

FSB BULLETIN

FIRST QUARTER 2005



New Securities Services Act

Cross-border cooperation



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Securities Services Act in operation

The investment services industry should be aware of far-reaching implications now that new securities legislation, aimed at consolidating the regulation of financial markets, has been adopted.

The Securities Services Act, 36 of 2004 (SSA) effective since 1 February 2005, introduces stricter penalties of up to R50 million and/or 10 years' imprisonment for various forms of market abuse.

The new law, which has replaced four separate pieces of legislation governing the regulation of financial markets, is in line with South Africa's ongoing efforts to stamp out white-collar crime and position itself as a financial centre and investment hub for Africa.

FSB's departmental head of capital markets, Norman Müller, says the SSA replaces the Stock Exchanges Control Act, 1985; Financial Markets Control Act, 1989; Custody and Administration of Securities Act, 1992 and the Insider Trading Act, 1998.

"Apart from consolidating the above Acts, it also seeks to add a significant number of new provisions, some of which relate to previously unregulated matters and of which the investment services industry should note." These are briefly set out below.

- Off-market transactions in listed securities resulting in a change of beneficial ownership, between financial institutions (as defined in the SSA) are allowed to operate on condition that the financial

institutions transact with each other as principals. However, all off-market transactions in listed securities are subject to a reporting requirement to the Registrar of Securities Services (the requirements are available on the FSB's website: www.fsb.co.za).

- Although it is not required that those who buy and sell unlisted securities of public companies be approved or licensed, the Registrar may prohibit a person from carrying on such business, or may impose or prescribe conditions regarding such business.

- The SSA introduces a requirement that a nominee of an authorised user (current member of an exchange) that acts as the registered holder of securities or that has an interest in securities on behalf of others, must be approved by the exchange in terms of exchange rules, and the nominee of a participant must be approved by the Central Securities Depository (CSD) in terms of its rules. The Registrar must approve nominees that are not approved by an exchange or a CSD.

- The SSA permits the demutualisation of exchanges and CSDs, in line with international trends.

- Clearing houses (if not performed in-house by an exchange) and CSDs will now require a licence, to be renewed annually by the Registrar, in line with the approach followed in respect of exchanges.

- An exchange and CSD must, within 14 days of the appointment of a new member to its controlling body, inform the Registrar of such appointment and furnish him with the required information. The Registrar may instruct the removal of such member under certain circumstances.

- The SSA introduces a limitation of 15% of control of, and shareholding in an exchange or CSD that is a company or

close corporation. However, the Registrar may approve a greater percentage.

- The SSA prescribes a code of conduct for authorised users, their employees, officers and clients. The code deals with general duties of authorised users, furnishing of advice, disclosure to clients, record keeping, inducements, advertisements, client statements, etc.

- Manipulative, improper, false or deceptive practices of trading as well as false, misleading or deceptive statements, promises and forecasts will from now on fall under the supervision of the Directorate of Market Abuse, formerly known as the Insider Trading Directorate. The criminal penalty for committing any of the above market abuse practices has been increased substantially — a fine not exceeding R50 million, or imprisonment for a period not exceeding ten years, or both.

- The Act introduces the establishment of an Enforcement Committee with the power to impose an administrative penalty on, or provides for the payment of compensation (in the case of insider trading) by a person who contravenes or fails to comply with the provisions of the Act. It is expected that this will give the FSB more effective and expeditious powers. In the past the FSB was able to take civil legal action against insider traders, and has used this enforcement option very successfully. In such a case the wrongdoer could be sued for the profit made or loss avoided, as a result of the offending transactions, as well as a penalty of three times such amount. The FSB can still sue for these amounts in a civil court, but now also has the option to request the Enforcement Committee to make such an order.

Source:

FSB Media Release, 7 March 2005



The Johannesburg Stock Exchange

– A hub of opportunity

The JSE Securities Exchange South Africa (JSE) has come a long way since its establishment in 1887. Today, it is the 14th largest stock exchange in the world by market capitalisation, and remains committed to its strategic focus of running a low cost, highly efficient market, offering a wide range of financial products and services to an ever-increasing investor community.

By Geoff Rothschild, Director of Corporate Marketing and Communications, JSE

Bringing economic prosperity and, as a result, social growth and development to Africa, is one of the JSE's main goals. It is an African exchange dedicated to assisting existing exchanges on the rest of the continent and working towards a Pan-African Board. It is an exchange concerned with remaining relevant to all its stakeholders. It provides opportunities for the fulfilment of financial hopes, from small investors to listed

companies. It also provides research material for the investor community through the provision of data services.

In its drive to remain competitive and compelling to local and international investors looking to gain exposure to South Africa and in future, the broader African continent, the JSE is constantly on a quest to innovate.

Last year was a particularly busy year in this regard. It was a year for introducing new products and services to the market,

consolidating newly introduced ones and working on bringing cost efficiencies and improved processes to the exchange in order to reduce the cost of trading.

To this end, Project Orion, the JSE's IT transformation project that aims to reduce costs and improve processes, got underway in 2004. The JSE's legacy IT structures were an obstacle to its goal of remaining a world-class exchange and offering a flawless, swift and cost-effective service. In a bold move, the exchange took critical action and outsourced the management of IT systems and structures to the company, Accenture. The new technology, which will be completely phased in by 2006, will cut operational costs significantly, and create greater functionality, reliability and flexibility.

