REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS

Commentators	Regulation	Comment	Commentator recommendation	Regulatory response

List of commentators		
1	Anslow Management Consultants (Pty) Limited	(R L Shaw, Director)
2	Association of Saving and Investments South Africa	(Anna Rosenberg)
3	Hollard	(Michael Frewen, Compliance Officer, Governance)
4	Lloyd's General Counsel Division-Lloyd's	(Cameron Murray, Senior Manager Lloyd's International Regulatory Affairs)
5	Old Mutual	(Hanneker Pepler)
6	Regent Insurance Company Limited	(Prabashni Naidoo)
7	Santam Limited	(Gordon Reid, Head: Corporate Legal Services)
8	South African Underwriting Managers Association	(SAUMA Managers)
9	The South African Insurance Association	(Suzette Strydom)
10	J Leach	(Member of the Short-term Insurance Advisory Committee)
11	Anonymous	

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		General comments		
1	Effective date of binder regulations	We now raise a matter which may be regarded as contentious. This relates to the imposition of Binder Regulations prior to the finalisation of the future Cell Captive regulatory environment. We submit that it is inequitable, and must be regarded as most unfair, that appropriate members of the Underwriting Management fraternity are prejudiced at a time when no further clarity has been provided by the Authorities in respect of the management, underwriting, control, processes and procedures relating to business entities which hold their own Cell Captive structures.		Not accepted. An Information letter to inform third party cell captive insurers of legislative and other developments (recent and planned), that may affect their business practices over the short to medium term, has been issued.
		Binder regulations comments		
6	Definitions and Interpretation, regulation 6.1 "associate"	1.2. The use of the definition of "Associate" in the proposed regulations has the following implications: 1.2.1. Many entities have equity stakes in both Intermediaries and Underwriting Managers. The rationale for this differs from entity to entity. One reason could be to ring fence operations, another reason might be as an overall investment strategy to facilitate BBBEE. The possible unintended consequence is that insurers will now have to revisit such strategies and disinvest from these entities. 1.2.2. The benefit to the insurer being allowed to own a stake in an Underwriting Manager ("UMA") and Intermediary is that it is able to utilise its equity stake to ensure that the UMA/Intermediary operates within the regulatory framework, which facilitates better accountability and a faster response to any issues that may arise. The consequence is that an insurer (through the prohibition on an underwriting manager being an associate of an intermediary) cannot now have a stake in a UMA where it also has equity interests in intermediaries. This prohibition amounts to an unreasonable restriction. 1.3. The very broad definition of Associate does not take into account the complex business environments in which certain insurers exist. The attempt to cast the net so wide as to include a parent company of a holding company is in our view not necessary. The binder regulations do not take into account that there are holding companies in the South African context with very disparate interests in various industries. In many instances the entities operate independently of each other and the regulations do not take this into account.	1.3.1. A suggestion would be to call on affected parties to provide Treasury with an impact analysis. We are of the view that the regulations in their current form could result in Insurers having to unbundle certain structures which could potentially result in job losses as certain UMAs and intermediaries may be reliant on the expertise, infrastructure and specialist skills to ensure the continuity of the business.	Partly accepted. See amendment to regulations 6.2 and 6.5(2).

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6	Definitions and Interpretation, regulation 6.1 "associate"	1.5. Where insurance companies and/or insurance groups will be required to unbundle various structures and business arrangements, the financial and related costs will be very high. In addition there could be an impact on non-financial services groups that may own equity stakes in a UMA and intermediary. This is because the definition of associate is extremely wide and includes the holding company of the holding company of an Underwriting Manager. Many non-financial services groups in South Africa have an insurance arm as well, rendering the prohibition problematic for the reasons set out above. 1.6. We are of the view that the disclosure requirements already contained in FAIS adequately ensure that the risk of a potential conflict of interest arising is mitigated and therefore the restriction should be removed.		See comment directly above.
9	Definitions and Interpretation, regulation 6.1 "associate"	The Binder Regulations states the definition of associate namely an associate "has the meaning assigned to it in the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);" ("FAIS"). The FAIS definition of associate includes "in relation to a natural person" and includes a spouse, life partner, child, parent etc. and in terms of "in relation to a juristic person" it includes "any subsidiary or holding company of that company". We wish to point out that the very wide and encompassing definition of associate will result in unintended consequences. An example would be where related persons may be on the staff of an Underwriting Manager and a non-mandated intermediary, but no perceivable Conflict of Interest arises in such circumstances. The non-mandated intermediary would be prevented from placing business via the underwriting manager, possibly to the detriment of the policyholder.	It is accordingly suggested that a phrase similar to section 3A(3) of the FAIS General Code of Conduct is included namely that the term associates may not circumvent what the Regulations aims to achieve namely avoiding a conflict of interest that may arise where a non-mandated intermediary is a binder holder and that the outright prohibition is removed in the definition of an underwriting manager alternatively that the following prohibition be added as either regulation 6.1 (2)(c), 6.2(7) or 6.3(6) "An underwriting manager may not directly solicit policies from, or market or sell policies to the public or any segment of the public on behalf of an insurer."	See comment directly above.
5	Definitions and Interpretation, regulation 6.1 "binder agreement"	Although the Registrar's Response document provides some clarification regarding the distinction between "rendering services as intermediary" and "binder functions", we believe that a clearer separation of the respective functions is of critical importance and that the definition proposed in our earlier submission will provide for this.	Amend the definition of "binder agreement" to read: "means an agreement in terms of which the insurer appoints a person with the power of authority to render one or more of the services listed in section 49A(1)(a) to (e) on its behalf".	Not accepted. The definition of "binder agreement" means an agreement contemplated in section 48A/49A.
2	Definitions and Interpretation, regulation 6.1 "binder agreement"	We suggest that a definition for "binder services" be included for purposes of ease of reference in the other definitions and the rest of the regulations.	Define "binder services" as "services contemplated in section 49A(1)(a)."	See comment directly above.
