

FAIS NEWSLETTER



Financial Services Board

8/11/2012

Volume 12

Background to Newsletter

The emphasis in this edition of the FAIS Newsletter is on compliance, the role of the Compliance Officer and an efficient compliance function within the business of the financial services provider ("FSP"). Failure to establish a compliance function with can result in the FSP running into regulatory compliance problems which can ultimately negatively taint such FSP's reputation in the long run.

It is imperative therefore that FSPs establish a compliance function and that such compliance function form part of the FSP's overall risk management framework. This is provided for under Regulation 5 of the FAIS Act which further provides that the compliance function must be supervised by an approved compliance officer where required in terms of the FAIS Act or otherwise managed under the control and responsibility of the provider alone in the case of a sole proprietorship.

"The compliance officer must be a suitably qualified person and Board Notice 127 of 2010 lays down the qualifications, criteria and experience for approval as a compliance officer."

The compliance function must be exercised by with diligence, care and degree of competency as may be reasonably expected from a person responsible for such a function. It is the responsibility of the compliance officer to provider the FSP with written reports on the level of compliance within the business as well as highlight areas that require more compliance efforts. The compliance officer must on an ongoing basis, monitor compliance with processes, procedures as well as compliance with the applicable legislation and must make recommendations to the FSP as regards any aspect of the required compliance or monitoring functions. *Continued Page 2..*

Inside this issue:

•••

Background	1
Irregularity reporting	2
Termination of business	4
Common questions on PI Cover	6
Important contact details	8

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.

The compliance officer must be a suitably qualified person and Board Notice 127 of 2010 lays down the qualifications, criteria and experience for approval as a compliance officer. The Compliance officers must therefore comply with the requirements stipulated therein. Exemptions from the aforementioned requirements are contained in Board Notice 126 of 2010 where the compliance officer renders compliance services under supervision. There are requirements which have been laid out in the notice that the compliance officer rendering compliance services under supervision must comply with.

IRREGULARITY REPORTING

Under Section 17(1)(c) of the FAIS Act

Section 17(1)(c) of the FAIS Act read together with section 19(4) provides that the compliance officer of an authorised Financial Services Provider (FSP) must report to and inform the Registrar in writing of Financial Services Providers of any irregularity or suspected irregularity in the conduct or the affairs of the authorised FSP concerned of which the compliance officer became aware in performing functions as compliance officer, and which, in the opinion of the compliance officer, is material.

The compliance officer's duty to report in respect of Section 17(1)(c) is not a new requirement and in the Registrar's experience the duty to report irregularities or suspected irregularities has not received the required attention in the past and in many cases the compliance officer utilised the annual compliance report as the platform on which to report irregularities.

There are currently two acceptable methods of reporting available to Compliance Officers:

- Hard copy submission; or
- Electronic submission by way of the FAIS online reporting system (preferred method)

It is important to note that:

- Irregularity reports submitted by approved compliance officers in respect of an FSP for which they are the approved compliance officer, will be dealt with as a **Section 17(1)(c) irregularity report** and will be handled by the **FAIS Supervision** Department.
- Irregularity reports submitted by approved compliance officers in respect of an FSP for which they are **not** the approved compliance officer, will be dealt with as a **complaint** and will be handled by the **FAIS Compliance** Department.

Some examples of Irregularity Reports:

- An FSP continuing to conduct business after its authorisation has been refused, suspended or withdrawn or after the authorisation has been voluntarily lapsed.
- An FSP rendering financial services in respect of a category or product for which the FSP is not authorised e.g. furnishing advice in respect of shares when the FSP is not licensed to do so.
- Where the accreditation of a FSP with the Council for Medical Schemes has been lapsed or suspended and the FSP continues to render financial services in respect of Health Services Benefits.
- An FSP conducting financial services related business with a person rendering financial services if that person is not authorised/licensed as an FSP or representative to render financial services.
- False or misleading declarations in respect of the fit and proper status of a key individual.
- Non-declaration of an adverse change in a key individual's status in respect of compliance with the Fit and Proper Requirements in terms of FAIS e.g. the key individual is sequestered.
- A person who in fact acts as a key individual but is appointed as a director/shareholder to conceal that such person does not meet the fit and proper requirements for a key individual.
- A representative which has been debarred renders financial services on behalf of the FSP.
- Failure to debar representatives.

TERMINATION OF AGREEMENT OR BUSINESS

Section 20 of the General Code of Conduct

The Financial Advisory and Intermediary Services Act ("FAIS Act") is mainly concerned with regulating the conduct of financial services providers ("FSP") which includes advice and intermediary services. The FAIS Act is also concerned with ensuring that clients' best interests are protected.

Section 20 of the General Code of Conduct for Financial Services Providers and Representatives ("GCOC") provides guidelines and requirements to FSPs on:

1. What is required when the agreement between the FSP and the client is for whatever reason being terminated; and
2. What is required when an FSP for whatever reason, wishes to discontinue rendering financial services to clients:

This section of the newsletter provides specific guidelines on how to treat the FSP's book of clients when that FSP ceases rendering financial Services.

A breakdown of the Sub-sections 20(a) –(c) is as follows:

20(a)(I):- Client voluntarily terminates agreement	The FSP is obliged to immediately terminate the financial services agreement with the client if the voluntarily requests this.
20(a)(ii):- FSP advises client to terminate	If it is the FSP who advised the client to terminate the agreement, the FSP is then obliged to ensure that they have explained to the client all the implications of terminating the agreement.
20(b):- FSP ceases to operate	<p><u>Voluntary Lapsing of license:</u></p> <p>If the FSP ceases to operate, he/she is obliged to ensure that:</p> <ul style="list-style-type: none">• All the clients are notified of this; and• Any business that has not been concluded at the time is completed promptly OR transferred to another FSP who is suitable. This must be done in consultation with the client and the product supplier(s) concerned.• Where a FSP voluntarily lapses their license they must ensure that an instruction is sent to Faispfc@fsb.co.za to lapse the license.