Last year also saw the Socially Responsible Investment (SRI) Index celebrated its first year in existence. This is the only index in an emerging market that encourages companies to care about people, the planet and prosperity.

The enthusiasm for the SRI Index among listed companies is encouraging. This is a clear indication of the rising concern and interest in creating and maintaining environmental, social and economic prosperity and sustainability and also the realisation that inclusion is attractive to potential investors. The JSE is in the process of examining and revising the Index. The SRI is entering its second phase and either reapplications or new applications are presently entertained.

The first successful listing on AltX took place in the first quarter of 2004. Since then numerous small and medium-sized companies have chosen to join this alternative exchange.

AltX lacks the wild volatility of share movements that typically marks the small to mid-cap sector and has proved attractive to investors interested in the growth potential of smaller companies. This year began well with a number of new companies coming to list on AltX, and many more are anticipated.

Yield-X, the exchange solely dedicated to trading a wide range of interest rate products, was announced in 2004 and was launched in February 2005. As a "one-stop-shop", Yield-X will make it simpler, cheaper and more transparent for investors to trade in interest rate products. This should make this market highly attractive to prospective and existing investors.

Yield-X represents the second development of the JSE's plans to expand its existing derivatives markets and offer more instruments to fulfil investor needs and



The JSE initialised an IT transformation process with the aim to remain a world-class exchange, offering a flawless, swift and cost-effective service. In a bold move, the exchange took critical action and outsourced the management of IT systems and structures. The new technology, which will be completely phased in by 2006, will cut operational costs significantly, and create greater functionality, reliability and flexibility.

demands. It follows the successful development of the Single Stock Futures market; a market that is now the fourth largest in the world, trading 135 futures and comprising 68% of the derivatives traded on the exchange. Exchange traded interest rate derivatives will be offered on Yield-X and trade will be through a central order book, with anonymous and guaranteed trading and settlement, transparency of price and depth of market.

The Agricultural Products Market had a tough year in 2004, with the price of maize depressed and a number of technology problems. However, the latter have

been addressed in the short term and this market will see a new long-term IT solution being implemented as part of Project Orion in 2006.

The JSE now looks to the future better equipped to meet the needs of its stakeholders and contribute to growing the economies of South Africa and Africa. It remains committed to the concept of providing a single market place for investors into Africa.

It sees its role as a hub of opportunity for investors who will be able to access quality investments across Africa using the JSE's technology and acting as a conduit for much needed investment into Africa.

The JSE is looking for donors to provide funding to enable Zambian and Zimbabwean exchanges to come on board. This initiative is in line with the government's goal to position South Africa as the financial centre for Africa.

Plans to broaden the investor base by attracting retail investors and demystifying the JSE are under way. Deregulating the processes of investment to attract more foreign listings, also steams ahead. The JSE is hard at work to bring more quality companies to the JSE in the footsteps of Aquarius Limited, the first international company to take advantage of this exchange control relaxation. This will broaden the range of investments available to local investors and using our world-class technology and trading environment, we aim to enable investors to trade international companies at a lower cost on the JSE than elsewhere.

The JSE also intends to launch Exchange Traded Funds to track the major international markets, thus enabling local investors to diversify their exposure without having to repatriate their money out of the country.

In light of the possibility of further relaxation of exchange controls in the future, the JSE is committed to making the most of this changing environment for its members and clients. The JSE is working hard to make a case to FTSE to upgrade the JSE's status from an "advanced emerging market" to that of a developed market.

Continued commitment to strengthening employment equity policies and the training and development of all staff, contribute to making the JSE become an increasingly powerful and positive African exchange. With a spirit of change and community working its ways through the veins of this institution we can only look forward to a better, more prosperous exchange.



The need for cross-border enforcement

Although not being a follower of Vladimir Ilyich Lenin, when thinking of cross-border enforcement, his phrase “trust is good, control is better” came into my mind.

Lying embalmed in his mausoleum, he will not keep us from developing his sentiment further by saying “trust is good, enforcement is better — and cross-border enforcement is best.”

Although cross-border enforcement has been a long-running saga for the International Organisation of Securities Commissions (IOSCO), hardly a year goes by without IOSCO becoming involved in the problem of how persons committing breaches of securities law can be efficiently prosecuted on a cross-border basis.

Will IOSCO ever be able to relax on this front? I fear not. As long as there are national borders, national regulatory authorities will always encounter against them, while markets, which are becoming more integrated internationally, can now ignore them altogether.

Globalisation has not only changed the financial markets, but has also given rise to a surge in fraudulent dealings. Sometimes it even seems that fraudsters are the winners of globalisation.

While companies frequently offer “global solutions”, we cannot have one for enforcement powers. However, it is becoming clear how much the efficiency of cross-border enforcement can be enhanced by harmonising national rules defining prohibitions, setting clear criteria for the

*Presentation by Jochen Sanio, President of the Federal Financial Authority, IOSCO Technical Committee Conference, 28 October 2004**

scope of mutual cooperation and providing the necessary powers. In this context one only has to think of the new rules being prescribed for European Union (EU) members in the Market Abuse, Markets in Financial Instruments and Transparency Directives. But how far can we get in international cooperation without such structural measures?