4	Definitions and Interpretation, regulation 6.1 "insurer"	As an aside from the main points made above (but a point of importance to Lloyd's) we note that there is an apostrophe in Lloyd's.	We respectfully propose that the definition of: "insurer" is amended to read: "... a short term insurer or any number of Lloyd's underwriters".	Accepted. Definition of "insurer" amended to read: "... a short term insurer or any number of Lloyd's underwriters".

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3	Definitions and Interpretation, regulation 6.1 "mandated intermediary"	In law, a verbal contract is considered to be legally binding. It is common modern day practice for financial transactions to be concluded telephonically. FAIS acknowledges and permits this practice by making allowance and provision for "oral" representations, subject to these representations being recorded. Accordingly, many intermediaries conduct legally binding financial services partly or wholly over the phone. It therefore seems counter-productive and administratively inefficient to insist on a "written mandate from a potential policyholder or policyholder" when every other part of the transaction has been concluded legitimately by telephone.	We suggest the following amendment: "mandated intermediary" means an independent intermediary that holds a mandate, either written or recorded telephonically, from a potential policyholder or policyholder …".	Not accepted. The term "written" must be read with the Electronic Communications Act No. 36 of 2005. Also, the written agreement is not required in respect of each and every transaction and should be in place upfront.
5	Definitions and Interpretation, regulation 6.1 "mandated intermediary"	The distinction between subparagraphs (a) and (b) of the definition adds unnecessary complexity, as a policy termination contemplated in (a) would in any event be covered by the acts contemplated in (b). We recommend the definition be simplified.	Reword the definition of mandated intermediary" to read as follows: "means an independent intermediary that holds a written mandate from a potential policyholder or policyholder that authorises that intermediary, without having to obtain the prior approval of that policyholder or potential policyholder, to perform any act in relation to a policy, including the termination of that policy, that legally binds that potential policyholder or policyholder, other than an act directed only at changing the underlying investment portfolio of a policy."	Partly accepted. Definition amended to read as follows: "means an independent intermediary that holds a written mandate from a potential policyholder or policyholder that authorises that intermediary, without having to obtain the prior approval of that policyholder or potential policyholder, to perform any act in relation to a policy, including the termination of that policy, that legally binds that potential policyholder or policyholder;"
11	Definitions and Interpretation, regulation 6.1 "mandated intermediary"	7.1 There is a major problem with the binder regulations in relation to who is a mandated intermediary (which determines who is a non-mandated intermediary). 7.2 A mandated intermediary is an independent intermediary who holds a written mandate from a policyholder to bind the policyholder to a policy or terminate a policy without having obtained the prior approval of the policyholder. In other words it is a broker who can move a book of business without getting the individual consent of policyholders. 7.3 The regulations do not deal with the situation where an intermediary has some clients who are happy to give a mandate to move the business and other clients who are not prepared to give the broker such a mandate. The situation could be even worse if they are co-insured's on one policy, each giving a different mandate to the intermediary. 7.4 The binder regulations should not be used to limit the choice of the consumer in their choice of broker. The consumer cannot be forced to give up a broker because the broker has other clients giving a different mandate.	7.5 This can only be cured by a major conceptual change. The regulations would require the intermediary to choose whether they only act for policyholders or act for insurers as well as policyholders. If they only act for policyholders, it would not matter whether they can move the book of business or not. Whether they can do so or not is a matter of individual mandate between the broker and the policyholder. It has nothing to do with the binder requirements.	Not accepted. If an intermediary holds such a mandate (even from one policyholder or potential policyholder) that intermediary is a mandated intermediary and cannot be a binder holder. A binder holder by definition acts for an insurer.
2	Definitions and Interpretation, regulation 6.1 "non-mandated intermediary"	In the Explanatory memorandum under the heading "Non-mandated intermediaries" (pg. 11) it is stated that "a nonmandated intermediary is defined as … a representative or independent intermediary other than ... administrative FSP". The definition, however, does not include the words "or administrative FSP".	Amend the definition of "non-mandated intermediary" to include the words "or administrative FSP".	Not accepted. Administrative FSPs are dealt with separately. See reg. 6.2(1) and (2).

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11	Definitions and Interpretation, regulation 6.1 "non-mandated intermediary"	(1) The definition of a non-mandated intermediary has been expanded to include the underlined words: "a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager". (2) This will preclude a non-mandated intermediary from acting as an underwriting manager as well. That is in line with the thinking according to which an underwriting manager should be a specialist representing the insurer only.		Observation. No change necessary.
2	Definitions and Interpretation, regulation 6.1 "settle claim"	The term "acceptance" in paragraph (a) of the definition causes interpretation difficulties, as "accept" normally means "to receive" so could be read to include the mere administrative processing of payment in respect of an approved or admitted claim, so suggest that "admission" be used instead. We recommend that paragraph (b) is incorporated into (a) as the action of admitting a claim may also include determining the quantum of the claim.	Amend definition of "settle a claim" as follows: "(a) the admission of a claim for policy benefits or a part thereof and/or the determination of the quantum of the liability of an insurer under a claim for policy benefits; or (b) the rejection of or refusal to pay a claim for policy benefits or a part thereof; where the insurer becomes aware of the admission, determination, rejection or refusal only after these acts have been performed;".	Partly accepted. Substituted "acceptance" with "acceptance of full or partial liability" in the definition of "settle a claim".
6	Definitions and Interpretation, regulation 6.1 "settle claim"		For the sake of clarity, the definition of "settle a claim" should read as follows: "settle a claim" means any act that results in – a) The acceptance of liability under a claim for policy benefits	See comment directly above.
