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Special points of interest:

- The FSB has formed a Forum on Fit and Proper to investigate the problems with the current requirements and also address the issues of new fit and proper requirements beyond 2009. More on this in our May newsletter
- Key individuals are again reminded to send in their qualifications if they did not meet the "Column 4" of the Fit and Proper Requirements at licensing or approval. Please refer to the FSB website under search for FSP we are indicating under the key individual detail whether the column 4 condition is applicable to you or not.
- The 2007 compliance report will be available during June 2007

PREAMBLE

The theme of this Newsletter is financial soundness/solvency and financial statements. Compliance with the financial soundness requirement is one of the prerequisites for issuing of a financial services provider's licence. This means that, an authorised financial services provider ("FSP") has complied with the financial soundness requirements as prescribed in Part IV of the Determination of Fit and Proper Requirements for Financial Services Providers (published as

notice 91 in Government Gazette No.29132 dated 16 August 2006). An FSP is further required to ensure ongoing compliance with the financial soundness requirement. Financial soundness can only be determined with reference to the FSP's financial statements. This therefore explains why FSPs are required to submit their financial statements to this Office (the Registrar utilises financial statements to establish the FSP's adherence to financial soundness requirement).

Financial statements and the general application of Section 19 of the FAIS Act

Section 19 of the FAIS Act generally imposes the following obligations on FSPs:

- a) That FSPs must maintain full and proper accounting records on a continual basis; which records must be brought up to date monthly,
- b) That FSPs must prepare annual financial statements reflecting the financial position of the business as at the last day of its financial year.
- c) That the FSP must cause the financial statements prepared to be audited and reported on by an external auditor. Note that the auditor's report referred to here is widely known as Section 19(2)(a) report.
- d) The financial statements so audited and reported on must consist of the following documents:
 - i) Audited balance sheet
 - ii) Audited income statements
 - iii) Audited statements detailing the source and application of funds.
- e) FSPs must submit their audited financial statements to this Office within six months after their year-end. Note that non-submission of financial statements is seen in serious light and may attract penalties and other remedial actions from this Office.

STATUS ON NEW LICENSE

We have received 16 665 applications for authorisation as financial services providers (section 8 (1) applications) as at 15 April 2007. These are Category 1, Category 2 (discretionary FSPs) and Category 3 (administrative FSPs) applications. A breakdown of these applications is as follows:

Number of licenses authorised by this Office	14 083
Number of declined applications	1 102
Number of applications in process	908
Number of lapsed licenses	544
Number of withdrawn licenses	13
Number of suspended licenses	3

APPLYING FOR EXTENSION FOR SUBMISSION OF FINANCIAL STATEMENTS

FSPs who are unable to submit their financial statements within the prescribed six months after their year-end may apply to this Office for extension of thereon. Such application must be lodged with the Registrar, in writing before the expiration of the prescribed six months period and must outline full reasons explaining why the required information was not submitted within the prescribed period and also, provide reasons why such extension is sought. Kindly note that any reason furnished must be accompanied by supporting documentation.

Please note that requests for extension will not be granted where the following circumstances are given as reasons for application for extension; furthermore, note that the list provided should not be seen as being exhaustive:

- i) Computer equipment or any other systems related failures or problems.
- ii) Misreading of information pertaining to the relevant due dates.
- iii) Minor medical ailments or other personal matters.
- iv) Maternity leave or vacation leave by either an external auditor or responsible individual in the FSP.
- v) Business trips and or seminars attended by either an auditor or a responsible individual in the FSP.

Penalty notifications

Please note that we are currently sending out penalty notifications to all FSPs that have not submitted their financial statements and compliance reports for 2005 and 2006. Penalties will be charged at R100 per day from the date that the financials or report were due.

Should you have any enquiries relating the submission of these reports send an e-mail to faisfins@fsb.co.za.

Exemptions from section 19 of the FAIS Act.

The above explained position is the general application of Section 19 of the FAIS Act. There has been subsequent publication of subordinate legislation and exemptions that influence how the provisions of Section 19 are applied to some FSPs. These subordinate legislation and exemptions are:

Exemption of certain authorised financial services providers from requirements pertaining to audited financial statements (published as notice 96 in the Government Gazette No. 25514 dated 30 September 2003).

This exemption applies to:

- Category 1 FSPs only,
- who do not receive or hold clients' money and assets or
- who do not receive or collect insurance premiums as per the Long-Term Insurance Act and the Short-Term Insurance Act, and
- are not obliged by any other law to have financial statements audited and reported on by an external auditor or reported on by an accounting officer.

This exemption relieves Category 1 FSPs who meet the criteria stated above from the requirement that their prepared financial statements be audited and reported on by external auditors. Such FSPs are also relieved from the obligation of appointing external auditors. Note that an FSP who is covered in terms of this exemption will still be required to:

- i) Maintain full and proper accounting records which are brought up to date monthly,
- ii) Annually prepare financial statements reflecting the financial position of the business as at the year-end,
- iii) Submit those prepared unaudited financial statements to the Registrar within six months after the FSP's year-end.

The exemption further relieves Category 1 FSPs who comply with the above criteria from the requirement that their assets must exceed their liabilities. Financial statements of those FSPs will be accepted by the Registrar even if reflecting an insolvent position. An FSP whose financial statements reflect an insolvent position is required to certify to the satisfaction of the Registrar that it shall at all times be able to meet any financial liability in respect its business of rendering financial services. This certification must be submitted concurrently with the financial statements.