Progress

IOSCO standards have frequently paved the way for cross-border enforcement, both at multilateral and bilateral levels. A recent milestone is IOSCO’s Multilateral Memorandum of Understanding (MMOU) which can be described as the credo of international cooperation in securities regulation. Not all IOSCO members can sing from its hymn sheet yet, since the necessary powers need to be in place before this cooperation agreement can be signed, and these are subject to careful scrutiny by IOSCO’s Screening Group.

Twenty-six members have already signed, more than 20 members have applied to do so and I hope many of them will sign the MMOU in the next few months.

The credit for this burgeoning “international cooperation infrastructure” goes to IOSCO. The improvements, particularly in the area of “classical” securities offences, such as insider dealing and market manipulation, are clear. IOSCO has even gone further by measuring and monitoring requests for assistance.

Although IOSCO has laid a foundation

stone in exchanging information, problems still exist in this area.

Problems

Some securities regulators are unable or even unwilling to support the system of information exchange that IOSCO has developed. The reasons are many and varied and differ from jurisdiction to jurisdiction. Banking secrecy laws and double criminality requirements are frequently used as cooperation killers. For instance, it may be the case that information can only be exchanged between prosecuting authorities (i.e. criminal and judicial) and not between securities regulators. Occasionally there is also simply a lack of adequate data recording requirements for financial market operators. Such conditions should not become barriers that thwart essential investigations into breaches of recognised securities trading rules, such as prohibitions on insider dealing, market abuse or fraud. To the extent that this occurs in jurisdictions whose financial industry does extensive cross-border business with foreign financial markets, it can have systemic implications, apart from the fact that skilled arbitrageurs systematically hunt out and exploit such loopholes to be safe from pursuit.

For some years, organisations such as the Financial Stability Forum (FSF), the International Monetary Fund, the Basel Committee and the Financial Action Task Force of the OECD (FATF) have been making efforts to reduce such loopholes.

The objects of their attention include

offshore financial centres that have acquired reputations as bases for subsidiary companies, special purpose vehicles and asset managers.

In this context, IOSCO will also have a function to fulfil in the securities field. The FSF is expecting IOSCO to take steps beyond the MMOU signing process and also cover non-IOSCO members. IOSCO will have to find risk-oriented solutions to pave the way for satisfactory cooperation through the exchange of information for so-called "non-cooperative" or "less cooperative jurisdictions" as well, especially those where cooperation is important for the functioning of orderly financial markets.

Limits on prosecution capabilities

The exchange of information and cooperation between administrative authorities enables insider trading to be better pursued across borders. But these tools alone will not enable us to do enough about fraudulent activities. A cause for concern is professional, international organisations which worm their way into the confidence of investors via the telephone and internet to transfer the victims' money around the globe into safe havens within a matter of hours and their ever-increasing boiler-rooms.

In the case of such activities, investment fraud and money-laundering are fre-

quently closely linked. In such cases of internationally network schemes, we can only be successful if the regulatory and criminal prosecution authorities, Financial Intelligence Units (FIU) and police forces, financial and IT companies cooperate speedily and effectively across borders.

Protection of assets of defrauded investors

It is one thing to make it easier to pursue fraudsters; but it is another and no less important matter to seek to ensure that their ill-gotten gains cannot disappear into thin air and ultimately to enable the victims of frauds to get their assets back. While this already requires considerable efficiency on the part of the authorities at the national level, the system of international cooperation in these cases is regularly over-stretched. A report by the IOSCO Technical Committee from 1996 produced disheartening results: hardly any securities regulatory authority was able to effect asset freezes on behalf of another, let alone contemplate the repatriation of assets. But in view of the scale of financial losses caused by boiler-rooms and the like, it is worth having another go and seeking measures which regulatory authorities can and should take.

The requirement of the EU Market Abuse Directive for EU-member jurisdictions to provide for asset-freezing powers

which can also be used for foreign authorities, gives great cause for hope.

Need for common structures

In all these issues of cross-border enforcement in the narrower sense, one thing should not be overlooked, however. Cooperation on enforcement can be made more efficient by having similar conceptions and conditions of offences and structures. In May, IOSCO came up with standard requirements for client identification and beneficial ownership.

This will make it easier for IOSCO and securities enforcers to cooperate more closely with one another, as well as the FATF and FIUs at cross-border level. This is important, for if enforcers dig deep enough in a particularly dirty investment fraud, money-laundering will be unearthed somewhere.

Adapting national regulations internationally is essential for cross-border enforcement. A major future function of IOSCO will be to "enforce" its own standards among its members in the interests of regulatory cooperation. Such enforcement will be just as important for IOSCO in the coming years as cross-border enforcement itself. Supervisors of the world, unite!

** Presentation shortened and reworded.*

Collaborate to combat fraud

Co-operation between national securities watchdogs is critical in the battle against cross-border fraud.

Panellists at a session entitled "Anatomy of a cross-border securities fraud" agreed that initiatives such as the Multilateral Memorandum of Understanding (MMOU) set up by the International Organisation for Securities Commissions (IOSCO) in 2002 will help to avert further scandals such as Enron and Parmalat.

IOSCO's MMOU provides a structure through which regulators can share information and even conduct investigations on behalf of one another.