11	Definitions and Interpretation, regulation 6.1 "settle claim"	3.1 The previous definition referred to settling a claim by accepting the claim, determining the liability or rejecting or refusing to pay a claim. This is correct in accordance with s 49A(1)(e) which refers to a binder holder having authority to "settle claims". 3.2 The wording is now less precise. To settle a claim "means any act that results in "the acceptance of a claim", or "the determination of the liability" or "the rejection or refusal to pay a claim". 3.3 That is a poor change. Besides the fact it is not in line with s 49A(1)(e) itself, who knows where an "act that results in the acceptance of a claim" starts or stops. Does it include a loss adjuster who adjusts the loss as a result of which the claim is settled? The previous wording was better. 3.4 Claims settlement now incorporates the requirement that the insurer "becomes aware of [the act of the binder holder] only after these acts have been performed". 3.5 This wording is presumably intended to ensure that the binder holders have a mandate to act within a mandate without prior referral to the insurer. It is not clear why a mandate to act on behalf of the insurer has as a necessary precondition that the insurer only learns of what has happened later.	3.6 A better wording throughout would be permissive: "... where the person performing these acts may do so without the insurer becoming aware of the [act] until after these acts have been performed." 3.7 If it is not phrased in this way, you will have the unacceptable consequence that where the insurer is aware that a claim is being settled (for instance is present when the agreement of settlement is signed) that is no longer a binder function.	Accepted. Amendments made to the definitions of "enter into", "vary", "settle a claim" and "renew".

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2	Definitions and Interpretation, regulation 6.1 "underwriting manager"	The FSB response to the comments received makes it clear what an underwriting manager is but the definition is not that clear and we submit that part (b) is changed to set out what intermediary functions can be performed rather than those which can't be performed. Furthermore the definition should refer to "any policy" and "clients" to clearly reflect that an underwriting manager can never act as an independent intermediary for any client irrespective of the class of business. As part (c) is presently worded, it is not clear whether the intention is that an administrative FSP may never be an underwriting manager, or whether an associate of an administrative FSP may never be an underwriting manager and this needs to be clearer.	Change parts (b) and (c) of the definition "(b) if that person renders services as an intermediary as defined in Part 3A of the Regulation such services are limited to the collection, accounting for or paying of premiums and/or providing administrative services in relation to any policy on behalf of an insurer only and does not include any services on behalf of clients; and (c) is not (i) an associate of a mandated or non-mandated intermediary, (ii) a representative of a mandated or non-mandated intermediary, or (iii) an administrative FSP".	Not accepted. The definition is clear.
3	Definitions and Interpretation, regulation 6.1 "underwriting manager"	Whilst the Explanatory Memorandum provides some clarity on the implied prohibition on underwriting managers from soliciting from, or marketing or selling policies to the public, we believe that the current draft is too vague on this point. Should a dispute arise, the Explanatory Memorandum has no legal standing and would therefore be of little use.	We suggest that the following prohibition be added as either item 6.1 (2)(c), or 6.2 (7), or 6.3.(6). An underwriting manager may not directly solicit policies from, or market or sell policies to, the public or any segment of the public, on behalf of an insurer.	Not accepted. See paragraph (b) of the definition of underwriting manager.
6	Definitions and Interpretation, regulation 6.1 "underwriting manager"		1.4. The Binder regulations emphasise the liability of the Insurer in respect of the UMA. It is respectfully submitted that in order to properly achieve the objectives of the Binder regulations, that the prohibition on a UMA being an associate of a mandated or a non mandated intermediary be deleted or that the definition of associate is narrowed down to allow an entity to hold equity stakes in both UMA's and Intermediaries.	See comment directly above.

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9	Definitions and Interpretation, regulation 6.1 "underwriting manager"	The result is that an underwriting manager according to the current wording can therefore not be a "natural associate" or "juristic associate" of a mandated / non-mandated intermediary or a representative of a mandated / non-mandated intermediary and the adverse implication hereof is that an underwriting manager, on behalf of the insurer, may not accept any insurance business from such an "associate". The Explanatory Memorandum confirms the intention of the Regulator namely a prohibition on underwriting managers from soliciting, or marketing or selling policies to the public. The Explanatory Memorandum unfortunately has no legal standing.	It is accordingly suggested that a phrase similar to section 3A(3) of the FAIS General Code of Conduct is included namely that the term associates may not circumvent what the Regulations aims to achieve namely avoiding a conflict of interest that may arise where a non-mandated intermediary is a binder holder and that the outright prohibition is removed in the definition of an underwriting manager alternatively that the following prohibition be added as either regulation 6.1 (2)(c), 6.2(7) or 6.3(6) "An underwriting manager may not directly solicit policies from, or market or sell policies to the public or any segment of the public on behalf of an insurer."	See comment directly above.
10	Definitions and Interpretation, regulation 6.1 "underwriting manager"	The revised binder agreements, explanatory memorandum and the FSB's response to comments note that UMAs are not allowed to sell directly to the 'public' (explanatory memorandum) or 'another person' (amendment)[1]. I understand that the intention of this restriction is to protect the consumer, due to a potential conflict of interest where the UMA represents the insurer rather than the client[2]. There appear to be two options going forward relating to aggregators (e.g. a large retailer, union or community grouping), which of course are critical in micro insurance: 1. License --> aggregator • end client a. NB There is no restriction on the license approaching the end client directly. 2. License --> UMA --> intermediary --> aggregator --> end client a. NB The aggregator could apply to become a mandated or non-mandated intermediary. What concerns me is that a broker often adds limited value in these arrangements as the aggregator is typically better informed than the end client and is able to negotiate effective terms that will benefit their members. If an intermediary is required, it may well just add cost and complexity into the system.		Not accepted. Aggregators dealing with clients should be licensed as intermediaries.

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10		The other option is to require the aggregator to become an intermediary as well as the aggregator and then they sell the product to their client base. I appreciate this is what happens now in some instances, but with the increasing regulatory complexity, this could be quite an ask. Currently they may only have to have a Juristic Representative which is a lower burden? In terms of market dynamics, whilst UMAs on the short term side are used to these arrangements, nascent Life 'UMAs' have been working with aggregators directly, so would likely have to introduce an intermediary into the relationship or require the aggregator to become an intermediary. This would of course increase cost and be disruptive. So my question is whether it should be possible to differentiate between Joe Public and an Aggregator so that a UMA can approach an aggregator directly rather than through an intermediary? The argument being that an aggregator should be better informed than the end client.		See comment directly above.
