STATEMENT SUPPORTING THE PROPOSED AMENDMENTS TO THE POLICYHOLDER PROTECTION RULES MADE UNDER THE LONG-TERM INSURANCE ACT, 1998 AND THE SHORT-TERM INSURANCE ACT, 1998

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CONTENTS

1 PURPOSE OF THE STATEMENT 2

2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION 2

2.1 NEED FOR THE PROPOSED AMENDMENTS TO THE PPRs 2

2.2 SUMMARY OF THE PROPOSED AMENDMENTS APPLICABLE TO BOTH LTIA PPRs AND STIA PPRs 3

2.3 SUMMARY OF THE PROPOSED AMENDMENTS UNIQUE TO THE LTIA PPRs 7

2.4 SUMMARY OF THE PROPOSED AMENDMENTS UNIQUE TO THE STIA PPRs 11

3 STATEMENT OF IMPACT OF THE PROPOSED CHANGES 14

4 STATEMENT OF INTENDED OPERATION OF THE PROPOSED CHANGES 14

5 WAY FORWARD 15

1 PURPOSE OF THE STATEMENT

This statement is published in relation to the proposed amendments to the Policyholder Protection Rules (PPRs) made under section 62 (1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTIA) and section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (STIA) respectively (the proposed amendments).

The statement is published in terms of section 98 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA) and provides an overview of, and the rationale for, the proposed amendments to the PPRs. It also explains the need for, and the intended operation and expected impact of , the proposed amendments to the PPRs.

2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

2.1 NEED FOR THE PROPOSED AMENDMENTS TO THE PPRs

The proposed amendments to the PPRs are necessary to –

- accommodate enhancements to the legislation, informed by supervisory findings and reports from several thematic reviews (including the review of reinstatement practices related to life insurance products) and the report on excess structures in the non-life insurance industry);
- expand on existing requirements in the PPRs to further mitigate conduct risks, including in particular risks identified around lack of governance of product design, premium review practices and the design and disclosure of loyalty benefits;
- address gaps in the Policyholder Protection Rules (Short-term Insurance), 2017 and Policyholder Protection Rules (Long-term Insurance), 2017 (collectively referred to as the “2017 PPRs”) that allowed for regulatory arbitrage as identified through supervisory experience, including specifically in relation to life insurance policies underwritten under the funeral and risk classes of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act;
- expand the scope of the PPRs made under the STIA (STIA PPRs) to explicitly apply to commercial lines business, and transpose the requirements in sections 51, 53 and

54 of the STIA to these PPRs, to align between the STIA PPRs and PPRs made under the LTIA (LTIA PPRs).

- correct minor drafting errors and clarify areas of interpretational inconsistency; and
- incorporate proposals emanating from policy developments.

2.2 SUMMARY OF THE PROPOSED AMENDMENTS APPLICABLE TO BOTH LTIA PPRs AND STIA PPRs

The following are changes that are proposed in both the LTIA PPRs and the STIA PPRs:

2.2.1 Definitions

The amendments to the definitions in the PPRs propose some changes following the finalisation of the conversion of licenses in terms of the Insurance Act, 2017 (Act No. 18 of 2017) (Insurance Act) by the Prudential Authority (PA). This includes the removal of the reference to "registered insurer" from all relevant definitions, as all license conversions have been considered and finalised, and therefore the reference to registered insurers has now become obsolete. The definitions have accordingly been adapted to simplify the interpretation of the PRRs.

The definition of "publish" is moved from Rule 10 on Advertising to the general section of the definitions, as the term is used in other rules and not only in Rule 10.

2.2.2 Rule 1: Requirements for the fair treatment of policyholders

The Financial Sector Conduct Authority (Authority) proposes the addition of the word "system" to Rule 1.4. Following the addition, the insurer will not only be required to have policies and procedures to achieve the fair treatment of policyholders, but also the necessary systems. This is added due to the heavy reliance on systems by the insurers in their operations, which plays an integral part in all steps of the policy lifecycle.

There are also enhancements proposed to closer align the outcome in Rule 1.4(b) to international best practice, and in line with the expansion of Rule 2 on product design. The change is informed by international research on requirements related to product design. The aim is to ensure that long-term objectives of the policyholders are taken into account when designing a product, alongside the more immediate needs of the customer. As an example, the requirements in the FCA Handbook of rules and guidance of the Financial Conduct Authority in the United Kingdom requires insurers in that jurisdiction to assess whether the insurance products remain consistent with the needs, characteristics, and objectives of the identified target market.

