

## SUBMISSION OF COMMENTS

TO THE NATIONAL ASSEMBLY STANDING COMMITTEE ON FINANCE  
ON THE FINANCIAL SERVICES LAWS GENERAL AMENDMENT BILL 2012  
FROM THE ASSOCIATION FOR SAVINGS AND INVESTMENT SOUTH AFRICA



18 April 2013

Honourable T. Mufamadi  
MP and Chairman: Standing Committee on Finance  
Parliament of South Africa

By email: awicomb@parliament.gov.za

Dear Honourable Mufamadi

### 1. About ASISA

The Association for Savings and Investment South Africa (ASISA) was formed in 2008 as a non-profit company and represents the majority of South Africa's asset managers, collective investment scheme management companies, linked investment service providers and life insurance companies. At the end of December 2012, a total of 109 member companies managed R4,64 trillion of the regulated household savings pool.

ASISA is mandated by its members to pro-actively engage on policy, regulatory and other issues of common concern. ASISA aims to be an active participant in the creation of an environment that promotes equal opportunities for its members through holistic regulation, while at the same time considering the interests of consumers/investors. It is ASISA's role to ensure that the key contributions made by ASISA members in supporting the nation's savings, development and transformation initiatives are valued and recognised and we have also been tasked with ensuring that as a collective our industry remains relevant and sustainable.

### 2. Consultation with ASISA members

ASISA established a Working Group resorting under its Regulatory Affairs Board Committee to consider the provisions of this Bill and to prepare a response thereto. Representatives nominated by ASISA members served on the Working Group. All ASISA members were given the opportunity to submit written comments and these were considered by the Working Group. This submission to the National Assembly Standing Committee on Finance is the product of the deliberations of the Working Group and is representative of the ASISA membership's views.

### 3. Consultation with National Treasury (NT) and the Financial Services Board (FSB)

ASISA members were given the opportunity to submit comments on a first draft of the Bill before it was tabled in Parliament and were invited to an information session during which ASISA was able to highlight concerns and comments.

A draft submission of comments on the Bill as it was tabled in Parliament was discussed with NT and the FSB on 18 February 2013. ASISA members' comments as set out in Annexure 1 include NT's written response to the draft comments. Subsequent to the Working Group's consideration of these responses, some comments were deleted, others were amended and some were expanded on as indicated in Annexure 1.

ASISA and its members wish to express their sincere appreciation to NT and the FSB for being willing to discuss and consider the comments and for responding to them.

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SAVINGS AND INVESTMENT ASSOCIATION OF SOUTH AFRICA NPC - REG NO. 2008/017776/08 trading as ASSOCIATION FOR SAVINGS & INVESTMENT SA (ASISA)

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### 4. Support of the Bill

ASISA members support and agree with the Bill save for the clauses as set out in Annexure 1. Although a number of our previous comments have been taken into account, ASISA members remain concerned about certain elements of the Bill, and therefore submit further substantive and technical comments which are set out in the Annexure attached to this letter. Most of the technical comments relate to issues where it is believed that the proposed wording and/or structure of the provisions will not achieve their intended purposes either in part or as a whole. ASISA members will be required to implement these provisions to be able to comply with the legislation and thus considered them from the perspective of the user/subject of the legislation.

### 5. Main concerns

The main concerns relate to the proposed process of consultation and the liability of the FSB.

ASISA and its members understand and embrace the measures to protect consumers and realise the need for the regulator to have the authority to act in emergency situations. The powers granted to the FSB by the provisions of this Bill, however, need to be proportionally balanced with an appropriate and robust process whereby entities and persons that will be the subject of the powers being exercised will have an appropriate opportunity to be consulted and their comments properly considered and responded to. Even though the wording as proposed by ASISA will codify a constitutional right to consultation, it is of utmost importance to alleviate legal uncertainty in respect of the process to be followed and will illustrate a commitment by National Treasury and the FSB to a fair and transparent process in this regard. Furthermore it will enable all departments within the FSB to apply a consistent standard of consultation which has been, with respect, a cause for concern by the industry up until now.

ASISA members are of the view that the FSB should be appropriately responsible and accountable in exercising the extensive powers granted to it by the legislation it administers. A *bona fide* exercise of power or carrying out of any duties or performance of any functions is not sufficient. *Bona fide* signals an intention of good faith. It is possible to intend to exercise power in good faith but still to do so in a negligent manner. The FSB should exercise any power, carry out any duty or perform any function in a *bona fide* manner and with due skill, care and diligence similar to regulated entities generally being required by law to act with due skill, care and diligence.

### 6. Presentation to the Standing Committee on Finance

ASISA will appreciate an opportunity to deliver an oral presentation to the National Assembly Standing Committee on Finance.

Yours faithfully

Handwritten signature of Peter Dempsey in black ink.

Peter Dempsey  
Deputy CEO

Handwritten signature of Adri Messerschmidt in black ink.

Adri Messerschmidt  
Senior Policy Advisor

*\*A copy of this submission was sent to National Treasury and the Financial Services Board*