10		[1] 'Public' and 'another person' are not defined. 'Public' implies an individual but, as was clarified in the Advisory Committee, a 'person' is apparently defined elsewhere, and includes a legal entity such as a company. I suggest you need to define or clarify these. [2] Whilst it is a separate point, I am not actually sure that this conflict of issue stands as the Insurer and the UMA have the same incentive to not act in the interest of the consumer as both focus on profitability of the book and face the same amount of regulation, either directly or through the insurer. The requirement to use an intermediary therefore appears to be primarily protecting the interests of the intermediary? Perhaps we could discuss this further?		The Interpretation Act defines "person". This definition applies across all legislation. Further, the term "public" is not used in the draft regulations.
11	Definitions and Interpretation, regulation 6.1 "underwriting manager"	4.1 The definition of underwriting manager has been expanded in a number of respects: (1) An underwriting manager must perform at least one binder function (enter into policies, determine wording, determine benefits, or settle claims) as well as any other functions that an underwriting manager performs on behalf of the insurer. Underwriting managers do everything as an agent for the insurer that the insurer would otherwise do for itself. There will have to be more than one agreement with the underwriting manager because a binder agreement cannot contain anything but the binder relationship. The additional intermediary and administrative services and other services the underwriting manager performs will have to be dealt with separately. That has always been a consequence of the Act wording itself. (2) An underwriting manager can render services as an intermediary as well as perform the binder and administrative services and other services performed for the insurer with one exception. The underwriting manager cannot perform an act the result of which is that another person enters into, varies or renews a policy. This introduces into the new regulations the provision that was previously in s 48(3)(c). The idea is to prevent underwriting managers from marketing policies direct to the public as brokers do. When selling and servicing policies, the underwriting manager is expected to work through a broker (mandated or non-mandated). This seems to be rational as it will avoid consumers being confused in thinking that the underwriting manager acts for them.		Noted - this is correct.

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11	Definitions and Interpretation, regulation 6.1 "underwriting manager"	4.2 The underwriting manager must render intermediary services (other than entering into and servicing policies) "on behalf of an insurer only". This provision used to relate to all the functions of an underwriting manager. Now they only relate to intermediary services. That will not cause any problems in practice because binder services are things that can only be done for an insurer (entering into policies, determining wording and benefits and settling claims). 4.3 The underwriting manager may not be an associate of a mandated or non-mandated intermediary or their representative. An associate is used in the broad sense defined in the FAIS General Code. This provision was, more-or-less, in the previous draft. The idea is to avoid the underwriting manager being part of a group in which there are also brokers. The underwriting manager is expected to be the insurer's agent only. In this provision the word "representative" is used in the sense it is used in the Short-term Insurance Act itself, namely a natural person (other than the insurer's employee) working for the insurer only. This provision was in the previous draft. It is not clear why. If the representative acts for the insurer only and the underwriting manager acts for the insurer only, there does not appear to be any mischief.		Noted. The purpose of the definition of "representative" was to exclude employees from the definition.
2	Definitions and Interpretation, regulation 6.1 "vary"	We understand that some of the activities itemised in this definition go beyond the ordinary meaning of the word "vary" in order to include "denial" or "repudiation"' of a claim which are not defined in the Act. There is a risk that the definition could be challenged as being *ultra vires* to the enabling provisions of s49A. We would therefore recommend that consideration be given to amending s49A itself to ensure that it adequately addresses the activities concerned.	Amend s49A to include the "denial" or "repudiation" of a claim.	Noted. Section 49A/48A is not the subject of amendment. The risk is understood.

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4	Definitions and Interpretation, regulation 6.1(2)(a)	As you are aware, Lloyd's underwriters conduct insurance business in syndicates consisting of one or more Lloyd's underwriters that are managed by managing agents (the legal entity responsible for a syndicate). We are concerned that per the current wording of 6.1(2)(a) and the definition of insurer, a Lloyd's managing agent could be viewed as an insurer with the result that an underwriting manager having a binder agreement with one managing agent could not also have a separate binder agreement with another managing agent in respect of the same class of policies without the written agreement of the managing agents. This would undermine Lloyd's status as a single entity (with all Lloyd's policies being backed by partially mutualised capital and a common rating) and hence would place Lloyd's at a severe competitive disadvantage when compared to other insurers. It would also have a significant detrimental effect on how Lloyd's operates in South Africa where our business tends to be underwritten by underwriting managers that have separate binder agreements with different Lloyd's managing agents in respect of the same class of policies. We assume that this is not the FSB's intention and that, instead, Lloyd's underwriters will be considered a single insurer. By extension we will also assume, unless you indicate otherwise, that 6.1(2)(a) will not apply where an underwriting manager has separate binder agreements with two or more Lloyd's managing agents because they would not be considered two insurers. Furthermore, that where an underwriting manager is, for example, a binder holder for one or more managing agents and wants to be a binder holder for another insurer (i.e. not a Lloyd's managing agent) or *vice versa* then, agreement is required between Lloyd's and the non-Lloyd's insurer.		Accepted. Definition of "insurer" amended to read: "… a short term insurer or any number of Lloyd's underwriters".
4	Definitions and Interpretation, regulation 6.1(2)(a) "… unless all the relevant insurers have agreed thereto in writing."	As a matter of principle, Lloyd's is concerned that the requirement for insurer agreement is in practice uncommercial. Firstly, because it will give rise to an insurer directly or indirectly disclosing commercially sensitive information to a competitor and secondly, because an insurer that already has a binder agreement with an underwriting manager may wish to prevent a competitor from establishing its own relationship with that underwriting manager. Notwithstanding these points of principle, Lloyd's submits that the onus of compliance with the requirement for written agreement to be obtained should be put on the underwriting manager and not on the insurers. It is the underwriting manager who is at the 'hub' and engaging with the insurers for the same policy and it is therefore more logical, commercially acceptable and practicable that the underwriting manager is responsible for obtaining written agreement from its principals.		Not accepted. Requiring written consent is reasonable. The responsibility to comply applies to both insurer and underwriting manager.

