

Market conduct law will streamline financial sector

By [Finn Elliot](#)

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This year will bring with it market conduct legislation for all South African financial institutions, which is arguably the single most significant regulatory reform for the sector that the country has ever experienced.



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The Financial Sector Regulation Bill, which is currently before parliament, is expected to be enacted during the first quarter of 2017. Once enacted, the Bill will establish and give effect to the two new regulatory authorities. As it pertains to market conduct, the Financial Services Board (FSB) will be dissolved and replaced by the Financial Sector Conduct Authority (FSCA) which will assume its new market conduct regulatory mandate.

Need for stronger regulatory oversight

To give perspective, market conduct is not new in South Africa and our regulators have been grappling with how to ensure the fair treatment of customers for years through existing financial sector specific legislation. While there has been some progress in this regard, persistent and pervasive market conduct challenges and practices, unfair treatment of customers, and poor customer outcomes in South Africa's financial sector have highlighted the need for stronger regulatory oversight of how institutions conduct their business and treat their customers.

The current legislative framework is considered to be fragmented, inconsistent, and incomplete across the financial sector and too institutionally focused (as opposed to functionally focused), which in turn compromises the effective supervision of market conduct by the regulators.

As such, it was identified that the need for a holistic and coordinated market conduct regulatory framework that applies consistently across the financial sector can best be achieved through structural change to the regulatory framework and through the creation of a dedicated market conduct regulator – the FSCA.

Market conduct will introduce a distinct shift in the manner and approach to the regulation and supervision of the financial services industry by the FSCA, and a change in what institutions will need to do to ensure compliance.

Principle-based approach

The FSCA will move away from a rules based, reactive, tick-box compliance approach, to a principle based, forward looking, pre-emptive, outcomes focused and risk-based approach. The FSCA is going to want to see and understand institutions' governance structures, risk controls, corporate culture and their business practices - institutions will need to objectively demonstrate to the FSCA how they are ensuring the fair treatment of customers.

Institutions should, as a first step in their market conduct journey, perform an assessment of their business model and strategy with the aim of identifying and assessing those conduct risks prevalent in their business. To be able to manage, monitor and measure conduct risks, those conduct risks must first be identified and assessed.

Then of course, institutions should implement the necessary governance structures, policies, processes and procedures to be able to manage, monitor and control conduct risks. A market conduct risk framework should be established, within which the governance structures and policies will operate.

Organisational culture at the root of market conduct

But it is not sufficient that institutions have the governance structures and risk controls in place to manage market conduct. It is not enough that management and staff are trained on these risk controls. To properly implement market conduct, all management and staff must understand and appreciate what market conduct is, the basis or rationale for it, and support the need for its introduction into the business. This is referred to as the organisation's culture.

Regulators around the world are identifying that risk controls and compliance management systems are not enough to resolve misconduct issues. Culture is being seen as a root cause for continued market conduct failings. Improved market conduct requires improved corporate culture. Institutions must be able to reflect that it is being taken seriously and addressed. The FSCA will want to see commitment from institutions to improving their corporate culture and that the fair treatment of customers is central to it.

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