

# FAIS NEWSLETTER



Volume 11

January 2012

## IN THIS ISSUE

TOPIC	PAGES
Background	2
Overview on Codes of Conduct	3
Overview on Financial Soundness requirements	4
Overview on Risk Management	5
Overview on the FAIS Online Reporting system	6
Overview on Regulation	7
FAIS Department Contact details	8
Quick Tips	9
Comments & Suggestions	10

### **Disclaimer**

The FAIS Newsletter must not be construed as a substitution of the FAIS Act and subordinate legislation. The newsletter is aimed at addressing specified areas and provides a quick reference to the reader. It does not take away the obligations that are imposed on FSPs, key individuals, representatives, compliance officers or any person involved in the rendering of financial services to acquaint himself or herself with the provisions of the FAIS Act.

## Background

The FAIS Newsletter has in the previous editions, attempted to cover topical issues relating to the FAIS Act itself. In most instances, the FAIS Newsletter attempted to provide clarity on some aspects of the Act and also provide guidance in respect of some or other aspects of the Act with the intention of promoting compliance with the Act by FSPs.

The Newsletter also places focus on new Board Notices, new Notices, developments, circulars and Amendment Notices and ensuring that due and continuous communication takes place and continues to take place in order to keep the regulated firms and the non-banking financial services industry as a whole abreast of developments.

The Newsletter furthermore brings to the fore by way of quick tips, other important regulatory aspects not necessarily contained in new or amendment notices but which are equally important. It is therefore critical that the section of the Newsletter providing quick tips, usually the end bit of the Newsletter be awarded due consideration.

The Newsletter gets published quarterly and gets sent to persons designated as contact persons for FSPs. It is also accessible on the FSB website under the communication section.

In this edition of the Newsletter, we will try and briefly give a cursory overview of some of the important topics covered in the last editions just as a reminder and consolidation of what was covered in the past. In the event that the reference in this edition to those topics in the previous editions appears insufficient or inadequate, the relevant editions where the topics were hopefully comprehensively dealt with can be accessed. These past topics will be mentioned in this edition in no particular sequence.

## The Codes of Conduct

In Newsletter Volume 8, we discussed the Codes of Conduct and specifically, the enactment of the Codes of Conduct, and the purpose of the Codes of Conduct. We further discussed the instances and circumstances under which these codes are published. We touched briefly on the enabling section the FAIS Act, section 15 of the Act, enabling the Office of the Registrar of Financial Services Providers to publish and or amend the Codes of Conduct for specific category FSPs or FSPs rendering financial services in respect of specific product subcategories.

Again it is very important that FSPs understand which of the specific Codes of Conduct applies to them. They must know of any amendments to the codes, and make sure that they implement new requirements as the Codes are changed. Failure to comply with the relevant and applicable specific Codes of Conduct can, will and may result in action taken against the non-compliant FSP.

All FSPs must adhere to the General Code of Conduct, and then, depending on their licensing conditions, may also have to adhere to specific Codes of Conduct.

New requirements and changes to existing requirements are also published on the FSB's FAIS website. We also publish additional information in the form of circulars, which are useful guidelines for FSPs on important matters.

FSPs are urged to continuously visit the FAIS website for new developments and updates and ensure that where and if necessary, compliance is ensured.

## The Financial Soundness requirements

Newsletter Volume 2 dealt with the financial soundness requirements as contemplated in section 9 of the Determination of Fit and Proper Requirements. The financial soundness requirement is one of the critical pillars of the fit and proper requirements with which FSP must comply. There are requirements for the various category FSPs. Specific amendments were made to the financial soundness requirements in respect of pertaining audited financial statements. This was to grant relief to the FSPs referred to in Board Notices 96 of 2003 and 85 of 2004 in respect of submitting audited financial statements.

In the interim and in the course of 2011, the Office of the Registrar of Financial Services Providers embarked on a process of consolidation of the aforesaid board notices and Board Notice 193 of 2011 was subsequently issued. The purpose of Board Notice 123 of 2011 was to do away with the confusion that may have resulted due to the co-existence of the 2 board notices firstly, and secondly, to align with the requirements of the new Companies Act requirements in respect of audited financial statements. At the same time, FAIS Circular 11/2011 was issued providing more clarity on audited financial statements and under what circumstances they must be submitted. Of further importance to note is that Category II, IIA and III FSPs still need to submit audited financial statements and this is irrespective of the classification in terms of the new Companies Act.

In *lieu* of the above, it is imperative that FSPs refer to the relevant board notice and circular for further clarity and in ensuring compliance with this requirement.

Please note that the application form is available on the website for those FSPs that wish to apply for this exemption.

## Risk Management

Risk management was another important area that was discussed in The FAIS Newsletter Volume 9. In light of the risk assessment visits conducted by the FAIS Supervision department on the authorised FSPs, it was rather imperative that time and space be allocated to risk management in the Newsletter.

What we attempted to do in the volume 9 was to explain what risk management is, steps to be taken in the risk management process as well as the creation of a risk management plan. We further emphasised the fact that FSP need to review risk and look at risk within their FSPs in a holistic manner, in other words, look at risk in an enterprise wide risk fashion. This is especially important because breakdowns in other operational areas as well as inadequate and fragmented controls in the other operational areas are highly likely to spread through and affect other areas of the business thus increasing risk of contagion.