2.2.3 Rule 2: Product design

The amendments propose certain enhancements to Rule 2 of the PPRs to address concerns about inappropriate product design picked up through supervisory oversight and analysis of the Conduct of Business Returns ("CBRs") which identified risk indicators related to product design. As an example, very high numbers of policy cancellations either by the insurer or at the instance of the policyholder could be indicative of inappropriate product design. Closer supervisory scrutiny identified amongst other things a lack of accountability and governance related to product design. In light of these findings and informed by international best practice, the principles related to product design are proposed to be extended to consider the longer-

term objectives and potential outcomes for policyholders at the product design stage. The rule makes it clear that the board of directors of an insurer is ultimately responsible for the appropriateness of all products that are introduced in the market.

Further to this, the proposed changes require the insurer to establish, maintain and operate a board-approved product design framework that contains at least the elements provided for in this additional section to Rule 2. The elements provided include, amongst others, appropriate level of involvement of the compliance function and the testing of products during the design stage. The product design approval process is expanded to cater for a product approval committee, but any delegation of the product design approval beyond a senior manager or product approval committee is explicitly prohibited in terms of this Rule.

The additions are founded on international best practices and informed by research conducted in relation to product design requirements in the Financial Conduct Authority's Handbook of rules and guidance in the United Kingdom.

The changes in Rule 2 also sets out principles applicable to product design where the product includes a loyalty benefit, which requires that the design of products that includes loyalty benefits or bonuses must consist of a payment structure in respect of accumulated value upon termination of such a product due to the death of the policyholder, and condemns structures whereby there are undue cross-subsidies between those policyholders who receive loyalty bonuses and those policyholders who do not receive loyalty bonuses.

The enhanced requirements related to loyalty benefits, as proposed in a number of Rules across the PRRs, are informed by the work done by the Authority on loyalty benefits, in turn informed by engagements with a number of insurers that underwrite investment products that includes loyalty benefits as part of the offering. The proposals are primarily principles-based and focused on fair outcomes for policyholders.

2.2.4 Rule 2A: Microinsurance standards and funeral product standards (in the LTIA PPRs) and Microinsurance standards (in the STIA PPRs)

The amendments proposed in this rule in both the LTIA PPRs and STIA PPRs comprise of the proposed deletion of Rule 2A.4.1 and 2A.4.2.

Rule 2A.4.1 limits the contractual term of a microinsurance policy to 12 months. This limitation related to the contractual term was initially included because of prudential reasons. Concerns have been identified that, when considered together with the limitations around waiting periods as set out in Rule 2A.6.1, it creates an unlevel playing field between so-called traditional insurers (that offer funeral type products) and microinsurers. In order to ensure that traditional and microinsurers are subject to the same requirements in regard to limitations on imposing waiting periods (as were the initial policy position), it is proposed that the limit in contractual term be removed from the product standards.

Similarly, it is proposed that Rule 2A.4.2 be deleted as the requirement is more appropriately dealt with in terms of the prudential framework as prescribed by the PA in prudential standards. Consequentially, the mirroring requirements of Rules 2A.4.1 and 2A.4.2 in the STIA PPRs are also proposed to be removed, for consistency.

Rule 2A.6.5 is to be amended to correct a drafting error. The reference in the current wording to "at least 31 days" creates an absurdity in interpretation meaning that the policyholder must have, for a period exceeding 31 days before entering into a new policy had a previous policy.

In Rule 2A.10.3 in the STIA PPRs and Rule 2A.11.1 in the LTIA PRRs, there is a proposed addition of the word “beneficiary” to address supervisory concerns around undesirable practices, through which insurers charge a beneficiary administration or tracing fees when he or she claims the benefits under a policy.

2.2.5 Rule 6: Determining Premiums (and excesses -– STIA PPRs)

Rule 6.2 is being amended to clarify in the wording that no administration fees are allowed – before or after the inception of a policy. This proposal is informed by instances identified through supervision where fees (including admin fees) are being charged before the inception of a policy, which is before the premium is set. The compliance argument is that such fees if charged before inception would fall “outside the policy” and therefore are not contrary to the wording in this rule. The intention is to therefore prohibit the charging of such fees also prior to the policy incepting.

2.2.6 Rule 10: Advertising

The Rule on Advertising contains minor drafting changes and Rule 10.14.7 expands on advertisements that reference a loyalty benefit, no-claim bonus, or rebate in premium and provides for balanced advertisement in relation to the primary benefits of the policy being advertised, prohibits the use of the advertisement as an inducement and requires clear communication on suitability. This rule has been inserted to ensure standardised practice related to the advertising of loyalty benefits linked to insurance products.

