right to receive profits that such statutory right permits, constitutes constitutionally protected property within the meaning of section 25. 58. The second leg of the test under section 25 asks whether a deprivation of property has occurred. A deprivation of property takes place whenever an aspect of the right touse, enjoy or exploit the property is substantially interfered with, limited or removed. However, the impact of the incursion must be sufficiently serious to warrant constitutional engagement. A loss of a trivial or worthless aspect of the property will not amount to a deprivation. 59. A deprivation will be arbitrary (and therefore unconstitutional) if it occurs without “sufficient reason”. In FNB, the Constitutional Court found that the question whether sufficient reason exists to justify a deprivation entails the following assessment: “(*a*) *It is to be determined by evaluating the relationship between means employed, namely the deprivation in question, and ends sought to be achieved, namely the purpose of the law in question.* *(b) A complexity of relationships has to be considered.* *(c) In evaluating the deprivation in question, regard must be had to the relationship between the purpose for the deprivation and the person whose property is affected.* *(d) In addition, regard must be had to the relationship between the purpose of the deprivation and the nature of the property as well as the extent of the deprivation in respect of such property.* *(e) Generally speaking, where the property in question is ownership of land or a corporeal moveable, a more compelling purpose will have to be established in order for the depriving law to constitute sufficient reason for the deprivation, than in the case when the property is something different, and the property right something less extensive. This judgment is not concerned at all with incorporeal*	

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		property. *(f) Generally speaking, when the deprivation in question embraces all the incidents of ownership, the purpose for the deprivation will have to be more compelling than when the deprivation embraces only some incidents of ownership and those incidents only partially.* *(g) Depending on such interplay between variable means and ends, the nature of the property in question and the extent of its deprivation, there may be circumstances when sufficient reason is established by, in effect, no more than a mere rational relationship between means and ends; in others this might only be established by a proportionality evaluation closer to that required by section 36(1) of the Constitution.* *(h) Whether there is sufficient reason to warrant the deprivation is a matter to be decided on all the relevant facts of each particular case, always bearing in mind that the enquiry is concerned with "arbitrary" in relation to the deprivation of property under section 25."* 60. On that approach, there must be a rational connection between the deprivation and the end sought to be achieved and, where the deprivation is severe, it must be proportionate. A proportionality analysis assesses the purpose of the law in question, the nature of the property involved, the extent of the deprivation and whether there are less restrictive means available to achieve the purpose in question. The stronger the property interest and the more extensive the deprivation, the more compelling the State's purpose has to be to justify the deprivation at issue. 61. For present purposes, nothing turns on this distinction. Underwriting managers are wholly deprived of their entitlement to share profit. We are not aware of any reason that underpins this deprivation – and none is obvious given that the Draft Regulations continue to permit profit sharing by other intermediaries, namely NMIs. 62. It follows that the removal of underwriting managers' rights to profit share may well violate section 25 of the Constitution. *Arbitrary differentiation between underwriting managers and NMIs*	

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		63. Section 9(1) entrenches the right to equality before the law and equal protection under the law. It is violated where legislation differentiates between categories of people for no rational purpose. Put differently, differentiation will only pass constitutional muster where it is rationally connected to a legitimate government purpose. 64. The Draft Regulations differentiate between underwriting managers and NMIs, by precluding the former from profit sharing and permitting the latter to do so. 65. There is no clear purpose served by the distinction. Indeed, underwriting managers are more tightly constrained than NMIs and their interests are more clearly aligned with those of the insurer than an NMI. That is so because: 65.1. Under the Draft Regulations, underwriting managers are precluded from sharing profits with an insurer – even though they are only entitled to act for an insurer and may not sell insurance directly to the public. The Draft Regulations add a further safeguard, by prohibiting underwriting managers from having "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". There is, in our view, no real threat of a conflict of interest between an underwriting manager and an insurer. 65.2. By contrast, NMIs (who can now share profits) are subject to less strict regulation. They need not act only for an insurer and can, in the limited circumstances identified above, provide advice to a policyholder while performing binder functions for an insurer. 66. It therefore appears to us that the differentiation between underwriting managers and NMIs introduced by the Draft Regulations may be arbitrary and infringe section 9(1) of the Constitution.	
General	PSG Konsult	OVERARCHING CONCERNS We have a number of concerns that we believe goes to the core of the Regulations	▪ **Incomplete process and consultation:** Noted. We assume you are referring to the binder fee caps as this the only aspect