A challenge that most small FSPs face is to ensure that proper risk management processes exist and that a risk management plan is in place. Volume 9 explains that it is critical that risk management processes be put in place and continuous monitoring takes place even in small FSPs. In the Newsletter, tips were given on how to ensure that proper risk management processes are developed and embedded in operational processes and the on-going monitoring of risk by way of risk management plans also continues to take place.

## The FAIS Online Reporting system

In volume 10 we dealt with the FAIS Online Reporting system. The FAIS Online Reporting has come a long way and was subject to modifications and enhancements to ensure easy use and user friendliness. The primary purpose of the FAIS Online Reporting system is to allow for the online submission of Compliance Reports and Financial Statements. The system allows easy, quick, reliable and safe submission of Compliance Reports and Financial Statements.

The greatest benefit of using the system by far remains the fact that ones submitted, the Compliance Reports and Financial Statements and attachments can be re-accessed by the FSPs and the Compliance Officer at any time. This further minimises the chances of documents going missing.

You will find useful guidelines on how to register and how to use the Online system on the FAIS website. There has been an increase in the number of FSPs and Compliance Officers using the FAIS Online Reporting system over the years. This Office still urges FSPs and their Compliance Officers to register and make use of the Online Reporting system. Again, refer to the FAIS Online Guideline document posted on the FAIS website for further clarity and assistance.

The online submission system is being updated on a continuous basis and more features will be added in 2012.

## What is Regulation

In volume 8 we had an opportunity to discuss regulation, the different types of regulation, the purpose of regulation and some of the challenges faced by regulators globally. In this edition we discussed extensively what regulation is and some of the important reasons regulation is necessary and needed. In the same edition we attempted to highlight the importance of ensuring compliance with applicable legislation by the regulated industry. This in turn highlighted the importance of an effective, efficient and adequate Compliance function (in this regard, you may want to have a look at Newsletter volume 3). Compliance processes must be reviewed and monitored on an on-going basis and embedded in the operational processes. A strong point coming across in that edition is the failure to comply with legislation in general by the regulated firms and the risk of monetary loss and most importantly, damage to reputation and even suspension or withdrawal of the license of the regulated firm to operate.

Some of the important concepts dealt with in that edition include right-touch versus light-touch regulation, systemic important entities (“SIEs”), ethics and regulation, cost versus benefit of regulation and compliance with regulation and regulation versus supervision. All of the aforementioned were discussed and the interdependence and most importantly, why both the regulators and the regulated firms must carefully consider them.

For a more comprehensive read on regulation, please refer to volume 8 of the FAIS Newsletter.

## FAIS Department Contact details

A: The following contact details are very important for any queries they you may wish to address to the FAIS Department:

Query/ Topic	E-mail address
Fit and Proper related queries	Fitandproper@fsb.co.za
Applications for recognition of qualifications	Fitandproper@fsb.co.za
Profile changes	Faispfc@fsb.co.za
Requests to lapse licenses	Faispfc@fsb.co.za
Requests for financial statements extensions	Faisfins2@fsb.co.za
Financial statements queries for Category I FSPs	Faisfins1@fsb.co.za
Financial statements queries for Category II FSPs	Faisfins2@fsb.co.za
Financial statements queries for Category IIA FSPs	Faisfins3@fsb.co.za
Financial statements queries for Category III & IV	Faisfins4@fsb.co.za
Compliance report queries for Category I FSPs	Faiscomp1@fsb.co.za
Compliance report queries for Category II FSPs	Faiscomp2@fsb.co.za
Compliance report queries for Category IIA FSPs	Faiscomp3@fsb.co.za
Compliance report queries for Category III & IV FSPs	Faiscomp4@fsb.co.za



## Quick Tips

- **Previous FAIS Newsletters**

On FAIS website — scroll down to FAIS Communication;

All the previous published Newsletters can be accessed on our website;

- **FAIS Circulars**

On the FAIS website — scroll down to FAIS Communication;

The various circulars published by the FAIS Department can be accessed on our website;

- Circular on First Level Regulatory Examinations;
- Update regarding Regulatory Examinations 2010;
- FAIS Circular 11/2011

- **New Developments**

**Comments were invited on:**

- Draft Determination of Continuous Professional Development Requirements;
- Draft Determination of Fit and Proper Requirements For Financial Services Providers;

- **Regulatory Exams for Compliance Officers**

- The South African Institute of Financial Markets (“SAIFM”) has been delegated the function of development and delivery of the compliance officer regulatory examinations;

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## CONTACT INFORMATION

**Physical address:**

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Ashlea Gardens Ext 6  
0081

**Postal address:**

P O Box 35655  
Menlopark, South Africa  
0102

**Telephone** : (012) 428 8145  
**Facsimile** : (012) 422 2973  
**Website** :

## COMMENTS &amp; SUGGESTIONS

We invite comments on this Newsletter and suggestions as to which topics you wish us to address in the coming publications. Any person who wishes to be included in the FAIS Newsletter circulation must forward an e-mail to [faiscomment@fsb.co.za](mailto:faiscomment@fsb.co.za). The FAIS Newsletter is for free.

**FSB Call Centre:** Are you aware that the Financial Services Board has a Call Centre / Contact Centre that is dedicated to resolving all your queries? The following toll free numbers may be used to contact the FSB Call Centre:

0800110443 or 0800202087

Per email: [info@fsb.co.za](mailto:info@fsb.co.za)

**Website** : All the important information applicable to financial services business is posted on our website. You are encouraged to frequently visit our website for latest information and updates. Our website address is [www.fsb.co.za](http://www.fsb.co.za). On the homepage click on the word "FAIS".

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