

FAIS NEWSLETTER



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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.

INTRODUCTION

As pointed out in the previous editions of the FAIS Newsletter, the FAIS Act was enacted to create uniformity within the non-banking financial services industry and to provide a regulatory framework within which the rendering of financial services will take place. This is achieved by means of creating standards to be adhered to by the holders of the FAIS license. Furthermore the FAIS subordinate legislation has been published to which legal effect has been given and whose aim is not to substitute or replace the existing Act but to supplement it.

The various codes of conduct have been published pursuant to Chapter IV of the FAIS Act specifically for the aforementioned purpose. These codes of conduct are mechanisms created in line with section 15 of the FAIS Act in order to regulate the market conduct of the financial services providers ("FSPs") and their representatives in the rendering of financial services. The codes of conduct must ensure that the FSPs and their representatives make the necessary and relevant disclosures to clients in order to enable the clients to make informed decisions on the financial services rendered.

Although contraventions of the codes are not offences under section 36 of the Act, such contraventions are however dealt with in the various sections of the Act dealing with non-compliance. The aforementioned is due to the fact that the Act encompasses the codes of conduct by virtue of the definition under section 1 (1). The rights conferred on the clients by the codes are enforceable and cannot be waived by the FSP. The codes of conduct are binding on FSPs and the representatives. The codes of conduct are drafted after the Registrar has consulted with the representative bodies and the FAIS Advisory Committee. After such consultation, the codes of conduct must be published by notice in the Government Gazette. Upon such publication, it becomes binding on all authorised FSPs and the representatives referred therein. Different codes of conduct may be drafted in respect of different categories of FSPs.

GENERAL INFORMATION ABOUT CODES OF CONDUCT

The codes of conduct can be categorised into two types, the specific codes of conduct and the general code of conduct. The specific codes of conduct have been published and are applicable to specific FSPs rendering financial services in respect of specific financial products. In other words, these are not applicable to all FSPs but only to specific FSPs and their representatives. FSPs and representatives rendering financial services in respect of other product categories and subcategories will not be bound by such a code.

The General Code of Conduct on the other hand is applicable to all FSPs except to extend exempted by the Registrar.

The codes of conduct may from time to time be amended or replaced where such amendment or replacement is deemed necessary in order to keep abreast of changes in practice in the industry or the code of conduct has become obsolete.

PRINCIPLES OF THE CODE OF CONDUCT

The principles of the code of conduct are outlined in section 16 of the FAIS Act. The codes of conduct must be drafted in such a manner that they are easily understood in order to guard against and avoid poor rendering of financial services to clients. The codes of conduct must furthermore be drafted to ensure that clients are ultimately led to make informed decisions and that their reasonable financial needs in respect of financial products will be appropriately and suitably satisfied. The FSPs and their representatives are compelled by the provisions of the codes of conduct to ensure that they:

- ⇒ act with honesty and fairness and with due skill, care and diligence in the interests of clients.
- ⇒ act with honesty and fairness and with due skill, care and diligence to uphold, enhance and maintain the integrity of the financial services industry.
- ⇒ comply with the fit and proper's operational ability requirement by ensuring that they have, and at all times employ resources, implement policies, procedures and controls, appropriate technological systems to ensure that financial services are rendered in a professional and uninterrupted manner.
- ⇒ perform the necessary financial needs and suitability analysis and extract appropriate information from clients in order to assist them with addressing their needs.
- ⇒ disclose any existing or potential conflict of interest to clients and act with caution in situation of conflicting interest and ensuring that clients are treated fairly in this situations.
- ⇒ ensure that the business of the FSP complies with all applicable legislation.
- ⇒ the making of the necessary disclosures to clients in accordance with the provisions of the codes.
- ⇒ having and maintaining clients' record-keeping facilities.
- ⇒ The implementation of controlled and managed flow of clients funds process and safe-keeping of clients' funds in order to eliminate fraud and loss of such clients' funds.
- ⇒ The maintenance of adequate suitable guarantees or professional indemnity or fidelity insurance cover by FSPs.
- ⇒ the implementation of policies aimed at controlling or prohibiting the giving or receipt of incentives by the FSP.