It follows from the above discussion that the following FSPs must appoint an auditor and submit audited financial statements reflecting their solvent financial position to the Registrar:

- i) All Category II (discretionary) FSPs,
- ii) All Category III (administrative) FSPs,
- iii) All Category I FSPs who collect premiums or hold clients' funds,
- iv) All Category 1 FSPs who are required in terms of other laws to maintain audited financial statements. The solvency requirement is dispersed with provided the FSP can submit a certification that they will be able to meet their liabilities for the year.

The above exemption is hinged on the premise that FSPs who do not handle clients' funds pose a lesser degree of risk to their clients. The risk is further minimised in cases where the FSP does not have discretion over clients' funds.

Exemption of certain authorised Financial Services Providers from requirements pertaining to audited financial statements (published as Notice 85 in Government Gazette No. 26628 dated 06 August 2004).

This exemption applies to Category 1 FSPs who render intermediary services to clients on Long-Term Insurance Category-A (funeral policies) only. The exemption however does not apply to Category 1 FSPs, who are responsible for payment of policyholders' claims and the off setting of such claims against premiums received from policy holders for remittal to the Long-Term Insurer.

Generally, Category 1 FSPs who render intermediary services in respect of Long-Term Insurance Category-A (funeral policies) and who collect premiums on behalf of the insurer will be required to appoint an auditor and to have audited financial statements.

The exemption relieves Category 1 FSPs who collect premiums and are authorised for intermediary services in respect of Long-Term Insurance Category-A from appointing an auditor and having audited financial statements. In terms of this exemption such FSPs must:

- i) Appoint an accounting officer who must be approved by this Office,
- ii) Have financial statements which must be certified and reported on by an accounting officer.

This exemption does not apply to FSPs who are required in terms of other laws to have audited financial statements. For example, Private companies (Pty; Ltd) and Public companies (Ltd).

Section 19 (3) Report

Section 19 (3) of the FAIS Act requires FSPs who hold money and or assets on behalf of their clients to:

- i) Maintain full and proper accounting records on a continual basis in respect of such assets and monies.
- ii) Cause the assets and monies held on behalf of clients to be audited by an auditor. Such audit must conform to the procedures and form determined by the Registrar.
- iii) The Audit report, widely known as the Section 19(3) Report, referred to above must be submitted to the Registrar within six months after the year-end of the FSP.

The Section 19(3) Report aims is to ensure that clients' assets and or monies held by an FSP are protected from unauthorised use and kept separate from the FSP's business funds and also, to detect any non-compliance in respect of those monies and assets.

Auditor's Responsibilities

The FAIS Act recognises the importance of the role played by auditors in the regulation of FSPs. Thus, Section 19(4) of the FAIS Act places a duty on auditors of FSPs to report and inform the Registrar of any irregularities or suspected irregularities that the auditor becomes aware of during the course of his audit on the business of an FSP. The Report as well as any other information to the Registrar must be in writing and must detail out the nature of the irregularity or suspected irregularity in question.

The FAIS Act does not stipulate the period within which such report must be submitted to the Registrar.

However, the nature of the report makes it imperative that such report be submitted to the Registrar within a reasonable time frame.

The duty to report irregularities and suspected irregularities also extends to auditors whose services have been terminated by an FSP. This means that an auditor who suspects or is aware of irregularities in the business of an FSP will still be obliged to report such irregularities or suspected irregularities irrespective of whether or not his services have been terminated.

How to submit financial statements, 19(2)(a) and 19(3) reports to this office

Financial statements, Section 19(2)(a) Reports and Section 19(3) Reports must be submitted to this office within six months after the year-end of the FSP. These documents may be emailed or posted.

The preferred method of submission of the above information is by email to faisfins@fsb.co.za. FSPs are advised to ensure that, documents that are emailed are kept in PDF format at all times, to prevent any possibility of tempering by third parties, with data contained in the emailed documents.

The above information may also be posted. Kindly note that the posted documents must reach this Office before the expiration of the six months period referred to above, otherwise such documents will be regarded as being late and may attract penalties. Our postal address is:

The Registrar of Financial Service Providers
 Attention: FAIS Financial Statements
 PO Box 35655
 Menlo Park
 0102

Our facsimile number is **(012) 422 2973**. Please note that submission by facsimile is not encouraged due to large number of documents that were allegedly submitted by facsimile but were not received by this office.

Your comments at faiscomment@fsb.co.za

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We thank you for your comments and suggestions on the last issue of the FAIS Newsletter. We have perused and noted all your comments and suggestions, in particular the questions surrounding the representatives register, and shall endeavor to address them as far as possible in the forthcoming editions of the FAIS Newsletter,

We also wish to issue an erratum (see page 7) on the FAIS contact list that was provided in the last issue of the FAIS Newsletter. Please accept our apologies for any inconvenience that might have been caused by this oversight.

Furthermore, please be informed that you can now access the FAIS newsletter on-line. To access this facility, log onto our website (www.fsb.co.za). On the homepage select "FAIS". Thereafter select the icon "Publications and Roadshows" and then select the volume/publication of the FAIS Newsletter.

New Fit and Proper enquiry e-mail address - fitandproper@fsb.co.za

We have created a new e-mail address for fit and proper enquiries.

All category I FSPs that is licensed for category long-term insurance A and friendly societies ONLY and who must comply with the provision in Board Notice 104 to report on their fit and proper status must submit prescribed forms as dispatch on 13 March 2007 to this address.

More on the Fit and proper requirements in our end of May issue.

Staff complement

We have four new staff members in our Department and they are:

Mr Amith Parusnath - Specialist Analyst Systems - FAIS Supervision
Ms Jabhile Mbele - Manager - FAIS Registration
Ms Thoko Magugula - Senior Analyst - FAIS Registration
Mr Khehla Mavuso - Analyst - FAIS Registration
Mr Buzwe Mfikili - Analyst - FAIS Enforcement

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