2.2.7 Rule 11: Disclosures

There is a proposed addition to the disclosure requirements applicable before a policy is entered into, in relation to bundled products. The change is informed by the need for more explicit disclosures on bundled products identified through supervisory findings on opaque pricing and benefit structures, where insurance products are bundled together or sold alongside other services of the product (including so-called “value-added products”). Clearer disclosures are also required concerning the impact on premium where goods and services are terminated in the bundled products. The changes to strengthen disclosure requirements on bundled products are also supported in terms of the International Association of Insurance Supervisors (IAIS) Insurance Core Principles, specifically ICP 19.7, as confirmed during the 2020 IAIS Conduct of Business peer review conducted on the FSCA. It also includes some drafting improvements.

Lastly, it is proposed that some targeted disclosures are required in relation to loyalty benefits, to ensure that policyholders understand the accrued value and costs of the loyalty benefits on the product, informed by research conducted by the Authority in relation to policyholders’ understanding of the impact of loyalty benefits on the cost of insurance products.

2.2.8 Rule 12: Intermediation and distribution

The Authority proposes the addition of Rule 12.1A, that requires the insurer to ensure that it has dynamic and responsive processes and controls over its chosen distribution channel, and that these processes and controls are regularly reviewed and improved. This change proposes enhanced governance around product development and product supplier accountability for the design of products, regardless of chosen distribution model. This is informed by RDR proposals made in the Retail Distribution Review (RDR) to addressing imbalances in the responsibility of product suppliers and intermediaries for customer outcomes (RDR proposals BB and CC). Further to this, the Authority picked up trends through

the CBRs, for example high cancellation rates on new policies issued that may indicate a need for additional processes and controls over product development and distribution of products, to ensure the products are developed and distributed to the appropriate target markets.

2.2.9 Rule 14: Monitoring and review of product performance

The proposed expansion in this Rule follows from offsite monitoring through submission of returns to the Authority, which indicated concerning trends in respect of product performance. A regular review of product performance is suggested, to ensure that products are distributed and remains suitable to the target market. Accordingly, the intention is to enhance governance and oversight by insurers over product performance. Previously this Rule only explicitly required monitoring, without mention of a review of product performance. The Authority believes that the concepts are linked, and both monitoring and review of product performance must be done in a structured way. The review speaks to using the information gathered from the monitoring, and monitoring relates to undertaking an assessment of the product performance. Part of proposed enhancements aims to make more specific the actions required relating to review and monitoring of product performance, including regular and *ad hoc* reporting to the executive management, the board of directors, and any relevant committee of the board on identified risks, trends in relation to product performance and actions taken in response thereto.

2.2.10 Rule 17: Claims management

The requirements for a claims management framework is expanded to provide for processes and procedures to ensure reasonable time is allowed for policyholders to institute claims, and appropriate and prominent disclosure of any time limitation for the institution of a claim. This principle-based proposal is based on concerns raised in the funeral insurance space by the supervisors.

It was found that some insurers impose an unnecessarily short and restrictive time period to claim through the terms and conditions of the policy and use this as a basis to repudiate claims not lodged within that period. The principle is that an insurer should allow the policyholder a fair and sufficient amount of time to lodge a claim.

The rule is also extended to set out specific requirements in support of combatting insurance fraud. The intention is that an insurer must have claims management practices that support the prevention of insurance fraud, and establish a fraud prevention training plan in respect of fraud detection and prevention, to align to requirements in the Prudential Standards under the Insurance Act in GOI3 (on Risk Management and Internal Controls for Insurer). It also places a requirement on the insurer in Rule 17.8.3 to disclose to a claimant any potential consequences of submitting false and/or incomplete information, in order to discourage fraudulent claims.

Changes to Rule 17.7.3 aim to align with the requirements in the updated version of the CBRs. The changes will enable the supervision teams to have more granular information in respect of claims, by receiving both information where claims have been accepted by the insurer but not yet paid, as well as information relating to claims that have been paid. Furthermore, detail on the claims withdrawn will also need to be maintained and reported on by the insurer.