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		and as a result place the RDR Review in jeopardy. These overarching concerns will need to be addressed to ensure the final sets of Regulations are to the benefit of the end consumer as well as the financial services industry as a whole. No one party should be jeopardized to the benefit of the other. Incomplete process and consultation Our main concern would be the haste with which the Regulations have been published. The comments provided in Annexure C to the Regulations clarify the purpose and intent of the Regulations. A couple of these comments however clearly indicate that consultation and work on important parts of the Regulations have not yet been completed. Publishing them in the proposed Regulations and even enacting them before the process is completed, begs the question whether the consultations with industry were done with the proper intent. This will attack the legitimacy of the Regulations. Financial impact assessment The implementation of the proposed Regulations will lead to significant hardship, job losses and have economic consequences to the intermediated market in South Africa. To date no proof has been provided that the intended benefit of the Regulations will outweigh the costs. No result of an economic / social impact study was released. Our understanding is that a number of members of the FIA had made presentations to the Regulator in which they indicated that they were currently subsidising their binder agreements. This is done as the subsidy is outweighed by the benefit of a better underwriting and claims experience by the end consumer. In addition the Thematic Review done by the Regulator would clearly have indicated the costs associated with these binders. It is also common knowledge that the cost for the large insurers to perform these functions is way in excess of the fees proposed by the FSB. It seems that the intention of the fees proposed only allows for operational costs to be covered. It does not allow for the binder holder to invest in the business such as improving systems, processes, upskill staff and enhance efficiencies. In addition it also does not allow for the binder holder to earn a return on capital invested and earn a reward for the risk assumed. It is therefore difficult to believe that the Regulator is not clearly aware of the fact	where further technical work has to be finalised. In this regard please refer to the Response to Key Issues document published together with the final Regulations. ▪ **Financial impact assessment:** It appears as if this comment is driven by one particular aspect of the regulations, this being the binder fee caps. In this regard please refer to the Response to Key Issues document published together with the final Regulations. ▪ **Level playing field:** It appears as if this comment is driven by one particular aspect of the regulations, this being the binder fee caps. In this regard please refer to the Response to Key Issues document published together with the final Regulations. ▪ **Balance of power:** The current reality is that the balance of power, to a large extent, sits with the intermediary when determining outsourcing fees (including binder fees). We have seen little evidence that Intermediaries act in the interest of policyholders when negotiating these fees. On the contrary, commercial interests appear to dominate. Insurers accept higher fees with the view of getting more business from that intermediary. This creates an untenable conflict of interest, the exact situation the RDR (through the amendments to the Regulations) is trying to address. The proposed amendments to the regulations relating to binder functions aim to mitigate such conflicts.

