



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



Financial Sector
Conduct Authority

**COMMENTS MATRIX:
COMMENTS SUBMITTED ON THE SOUTH AFRICA RETAIL BANKING DIAGNOSTIC
DECEMBER 2018**

List of commentators

Organisation		Comment submitted by
1.	Payments Association of South Africa	Charl Ackerman
2.	Ombudsman for Banking Services (OBS)	Reana Steyn
3.	Private individual	Goolam Kolia
4.	Association of Black Securities and Investment Professionals (ABSIP)	Asief Mohamed
5.	Actuarial Society of South Africa (ASSA)	Niel Fourie
6.	University of Stellenbosch Law Faculty: Post Doctorate Fellow	Wentzel Oaker
7.	Office of the Ombud for Financial Services Providers (FAIS Ombud)	Melani Winkler
8.	Information Technology Consultants (Intercon)	Riaan de Swardt
9.	Black Sash	Hoodah Abrahams-Fayker
10.	Banking Association of South Africa (BASA) [comments included as annexure]	Marguerite Jacobs

COMMENTS SUBMITTED AND RESPONSES

No.	Commentator	Comment	Response
Product Design			
1.	OBS	<p>Unfair product terms:</p> <p>This office regularly receives complaints relating to potentially unfair clauses in the banks' terms and conditions. Specifically, relating to those clauses relating to the limitation of liability, exclusion, indemnity, or assumption of risk.</p> <p>It has often been our experience that these clauses are not highlighted and specifically drawn to the customer's attention. The clauses relating to the limitation of liability, exclusion, indemnity, or assumption of risk, need to be highlighted and specifically brought to the customers attention. The customer must initial next to the specific clause, or take some action that has a similar effect, thereby confirming that the specific term/condition was brought to his attention at the time of contracting.</p> <p>The pricing guide of the account must also be provided to the customers and it should not be the customers responsibility to obtain the pricing guide for his/her accounts via an online platform etc.</p>	<p>Noted.</p> <p>The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p>
2.	G Kolia	<p>To read and decide on a favourable bank charge according to their Price list one needs to be a rocket scientist because it's so complicated. Eventually one just have to go with the flow because of the helplessness.</p> <p>A simple test would show that even the staff and the Manager at the bank don't know which pricing to choose.</p>	<p>Noted.</p> <p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of</p>

		<p>We need to have only one bank account to simplify things. The transaction account, The Savings account, the Credit card, 32 day call, etc should all be incorporated into one. It should then have a percentage for bank charge per transaction. It should incur interest on credit balances. The rate of interest can be scaled with the amount of balance in the account.</p> <p>With so many account products, the banks are creating unnecessary work and management and frustrates the consumer. They also keep changing the products.</p> <p>If it's simplified everyone will open an account, deposit the money, receive interest or pay basic charges for any withdrawal. The economy would then grow with all the money in formal circulation. It would reduce robberies of cash.</p> <p>Opening of bank accounts should be simplified. Many staff have to be paid cash because they regard the bank charges too high at withdrawal. Paying cash increases the risk for the employer.</p>	<p>product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p> <p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p>
3.	W Oaker	<p>To what extent will Treasury/FSCA promote/create or incentivize competitive cost reduction in a highly concentrated SA banking sector?</p> <p>I. This conflicts with the "four pillar" policy (fostered by former Governor Tito Mboweni) and the maintained high barriers to entry with the FSRA 2017.</p> <p>II. It is well documented/researched that product packages are difficult for customers to understand, and customers cannot easily cross-check and verify product costs and benefits (the</p>	<p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p>

		<p>slides highlight that previous efforts to achieve this have not worked); and</p> <p>III. Despite obvious weaknesses such as conflicts of interest, excessive fees charged and lack of transparency it is not obvious that transparency only will be sufficient.</p>	
4.	FAIS Ombud	<p>Transactional accounts:</p> <p>Consideration was given to TCF outcome 2, which provides that products and services marketed and sold in the retail market, must be designed to meet the needs of identified customer groups and be targeted accordingly. The most vulnerable remains the middle and low income earners.</p> <p>The only manner in which it can be concluded that a product met the needs of an identified person, is when there was compliance with section 8 (1) of the General Code of Conduct, which provides that an FSP should take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice. An analysis should be conducted for purposes of the advice, based on the information obtained in order to identify the financial product most appropriate to the client's risk profile and financial needs.</p> <p>In addition, banks should be required to provide evidence of all the facts and criteria considered in the process of formulating such products, determining the relevant market segment, the needs of such market segment, the benefits to be provided by means of the product created and how such benefits addresses the needs of the segment of consumers identified.</p>	<p>This is well noted, and will feed into further research that FSCA will undertake, regarding customer needs in relation to transactional accounts. This research will inform any product standards that may be developed, to ensure that bank products are meeting the identified needs of consumers when designed and sold.</p>

		<p>Similarly, records should be kept of the criteria informing the pricing of such products and evidence of a managing executives sign-off on such pricing and product.</p> <p>The more complex the products are, the greater the need for FSP's to ensure that their clients have a proper understanding of the products, as well as the relevant terms and conditions, as provided for in section 3 (1) of the Code. The practice of using fine print t's and c's forming part of a bundle of documents required to be signed by consumers when applying for the banking product, remains a practice that facilitates the banks' need for comprehensive documenting and record keeping but is questionable when approached from the standpoint of whether same meets the needs of the consumer in understanding the products and its material terms and conditions.</p> <p>Since a transactional account qualifies as a financial product in terms of the FAIS Act, this Office should have the mandate to deal with complaints arising from any failure to comply with the Code. This Office however see very little complaints in this regard. We believe a lot more can and should be done by banks to inform consumers of their rights to approach this Office where they have any such complaints in this respect.</p>	
5.	FAIS Ombud	<p>Fixed deposits:</p> <p>This Office is already mandated to deal with complaints relating to fixed deposits, as provided by the Act and the Code of Conduct on Short Term Deposit business. Again, consumers being made aware of this needs to be addressed by imposing an obligation on the banks to do so</p>	<p>Noted. The FSCA will establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard, including disclosures in relation to complaints</p>

6.	FAIS Ombud	<p>Product complexity:</p> <p>The bundling of account and services fees makes it difficult for customers to draw a comparison on their own about the suitability and affordability of products. Ideally, consumers should be in a position to "compare apples with apples", and where they are unable to do so, to call on advice from a representative from the bank. This strengthens the argument that advice is essential to the rendering of financial services in respect of banking products.</p>	<p>This is noted, and will feed into further research that FSCA will undertake, regarding customer needs in relation to transactional accounts. This research will inform any product standards that may be developed, to ensure that bank products are meeting the identified needs of consumers when designed and sold</p>
7.	FAIS Ombud	<p>Pricing:</p> <p>Consumers might also not be aware that in terms of pricing of products, that there is a difference between ATM and over the counter withdrawals and the associated costs. Often, the industry loses sight of the fact that a person may have no other choice due to safety and security to do withdrawals over the counter. Such a consumer would then be penalised with higher fees due to no choice of their own. It is imperative that more be required by banks in this respect to advise consumers on the choices available and the different pricing structures that would apply, as this can only result in more informed decision making.</p>	<p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p>
8.	Intercon	<p>Unfair fees:</p> <p>For a general background, the BankservAfrica monthly EDO Payment Stream Analysis Industry for September 2018 should be consulted. (Annexure included in submission).</p> <p>For September 2018, the analysis clearly reflects:</p>	<p>This is well noted. The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations and inputs made in this regard.</p>

		<ul style="list-style-type: none"> • 527 701 (amounting to 24.94%) of AEDO transactions submitted were unpaid; of which 498 231 of the unpaid AEDO transactions were due to insufficient funds.¹ • 3 316 948 (amounting to 22.54%) of NAEDO transactions submitted were unpaid; of which 2 880 926 of the unpaid NAEDO transactions were due to insufficient funds.² <p>Consumers in the lower Living Standards Measure (LSM) are over-exposed and are unable to settle their creditors on time on a fixed monthly basis. The last six months of statistics included strongly reflects this statement. As a result, it is proposed that a basic bank account be developed with the knowledge that unpaid debits would be common occurrence in such an environment.</p> <p>It is a misconception that a charge for an unpaid debit order can be motivated as a “form of penalty”.</p> <p>Banks do not incur any other additional costs to process an unpaid debit order vs a paid debit order. Banks have to present the debit against the account. The outcome is either successful or unsuccessful due to insufficient funds. There is no justification to charge a fee for an unpaid debit order that is different to the fees charged for a successful debit order transaction, as the processing are no different on the bank platforms.</p> <p>During September 2018, the EDO paying banks charged an unpaid EDO debit order fee for 3 379 157</p>	
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¹ Pages 4&6

² Pages 9&11

		<p>cases due to insufficient funds. These charges have become a significant additional income for banks.</p> <p>Intecon is of the opinion that, not only should the charge of an unpaid debit order be reconsidered, but also when such a charge may be levied.</p> <p>Tracking has become a feature of all modern payment systems and will be supported in the AC or DebiCheck payment streams. An unpaid debit order fee should only be chargeable at the end of the tracking cycle if the debit was unpaid and not during the tracking cycle. If the debit was paid during the tracking cycle, only a successful fee may be charged.</p> <p>Intecon is of the opinion that banks who charge an unpaid fee on the first day of the tracking cycle are exploiting the bank account holders; especially where the debit was paid during the tracking cycle and an additional fee for the successful debit was also charged.</p>	
9.	Intercon	<p>Basic transactional account:</p> <p>Intecon is of the opinion that the South African population must have a basic transactional bank account that supports the following features:</p> <ul style="list-style-type: none"> • Accepting of electronic debits and credits, including cash deposits • A card and PIN linked to such an account, allowing ATM withdrawals on the national ATM network as well as performing POS purchases and Cashback at POS transactions • No automatic overdraft facility; all transactions are honoured through available funds. 	<p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>This input is valuable and will be considered in this regard.</p>

		<ul style="list-style-type: none"> • Remote access to the bank account. Remote access must be supported through the internet, using https protocol, regardless of whether a personal computer or a phone with internet access is being used. It is irrelevant for banks to distinguish between internet banking and cellular banking. • Remote access is a feature of a basic transactional account, even though it is not utilised by some account holders. • A basic transactional bank account is not linked to income ranges. Any branding of a basic transactional bank account designed for “low income” or “middle income” accountholders will fail. <p>A basic transactional bank account is what it portrays: Access to the NPS, the latter regarded as a national asset. The fees to operate a basic transactional account must reflect the principle of “Access”.</p>	
10.	Black Sash	<p>Unfair terms and conditions:</p> <p>Even though the national payment system of social grants has transitioned to a state-led hybrid model with a ring fenced bank account; Black Sash is gravely concerned that the Net1 and its subsidiaries continue to be directly involved in the social grant space with the EPE (Easy Pay Everywhere) card.</p> <p>Currently there are 2.1 million beneficiaries who have EPE cards. These beneficiaries are deemed to be commercial bank customers. There are an additional 2.1 million beneficiaries who receive their grants in their personal bank accounts. We are therefore concerned about the fact that a significant number of beneficiaries will still be exposed to the detrimental marketing practices associated with the EPE account.</p>	<p>Noted. The following two processes aim to address the issues highlighted in this comment:</p> <p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers, including low income and vulnerable customers.</p> <p>The FSCA will also establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations and inputs made in this regard.</p>

		<p>With the termination of the contract between SASSA and CPS, resulting in CPS no longer administering social grants, there have been vigorous marketing ploys (by CPS/Net1) to encourage beneficiaries to use of the EPE card to receive social grants to beneficiaries. In effect, Net1/CPS used their privileged position vis-à-vis beneficiaries to manipulate the transition process to their benefit. This is illustrated in the EPE media release, dated 01 October 2018 [included in full comment]</p> <p>The SASSA and EPE accounts and bank cards are subject to user terms and conditions which for practical purposes are identical. These terms and conditions are an illustration of vague and biased conditions, not favouring the customer.</p> <p>Black Sash therefore appreciates that the report acknowledges that there are potentially unfair terms and conditions which have broadly phrased and vague clauses, invariably favouring the bank rather than the customer. Social grant beneficiaries would not necessarily understand the implications of such terms and conditions and the possible implications for them.</p>	
11.	Black Sash	<p>Preference for cash:</p> <p>In the investigation of transactional accounts for low-income customers, your findings revealed that at the entry level of the market there remains a great propensity for cash.</p> <p>Both industry participants and a civil society organization (being Black Sash), noted in discussions that there remains a preference, and often a need, for</p>	<p>Noted. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers, including low income and vulnerable customers.</p>

		<p>low-income account holders to access cash from their transactional accounts.</p> <p>Black Sash's experience with grant beneficiaries is similar, where there is a preference to transact in cash. The reasons for that is inter alia that because they have limited access to electronic banking facilities, have no/limited resources to access the internet and are not educated technologically. Some religious and/or cultural belief encourages beneficiaries to receive their full grant in cash.</p> <p>In terms of your report you noted that a civil society organization (being Black Sash) also noted that the cost of using ATMs, particularly out-of-network ATMs, tends to contribute to the propensity of low-income customers to make a single withdrawal.</p> <p>A reluctance to use electronic channels may also be driven by lack of access.</p> <p>In our community-based monitoring over the past six months with the transition to SAPO, beneficiaries urged Black Sash to advocate for cash to remain a payment method for beneficiaries.</p> <p>While Black Sash accepts that SASSA has a responsibility (as per global best practice) to assist in the move to electronic payments; SASSA must ensure due consideration must be given to the lived realities of beneficiaries and provide support with resources and infrastructure, address the need to educate beneficiaries towards establishing local digital payment systems and to involve all responsible parties to achieve this in order for grant beneficiaries to have</p>	
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		opportunities at a lower cost, more convenience and with dignity.	
Product offer and sale			
12.	OBS	Our office also regularly receives complaints where the customers have not been provided with the terms and conditions of an account, in particular where the agreement has been concluded telephonically or online. It is our view that the bank must ensure that the customer is provided with a copy of the terms and conditions of the account and that the key features of the terms and conditions must be set out in a separate document which must be provided to the customer.	The FSCA will establish a workstream on improving disclosure requirements in relation to bank products, including when and how disclosure of pertinent information is made; this workstream will advise on how best to take forward all recommendations made in this regard
13.	ASSA	<p>Customers should be Appropriately informed:</p> <ul style="list-style-type: none"> • Before • During, and • After the time of contracting <p>Advice must be suitable and consider the customers circumstances. In short, advice should be useful. There is a need for meaningful comparisons.</p> <p>Significant work is needed in terms of TCF. There are limitations that apply to the FAIS Act which relates to advice defined in terms of the Act and not to products more generally. For example, banks in general believe that it does not extend to transactional products. Where accounts are opened without advice it is deemed to be regulated by the Register of Banks and not the FSB. There is therefore potential for regulatory arbitrage.</p>	<p>Noted. The FSCA will establish a workstream on improving disclosure requirements in relation to bank products, including when and how disclosure of pertinent information is made; this workstream will advise on how best to take forward all recommendations made in this regard.</p> <p>The proposed Conduct of Financial Institutions (COFI) Bill will also aim to address regulatory inconsistencies and ensure similar requirements are imposed on similar activities, regardless of the entity performing the activity.</p>
14.	ASSA	<p>Advertising:</p> <p>Advertising should not be misleading or include false information. Further, advertising should not omit</p>	The FSCA will establish a workstream on improving disclosure requirements in relation to bank products, including ensuring that disclosure is useful to the customer and

		<p>information important for decision making. Exception fees are a common cause of both complaints and adverse findings against FSPs. The abuse of the term FREE in respect of some bundled services was identified as an issue where the bundle had a fee and the “FREE” service was costed into the bundle.</p> <p>On recommendations on advertising (<i>The COFI/FSR Laws should explicitly address advertising and marketing practices for all financial products (including transactional accounts), building on the relevant provisions in the FAIS Legislation and addressing any potential gaps as to their coverage as noted above.</i>)</p> <p>While we support the sentiment, we question the practicality of a rules-based approach. The feasibility of a principle-based approach should be further explored. The balance between advertising and education needs to be further explored. How do we improve education alongside allowing free but fair advertising?</p> <p>Is there an opportunity to create meaningful benchmarks to assist the consumer to make comparisons, e.g. the UKs APR benchmark for total cost of lending? A possibility is to identify customer segments and then develop comparative benchmarks.</p>	<p>supports comparability; this workstream will advise on how best to take forward all recommendations made in this regard. Implications for advertising will also be considered in this workstream.</p>
15.	ASSA	<p>Disclosure:</p> <p><i>“The COFI/FSR Laws should establish a comprehensive disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and rights and recourse for transaction and fixed account deposit products.”</i></p>	<p>Noted. The FSCA-led workstream on improving disclosure requirements in relation to bank products will consider how best to take forward all recommendations and inputs made in this regard.</p>

		<p>We support this recommendation. The COFI/FSR Laws should clearly enumerate the product features and pricing elements of a transactional account and fixed deposit that should be disclosed during the shopping and pre-contractual or contract-formation stages.</p> <p><i>In order to be sustainable measures must be implemented to ensure that legislation does not lag product innovation. Product terms and conditions should disclose in clear, accessible language key contractual matters and related rights.</i></p> <p>We support this recommendation. A mechanism is required to police this.</p> <p><i>The COFI/FSR Laws should also establish key parameters for the manner in which information on transactional accounts and fixed deposits is disclosed.</i></p> <p>We support this in principle.</p> <p><i>The COFI/FSR Laws should also define when banks are required to provide their customers with key information, and how disclosure requirements may vary across stages of the product life cycle.</i></p> <p>We support this.</p> <p><i>Requiring account providers to post standard customer agreements prominently on their websites and notifying the FSCA when revisions are made should also be considered.</i></p> <p>We support this but question how the material segments of the population without access to the internet can also access this information.</p>	
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		<p><i>The COFI/FSR Laws should allow for key contractual disclosures to be made in electronic format.</i></p> <p>We support this noting further that electronic communications enable better searching within documents.</p> <p><i>Consistently with the approach of South African authorities in relation to other financial products and with international good practices, the COFI/FSR Laws should require provision of a standardized short-form disclosure document to summarize key product features, pricing, and terms and conditions of transaction and fixed deposit accounts discussed above.</i></p> <p>We support this but question its content and updating.</p> <p><i>The regulator should develop the KFSs through in-depth consumer behavioural research and consultation with industry stakeholders.</i></p> <p>The role of professions in this regard should be both encouraged and formalized.</p> <p><i>Verbal communication should be mandated in some circumstances, particularly for customers with limited education or literacy.</i></p> <p>Verbal communication should always be available when requested and compulsory in the case of the illiterate and when documents are not available in the customer's home language.</p>	
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		<p><i>Given the complexity of pricing bundles for transactional accounts in South Africa, the authorities should consider the feasibility of including in KFSs an overall cost indicator based on standard or sample usage patterns.</i></p> <p>We support this and note the value that actuaries can add in providing experience/ usage investigations and benchmarks.</p> <p><i>South African authorities should consider establishing standards for disclosing or explaining interest rates and calculations on fixed deposit accounts in a simplified manner.</i></p> <p>We support this.</p> <p><i>Language requirements should apply for key customer-facing documentation related to transaction and fixed deposit accounts.</i></p> <p>We support this.</p> <p><i>Given the apparent lack of success in implementing effective and accessible product-comparison tools, the authorities should consider establishing or supporting the establishment of a centralized website and related tools that facilitate easier product comparison on comparable features, prices, and terms of transaction and fixed deposit accounts.</i></p> <p>We support this proposal. A mechanism for simplification and comparison would probably have to be iteratively derived.</p>	
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		<p><i>The CBP should be revised to reduce the onus on customers to request key information, remove unnecessary and ambiguous caveats, and include disclosure of dispute-resolute mechanisms.</i></p> <p>We support this recommendation. Efforts should be undertaken to raise awareness among consumers of the CBP. We support this recommendation.</p>	
16.	ASSA	<p><i>The COFI/FSR Laws should build on and extend the approach taken in the FAIS Legislation with respect to sales practices.</i></p> <p>We support this recommendation. Further, metrics to measure compliance should be developed, e.g. NTU and churn measures as a proxy for mis-selling.</p> <p><i>Building on current FAIS Legislation requirements, the COFI/FSR Laws should establish principles for compensation of frontline sales staff and agents to limit consumer risks.</i></p> <p>We support this recommendation. As a minimum some customer experience measures should be included as should penalties for mis-selling.</p> <p><i>The ongoing efforts under the Retail Distribution Review to establish an activity-based approach to intermediary services should establish clear, proportional rules governing relationships between banks, third-party agents or intermediaries, and consumers with respect to transaction and fixed deposit accounts.</i></p> <p>We support this recommendation.</p>	<p>Matters raised in relation to this recommendation will be partly addressed in the banking conduct standard being drafted by the FSCA. The FAIS Code is also being strengthened. The FSCA will also assess RDR through a more specific banking lens.</p>
17.	FAIS Ombud	<p>Access:</p>	<p>Noted. The FSCA will undertake further research into customer needs in relation to</p>

		There is a lack of appreciation for the constraints that the lower income earners face when it comes to electronic banking. There is no real indication that affordability in respect of fees outweighed a consumer's preference to still visit a branch to do banking. Lack of access to electronic means of communicating is still a reality in many communities.	transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers, including vulnerable customers and those in the low-income segment.
18.	FAIS Ombud	<p>Language:</p> <p>The language used by banks in documentation and contracts, are still "old school" and often do not keep up with the requirements of plain and simple language. This would mean that many consumers do not understand the terms and conditions of complicated contracts like home loans for example. The use of technical jargon only exacerbates the problem. In line with this, the use of white-labelling also complicates matters further. In this respect in particular, the practice of credit cards issued from an organisation, but the banking services relating thereto being provided by one of the registered banks needs to be considered and greater protection afforded to consumers in such instances.</p>	<p>Noted. The FSCA will establish a workstream on improving disclosure requirements in relation to bank products, including plain language requirements; this workstream will advise on how best to take forward all recommendations made in this regard.</p> <p>The FSCA will also be engaging the NCR on all credit-related aspects raised in the diagnostic, and evaluate how best to address the findings and recommendations.</p>
Product operation and administration			
19.	PASA	The Retail Banking Diagnostic delves into the issue of 'dishonor fees' related to unsuccessful debit orders and 'fees for disputing debit orders'. It mentions that there have been initiatives, such as authenticating debit order, to address the triggers for such fees. It must be clarified that the initiatives in the debit order environment are not aimed to reduce the fees being charged, but to curb the abuse seen by rogue entities and payers that improperly dispute validly mandated debit orders. However, an	Noted. The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard. PASA will be invited to participate on relevant areas of work.

