

# Ombud Council

**Physical Address:**

C/O Financial Sector Conduct Authority  
Riverwalk Office Park, Block B  
41 Matroosberg Road  
Ashlea Gardens, Pretoria  
0102

**Postal Address:**

C/O Financial Sector Conduct Authority  
P.O. Box 35655  
Menlo Park, Pretoria  
0081

**Email Address:** [admin@ombudcouncil.org](mailto:admin@ombudcouncil.org)

**Website:** [www.ombudcouncil.org.za](http://www.ombudcouncil.org.za)

Advocate N. Tshombe,  
Office of the Ombud for Financial Services Providers (FAIS Ombud),  
Menlyn Central Office Building,  
125 Dallas Avenue,  
Waterkloof Glen,  
Pretoria 0010

## Re: Designation to Manage former FSOS Complaints

Dear Adv Tshombe

1. With reference to our meeting of 7 June 2022, I am writing to confirm that the Ombud Council consulted with you regarding a proposed extension of the designation granted to the Ombud for Financial Services Providers (the FAIS Ombud Scheme) in terms of section 211 (1) of the Financial Sector Regulation, No. 9 of 2017 (FSR Act) on 25 June 2021. The designation was granted for the period 1 June 2021 to 31 May 2022, to enable the FAIS Ombud Scheme to continue fulfilling the role it had played as statutory ombud under section 14 of the Financial Services Ombud Schemes Act, No. 37 of 2004 (FSOS Act), in light of that Act having been repealed on 31 May 2021. The period of that designation has now expired.
2. Under s. 211(1) of the FSR Act, the Ombud Council hereby designates the FAIS Ombud Scheme to deal with and resolve complaints described in paragraph 4 below for a further 12 months as from 1 June 2022.
3. Terms used in this designation bear the meanings as defined in the FSR Act, unless stated otherwise.
4. The FAIS Ombud Scheme is designated to deal with a complaint against a financial institution where —
  - (a) the financial institution is-
    - (i) a financial institution as contemplated in paragraph (a) of the definition of ‘financial institution’ in section 1 of the Financial Services Board Act, No. 97 of 1990 (irrespective of whether that Act has been fully repealed), except a financial institution referred to in items (i) and (xii) of that paragraph; or
    - (ii) a bank as defined in section 1(1) of the Banks Act, No. 94 of 1990, or a mutual bank as defined in section 1(1) of the Mutual Banks Act, No. 124 of 1993, or a co-

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operative bank as defined in section 1 of the Co-operative Banks Act, No. 40 of 2007;

- (b) subject to any applicable Ombud Council rules, "complaint" means a specific complaint relating to a financial product provided by, or a financial service rendered by a financial institution referred to in paragraph (a) to the complainant, in which it is alleged that the financial institution -
- (i) has contravened or failed to comply with a provision of an applicable financial sector law and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;
  - (ii) has wilfully or negligently provided the financial product or rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or
  - (iii) has treated the complainant unfairly;
- (c) the financial institution is -
- (i) not required by section 211(3) of the FSR Act to be a member of a recognised industry ombud scheme;
  - (ii) required by section 211(3) of the FSR Act to be a member of a recognised industry ombud scheme but is not a member of such scheme, or the recognition of the applicable scheme has been suspended or revoked in terms of sections 198 or 199 of the FSR Act; or
  - (iii) a member of a recognised industry ombud scheme, but the ombud concerned lacks jurisdiction in terms of the relevant scheme to deal with the complaint while the FAIS Ombud Scheme has jurisdiction in accordance with this designation to entertain such complaint;
- (d) no statutory ombud scheme, including the FAIS Ombud Scheme acting in terms of its jurisdiction under the Financial Advisory and Intermediary Service Act, No. 37 of 2002 (FAIS Act) has jurisdiction to deal with the complaint;
- (e) the complainant is not, at the time of lodging the relevant complaint, a person carrying on any business or profession with a net asset value, an annual turnover (including group turnover) or annual income of more than R8 million; and
- (f) the facts or legal issues underlying the complaint do not appear to the ombud to be so complex that lengthy or expert evidence may probably be required to determine them<sup>1</sup>.

5. Subject to any applicable Ombud Council rules, the provisions of Part I of Chapter VI of the FAIS Act, including the Rules made in terms of section 26 of that Act<sup>2</sup>, apply to the FAIS Ombud Scheme for purposes of this designation.

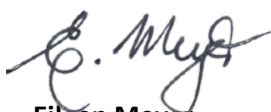
<sup>1</sup> The provisions of paragraphs 4(e) and (f) are jurisdictional limitations previously applicable to the statutory ombud in terms of Regulations to the FSOS Act.

<sup>2</sup> In terms of section 301(2) of the FSR Act, these Rules have effect as Ombud Council rules and may be amended or revoked by Ombud Council rules.

6. This designation applies to relevant complaints received since 1 June 2022 by the FAIS Ombud Scheme.

In accordance with section 217(1) of the FSR Act it is requested that the FAIS Ombud Scheme provide the Ombud Council with a quarterly report on complaints handled in terms of this designation. The report should cover each calendar quarter for the period of this designation and be submitted one month after the end of the quarter. The first report should therefore be submitted by 30 September 2022, covering the period 1 June 2022 to 31 August 2022. The report should provide information on the number and type of complaints; trends observed and analysed; how complaints have been resolved; and an explanation of why the complaints or types of complaints concerned fall within the scope of this designation rather than within the jurisdiction of a recognised industry ombud scheme or a statutory scheme (including the ordinary jurisdiction of the FAIS Ombud Scheme under the FAIS Act), as the case may be.

Yours sincerely



**Eileen Meyer**  
**Chief Ombud (Interim)**  
**Date: 24 June 2022**