

BOARD NOTICE 88 OF 2004**FINANCIAL SERVICES BOARD****NOTICE ON PROPOSED NEW POLICYHOLDER PROTECTION RULES
(SHORT-TERM INSURANCE), 2004**

I, Jeffrey van Rooyen, Registrar of Short-term Insurance, after consultation with the Advisory Committee on Short-term Insurance, hereby under section 55(3) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), give notice of an intention-

- (a) to rescind the Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in Gazette No. 22084 of 23 February 2001;
- (b) to promulgate new Rules, and for the reasons, as respectively set out in Schedule A and the Memorandum of Objects in Schedule B; and
- (c) to submit, under section 55(4) of the said Short-term Insurance Act, 1998, the proposed rescission and new Rules, together with all written representations received, my comments and those of the said Advisory Committee, to the Minister of Finance for consideration and promulgation under section 55 (5) of the said Act.

All interested persons are hereby invited to make written representations in relation to the abovementioned matters so as to reach me within 21 days after the date of publication of this Notice at the following address:

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J. VAN ROOYEN,

Registrar of Short-term Insurance

SCHEDULE A

POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

Section 55, Short-term Insurance Act, 1998

ARRANGEMENT OF CONTENTS

PART		RULES
Part I	Definitions	1
Part II	Objective and Application of Rules	2-3
Part III	Basic Rules for Direct Marketers	4
Part IV	Rules on Void Provisions and Format	5-6
Part V	General Rules	7
Part VI	Miscellaneous	8-11

PART I

DEFINITIONS

1. In these Rules "the Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), including the regulations promulgated under section 70 of the Act, "the FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including any measure or decision referred to in the definition of "this Act" in section 1(1) of that Act, any word or expression to which a meaning has been assigned in the Act or the FAIS Act, bears, subject to context, that meaning and, unless the context otherwise indicates-

"**commencement date**" means the date on which these Rules become binding, as determined and published by the Minister in accordance with section 55(5) of the Act;

"**direct marketer**" means an insurer who, in the normal course of business, carries on business in the form of direct marketing;

"**direct marketing**" means the marketing of a policy, including the entering into thereof, by way of telephone, internet, media insert, direct or electronic mail to a policyholder, and with mention and implementation of one or more transaction requirements to be met;

"**effective date**", in relation to the entering into of any policy, means the date on which any such policy is entered into or varied;

"**ensure**", in relation to a person or body and any matter mentioned in a provision of these Rules, means to take any necessary steps in order that the clear objective of the provision is achieved;

“enter into”, in respect of a policy, includes the renewal or variation of any such policy: Provided that in the case of monthly policies only the renewal after the entering into of the policy effected during every consecutive twelfth month of the currency of the policy shall qualify as a renewal referred to in this definition; and **“entering into”** has a corresponding meaning;

“independent intermediary” or **“intermediary”** means a person who qualifies as an independent intermediary in terms of the definition thereof in section 1(1) of the Act, and with whom an agreement has been entered into by an insurer in compliance with Rule 7.1(a)(i);

“insurance party involved” means, in relation to the entering into of a policy with the policyholder concerned or any other matter connected with such policy, any insurer or independent intermediary, as the case may be, directly involved in such entering into, or in such other matter;

“insurer” means a short-term insurer, and includes any representative of the insurer;

“policy” means any short-term policy where the policyholder is a natural person acting otherwise than solely for the purposes of its own business; but excluding a reinsurance policy;

“policyholder” includes a prospective policyholder;

“previous Rules” means the Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in *Gazette* No. 22084 of 23 February 2001;

“transaction requirement” means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, an insurer by or on behalf of a policyholder and relating to a policy, including any amendment thereof or variation thereto;

“variation”, in relation to a policy, means any variation of the premiums or benefits of the policy, excluding any periodic variation in terms of a contractually determined inflation-connected formula, or otherwise in terms of fixed contractually determined provisions;

“writing” includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and **“written”** has a corresponding meaning.

PART II

OBJECTIVE AND APPLICATION OF RULES

Objective

2. The objective of these Rules is to ensure that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest.

Application

- 3.1 Part III of these Rules only applies to the entering into of a policy in respect of which the effective date is a date on or after the commencement date.
- 3.2 No provision of these Rules shall be construed as in any way affecting the duty of any person to comply with any applicable provision of the FAIS Act.

PART III

BASIC RULES FOR DIRECT MARKETERS

- 4.1 (a) A direct marketer must at all times render services honestly, fairly, and with due skill, care and diligence.
- (b) A direct marketer must—
 - (i) in making contact arrangements, and in all communications and dealings with a policyholder, act honourably, professionally and with due regard to the convenience of the policyholder; and
 - (ii) at the commencement of any contact, visit or call initiated by the direct marketer clearly explain the purpose thereof.
- (c) Representations made and information provided to a policyholder by a direct marketer—
 - (i) must be factually correct;
 - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (iii) must be provided timeously so as to afford the policyholder sufficient time to make an informed decision about the proposed transaction;
 - (iv) may, subject to the provisions of these Rules, be provided orally and, at the policyholder's request, confirmed in writing within a reasonable time after such request;

- (v) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
 - (vi) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (vii) need not be duplicated or repeated to the same policyholder unless material or significant changes affecting that policyholder occur, or the relevant services as direct marketer renders it necessary, in which case a disclosure of the changes to the policyholder must be made to the policyholder without delay before a transaction is concluded.
- (d) The direct marketer must disclose to the policyholder the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the policyholder.
- (e) Services as direct marketer must be rendered in accordance with the contractual relationships and reasonable requests or instructions of the policyholder, which must be executed as soon as reasonably possible and with due regard to the interests of the policyholder which must be accorded appropriate priority over any interests of the direct marketer.
- (f) Transactions of a policyholder must be accurately accounted for.
- 4.2** (a) A direct marketer must have appropriate procedures and systems in place to-
- (i) record all verbal and written communications relating to the direct marketing to a policyholder as are contemplated in these Rules;
 - (ii) store and retrieve transaction documentation and all other documentation relating to the policyholder; and
 - (iii) keep the policyholder records and documentation safe from destruction.