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		that it is not possible to operate the binders at the proposed level of fees. This creates a distinct risk that the credibility of the methodology and basis followed to determine the proposed fee will be questioned. It appears (from own admission by the FSB) that the real and bigger issue to address is the skill set and capabilities of the binder holders to ensure these functions are performed efficiently to the benefit of the policy holder and in a manner which contributes to the overall efficiency of the process. It is our opinion that this should not be addressed through limiting binder fees. A better way to achieve this objective is to clearly define the activities, set minimum requirements to perform these activities and assign more oversight responsibilities to the product providers. We acknowledge that this will require more time to implement but we firmly believe this would result in an improved outcome to the real concerns and potential risks that the Regulator wish to address. Level playing field Various interpretations of the Regulations are that it favours the large insurers to the detriment of all. This is apparent after discussions with a number of medium and smaller insurers about the Short-Term Regulations. These Regulations will lead to an oligopoly that will in the long run be to the detriment of the end consumer. Our own reading of the Regulations clearly shows that the Regulations pertaining to binders does not address the real issues at the heart of the risks the Regulator wishes to address. We believe this violates the principle that prohibits legislation from benefitting one economic group to the detriment of another. The current binder regulations create a distinct risk that consolidation will occur. This will naturally lead to reduction of competition and in the long run is to the detriment of the end consumer and economy as a whole. Balance of power Finally it is also important to note that the balance of power between insurer and intermediary is extremely important for the ultimate benefit of the client and to ensure product providers operate efficiently. A focus by the Regulator purely on the fees of binders, clearly underestimates the balance of power it creates. In a post Regulations environment, it is envisaged by the Regulator that the intermediary, together with the consumer, will negotiate with the insurer on an individual level. This will place the client at a significant disadvantage relative to the power of the	

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		insurer. Examples of this could be provided upon request. The only counter to this power is to bulk or aggregate clients. This is currently providing significant success in reducing asset management fees to the direct benefit of consumers. The same position is achieved through the binders within the short-term environment. PSG has ample proof where it has negotiated better outcomes for clients through its binder arrangements. It will be impossible to negotiate better tariffs, better service or claims management on a one-on-one basis, ultimately benefitting insurers to the detriment of better outcomes for clients. Even the proposed exemption application process in the Regulations are giving the power to the Insurer as they are the one to decide whether they will be applying for exemption or not.	
General	Santam	Value added products/services (VAPS) In general, NMIs are likely to consider options to make up possible losses of revenue emanating from reduced fees, where applicable. These may result in the proliferation in the market of the so-called VAPS offered by NMIs to Policyholders at a fee. In some instances, insurers may be required to unbundle value added products from their products as NMIs seek to offer these services as stand-a-lone benefits to policyholders at a fee. To date, the VAPS have practically been considered to fall outside the license requirement. This notwithstanding that most if not all VAPS in principle amounts to no less than short term insurance business as defined in the Short-term Insurance Act (the Act) in that they offer or provide or undertake to provide a service or other benefits (policy benefits) against a consideration or fee akin to premium. This practice, whether by insurers and/or NMIs or Administrators or Underwriting Managers or other service providers, in our view, is not in line with the Act. The VAPS beneficiaries or subscribers do not enjoy the benefit of regulatory protections pertaining to solvency requirements, maintenance of assets and/ or unearned premium provisions insurers are required to manage risk to Policyholders. VAPS beneficiaries or subscribers are at risk of failures of the providers of these service benefits or collapse of these benefits schemes to the detriment of subscribers without the protection of regulations aimed at managing or mitigating risk to Policyholders. We consider this to be a risk worthy of review and reconsideration by the Registrar to formulate a firm view whether these offerings falls within or outside the Act. The Registrar's views and comments in this regard will go a long way in clarifying what continues to be a grey area open to abuse or exploitation by NMIs or any other prospective provider of VAPS outside of a licence.	▪ VAPS: VAPS do not necessarily fall outside of what constitutes insurance, it depends on what the nature of the specific VAPS product is and whether that product constitutes insurance or not (if assessed on its own). Notwithstanding, the concerns you raise are valid and for this reason this will be a supervisory focus once the final Regulations are enacted. ▪ Partial outsourcing: The capped binder fee applies to the binder function (which includes incidental activities). The cap will remain the cap and the actual fee should be proportionate to the range of activities actually performed (which may or may not include various incidental activities). ▪ Data transfer or update costs: Please refer to the Response to Key Issues document published together with the final Regulations. ▪ Sub-contacting incidental activities: An insurer can only pay the legislated fee. Any sub-outsourcing and incidental activities should be paid from the binder fee, i.e. it is not possible to pay more than the cap.