The Rule will now also prohibit the imposition of any charge or fee for a claimant to make use of claims processes and procedures, and the repudiation of a claim based solely on the outcome of information gathered from a tracking or fitness device. These prohibited claims

practices are informed by suggestions from supervisory findings, that claims practices in terms of which the information gathered from tracking devices is used as only grounds to repudiate a claim may lead to undesirable outcomes for policyholders. In principle, consent should be given by policyholders to use any information on tracking devices for claim verification purposes.

2.2.11 Rule 18: Complaints management

In this Rule, the proposal is to remove the distinction between a "reportable complaint" and a non-reportable complaint. This is proposed to broaden the scope of categorisation as required by Rule 18.5 and the related recordkeeping, monitoring, and analysis of complaints (Rule 18.8) to no longer be limited to only reportable complaints but rather to apply to all complaints.

Supervisory experience has proven that complaints captured and resolved within 5 days are often the most accurate indicators of market conduct risks and trends. This aligns with practices and requirements already communicated by the Authority during insurer engagements and through thematic workshops on the CBRs, in order to ensure that there is no inconsistency in the reporting to the regulator.

2.2.12 Rule 19 (ST) / Rule 20 (LT): Termination of policies

The proposed changes suggest the addition of Rule 19.5 (STIA PPRs) and Rule 20.5 (LTIA PPRs) in respect of the termination of policies, that includes loyalty benefits. The changes propose that in instances where there is a loyalty benefit attached to a policy, and the policy terminates due to the death of the policyholder before the due date when the accrued value of the loyalty benefit is to pay out to that policyholder, any accumulated value must be paid to the estate of the policyholder or nominated beneficiary.

This is suggested because the charges/costs involved for the insurer on a policy decreases over time, and the loyalty benefit is in essence funded through the decrease in costs (instead of the insurer decreasing the premium payable by the policyholder over time). If there is an accrued value to such a loyalty benefit at the time that the policy is terminated due to the death of the policyholder, it would be considered fair that any such accrued value be paid out to the estate of the policyholder or nominated beneficiary of the policyholder.

2.3 SUMMARY OF THE PROPOSED AMENDMENTS UNIQUE TO THE LTIA PPRs

Further to the changes that apply to both the LTIA PPRs and STIA PPRs set out in section 3.2 above, the following are changes that are proposed in the *LTIA PPRs only*:

2.3.1 Definitions

A definition for "living annuity" is inserted to accommodate alignment with the requirements in *draft Conduct Standard [-] of 2020 (RF) on Conditions for Living Annuities in an Annuity Strategy.* The draft conduct standard places certain obligations on retirement funds when utilising living annuities as part of their annuity strategy. In some instances, the annuities are contracted outside of the funds/ directly with insurers. The aim is to have the same monitoring and disclosure requirements applicable to both retirement funds and on insurers in relation to the use of living annuities. These obligations will be placed on retirement funds through the draft conduct standard, and on insurers through the amendments to the PPRs.

A definition for “reinstate” is proposed, informed by proposals from the thematic review on reinstatement practices in the life insurance industry undertaken by the supervisors. The term is used in Rule 11 and the newly added Rule 22 on Reinstatement of policies.

2.3.2 Rule 2: Product design

In addition to what is set out in section 2.2.3 above, this rule contains proposals in relation to Rule 2.2.5, particularly in respect of the provision of policies that have an investment value which includes loyalty benefits. The insertion is informed by the engagements between the Authority and a number of insurers that underwrite investment products that include loyalty benefits as part of the offering.

2.3.3 Rule 2A: Microinsurance and funeral product standards

Change to the definition of “funeral policy”

It is proposed that the definition of “funeral policy” in this rule be expanded in order to include all funeral type benefits and products (regardless of being written under the “funeral” or the “risk” class of business[1]), thereby ensuring that the funeral product standards apply to all life insurance policies intended specifically to cover the cost of a funeral or rendering of services on the happening of a death event. The aim of this change is to ensure level playing fields, consistency, and fair practices in the funeral insurance market, curb potential abuse, and avoid regulatory arbitrage. This also aligns with the policy objectives in the 2011 National Treasury Policy document titled *“The South African Microinsurance Regulatory Framework”*[2], to set product standards that ensure that these products are designed in an appropriately simplified way, to support improved understanding of insurance products by consumers in the market.

The definition of “funeral policy” is extended, to further clarify the intention that the product standards in Rule 2A must apply to all rider benefits[3] intended to cover the cost associated with a funeral or the rendering of a service on the happening of a death event, and all rider benefits (that meet the other classes of life insurance business i.e. risk, credit life, etc) that are ancillary to a “primary / main” policy that offers funeral benefits.