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4	Definitions and Interpretation, regulation 6.1(2)(a) "… in respect of the same class of policies"	Lloyd's is concerned that class of policies is very broad and that it will have a significantly detrimental effect on binder holders. It would mean, for example, that an underwriting manager with an existing authority from an insurer to write Attorney PI Insurance could only have a subsequent binder agreement with another insurer to write Medical PI Insurance if the first insurer agrees because each is within the same class of policies, i.e. liability, even though each is a different product. Considering the purpose of 6.1(2)(a), we do not understand how this example could give rise to a conflict. The consequence of 6.1(2)(a) applying to class of policies is that there will be either: a reduction in binder agreements, as insurers refuse to agree, and therefore competition and choice; or where agreement is obtained, an increase in cost to insurers as a result of achieving formal agreement. This cost will inevitably be passed on to purchasers of insurance. Lloyd's maintains that class of policies should be replaced with type of policy, being a type of insurance product within a class of business. In the above example attorneys PI and medical PI would be different product lines. Using this interpretation, a binder holder would be able to act as an agent for different insurers/managing agents in relation to different product lines without the need for agreement between insurers.	We respectfully propose that 6.1(2)(a) is amended to read: "Save amongst Lloyd's underwriters, an underwriting manager who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same type of policy, unless the underwriting manager obtains the consent in writing of all the insurers represented". This would still bind Lloyd's where one insurer is a Lloyd's underwriter and the other is not.	Not accepted. It is too complicated to attempt to define "type of policy". Where different types of policies are to be dealt with by a binder holder on behalf of two or more insurers, it should not be difficult to secure agreement.
11	Definitions and Interpretation, regulation 6.1(2)(a) "… in respect of the same class of policies"	5.1 The restriction on an underwriting manager acting for more than one insurer previously referred to more than one insurer in relation to "certain types or kinds of policies". It now refers to the same "class of policies". A class of policies is very broad and is the classes of policies listed in the definitions in the Short-term Insurance Act (engineering policy, guarantee policy, liability policy, miscellaneous policy, motor policy, accident and health policy, property policy or transportation policy). 5.2 An underwriting manager can act for more than one insurer only with the written permission of each relevant insurer. The reason for this change is not apparent. It will prevent an underwriting manager (without both insurers agreeing) acting as an expert for one insurer in relation to attorneys professional liability and for another insurer in respect of directors and officers liability. As those two types of business are quite different but may be within the expertise of the underwriting manager it is hard to see why the insurers should have the say. This provision does not apply during a period when one underwriting management agreement is being replaced by another but that is simply a practical change.		See comment directly above.
11	Definitions and Interpretation, regulation 6.1(2)(a) "… in respect of the	5.3 A further provision has been added to the requirements for a binder agreement, namely that the agreement must "specify if the binder holder is a non-mandated intermediary or an underwriting manager". There is nothing significant about this change. It is a good idea to state at the outset of a binder agreement whether it deals with a non-mandated intermediary or an underwriting manager.		Noted, no change required.
11		5.4 A further change to the provisions to include lapsing and non-renewal of a binder agreement within the concept of termination is an unnecessary but harmless addition.		Noted, no change required.

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Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
	same class of policies"	5.5 It is further provided that termination of the binder agreement does not prohibit the insurer from limiting or preventing the binder holder from performing acts during the termination period (so that, for instance, a crooked binder holder's functions can be stopped immediately). Similarly the insurer can take reasonable measures to limit risks resulting from binder agreement or its termination. These provisions are rational.		Noted, no change required.
6	Definitions and Interpretation, regulation 6.1(2)(a)	The regulations allow an Underwriting Manager to act for two insurers in respect of the same class of business provided that the Insurers consent thereto in writing. This is problematic in the following respects: 2.2. Insurers could become privy to sensitive information regarding competitors which could result in possible competition issues. 2.3. It could result in anti-selection where the profit share arrangement of the one insurer is less favourable than the other insurer. 2.4. The Underwriting Manager could be placed in a position where a conflict of interest arises because of a possible differential between the extent of profit share between the insurers. This could result in the Underwriting Manager steering business to the insurer that rewards the Underwriting Manager with the higher profit share. This would be undesirable for the following reasons: 2.4.1. The risk of anti-selection against the insurer; 2.4.2. Competition legislation might view such arrangements as collusive.		Not accepted. Requiring written consent is reasonable. The binder holder acts as the agent of the insurer. If the binder holder acts as the agent for more than one insurer simultaneously, the insurers should agree thereto, thereby being able to identify and manage any conflict that may arise.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
6	Definitions and Interpretation, regulation 6.1(2)(a)	2.5. The other difficulty with this section is the phrase "in respect of the same class of policies defined in section 1 of the Act". The STIA defines a short-term policy as: 2.5.1. Engineering; 2.5.2. Guarantee; 2.5.3. Liability; 2.5.4. Miscellaneous; 2.5.5. Motor; 2.5.6. Accident and health; 2.5.7. Property; 2.5.8. Transportation; 2.5.9. A combination of any of the above. 2.6. This classification is important for Short-term return purposes and for reporting and analysis purposes. However these distinctions are almost meaningless in the market where other classifications and distinctions have become more prominent and more important. For example, in the market, policies are considered different where they are aimed at a particular segment of the market. Thus a motor policy aimed at women would be considered different in nature and kind from a policy aimed at commercial fleet-owners.	2.7. The classification in the current section 48 is preferable, viz "a particular kind of short-term policy". We suggest therefore that this is amended.	Not accepted. It is too complicated to attempt to define "type of policy". Where different types of policies are to be dealt with by a binder holder on behalf of two or more insurers, it should not be difficult to secure agreement.