		<p>indirect consequence could be that the fees under scrutiny are addressed.</p> <p>It is prudent that PASA clarify that it does not have a pricing or fee mandate. This is due to that fact that PASA's members are mostly the banks who are competitors, and any conduct in relation to pricing or fees could fall foul of the Competition Act. Our scope is therefore solely in relation to the system, operational, legal and market conduct aspects of the Authenticated Collections and Debit Abuse Projects.</p> <p><i>[Full submission includes update on Authenticated Collections/DebiCheck and Debit Order Abuse projects]</i></p>	
20.	OBS	<p>Potentially unfair penalties:</p> <p>Our office regularly receives complaints in respect of penalty fees. The penalty fees charged for dishonoured debit orders are often substantial.</p> <p>We agree with the recommendation that guidelines need to be put in place as to when these penalty fees can be charged, the maximum fee that can be charged and the number of times these fees can be charged. For example, the banks cannot be allowed to charge a penalty fee for the same dishonoured debit order every month in perpetuity.</p> <p>The penalty fees must be disclosed to the customer at the time that the account is opened.</p> <p>Furthermore, we regularly receive complaints related to the fees charged by banks in respect of disputed debit orders. The fee structure in respect of this fee differ</p>	<p>Noted. The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p>

		considerably between banks (some banks do not charge a fee). Again, we are of the view that guidelines need to be put in place as to when these fees can be charged, the maximum fee that can be charged and the number of times these fees can be charged in respect of the same disputed debit order	
21.	OBS	<p>Dormant transactional accounts:</p> <p>We have received a number of complaints in respect of dormant accounts. The crux of the complaint is often the fact that no notice was given by the bank to the customer that the account was declared dormant.</p> <p>We are in agreement with the recommendations made in the report. We are of the view that guidelines should be put in place which prescribe when an account will be considered dormant and the applicable interest, fees and charges which banks would be entitled to charge once an account has been declared dormant.</p> <p>Customers must be informed of the circumstances under which an account will be deemed to be dormant and the fees that will be charged on accounts that technically appear to be dormant. Banks should notify their customers prior to declaring an account dormant. The consequences of dormancy must also be brought to the customers attention prior to the opening of an account.</p>	<p>Noted. Issues raised in relation to dormant accounts will be addressed in two workstreams:</p> <p>The FSCA-led workstream considering unfair product terms and conditions, fees and penalties can consider the matter of fees charged on dormant accounts.</p> <p>The FSCA-led workstream on improving disclosure requirements can consider issues such as notification of actions taken in relation to dormant accounts and alerting customers to consequences.</p>
22.	OBS	<p>Temporary overdrafts or “shadow” credit limits:</p> <p>A number of complaints relating to the fees and charges that are debited to a customer’s account as a result of the bank allowing a temporary overdraw of the account has been received by our office. Customers often state</p>	<p>The FSCA will be engaging the NCR on all credit-related aspects raised in the diagnostic, and evaluate how best to address the findings and recommendations.</p>

		<p>that they were not aware of the fees and charges nor did they agree to same.</p> <p>We agree with the view that it should be the customer who elects whether or not to allow temporary overdrawing on his/her accounts and that the option must be given prior to entering into the agreement. The consequences of accepting the option for a temporary overdrawing must be brought to the customer's attention.</p> <p>Further, the banks' practice of unilaterally increasing their customers' credit limits as provided for in Section 119 of the National Credit Act should also be reviewed. We have received numerous complaints related to this, specifically instances where the customer was a victim of fraud and because of the bank unilaterally increasing the limit unbeknown to the customer, the fraudulent transactions were made possible.</p> <p>The customers are usually unaware that the bank can unilaterally increase their credit limits. Once again, we are of the view that it should be the customer who elects whether to allow a unilateral increase in his/her credit limit. The option must be given prior to entering into the agreement. The consequences of accepting the option of unilateral credit limit increases must be brought to the customer's attention.</p>	
23.	G Kolia	<p>Debit order charges should also be revisited and revised. E.g. A debit order of R19 incurs a bank charge of R18.42</p> <p>Debit orders should have a final confirmation from the Payer. This could be via an sms with a confirmation reply sms or a OTP (One Time Pin).</p>	<p>Noted. The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p>

24.	ASSA	<p>Penalty fees:</p> <p>Penalty Fees are a means of protecting banks, however, the manner in which these are charged could define what is considered fair. The FSCA should not remove the use of penalty fees for this mechanism but rather ensure the fees charged influence and drive a change in behaviour. This could only be done if:</p> <ul style="list-style-type: none"> - There is a clear definition of what a penalty is – Agree with this recommendation - There is consistent disclosure of the penalty fees, not only at inception, where the disclosures should be in a simple language, aligning to the other disclosure recommendations within this report. <p>We disagree with the bank’s statement that <i>“if a fee is disclosed up front to a customer, then it would never be a penalty, but rather an administrative fee”</i></p> <p>We agree with the finding raised that fees are not comparable between banks and are not in a consistent location – disclosure requirements should address this.</p> <p>We agree with the recommendation on disclosures.</p> <ul style="list-style-type: none"> - The penalty fees should be consistent with the cost incurred by the bank, however, if there is a cap / limit on the penalty fee this shouldn’t be done without consulting the bank’s and understanding the true cost of these penalties. <p>The FSCA should encourage banks to be innovative in reducing the number of transactions that would incur penalties. It appears that operational issues that attract a penalty fee are also caused by customers not understanding the fee, or understanding the product itself.</p>	<p>The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard. All workstreams will also consider relevant consumer education initiatives that may be needed in relation to their area of focus</p>
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25.	ASSA	<p>Dormant accounts:</p> <p>It is understood that each bank has a different definition of dormant that is driven by different criteria. Dormant accounts in themselves are not a problem, however, the implications of dormant accounts does matter:</p> <ul style="list-style-type: none"> - A dormant account that attracts fees different to that under a normal transacting accounts; - Clients intending to close an account but are not aware how and are charged fees that they don't expect; <p>We agree with the recommendations that banks should notify their clients prior to an account becoming dormant and the implications of this. The recommendations should also be consistent with unfair fees, and should not charge clients exceeding the cost of operating the account should it fall dormant. It should also consider the recommendations made with respect to dispute resolution, as there could be disputes stemming from fees charged by an account entered dormancy.</p>	<p>Noted. Issues raised in relation to dormant accounts will be addressed in two workstreams:</p> <p>The FSCA-led workstream considering unfair product terms and conditions, fees and penalties can consider the matter of fees charged on dormant accounts.</p> <p>The FSCA-led workstream on improving disclosure requirements can consider issues such as notification of actions taken in relation to dormant accounts and alerting customers to consequences of dormancy.</p>
26.	ASSA	<p>Shadow credit limits:</p> <p>Banks should ensure the customer is aware of the services being signed up for, where the disclosures should follow those recommended in the offer section. It is recommended that the disclosure would include a simple summary of what the product is, and fees associated with it.</p> <p>There is a risk of default on any temporary limits if overdrawn, the banks should be clear with how these limits are determined, and should be relatively small to not have a large impact on capital or provisioning.</p>	<p>The FSCA will be engaging the NCR on all credit-related aspects raised in the diagnostic, and evaluate how best to address the findings and recommendations.</p>

		The use of fees on these temporary drawings should align to recommendations in section 3.1. There should be regulations implemented to manage these shadow limits. We agree with the recommendations.	
27.	ASSA	<p>Changes to Terms and Conditions and Fees and Charges:</p> <p>We agree with the findings raised within the report. It is not clear what a direct customer impact means in the following recommendation “The COFI/FSR Laws should mandate minimum notice periods and require individual customer notice of changes that will have a direct customer impact”. There should be a more defined definition for “customer impact”.</p>	Noted. This can be considered in the FSCA-led workstream on unfair product terms and conditions, fees and penalties
28.	ASSA	<p>Statements:</p> <p>For us this is a wider issue where institutions do not accept electronic statements, and thus the necessity of paper statements. We understand why paper statements are required but fraud can happen in all types of statement forms.</p> <p>As much as there is a debate on electronic vs. Cash, in Africa most individuals have cell phones and can access their statements to their cheque accounts via these means. Accessing these statements is free of charge. We can understand that delivering statements with the current postal system into more rural locations is difficult, thus the recommendations that these can be printed once at a branch free of charge could work, as monthly statements should be part of the bank’s service.</p> <p>We agree with the recommendations raised, with consideration of the above, the bank should improve disclosure in this area and promote implications of the</p>	This is well-noted. The FSCA-led workstream on disclosure requirements will include a focus on the provision of regular statements. These comments will be considered in that process.

		choice of statement delivery. We do believe the bank's should incorporate the choice to collect statements at a branch free of charge if this is the method of delivery, any additional statements required throughout the month should be charged for and limited to the operating fee of the bank.	
29.	ASSA	<p>Disclosure of Dispute Mechanisms:</p> <p>We agree that access to dispute platforms both internally and externally makes for an effective consumer redress, but should not allow for abuse as this would negate the effectiveness of the process.</p> <p>We agree the bank's need to disclosure the avenues and process for disputes, where, the disputes should be internal prior to going externally to the Ombudsman. Fees for disputes should not be charged.</p> <p>If the banks' address the recommendations within the report, the products would meet the needs of the customers, have the appropriate disclosures and be simple enough to understand, thus leading to less disputes due to misinformation, lack of clarity, lack of education. Due to this, fees for disputes should not be charged and would incentivise the banks to treat their customers fairly.</p>	<p>Noted. Currently the ombuds provide their services free of charge.</p> <p>The FSCA-led workstream considering unfair product terms and conditions, fees and penalties can consider fees charged in relation to disputes within banks</p>
Product closure and mobility			
30.	ASSA	<p>Potential Barriers to Account Closure:</p> <p>A finding is that there is a lack of transparency with regards to account closing procedures in many of the banks. The recommendation of customers are to be given clear information before, during and after contract completion is valid. Customers should be aware of the account closure process and this should be easily available and accessible</p>	<p>Agreed. The FSCA-led workstream on disclosure requirements will address such requirements.</p> <p>The FSCA will also establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard.</p>

31.	ASSA	<p>Account Switching Process:</p> <p>A finding is that account switching is a concern in South Africa as many believe the account switching process to be stressful. A related finding is that no official account switching process document is available from the various banks. The recommendation that authorities should work with the banking industry to achieve a common approach to transferring bank accounts and debit orders.</p> <ul style="list-style-type: none"> • A guide covering relevant information for switching needs to be considered. • This guide should include time frames and maximum costs that may be charged. • Account switching process over the phone, email, mobile application and online should be available to the customer. Requiring physical handover and signing of documents in a branch should not be compulsory. • Account switching and account closure for account holders in other countries should also not be onerous for the customer. 	<p>Noted. The FSCA will establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard.</p>
32.	ASSA	<p>Early Termination and Rollover of Fixed Deposits</p> <p>The key findings are that information regarding early termination and rollover of fixed deposits are not clearly communicated and understood by the customer. The recommendations are to create a summary document of Key Facts Statement (KFS) (as addressed in section 2.2). This would provide a standardised or minimum requirement for disclosure for the customer. The costs of implementing such documents should also be considered.</p> <ul style="list-style-type: none"> • South African authorities should consider establishing standards for disclosing or explaining 	<p>Noted. Issues raised will be addressed in two workstreams:</p> <p>The FSCA-led workstream considering unfair product terms and conditions, fees and penalties, which will include in relation to fixed deposit accounts.</p> <p>The FSCA-led workstream on improving disclosure requirements, including notifications on savings accounts.</p>

		<p>interest rates and calculations on fixed deposit accounts in a simplified manner. This is valid as some banks may mix simple and compound interest rate calculations in their advertising. This could be potentially misleading as is, even more so when items such as fees are eventually included.</p> <ul style="list-style-type: none"> • An establishment of a centralised website to offer product comparisons. A fair idea, however administration and control of the content will need to be decided. This will require collaboration from the banks in order to make the process reasonable. Otherwise this could end up becoming a manual process of looking through various product guides and then summarising information. • Unfairness in terms of Fixed Deposits should be addressed through product design requirements (section 1.2, 1.3 and 1.4). While minimum product design factors and information should be considered as best practice, the costs and drawbacks of over prescription should be considered. • The examples in Table 4.1 clearly show some of the potentially unfair wording with regards to penalty fees on early withdrawal of a fixed deposit. An open ended statement such as: 'an amount as the bank sees fit' is not appropriate. This statement leaves the customer at the mercy of the bank in such situations. The question becomes, at what point or through which process does the bank see an amount as a fit amount to charge the customer? • A coordinated industry approach should also be considered for providing alerts ahead of the maturity date of fixed deposits. This is a fair recommendation. 	
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		Advanced notice even mandated by regulation, should at a minimum consider SMS as noted by the report and should include other avenues as optional: email, mobile app and phone call.	
33.	FAIS Ombud	A real concern exists that due to the limited mandate of the Banking Ombud, that more complaints should be directed to this Office. Are consumers therefore aware by means of the disclosures from banks as to whom should be contacted in the event of a complaint and especially in circumstances where the Banking Ombud cannot assist?	Noted. This will be considered in the FSCA-led disclosure workstream in relation to appropriate disclosures regarding dispute channels.
34.	Intercon	<p>Responsible account holders who open a new bank account will inform their previous bank to close the old account and will inform their creditors of the new bank account details.</p> <p>Capitec Bank is the only bank that we are aware of that notifies the markets when a new Capitec Bank account has been opened. Through their electronically deployed systems they provide the new Capitec Bank account number details, allowing the markets to redirect debits to the new Capitec Bank account.</p> <p>Banks have different rules with regards to the procedures followed when no new credits are being paid into an account. These rules are time dependant and therefore, in cases where the account holder did not inform the bank to close the account, it may take two to three months before any further action would be taken by the bank to update the account's status.</p> <p>Depending on the particular bank, during the two or three months of no new funds being deposited into the bank account, the bank will initially only provide a response of "unpaid" on debit order requests. This results in the markets being entirely unaware that the</p>	This is well noted. The FSCA will establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard. This input will be considered in that regard.

		<p>account is no longer receiving funds. After a further lapse of time, the bank will provide a response stating that the account is either “frozen”³ or “dormant”. This response will be received for a further lapse of time until the bank will eventually provide a response stating that the account is “closed”.</p> <p>A uniform approach across all banks in the instance where no credits were deposited into a bank account is essential.</p>	
35.	Intercon	<p>Some consumers open new bank accounts to escape their existing debt obligations.</p> <p>The above is commonly referred to as “account churning”.</p> <p>In the context of AC or DebiCheck, the AC paying banks must co-operate with one another to allow all authenticated debit orders previously authorised by an account holder whilst with Bank 1 to automatically be transferred to the account with Bank 2, as authorised, except in the instance where the account holder used his remedy of fraud.</p> <p>Without such feature, AC or DebiCheck will fail.</p> <p>With such implementation in AC or DebiCheck, 208 689 instances of account closure, account frozen, and account dormant responses will be circumvented.⁴</p> <p>The consumers, together with other required educational processes, will gradually be taught that the</p>	<p>The FSCA will establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard. This input will be considered in that regard.</p>

³ In this context, frozen in the instance of irregular or suspicious behaviour on the account is ignored.

⁴ Collective total as set out on pages 6 and 11 of annexure B

		abandoning of bank accounts is no longer an option for incurring liabilities that exceed their monthly income, or a means of escape from debt. Once the follow-me principle is implemented, more responsible financial management will be encouraged.	
36.	Black Sash	<p>The EPE card and account, falls into the category of a commercial bank account but lacks practical access to recourse mechanisms.</p> <p>There is no banking infrastructure to service grant beneficiaries using the EPE accounts.</p> <p>The EPE card is, by design, almost impossibly difficult to close without active assistance, which is typically not forthcoming.</p> <p>It is therefore important that the lack of recourse mechanisms with the EPE card as a commercial bank be addressed</p>	<p>This is noted; Chapter 14 of the Financial Sector Regulation Act provides that all financial product and service providers must belong to an ombuds scheme. The chapter will be implemented in April 2019, and will ensure access for customers to the ombuds as a recourse mechanism.</p> <p>The FSCA is also in the process of drafting a bank conduct standard that will ensure fair treatment of bank customers. This should also assist in the nearer term in eradicating such practices by commercial banks where they are identified.</p>
Code of Banking Practice			
37.	OBS	<p>It is noted from the key findings and recommendations of the Retail Banking Diagnostic that the common thread in respect of all aspects is the need for clear and transparent communication from banks. An informed consumer is an empowered consumer that will be able to make better financial choices. The issues / concerns identified in the document in respect of notice of account closure, clarity on fees, language barrier, non- receipt of statements of account etc are all issues that we have dealt with at our office. We can therefore identify with the findings contained in the report in respect of these issues and agree with the recommendations made.</p>	<p>Noted and agreed. The FSCA will be establishing various workstreams to take recommendations of the diagnostic forward. The workstreams will need to consider consumer education opportunities in taking forward recommendations. It is also proposed that the Banking Association of South Africa will lead a process to update the Code of Banking Practice.</p>

		<p>There is certainly, in our view, a need to review the present Code of Banking Practice and ensure that it fully reflects the recent regulatory changes in the context of the TCF outcomes. Greater effort should also be made to increase consumer awareness of the Code of Banking Practice.</p> <p>Whilst the TCF principles are being applied to transactional and fixed deposit accounts in this instance, it is our view that it is the first step in changing the culture of banking in SA and making it more in line with the TCF principles in respect of all product offerings.</p>	
Other			
38.	PASA	<p>At the public hearing on the Retail Banking Diagnostic, held at the offices of the FSCA on 1 October 2018, it was mentioned that engagements would be held with the banks prior to any Conduct Standards being published.</p> <p>In this regard, it is kindly requested that the FSCA engage with PASA on payments related matters, not only the banks. Members of PASA's Executive Office have already participated in the Expert Panel for the Review of the Conduct of Financial Institutions Bill and provided submissions on payments related activities</p>	Noted and agreed.
39.	ASSA	<p>The recommendations, and changes within the report should be implemented in the correct regulatory documents and should ensure no conflict between these documents. It is advised that these recommendations and changes should only be included in a single regulatory document and not across multiple – this would reduce conflicting statements over time due to versioning.</p>	Noted, and the principles of avoiding regulatory duplications and streamlining legislative requirements, is agreed. Some recommendations will be addressed in the banking conduct standard being drafted by the FSCA, some in the Conduct of Financial Institutions Bill, and the workstreams established will aim to ensure recommendations are efficiently implemented.

