FINAL REVISIONS TO THE FINANCIAL SECTOR REGULATION BILL FOR CONSIDERATION BY COMMITTEE

1. **Definition of "systemic event":** It is proposed that the definition be amended as follows, to align with the amendments proposed to the definition of "financial stability" in clause 4:

   ""**systemic event**" means an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services, or services provided by a market infrastructure;".

2. **Clauses 58(2) and 106(5):** After final engagements with the NCR, it is confirmed that they are happy with the following proposed wording:

   58(2): "(2)In relation to a financial institution that is a credit provider regulated in terms of the National Credit Act, the Financial Sector Conduct Authority may, in addition to regulating and supervising the financial institution in respect of the financial services that the financial institution provides, and notwithstanding section 2(1)*(g)*, regulate and supervise the financial institution's conduct in relation to the provision of credit under a credit agreement only in respect of those matters referred to in section 108.".

   106(5) " (5)*(a)* In relation to a credit provider regulated in terms of the National Credit Act, a conduct standard may only be made in relation to a financial service provided in relation to a credit agreement and matters provided for in section 108.

   (b) A conduct standard referred to in paragraph *(a)* may only be made after consultation with the National Credit Regulator.".

3. **Clause 81(1):** In relation to the transformation objective that is now included in the Bill, it is proposed to include the establishment of a working group of the Financial System Council of Regulators:

   81. (1) The Financial System Council of Regulators must establish working groups or subcommittees in respect of the following matters:
   (a) Enforcement and financial crime;
   (b) financial stability and resolution;
   (c) policy and legislation;
   (d) standard-setting;
   (e) financial sector outcomes;
   (f) financial inclusion; **[and]**
   (g) transformation of the financial sector; and
   (h) any other matter that the Director-General may determine after consulting the other members of the Financial System Council of Regulators.

4. **Clause 93(2):** in order to clarify the wording of the provision, it is proposed to refine the wording slightly as follows:

   "(2) If a financial sector regulator intends to make **[a]** an administrative action procedure or amendment **[in a]** that is materially different in form from the draft procedure or amendment that was published in terms of paragraph *(a)*, the regulator must, before making the procedure or amendment, repeat the process referred to in paragraph *(a)*.".

5. **Clause 106(3)*(c)*(v):** In response to BASA's submission on the October draft of the Bill that was published for comment, it is proposed that a new clause 106(3)*(c)*(v) be inserted in the Bill to provide as follows:

"(v) governance of the decision to refuse, withdraw or close a financial product or a financial service by a financial institution from one or more financial customers, and disclosure that may be required;".

6. **Clause 134(2):** To correct an error in terminology, the term "inspector" should be replaced with "investigator":

"(2) A person appointed as an **[inspector]** investigator must —
(a) not be a disqualified person;
(b) not have any conflict of interest in respect of the subject matter of the investigation; and
(c) have appropriate skills and expertise.".

7. **Clause 144 (1)*(c)*** -This revision is proposed in order to avoid the provision being interpreted as saying that the Financial Sector Conduct Authority would be able to compel a financial institution to provide financial education programmes, it is proposed to amend the provision to provide as follows:

"*(c)* the financial institution is providing financial education in a manner that is not in accordance with relevant conduct standards;".

8. **Clause 184*(d)*(ii):** in order to better specify the information that must be provided to the Minister, it is proposed to refine the wording of the provision slightly to provide as follows:

"(ii) the trends in nature of complaints and issues raised in complaints that ombud schemes are dealing with, and how **[they]**those types of complaints and issues are being dealt with; and".

9. **Clause 196(3)(b)(vi):** a slight adjustment of the wording is proposed to make the provision clearer:

"(vi) make adequate provision for monitoring and oversight of the operation of the industry ombud scheme, including in respect of the terms and conditions of the engagement of the ombud, including remuneration and other benefits, **[the engagement of the ombud,]** and any action to terminate that engagement;".

10. **Clause 237(4):** To ensure that the wording of the provision is clear, it is proposed that the word "different" should be added before "levies".

"(4) Different fees may be determined and different levies may be imposed for different types or categories of persons or supervised entities.".

11. **Clause 243(2):** To clarify the provision, it is proposed to revise the provision slightly as follows:

(2) A person who wishes to make an offer to pay a fee or levy by instalments must make an offer—
(a) immediately **[upon]** after being notified of the fee or levy charged, if **[the date by which]** the fee or levy must be paid **[is]** within 14 days after the date on which notification is received; or
(b) at least 14 days before the date on which the fee or levy **[is due to]** must be paid, if **[the date by which the fee or levy must be paid is 15 days or a longer period after the date on which notification is received]** paragraph *(a)* does not apply.

12. **Clause 245(3):** To ensure that the grammar is correct, it is proposed to refine the provision slightly as follows:

"(3) A financial sector body may only grant an exemption from the payment of a fee, or a part of a fee, **[on]** for sound reasons."

13. **Clause 251(4)*(d)*(iii):** In order to clarify the wording, it is proposed to refine the provision slightly as follows:

"(iii) must retain its integrity and confidentiality, and the designated authority that receives the information must take appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of the information, and unlawful access to or processing of the information.".

14. **Clause 272(2)*(a)*:** In order to improve the wording of the provision, it is proposed to revise the provision slightly to provide as follows:

"(2) *(a)* [A] If a financial sector regulator or the Reserve Bank **[who]** commits an offence referred to in subsection (1), it is liable on conviction to a fine not exceeding R5 000 000."

15. **Consequential Amendments to the Financial Advisory and Intermediary Services Act- Item 11, amendments to section 14 of the Act:**

In response to submissions from BASA, it is proposed that section 14(1) and (5) of the Financial Advisory and Intermediary Services Act be amended slightly to provide as follows (the remainder of the proposed amendments to that section would remain the same):

"**14.** (1)*(a)* An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be—

(i) a representative of the financial services provider; or

(ii) a key individual of such representative,

if the financial services provider is satisfied on the basis of available facts and information that the person—

(iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)*(a)*; or

(iv) has contravened or failed to comply with any provision of this Act in a material manner;

(b) The reasons for a debarment in terms of paragraph *(a)* must have occurred and become known to the financial services provider while the person was a representative of the provider."

"(5) A debarment in terms of subsection (1) that is undertaken in respect of a person who no longer is a representative of the financial services provider must be commenced not longer than six months from the date that the person ceased to be a representative of the financial services provider." .

16. **Consequential Amendments to the Financial Markets Act- Item 31, paragraph *(f)*, amendments to section 50 by the insertion of a new subsection (3A):** In the new subsection (3A), paragraph *(b)* should be amended to read as follows (the rest of the proposed subsection would remain the same):

"*(b)* manage and process the transactions from the date the central counterparty `interposes itself between counterparties to transactions becoming the buyer to every seller and seller to every buyer, to the date of fulfilment of the legal obligations in respect of such transactions; and".