The codes of conduct may also deal with any other matter deemed necessary to be regulated for the better achievement of the objects of the Act where such matter is not currently regulated or is loosely regulated.

LIST OF CODES OF CONDUCT

The codes of conduct and the amendments as reflected below have been published in the various Gazettes and are accessible on the FSB's website by following this internet menu path: www.fsb.co.za — FAIS — Under Legislation — FAIS Subordinate Legislation — Codes of Conduct.

CODE OF CONDUCT	PUBLICATION	BOARD NOTICE
General Code of Conduct for Authorised FSPs and representatives	Government Gazette 26201, 8 August 2003	BN 80 of 2003
Amendment Notice on the General Code of Conduct for Authorised FSPs and representatives	Government Gazette 31054, 15 May 2008	BN 43 of 2008 and BN 152 of 2008
Code of Conduct for Authorised Financial services providers and representatives involved in forex investment business	Government Gazette 26201, 30 March 2004	BN 39 of 2004
Codes of conduct for administrative and discretionary financial services providers	Government Gazette 25299, 8 August 2003	BN 79 of 2003
Notice on Amendment of Codes of Conduct for Administrative and Discretionary FSPs	Government Gazette 25681, 6 November 2003	BN 3196 of 2003 and 89 of 2007
Specific Code of Conduct for Authorised FSPs and representatives conducting Short-term deposit-taking business	Government Gazette 25629, 8 August 2003	N/A
Notice on Specific Code of Conduct for Authorised FSPs and representatives conducting Short-term deposit-taking business	Government Gazette 26844, 29 September 2004	BN 102 of 2004
Amendment Notice of the General Code of Conduct For Authorised Financial Services Providers and Representatives (Conflict of Interests)	Government Gazette 33133, 19 April 2010	BN 58 of 2010
Amendment Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives	Government Gazette 31755, 29 December 2008	BN 152 of 2008
Amendment of Codes of Conduct for Administrative and Discretionary Financial Services Providers	Government Gazette 25681	BN 3196 of 2003
Notice on Codes of Conduct for Administrative and Discretionary FSPs Amendment Notice	Government Gazette 30228	BN 89 of 2007

NEWSFLASH

- **Notice on Requirements on Professional Indemnity and Fidelity Insurance Cover For Providers**
On the FAIS website — Under Legislation — FAIS Subordinate legislation, regulations, exemptions and guidance notes — Codes of Conduct — Notice on Requirements on Professional Indemnity and Fidelity Insurance Cover For Providers, 2009
- **FAIS Compliance report online user guide**
On FAIS website — Supervision Department — FAIS Compliance report online user guide
- **Guide on preparation of financial statements for small FSPs**
On the FAIS website — Supervision Department — Financial Statements and Audit Requirements — Under Documents relating to submission of financial statements — Guide on preparation of financial statements for small FSPs — Example of financial statements for sole proprietors
- **Change of contact detail**
In future, FSPs will be able to change the contact details on the online compliance report and financial statement submission programme. FSPs are encouraged to use the online facility to update their contact details to ensure that they receive regular communication and that they also comply with Condition 1 on their license.
- **Extensions on submission of financial statements**
FSPs will be able to apply for automatic extension on the submission of financial statements provided that all other previous financial statements and compliance reports have been submitted to this Office. FSPs are encouraged to apply for extension to ensure that they are not penalized R150 per day from the date that the financial statements were due until the date the financial statements are submitted. It should also be noted that the non-payment of penalties can lead to the suspension of FSP's license.
- **FAIS Annual Conference and workshops**
We urge FSPs to be on the look-out for the opening of our annual conference and workshop bookings that will also be communicated in due course. As with previous years, the conference is free of charge. This year will have one main conference and for those that cannot attend, a telematic mini-conference will be broadcast from Stellenbosch to centres in all nine (9) provinces. There will also be a number of other workshops that will be transmitted to these centres following the conference. We encourage FSPs to participate and get first-hand knowledge from regulatory staff and experts in the industry on a wide variety of topics that we will cover this year.

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COMMENTS & 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".