Dr Franso van Zyl, senior specialist, legislation, represented the FSB at the conference of the International Bar Association in Auckland, New Zealand during October 2004. He was one of the panelists at the session.

"Although not binding on signatories,

the IOSCO initiative encourages the exchange of information, allows regulators to conduct investigations overseas and guarantees that information exchanged will be kept confidential," said Van Zyl.

"It also encourages regulators to share experiences, which can be especially helpful to those in developing countries. It means you know what to look out for," said Van Zyl. South Africa is one of 26 signatories of the MMOU.

"We need to get to a point where, rather than questions that separate us, there are attitudes that bind us," said Sasha Angus, Director of Enforcement of the Columbia Securities Commission in Canada.

"Only countries where regulators have the legal capacity to deliver genuine assistance to foreign equivalents are able to sign up," said session leader, David Knott, former chair of the Australian Securities

and Investments Commission.

"The MMOU is a clear indication of the global effort to ensure co-operation by as many regulators as possible on a uniform basis," he said.

The MMOU is intended to supplement the loose framework of bilateral agreements in place between regulators. Regulators also hope that it will create an impetus for some countries to improve their practices.

The MMOU also reflects a broader desire among regulators to make securities regimes of different countries track one another. "Speed of action is essential in enforcement," said Angus.

Source: IBA Daily News, Auckland Conference, 27 October 2004

IOSCO to raise standards of cross-border cooperation among securities regulators

By Norman Müller, Head:
Capital Markets, FSB

The International Organisation of Securities Commissions (IOSCO) announced in Cape Town recently that it has launched an initiative to raise the standards of cross-border co-operation among securities regulators.

IOSCO's objectives are to protect investors, to ensure fair, efficient and transparent markets and to reduce systemic risk. Together IOSCO members are responsible for regulating more than 90% of the global securities market. South Africa, through the FSB's Executive Officer Jeff van Rooyen, is the vice-chair of IOSCO's Executive Committee.

The initiative announced in Cape Town will be based upon a four part process designed to raise standards for effective cross-border co-operation among securities regulators:

- Identifying jurisdictions that appear to be unable or unwilling to co-operate, and prioritising follow-up work with the jurisdictions presenting the greatest risks to IOSCO's objectives of investor protection, maintenance of fair and efficient markets and financial stability;
- Entering into discussions with priority



Jean-Pierre Cristel, Deputy Secretary-General of IOSCO; Jeff van Rooyen, Executive Officer, FSB; and Philippe Richard, Secretary-General of IOSCO during the IOSCO meetings hosted by the FSB in Cape Town earlier this year.

jurisdictions to develop a mutual understanding of their ability and willingness to engage in co-operation and assisting them in resolving problems;

- Assessing progress in meeting IOSCO standards for co-operation; and
- Considering further actions that will achieve conformity with IOSCO standards.

Lagos meeting

At the recent IOSCO Africa/Middle East Regional Committee meeting held in Lagos, Nigeria, from 3 to 5 March 2005, member countries declared the regional meetings so beneficial that more frequent meetings will be hosted by members on a rotational basis in future.

FSB Executive Officer, Jeff van Rooyen, attended the Lagos meeting on behalf of the FSB together with Tshivhangvaho Mphanama, Assistant Manager, Capital Markets.

The agenda of the Lagos meeting focused on IOSCO's new strategic direction, which includes focus on improved enforcement-related cross-border cooperation. A key issue on the agenda was setting a deadline for becoming signatories to the Multilateral Memorandum of Understanding (MMOU). The meeting also served as preparation for IOSCO's annual conference which took place in Sri Lanka

from 4 to 7 April 2005.

At the annual conference, IOSCO has formally endorsed a range of operational priorities that will further strengthen the effectiveness of the organisation. These operational priorities will help members to focus on common efforts as well as to coordinate actions. The objectives include maintaining the role of IOSCO as the international standard setter for securities regulation by improving enforcement related cross-border cooperation and implementing the IOSCO Objectives and Principles of Securities Regulation (IOSCO Principles). In addition, the annual conference has endorsed a new IOSCO Public Consultation Policy.

Part of the newly adopted IOSCO strategic direction will involve greater emphasis on the IOSCO MMOU.

IOSCO has adopted a timetable by which all member regulators, which are not already signatories to the MOU, will be asked to meet this benchmark by 1 January 2010. By this date all member regulators should have applied for and been accepted as signatories under Appendix A of the IOSCO MMOU or have expressed (via Appendix B), a commitment to seek legal authority to enable them to become signatories. In order to achieve these objectives, IOSCO will provide resources to members including technical assistance to enhance progress.





The FSB's Chairperson, Dr Cyrus Rustomjee, placed human resource development and training in the financial services sector under the spotlight at this year's Raging Bull Awards ceremony.

Strategies for human resource development in financial services sector 'inadequate'



Dr Cyrus Rustomjee

"The issue of our future human resource capacity in the financial services sector is paramount. It is an issue, which goes to the core of the future efficiency and effectiveness of our financial services sector. Adequately addressed in the next three to four years, it will be central of our continued growth as an emerging market economy. Inadequately addressed, it will contribute to unraveling the important gains we have made in the last decade," according to Dr Cyrus Rustomjee, Chairperson of the FSB.