40.	G Kolia	<p>FICA:</p> <p>The FICA requirements should be revisited, simplified or scrapped.</p> <p>It is the most traumatic experience, with frustrations and aggravations and ridiculously unnecessary. Banks and institutions make us run around for "proof of address".</p> <p>House could be on wife's name. Person could be staying in a "squatter camp" Person could be renting.</p> <p>The Proof of address, e.g. Telephone account or Municipal account may have the postal address and not the residential address.</p> <p>The Accounts are now received via email, which must be printed. If printed in black and white then it's not accepted, it must be printed in colour. And colour printers are not easily available. It means a few trips to institutions which cost petrol money or taxi fare. It's a real run around.</p> <p>Another ridiculous example of the requirement of the FICA compliance.</p> <p>To get the YeboYethu share dividend payout for 600 shares we received 111 pages of documents to read and complete.</p> <p>We have to also submit all the company documents of CIPC, with directors copies and details and to be certified then emailed or delivered.</p>	<p>This is noted, and is an area that Government is considering, along with regulators such as the Financial Intelligence Centre, South African Reserve Bank, and Financial Sector Conduct Authority. The FIC Act was also recently amended to allow for a more proportionate and risk-based approach to be followed in complying with requirements.</p>
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		<p>Whereas a simple requirement would be a matching bank account in the name of the company. Which the banks already verified.</p> <p>When shares were bought 2 pages were completed, now for payout 111 pages and more are required. Which is frustrating.</p> <p>There should be a central database with the individuals name, I.D and address. All institutions could then access this for the details required or verified. Then we only have to update profile in one place.</p> <p>The ordinary man in the street earning a meagre salary is BURDENED with FICA AND MONEY LAUNDERING compliance whilst government officials plundered the kitty and got away with TRILLIONS.</p> <p>Therefore scrap it for the man in the street and keep it for accounts with balances exceeding say 3 to 5 times their normal salary.</p> <p>The banks can still monitor and report unusual activity on an account.</p> <p>They could verify turnover on the financials to the deposits as an ad hoc automated audit process. This collective punishment for all must stop because of the misdemeanors of a few</p>	
41.	G Kolia	<p>Banks should have a 24 hour call centre service because of internet banking and the problems we pick up after hours.</p> <p>Banking should be from 8am to 5pm because of the new demands.</p>	<p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, and potentially other necessary requirements, to ensure that bank products are meeting the identified needs of</p>

		<p>There is no adequate privacy at the tellers and the Atm's.</p> <p>Queues at banks are always very long and time wasting.</p>	<p>consumers, and services are adequately provided.</p>
42.	ABSIP	<p>Overall, we support the following recommendations which include but are not limited to:</p> <ul style="list-style-type: none"> • Strengthening and simplification of the reporting parameters under FSC code for transactional accounts. • The inclusion of the COFI FSR laws during the development and amendment of product development. • The establishment of a centralized website for the comparison of transactional accounts and fixed deposits. • Strengthening the governance of advice and sales related to transactional accounts and fixed deposits. • Issuing of specific regulatory requirements on transparency and fair conduct as they relate to dormant accounts by South African authorities. • The regulation of temporary overdrawn of transactional accounts. • The review of banking practices by the National Credit Regulator. • Increasing efforts to enhance consumer awareness on the Code of Banking Practice. <p>In addition, transformation within the financial sector is vital and thus as an extension, we strongly urge for the development of banking products and services that are affordable and more reflective of the socio-economic status of the South African demographic. We urge for the fair pricing of banking products and services that are</p>	<p>Noted; the FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards to ensure that bank products are meeting the identified needs of consumers, including vulnerable and low-income customers.</p> <p>The FSCA will also establish a workstream considering unfair product terms and conditions, fees and penalties in relation to bank accounts.</p>

		tailor-made for low-income earners and the continued promotion of consumer awareness of the Banking Code.	
43.	W Oaker	<p>Slide 8 states that “The mandate of the FSCA includes protecting financial customers by financial institutions”, however the mandate is not clear as per the common law benchmark (FSRA 2017 excluded) against which financial institutions would ultimately be judged/tested.</p> <p>Thus, the regulatory framework should extend to create an environment in which investors and regulators alike clearly see the advantages and disadvantages as per the contractual relationship between the customer and financial institution. The common law principle of “unfettered discretion” could be one such classical principle that could become an important, yet common thread, which covers the critical foundational issue of FIDUCIARY LAW.</p> <p>I also trust that the major ongoing debates concerning financial stability, market efficiency, corporate governance, financial innovation and complexity, and even income inequality is intertwined with your “diagnostic”? Despite not being apparent at first glance of from your presentation.</p>	<p>The FSR Act is primary law that provides for the role of the FSCA as stated. Financial institutions can be tested against that law, and the standards that can be set under that law.</p> <p>The Twin Peaks architecture created through the FSR Act allows for principles of stability, efficiency and innovation to be considered while also ensuring that one objective does not override others in the sector.</p>
44.	W Oaker	<p>General Bank Regulation:</p> <p>Also, Policy Makers/FSCA must be mindful of how the Banks adopt "open banking", which refers to the 3rd party usage of large, highly granular customer data.</p> <p>For example, it is common cause that both the local and international banking structures all face difficulties with</p>	<p>Many of the issues raised will be considered by the Prudential Authority, with a holistic mandate to consider microprudential regulation across the sector. The FSR Act gives the PA the ability to regulate financial conglomerates in addition o the individual financial institutions within a conglomerate structure. The South African Reserve Bank is given a mandate for financial</p>

		<p>supervision. Thus, on the one hand there may be obvious advantages, but on the other hand it creates moral dilemmas and could unintendedly lead to a reverse impact of the intended regulatory policy.</p> <p>Ultimately, the chances of improved tailored services designed for the benefit of the customer is highly improbable, especially if there are little to no competitive pressures to incentivize banks to compete for deposits.</p> <p>I believe that the FSCA will struggle to regulate banks to do the aforementioned. For example, regulatory arbitrage already appears to be taking place in SA. Recent research data shows that increasingly, retail banks are obtaining funding from non-bank financial intermediaries. Data indicates that circa 1/3 of total liabilities.</p> <p>Furthermore, principal Asisa and Basa members are intertwined via complex conglomerate relationships. Many of these 'industry bodies' fulfil an important role, but simultaneously raise many foundational Competition Law issues.</p> <p>The walls between the three main sectors of finance in SA: banking, securities and insurance have broken down, yet at their core banks continue to be somewhat unique in their functions and the challenges they present for financial stability.</p> <p>Also, the debate over big banks and "too big to fail" concerns continued to be an important public policy concern in SA which is ostensible missing from your slides.</p>	<p>stability as a whole and will be able to set requirements in particular for Systemically Important Financial Institutions (SIFIs). The FSCA participates on the Financial Stability Oversight Committee to ensure that issues impacting stability can be highlighted from wherever they occur, e.g. in terms of poor customer practices rather than strict balance sheet considerations.</p> <p>The PA and FSCA both have to consider competition imperatives in conducting their activities.</p> <p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards to ensure that bank products are meeting the identified needs of consumers, including vulnerable and low-income customers</p>
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		<p>Historical and Monopolistic practices in SA (ie pre and post-apartheid), like the current continuous formation of conglomerates in SA, coupled with the soft issue related to their stereotypically cultures, are not advancing the socio-economic challenges facing South Africa.</p> <p>Also, (my personal view) where the big banks subsidize this lending activity of the lowincome customers is a bad practice/idea. WHY?</p> <ul style="list-style-type: none"> - SARB has an established track record of crisis management and resolution of smaller banks. - The SA “experience” has always been that small banks are willing to cater to the under- and un-banked. - Such low-income “individuals/customers” are typically a key interest group for the FSCA/Treasury. - Thus, surely it would appear more effective and efficient to treat such target customers differently and therefore think about how to separately regulate/supervise those institutions that target this group? Related to this is the deposit insurance scheme (DIS), which will further reduce the attention of individuals to their deposit taking institutions. Which also begs the question. Do the apparent benefits of DIS outweigh the clear costs? - Despite this possible creating a form of regulatory arbitrage (in light of African/VBS Mutual Banks recent curatorships), there is a sound case to be made in keeping the risk inherent in the unsecured and micro-lending business separate from the core banking sector. 	
45.	W Oaker	<p>Fintech:</p> <p>The FSB, now FSCA has traditionally engaged solely with non-bank financial services providers. Suddenly, it</p>	<p>The infusion of technology within financial services presents significant potential benefits, including improving financial inclusion and enhancing the value of financial services to</p>

	<p>now has to deal with both non-bank and banking financial services providers. Thus, financial regulatory agencies must quickly begin to react to the emergence of non-bank financial services providers operating in the banking sector.</p> <p>As mentioned above, retail banks are increasingly obtaining funding from non-bank financial intermediaries. In addition thereto, the introduction of the FinTech industry has changed the banking landscape in SA.</p> <p>For example, Bitcoin has spawned new derivatives products. For example, you can now apply for a mortgage on your smartphone, initial coin offerings are now a viable alternative to venture capital funding.</p> <p>The Fintech unit within the FSCA and Fintech sandbox unit within SARB has yet to propose a new kind of bank charter specifically for FinTech firms.</p> <p>While SARB and FSCA are beginning to focus on the technologies underpinning the FinTech revolution, my perusal of SARB's project Khokha 2017 report highlights an obvious weakness. Namely, less attention has been placed on how these technologies fit within the current Twin Peaks regulatory framework.</p> <p>This I believe should be included in your consideration. I believe that SARB's Fintech Regulatory sandbox initiative has a crucial role in (i) developing the Twin Peaks regulatory framework to keep up with the Fintech revolution, and</p>	<p>society. However, it can also pose risks to consumer protection and overall stability. The IFWG, comprising members from National Treasury, the South African Reserve Bank, the Financial Sector Conduct Authority and the Financial Intelligence Centre, was formed to develop a common understanding among regulators and policymakers of FinTech developments and relevant policy and regulatory implications for the South African financial sector and economy. It aims to develop a co-ordinated approach to FinTech policy making in the country</p>
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		<p>(ii) create an understanding of the this framework. Both the aforementioned objectives are critical to the long-term success of any FinTech start-up. While technology start-ups in other sectors may predicate their business on breaking rules and ignoring regulations, such a strategy is sure to fail if deployed by a FinTech firm. This would mark the success of the regulatory system. This would be because the SA financial industry should be viewed as well-regulated and supervised by multiple agencies that often have overlapping authority.</p> <p>The objective of the SA regulatory environment should be: a successful FinTech firm requires more than just great technology; it also requires an understanding of the laws and regulations applicable to their business.</p> <p>Nevertheless, to what extent will Treasury/FSCA promote/create awareness and a greater understanding amongst customers with regards to the regulatory considerations, risks and benefits associated with cryptocurrencies, initial coin offerings, online lending, new payments and wealth management technologies, and financial account aggregators.</p> <p>The fundamental question for me being: <i>How regulatory agencies in SA are adjusting to the emergence of new financial technologies and how National Treasury/FSCA/SARB proposes a path for FinTech firms to become regulated banks?</i></p>	
46.	FAIS Ombud	There is a lack of conduct standards in the banking industry, and where standards exist (by means of codes of practice), these are not applied consistently throughout the industry and in respect of all banking	The FSCA is empowered through the FSR Act to set requirements on banks, and is currently drafting a banking conduct standard to address this issue.

		products or practices. Far more comprehensive conduct standards are already in place for the insurance industry, and it should therefore not be a difficult task to adapt and apply those standards to the banking industry.	
47.	FAIS Ombud	<p>CONSUMER EDUCATION:</p> <p>There should be a greater focus on consumer education. Consumers should be aware of their rights to have disclosures made, and for terms and conditions to be properly explained. Disclosures in respect of the product, as well as the pros and cons of the product are often not clear. Mere disclosure isn't sufficient in our view, and more consumer education is required.</p> <p>Responsible lending and affording of credit should also be emphasised. In this respect sometimes consumers need to be protected from over-spending and living beyond their means. This is an unfortunate reality which must be taken into account and considered alongside admirable goals such as financial inclusion and access to financial services.</p>	Noted and agreed. All the workstreams established to take forward recommendations of the diagnostic, will also consider what consumer education initiatives would be necessary and appropriate in each instance.
48.	FAIS Ombud	<p>GOVERNANCE:</p> <p>The Policy Holder Protection Rules provides for indications as to who is responsible for complaints, for sign-off's on marketing, advertising, products newly created and any amendments thereto, including the distribution channels involved. In addition, guidance is provided in such Rules for the periods for which records of same are to be kept. Similar guidelines should apply to banks to ensure responsible and accountable decision making and record keeping.</p>	Noted. In addition to the workstreams to be established to take forward recommendations, the FSCA is currently drafting a banking conduct standard to put in place legislated requirements on banks in relation to fair customer treatment requirements.

		<p>Furthermore, whilst marketing is important, the industry should consider cutting on the cost of sponsoring for example a proliferation of sports events and also consider the glaring need for consumer education and attempts to make products more affordable for their customers. Some balancing act in this respect is required.</p>	
49.	Black Sash	<p>Existing investigations:</p> <p>In March 2018 the National Payment System Department ("NPSD") of the South African Reserve Bank (SARB) initiated a high-level investigation of the Easy Pay Everywhere (EPE) account (and related card) product offered by Moneyline Financial Services (Pty) Limited (Moneyline). As the SARB does not have jurisdiction over Moneyline, the investigation was directed at Grinrod which is a registered bank and payment system providing the banking services related to the product. The investigation of the EPE product was triggered by various reports from civil society of alleged irregularities relating to the EPE product and complaints of alleged unethical lending and debit order practices being perpetuated by the financial institution(s) offering the product. The NPSD, as overseer of the national payment system (NPS), embarked on the investigation to ascertain whether there was any cause for concern, and if so, to recommend possible action. The team that conducted the investigation was composed of officials of the NPSD as well as those from the Payments Association of South Africa ("PASA").</p> <p>The initial investigation launched by the SARB in this regard as reported in the Panel's Fifth Report has been concluded and has highlighted some concerns that may fall within the regulatory ambit of various regulators</p>	<p>This is well noted. The FSCA works closely with the SARB, and the FSCA, National Payments System Department of the SARB as well PASA participate in the Banking Market Conduct Subcommittee chaired by the National Treasury, at which conduct issues in relation to the banking and payments industry is discussed. Findings of previous investigations will be taken into consideration in developing a regulatory approach by the FSCA to banks and payment service providers.</p>

		<p>such as the Prudential Authority, the Financial Sector Conduct Authority, the Information Regulator and the National Credit Regulator.</p> <p>The regulators agreed to conduct further investigations within their respective areas of mandate and obtain guidance on the way forward from their respective principals. Within the National Payment System, the concerns that were highlighted are being investigated further and addressed by the SARB and PASA.</p> <p>We welcome the investigation by the South African Reserve Bank (SARB) and Payments Association of South Africa (PASA). It is imperative that the report takes guidance from the findings of the investigation made by SARB and PASA which may provide guidance as to how customers can be better protected</p>	
50.	Black Sash	<p>Protection of personal information:</p> <p>In Black Sash Trust, the Constitutional Court held that: <i>“It is declared that SASSA is under a duty to ensure that the payment method it determines:</i></p> <ul style="list-style-type: none"> - <i>Contains adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants or any other purpose sanctioned by the Minister in terms of section 20(3) and (4) of the Social Assistance Act;</i> - <i>Precludes a contracting party from inviting beneficiaries to “opt-in” to the sharing of confidential information for the marketing of goods and services.”</i> 	<p>This is noted. In addition to the Information Regulator’s requirements on information use, the role of the FSCA will include ensuring that banks do not engage in unfair use of customer information, and unscrupulous marketing of their products and services. This will be to some extent addressed in the banking conduct standard currently under development and which will be consulted on by the FSCA.</p>

		<p>Black Sash has always been a strong advocate for the protection of the personal information to ensure that beneficiaries receive their grants in full without deductions being made from their grant arising from unauthorized access to their confidential data.</p> <p>The protection of the personal information of grant beneficiaries and by extension banking customers, should be adequately protected to ensure that they are not lured into unscrupulous marketing tactics.</p> <p>We note with concern that the only reference to the protection of personal information in the report refers to the responsibility of the customers to keep certain information confidential.</p> <p>This also raises the issue of market conduct protection to ensure protection against unethical sales and marketing by service providers.</p> <p>Black Sash therefore recommends that the banking sector ensures that the customers' right to the protection of personal information is upheld.</p> <p>Black Sash recommends that the financial services regulators such as the FCSA assist the Information Regulator in the oversight of ensuring the protection of information of banking customers</p>	
51.	Black Sash	<p>Commercial banks paying social grants:</p> <p>With SASSA's plan to decommission cash pay points, the ultimate goal being that cash is no longer used as a payment method, SASSA has encouraged beneficiaries to have their grants accessed via their personal commercial bank accounts.</p>	<p>This is noted, and the comment will be submitted to the Banking Association of South Africa for consideration. Note also that the FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products</p>

		<p>Currently there are approximately 2.1 million beneficiaries (other than the EPE account) who receive their grants using their own bank account.</p> <p>Despite the recommendation by SASSA for beneficiaries to receive their grants in their personal bank accounts, SASSA has not been forthright in explaining the implications that bank charges can have should beneficiaries opt to use the commercial bank accounts for their grants.</p> <p>SASSA has indicated that they have been engaging with the banking sector for low cost banking products, but there appears to be no progress in this regard.</p> <p>Black Sash encourages banks to engage with SASSA in the spirit of social responsibility towards working to find a solution</p>	<p>are meeting the identified needs of consumers, including vulnerable and low-income customers.</p>
52.	Black Sash	<p>General:</p> <p>The Black Sash generally appreciates the study looking into low income customers and supports the amendment to make provision to accommodate grant beneficiaries who are particularly vulnerable.</p> <p>Customers' personal information must be protected to ensure that they are protected from marketing practices which will make them susceptible to accept products that are not in their best interest, in fact the grant must not be seen as a market at all.</p> <p>Grant beneficiaries are susceptible to the destructive use of unsecured debt because the grant amount is not even enough to keep them above the food poverty line. Black Sash therefore recommends that the FCSA</p>	<p>Noted, and agreed. The FSCA will undertake a number of further actions aimed at addressing the concerns raised. These include:</p> <p>The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p>

		<p>engage with the National Credit Regulator to ensure fair and efficient use of the payment system for legitimate use. For example, the payment system should be held accountable to ensure transactions are legitimate, where debit orders are mandated and proper.</p> <p>It is imperative that the terms and conditions for customers be fair, especially for low-income customers.</p> <p>Black Sash maintains that there is still a need for a low-income account model that offers a basic suite of services to very low-income customers at little cost, including face-to-face (for example, branch) and ATM services.</p> <p>Consideration should be given to specify minimum product standards, specific to transactional accounts and its costs, so that customers can make an informed decision about its availability and affordability of specific transactional and informational services.</p> <p>We look forward to seeing the FSCA fulfilling its obligations in anticipation of protecting the rights of low-income customers.</p>	<p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard.</p> <p>The FSCA will also establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard.</p> <p>The FSCA will also be engaging the NCR on all credit-related aspects raised in the diagnostic, and evaluate how best to address the findings and recommendations.</p> <p>All workstreams will also consider relevant consumer education initiatives that may be needed in relation to their area of focus</p>
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Annexure A: BASA Submission: Retail Banking Diagnostic Comments and Recommendations