9	Definitions and Interpretation, regulation 6.1(2)(a)	In terms of the Binder Regulations an underwriting manager who is a binder holder in respect of certain classes of policies of an insurer cannot also be a binder holder of another insurer in respect of the same class of policies, unless the insurers have agreed thereto in writing. It is confirmed that there is a distinction between a different "kind or type" of policy and a different "class" of policy. The challenge is that a conflict of interest could arise when a binder holder shops around for the best outsource fee arrangement or place more profitable business with the insurer that pays the best binder fee or underwriting managers that shop around for the best profit share and fee arrangement. Although regulation 6(3)(1) state that the binder fee must be reasonable commensurate with the actual costs of the binder holder to allow freedom of trade the temptation to conduct business with the highest bidder remains a concern. A confidentiality clause in Binder agreements might to a certain extent address this issue. It should also be noted that the content of a Binder agreement is confidential for commercial reasons. Insurers will therefore not normally have sight of binder agreements between underwriting managers and other insurers. Although the Binder Regulations do not state that underwriting managers must obtain written approval it states that insurers must agree to an underwriting manager, who is a binder holder, in respect of the same class of policies in writing. In the event of an underwriting manager that places business of not only the same class of policy but also the same kind or type of policy within a defined class with more than one insurer, anti selection against one of the insurers would be a real risk.	It is acknowledged that the requirement in respect of policies written for multiple insurers in the same class should be retained. In this context, it is suggested that Regulation 6(1)(2) should be expanded to provide that underwriting managers in such circumstance should be required to demonstrate that there is a difference in the kind or type of policies within that class of policies, relating to for e.g. geographical area, sum insured, etc.	Not accepted. There is no reason to impose restrictions where the insurers agree.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
2	Regulation 6.2(1)(a)	The exclusion of any "associate of a mandated intermediary" from being a binder holder could be problematic in bigger group set ups. The scope of the definition of "associate" is very wide. Members have been requested to send any specific examples to the FSB directly.		Agreed. The Regulations have been amended to state that a non-mandated intermediary that is a binder holder may not conduct any business with a mandated intermediary that is an associate of that non-mandated intermediary, and that an underwriting manager may not do any business with a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary (or an administrative FSP, in respect of the Long-term Regulations) that is an associate of that underwriting manager. However, the Regulations allow the Registrar, on application from an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(2) or (3), to exempt that insurer and non-mandated intermediary or underwriting manager that is a subsidiary or associate of that insurer from regulation 6.2(2) or (3), if the Registrar is satisfied that no conflict of interest or potential conflict of interest exists.
5	Regulation 6.2(1)(a)	The exclusion of any "associate of a mandated intermediary" will be problematic in bigger group set ups. The scope of the definition of "associate" is very wide. If any mandated intermediary exists in a group of companies, the insurer in the group may not turn to (or establish) any other non-mandated intermediary in the group to render binder services, even where the actual intra-group relationships may be so remote that no actual or perceived conflict of interest arises. This may lead to absurd results. SEE EXAMPLE PROVIDED BY COMMENTATOR ON LAST PAGE We submit that the FAIS Conflict of Interest provisions, including the general prohibition to avoid circumvention through the use of associates, are already adequate to limit conflict risks in these situations, and that the outright prohibition of these intra-group relationships is not warranted. Alternatively, we recommend that a similar approach to that of FAIS be adopted, viz, that a general obligation to avoid conflicts of interest, and a prohibition on the use of associates to seek to circumvent the Binder Regulations, be included.	Either: Delete the words "that is not an associate of a mandated intermediary"; Or: Delete the words "that is not an associate of a mandated intermediary"; and Insert a new provision in the Regulations (possibly as 6.2(6)) worded along the following lines: "An insurer and a binder holder must, in connection with any binder agreement, ensure that they avoid and, where this is not possible mitigate, any actual or potential conflict of interest between the insurer, the binder holder, any of their associates, and/ or any policyholder or potential policyholder."	See comment directly above.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
7	Regulation 6.2(1)(a)	We acknowledge that the challenge around co-insurance and other concerns have been addressed by an amendment to Regulation 6.1(2) that now allows an underwriting manager who is a binder holder of one insurer to also be a binder holder of other insurers provided the other insurers involved consent thereto in writing. However, we are concerned that this may in certain circumstances create a conflict of interest. The regulations allow insurers to pay underwriting managers a profit share which creates the potential for different profit share offerings by different insurers. This in turn may create a conflict of interest in the event that the underwriting manager is tempted to steer business towards the insurer offering the most attractive profit-share arrangement. This is surely not the intention of the FSB.		Not accepted. It is too complicated to attempt to define "type of policy". Where different types of policies are to be dealt with by a binder holder on behalf of two or more insurers, it should not be difficult to secure agreement.
8	Regulation 6.2(1)(a)	An underwriting manager can act for more than one insurer only with the written permission of each relevant insurer. The reason for this change is not apparent. It will prevent an underwriting manager (without both insurers agreeing) acting as an expert for one insurer in relation to attorneys professional liability and for another insurer in respect of directors and officers liability. As those two types of businesses are quite different but may be within the expertise of the underwriting manager it is hard to see why the insurers should have the say.		Not accepted. Requiring written consent is reasonable. The binder holder acts as the agent of the insurer. If the binder holder acts as the agent for more than one insurer simultaneously, the insurers should agree thereto, thereby being able to identify and manage any conflict of interest that may arise.
5	Regulation 6.2(2)(e)	It is not clear why the fees payable in respect of a binder agreement must specify the Rand value payable in respect of each policy. We therefore propose that the regulation be simplified to read as suggested.	Amend sub-regulation (2)(e) to read: "specify the basis on which the remuneration or consideration, contemplated under regulation 6.3, will be calculated."	Not accepted. It is preferable that the Rand value should be specified upfront, only where this is not possible (and the insurer will have to motivate same to the Registrar on request) should the basis of remuneration be specified.
5	Regulation 6.2(2)(e)	It must be noted that fees payable will have to be "determinable" with reference to the agreement, otherwise the contract may be void for vagueness.	Amend sub-regulation (2)(e) by deleting "… if the Rand value is not fixed or determinable on entering into the agreement, the basis on which the remuneration or consideration payable will be calculated" and replacing with: "… the Rand value of the remuneration or consideration contemplated under regulation 6.3 payable by the insurer to the binder holder and/or the manner in which the remuneration or consideration payable will be calculated".	See comment directly above.