Rustomjee said at the Raging Bull Awards ceremony held in February in Pretoria, that human resource development is one of the most urgent challenges confronting the financial services sector.

He pointed out that the Financial Sector Charter seeks to address a range of

challenging issues such as the urgency and need for black economic empowerment and effective access to financial services. "These objectives must be pursued with vigour. Less focus and less attention, in my view, has been given to the objective of human resource development.

"There are of course important initiatives taking place in each sub-sector of the industry. I am pleased, for example, to see the significant efforts being made by the ACI, together with the Insurance SETA, to begin addressing the challenge of improving skills and training in this sector of the industry. These efforts must continue and must be strengthened.

"In my view the collective response across the financial services sector has been insufficient to date and requires a more concerted, more comprehensive and more significant impetus," Rustomjee said.

"There is also the bigger challenge of

ensuring that the entire managerial component in the industry benefits from updated skills, knowledge, training and human resource development. This is a huge challenge. My question to the financial services sector as a whole is: How will we get there? What plans do we have, today, in a period of comparative calm, to address this future looming need?

"I know that serious efforts are being made, but I am not convinced that these efforts are cohesive enough, comprehensive enough and ambitious enough to address our future needs, as an industry.

"What will the consequences be if we succeed? We will clearly build the basis for strong, enduring and sustainable growth, make real the promise of South Africa as a pre-eminent emerging market economy and fully substantiate our objective of

continued on p10

FSB helps to lay down international pensions standards

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Recently established international pensions organisation, the International Organisation of Pension

Supervisors (IOPS), aims to lay down good practice and compliance standards for pension supervisors.

FSB Deputy Executive Officer for retirement funds and friendly societies, Dube Tshidi, says IOPS has agreed to prioritise these issues in its technical work programme for 2005 and 2006.

Tshidi was appointed Vice-president of the IOPS Executive Committee at its inauguration in July last year.

John Ashcroft, President of IOPS, said the technical work programme would be challenging and exciting.

"It has the potential to place IOPS firmly on the map as the leading authority in the supervision of private pensions. It is

By Astrid de Vos, Communication and Liaison, FSB

particularly timely given the challenges facing pension provision in developed and developing nations alike. In addition to project based work we intend to consider a framework for the delivery of assistance to pension supervisors and those planning pension supervision in emerging markets," he said.

Initiated by the network of pension supervisors and regulators of the Organisation for Economic Cooperation and Development (OECD), the organisation promotes international cooperation and provides a worldwide forum for dialogue and exchange of information. It also aims to set international standards on pension supervisory issues.

IOPS announced this week that its technical committee would prioritise two projects during 2005 to deal with issues of particular concern to pension supervisors. These are good practices guidelines and core elements of a risk-based approach to pension supervision and strategic planning.

Regarding good practices, IOPS will draw up a set of pension supervision guidelines, generalised to private pensions, and will expand on work done by the OECD and supported by the IOPS forerunner, the International Network of Pension Regulators and Supervisors.

The OECD, Italy, Jordan, Mauritius and possibly the Netherlands will lead the project.

Work on developing core elements for a risk-based approach will focus on procedures for assessing compliance with rules relating to funding, asset-liability matching, use of derivatives, investment mandates and other investment regulation.

It will also identify key areas where supervisory resources should be directed and a generic framework for strategic thinking and the issues specific to pension supervision. The World Bank, Australia, Germany, the Netherlands, Pakistan and the United Kingdom will spearhead the project.

A further six projects will be started during 2005 for completion during 2006:

- Supervisory education, outreach and communication, including training of trustees - led by Kenya, Ireland, South Africa, the United Kingdom and the World Bank.
- Guidelines for compliance with the licensing of pension funds - Australia.
- The documentation of methods for pension supervision - Australia.
- Analysis of supervisory structures - Mexico, Italy.
- Cross-border pension supervision - Spain.
- Utilisation of IT technology in off-site supervision - Turkey.

Strategies ... from p 9

establishing, in our financial sector, the financial centre for Africa," Rustomjee said.