Part A: General Comments and Recommendations	Response
<p>1. BASA notes the references to the Mzansi account which was introduced in the early 2000's. There seems to be questions about the feasibility, applicability and success of this account. BASA undertakes to provide a report documenting the various elements of the Mzansi account, including the feasibility and success of the account structure.</p> <p>2. The principles should apply to all types of products and not be restricted to the banks and banking products. Our understanding is that the Conduct of Financial Institutions Bill (COFI) is meant to cover all activities. For financial products this entails how it is sold, the disclosures, etc. which should be appropriate to the service, the complexity or otherwise of financial product type sold and the type of client. In this regard principles-based legislation is a more feasible approach than rules-based legislation. In this regard we suggest that the following be considered:</p> <ul style="list-style-type: none"> • principles informing fees and pricing should be considered for inclusion under TCF Outcome 2 to still allow competition in the industries; • recommendations in the Retail Distribution Review (RDR) paper released earlier this year for comment around disclosure of fees should be incorporated in any final decisions being made. Fee models should be left to the discretion of 1st line business owners, with accountability and responsibility placed for 1st line owners that these should deliver fair outcomes to customers; • there are several papers and proposals out for comment, all looking to eventually culminate in a principle and/or standard under COFI. Integration of all ideas is needed to ensure there is no duplication or contradictions that could lead to regulatory arbitrage; • the Financial Sector Conduct Authority (FSCA) should create a regulatory sandbox where products can be tested without the risk of sanctions and clients' losses returned where needed; and • product features and costs should not to be over-engineered, thereby preventing competition. 	<p>1. Noted</p> <p>2. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p> <p>The FSCA is also in the process of drafting a banking conduct standard that will be consulted on, and will introduce legislative requirements pertaining to fair customer treatment.</p>

Part A: General Comments and Recommendations	Response
<p>3. Clause 95(2) states that the FSCA is entitled to create conduct standards for financial products or financial services, including standards in relation to the design, pricing and valuation thereof and applied methodologies. The Bill in its design is not clear how the Regulator will determine these standards. Section 53(1)(g) does talk to co-operation and collaboration with the Competition Commission for enabling sustainable competition in the provision of financial products and services, however whether this would work practically and efficiently still needs to be seen and the regulators need to ensure that standardization of products do not take away any form of innovation and competitiveness. We need to caution against the commoditization of products as this will take away the competitive aspect. With no competition, the consumer is likely to suffer as legitimate product innovation may be stifled. We are also concerned that this approach may lead to moral hazard. We support an approach wherein conduct standards align to TCF outcome 2 product design principles, without being overly prescriptive.</p> <p>4. Recommendations for regulatory changes or improvements should be aimed at creating an enabling policy and regulatory environment and focus on principles, (not rules and the creation of complex and onerous obligations for banks) that seek to actively promote the important and central concepts of treating customers fairly.</p> <p>5. There can be no doubt that a host of internal and external factors is pushing the need for less complexity and simpler product offerings. The need for simplicity is only going to get more important as the pressures on banks increase. This has been identified in the diagnostic and it becomes apparent from the diagnostic that complex products (both in terms of the contractual terms and the manner in which the products operate) are often misunderstood or obscure to clients. In this regard the main regulatory principles should focus on ensuring that Banks are able to originate simple and complex products and relevant and appropriate to their strategic objectives. However, there must be clear obligations on financial institutions to provide suitability assessments, advice and clear and unambiguous disclosures, as appropriate to the customer type and the distribution model selected. Specific consumer education initiatives and focus</p>	<p>3. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p> <p>4. Noted</p> <p>5. Noted</p> <p>6. Noted; the Intergovernmental Fintech Working Group is looking at how best to address new innovations in the financial sector, including the implications of increasingly digital channels of access. The FSCA will consider what implications this carries for consumer protection.</p>

Part A: General Comments and Recommendations	Response
<p>should be afforded to customers in the low and middle- income markets. We accordingly support a principles-based approach which enables:</p> <ul style="list-style-type: none"> • regulations the broad effect of which is to ensure a banking environment that understands client needs and preferences and drives a move towards matching products with client preferences and to ensure that principles drive client-centric outcomes whilst ensuring that individual Banks are able to bring to market differentiated product offerings which enhances competition; • greater transparency for clients, which means easy to understand pricing and product operation; • the ability for consumers to make simple comparisons; and • creating principles that drive the creation of differentiated products, being a combination of simple (uncomplicated) and easy to understand products and more complex products, aligned to the respective target markets; • to address regulatory concerns, future principles-based conduct standards could include evidence of: target market research, market literature that is tested with customers and easy to understand, and the selection of appropriate distribution channels so that customers may opt for advice or not, as necessary. These are principles which are currently published by the FSCA under TCF Outcome 2 (albeit not yet enacted as legislation) and we support the adoption hereof into COFI/FSR laws in future. <p>6. As part of the shift towards simplicity it is vital that the digital changes are addressed. Banks are feeling the digital shift and have responded to those changes. This is true especially at the point of contact with the client who is increasingly able to educate themselves through on-line forums, and social media. Regulatory principles that deal with this shift are possibly advisable.</p> <p>7. Closely allied to disclosure is the issue of client complaints. The diagnostic seems to indicate a correlation between consumer complaints and the issue of disclosure. That is, the failure to disclose key information is often the source of complaints. In this regard regulators should seek to create an environment where banks ensure that complaint trends are analyzed, and root causes</p>	<p>7. The FSCA will establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p> <p>8. Noted, and this is an area that the COFI Bill should provide much greater clarity on</p> <p>9. Noted and the principle of a proportionate and flexible approach to regulation is agreed</p> <p>10. The FSCA will also be engaging the NCR on all credit-related aspects raised in the diagnostic, and evaluate how best to address the findings and recommendations. Further engagement with the industry will follow thereafter</p> <p>11. Disagree; it is unclear why requirements imposed by the FSCA should be limited to mirroring provisions in the CPA</p> <p>12. Noted and agreed.</p>

Part A: General Comments and Recommendations	Response
<p>addressed through review of key business processes. This should address disclosure and other customer complaint trends that indicate TCF failures within the organization.</p> <p>8. Clarity around the application of COFI to transactional banking products to ensure level playing fields in future</p> <p>8.1. Observations in the World Bank Report</p> <p>The diagnostic states on page 60 that: “...the FSB also noted for the purposes of this diagnostic that, where a transactional account is sold directly by the product supplier (the bank) without intermediation or the benefit of advice, there is an argument that the FAIS Act is not applicable to their conduct. The FSB explained that the bank or the product itself would then not be regulated by the FSB, but by the Registrar of Banks. This is a recognized regulatory gap to be addressed through consequential amendments to the FAIS Act (effected by the FSR Act) that will apply the FAIS Act to direct sales by any product supplier (including sales of deposits by a bank).”</p> <p>8.2. We submit the following comment in relation to the aforesaid:</p> <ul style="list-style-type: none"> • the FSR Act includes in the definition of “financial product”, “a deposit as defined in the Banks Act; • historically in 2003, Banks engaged with the FSB through the Banking Association of South Africa, and the result of these conversations was confirmation from the FSB that certain banking products were regulated by the FAIS Act, these being: credit card products, savings accounts, current accounts and 32-day notice deposits. • the current FAIS Act definition of intermediary services – which was referred to in paragraph 1(j) of the FSR Act consequential amendments, has not been yet been amended as per Notice 169 of 2018 (FSR Act commencement dates). Additionally, Section 45(1A(a)(ii) being a consequential amendment to the FAIS Act which became effective from 01 April 2018 states that: 	

Part A: General Comments and Recommendations	Response
<ul style="list-style-type: none"> • “The provisions of this Act do not apply to the performing of activities referred to in paragraph b(ii) and (iii) of the definition of “intermediary service” by a product supplier, where the rendering of such service is regulated under such law”. • The above exemption entrenches the carve out status quo in the current definition of FAIS intermediary services in subsection b(ii). It also supports the view in the report, of certain banks that where a “transactional account is sold directly by the product supplier (the bank) without intermediation or the benefit of advice, there is an argument that the FAIS Act is not applicable to their conduct”. • currently, certain Banks hold FAIS licenses whereas others do not. It is important that there should be a level playing field in the industry and that either all Banks should comply with FAIS / future COFI when providing transactional products or all are exempt. It is recommended that as compliance with FAIS imposes significant regulatory obligations and compliance costs (fit and proper), even when intermediary services are provided, that the regulator provide clarity on this matter by addressing the pending amendment to definition of FAIS “intermediary service” as soon as possible. <p>9. Application of future rules – possible exemptions when dealing with certain customers. Banking products provided to high net worth or ultra-high net worth customers do fit into the value chain of transactional accounts. We note however that the WB report focuses on low and middle-income customers. We support this approach and submit that COFI/FSR laws should provide for differentiated customer definitions. As an example, the draft COFI document which was made available in a limited consultation process in February 2018 recognizes current (customer) exemptions in the CPA and NCA, for application within the future COFI as well. The FSCA should also consider the application of “opt out” principles in relation to certain customers who have sufficient know-how or expertise and will largely not avail of “advice” but will provide execution-only instructions to the financial institution.</p> <p>10. Temporary or shadow credit limits and the NCA, the diagnostic states that: “The South African authorities should consider how best to regulate these</p>	

Part A: General Comments and Recommendations	Response
<p>occurrences to ensure that banks do not engage in unfair practices in relation to temporary overdrawing of transactional accounts (for example, whether it is necessary to amend the National Credit Act or Regulations to extend it more clearly to such facilities, or to impose requirements through the COFI/FSR Laws.” We submit the following:</p> <ul style="list-style-type: none"> • That further industry consultation should be undertaken in relation hereto, as legal counsel opinions procured by a member bank state that an overdrawn transactional account cannot be an incidental credit agreement: as the characteristics of an overdrawn transactional account do not meet the definitional requirements of an incidental credit agreement as stipulated in the NCA. • Due cognizance must be taken that the NCA does permit the temporary increase of the limit of a credit facility (where there is already an overdraft) in section 119 and there are already legislative requirements in this regard. <p>11. The CPA does not apply to matters regulated by the FSCA. The diagnostic acknowledges on page 51 that Section 10(1) of the FSR Act affirms that the provisions of the Consumer Protection Act do not apply to a function, act, transaction, financial product or financial service which is regulated by the Financial Sector Conduct Authority (“FSCA”). Accordingly, while we note the varied proposals to adopt best practice principles pertaining for example to unfair contractual terms, we submit that only those principles which may be uplifted from the CPA (<i>insofar as they may be relevant to intangible financial products</i>) be promulgated as conduct standards within COFI / other financial sector laws, as applicable.</p> <p>12. Regulatory instruments, we note the varied proposals to publish more regulations, laws, guidance notes and to strengthen the Code of Banking Practice, as well as to adopt certain guidelines from the Consumer Protection Act and/or to revisit the NCA. We submit that any future standards or laws should be published in the form of “regulatory instruments” as is defined in the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”). The reason for this is to ensure legal certainty around the status and obligation to comply with a regulatory instrument as envisaged in the FSR Act, as compared to a guidance</p>	

Part A: General Comments and Recommendations	Response
note or other instrument. Similarly, once the new conduct standards and /or laws are finalized, we submit that the status of current voluntary Codes of Conduct – such as the Code of Banking Practice – should be made clear.	

Part B: Detailed Comments and Recommendations					
No	Page/Section Number & Description	Section/Regulatory Proposal description findings & WB report recommendations	Comment	Recommendations	Response to recommendations
High Level summary of report recommendations					
1.	4 - 6 Product Design Transactional accounts for low-income customers	<ul style="list-style-type: none"> The South African authorities should consider strengthening and simplifying the reporting parameters under the FS Code regarding transactional accounts to incentivize banks more clearly to ensure that pricing as well as features support accessibility. The South African authorities should also consider introducing measures—such as those introduced through regulation in the European Union, 	<ul style="list-style-type: none"> We agree that legislative reforms are required to enforce the TCF objectives. We agree that the obligations in the FS Code should be strengthened, including reporting and publication to more clearly incentivize banks through minimum performance criteria that supports financial access and inclusion. We agree that the FS Code and other applicable Codes / 	<ul style="list-style-type: none"> We submit that the reporting parameters under the FS Code should be reviewed, with a view to simplifying same in relation to transactional accounts. Further that the obligations in the Code should be strengthened to incentivize banks to ensure that pricing as well as features support accessibility. We suggest that the Regulator should adopt the product design principles as are stated in TCF 	<ul style="list-style-type: none"> Process underway to review FS Code, led by Financial Sector Transformation Committee. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards – including any in relation to pricing – to ensure that bank products are meeting the identified needs of consumers.

		<p>for example, or through a coordinated industry agreement in Canada—promoting the provision of full-featured transactional account offerings that respond to the needs of low-income customers, including in terms of pricing. Consideration should be given to setting out minimum feature and pricing aspects to be met that providers could then enhance and build on, fostering accessibility while allowing for innovation. Importantly, the parameters of any such intervention should be based on comprehensive customer-focused research that examines in sufficient detail not only low-income individuals’ current usage in South Africa but also broader financial transaction needs, behaviors, preferences, and</p>	<p>laws need to be reviewed to address more cost effective and new measures to promote transactional accounts that meet the needs of the low-income customers in terms of the customer value proposition.</p>	<p>outcome 2, in a TCF self-assessment template which issued previously by the FSCA as this covers target market reviews and the like.</p> <ul style="list-style-type: none"> • The Regulator should provide minimum standards or processes to be followed which can be measured against non-compliance: <ul style="list-style-type: none"> ○ We therefore do not support that the Regulator should prescribe granular rules pertaining to pricing or product features. 	
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		<p>related physical and technological accessibility (for example, drivers for continued demand for branch and ATM access and cash usage). Research should also examine potential market impact, including previous experience and concerns expressed with regard to Mzansi accounts.</p> <ul style="list-style-type: none"> • In addition, the general product-design obligations recommended below should apply to all levels of product offerings, including low-income products. 			
2.	p6 & 1.3 Product design Fixed deposit design	<ul style="list-style-type: none"> • <i>Fixed deposit design</i> A wide range of rates is offered on fixed deposit offerings. There is also significant variation in product structuring for fixed deposits. The availability of a range of offerings of itself is not necessarily of 	<ul style="list-style-type: none"> • We are of the opinion that the risk/s highlighted herein will be resolved by the implementation of RDR, and the amended FAIS Act. • We are also required to adhere to varied existing 	<ul style="list-style-type: none"> • Due cognizance must be taken of recently amended laws or pending laws, prior to any further new rules being implemented. • We recommend the adoption of high-level product design principles (see above notes), supported by 	<ul style="list-style-type: none"> • Implementation of recommendations of the diagnostic will be aligned to other work underway • The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of

		<p>concern, if it gives retail customers the ability to choose more suitable alternatives.</p> <p>However, the complexity involved in comparing individual aspects of current alternatives is likely to make it more difficult for retail customers to choose without assistance.</p> <ul style="list-style-type: none"> To assist in addressing these issues, the South African authorities should consider implementing the specific product-design obligations noted above to apply to fixed deposits, as well as the improvements to product disclosure referred to in 2 below. 	<p>laws which address establishing the risk appetite of the customer.</p> <ul style="list-style-type: none"> We submit that detailed and prescriptive product design rules could restrict innovation. 	<p>improvements on product disclosure and evidence of market research that the product will meet a need for a specific target market, market literature that is easy to understand for any customer so that they can choose it without additional assistance and it is sold through appropriate distribution channels so that customers can ask all the questions that they need.</p>	<p>product standards to ensure that bank products are meeting the identified needs of consumers</p>
3.	7 – product disclosure	<p>.... the ulate terms and conditions</p> <p>ense and laden with legal</p>	<ul style="list-style-type: none"> FAIS specifically outlines the necessary disclosures that we are required to make to the 	<ul style="list-style-type: none"> We do not support additional disclosure rules, than those already embedded in the FAIS General Code or in the Short- 	<p>The FSCA will establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward</p>

			<p>customer and the recent FAIS amendments protect the customer's interests over the FSPs' interest.</p> <ul style="list-style-type: none"> • By adding further disclosures in relation to transactional accounts, this will add an unnecessary burden on FSPs as it will also require a remediation exercise to cover the existing/new and future base. • More context is required on why transactional accounts in particular are not meeting the current disclosure criteria. 	<p>term Deposit Code. Any gaps in same should be evaluated and addressed.</p> <ul style="list-style-type: none"> • We recommend that adherence to plain language disclosures, free of legal terms and jargon should be tested in future regulatory reports or inspections. 	<p>all recommendations made in this regard</p>
<p><u>General comments on low income transactional accounts:</u></p> <p>1. An effective regulatory regime needs to be implemented ensuring that all banks adhere to principles in relation to unfair terms and fees.</p>					<p>Noted. These comments can feed into the customer needs research work to undertaken by the FSCA; into the workstream on unfair Ts and Cs; and for cross-cutting focus on</p>

<ol style="list-style-type: none"> 2. Standardised terms and conditions should be simple and in plain language and should also cater for electronic channels. 3. Due consideration must be afforded to security concerns of using certain channels example: registered post to eliminate/mitigate fraud. 4. Future legislation must cater for the offering of financial products and services through electronic channels/digital solutions. 5. Legislation must not hamper business agility: <ul style="list-style-type: none"> o Business should have the ability to create more agile systems/operating models so that quicker and more efficient solutions can be implemented to react to quickly evolving client needs. 6. A risk-based approach should be implemented to assist with reduction of the cost for low-income customers/drive efficiency and thus lowering cost. 7. Improve financial literacy – resources spent on financial education and improvement of financial behaviours are imperative (to enable national strategies for financial education and which can be measured and monitored) 8. We note the recommendation that South African authorities should consider strengthening and simplifying the reporting parameters under the FS Code regarding transactional accounts to incentivize banks more clearly to ensure that pricing as well as features support accessibility, but we urge the Regulator to be mindful of the fact that competitive forces are more successful in delivering a better outcome for customers as opposed to a regulated industry standard. 9. Although the FSC should consider increasing the points awarded for access to qualifying products, commercial banks will nevertheless continue to service this market in line with previous commitments to support financial inclusion. 10. The Banking Enquiry recommendation to develop basic banking products (together with a separate recommendation to create standard customer profiles) was ultimately dismissed by the National Treasury. It was agreed at the time that this consumer segment was best served by competitive forces and, moreover, it was recognised that there had been positive developments in this segment. The positive development includes the low-cost offerings the different banks launched, the reduction in declined debit order fees for this market segment. As part of the engagement with the National Treasury following the Banking Enquiry, it was agreed that a number of banks had launched new products in this segment. 	<p>consumer education. The work on the FS Code will be undertaken through the process led by the FSTC</p>
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| <ol style="list-style-type: none">11. In particular, there has been a number of developments aimed at reducing the cash withdrawal fees. These developments included improved disclosure for Saswitch ATM cash withdrawals as well as the introduction of low-cost transactional offers for entry level customers.12. We recommend that when researching accessibility, the scope should be broader than just account opening capabilities and that factors to be considered should include technological accessibility, by way of example the ATM footprint of individual banks, data free banking apps and free WIFI services etc. The cost of infrastructure should be factored in when reviewing pricing so as not be to the detriment to banks providing same, for example. 'Saswitch' fees.13. Although Income criteria is used as a proxy for volume of transactions expected per segment, customer needs are considered in product design, product changes and distribution channels used. Data does however indicate that the volume and types of transactions are closely correlated with customer income. This proxy is however not a forced rule, customers can elect to go for different products to those suggested. | |
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No	Page/Section Number & Description	Section/Regulatory Proposal description findings & WB report recommendations	Comment	Recommendations	Response
14.	p9 & 3.5 Product operation and administration Statements	<ul style="list-style-type: none"> <p><i>Statements</i></p> <p>Statement requirements for transactional accounts are not currently regulated by legislation. The CBP addresses the provision of statements for transactional accounts only to some extent. Banks indicated that they provide customers with a statement either on a regular basis or upon request. Practice in this regard seems to vary and charging for paper statements seems a common practice. Consumer representatives indicated that access to bank account statements is one of the main challenges faced by account holders.</p> <p>The COFI/FSR Laws should specify requirements for the provision of periodic statements for transactional accounts. Regulatory requirements should address minimum content and format requirements, as</p> 	<ul style="list-style-type: none"> <p>Some banks have embarked on making statements more easily attainable using channels such as ATM's. This is to enable customer convenience and mitigates risks such as identity theft and the fraudulent opening of accounts.</p> 	<ul style="list-style-type: none"> <p>Future regulation should take cognizance of industry efforts to mitigate fraud risk, through use of providing electronic channels to customers for them to access their statements.</p> 	<ul style="list-style-type: none"> <p>Noted</p>

		well as frequency, timing, and manner of delivery (including making appropriate provision for easy access to statements and other transactional information through electronic channels).			
15.	p9 & 3.6 Product operation and administration Information about external dispute resolution	<ul style="list-style-type: none"> • <i>Information about external dispute resolution</i> Information regarding external dispute resolution mechanisms does not seem to be consistently available across all channels. • The disclosure requirements recommended in the report should require banks to disclose clearly the contact information and basic processes for internal and external complaints handling mechanisms. 	<ul style="list-style-type: none"> • We support the proposal. 	<ul style="list-style-type: none"> • Future regulation should take cognizance of the FSCA TCF complaints-handling paper, the FAIS provisions in relation to complaints-handling and the Ombud discussion paper. 	<ul style="list-style-type: none"> • Noted and agreed
16.	p10 & 4.1 Product closure and mobility Potential barriers to account closure	<ul style="list-style-type: none"> • <i>Potential barriers to account closure</i> Banks generally confirmed that account closure is at the customer's discretion but that some administrative steps would need to be undertaken. The OBS reports only a few complaints related to account 	<ul style="list-style-type: none"> • We support future principles around product closure and mobility. 	<ul style="list-style-type: none"> • We recommend that future regulation set out the guidelines on clear and understandable processes, including roles and responsibilities on closure of accounts. 	The FSCA will establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard.