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		Partial outsourcing Clarity is also sought whether the capped fee for binder functions or policy data administration is applicable to all incidental activities or whether the retention by an insurer of some incidental activities will still justify maximum fee. By way of illustration, a claim settlement fee is capped at 2%. Will it be permissible for a binder holder to earn the full capped fee even though the insurer may retain say the management of recoveries or disposition of salvages? Data transfer or update costs Clarity is sought whether the costs of data transfer to insurers are included within the capped fee or if they can be charged separately. For illustration purposes, the industry data transfer initiative (Astute (formerly Stride)) contemplates payment by an insurer of the cost of transfer of data through the facility by an insurer. Will these costs outside of the capped fee be construed to amount to payment of fees above the caps albeit in part to the data transfer services provider and not the NMI. Sub-contacting incidental activities The guidelines to binder functions clearly allowed the -sub-contracting or sub-outsourcing of incidental functions provided paid for by the binder holder. Are sub-outsourced arrangements subject to the fee caps as may be applicable to the principal agreement? We will appreciate the Registrar's views or comments in this regard.	
General	TD Admin	The State, if it passes the proposed Insurance Regulations, will not be achieving the progressive realisation of the National Development Plan; it is rewinding transformation. It is considered by many "Bias" in favour of the large corporates and against the smaller Financial Services Provider. A fair and commensurate fee must be considered for administrative and or Binder function that are performed by the binder holders. The current proposed fee cannot be considered fair where the premium is low. Much consideration by the Minister must be given to the onerous requirements in both the General Code of Conduct and the current regulations before a fair and commensurate method for calculating fee is regulated.	The assertion that the regulations favour of large corporates is not substantiated. It is therefore impossible to appropriately respond to the assertion. The Regulations impose minimum standards that must be met by all binder holders. The requirements are therefore "size neutral", provided that the NMI can meet the standards required to ensure adequate policyholder protection. Please also refer to the Response to Key Issues document published together with the final

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		It is evident, and this fact is supported by comments from numerous "binder holders" that there is a concerted effort being made by the Minister to side line, or eradicate totally the binder holder industry by legislating a totally unacceptable remuneration package. It is inconceivable that a binder holder will be able to maintain an acceptable business model, with our current service profile, at a maximum fee of 6% of premium – this would not only be unsustainable, but severely impact on our service levels, including the ability to Treat Customers Fairly. It is inconceivable that the Minister can dictate a level of remuneration without being privy to the extent of services, expenses and expertise that the Binder Holder provides not only to the Insurer, but to the Insured (both of which are clients of the Binder Holder). Remuneration for services rendered should be a discussion and agreement between the two parties (Insurer and Binder Holder) based on agreed tasks and service levels. The current suggested levels of remuneration, particularly for premiums of less than R100.00 does not make any economic sense, bearing in mind that the cost to administer (debit order costs, IT costs, staff costs etc.) are the same notwithstanding the gross premium cost. The allowance for dispensation does not guarantee that the result will be anything other than the downfall of these South African small Financial Services Providers as the onus is on other parties (Registrar and Insurer) to secure such dispensation, and that the conditions can only be considered as unwavering and thus unfair. In addition, the process will become protracted, cumbersome and does not allow for objections. Finally, a Regulation that requires a 24 hour data transfer without any regard as to how this can be achieved without any interruption ever is beyond comprehension, and whilst we agree that insurers must receive meaningful data, we believe that this legislation is totally both unreasonable and unrealistic. In addition, if for any reason outside our control (force majeure) we are unable to fulfill this, we would be in breach of the Act,	Regulations. On the binder caps and 24 hour data exchange requirement: Please refer to the Response to Key Issues document published together with the final Regulations.
General	Renasa	We would like to express our disappointment at the proposed amendments being published on 23 December 2017, when the majority of the industry was on leave, leaving very little time for the proposed amendments to the Regulations to be	Please note that the closing date for comments was 22 February 2017. This represents an 8-week comment period.