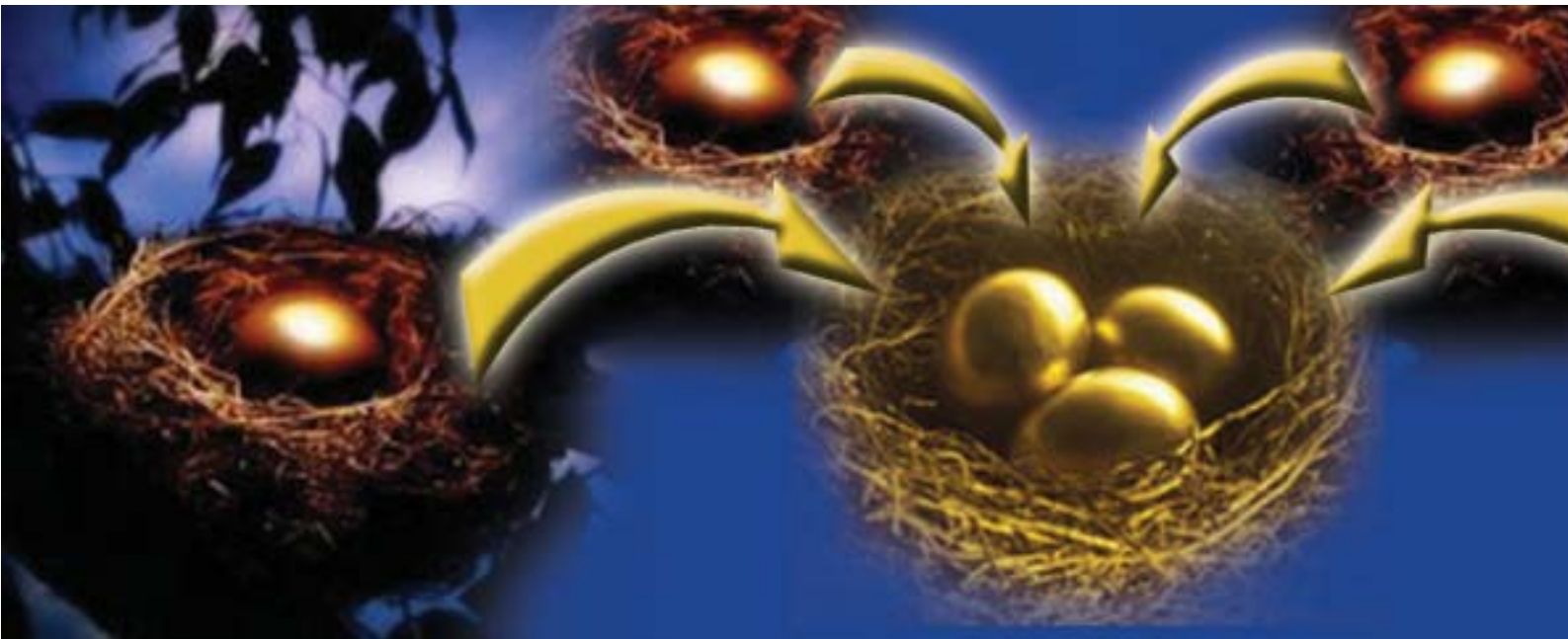
He pointed out that if the industry fails to achieve these objectives and targets, the consequences would be significant. "It will mean that we have not achieved the equity objectives set out in the Financial Sector Charter. It will also strike at the core of our comparative advantage as an emerging market – our ability to remain ahead of our comparative emerging markets. This includes our ability to maintain our relative competitiveness and efficiency and our ability to give substance to our ambition to build a financial centre for Africa; our ability to retain existing levels of portfolio and long-term capital inflows and to build upon them; our ability to prevent the destabilising effects of unforeseen shocks; and ultimately, our ability to grow at the pace needed to eradicate poverty."

Rustomjee stressed that although his comments have been addressed to the private sector, the need for adequate levels of capacity and skills is equally an imperative

among the regulatory fraternity.

"For regulators, there are already enormously increased demands for more human resource capacity, for example, to address the market conduct and the prudential consequences of expanded access; and also as a result of an increased pursuit of risk-based supervision. The FSB intends to significantly expand its human resource capacity to address these challenges.

"With a generally sound regulatory framework now in place, following a protracted period of legislative and regulatory change, the FSB's focus is shifting decisively toward implementation. For this reason, I believe it is fair to say that we can expect the mechanisms for enforcement and for compliance to significantly expand in the coming period. Mechanisms will include, for example, a substantially increased capacity for on-site visits and inspections. This will necessitate industry levies increasing at rates above the prevailing inflation rate to accommodate the FSB's need for increased regulatory capacity," Rustomjee said.



Collective investments: cost-effective and flexible solutions to retirement funding

The collective investment industry, which operates under the Collective Investment Schemes Control Act, 45 of 2002 (CISCA), is a growing and dynamic part of the South African financial services landscape.

By Di Turpin, Chief Executive, Association of Collective Investments

Unit trusts were first introduced in the mid-sixties and took nearly 20 years to really take off, mainly due to the bear markets of the seventies. However, since then we have seen rapid growth and much innovation resulting in an industry with over R300 billion in assets appealing to retail and institutional investors.

CISCA introduced a modern, supportive and unambiguous legislative framework for investors providing for enhanced consumer protection.

Although unit trust management companies set and followed industry guidelines on disclosure, the new law entrenches these guidelines. Before concluding a transaction with an investor, the manager must disclose details such as investment objectives, calculation of the net asset value, dealing prices, charges, risk factors,

distribution of income accruals, and all other relevant information needed to make a decision.

CISCA also enables the introduction of new vehicles not previously available in South Africa. We have seen some activity in this area with South Africa's exchange traded funds, SATRIX, registering as collective investments in 2004.

One of the Act's prime features is its structure. Fundamental principles are entrenched in law, surrounded by the Registrar's conditions. The latter provide the mechanics of operation, allowing flexibility to develop the industry while keeping pace with international best practice and in line with consumer protection trends.

Trustee duties were also increased and enhanced. Investors in unit trusts have always enjoyed protection as assets are held in a trust, which is closely administered on the investor's behalf by an independent trustee.

CISCA is testimony that legislation can increase a product's ability to be a flexible and client-friendly savings vehicle within the bounds of full disclosure. The industry hopes to take these benefits into the retirement savings arena once the Pension Funds Act, 24 of 1956, is rewritten.

