

ANNEXURE A

**RESPONSE TO COMMENTS SUBMITTED ON THE DRAFT AMENDMENT OF THE EXEMPTION BY THE FINANCIAL SECTOR CONDUCT AUTHORITY
OF CERTAIN PERSONS FROM JOINT STANDARD 1 OF 2020
FINANCIAL SECTOR REGULATION ACT (ACT, NO 9 OF 2017)**

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Commentators:

#	<u>Commentator</u>	<u>Acronym</u>
1.	Baillie Gifford Overseas Limited (FSP number 44870)	BG
2.	The Banking Association South Africa	BASA
3.	DBF Financial Planning & Wealth Solutions CC / Duncan Fraser	DBF
4.	Financial Intermediaries Association of Southern Africa	FIA
5.	Old Mutual	OM



#	<u>Commentator</u>	<u>Acronym</u>
6.	South African Insurance Association	SAIA
7.	The South African Institute of Stockbrokers	SAIS
8.	Trinity Risk Managers Pty (Ltd) (FSP Number 48599)	TRM

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#	Commentator	Section	Issue/Comment/Recommendation	FSCA Response
1.	BASA	n/a	No comments submitted	The response is noted.
2.	DBF	n/a	No comments submitted	The response is noted.
3.	FIA	(a) and (b)	While we understand the need for the extension of the Joint Standard especially following the publication of the FATF Recommendations, we are mindful that this may act as a deterrent to some entities wanting to take on significant ownership of FSPs, due to the additional requirements and scrutiny which may have a negative impact on the objective of supporting development of small businesses.	<p>We wish to reiterate what was stated in FSCA Communication 22 of 2022 (GENERAL):</p> <ul style="list-style-type: none"> • The exemptions pertaining to competence and financial standing was perpetuated to ensure that undue barriers are not created in the FSP environment; • In our view the requirement to be honest and have integrity will not create an undue burden on significant owners of FSPs, including significant owners of small FSPs. <p>Essentially the main requirement that will be applicable to a significant owner of a FSP is that it must be honest and have integrity. We</p>



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				question why you say that this requirement will deter a person from taking on significant ownership.
4.	FIA	(c)	The FIA welcomes the retention of the exemption in relation to competence and financial standing of significant owners in support of the FSCA's objective of supporting the development of small businesses.	Noted, and agree.
5.	OM	(c) 2A	With reference to amending the Schedule of the Exemption by the Financial Sector Conduct Authority of Certain Persons from Joint Standard 1 of 2020 (as published in FSCA General Notice 3 of 2020) by adding paragraph 2A, clarity is required as to whether, in order for the significant owner of an authorised financial services provider to be exempted from the application of paragraph 6.1 of the Joint Standard they need to be both an eligible financial institution and a manager as defined in the Collective Investment Schemes Control Act, 2022. The reason clarity is sought in this regard is that the circumstances where an authorised financial services provider would be an eligible financial institution and a manager are exceedingly rare. Is the intention not for the exemption to read that, in order for the significant owner of an authorised financial services provider to be exempted from the application of paragraph 6.1 of the Joint Standard they need to be an eligible financial institution or a manager as defined in the Collective Investment Schemes Control Act, 2022	Please note the intention is not to amend the existing exemption with regards to " <i>an eligible financial institution; and a manager as defined in the Collective Investments Schemes Control Act, 2002 (Act No. 45 of 2002)</i> ". Paragraph 2 and 2A are two separate paragraphs and must be read in isolation. Eligible financial institution and managers were not excluded from the first exemption (General Notice 3 of 2020) and this approach has been perpetuated.
6.	SAIA	Section 2A	By exempting the significant owners (as opposed to the FSPs), the FSCA is placing the onus on the FSP to assess its shareholders. This places the management of FSPs in an invidious position in that they are required to report any issue to the regulator regarding their principals, who could retaliate and remove the reporting manager(s). It	Comment not understood. Firstly, significant owners of particular FSPs, and the FSPs themselves, were already exempted from Joint Standard 1 of 2020 (through General

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			is recommended that the exemption not be extended to Significant Owners.	<p>Notice 3 of 2020). The amendment to General Notice 3 of 2020 removes the exemption in as far as it relates to the honesty and integrity requirements.</p> <p>Further, Joint Standard 1 of 2020 places the obligation to assess fitness and propriety on the significant owner, not on the financial institution. The significant owner is also obliged to report its significant ownership to the FSCA. As an additional failsafe, a financial institution is required to:</p> <ul style="list-style-type: none"> • Notify the FSCA of significant ownership or potential significant ownership; and • Report non-compliance with the Joint Standard; <p>if it becomes aware of significant ownership or non-compliance.</p> <p>Therefore, the obligation placed on the financial institution is not an obligation to proactively or actively assess fitness and propriety and report non-compliance- it must merely do so if it becomes aware of such a situation.</p>



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				We therefore disagree that extending the exemption to significant owners will place the onus on the FSP to assess its shareholders. Besides, as explained, the exemption already applies to significant owners and the draft amendments will remove the existing exemption.
7.	SAIS	n/a	No comments submitted	Noted.
8.	SAIA	Section 3.8 and 3.11 of Communication 22 of 2022.	The FSCA's acknowledgment that the definitions of Beneficial Owner and Significant Shareholder are not the same and that the FSCA plans to approach the National Treasury to address this issue is welcomed. There is also the term "Controlling Company" which is used. Aligning the definitions will be appreciated so as to avoid confusion, if not regulatory arbitrage.	Agree. The Authority confirms that the Minister of Finance has tabled the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill [B18-2022] in Parliament, in terms of Joint Rule 159. The ATC No125-2022 issued by Parliament on 25 August 2022 has confirmed that the Bill has been submitted to the Standing Committee on Finance (SCOF) and the Select Committee on Finance (SECOF). Further delineation will be considered when the parameters for beneficial ownership is set through standards.
9.	TRM	n/a	Commentator agrees the Joint Standard should apply to all FSP's	Noted.