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		considered, evaluated and comprehensively responded to. Accordingly, in the interests of having comprehensive and constructive submissions considered, we intend to supplement this submission should the need arise. We are of the opinion that the proposed amendments are flawed and should be urgently reconsidered as they are unworkable and out of line with the current workings and structure of the industry. By way of introduction, we wish to point out the following: A. Approximately 25% of all written premium is administered on systems which are owned independently of insurers and used by intermediaries to provide (underbinder and outsource arrangements) the administrative functions necessary to the issue of insurance policies; B. In the case of binder functions it is not the exercise of the binding authority per se which is the most costly service for the intermediary to provide, but rather the administrative functions associated with the exercise of that binding function which require a costly infrastructure to provide – accordingly the proposed cap on binder fees of 2% for each of the three functions defined is devoid of any association with the current practical operation of the market; C. Given that there are few commercial binders and that, in any event in terms of B above, the majority of work in relation to binders is administrative in nature, the functions performed by intermediaries on an outsourced basis on behalf of insurers is associated with the administrative activities required to be performed to issue the policies which constitute the 25% market share referred to in A; D. It is these administrative functions which engages many employees in intermediary offices around the country and who are essential to the issuing of policies and the functioning of the market; E. Removing the customary remuneration for the administrative functions performed by intermediaries as described above which, by whatever name such remuneration is referred to, binder fees or outsource fees, account for nearly all policy and claims administration in at least 25% of the market which is administered on systems not owned by insurers will: prevent intermediaries from being able to perform such functions;	We are of the view that your general comments have appropriately been addressed in the Response to Key Issues document published together with the final Regulations. Please refer to that document.

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		result in serious job loss as intermediaries discharge these many administrative staff; force insurers in a hurried fashion to significantly expand their administrative capabilities to assume the administrative functions no longer performed by intermediaries which impact on at least 25% of the market; affect the levels of service to insured clients; F. While legislative change may seek to restructure the insurance market, caution must be exercised in the means embraced to achieve this objective so as to avoid the unintended consequence of damaging the market and initiating significant job losses which may flow from such changes. Significant change cannot be brought about in a short space of time.	
General	Walco	With reference to the above mentioned document we make the following submission (without prejudice): Large insurance company business model: I think one must be careful not to leave out / forget about or don't worry about the smaller brokerages out there which in their own way serve a broad spectrum of clients and who more often than not, will actually walk the extra mile for the client, the reason being that we as smaller brokerages, cannot afford to loose clients that easily (which in turn will mean lessor income). I suggest that you obtain numbers to familiarise yourselves what the true involvement of the smaller brokers are (number of clients / assets insured through ourselves). One must be careful not to minimize / reduce the options that clients may have thereby ensuring that they get the services they will deem fit. The proposals put forward with regards to the change in binder fees, are based upon the business models of the largest insurers in the country, and they in all likelihood / probability exclude the models of the smaller insurers. In general their business models are very different to those of the smaller brokerages. The large companies, who effectively hold monopolies, exercise undue influence over decision making bodies to reduce or exclude binder agreements which both prejudices and discriminates against small to medium sized insurers, brokerages and	The assertion that the regulations favour of large corporates is not substantiated. It is therefore impossible to appropriately respond to the assertion. The Regulations impose minimum standards that must be met by all binder holders. The requirements are therefore "size neutral", provided that the NMI can meet the standards required to ensure adequate policyholder protection. Please also refer to the Response to Key Issues document published together with the final Regulations which, amongst other things, positions the need and approach to binder caps.