Other countries provide some useful examples of how collective investments can provide cost-effective and flexible solutions to retirement funding:

Recent research in the United States shows that Individual Retirement Accounts (IRAs), which are the largest component of the \$11,6 trillion (±R70,9 trillion) United States retirement market, represent one out of every four dollars. Over 45 million households, or 40% of all US households, owned IRAs last year.

Legislative activity around the IRAs shows that individuals respond well to incentives to build assets to save, as long as they are simple, understandable and predictable. This can be seen in the responses to various rule changes to the IRA over the last 30 years.

Small businesses use IRAs to make retirement plans available to their workers, or as a means of preserving retirement money. There is also an after tax contribution option which exempts growth from taxation, the so-called Roth IRA.

Leading Canadian academics have proposed the introduction of similar tax prepaid savings plans, in addition to the existing tax deferred plans. These would allow

continued on p13



Changes to retirement legislation will give consumers greater protection

South Africa's retirement legislation is about to undergo changes that will dramatically expand the availability of retirement savings vehicles and give greater protection to fund members.

The rewriting of the Pension Funds Act, 24 of 1956 is to move into top gear following the publication of a discussion paper on retirement fund reform by the National Treasury in November last year. The Act is being rewritten to give investors in retirement savings products greater protection and to ensure that more South Africans are able to save for retirement.

The National Treasury task team feels too many people reach retirement age without adequate accumulated savings.

National Treasury and the FSB conducted road shows in March to inform the public about the principles of the proposed new legislation as well as to invite input into the process.

Although South Africa's retirement fund system is in many respects financially sound and well regulated, National Treasury believes that for too many people, the build-up of savings is disrupted, and the costs associated with retirement fund provisioning are unacceptably high.

Between the basic old-age social grant, and private contractual and voluntary savings vehicles, there is a notable lack of cost-efficient vehicles appropriate to meeting the retirement funding needs of lower income people, and those whose lifetime earnings are largely informal or irregular.

Key objectives

The government's main objectives in revamping the legislation that governs the provision of retirement funding include:

- Encouraging and enabling individuals to make adequate provision for their retirement and the financial needs of their dependants.
- Ensuring that all employees have access to affordable and appropriate retirement-funding vehicles.
- Encouraging employers and employees to provide for retirement funding as part of employees' remuneration contracts.
- Ensuring that retirement-funding arrangements are efficient, cost-effective, prudently managed, transparent and fair.
- Within the resource constraints of a retirement fund, promoting the retention of the purchasing power of pensions by protecting them against the effects of inflation.
- Raising the standard of retirement fund governance. This includes: improving trustees' level of knowledge, accountability and ethical conduct; protecting members' interests; and ensuring pertinent and relevant information is disclosed to members and contributors in a clear and understandable way.
- Through social assistance, providing an assured basic income to elderly people who do not have the means to save for retirement.
- Creating a retirement system that will be robust over the long term.

Main recommendations

The National Treasury task team made the

following main recommendations to achieve the government's aims for retirement funding:

- A National Savings Fund should be established for low-income earners.
- Commission or service fees paid to intermediaries should possibly be limited, and should be fully disclosed.
- Preservation of savings in the case of a change of jobs.
- Benefits should provide an adequate replacement ration for a member retiring at age 65. A pension should retain its purchasing power in the face of inflation and be payable for the lifetime of a member.
- A fund should trace beneficiaries of unclaimed benefits. Failing this, such benefits should be transferred to a central fund after say two years. If the funds remain unclaimed, they should eventually revert to the State with the possibility of the funds being specifically earmarked for the social old age pension.
- Full disclosure of both direct and indirect costs and a clear illustration of how much of a fund's total contribution effectively goes towards paying costs, including the provision of risk benefits, should be made to the member.
- Investment choice for fund members should be the decision of a trustee board, but if offered to members, should be limited to approximately five portfolios.
- Any proportion of a retirement fund benefit that is allocated to the spouse of a fund member in a divorce settlement must be ring-fenced or transferred to the member's individual fund, with the spouse receiving investment growth on the por-

Forex marketer in provisional liquidation



One of the largest forex marketing companies, Leaderguard Securities, which exclusively marketed foreign exchange investment products of Leaderguard Spot Forex, has been provisionally placed under liquidation following huge forex losses.

The application was brought by Leaderguard Securities' Financial Director, Maria Fryer.

Leaderguard Spot Forex's business was to trade investors' money for foreign currency with forex dealers in England and Denmark. Investors recruited by Leaderguard Securities gave a mandate directly to Leaderguard Spot Forex, a Mauritian-registered company. About 60 agents recruited investors in South Africa, Botswana and Swaziland.

Leaderguard Securities' sole source of income was the monthly 1.8% of total asset under management by Leadership Spot Forex. The commission was not promptly paid in December, January and February and there was a shortage of \$200 000.

Against all expectations, Leaderguard Spot Forex suffered enormous losses on foreign markets. It is estimated that 80% of the total funds administered by Leadership Spot Forex was lost. According to Fryer, Leaderguard Securities has 1 600 clients who lost about R300 million.

Fryer says in her affidavit Leaderguard Securities is commercially and factually insolvent as its liabilities exceeds its assets by R2.4 million.