		<p>closure, but there seems to be a lack of transparency or publicly available information regarding applicable procedures and varying degrees of facilitation by banks.</p> <ul style="list-style-type: none"> • The new disclosure requirements recommended above in 2 should cover inclusion of clear information regarding closure and switching rights and processes. • The authorities should work with the banking industry to achieve a common and facilitative industry approach to transferring bank accounts, including debit orders (before considering regulatory intervention). 			
17.	p10 & 4.3 Product closure and mobility Early termination and rollover of fixed deposits	<ul style="list-style-type: none"> • <i>Early termination and rollover of fixed deposits</i> Customers may not understand fully the implications of restrictions on fixed deposit withdrawals. Automatic roll-overs of fixed-term deposits may sometimes also occur without customer understanding. • The short-form disclosure documents that are 	<ul style="list-style-type: none"> • This information should be clearly and plainly explained in the product rules and T&Cs. 	<ul style="list-style-type: none"> • As above. 	<ul style="list-style-type: none"> • See above response

		<p>recommended to be introduced in 2 should provide a brief, clear explanation of the consequences of early termination and of the implications at maturity if the customer does not withdraw the fixed deposit.</p> <ul style="list-style-type: none"> • Potential inappropriateness or unfairness of terms governing early withdrawals should also be addressed through the product-design and unfair-terms measures referred to above in 1. • A coordinated industry approach should be considered for providing alerts ahead of the maturity date of fixed deposits. 			
18.	p17 Table 1.2.	The 5 th column appears to erroneously mix up Standard Bank and Capitec.	The headings and content in columns 5 and 6 should be reviewed given the error.	•	• Noted; to be amended
19.	p19 – 21 & 1.1	<ul style="list-style-type: none"> • Several banks expressed the view in discussions that there is very little of the South African population left that is actually “bankable” and still remains unbanked. 	BASA will appreciate the opportunity to participate in discussions around the SASSA grant beneficiaries’ use of accounts and products.	•	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are

					meeting the identified needs of consumers. This can be considered as part of that process
Specific comments on Low Income transactional accounts					
20.	p20 - Product design Transactional accounts for low income customers (pricing and access)	<ul style="list-style-type: none"> “An industry participant noted that barriers for low-income account holders to actively use their accounts include the fees account holders face in doing so as well as availability of access points. A civil society organization also noted that the cost of using ATMs, particularly out-of-network ATMs, tends to contribute to the propensity of low-income consumers to make a single withdrawal.” 	<ul style="list-style-type: none"> The cost of servicing and maintaining an ATM infrastructure is high and has been growing above inflation for some time now, not least because of the cost of cash-in-transit crime and insurance of cash. Supplying cash to remote locations is even more expensive. Not all banks provide ATM services, and failure to compensate ATM providers for the cost of ATM services will lead to a reduction in ATMs. 	<ul style="list-style-type: none"> Future regulation around fees in low income transactional accounts should take consider all factors i.e. the cost of servicing and maintaining of ATM infrastructure etc. the questions is whether customers are treated unfairly. 	Noted. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.
21.	p20 - Product design Transactional accounts for low income	<ul style="list-style-type: none"> “An industry participant noted that the substantial level of “off-us penalty fees” charged by banks for use of another bank’s ATM, with the aim of encouraging customers 	<ul style="list-style-type: none"> These are not penalty fees. Banks compensate each other for costs incurred to service another bank’s customers. Failure to 	<ul style="list-style-type: none"> As above. 	Noted. The FSCA will also establish a workstream considering unfair product terms and conditions, fees and penalties; this

	customers (pricing and access)	to make use of a bank's own ATM infrastructure, is one of the biggest complaints by consumers."	do so would restrict the banks from offering services to other banks' clients (interoperability) and from investing in ATMs which are used predominantly by other banks' clients. This is increasingly relevant as new banks are less inclined to offer ATM services.		workstream will advise on how best to take forward all recommendations made in this regard.
22.	p21 - Product design Transactional accounts for low income customers (pricing and access)	<ul style="list-style-type: none"> "The Banking Enquiry also made some further recommendations on pricing and transparency, but, for example, banks argued that displaying the exact amount of a surcharge at an ATM display would not be feasible and instead introduced a generic disclaimer that additional charges may apply." 	<ul style="list-style-type: none"> The ATM provider would not know what fee the customer's bank charges to use other bank's ATM's, nor is it necessarily a fixed fee (implying that the ATM would need to do some calculation). 	<ul style="list-style-type: none"> As above. 	The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.
23.	p21 – pricing & access	<ul style="list-style-type: none"> "Banks impose higher charges for use of a branch network as opposed to use of POS / electronic channels and appear to drive customer behaviour away from the former and towards the latter. 	<ul style="list-style-type: none"> A bricks and mortar infrastructure are costly for banks, and many SA banks are moving their customers towards more cost effective and efficient payment channels. Self-service 	<ul style="list-style-type: none"> As above. 	The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take

			channels as an example are not burdened by the additional costs for staff, premises, etc. and prove to be more efficient even for low income customers.		forward all recommendations made in this regard. The FSCA will undertake further research into customer needs in relation to transactional accounts.
24.	p20 Product design Transactional accounts for low income customers (pricing and access)	<ul style="list-style-type: none"> At this level of the market, there remains a great propensity to transact in cash, so the cost of branch and ATM services can affect account usage significantly. Factors such as the cost of withdrawals contribute to a propensity to make a single withdrawal of any available balance. 	<ul style="list-style-type: none"> Sometimes pricing does not necessarily encourage one single withdrawal. As an example from a member bank: a bundled fee option makes the first R3000 of withdrawals free (regardless of the number of withdrawals). Further, on pay-as-you-use and bundled, card purchases are <u>free</u> and cash at till is a low flat fee of R1.60. This pricing therefore does not encourage immediate withdrawal to avoid fees as both of these are very 	<ul style="list-style-type: none"> We recommend that further studies and industry consultation be undertaken prior to any prescribed pricing rules being implemented. 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.

			affordable options to access funds.		
25.	p23 Product design Transactional accounts for low income customers	<ul style="list-style-type: none"> • Pricing tends to be significantly lower for POS or retailer-hosted transactions than for branch equivalents. <ul style="list-style-type: none"> ○ South Africa has a reasonably well-developed network of access points but with room for improvement, particularly in rural areas. ○ Such access points comprise both more traditional ATMs and branches and alternatives, such as POS devices or terminals with enhanced transactional capability, and with the latter incurring significantly lower fees. ○ However, such an alternative channel may not necessarily provide customers with the same experience and level of assistance as would be provided by bank staff in a branch. 	<ul style="list-style-type: none"> • In rural areas Self Service Devices (SSDs) have been strategically placed to service customers within those areas. • From a functionality perspective: <ul style="list-style-type: none"> ○ the business model for an SSD device incentivizes retailers for payments as opposed to POS which attracts a merchant commission; ○ SSD's offer all interbank transactions that an ATM offers (as a minimum); ○ Very often smaller retailers do not qualify for POS devices but may be considered eligible for SSD's. • POS devices also offer additional functionality such as cashback (if the merchant is enabled). 	<ul style="list-style-type: none"> • We are unable to provide any recommendation until such time as further draft standards are published around product features and pricing. 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.

26.	p23 Product design Transactional accounts for low income customers	<ul style="list-style-type: none"> • Cash deposits in branches are expensive, and while ATM deposits are cheaper, funds deposited through ATMs are not immediately available. • Banks' approaches in this context seem to be driven largely by commercial imperatives, both in terms of reflecting costs and generating profitable revenue. 	<ul style="list-style-type: none"> • Branches are more expensive to maintain and attract higher costs as opposed to a payment device, therefore transactions performed over the counter in a bank branch are more expensive. 	<ul style="list-style-type: none"> • We are unable to provide any recommendation until such time as further draft standards are published around product features and pricing. 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.
27.	p23 Product design Transactional accounts for low income customers	<ul style="list-style-type: none"> • Cash handling costs remain high, options such as deposit taking at retailers must be explored as it is more accessible. Banks seem to rely heavily on account transaction fees not only for cost recovery but also for revenue generation. 	<ul style="list-style-type: none"> • We note the recommendation. 	<ul style="list-style-type: none"> • We are unable to provide any recommendation until such time as further draft standards are published around product features and pricing. 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.
28.	p 27 Product design Transactional accounts for low income customers	<ul style="list-style-type: none"> • Big Four banks ignore a significant portion of the market in internal product development and pricing strategies – e.g. eWallet sits below transactional account 	<ul style="list-style-type: none"> • Many South African banks are now offering wallet solutions, these solutions are being taken up and widely used by the lower income market for the 	<ul style="list-style-type: none"> • We are unable to provide any recommendation until such time as further draft standards are published around 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform

		<p>offering and does not allow debit orders</p>	<p>purpose of sending money.</p> <ul style="list-style-type: none"> • The eWallet is evolving to: <ul style="list-style-type: none"> ○ Promote financial inclusion ○ Service the underbanked / underserved ○ Digital banking product – affordable & simple to use ○ Easily accessible to all ○ USSD and App Solution ○ Supported by SSCC, SSD (Slimline), ATM and POS networks • This will encourage customers to keep a store of value in the account which will allow for traditional products like debit orders to be considered on these virtual wallet accounts. • Clients can access debit order 	<p>product features and pricing.</p>	<p>the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p>
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			functionality by upgrading their account. In this way, parties who do not want debit order functionality need not incur the costs of this functionality. This puts the choice in the customers hands.		
29.	p 27	<ul style="list-style-type: none"> There is still a need for a low-income model that offers basic banking services at little cost, including branch and ATM services. Government to assist in financing such a payment product? 	<ul style="list-style-type: none"> The Mzansi account is largely considered to have been unsuccessful in this regard and we believe that competitive and differentiated products have shown to be more successful in meeting this market's needs. 	<ul style="list-style-type: none"> We are unable to provide any recommendation until such time as further draft standards are published around product features and pricing. 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.
Recommendations – low income transactional account customers					
30.	p 27 Product design Transactional accounts for low income customers	<ul style="list-style-type: none"> Consideration should be given to specify more granular minimum product standards, specific to transactional accounts, that target availability and affordability of specific transactional and informational services, such as access to non-electronic, 	<ul style="list-style-type: none"> We do not support the recommendation that granular product standards should be prescribed for transactional accounts as to do so would inhibit product differentiation and competitiveness. 	<ul style="list-style-type: none"> We submit that future laws should specify only high-level principles and guidelines. To address regulatory concerns, future principles-based conduct standards could 	The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure

		as well as electronic, channels.	<ul style="list-style-type: none"> We do support that high-level product design principles should be promulgated, which enables new product origination for a specific target market or for the unbanked, based on market research. 	include evidence of: target market research (banked and unbanked) to establish customer need, market literature that is tested with customers and easy to understand, and the selection of appropriate distribution channels so that customers may opt for advice or not, as necessary.	that bank products are meeting the identified needs of consumers.
31.	p 27 Product design Transactional accounts for low income customers	<ul style="list-style-type: none"> Consideration should also be given to publicizing the results of each bank's periodic performance specifically in relation to transactional accounts in a form that is easily understandable and accessible to retail customers for these specific products (for example, mandating display of this on bank website pages relating to transactional accounts, or on a central website to which banks would have to cross-refer on their own website). 	<ul style="list-style-type: none"> We agree that reporting and publication should be strengthened to more clearly incentivize banks through minimum performance criteria that supports financial access and inclusion 	<ul style="list-style-type: none"> We recommend plain language disclosure principles be adopted. See previous comments. 	The FSCA will establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard
32.	p 27 Product design	<ul style="list-style-type: none"> The South African authorities should also consider introducing measures similar 	<ul style="list-style-type: none"> With regards to the alternative recommendations 	<ul style="list-style-type: none"> We recommend that the coordinated industry agreement 	The FSCA will undertake further research into

	<p>Transactional accounts for low income customers</p>	<p>to those outlined in Box 1.2, introduced in a number of other jurisdictions, to ensure that low-income customers who remain effectively underbanked, or are unbanked, are offered transactional account options that respond to their needs, including in terms of pricing.</p> <ul style="list-style-type: none"> Such measures can be in the form of regulation, as introduced in the European Union, for example, or through a coordinated industry agreement, as implemented in Canada. Given previous efforts in South Africa, the latter approach may be preferred, at least in the first instance, if it can be monitored effectively. Consideration should be given to setting out minimum feature and pricing aspects to be met that providers could then enhance and build on, fostering accessibility while allowing for innovation. At least initially, a more targeted regulatory approach could also be feasible. For example, the 2016 WBG Report already recommended leveraging 	<p>made by the WBG, we are in support of a coordinated industry agreement which is monitored by the authorities.</p> <ul style="list-style-type: none"> We caution against creating a “one size fits all” product as this will stifle innovation. 	<p>should address the concerns raised in the diagnostic report with reference made to the considerations highlighted in the recommendations on page 32, with reference to customer-focused research.</p> <ul style="list-style-type: none"> We support principle-based guidelines by the regulators. 	<p>customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers.</p>
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		<p>SASSA payments to encourage use of transactional accounts with greater functionality than existing SASSA accounts and associated debit cards.</p> <ul style="list-style-type: none"> Consider introducing measures similar to those in other jurisdictions, to ensure that low-income customers are offered transactional account options that respond to their needs, including in terms of pricing such measures could be regulated or achieved through industry agreement. 			
Middle Income transactional account offerings – findings					
33.	p 42 Product design Middle income transactional account offerings	<ul style="list-style-type: none"> All of the banks consistently indicated (albeit with varying levels of emphasis) a focus toward encouraging customers to use digital channels as opposed to branches and ATM services. “Banks driving customers towards digital channels as opposed to using branches ATMs – channel adoption strategies”. 	<ul style="list-style-type: none"> Self-service channels as an example are not burdened by the additional costs for staff, premises, etc. and prove to be more efficient and cost effective even for low income customers. In areas where there is no or limited bank points of presence, customers are forced to use another banks infrastructure or use self- service channels 	<ul style="list-style-type: none"> We are unable to comment until further regulatory proposals are tabled in relation to access and financial inclusion. 	<ul style="list-style-type: none"> Noted, see responses above

			for their payment needs.		
34.	p 43 Product design Middle income transactional account offerings	<ul style="list-style-type: none"> • It is not possible to determine the drivers for the Big Four banks' pricing similarity in the absence of data regarding individual bank costs <ul style="list-style-type: none"> ○ the pricing-versus-costs analysis undertaken by the Banking Enquiry (which found a lack of identifiable relationship between the prices of transactional accounts and the costs to the banks of providing them) could be refreshed by South African authorities to assess whether pricing continues to be affected by a lack of competitive pressure or is in fact a reasonable result of pressures faced by all Big Four. ○ Such analysis should be complemented by an in-depth customer study of why, for example, middle-income customers are not switching from a Big Four bundle to a competitor offering even if there is a 	<ul style="list-style-type: none"> • We wish to confirm that we are not in support of a Banking Enquiry into pricing. 	<ul style="list-style-type: none"> • We submit that the combination of recommendations put forward by the WBG in addition with some of the recommendations that we have tabled in this paper, if implemented appropriately, should address the underlying conduct concerns raised by the WBG. • In this regard, we specifically refer to the recommendations relating to product design, fee disclosure, unfair terms, etc. 	<ul style="list-style-type: none"> • Noted. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers. The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard. The FSCA will also establish a workstream on improving disclosure requirements in relation to bank

		potentially significant monthly cost difference.			products; this workstream will advise on how best to take forward all recommendations made in this regard The FSCA will also establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard
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Middle income transactional account offerings – recommendations

35.	p 44 Product design Middle-income transactional account offerings read with Box 1.3	<ul style="list-style-type: none"> The South African authorities should consider including in the COFI FSR Laws specific product-design obligations to ensure that financial institutions' processes for developing and making changes to transactional account (and fixed deposit) products include clear, concrete steps intended to drive TCF Outcomes. Examples of approaches are provided in the report. At least initially, such obligations should be principles-based, particularly 	<ul style="list-style-type: none"> We agree that the FSCA should issue more regulatory guidance taking into account product practicalities and concerns and must take cognizance of industry best practice standards. We acknowledge and support the TCF objectives and desired outcomes relating to product design. Specifically, those outcomes that seek to ensure that 	<ul style="list-style-type: none"> Regarding Box 1.3: we would recommend a closer look at the approaches in the Australian and EU guidelines. We agree that a principle-based approach is appropriate and recommend that it should measure attrition (pricing vs cost vs switching behavior) and provide for gap 	Noted. The FSCA will undertake further research into customer needs in relation to transactional accounts. This research will inform the setting of product standards, to ensure that bank products are meeting the identified needs of consumers. These comments can feed into that process
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		<p>assuming that they would not be confined to transactional accounts and fixed deposit products but would also be intended to apply to other financial products.</p> <p>Importantly, however, the FSCA should augment such principles-based obligations by issuing more detailed regulatory guidance, addressing product-specific practicalities and concerns (that can be updated over time reflecting its supervision outcomes). If industry does not meet relevant expectations sufficiently, then more prescriptive requirements could follow.</p>	<p>products are designed to meet identified needs of specific targeted customer markets.</p> <ul style="list-style-type: none"> • Consideration should be given to the fact that product value propositions will differ across banks. This will, as observed by the WBG, impact on the ability of customers to make like for like comparisons. We are of the view that supporting customers and enabling them to make informed decisions should be addressed by enhancing disclosures made by banks to customers. These disclosures should further be supported by appropriate distribution channels that provide further assistance to customers needing clarity on products. • With regards to product design, given the broad nature of 	<p>analysis review exercises.</p> <ul style="list-style-type: none"> • COFI may contain general obligations that product manufacturers should meet in relation to products and services. • Regulators should issue publications providing examples of good or poor industry practices that deliver fair customer outcomes in the product design process. • Where broad sweeping poor industry practices are identified that are inconsistent with fair outcomes for customers, targeted prescriptive regulation may be introduced. • Banks generally compose their bundles based on deep insight, which includes actual transaction behaviour and product needs of the 	
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			<p>the TCF outcomes relating to product design, we are in support of an approach similar to that followed by the FCA in the UK.</p> <ul style="list-style-type: none"> We caution against prescriptive obligations on product design as this would restrict innovation. 	<p>segment for which the bundles are created. Bundles are designed to be simple and easy to understand. The transactions included within the bundle offerings are discounted, thereby offering our customers true value for money.</p> <ul style="list-style-type: none"> One of the key areas where banks differentiate is in terms of their fees and service offerings. It will severely impede the banks' ability to differentiate their offers if bundle composition is standardised. This will be to the detriment of the customer and will potentially stifle competition and erode competitive advantage. 	
Fixed deposit design – recommendations					
36.	p 50 Product design	<ul style="list-style-type: none"> See the recommendations related to the product-design process in section 1.3 above 	<ul style="list-style-type: none"> Please note that our comments noted above in relation to 	<ul style="list-style-type: none"> Please note that our comments noted above in relation to 	<ul style="list-style-type: none"> See responses above in relation to the customer

	Fixed deposit design	<p>(and the recommendations for improving product disclosure made in section 2.2 below), which also apply with regard to fixed deposits.</p> <ul style="list-style-type: none"> The recommended approaches are intended to assist in improving retail customers' understanding of and ability to compare fixed deposit features, such as returns and product operation, and to foster competition based on product quality and suitability for the target market, as well as more transparent product features. 	middle income product design apply similarly to fixed deposits.	<p>middle income product design apply similarly to fixed deposits.</p> <ul style="list-style-type: none"> In addition, we are supportive of a standardized terminology used for interest rates on fixed deposits to simplify the rate comparisons between the many different fixed deposit offers. 	<p>needs research work to be undertaken by the FSCA.</p> <ul style="list-style-type: none"> The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard
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Potentially unfair product terms – findings