This is inserted to ensure level paying fields between micro insurers and traditional insurers that offer funeral policies.

In its current form Rule 2A applies to all microinsurance policies, including any rider benefits offered by micro insurers, as ancillary to the primary benefits. Rule 2A also applies to all so-called traditional insurers that offer life insurance policy underwritten under the funeral class of life insurance business[4] and any rider benefit that would have been written under the funeral class of business, had it not been a rider benefit. This is due to the fact that the

[1] As set out in Table 1 of Schedule 2 of the Insurance Act, 2017

[2] Available on the National treasury website at: http://www.treasury.gov.za/publications/other/MicroinsuranceRegulatoryFramework/Policy%20Document%20Micro%20Insurance.pdf

[3] As defined in the Insurance Act, 2017

[4] set out in Table 1 of Schedule 2 of the Insurance Act, 2017.

definition of "funeral policy" in the 2017 PPRs only extended to rider benefits that would have been written under the funeral class of business, had it not been a rider benefit. By implication this means that other types of rider benefits (i.e. not rider benefits that meet the description of the funeral class of business, but rider benefits that would meet the descriptions of any of the other classes of life insurance business being risk, credit life, investment etc.) offered by traditional insurers alongside a funeral benefit are not subject to Rule 2A.

The intention is that Rule 2A must apply to all policies that offer funeral cover, regardless of whether it constitutes the primary obligations or a rider benefit, and regardless of the class of business under which it is written. It is also intended to apply to any other rider benefits that are attached to a funeral policy, regardless of the types of insurance benefits that such a rider benefit offers.

The proposed changes to the definition of funeral policy is intended to capture all these scenarios, and ensure that the application of Rule 2A is consistent across the industry to funeral cover.

Other salient changes in Rule 2A

The requirements in Rule 2A.9 on reinstatement of microinsurance and funeral policies will be moved out to the new dedicated rule on reinstatement of policies (see new Rule 22), informed by the supervisory thematic review on reinstatement practices mentioned above. The intention is to broaden the application of these requirements not only to microinsurance and funeral policies, but to risk policies as well. The requirement related to reinstatement will nevertheless still be applicable to microinsurance and funeral policies.

The change proposed to Rule 2A.10 aims to clarify that the prohibition on policy benefits being payable directly to a service provider is not applicable to a microinsurance policy underwritten under the credit life class of life insurance business, as set out in Table 1 of Schedule 2 to the Insurance Act. Given the nature of credit life policies being aimed at satisfying all or part of a financial liability to a credit provider, this limitation is not relevant to these types of microinsurance policies.

2.3.4 Rule 10: Advertising

Given the proposed expansion of Rule 2A to all funeral type policies (regardless of whether written under the Risk or the Funeral class of insurance business) and the related amendment of the term "funeral policy" in Rule 2A, the Authority holds the view that the regulatory arbitrage and unlevel playing fields between funeral products underwritten in the funeral class of business versus those underwritten in the risk class will be appropriately addressed, and consequently Rule 10.4.13 will no longer be required. The rule also contains some very minor drafting corrections.

2.3.5 Rule 11: Disclosures

Additional ongoing disclosures (disclosures after the inception of a policy) are proposed in respect of any limitations or conditions related to reinstatement, including implications related to waiting periods. As with the new rule on reinstatement, this was proposed based on recommendations from the thematic review on reinstatement practices.

Rule 11.6.3 which relates to information that must be provided at least annually in respect of investment policies, sets targeted disclosures on loyalty benefits provided in relation to

investment policies to give clarity to the policyholder on the ongoing cost and value of the loyalty benefit. This is to ensure that the policyholder is fully informed on an ongoing basis.

Rule 11.6.3 is also expanded to place certain obligations on insurers that offer living annuities, to align to the disclosure requirements applicable to retirement funds in relation to the use of living annuities. These obligations will be placed on retirement funds through the draft conduct standard, and on insurers through the amendments to the PPRs.

2.3.6 Rule 15: Premium reviews

Following supervisory experience and intervention on some of the premium review-related complaints received by the Authority, the amendments propose notification to the Authority, in the event that the premium increase referred to in Rule 15.7 exceeds 20 % of the premium payable on the policy. This will enable the supervision teams to have sight of the reasons for such an increase in each case, to mitigate potential unfair outcomes to vulnerable groups and policyholders as a whole. The additions to this Rule also propose the establishment, maintenance, and review of a board-approved Principles and Practices of Premium Review policy. This is similar to the requirement in the LTIA regarding principles and practices of financial management.[5] The aim is to require this level of oversight by the board of directors of an insurer over premium review practices and require the necessary processes and structures within the insurer to ensure fair outcomes to policyholders.

