

Market Notice

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Update on Consumer Protection Act No. 68 of 2008

Member firms are reminded that the Consumer Protection Act, 2008 ("CPA") is scheduled to take effect on Thursday 31 March 2011.

This new legislation has wide-ranging implications for all consumer-facing businesses and will impact on most transactions for the sale of goods or supply of services within South Africa (to consumers as defined, being natural persons and juristic persons with annual turnover and assets of under R3m).

The CPA extends a range of new rights to consumers, including the right to return goods or rescind transactions in certain circumstances, protection against unreasonable contract terms, and the right to information in plain and understandable language, amongst many others. Giving effect to these rights may prove challenging, particularly in the context of the regulated securities services industry.

FAIS services are exempt

The CPA provides for exclusions in respect of advice or intermediary services that are already regulated under the Financial Advisory and Intermediary Services Act, 2002 ("FAIS"). This exclusion recognises that financial advisory and intermediary services are sufficiently regulated under FAIS, and that to include these services within the ambit of the CPA could lead to undesirable consequences and duplicated regulation.

Securities services are not exempt

At present, securities services as regulated in terms of the Securities Services Act, 2004 ("SSA") do not enjoy specific exclusion from the CPA.

Goods and services provided by regulated persons in terms of the SSA, as well as the functions and activities of self-regulatory organisations, will continue to be regulated under the SSA (and by the JSE's Rules and directives, where appropriate) after the CPA comes into effect on 31 March 2011. No specific changes to this regulatory environment for securities services are currently envisaged.

Member firms should therefore be aware of and sensitive to possible inconsistencies that might arise when seeking to comply with both the SSA and the CPA.

The JSE continues to engage with the Financial Services Board ("FSB") on how best to minimise any potential regulatory conflicts that might result from applying both the SSA and the CPA. Members will be kept informed of any developments in this regard.

CPA-readiness remains an individual responsibility for each Member firm. Members are therefore encouraged to take appropriate steps and consult with their professional advisors as to how best to ensure their compliance with the CPA.

Members can access copies of the CPA and the draft regulations on the dti website www.dti.gov.za.



For CPA queries relating to the JSE, please contact Louis Cockeran (louisc@jse.co.za) or Graeme Brookes (graemeb@jse.co.za).

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