<p>20(b):- FSP ceases to operate</p>	<p><u>Suspension or withdrawal of license:</u></p> <p>This sub-section will also apply to any FSPs whose license is suspended or withdrawn by the FAIS Compliance Department. As soon as a license is suspended or withdrawn the FSP is required to immediately cease conducting business and:</p> <ul style="list-style-type: none"> • Must inform all affected clients and product suppliers concerned that its licence has been suspended. The Registrar must be copied with such correspondence • Must return all funds of clients and must in consultation with clients and product suppliers concerned, take reasonable steps to ensure that any outstanding business is transferred to another licensed financial services provider in the best interest of clients. The licensee must advise the Registrar accordingly. • Where applicable, the licensee's registered auditor / accounting officer must furnish the Registrar with a report confirming that all clients' funds were transferred as stipulated in paragraph 5.3 above
<p>20(c):- A representative ceases to act as a representative for a specific FSP</p>	<p>If a representative leaves the employ of the FSP, that FSP is obliged to ensure that:</p> <ul style="list-style-type: none"> • The clients that were allocated to the representative are notified of this; and • All outstanding business at the time is completed or transferred to the FSP or another representative of the FSP. This must be done in consultation with the client and the product supplier(s) concerned. <p>It is important to note that the clients remain the FSP's clients even if they were sourced by the representative, unless otherwise agreed with between the two parties.</p>

COMMON QUESTIONS ON PROFESSIONAL INDEMNITY (PI) COVER

Board Notice 123 of 2009

Who needs PI cover?

...

Any business that advises, consults, or works in an environment where an administration error or omission could potentially cause a loss to their clients should cover themselves by taking out professional indemnity insurance.

All financial advisors, scheme administrators, brokers need it. In terms of the FAIS Act, all authorised FSP's are required to have PI Cover and/or Fidelity Insurance in place (except for funeral parlours). BN 123 of 2009 only contains the minimum amount that FSP's should have in place.

FSP's need to assess their own needs that are suitable for their business and ensure they have suitable cover in place.

Why take out PI Cover?

...

Unfortunately at some point almost everyone makes mistakes. For professionals, these mistakes can result in large losses for their clients. Without Professional Indemnity Insurance, the company would be forced to reimburse the client for the losses. Even if as a professional you did not make a mistake, the costs of proving yourself innocent in a court could cripple the company in the same way that having to reimburse losses could. Insuring against professional indemnity is a prudent way to ensure that your company survives losses it needs to reimburse because of mistakes, or costs it incurs proving that no mistake was made.

Typical claims on PI cover

...

Typical claims would be, the company forgot to do something it was supposed to do or it made a miscalculation/error, administrator enters incorrect numbers, auditor overlooks miscalculations & this effects the outcome that the company was responsible for.

Usually, this creates a ripple effect & the extra costs & damages incurred by all separate parties because of the initial error are added up to the final claim amount. In many claims, the exact origin of the fault is argued, with all parties pointing fingers at each other. These claims tend to be made up of legal costs plus the amounts of the partial damages caused by each party.

PI Cover requirements under FAIS



CATEGORY OF FSP	COVER REQUIRED
Cat I or IV FSP <i>(FSP doesn't receive client funds)</i>	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R1 mil or • PI minimum R1 mil
Cat I or IV <i>(FSP receives client funds)</i>	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R1 mil or • PI and Fidelity minimum R1 mil
Cat II <i>(FSP doesn't receive client funds)</i>	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R1 mil or • PI minimum R1 mil
Cat II <i>(FSP receives client funds)</i>	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R5 mil or • PI and Fidelity minimum R5 mil
Cat IIA <i>(FSP doesn't receive client funds)</i>	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R5 mil or • PI minimum R5 mil
Cat IIA <i>(FSP receives client funds)</i>	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R5 mil or • PI and Fidelity minimum R5 mil
Cat III	<ul style="list-style-type: none"> • Suitable guarantee of minimum of R5 mil or • PI and Fidelity minimum R5 mil

IMPORTANT FAIS CONTACT DETAILS

General FAIS related queries	Faisinfo@fsb.co.za
Extensions on the submission of annual financial statements	Faisfins2@fsb.co.za Faisfins3@fsb.co.za
Queries relating to qualifications	Fitandproper@fsb.co.za
Queries on Fit and Proper requirements	Fitandproper@fsb.co.za
Updating details on a license (Profile Changes)	Faispfc@fsb.co.za
Debarment of representatives	Debarments@fsb.co.za
Queries on Date of First Appointment (DOFA)	Fais.Dofa@fsb.co.za
Submission of complaints against a FSP	FaisComplaints@fsb.co.za
Queries relating to the suspension / withdrawal of licenses	Fais.Compliance@fsb.co.za
Correspondence relating to specific exemptions	Fais.Exemptions@fsb.co.za
Queries on the FAIS online reporting system	Faiscomp1@fsb.co.za
Queries relating to compliance reports	Faiscomp2@fsb.co.za Faiscomp3@fsb.co.za Faiscomp4@fsb.co.za

Comments and 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. 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

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.

On the homepage click on the word “*FAIS*” in the top right hand corner.