37.	p 6 Product design Potentially unfair product terms	<ul style="list-style-type: none"> <i>Potentially unfair product terms</i> <p>A review of a sample of current bank terms and conditions, and discussions with banks, suggests varying degrees of effort across the industry to ensure that such terms do not contain unfair or excessively one-sided clauses. Clauses of concern include, for example, significant exclusions of</p>	<ul style="list-style-type: none"> We agree that an effective regime needs to be implemented ensuring that all banks adhere to prohibiting unfair terms and fees. We support the recommendation that institutions should undertake substantive reviews. Future conduct standards must take 	<ul style="list-style-type: none"> The FCA in the UK has principles which regulate unfair terms and conditions and we recommend that these be referenced to in considering the future standards in RSA. We submit that future regulation around what would be regarded as unfair terms and conditions 	<p>The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.</p>
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		<p>liability and the placing of excessive responsibility on customers for some risks.</p> <p>(The report discusses a range of examples in more detail.)</p> <ul style="list-style-type: none"> • A regime that would prohibit unfair terms in transactional account and fixed deposit standard form contracts should be implemented in the COFI/FSR Laws. The regime should provide both for enforcement by the FSCA and reliance by individual retail customers. The regime should contain appropriate adjustments for issues relating to financial products, such as regarding its application to pricing. The FSCA should issue up-front guidance on its expectations in this regard, which should include practical guidance focusing on the application of the regime to key aspects of financial products, such as unilateral rights of variation and exclusions of liability. Institutions should then be expected to undertake (for example, during a transition period) substantive reviews and, where necessary, amendments of 	<p>cognizance of the fact that notwithstanding contractual terms and conditions, banks do already apply discretion in their day-to-day dealings with customers, evaluating each case on its merits.</p>	<p>and thus prohibited, should be consulted upon with industry working groups. Common law considerations are also relevant.</p> <ul style="list-style-type: none"> • It will be helpful to have a better understanding of what is meant with “unfair clauses”, to avoid any potential confusion that may arise. 	
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		terms and conditions to ensure consistency with the regime.			
38.	p 54 Product design Potentially unfair product terms	<ul style="list-style-type: none"> • When dealing with security of debit cards and personal identification numbers (PINs), several banks' terms and conditions are also written in a way that skews liability for unauthorized transactions significantly toward the customer. <ul style="list-style-type: none"> ○ They suggest that a customer, rather than a bank, is liable for unauthorized transactions regardless of whether he or she knew or reasonably ought to have known of the loss, theft, or unauthorized use of a PIN or card, until the customer has notified the bank of such loss or theft. ○ At least in one instance, terms and conditions state that the bank is not liable following such notification and possibly until they have an opportunity to do something about it. 	<ul style="list-style-type: none"> • We disagree with the observations herein for the following reasons: <ul style="list-style-type: none"> ○ Current fraud processes cater for the reporting of such instances, and customers are assisted through this process as soon as they have informed the bank. ○ Banks provide certain tools to cover the customer and to reduce the risk of fraud. Example - the bank issues a card and pin for most Card present contact transactions and certain contactless transactions. ○ For electronic payments banks auto register customers for 3D 	<ul style="list-style-type: none"> • We are unable to comment further, until such that further draft COFI/FSR laws are published for comment. 	The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.

		<ul style="list-style-type: none"> ○ Although one Big Four bank had recently redrafted its terms and conditions to be clearer to customers, including with regard to these issues, clauses dealing with such issues nevertheless still contained language potentially suggesting that customers remain responsible for all unauthorized transactions on their accounts through their cards or an electronic channel until they notify the bank that their accounts are at risk, regardless of whether they are or should be aware this is the case. 	<p>secure whereby the customer has to enter an OTP when purchasing online.</p> <ul style="list-style-type: none"> ○ Banks offer a Disputes and Fraud service where customers can log cases for the bank to review. Chargeback rules are in place where the banks can chargeback certain disputes and fraud transactions. The bank also takes the write off risk in certain cases. ○ Banks also offer in-contact services whereby customers are notified of transactional activity and could report fraud ○ For cases where card and pins have been compromised, comprehensive investigations are 		
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			undertaken, before a customer is held liable. Circumstances play a role, for example how long the customer took to report a card as stolen after they have become aware of it.		
39.	p 55 Product design Potentially unfair product terms	<ul style="list-style-type: none"> Some banks' terms and conditions contain strong wording regarding a customer's lack of right, or a bank's lack of responsibility, to stop payment transactions. <ul style="list-style-type: none"> This is potentially done without sufficient qualification having regard to, for example, card scheme rules or a bank's own ability to take at least reasonable steps to seek to stop or change a transaction 	<ul style="list-style-type: none"> Stop payments are only customer-initiated. 	<ul style="list-style-type: none"> NA 	The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.
40.	p 56 Product design Potentially unfair product terms	<ul style="list-style-type: none"> A regime prohibiting unfair terms similar to that set out in Part G of the CPA but appropriately tailored to financial product terms should be implemented through the COFI/FSR Laws to apply to transactional account and 	<ul style="list-style-type: none"> There seems to be a proposal to enforce the Consumer Protection Act provisions relating to terms and conditions on financial products. We support the recommendation for 	<ul style="list-style-type: none"> If the regulators accept the WBG recommendation in relation to potentially unfair terms, any future guidance/regulation should consider the contractual terms 	The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take

		<p>fixed deposit standard-form contracts.</p> <ul style="list-style-type: none"> ○ The regime should provide for enforcement by the FSCA and reliance by individual retail customers. ○ The FSCA should issue up-front guidance on its expectations in this regard, which should include practical guidance focusing on the application of the regime to key aspects of financial products, such as unilateral rights of variation, exclusions of liability, or penalty fees. ○ The regime should also highlight how the unfairness of particular terms will be determined, including having regard to matters such as appropriate balancing of risk allocation between banks and customers, and the nature of the product involved (including whether it is intended to be a product for more vulnerable customers). ○ Institutions should then be expected to undertake (for example, during a 	<p>equitable principles being introduced into product terms and conditions.</p> <ul style="list-style-type: none"> • We support the recommendation that terms should be drafted in plain language minimizing the use of legal terminology in customer facing documentation. • We support the recommendation that the FSCA should publish upfront guidance in relation to its expectation of terms that it considers unfair and inconsistent with fair customer outcomes. • This guidance should be practical in nature and mirror, where appropriate the CPA principles that seek greater customer equality in contracting. • We do however caution on a broad approach to aligning to the provisions of Part G of CPA without 	<p>that must be disclosed by distribution channels as contained in the FAIS Act and the disclosure obligations placed on product manufacturers. The disclosure requirements placed on both role players in the product value chain should be complementary and relevant to the point of contact with the customer.</p> <ul style="list-style-type: none"> • With regards to the content of Part G of CPA, we propose that initially the FSCA consider publishing guidelines in relation to unfair contractual terms. • It is noted that the basic principles of contract are founded on the existence of consensus between parties, namely agreement on the terms. This would imply that both parties have a close 	<p>forward all recommendations made in this regard. Comments will be considered in that process</p>
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		<p>transition period) substantive reviews and, where necessary, amendments of terms and conditions to ensure consistency with the regime.</p>	<p>full consideration of the impact of these provisions on the laws of contract and other common law provisions relating to contracting.</p>	<p>to equitable position to negotiate the terms that govern their transaction. It should however be born in mind that I would not be possible for every customer to negotiate terms that suit them and as such banks would prepopulate the terms of any agreement entered into with customers. A fact that the Regulator must take into consideration when drafting the recommended guidance.</p> <ul style="list-style-type: none"> • The proposed guide should further contain an articulation of what the regulator’s views are in terms of “unfair terms”. What makes a term unfair and what negative outcomes does it expose customers to? • CPA contains a grey list of prohibited 	
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				<p>terms which, if included, render an agreement void. If it is the regulator's intention to introduce such a grey list, we suggest adoption of the list to address practices that do not meet the principles of fairness as contained in the guidance recommended as an initial step prior to prescriptive regulation.</p> <ul style="list-style-type: none">• The guidance should further provide insight into interpretation practices that will be followed when reviewing terms for fairness and the consequence to the contract and recourse available to customers, in the event a term is deemed unfair.• Consideration to include dispute resolution through the ombud schemes currently available.	
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				<ul style="list-style-type: none"> We further recommend that use of electronic transacting be considered in the guidance for fair terms, specifically in relation to reducing terms to writing and requiring a wet signature. Other methods such as recording of telephonic contracting and digital logging of acceptance be catered for. In addition, proportionality should be applied to the requirement for proof of acceptance in instances where there is no adverse risk faced by customers in relation to products. 	
The offer and sale of transactional & fixed deposit accounts – advertising & sales material – findings					
41.	p 63 Product offer and sale	<ul style="list-style-type: none"> Of the ASA complaints relevant to transaction and/or fixed deposit accounts, most relate to misleading claims 	<ul style="list-style-type: none"> Banks are subjected to the ASA which ensures that consumers have (i) a 	<ul style="list-style-type: none"> Due cognizance must be taken of the many advertising and marketing laws 	Noted and agree. The FSCA will also establish a workstream on

	Advertising and sales material	about product features, pricing, and availability.	forum to be heard and (ii) is a significant deterrent in FSPs not implementing TCF principles.	already promulgated before any new laws are considered.	improving disclosure requirements in relation to bank products; this workstream may also give consideration to advertising and marketing implications of disclosure requirements
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The offer and sale of transactional & fixed deposit accounts – advertising & sales material – recommendations

42.	p 64 – 65 Product offer and sale Advertising and sales material	<ul style="list-style-type: none"> The COFI/FSR Laws should explicitly address advertising and marketing practices for all financial products (including transactional accounts), building on the relevant provisions in the FAIS Legislation and addressing any potential gaps as to their coverage as noted above. The COFI/FSR Laws should set minimum disclosure standards for all advertising and marketing materials and reflect and build on relevant provisions in the FAIS Legislation and the CPA dealing with matters such as direct marketing, comparative advertising, and other marketing approaches that can adversely affect retail 	<ul style="list-style-type: none"> We acknowledge the role played by advertising and marketing material and information in creating customer expectations in relation to products being marketed however note that FAIS and Insurance laws already contain extensive advertising and marketing standards. 	<ul style="list-style-type: none"> We recommend that any future legislation should make a clear definitional differentiation between “marketing”; “direct marketing” and “advertising”. <ul style="list-style-type: none"> The relevant obligations and principles applicable to marketing would differ from advertising. The relevant marketing or advertising mediums should also be considered – as this may restrict the content of the 	<p>Noted. The Draft Banking conduct standard will introduce high level requirements, which will be consulted on.</p> <p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream may also give consideration to advertising and marketing implications of disclosure requirements. Comments will be considered in this process</p>
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		<p>customers for transactional accounts and fixed deposits.</p> <ul style="list-style-type: none"> • Content requirements should also be prescribed to address potential gaps in the awareness of retail customers. These should include, for example, details of the regulator (the FSCA) that will supervise compliance with requirements relating to transaction and fixed deposit accounts. It should also include language advising retail customers to consider the required disclosure documents for the relevant transactional account or fixed deposit product before deciding whether to acquire it. • Terms such as <i>free</i>, <i>unlimited</i>, and <i>zero costs</i> should be restricted in cases where the product or feature in question comes at direct or indirect cost to the consumer. • The FSCA should issue regulatory guidance that lays down clear parameters as to how the obligations under the COFI/FSR Laws are expected to be complied with in practice, including in an electronic environment. 		<p>marketing or advertising.</p> <ul style="list-style-type: none"> • This would ensure alignment with current legislative regimes – such as the National Credit Act, Consumer Protection Act, The Electronic Communications and Transactions Act and the Protection of Personal Information Act. Proposed amendments to the FAIS General Code of Conduct published in 2017 contain extensive regulatory provisions setting out minimum disclosure requirements relating to marketing and advertising. In addition, the provisions set out requirements in relation to the content and presentation of advertisements and marketing and the impressions they create to customers. These proposed 	
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				<p>amendments cover the recommendations made by the WBG.</p> <ul style="list-style-type: none">• Should authorities consider introducing regulation in COFI it is recommended that the FAIS proposed amendments be used as a base for such recommendations as these proposals cover all financial products and not only transactional accounts and fixed deposits.• The report recommends that COFI/FSR Laws should explicitly and comprehensively address advertising and marketing practices in relation to transactional accounts and fixed deposit. We recommend that the above be extended to include all financial products in general and should not be limited to	
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				<p>transactional and fixed deposits.</p> <ul style="list-style-type: none">• The report recommends that the details of the FSCA be included in the content of advertising and sales material however this is impractical for certain media e.g. SMS, where space is at a premium.• We would welcome a discussion on relaxation of comparable advertising standards allowing us to compare our offers with that of our rivals in the competitive space. Comparative advertising may increase competition in favour of the customer. The discussion will however need to consider consequences, some of which may be unintended, which includes difficulty in comparing underlying features,	
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				and banks increasingly challenging each other on comparative advertising, which will be damaging to the industry.	
The offer and sale of transactional & fixed deposit accounts – disclosure – findings					
43.	p 72 Product offer and sale Product disclosure	<ul style="list-style-type: none"> Most customer-facing product documentation is available only in English and Afrikaans, despite the fact that 77 percent of adults speak another language as their main language at home. This has implications for customers' understanding of the features and pricing of transactional accounts and fixed deposits. The COFI/FSR Laws should mandate more comprehensive language requirements for key customer-facing documentation related to transactional accounts and fixed deposits reflecting approaches taken in and, importantly, lessons learned from the implementation of such requirements in the National Credit Act and, for 	<p>Some comments from one of our members include the following:</p> <ul style="list-style-type: none"> The recommendation is noted, this bank's ATMs offer transacting in the 11 official languages and their statistics however show that only 5% of customers have selected a non- English language preference on their ATM network. The bank believes it will be sufficient to offer assistance to customers who wish for product features and information to be explained to them in a language of their choice to the extent practically possible. 	<ul style="list-style-type: none"> 	Noted. The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard

		<p>the public sector, the Use of Official Languages Act.</p>	<ul style="list-style-type: none"> • Should we extend our literature to be published in all 11 official languages then we would need to agree at an industry level on a standard lexicon for banking terminology across different languages. • The judicial system would have to be part of the initiative in order to ensure that formal dispute resolution (litigation) remains effective. • The report recommends that copies of the CBP (or a summary) be provided to customers. In the past this has been seen to be ineffective. Referral to the CBP or verbal highlighting of applicable sections is more direct and effective. • The report recommends that COFI/FSR Laws should mandate more comprehensive language requirements 		
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			<p>for key customer-facing documentation related to transactional accounts and fixed deposits reflecting approaches taken in and, importantly, lessons learned from the implementation of such requirements in the National Credit Act and, for the public sector, the Use of Official Languages Act. We submit that the eventual outcome of these regulatory discussions (should documents be published / financial services offered in all 11 languages or not) apply to all financial products, and not just to transactional accounts and fixed deposits.</p>		
Product Disclosure – Recommendations					
44.	p 74 – 81	<ul style="list-style-type: none"> The COFI/FSR Laws should establish a comprehensive disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and 	<ul style="list-style-type: none"> We agree that the customer should be placed in a position wherein he is able to make an informed decision based on clear, concise and 	<ul style="list-style-type: none"> We note this recommendation and will support – in principle - initiatives that will meaningfully simplify disclosure to the customer and 	<p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this</p>

		<p>rights and recourse for transaction and fixed account deposit products.</p> <ul style="list-style-type: none"> • The COFI/FSR Laws should clearly enumerate the product features and pricing elements of a transactional account and fixed deposit that should be disclosed during the shopping and pre-contractual or contract-formation stages. • Product terms and conditions should disclose in clear, accessible language key contractual matters and related rights. • The COFI/FSR Laws should also establish key parameters for the manner in which information on transactional accounts and fixed deposits is disclosed. • The COFI/FSR Laws should also define when banks are required to provide their customers with key information, and how disclosure requirements may vary across stages of the product life cycle. • Requiring account providers to post standard customer agreements prominently on 	<p>comparable product information that is useful to the consumer, at the appropriate stage in the product life-cycle and many such interventions are already in place. As an example:</p> <ul style="list-style-type: none"> ○ A member bank provides clear and concise pre-contract product information as well as available functionalities on their website and through consultants at all branches. An opportunity exists to develop a fact sheet with FAQ's which consumers can download pre-sales to get a clear understanding of impacts of taking up the product. ○ A member bank provides its Fixed Deposit customers with customer 	<p>improve competitiveness in the market. Examples in this regard could include customer education initiatives rather than <i>more</i> disclosure documents.</p> <ul style="list-style-type: none"> • The report recommends that disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and rights and recourse for transaction and fixed account deposit products, as well as the manner and timing of disclosure should be established. We recommend that the proposed regime be extended to include all financial products in general and should not only be limited to transactional and fixed deposits. • To assist our customers in making 	<p>workstream will advise on how best to take forward all recommendations made in this regard</p>
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		<p>their websites and notifying the FSCA when revisions are made should also be considered.</p> <ul style="list-style-type: none"> • The COFI/FSR Laws should allow for key contractual disclosures to be made in electronic format. • South African authorities should consider establishing standards for disclosing or explaining interest rates and calculations on fixed deposit accounts in a simplified manner 	<p>agreements at point of sale for the customer to sign and agree on the terms that they are contracting. It also provides electronic confirmation letters that are sent the following day, which detail the customers balance, interest rate and interest rate methodology and the term of contracting and allows the customer a grace period to dispute any discrepancies.</p> <ul style="list-style-type: none"> ○ The same member bank clearly states in its product rules and terms and condition that there will be a penalty imposed for early withdrawals. 	<p>an informed decision regarding bank products we recommend that the following be considered:</p> <ul style="list-style-type: none"> ○ Pre-sales terms and conditions (Ts&Cs) should be easy to understand, concise, have non-legalistic terms and must be available on all channels that are accessible by all customers. ○ Key information should be presented and signed during account opening at any face to face channels. ○ An opportunity exists to develop downloadable fact sheets with brief key product feature summary and FAQ's which customers can access pre-contracting and 	
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				during the product life cycle.	
45.	p 81 1 st paragraph Product offer and sale Product disclosure	<ul style="list-style-type: none"> The authorities should consider establishing or supporting the establishment of a centralized website and related tools that facilitate easier product comparison on comparable features, prices, and terms of transaction and fixed deposit accounts. A centralized product-comparison website could make it easier for consumers to search for and compare product offerings in the market. A more advanced option would allow a consumer to enter or filter information on anticipated use of key product features (for example, the number of over-the-counter withdrawals per month) and then evaluate the total monthly costs of similar products across different providers. The website could be further adapted to include service quality measures (including data on complaints) the use cases displayed on the website should be based on detailed and periodically 	<ul style="list-style-type: none"> As above. 	<ul style="list-style-type: none"> We recommend that research is conducted to understand the benefits, and challenges experienced by other jurisdictions as set out in the paper. The results of this research should be applied to the South African banking sector to advise on the feasibility of such centralized website. In addition, we further propose, to address the inability to provide like for like comparisons, alternative comparison methodologies such as scenarios or input fields (calculators) be made available so that customers may get a view of the impact of fees, interest rates and other product variables on the intended investment 	<p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard. The feasibility of the recommendation on a centralized website can be considered as part of this process.</p>

		<p>updated consumer research and described in clear, simple terms</p> <ul style="list-style-type: none"> Language considerations similar to those discussed above with regard to disclosure will also be relevant for the content and presentation of any such website (including considering, as feasible, presenting at least some key information in multiple official languages). 		<p>amount over the intended savings period and the illustrated maturity value.</p>	
46.	p 7 – language requirements	<ul style="list-style-type: none"> Most customer-facing product documentation is available only in English and Afrikaans, despite the fact that 77 percent of adults speak another language as their main language at home. This has implications for customers’ understanding of the features and pricing of transactional accounts and fixed deposits. The COFI/FSR Laws should mandate more comprehensive language requirements for key customer-facing documentation related to transactional accounts and fixed deposits reflecting approaches taken in and, importantly, lessons learned 	<ul style="list-style-type: none"> While the proposed amendments are aligned to the NCA, the challenge that this places on FSPs is that it may have a significant operational and cost impact in relation to: <ul style="list-style-type: none"> (a) the translation of documents to cater for the various official languages (b) to implement and continuously update such documents. (c) In addition to the product documentation, challenges will be 	<ul style="list-style-type: none"> Bearing in mind that South Africa has eleven official languages, the COFI/FSR should specify the languages commonly used. We recommend that prior to the FSCA implementing any further legislation in this regard, that a risk-based approach and onus be placed on FSPs as follows: <ul style="list-style-type: none"> (a) consideration be given to FSPs first establishing customer preferences in 	<p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p>