For purposes of alignment with the requirements in *draft Conduct Standard [-] of 2020 (RF) on Conditions for Living Annuities in an Annuity Strategy* applicable to retirement funds (mentioned above), an addition to this rule proposes that an insurer that offers a living annuity to a member of a fund must monitor the sustainability of income of the living annuity by applying the same criteria as is prescribed for a pension fund. The aim is to align the requirements applicable to retirement funds and insurers when it comes to utilising living annuities towards retirement savings. These obligations will be placed on retirement funds through the draft conduct standard referenced above, and on insurers through these amendments to the PPRs.

2.3.7 Rule 22: Reinstatement

A stand-alone rule is proposed to set out requirements, informed by proposals from the thematic review on reinstatement practices of life risk policies undertaken by the Authority during 2019 and 2020. The requirements build on the requirements already applicable to microinsurance and funeral policies and aim to address undesirable practices around the imposition of waiting periods under lapsed policies and changes to terms and conditions of reinstated policies that are to the detriment of the policyholder.

Supervisory findings show that often insurers allow reinstatement subject thereto that the total outstanding (arrear) premium be paid to the insurer. Actual examples of exorbitant arrears premiums of up to R184 000 over the life of the policy were found, and instances where insurers impose excessively high premium increases upon reinstatement. Evidence has shown that often the insurer accepts the reinstatement, but the policyholder is in actual fact unable to afford the policy. The policyholder pays the arrears premium and/ or excessively increased premium but then the policy just lapses again.

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[5] Section 46 of the LTIA.

Accordingly, it is suggested that an insurer must, before electing to reinstate a policy, take into account the affordability of the policy for the policyholder. In taking into consideration the affordability of the policy for the policyholder, the insurer could then employ alternative means to manage the risk and/or recover costs, and, for example, set internal policies on maximum arrear premiums, and impose more gradual increases in premium. Specific comments on this proposal is invited from the life insurance industry.

2.4 SUMMARY OF THE PROPOSED AMENDMENTS UNIQUE TO THE STIA PPRs

The following are the proposed changes that apply to the STIA PPRs additional to that set out in section 2.2 above:

2.4.1 Extending the Application of the STIA PPRs to commercial lines business

It is proposed that the application of the STIA PPRs be widened to extend to commercial lines business, whereas previously the application was limited to personal lines. Historically, the 2004 short-term insurance PPRs only applied to personal lines business. With the replacement of the 2004 PPRs with the 2017 PPRs, it was initially proposed as part of the consultation process that the PPRs apply to both commercial and personal lines business. There was significant push back from the short-term insurance sector on this proposal. Reasons cited included that some of the requirements in the PPRs were not appropriate for commercial lines business, and that commercial policyholders have enough commercial knowledge to allow them to make informed decisions, such that the protections afforded by the PPRs are more appropriate to individuals / personal lines policyholders. It was argued that the compliance costs involved in meeting the requirements in the PPRs outweighed the benefit that these protections would offer commercial policyholders.

The national state of disaster brought about by the COVID-19 pandemic in 2020 created significant challenges in the insurance sector. In particular, it highlighted certain approaches and practices that illuminated the need for the protection afforded to individuals and very small SMME’s under the current PPRs, to be explicitly extended to commercial lines business. This would ensure the enforceability of the TCF principles in relation to commercial lines business as well, to ensure the level of protection in the PPRs regardless of whether the policyholder is a business or an individual.

This was particularly evident in relation to certain aspects of Business Interruption (BI) insurance cover, including examples where new exclusions or requirements were introduced during the period of national lock down during the COVID-19 pandemic crisis, and certain undesirable claims practices came to light that threatened fair outcomes to commercial lines policyholders. It was evident that commercial lines policyholder would also benefit from the protections afforded through the STIA PPRs.

An analysis was undertaken on the existing requirements in the STIA PPRs which showed that on the face of it, most of the rules in the PPRs can be made equally applicable to commercial lines business. Rule 2A, which sets out the Microinsurance product standards, is in any event only applicable to personal lines (as microinsurance business by its nature in terms of the definition in the Insurance Act is limited to personal lines business only). It is therefore proposed that, save for a specific qualification in Rule 13 on Data management, all the STIA PPRs rules be expanded to apply to commercial lines business. In term of the drafting necessary to bring about this change, it is proposed that the definition of “policy” is an amendment to align to that in the STIA, thereby automatically capturing both personal lines business and commercial lines business when referring to a policy in the STIA PPRs.