5	Regulation 6.2(2)(f)	It is not clear what disclosure can be required in respect of the specific actions contemplated in subparagraphs (ii) to (v). We propose that the regulation be simplified to read as suggested. We believe that the proposed amendment will make it clear that the duty to disclose remains with the insurer, but that the binder holder may be contractually bound to make certain disclosures on the insurer's behalf. We believe that the proposed amendment will also cover the disclosure of fees prescribed in regulation 6.3(5).	Amend sub-regulation (2)(f) to read as follows, and delete paragraphs (i) to (v): "specify that the binder holder must effect all the disclosures which the insurer would legally have been obliged to make to a policyholder, but for the binder agreement."	Not accepted. The insurer must specify what the binder holder needs to disclose.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
5	Regulation 6.2(2)(h)	There is no requirement in the Act or Regulations which obliges the insurer to monitor the binder holder's performance. The wording "provide for the manner in and means by which the insurer must monitor the binder holder's performance …" is accordingly anomalous.	Amend sub-regulation (2)(h) to read: "provide for the right of the insurer to inspect, audit and monitor the binder holder's performance under and compliance with the binder agreement and the manner in and means by which such rights may be exercised".	Not accepted. The wording is clear.
2	Regulation 6.2(2)(k)	The requirement that the binder holder update policyholder and policy information in the insurer's records every 60 days is impractical and unduly onerous, particularly for group business which is updated by the insurer on an annual basis. Regulation 6.2(2)(j) already provides for the insurer to have continued access to policyholder and policy information. It is submitted that a requirement for quarterly updating would suffice.	Replace the words "60 days" with "3 months".	Partly accepted. The period of 2 months has been extended to 3 months under the Long-term Regulation because of the nature of long-term insurance.
1	Regulation 6.2(2)(n)	Clause 6.2 (2) (n) read in conjunction with 6.2 (3) (a) (b) appropriately provides for termination and run-off. however, when read in conjunction with 6.1 (2) (a) (b), there is a distinct lack of clarity, in particular as it may refer to atypical business such as Guarantee business, Contractor's All Risk insurance, Erection All Risks insurance business and occasional other non-life insurance policies where the run-off period of a policy could, practically and theoretically, continue for up to 72 months. In such a situation, the UMA will he responsible for such run-off and could be particularly involved in 'settling a claim' with the occasional possibility of the need to 'vary a policy'. It would be beneficial that in such circumstances, where two insurers may well he involved, that the wording/s of 6.1 (2) or 6.2 (2) (n) or 6.2 (3) be appropriately worded to cater for these circumstances and to ensure that there is no contradiction or conflict in the phraseology so that appropriate outsourcing continues during such run-off period.		Not accepted. The insurer is responsible for the run-off of policies. The 90-day period refers to the minimum termination period; the period may be longer.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
5	Regulation 6.2(2)(n)	As presently worded, an insurer would not be able to terminate a binder agreement notwithstanding the fact that the binder holder is in breach of a number of obligations imposed by the Binder Regulations. We do not believe that it is desirable to prevent an insurer from terminating a binder agreement under circumstances where, for example, the insurer discovers that the binder holder is conducting the business in a fraudulent or other unlawful manner. We therefore propose that Regulation 6.2(2)(m) and (n) be amended as suggested.	Amend the opening sentence of sub-regulation (2)(n) to read: "Provide for a notification period of termination, which shall be at least 90 days, in all cases where the agreement is terminated for reasons other than material breach, the insolvency or liquidation of the binder holder or the binder holder being placed under curatorship."	Not accepted. The rationale for the provision has been addressed in the explanatory memorandum and the Registrar's responses to the previous round of comments.
5	Regulation 6.2(2)(o)	It is difficult to see how the agreement can provide for "continuity of service" under the listed circumstances. The aim is presumably to ensure that there is continued service to the policyholders and this would require the insurer to be able to step in, obtain information and documents and take over the binder services or outsource them to another service provider.	Amend the first part sub-regulation (2)(o) to read "ensure the continuity of services to the policyholders by the insurer if the binder agreement is terminated. "	Not accepted. Continuity of services relates to more than services to policyholders only.
5	Regulation 6.2(4)(a)	In practice, this limitation is difficult to interpret, as it is not always clear which matters could be regarded as "incidental" to the binder functions, which could lead to inconsistency of approach. For example, some binder holders, in addition to performing one or more of the binder functions, also collect and reconcile the premiums relating to the policies in relation to which the binder functions are performed. It would be impractical to have a separate agreement with the binder holder to regulate the collection and reconciliation of premiums. We submit that it would be more sensible to require that binder functions be clearly "ring-fenced" as such in a clearly identifiable part of the agreement between the parties, rather than be dealt with in an entirely separate agreement.	Reword sub-regulation (4)(a) as follows: "Where any binder agreement forms part of an agreement regulating any other arrangement or relationship between the insurer and the binder holder, then irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential on such other arrangement or relationship, the provisions of the agreement dealing with the matters referred to in section 49A of the Act, this Part and matters incidental thereto must be clearly and separately identifiable and distinct from any other provisions of such agreement."	Not accepted. Only binder functions must be dealt with in the agreement. The ordinary meaning of "incidental" applies.