		<p>from the implementation of such requirements in the National Credit Act and, for the public sector, the Use of Official Languages Act.</p>	<p>faced in relation to the various distribution platforms used by banks and the ability to accurately disclose product features and terms.</p> <ul style="list-style-type: none"> The request for more comprehensive language requirements will have an impact on client facing staff as they would have to be trained in handling queries in a language other than English 	<p>relation to languages;</p> <ul style="list-style-type: none"> FSPs to then provide documentation aligned to customer language preferences. 	
47.	p 79	<ul style="list-style-type: none"> Language requirements should apply for key customer-facing documentation related to transaction and fixed deposit accounts. The authorities should draw from the NCR's experience to understand the effectiveness and limitations of its approach to language policies relating to credit. A stricter standard seems likely to be necessary to require that transaction and fixed deposit account information in key customer- 	<ul style="list-style-type: none"> While it is imperative to have product information and customer agreements available in all official languages to ensure sufficient understanding for both parties before any decisions are made by the customer when taking up bank products, it may not be conducive in having all official languages displayed 	<ul style="list-style-type: none"> As above. 	<ul style="list-style-type: none"> See above

		<p>facing documentation and transactional channels is made available in languages that reach a sufficient proportion (for example, at least 90 percent) of the population. Such customer-facing documentation should include, for example, KFSs, terms and conditions documents, and information provided through ATM displays, mobile banking, and SMS communications. Approximately 63 percent of jurisdictions have some form of local language requirements in place as part of a broader disclosure regime, according to the 2017 Global Financial Inclusion and Consumer Protection Survey.</p>	<p>on all bank channels. This may make the sales process a bit daunting from a channel display perspective.</p> <ul style="list-style-type: none"> • A more viable option would be to make available the predominant medium language on bank websites and allow for customers to request agreement documents in any of the official languages from the branch or via email communication. 		
48.	p 74 Product offer and sale Product disclosure	<ul style="list-style-type: none"> • The COFI/FSR Laws should establish a comprehensive disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and rights and recourse for transaction and fixed account deposit products. The disclosure regime should provide clear and sufficiently detailed rules to allow for 	<ul style="list-style-type: none"> • We support the TCF outcomes relating to providing customers with appropriate information and the appropriate time, thereby enabling customers to make informed decisions throughout the product life cycle, 	<ul style="list-style-type: none"> • A guiding principle to disclosure is the desire to provide customers with appropriate information at the appropriate time. Key is differentiating between information that is essential for purposes of understanding the 	<p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p>

		<p>consistent application and comparability across providers. As further detailed below, the disclosure regime should enumerate what, how, and when banks must disclose information to potential or existing consumers, including in precontractual product documentation and in the product terms and conditions provided to retail customers. In particular, the disclosure regime should include specific requirements for elements where lack of standardization could hamper the purpose of mandated disclosure in the first place—for example, for presenting interest rates and fees amounts and formulas and, for fixed deposits, interest calculations on early withdrawal. Clear and sufficiently detailed disclosure rules will facilitate provider compliance as well as the ability of regulators to monitor and enforce compliance. A key element of this regime should be standardized short-form disclosure documents, which are discussed separately in Product Offer and Sale more detail. Efforts should also be made to follow</p>	<p>however, this should be principles-based.</p> <ul style="list-style-type: none"> • We therefore do not support the recommendation that the full customer agreement must be provided before the customer contracts. 	<p>key features of the product. This set of information being required to enable informed decision making. Second to this is information of a contractual nature, which would include items that will not impact on the clients' ability to make an informed decision.</p> <ul style="list-style-type: none"> • Proposed amendments to the FAIS General Code of Conduct, expand the disclosure obligations of financial services providers and do away with the lesser disclosure regime applicable to transactional accounts. In their current form, the requirements do not cater for proportionality or the timing of disclosures through the life cycle of the product, with the current requirement being that all disclosures 	
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		<p>an activity-based approach that aligns disclosure requirements across similar products offered by various types of FSPs (that is, including nonbanks where relevant) and assists with understanding and comparability of product variations (for example, accounts that have only a transactional focus versus accounts that also provide savings incentives).</p> <ul style="list-style-type: none"> • The COFI/FSR Laws should establish a comprehensive disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and rights and recourse for transaction and fixed account deposit products. • The disclosure regime should provide clear and sufficiently detailed rules to allow for consistent application and comparability across providers. As further detailed below, the disclosure regime should enumerate what, how, and when banks must disclose information to potential or existing consumers, including in precontractual product 		<p>must be made prior to contracting.</p> <ul style="list-style-type: none"> • It is our view that regulation should take into account the customer experience. The risk that regulation or guidance should seek to address and mitigate related to customers not receiving appropriate and sufficient information that is relevant to the particular phase in the product life cycle. Secondly, the impact of this appropriate information on the customer's ability to make decisions relevant to that particular phase in the product life cycle. Thirdly, the obligation on product manufacturers and distribution channels to make all product and service related information available for access by the customer irrespective 	
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		<p>documentation and in the product terms and conditions provided to retail customers.</p> <ul style="list-style-type: none"> • In particular, the disclosure regime should include specific requirements for elements where lack of standardization could hamper the purpose of mandated disclosure in the first place—for example, for presenting interest rates and fees amounts and formulas and, for fixed deposits, interest calculations on early withdrawal • Account providers should be required to provide consumers with a copy of a standard customer agreement containing at least key terms and conditions prior to entry into a contract. 		<p>of the phase they are in, in the life cycle.</p> <ul style="list-style-type: none"> • Earlier comments highlighted the need for consideration between product manufacturer disclosure requirements and distribution channel requirements. A good example of such consideration is contained in the Long-term Insurance PPR with reference to the replacement of policies and the disclosures required by the Long-term Insurance Act and those required by FAIS. • We further recommend that use of electronic transacting be considered in the guidance for fair terms, specifically in relation to reducing terms to writing and requiring a wet signature. Other methods such as recording of 	
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				<p>telephonic contracting and digital logging of acceptance be catered for.</p> <ul style="list-style-type: none"> In addition, proportionality should be applied to non-face to face platforms with guidance requested on fair terms at the point of engaging with client via the platform. Examples include transactions via ATM or SMS (e-Wallet). 	
49.	<p>p 76 Last paragraph Product offer and sale Product disclosure</p>	<ul style="list-style-type: none"> The COFI/FSR Laws should require provision of a standardized short-form disclosure document to summarize key product features, pricing, and terms and conditions of transaction and fixed deposit accounts discussed above. These tools summarize the main product features and pricing structure of a financial product to help consumers understand the product and compare it with similar products offered by other providers. 	<ul style="list-style-type: none"> We are in support of this recommendation and its dissemination to customers at the pre-contractual phase to assist in decision making. We support the introduction of consistent use of terminology in terms of pricing etc. We do however caution that the differing product value propositions may include features and 	<ul style="list-style-type: none"> To cater for differing product value propositions and pricing, the proposed regulations should require the use of examples wherein scenarios are used to illustrate product features, usage and pricing to enable customers to understand the interplay between these aspects. 	<p>The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard</p>

			pricing that cannot be standardized.		
50.	p 78 2 nd paragraph Product offer and sale Product disclosure	<ul style="list-style-type: none"> • South African authorities should consider establishing standards for disclosing or explaining interest rates and calculations on fixed deposit accounts in a simplified manner. • While financial sector participants may generally understand that various methods can be used to describe interest rates and calculate interest on an investment, many financial consumers are unlikely to be aware of such nuances. 	<ul style="list-style-type: none"> • There is inconsistency in the type of rates that are published across banks. Example: Nominal versus Effective versus Interest rate at maturity. • We support the WBG recommendation in relation to the introduction of interest rate disclosure standards. 	<ul style="list-style-type: none"> • All FSPs should explain the rate in disclosure documents and should include calculation examples to assist clients in understanding the rates. • We recommend that as part of the exercise to standardize interest rate disclosure, an exercise to identify the various interest rates available across the industry be undertaken. • Once identified, standardization of the terminology used to describe these interest rates should be introduced. This standardized terminology should be supported by industry agreed on definitions to ensure consistency in usage and application across the industry. 	The FSCA will establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard

51.	p 81 – centralised comparison tool website	<ul style="list-style-type: none"> • Industry-led efforts to provide fee calculators to help customers compare products appear to have been largely ineffective. • Given the apparent lack of success in implementing effective and accessible product-comparison tools, the authorities should consider establishing or supporting the establishment of a centralized website and related tools that facilitate easier product comparison on comparable features, prices, and terms of transaction and fixed deposit accounts. 	<ul style="list-style-type: none"> • Clarity needs to be provided on whether or not the centralised tool will be applicable to all transactional accounts across the industry? • While we support the principle of product comparison, we submit that it may however not be an easy and straight forward exercise to compare Fixed Investment products across banks. <ul style="list-style-type: none"> ○ This is largely due to the differences in product specific features and available functionalities. ○ An example is that while one bank may offer a pure Fixed Deposit where funds will only be made available at the selected date of maturity, another competitor bank may provide a Fixed Deposit with an access portion, 	<ul style="list-style-type: none"> • We recommend that the FSCA adopt a phased approach: <ul style="list-style-type: none"> (a) first evaluating whether or not the regulatory objective (product comparison across banks) would be achieved by the key fact statements document (if implemented) (b) or products features for transactional accounts being prescribed in future, and thereafter assessing if it is necessary to have a product comparison tool as well? 	<ul style="list-style-type: none"> • Noted, see responses above
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			<p>thus making it difficult to compare the two Fixed products using a central website.</p> <ul style="list-style-type: none"> ○ To ensure a meaningful comparison, the product will have to be exactly the same when comparing them and benefits on the accounts will need to be stated. ● In addition, a high-level pricing structure could also misrepresent the benefits and value/adds the customer would receive which could potentially sway a customer decision. Hence, a high-level structure would be of a disservice to both the customer and the bank. ● With reference to page 67 paragraph 2 & page 70 paragraph 2, it is recommended that the alignment of 	<ul style="list-style-type: none"> ● We recommend that a study be implemented to understand the benefits and drawbacks in the insurance industry to understand how any such tool would impact banks. ● Given the concerns raised, it may be appropriate for guidance to be provided to such 	
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			<p>product terminology across banks should be prioritized, which would assist customer with comparisons.</p> <ul style="list-style-type: none"> • Such a tool is in use in the insurance industry for annuities and guaranteed investment plans. • Subsequent to the Banking Enquiry, the National Treasury considered the establishment of a centralised website. The National Treasury ultimately decided the banks should make their own fees calculators available across a number of channels. It was pointed out at the time of the Banking Enquiry that third-party providers were already providing such comparison services. 	<p>third-party providers (as opposed to the need for a centralized calculator).</p>	
Advice & Sales Practices & Incentives – Recommendations					

52.	<p>p 86 1st paragraph Product offer and sale Advice and sales practices and incentives 7 sales practices and incentives</p>	<ul style="list-style-type: none"> • The COFI/FSR Laws should build on and extend the approach taken in the FAIS Legislation with respect to sales practices. • In particular, the relevant provisions should require FSPs to act honestly and fairly and ensure that appropriate advice is provided so the client is able to select a product suitable for his or her needs. • FSPs should be required to have and comply with formal sales policies and procedures. <ul style="list-style-type: none"> ○ Such policies should clearly define and prohibit mis-selling, misrepresentations, aggressive high-pressure sales, and discriminatory sales practices. ○ Such policies should cover disclosure and advice and ensure that customers seeking transactional accounts are not steered toward certain products based solely on income metrics, particularly when more affordable products are on offer. 	<ul style="list-style-type: none"> • We support the recommendations made by the WBG in relation to product offer and sales. We further support the recommendation for proportionality in the application of these recommendations. • Recent amendments to the FAIS Fit and Proper Requirements have provided for an activity-based approach to intermediary services. • Proposed amendments to the FAIS General Code will introduce additional qualitative metrics for the remuneration of representatives that seek to promote the fair treatment of customers and ensure compliance on the part of representatives with regulatory requirements such as disclosure. • RDR seeks to address unfair 	<ul style="list-style-type: none"> • We recommend that the FSCA publish guidance in relation to their expectations of good qualitative metrics to be included in remuneration models for frontline staff members. • Remuneration principles should apply to all banking products to ensure appropriate advice is given to clients at all times. <ul style="list-style-type: none"> ○ If fixed deposit and transactional accounts become “rules-heavy” and prescribed in relation to remuneration limits, then the sales staff may rather opt to selling other products with higher remuneration. • Remuneration should be fair in that the sales staff should be appropriately 	<p>Aspects of the findings and recommendations made in this section of the diagnostic will be partly addressed in the draft banking conduct standard under development. Aspects may also be covered in the FAIS Code being strengthened. The FSCA will also be assessing RDR through a banking lens to see how the findings of the diagnostic may also be fed into that process</p>
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		<ul style="list-style-type: none"> • The reforms proposed under the Retail Distribution Review—including recognizing sales execution as a regulated activity—are a positive step in this regard to the degree that they will extend to transactional accounts. • Building on the approaches taken in the FAIS Legislation with respect to sales practices, the COFI/FSR Laws should appropriately strengthen governance of advice and sales related to transactional accounts and fixed deposits, including regarding <ul style="list-style-type: none"> – the compensation of frontline sales staff and agents to limit consumer risks, and – protective rules governing relationships between banks, third-party agents/intermediaries, and retail customers (leveraging work so far under the Retail Distribution Review). • Importantly, the application of these rules should be proportional, and adaptable, to initiatives intended to promote effective access by low-income consumers to 	<p>remuneration practices with incentive-based remuneration models receiving attention. We agree that the future regulatory landscape should take cognizance of work being undertaken in the RDR.</p> <ul style="list-style-type: none"> • Rules which mitigate conflicts of interest need to be enhanced but should take cognizance that in many instances review around fair sales practice will occur after the fact. 	<p>compensated for the effort involved.</p> <ul style="list-style-type: none"> • For fixed deposits or savings products, the principles implemented should be such as to encourage sales staff to sell savings products to increase savings behavior in RSA as we have a very poor savings culture. • Fixed deposits are very simple products with very small margins as it is a very competitive market, and this should also be considered to ensure FSPs can still offer a competitive rate but also pay sales staff a fair remuneration as well as make a reasonable margin. • The report recommends that the approaches taken in the FAIS Legislation with respect to sales practices, the COFI/FSR Laws should be built 	
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		<p>transaction and savings products.</p>		<p>appropriately to strengthen governance of advice and sales related to transactional accounts and fixed deposits. We recommend that the above should not be limited to transactional and fixed deposits, it should be extended to include other financial products in general.</p> <ul style="list-style-type: none"> • We suggest consistency around principles and standards which should inform responsible sales process and incentives which do not deliver TCF outcomes to customers, However FAIS requirements have typically been one size fits all. We regard COFI as an opportunity to relook at the conduct standards and possibly incorporate principles which 	
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				places obligation on the FSPs to demonstrate that they are achieving fair outcomes for clients.	
Product Operation and Administration – background					
53.	p 93 Product operation and administration Potentially unfair fees	<ul style="list-style-type: none"> <i>Fees for Disputing Debit Orders</i> Paragraph 9.4.4 of the CBP advises customers to report any disputes relating to their debit orders to their banks. A range of circumstances in which customers should raise a dispute are described, including when the third party seeking to claim a debit order (i) has withdrawn an amount before the date specified in the customer’s instruction, (ii) continues to collect a debit order that the customer has cancelled or is subject to a stop-payment instruction, (iii) debits the customer’s account for an incorrect amount, (iv) has collected a debit order that the customer did not authorize or in a manner the customer did not authorize (for example, split the collection 	<ul style="list-style-type: none"> In the current process, where customers dispute legitimate debit orders to assist them with their own cash management, the customer should be charged a fee. In cases where rogue users have been identified, current bank internal processes facilitate the refunding of the fees that have been charged to the customer. 	<ul style="list-style-type: none"> It is anticipated that the DebiCheck Project will solve for many of these issues and that unauthorised debit orders will not be processed. 	<ul style="list-style-type: none"> Noted The FSCA will also establish a workstream considering unfair product terms and conditions, fees and penalties; this workstream will advise on how best to take forward all recommendations made in this regard.

		<p>amount or consolidated several debit orders), or (v) has collected a debit order that is not consistent with the customer's instruction.</p> <ul style="list-style-type: none"> Despite recognising the importance of customers being able to raise debit order disputes, disputed debit order fees can potentially be unfair and discourage legitimate disputes as customer have to bear the financial burden of the fee upfront which may only be refunded when the veracity of the claim is confirmed. These fees can act as a disincentive for customers seeking to enforce their rights and to avail themselves of internal dispute resolution processes. Even if such fee may not be a penalty in a legal sense, its application and administration can result in substantive unfairness to customers.” 			
Product Operation and Administration – recommendations					
54.	Pages 8 & 94 1 st paragraph Product operation and	<ul style="list-style-type: none"> Transactional account and fixed deposit terms and conditions do not seem to have been effectively subjected under the general unfair-terms regime. (The 	<ul style="list-style-type: none"> In terms of current practice, the fees and charges are provided to customers at the onset and when the pricing changes. In addition, fees are 	<ul style="list-style-type: none"> We recommend that there should be some future guidelines in terms of penalty fees for banks for fixed deposits: 	The FSCA will establish a workstream considering unfair product terms and conditions, fees and penalties; this

	<p>administrati on Potentially unfair fees</p>	<p>report discusses the reasons for this in more detail.) Common law concepts of penalties and limited legislation seem to apply, but there does not seem to be a common understanding in the banking industry as to when a fee would be prohibited as a penalty. Some banks consider that disclosure can be sufficient to avoid a fee being a penalty.</p> <p>While there have been some improvements in fee-charging practices, some fees continue to be charged that could potentially be restricted penalties in the sense contemplated under existing legislation or, even if this is not the</p> <p>case, could nevertheless be viewed as unfair or unreasonable (for example, certain dishonour fees or fees associated with debit order disputes).</p> <ul style="list-style-type: none"> • The regime prohibiting unfair terms recommended above in 1 should apply to relevant fees. The fairness of such fees would then be tested against the restrictions in the regime 	<p>explicitly communicated with regard to penalties on contravening the agreed conditions for the product.</p> <ul style="list-style-type: none"> • Clarity is required as what “disclosed consistently” would mean under the new disclosure rules: <ul style="list-style-type: none"> ○ If fees are updated on pricing guides on an annual basis, would this satisfy the requirement to “consistently disclose”? ○ Example: a low-income account customer travelled overseas and was charged a fee for an International ATM withdrawal. The customer refutes the charge of the fee, yet he was advised on same via the annual pricing guide. Would the acceptance and “sending” to 	<ul style="list-style-type: none"> ○ to ensure that the comparison between banks can also take into account penalties in the event of breakage (as this could result in clients making more informed decisions if they know upfront what the expected penalty can be and if it is too substantial to look at alternative courses of action such as to look at segregating their investments into fixed and immediate access or withdrawing the interest earned or paying out the interest monthly if these options are available to the client upfront and when the client wants to exit their fixed deposit.) <ul style="list-style-type: none"> • We recommend that future disclosure 	<p>workstream will advise on how best to take forward all recommendations made in this regard.</p> <p>The disclosure workstream will similarly consider disclosure related aspects.</p> <p>Some aspects of these findings may also be covered by the draft banking conduct standard that will shortly be consulted on.</p>
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		<p>to determine whether the fee is appropriate.</p> <p>If necessary (depending on the implementation of the regime), the application of existing legislative and common law doctrines on penalties should be clarified for financial sector participants.</p> <p>The disclosure improvements recommended above in 2 should also be pursued to address the potential lack of customer awareness regarding the application of relevant fees.</p> <p>Such fees should not be enforceable unless disclosed consistently with new disclosure requirements.</p>	<p>notifying the charges on a product annually to a customer be seen as satisfying the requirement for “consistent disclosure”?</p>	<p>principles should take cognizance of existing laws and future proposed regulatory tools such as the key facts statements. A combination of these should serve to address regulatory concerns around disclosure of penalty fees.</p>	
Dormant transactional accounts – recommendations					
55.	<p>p 8 Product operation and administration on Dormant transactional accounts</p>	<ul style="list-style-type: none"> There are currently no regulatory or self-regulatory requirements, nor uniform industry practices, for dealing with dormant accounts. Fees may continue to be charged on an inactive or a dormant account for different periods, depending on the bank. South African authorities should issue specific 	<ul style="list-style-type: none"> The customer has a role to play in ensuring that risks herein are mitigated, and that customer updated information is key to ensuring that TCF deliverables are met. We caution against a one size fits all approach to the 	<ul style="list-style-type: none"> We agree that future principles-based regulation should be implemented to ensure a consistent industry approach hereto. We recommend an industry coordinated approach in relation to defining when an account becomes 	<p>The FSCA will establish a workstream on account switching and closures in particular, and will advise on how best to take forward recommendations made in this regard. Consideration of account closure practices will include</p>