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		other industry suppliers. Small insurers have similar intellectual property but very small personnel teams, small offices and generally operate on a much smaller scale. They filter down to their binder holders (their agents) who offer a more efficient, cost effective way of doing business. In effect they more often than not, will have a much shorter turnaround time e.g. a quote from a binder office is done immediately by the broker staff whilst a quote from a multi-national, takes 24 to 48 hours, and quite often even longer than that to generate. Endorsements and issuing of policies is immediate, and in-house. Binder holding companies has full access to the policy information and systems, through a portal. The insurer thus has full and complete access 24 /7. Resources and Staff: One must also remember that the reason for outsourcing actually stems from the fact that bigger business nowadays wants to outsource as much as possible thereby cutting down on all the hassles that comes from a big staff compliment (more demands, off sick, bonuses, salary increases, proper office space & facilities, parking etc.) Binder holding brokerages employ a full staff complement – administration, underwriting, claims and management, but the difference is that they must face and sort issues themselves. There is a complete company structure in place, which is decentralised for the insurer. If the binder authority is revoked, then the staff number will have to be significantly reduced as they will become redundant. This will lead to higher rates of unemployment, which is contradictory to what government tries to achieve. Our future rights are thus prejudiced indefinitely. FSB Mandate In 2012 the FSB agreed to binder authorities and out-sourcing agreements. Companies structured their businesses around these provisions. Now, we are under review once more, and the uncertainty is great.	

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		The binder authority fee paid has no effect on the bottom line of the client. There is no conflict of interest. The binder fee, it is a fee paid to the broker for work done; the insurer, if this work had not be de-centralised, would have had to do this work themselves, more than likely at higher costs as they would have to acquire the infrastructure and staff to fulfill these tasks. Removing the binder authorities will ultimately cost clients more. Insurers will pass on their increased costs to their policy holders. The biggest threat to the certainty in our industry is the FSB itself; it constantly moves the goalposts and does not have a clear and defined direction. Every number of years they amend legislation and proposed new remuneration terms, which throws the industry into a state of flux and chaos. Changes are sent out at the most in-opportune time of the year, often in December, when everyone is on leave and unable to respond timeously. Government regulatory bodies: Various regulatory bodies have in the past been taken to court by different industries for failing to conduct due diligence effectively. The only way to put a stop to such court proceedings would be to hold the members of the regulatory bodies personally legally liable for legal costs, for frivolous suits brought on by their lack of competence and efficacy. An extensive impact study, prior to any changes being made is obligatory in this instance to determine the full impact of these changes upon the short-term insurance industry. If said was done then in all fairness that must be disclosed and opened for remarks/opinions. National Treasury should commission such study before tabling amendments to ensure that the interests of all parties have been examined and are protected sufficiently. The proposed amendments indicate a gross over-regulation of the binder authority holders, and severely limit the earning potential of businesses, who incur the high costs to employ people. The Registrar may, upon application, authorise additional fees above the set limits. However, is this Registrar duly qualified, and sufficiently able to determine adequate and fair remunerations?	

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		Binder authority fees should be the subject of commercial negotiations between a supplier (the Insurer) and the service provider (the binder holding broker) as these are ultimately, the only two parties to the agreement, and in fact, the only parties who understand the work to be done and what is considered fair market price for such work. The client is NOT impacted from a cost point of view; in fact, they benefit from direct, improved service. The principle of free trade should apply. Surely small businesses have the right to earn commensurate compensation for work done? The large insurers, have pre-determined two things, firstly, they do not wish to operate with binder agreements as their main modus operandi, and secondly, they have set the rates for a business model that is not their core business. However, large insurers do operate on a tied agent basis, for which the agent receives a negotiated fee for work done. But due to them being a tied agent, this is similar to them being an employee. This is very different to being a binder holder. Changes to the Pharmaceutical industry in recent years, closed down all the small businesses, and today one sees only the large chains of pharmacies, multi nationals. Is this where the insurance industry is headed? To allow the national conglomerates to flourish at the expense (and extinction) of the small companies. The proposed binder authority amendments will do just that. Broker fees Broker fees are determined between the client and the broker. If the client is not prepared to pay such broker fees, he is welcome to place the business elsewhere. This is outside the scope of the FSB. Brokers are professionals similar to attorneys and doctors. We should be able to contract out of set rates in similar fashion to medical practitioners. South African Legal Principles: The Competitions Act, Chapter 2 – makes reference to *Prohibited Restrictive Vertical*	