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1.	Baillie Gifford Overseas Limited (FSP number 44870)	<p><u>Foreign FSPs</u> Can the FSCA please clarify the requirements for Foreign FSPs, currently exempt from the Joint Standard, that will be brought into scope by the removal of the exemption, where such foreign FSPs have no local presence in South Africa and operate only on a cross-border basis? Such foreign FSPs will comply with Home State requirements regarding significant owners, for example in the United Kingdom, the Financial Conduct Authority's (FCA) Senior Managers and Certification Regime (SMCR) which sets standards of conduct in UK financial services, ensuring:</p> <ul style="list-style-type: none"> • greater personal accountability at all levels • minimum standards of conduct • staff in key jobs are fit and proper to perform their roles <p>Where an FSP has no local presence in South Africa and its Home State requirements include stringent and equally effective requirements related to fitness, propriety and other standards expected of significant owners and senior managers, such as the FCA's SMCR, the requirements of the Joint Standard should not apply directly to the Foreign FSP.</p>	<p>The effect of the amendment of the exemption is that the Joint Standard will apply to the significant owners of FSPs – however the application is still only partial application as the requirements in the Joint Standard with regards to competence and financial standing of the significant owner – is still not applicable.</p> <p>Foreign FSPs and their significant owners, will going forward, need to comply with the honesty and integrity portions of the Standard.</p> <p>The Authority disagrees with the proposal that the requirements should not be made applicable to foreign FSPs. The additional local requirement should not place a too onerous burden on foreign FSPs in addition to their home state requirements already in place.</p>
2.	SAIS	The SAIS notes the amendments to the Notice Regarding the Publication of the Draft Amendment of the Exemption by the Financial Sector Conduct Authority of Certain Persons from Joint Standard 1 of 2020, relates only to having the necessary competence and financial standing	Noted. For the sake of clarity, the proposal is that the honesty and integrity requirements will apply to significant owners of FSPs (i.e. this exemption will be withdrawn), but the requirements relating to having the necessary competence and financial

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		<p>required to support the business of a financial institution of which it is a significant owner.</p> <p>The SAIS understands and concurs with the reason for the amendment, which is to partially assist in the remediation measures required to be implemented in order to evidence compliance into the FATF Mutual Evaluation conducted. The SAIS notes the reason for the withdrawal of the exemption, which is that should the exemption, insofar as it relates to significant owners of FSPs, be withdrawn this will have the effect that a broader scope of beneficial owners (through the definition of significant owner) will be brought within the scope of the Joint Standard. This, in turn, will subject them to the fit and proper requirements and as a result, partially address the FATF MER finding referred to above, which was identified in the context of FATF Recommendation 26.</p>	<p>standing will not apply (these exemptions will be perpetuated).</p>
3.	FIA	<p><u>Clause 5.1 of the Joint Standard</u></p> <p>Clause 5.1 of the Joint Standard requires assessment and attestation of the significant owner's fitness and propriety within one year of the date of the commencement of the Joint Standard. By when will this now be required by FSPs?</p> <p>In terms of the requirement for annual assessment and attestation of fitness and propriety by the significant owner, where must this information be retained, i.e., must it be retained by the significant owner, or reported to the FSP?</p>	<p>The requirement will need to be complied with within one year from the effective date of the amendment of the exemption (this amendment).</p> <p>In terms of paragraph 5.1, the requirement for annual assessment and attestation of fitness and propriety by the significant owner is imposed on the significant owner, not the financial institution.</p>

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		<p><u>Clause 5.5 of the Joint Standard</u> In terms of this clause, what would constitute appropriate independent confirmation?</p> <p><u>Clause 6.2 of the Joint Standard</u> The Joint Standard is unclear on what is expected should any of the existing significant owners fall into one of the categories in sections 6 of the Joint Standard. To have to withdraw ownership could have significant detrimental effect on a small business.</p>	<p>From the initial consultation report published with the Joint Standard the response to a similar question was: <i>“Independent confirmation may be provided by an internal auditor or an external auditor. It advised however, that the Authorities will in the request specify the type of independent confirmation that is required. The type of independent confirmation will be dependent on the nature, scale and complexity of the financial institution or the nature of the significant owner.”</i></p> <p>If any of the factors listed in paragraph 6.2 is applicable to a significant owner, it would constitute prima facie evidence that the significant owner is not fit and proper and the significant owner might be in breach of the Joint Standard. In such an instance paragraph 5.4 will be applicable, which reads as follows:</p> <p><i>“A financial institution must notify the Authorities, in the manner and form determined by the Authorities, within 30 days of it becoming aware of non-compliance with this Joint Standard by a significant owner.”</i></p>



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			<p>However, the significant owner can still attempt to make an argument that it is fit and proper notwithstanding the factor. This, however, will be a factual consideration depending on the specific circumstances. If, however, it is concluded that a significant owner is not fit and proper, regulatory action might be taken..</p>