2.4.2 Definitions

The reference to credit life insurance and related definitions (mandatory credit life and optional credit life insurance) is to be repealed from the STIA PPRs, as credit life is a class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act only. Licensed non-life insurers cannot underwrite credit life insurance due to these structural limitations in the classes of business under the Insurance Act. Only life insurers may underwrite credit life insurance if so licensed.

The definition of “policy” is amended to allow for the STIA PPRs to be applicable both to both commercial and personal lines business for the reasons set out in section 2.4.1 above.

2.4.3 Rule 3: Consumer credit insurance

The proposed changes suggest the removal of references to credit life insurance, due to it being a class of life insurance business in Table 1 of Schedule 2 to the Insurance Act (as mentioned above). Accordingly, licensed non-life insurers are not allowed to underwrite credit life insurance, as any reference to this class of business for purposes of non-life insurance has now become superfluous.

2.4.5 Rule 6: Determining premium and excesses

The amendments emanate from recommendations drawn from the thematic review on excess structures in the non-life insurance sector undertaken by the supervisory departments. Based on the findings of the thematic review the Authority proposed certain considerations to be taken into account by the insurer when determining excesses, and the disclosure of affordability to the policyholder in the event that the excess charges exceed certain amounts or percentages.

These requirements will be applicable to personal lines policies only, as findings show that the greatest risk lies with individuals that cannot afford excesses and do not know or understand the potential impact to these excess structures in the event of a claim. The requirement proposes that, when determining any excess where the aggregated excess amount exceeds either R10 000 or 5% of the value of the insured risk (whichever is lower), an insurer must take the following two steps:

1. take into consideration the policyholder's ability to financially bear any costs or risks associated with the excess by conducting an affordability test; and
2. disclose to the policyholder in writing the result of such an affordability test before the policy is entered into.

It is acknowledged that such an affordability assessment may be considered onerous and intrusive, however the expected result is that insurers will move away from imposing exorbitant excesses and complicated excess structures to avoid conducting such an affordability test, thereby resulting in better outcomes for policyholder. An insurer can still elect to impose a higher excesses if is considered appropriate given the particular risk, or where an insurer does so at the request or insistence of the policyholder. In such instances the affordability test must however be undertaken and the results disclosed to the policyholder. It is considered a less intrusive requirement than outright prohibiting such excesses, as has been done in the microinsurance space as per Rule 2A.8 of the STIA PPRs. Specific comments on this proposal are invited from the non-life insurance industry in respect of this proposed requirement.

2.4.6 Rule 7: Void provisions

During consultation on the first set of amendments to the 2017 PPRs, it was proposed that the existing conduct of business provisions in the STIA and LTIA (which were to be repealed through consequential amendments to the Insurance Act) be "moved into" the PPRs, as these requirements are better placed in subordinate legislation. Through the public consultation comments were raised that as the STIA PPRs, in its current form, does not apply to commercial lines policies, it may have unintended consequences if these sections are moved out of the STIA – as it would have the effect that these requirements would no longer apply to commercial business. With the intention to expand the application of the STIA PPRs to commercial lines business (explained in paragraph 2.4.1 these concerns will be resolved.

It is therefore proposed that section 51 (Voidness of certain provisions of agreements relating to short-term policies) and section 54 (Validity of contract) of the STIA be moved to this rule without effecting any changes to the content of the requirements. This will have the added benefit of aligning the STIA PPRs more closely to the LTIA PPRs. The requirements in Section 53 will be moved to a separate rule on Misrepresentation. In this regard see paragraph 2.4.9 below.

2.4.7 Rule 11: Disclosures

The definition of "significant exclusion or limitation" is expanded to specifically include excess structures. This aims to ensure detailed and relevant disclosures related to excess structures, required to ensure that policyholders are aware of and understand the excesses attached to their non-life policies as a significant exclusion or limitation.

Additional disclosure in respect of the potential impact of the excesses is proposed through the addition of Rule 11.4.4, which requires comprehensive information where the policy contract provides for an excess of 5% or more of the value of a claim or the excess amount in rand value exceeds R10 000. The changes to this rule are informed by the findings in the supervisory thematic review on excess structures. It was found that often non-life insurance products which are structured with a lower that usual premium are marketed and sold to customers, but then excessive excesses are included in the policy which the policyholder only becomes aware of in the instance of a claim. Very often policyholders are not aware of the implication of these high excess structures, which deprives them of making an informed decision about the best policy offering to suit their needs.