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		practices ie agreement between parties which are prohibited if they have th*e "effect of substantially preventing or lessening competition in a market".* We would argue, that reduction in binder fees or agreements with regulatory body set fees substantially lessens the competition in the market – smaller insurers or brokers could be put out of business, thus clearing the pathway for large companies to take over the market. Our Pharmacy example refers. Eg Should an insurer, currently operating through only binder holding brokers, be subject to the set regulated fees in their vertical agreement, then several brokers would go out of business due to the unaffordability of the operation. The insurer would then, in turn, have to recruit staff, rent premises, and provide work equipment and technology on a large scale at huge costs to take over such broker functions. Not all small insurers can afford such overheads; and their choice is then to close or to operate at a loss. More unemployment, less small businesses, and the large nationals take over to fill the gap. Regulatory body fees: We pay the FSB a large licence fee annually and several other fees for amendments to our company information held by them; the regulatory body then proposes amendments such as this which can effectively close our doors – which in turn will impact directly to your income stream as well ultimately may lead to FSB-staff to be laid off. The tariffs imposed, and fees charged, are dis-proportionate and the argument that our fees should be regulated is incongruent. How can the FSB have free reign to determine their fees, and yet they will not allow free commercial negotiations on fees within our industry? How do they justify their fees? The questions begs that why do we not have a say or input into the salaries and wages paid to FSB staff because we are the ones that must provide the funds for that – we as brokers do not get a "thirteenth cheque, annual salary increases, paid vacation and sick leave or a guaranteed monthly income with medical benefits etcetera".	

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		See FAIS ACT 2001 – notice issued 23.12.2016. Onerous obligations The obligation on the part of industry service providers to adhere to regulations is significantly onerous. The number of Acts with which a small business must comply is arduous, and the proposed over regulation of earnings, is a direct barrier to entry to industry and an attack on small enterprises. Monopolies Large multi nationals hold a monopoly. The proposed binder authority amendments, affect the number of small companies operating within the insurance industry. It is not a healthy economic situation for only a handful of companies to own almost 75% of the insurance market. For them to expand, and to continually get an increased return for their shareholders, they need to now eat up more and more market share. How do they do this? They get rid of the smaller companies. Commission structure The short term model has been in place for a number of years and is , in my opinion, working just fine. The client knows what we are paid and he / she have the choice that should they wish to change brokers, then from a commission point of view they will not be prejudiced, thereby ensuring that they will seek the broker that they are happy and comfortable with. Also if you taking into consideration that on average we earn 15% commission (excluding VAT 13.06 %). From this amount/ income we must carry ALL COSTS. I'm quite confident to say that none of my business clients would be able to operate their businesses on such mark-ups. Please protect our industry, not only for ourselves but also for those who would like to do what we have been doing all these years.	