5	Regulation 6.2(5)	The rationale of the regulation is presumably to ensure that the policies issued are actuarially sound and this regulation must accordingly be linked to this concept and should not have application in respect of pure investment/sinking fund policies. It is accordingly submitted that the subparagraph be amended to make it clear that it only pertains to risk benefits; i.e. benefits payable upon the happening of the insured risk and not to the benefits payable upon maturity of a policy.	Amend sub-regulation (5) by inserting the words "in accordance with the provisions of section 46 of the Act" after the words "discretion of the binder holder". Amend sub-regulation (5)(a) by replacing the word "policy" with "risk" before the word "benefits" in the first line and inserting the words "for risk benefits" before the words "that may be settled.	Accepted. The Long-term Regulations have been amended to also limit discretion in respect of any guarantee of policy benefits that may be provided for under an investment policy as defined in Part 3A of the Regulations.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
2	Regulation 6.2(6)	Although s49A(1)(a) does refer to "renewal" of a policy, it should be noted that long-term policies are not renewed. However, a policy may, depending on the terms of the policy, be reinstated. It is accordingly suggested that under part (a) the term "reinstate" is used instead of "renew" as long term policies are not renewed.	Replace in part (a) "renew" with "reinstate".	Accepted. Definition of "renew" amended.
5	Regulation 6.3(1)	The reference to "reasonably commensurate with the actual costs of the binder holder" is problematic. Surely binder holders who are more business efficient should not be penalised because their actual costs of rendering the services are less? The fee should rather be reasonably commensurate with the services being rendered. This would also be consistent with the approached adopted to permissible payments for services rendered in terms of the FAIS Conflict of Interest provisions.	Amend the sub-regulation (1) to read: "reasonably commensurate to the services being rendered under the binder agreement."	Not accepted.
7	Regulation 6.3(1)	We repeat our concern that because Regulation 6.3(1) provides that the binder fee must be reasonably commensurate with the actual costs of the binder holder and that allowance must be made for a reasonable rate of return for the binder holder, the industry is left with parameters that are far too vague and will prove virtually impossible to monitor and enforce. Furthermore, to render the binder fee commensurate with the actual cost incurred by the binder holder will in all likelihood result in operational inefficiencies because there is no objective standard involved. It would appear that the FSB is hoping that the free market will keep the binder fee reasonable and fair but we are of the very firm view that, given the temptation to direct business to the highest bidder, the free market will fail in this. SEE EXAMPLE PROVIDED BY COMMENTATOR ON LAST PAGE	We propose, as a possible solution to this challenge, that the FSB caps the binder fee payable per binder function. We are of the view that this will ensure that the binder holder will receive the same or similar binder fee per binder function regardless of which insurer is involved.	Not accepted. Setting fees may result in unintended consequences. The desired outcome will be a combination of appropriate governance, disclosure and monitoring.
5	Regulation 6.3(5)	The binder functions contemplated in section 49A pertain to services ordinarily performed by the insurer itself. It is not clear why it is deemed necessary that the fees payable under any such agreement need to be disclosed to policyholders, bearing in mind that the policy fees and levies payable by a policyholder will be set out in the policy contract.	Delete subparagraph (5).	Not accepted. Section 49/48(2)(h)(i)(bb) requires disclosure to policyholders of any remuneration payable to that person in terms of an agreement contemplated in this section.

REGULATORY RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE PROPOSED LONG-TERM AND SHORT-TERM INSURANCE BINDER REGULATIONS				
Commentators	**Regulation**	**Comment**	**Commentator recommendation**	**Regulatory response**
5	Regulation 6.3(4)	In view of our recommended changes to regulation 6.2(n), we propose that regulation 6.4 be amended to also provide for notification to the Registrar upon the termination of a binder agreement on grounds of material breach, liquidation or sequestration, etc.	Amend regulation 6.4 by inserting the words: "upon the immediate termination of a binder agreement on the grounds provided for in subregulation 6.2(n) …" before the words "60 days". Sub-regulation 4(a) must accordingly be amended to read "on the date on which the binder agreement has terminated or will terminate."	Not accepted. The rationale for regulation 6.2(n) has been addressed in the explanatory memorandum and the Registrar's responses to the previous round of comments.
11	Regulation 6.5	The requirements that the insurer must give notice pending termination of the binder agreement has been changed from 30 days before termination to 60 days before termination. That should be easily met and needs no comment.		Noted. No change required.
3	Regulation 6.6 Transitional arrangements	Although the transitional arrangements provide one year for the alignment of agreements, they do not allow any time for correcting the company structures that resulted in those agreements.	We suggest the following amendment: "Any agreement, company structure or shareholding entered into or concluded before …"	Not accepted. Company structures and shareholding will have to change to ensure a lawful binder agreement. These must therefore change within the 1 year period.
1	STIA S48A.(3)(a)	We submit that there should be a clear differentiation insofar it relates only to Guarantee business as governed by the Short-term Insurance Act. The underwriting of Guarantee business involves substantial ongoing and continuous monitoring such as onsite construction monitoring activities as well as monthly and quarterly monitoring of projects and contracts, coupled with financial monitoring on a monthly and quarterly basis to ensure continued financial viability of contractors andlor insured clients. The non-risk costs should be continued to be permitted as separate charges and not form part of the gross premium.		These fees should be included in the binder fee.
8	STIA S48A.(3)(a)	Costs that do not relate to the risk insured should be charged as separate and disclosed costs. Although the insurer is able to include in the gross premium most costs associated to a policy, non-risk costs should rather be disclosed as separate line items added to gross premium, as is the current practice. These additional costs should not be included in the gross premium as they increase the cost of the policy for the consumer: Brokers will earn commission and reinsurers will get higher reinsurance premiums on a gross premium that has been inflated by costs that are not risk related. Lumping these costs into gross premium is prejudicial to the consumer and the commission is inflated adding to the cost of the insurance. If costs are added and disclosed as separate line items it gives the consumer the right to know why he/she is paying certain costs and what the true risk premium is. This also gives the consumer the opportunity to negotiate costs and compare risk premium between insurers.	SAUMA therefore submits that the National Treasury in conjunction with the Financial Services Board should include in the regulations that non-risk costs such as debit order costs should be allowed be charged as separate line items and not included in gross premium.	The Act states that a binder agreement may not authorise that other person to add an amount to any gross premium unless the regulations provides otherwise. After consideration of the issue, it was concluded that it would not be appropriate to provide in the regulations for any additions to gross premiums or deductions from claims in respect of policies referred to in binder agreements, as all costs associated with the policy should be determined by the insurer and included in gross premiums.