2.4.8 Rule 13: Data management

In line with the decision to expand the application of the STIA PPRs to commercial lines business (as explained in section 2.4.1), it is proposed that Rule 13.4 be expanded on to distinguish between the data required for personal lines versus that required for commercial lines business. The Rule, therefore, differentiates between personal lines and commercial lines requiring the insurer to have access to the names, identity numbers, and contact details of all its policyholders in respect of personal lines and in respect of commercial lines the company registration number, the risk address, and contact details of the policyholder.

2.4.9 Rule 20: Misrepresentation

The Authority proposes the insertion of this Rule to mirror the requirements as is currently set out in section 53 of the STIA (Misrepresentation and failure to disclose material information) and to align with the LTIA PPRs, for the reasons explained under section 3.4.6 above.

3 STATEMENT OF IMPACT OF THE PROPOSED CHANGES

It is envisaged that these amendments to the 2017 PPRs will have a positive impact on the governance and oversight of product development by insurers and the distribution of insurance products. It is further believed that these amendments will enhance the protection of customers through more targeted disclosures around excess structures, bundled products, and loyalty benefits, which have in the past proven to be complex and not well understood by policyholders. It will also ensure closer alignment between the LTIA PPRs and STIA PPRs and make necessary corrections to the legislation while filling gaps identified over the past 3 years since the replacement of the 2004 PPR with the 2017 PPRs.

This will ultimately ensure a stronger and less fragmented regulatory framework for the conduct of the business of insurers and lead to better outcomes for policyholders.

The Authority acknowledges that there may be instances in which the implementation of the amendments could have a cost implication for insurers, particularly in relation to system development. In recognising this, all stakeholders are requested to elaborate on the extent thereof on the comment template published with this statement.

The responses will be analysed to understand the anticipated cost impact, if any, of implementing the amendments once it becomes effective. This includes the extent to which transitional provisions are required in respect of some of these amendments to the 2017 PRRs. Stakeholders are encouraged to give as much detail as possible, in relation to the impact of specific clauses rather than the amendments overall, and the specific expected costs implied by those specific clauses.

4 STATEMENT OF INTENDED OPERATION OF THE PROPOSED CHANGES

The proposed changes are consistent with the objective of the FSRA, and specifically the mandate of the Authority to protect financial customers by promoting the fair treatment of financial customers (including policyholders) by financial institutions. It comprehensively aligns to the strategic priorities of the Authority as set out in the Regulatory Strategy of the FSCA,[6] by facilitating the development and maintenance of a robust regulatory framework that promotes fair customer treatment. In its essence, the proposed changes and enhancements are proposed to better protect financial customers.

Regarding the operation of these amendments once effective, the changes will support a pro-active supervisory approach in which potential areas of concern, for example, premium reviews will be more pre-emptively monitored by the supervisory teams by requiring notification to the Authority in certain instances to afford the supervision teams the opportunity to consider the increases in premium at earlier stages than being reactive on submission of complaints.

The changes also require record keeping of more granular data on claims and a broader scope on complaints. It is believed that the data obtained through these amendments to the PPRs will be used as an offsite supervisory tool to identify conduct risks and trends specific to a particular insurer and for benchmarking purposes across the insurance sector.

It is proposed that the amendment notices take effect six (6) months after the publication of the final amendments. It is acknowledged that the changes may require certain structural changes to products, processes, and systems of the insurer, and in pre-empting the industry's concerns in this regard a fair transitional period will be granted to allow insurers to ensure compliance with the enhanced requirements.

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[6] Available on the FSCA website at https://www.fsca.co.za/Documents/FSCA_Strategy_2018.pdf

5 WAY FORWARD

The draft amendments to the 2017 PPRs are published in terms of section 98(2) of the FSRA for a period of six (6) weeks for public comment, and comments are due to the Authority on or before 10 September 2021. After careful consideration of all submissions received on the proposed changes, the Authority will make any necessary changes to the PPRs and submit the updated PPRs to Parliament for a period of at least 30 days while Parliament is in session, provided that the amendments to the draft PPRs are not of such a significant nature that it warrants a second round of public consultation.

Please note that this statement supporting the publication of the proposed changes to the PPRs may be updated to better reflect the expected impact of the proposed changes based on the submissions received in the comments template.