		<p>regulatory requirements on transparency and fair conduct related to dormant accounts, including defining the time or circumstances when an account would be considered dormant, to ensure uniformity of customer treatment by banks, and parameters for (i) identification of dormant accounts, (ii) notification to consumers, and (iii) closure. Specific prohibitions of adverse practices should also be considered, such as continuing to charge maintenance fees on dormant accounts that have reached a zero or negative balance.</p> <ul style="list-style-type: none"> • Specific prohibitions of adverse practices should also be considered, such as continuing to charge maintenance fees on dormant accounts that have reached a zero or negative balance. 	<p>regulation of dormant and unused accounts given the diversity in product value propositions across banks.</p>	<p>dormant and the agreement of principles for the treatment of such accounts including proactive disclosure to customers and the levying of fees for the maintenance of these accounts.</p> <ul style="list-style-type: none"> • We will welcome an opportunity to workshop this recommendation and unpack what it will mean for the banks and clients alike and develop principles and Standards to meet this objective under COFI. 	<p>consideration of dormant accounts.</p>
Temporary overdrafts or shadow credit limits					
56.	p 8, 96 - 99 Product operation and administration	<ul style="list-style-type: none"> • Some banks allow selected customers to temporarily overdraw their transactional account without a prior agreed overdraft, while others charge for this service. It seems that 	<ul style="list-style-type: none"> • <u>General Comment:</u> Note that certain member banks have legitimately structured overdrawn transactional 	<ul style="list-style-type: none"> • <u>General Comment:</u> • In the event that a member bank concludes an agreement with a consumer to: 	<p>The FSCA will first engage with the NCR on recommendation made in relation to temporary overdrafts and shadow credit,</p>

	<p>Temporary overdrafts or “shadow” credit limits</p>	<p>customers would need to expressly opt out if they are not in fact interested in receiving this service. There are differing legal views between the banks regarding the application of the National Credit Act to such temporary overdrawing and thus to compliance.</p> <p>Indications are that, notwithstanding specific references in some terms and conditions, customers do not necessarily understand that they have been granted such credit nor how it operates. Some of the consulted banks started implementing alternative ways to notify customers in case their transactional accounts may not have sufficient funds to cover future debits (to avoid overdrawing as well as dishonors).</p> <ul style="list-style-type: none"> • While recognizing that temporary overdrawing can serve a legitimate customer purpose, the South African authorities should consider how best to regulate it (for example, whether it is necessary to amend the National Credit Act or National 	<p>accounts (without a formal overdraft) such that it remains outside of the ambit of National Credit Act. Accordingly:</p> <ul style="list-style-type: none"> (a) There is no deferral of payment – that is, if the consumer overdraws the transactional account the overdrawn amount is due and payable immediately; (b) The member bank does not charge credit interest, fees or charges; and (c) The member bank charges a service fee for honoring the relevant transaction. <ul style="list-style-type: none"> • Please note that the National Credit Act does permit the temporary increase of the limit of a credit facility (where there is already an overdraft) in section 119 and there are already 	<ol style="list-style-type: none"> 1. Honor a payment leading to the consumer overdrawing the transactional account; 2. The consumer actually agrees to a specific limit in this regard etc. (as per the recommendations), this agreement would become a credit facility as envisaged by the NCA and all the NCA requirements (including affordability assessments, disclosures etc.) will have to be met. 	<p>and thereafter engage further on possible mechanisms to take forward recommendations</p>
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		<p>Credit Regulations to extend them more clearly to such facilities, or impose requirements through the COFI/FSR Laws) to ensure that banks do not engage in unfair practices in relation to temporary overdrawn of transactional accounts. More specific product-design obligations of the kinds recommended above in 1 would also be relevant in ensuring that the inclusion of such features in transaction accounts is consistent with TCF Outcomes.</p> <ul style="list-style-type: none"> • In the meantime, the NCR should also consider a targeted review of banks' current practices relating to temporary credit provided in connection with transactional accounts to ensure compliance with the National Credit Act and National Credit Regulations. 	<p>legislative requirements in this regard.</p> <ul style="list-style-type: none"> • It should be noted that the purpose of shadow credit is to provide assistance to customers in instances where the balance in their transactional accounts have insufficient funds to service essential debit orders. • We support the recommendations put forward by the WBG in relation to disclosure and providing options to opt out of the service. • We are not in support of the recommendation for the NCR to conduct a review of shadow credit limits. 		
57.	p 95 Product operation and administration Temporary overdrafts	<ul style="list-style-type: none"> • The National Credit Act regulates consumer credit in South Africa, but only some aspects of the Act apply to "incidental credit agreements." An incidental credit agreement is defined in section 1 of the Act as an agreement, 	<ul style="list-style-type: none"> • A member bank has various external legal opinions (including senior counsel's opinion) which stipulates that an overdrawn transactional account 	<ul style="list-style-type: none"> • We recommend further consultation with industry on this matter. 	<ul style="list-style-type: none"> • Noted, see also response above

	or shadow credit limits	irrespective of its form, by which an account was tendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time and either or both (a) a fee, charge, or interest became payable when payment of an amount charged in terms of that account was not made on or before a determined period or date, or/and (b) two prices were quoted for settlement of the account, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable due to the account not having been paid by that date.	can never be an incidental credit agreement – as it does not meet the definitional requirements.		
Changes to terms and conditions and fees and charges – recommendations					
58.	p 101 - 103 Product operation and administration Changes to terms and conditions and fees	<ul style="list-style-type: none"> The COFI/FSR Laws should mandate minimum notice periods and require individual customer notice of changes that will have a direct customer impact (and having regard to the likelihood that a customer may not become aware of general public notices of relevant changes). 	<ul style="list-style-type: none"> We are in agreement with the recommendation to pro-actively inform customers of changes to product terms within a reasonable period. With regards to individual targeted communication, 	<ul style="list-style-type: none"> Once all the provisions in POPIA come into effect, all financial services providers will be obliged to ensure that the customers' personal information is kept up to date. The FSCA should consider publishing 	<ul style="list-style-type: none"> The draft banking conduct standard will address some of the aspects related to disclosure requirements; the FSCA will also establish a workstream on disclosure to

	and charges	<ul style="list-style-type: none"> • Internationally, there is no broadly accepted minimum notice period for communicating changes in contract terms and conditions to consumers, but the 20-business-day period in the CBP with which banks are already familiar seems a good starting point in South Africa. • The key will be to ensure that appropriate notice methods, including targeted notices, are also mandated. • This can include appropriate flexibility. For instance, the notice of a change in an ATM withdrawal fee could be given in a non-personalized, general fashion, such as a message on the screen of the ATM, which a consumer should be required to acknowledge before the withdrawal is conducted. 	<p>whereby the bank makes an effort to communicate with customers through the details it has available in its records, consideration should be had to customers not updating contact details as they change from time to time.</p> <ul style="list-style-type: none"> • With regards to prohibition of unilateral variation rights – comments relating to prohibited terms has reference with the added comment that should terms be changed unilaterally prior notice should be afforded to the customer. 	<p>guidance on steps that institutions may take to demonstrate that they have attempted to reach customers and steps taken to update customer contact details.</p> <ul style="list-style-type: none"> • Consideration should be given to some of the principles relating to contacting customers contained in the ASISA Code for unclaimed benefits. • We welcome conversations around the options being considered by the FSCA. We submit that the approach should be principled based and needs to consider the type of client, geographical locations of clients, etc. The FSPs should demonstrate how notification is done for different target groups and have evidence of how they reached 	<p>consider the recommendations made in the report and how best to take these forward.</p>
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				the decisions on what types of communication are most effective for a certain target group.	
59.	p 9, 99 - 100 Product operation and administration Changes to terms and conditions and fees and charges	<ul style="list-style-type: none"> • <i>Changes to terms and conditions and fees and charges</i> In their account terms and conditions, banks retain extensive unilateral rights to make changes to fees and charges and other terms. Some banks' terms and conditions contain clauses indicating that a bank can change the fees and charges and other terms and conditions for an account without prior individual notice being given to the customer. • The COFI/FSR Laws should mandate minimum notice periods and require <u>individual customer notice of changes that will have a direct customer impact, considering the likelihood that a customer</u> may not become aware of general public notices of relevant changes. 	<ul style="list-style-type: none"> • We do not support there should be individual customer notice of changes provided that fair and reasonable notice periods are provided in respect of pending changes: • As an example: <ul style="list-style-type: none"> ○ One member bank communicates pricing changes 21 working days prior to the change. ○ One member bank provides 5/6 weeks' notice period to customers on product changes or discontinuation. 	<ul style="list-style-type: none"> • While we agree that minimum notice periods should be defined in future, we do not support the requirement for individual notice to each customer before any change is made. • We recommend that significant changes to the product should be communicated 30 to 60 days prior to implementation. • In our view, disclosure to customers can be achieved more practically through the following mechanisms: <ul style="list-style-type: none"> ○ Terms and conditions should be more visible on the banks websites as they are usually somewhere at the bottom and 	<ul style="list-style-type: none"> • See above response

		<ul style="list-style-type: none"> • Unilateral variation rights included in terms and conditions should also be subject to an unfair-terms regime as recommended above in 1. 		<p>cannot be easily seen;</p> <ul style="list-style-type: none"> ○ The language used in these terms and conditions should be more customer friendly to make it easier for clients to understand. It should also be displayed such that the most important parts are highlighted for the customer to understand; ○ Terms and conditions should be kept concise so that customers can easily read it; ○ Terms and conditions should also be reviewed at least once a year to ensure that they are still relevant and contain any changes that might have been made. 	
				<ul style="list-style-type: none"> • Banks should be obliged to obtain 	

				feedback from their clients to understand what customers want to see on the website and to make the necessary changes.	
Statements – recommendations					
60.	p 9 & 103 Product operation and administration Statements	<ul style="list-style-type: none"> • <i>Statements</i> Statement requirements for transactional accounts are not currently regulated by legislation. The CBP addresses the provision of statements for transactional accounts only to some extent. Banks indicated that they provide customers with a statement either on a regular basis or upon request. Practice in this regard seems to vary and charging for paper statements seems a common practice. Consumer representatives indicated that access to bank account statements is one of the main challenges faced by account holders. • The COFI/FSR Laws should specify requirements for the provision of periodic statements for transactional accounts. Regulatory requirements should 	<ul style="list-style-type: none"> • We support the WBG recommendation for regular dissemination of statements to customers. This is a practice we currently subscribe to. • We wish to raise a concern in relation to the manner in which statements are disseminated, specifically with regards to postal dissemination. Given the rise of fraud through identity theft and customers not keeping their postal contact detail up to date, we consider this method of dissemination a risk to customers. <ul style="list-style-type: none"> ○ One member bank has embarked on making 	<ul style="list-style-type: none"> • Future regulation should take cognizance of industry efforts to mitigate fraud risk, through use of providing electronic channels to customers for them to access their statements. • We recommend that banks be required to provide customers with regular statements. • With regards to uniform terminology, we recommend that there is consistency in relation to terminology used in customer facing documentation such as pre-contracting information and the information 	Noted. The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard

		<p>address minimum content and format requirements, as well as frequency, timing, and manner of delivery (including making appropriate provision for easy access to statements and other transactional information through electronic channels).</p>	<p>statements more easily attainable using e channels such as ATM's. This is in light of customer convenience and mitigates risks such as identity theft and fraudulent opening of accounts.</p>	<p>contained in the statement.</p> <ul style="list-style-type: none"> • We would like to further propose that consideration be had to allowing banks with the flexibility, where statements are available on digital platforms or alternatively where information on transaction history, balances and fees are made accessible to customers through digital means that statements need not be sent to customers as customers using these platforms are enabled to print statements as they require. Perhaps further consideration for banks to track customer usage of the digital platforms to demonstrate opportunity for customers to access statements. • We recommend that customers not using digital platforms as a minimum should 	
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				receive statements via email with non-electronic options remaining available to customers at branches and other paper based avenues.	
Product Closure & Mobility – background & findings					
61.	p 109 4 th paragraph Product closure and mobility Account switching processes	<ul style="list-style-type: none"> Debit orders present significant concerns for the banking industry in South Africa, with issues ranging from poor conduct from debit order service providers to irresponsible behavior from customers. Banks indicated that over the last few years there has been a significant increase in debit orders processed to bank accounts without customers' authorization, as well as inappropriate customer behavior, where bank customers are disputing validly authorized debit orders to delay payment. 	<ul style="list-style-type: none"> Noted 	<ul style="list-style-type: none"> With the implementation of the DebiCheck Project, and through PASA, there are customer education campaigns and initiatives planned to increase awareness on this new process, and to educate customers on how this new solution will work. Individual banks are also rolling out customer education initiatives to educate their own customer bases on the new system for debit order collections. These combined efforts aim to bridge this literacy gap. 	<ul style="list-style-type: none"> Noted

62.	p 109 5 th paragraph Product closure and mobility Account switching processes	<ul style="list-style-type: none"> • An industry project aiming to enhance and eventually replace certain types of debit orders and thereby contribute to the safety and efficiency of debit orders, was commenced in 2013. (Footnote 165: Payments Association of South Africa website as of June 2017, www.pasa.org.za/home/2017/06/29/news.) • The project aims to deliver a new type of debit order system, called DebiCheck. • Through the new debit order system, a debit order will be processed to a consumer's account only if the mandate for such a debit order has been electronically confirmed by the consumer. • The industry foresees that the number of invalid debit orders being processed as well as the number of consumer disputes where valid mandates are in place will decline. • For DebiCheck debit orders, consumers are being required to confirm, electronically and on a once-off basis, their debit 	<ul style="list-style-type: none"> • Section 4.1.3 Electronic Funds Transfer (EFT)- based instruments, is aligned to EFT processes (As-Is and To-Be) and future plans e.g. DebiCheck. • However, no.163 in this section (information on DebiCheck) contains dates which are outdated. 	<ul style="list-style-type: none"> • We recommend that the DebiCheck document be updated by PASA. 	<ul style="list-style-type: none"> •
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		<p>order information with their bank.</p> <ul style="list-style-type: none"> • To support this new electronic confirmation process, banks have developed a number of ways in which they will obtain such confirmation, such as through USSD messaging to cell phones, banking applications, and by utilizing traditional channels, such as on-line banking, ATMs, or branches. • Given the low level of financial literacy of the population in South Africa, customers may not understand or become confused with the process of authentication of the debit order. 			
63.	p 111 Product closure and mobility Account switching processes	<ul style="list-style-type: none"> • The authorities should work with the banking industry to achieve a common and facilitative industry approach to transferring bank accounts, including debit orders (before considering regulatory intervention). • Matters for coverage would include, for example, switching information exchange processes and time frames. 	<ul style="list-style-type: none"> • We support the proposal for a joint effort between authorities and the banking industry to achieve a common and facilitated industry approach to transferring bank accounts and debit orders. This is a preferred approach prior to consideration of regulatory intervention. 	<ul style="list-style-type: none"> • We recommend further industry and regulatory consultation on this matter. 	<ul style="list-style-type: none"> • Noted

		<ul style="list-style-type: none"> The CBP provisions on switching should also be revised to reflect a more facilitative approach from a customer perspective 			
Early termination and rollover of fixed deposits – recommendations					
64.	p 112 – 114 Product closure and mobility Early termination and rollover of fixed deposits	<ul style="list-style-type: none"> The KFSs that are recommended to be introduced in section 2.2 above should address both early withdrawal and rollover. Given that there are already requirements relating to disclosure that would apply to fixed deposits, it is not recommended that more detailed disclosure requirements be developed. Rather, it is recommended that certain aspects of fixed deposits that might be unclear to customers be highlighted through the KFSs. In particular, a KFS should provide a brief, clear explanation of the consequences of early termination and the implications at maturity if the customer does not withdraw the fixed deposit. Issues of potential inappropriateness or 	<ul style="list-style-type: none"> We agree that certain key aspects be highlighted to customers: <ul style="list-style-type: none"> To raise awareness of customers upcoming maturities to mitigate risks of customer forgetting about the maturity date, it is good practice for SMS alerts to be sent to customers regarding key account-related events, including upcoming maturity of deposits before the account matures. It is also good practice to communicate with the customer post maturity to inform 	<ul style="list-style-type: none"> We recommend that regulation provides for notifications to the customer, by form of a letter 6 weeks before maturity and thereafter to send an additional SMS alert 7 days before maturity. We also recommend that regulation provide that the financial institution should send a customer a reinvestment letter day after the investment account is reinvested and allow a grace period for any disputes. Such a communication process will be adequate to raise the awareness amongst customers of upcoming maturities. 	The FSCA will also establish a workstream on improving disclosure requirements in relation to bank products; this workstream will advise on how best to take forward all recommendations made in this regard

		<p>substantive unfairness of terms governing early withdrawals should also be addressed through the product-design requirements discussed in sections 1.2 and 1.3 above and the unfair-terms regime discussed in section 1.4 above. The application of these requirements (through FSCA guidance, enforcement, and so on) should take into account both customer impact and any legitimate business reasons for relevant restrictions, depending on the nature and extent of those restrictions, such as prudential requirements.</p> <ul style="list-style-type: none"> • A coordinated industry approach should also be considered for providing alerts ahead of the maturity date of fixed deposits. As noted above, some banks have been sending customers SMS alerts regarding the forthcoming maturity of their fixed deposits. If necessary, however, advance notice could be mandated by regulation. 	<p>the customer of any roll-over and allow customers a 14 Day Grace period to dispute reinvestment.</p>	<ul style="list-style-type: none"> • We recommend that this should be an industry standard, going forward, to ensure that customers are not locked into a second investment term without their knowledge. • We will welcome the opportunity to engage on standards on standards to be agreed on regarding alerts and notifications relating to deposit maturity and automatic reinvestments. • It may be worthwhile to investigate opportunities around a cooling off period with no early redemption fees to allow customers to change their mind after their deposit have been reinvested. 	
General observations around the CBP					
65.	p 115	<ul style="list-style-type: none"> • The CBP remains a key instrument affecting banks' 	<ul style="list-style-type: none"> • We acknowledge the role that the Code 	<ul style="list-style-type: none"> • With the establishment of a 	<ul style="list-style-type: none"> • Noted; as a voluntary industry

	Code of banking practice	<p>dealings with consumers in relation to the products discussed in the report.</p> <ul style="list-style-type: none"> • As such, this report includes specific recommendations to strengthen the CBP. For example, section 2.2 includes a recommendation to revise the CBP to reduce the onus on customers to request information, as well as to remove unnecessary and ambiguous caveats that might excuse banks from certain provisions. • The need for greater efforts to raise awareness of the CBP among consumers is also highlighted. • Section 4.2 includes a recommendation to revise CBP provisions on account switching to reflect a more facilitative approach from a customer perspective. • More broadly, it is important that the CBP be comprehensively reviewed to ensure that it fully reflects up-to-date public and regulatory expectations in the context of the TCF Outcomes. 	plays in the current landscape.	<p>conduct regulatory authority and new regulatory frameworks, we realise that the role of the Code of Banking Practice needs to be evaluated and in the event of its retention, the CBP will need an update within the next two years of so required.</p> <ul style="list-style-type: none"> • We further wish to recommend that as the FSCA considers conduct standards for the financial services industry, current consumer protecting subordinate legislation, such as the PPR in the long- and short- term insurance Acts, proposed amendments to the FAIS General Code and RDR proposals be taken into consideration as the principles upon which these conduct standards are built. 	code, BASA will be responsible for managing the process for making any changes and updates.
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