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Capping fees	XL Transit	I write this email will great concern with regards to the above proposed regulation and indeed with the overall level of regulation currently forthcoming from the Financial Services Board. There is a clear disconnect between the communication from treasury of how it wishes to create jobs and encourage entrepreneurship on one hand and that absolutely kills any attempt at such on the other. Quite frankly it is mindboggling. I am a small business owner operating a Underwriting Management Agency (UMA) in a very specialised market, providing competitiveness and efficiencies to our market, creating jobs, paying tax, fees etc. Generally making a positive contribution to all stakeholders. It is an excellent little business and valued by all concerned. You however at Treasury and indeed you Caroline at the Financial Services Board are going to finish us and many other such valuable, positive businesses making an excellent contribution to the economy. You will kill us and it will be directly because of you. Now this. We as a small business run costs and my market is commercial transport insurance pertaining to the cover of cargo moving throughout Sub Saharan Africa. It is a highly administration intensive. It has to be and needs to be. This is costly in and of itself. We have specific software costs which are very high (around 1% of premium), salaries, overheads etc. We cannot compete with the corporates in terms of scale of costing but we absolutely dominate them in terms of service delivery, turnaround efficiencies and on every other level. We earn our fees believe me and we deserve them. Now please understand we are not a "broker binder" but a specific underwriting company. You however incorrectly seem to bracket the two together. I am absolutely directly opposed to "broker binders" in principle. It is a certain conflict of interests and indeed opposes the very functionality of a broker which is to conduct a market exercise on behalf of their clients. An underwriting company (UMA) in fact provides that very market. More efficiently and with, in many cases more expertise and skill than most corporates. Yet you continue to view the two in exactly the same light. It is really nothing short of foolishness in my view because we have been addressing this for so long now and yet there has been no discernible acknowledgement of this from either the FSB or the Treasury.	The Regulations impose minimum standards that must be met by all binder holders. The requirements are therefore "size neutral", provided that the NMI can meet the standards required to ensure adequate policyholder protection. Please also refer to the Response to Key Issues document published together with the final Regulations. Please note that the remuneration limitations are limited to NMIs that are registered for advice under the FAIS Act. Further, the regulations draw a clear distinction between NMIs and UMAs and the caps do not apply to UMAs. As to the statement that the regulations include a proposal that there needs to be broker training on specific products by underwriters and insurers. This is not correct. This comment may relate to the FAIS Act subordinate legislation. Please also refer to the Response to Key Issues document published together with the final Regulations which, amongst other things, positions the need and approach to binder caps.

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		<u>A binder fee augments a brokers income but is the only source of income for a UMA!!!</u> If you are seriously going to restrict a fee on UMA`s as proposed you will simply kill off a very large part of this market, it will definitely result in job loss, reduction in taxation, less efficiencies and competitiveness in many markets. It will be to the determinant of the consumer and all stakeholders. Not the least of which entrepreneurship itself. The only possible benefit of this will be to the large corporates. Is that really wise? Is that really the message you want to send? Please confirm? Finally and in addition to all of the above is the general level of regulation in the industry. It is absolutely astronomical. It is choking to death small business and is counter -productive. Again it is no problem for the big corporates though. So the message from you is really we support big business only. Some of the proposals are actually quite bizarre. As an example there is a proposal that there needs to be broker training on specific products by underwriters and insurers. It is a requirement. So let me just get this straight, we are required to educate a broker, who is meant to be educated, on the specifics of a market product? So if there are say five underwriters/insurers in a niche market. That broker will be required to receive training from all seven on that same product market? In turn those underwriters/insurers must educate/train all of their broker network – for example 150 broking companies with many employees throughout South Africa? Not well thought out in my view. We get a lot of that type of cut and paste regulation and it is absolutely ridiculous. How is a business supposed to get around to trading under all of this? In closing, certainly I agree there is a need for a level of regulation. It is required to ensure any unscrupulous and immoral operators are identified and there is a fundamental framework of adherence. However it is becoming excessive in the extreme. I recall an advocate once wisely commenting as follows; “there will always be an exception to every rule, however a just law should never be made based on an exception”. In my view there are too many laws forthcoming which are indeed based specifically around the exceptions, to the detriment and excessive burden of those who are merely attempting to operate with integrity and efficiency in an over regulated industry. It is stifling efficiency and suffocating small business and	

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		entrepreneurship, in an industry which should be encouraging it. I could go on believe me and I would be glad to meet with either of you at any stage to further elaborate and unpack. However should your proposal become ratified and binding it will likely be from outside of my business capacity because it will never survive on your proposal. I could bring my ex- employees with me if you like and you can tell them that it was you and not I that forced their employment termination and their struggle thereafter. Because make no mistake, you can call it what you like, it will be.	