The public is once again warned against dealing with any financial intermediary who is not licensed in terms of the Financial Advisory and Intermediary

Services Act, 37 of 2002, or does not operate in terms of an exemption.

The FSB's FAIS specialist, Wendy Hattingh, said that financial services providers have to be licenced for the products that they are rendering financial advise on or have applied for, otherwise they will be operating illegally.

The return date for the provisional liquidation is 28 April. Leading up to the provisional liquidation, the FSB's Mauritian counterpart, the Financial Services Commission (FSC) had suspended the Category 1 Global Business Licence of Leaderguard Spot Forex Limited after receiving information that the company has been rendered insolvent as a result of substantial trading losses.

Statement

In a statement the FSC said measures have been taken to protect the remaining assets of the company in the interests of its investing clients and creditors, pending a full investigation into the circumstances of the loss.

"Leaderguard Spot Forex was licensed as an asset management company and was using its sister company, Leaderguard Securities (Pty), as marketing arm to develop a wide clientele base in Southern Africa primarily through a network of investment consultants and brokers.

"In suspending the licence, the commission has issued directions to the company preventing it from undertaking new business activity. It may only operate those trading positions that are still pending so that the best interests of clients are protected. The company has been ordered to submit all its decisions to the oversight of its independent director. Signatory authorities

of executive directors are also subject to the concurrence of the independent director.

"In addition, in order to further protect clients and creditors, the company has been directed to apply by not later than 1 April 2005 to the supreme court in Mauritius for the appointment of either a liquidator or a receiver-manager. Any director who fails to comply with the directions of the FSC commits a criminal offence under the Financial Services Development Act, and is liable on conviction to imprisonment.

"The commission has been informed that the company is seeking to work out a compromise with the investing clients and creditors. The commission will continue to probe the matter and liaise with the FSB, and any other regulatory authority that might have an interest."

Hattingh cautions that investors must not sign away their rights when entering into any compromise.

Source:
FSB Media Release,
1 April 2005

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tax-free accumulation of savings and withdrawals at retirement, funded by non tax-deductible contributions.

This alternative would also suit low and middle-income earners in South Africa as current tax incentives are often meaningless and tax rates within the fund are higher than outside the retirement environment.

The South African collective investment industry believes that there is room in the new legislation for a tax pre-paid savings vehicle to attract taxed discretionary income, as well as a low entry, easy access vehicle for retirement savings in the form of the existing collective investment prudential funds.

This would benefit low and middle-income workers. The retirement fund discussion paper paves the way for these consumer oriented retirement savings options to become part of the South African retirement landscape while capitalising on the inherent strengths of the collective investment vehicle and legislation.

Changes to retirement legislation

tion allocated to them by the court.

- Considering retirement fund governance, National Treasury has recommended the following measures:

- * Granting the regulator increased powers, including:

- The power to recover money inappropriately removed from funds;

- The power to remove trustees and service providers to funds.

- * More effective education of fund

trustees.

- * Codes of good conduct for trustees and service providers.

- * More efficient use of the office of Adjudicator of Pension Funds.

- * Control and disclosure of conflicts of interests.

- * Better regulation of umbrella retirement funds.

- * Encouragement of shareholder activism.

- * Improved disclosure to members.



SAIA and FSB share passion for consumer education

Consumer education is an important obligation of all players in the financial services sector, one that is taken seriously by many. Many organisations and companies are already doing sterling work in this regard. In this article the South African Insurance Association (SAIA) tells about its unique approach to consumer education, specifically the consumer education spend obligated by the Financial Sector Charter (FSC). SAIA also explains its partnership with the FSB that will contribute to the fight against financial illiteracy.

The SAIA FSC Consumer Education Initiative started in 2004 when the SAIA seriously began addressing all areas of the Financial Sector Charter, trying to find ways and means to assist its members with the implementation of the Charter.

By Vivienne Pearson, Corporate Affairs Manager, South African Insurance Association

SAIA soon realised that the 0.2% after tax profits to be spent by its individual members on consumer education could make a bigger difference in the lives of the lower income groups if it was a combined effort. More money could be put to better use on more synchronised efforts. In addition, it was felt that individual companies could experience difficulty in earning their points for consumer education spend if their efforts were seen to be branded or in any way attached to their specific products.

Some SAIA members indicated that they wished to participate in a SAIA Consumer Education Initiative. This was in reply to a SAIA questionnaire sent to members in June 2004. Members had to indicate if they would be spending 0.2% after tax profits on consumer education, as required by the Financial Sector Charter. They also had to indicate if they would like to spend these funds on their own initiatives or contribute funds to a SAIA Consumer Education Initiative. In order to set up the initiative, a workshop was arranged to address

all relevant matters. The SAIA Consumer Education Workshop took place in September 2004.

This workshop was attended by members of the SAIA Consumer Education Committee, members of the SAIA FSC Access Committee, Charter experts, including Adam Samie, consumerists such as Isabel Jones, FinMark Trust's Jeremy Leach, representatives of broker bodies, and others.

General guidelines

The workshop set the following general guidelines:

- The SAIA Consumer Education Committee will consider projects from all possible sources, as well as their own projects, and make recommendations regarding projects to be supported or launched.
- These recommendations will be submitted to a Project Panel that will make a final decision on projects to be supported. The Project Panel consists of a representative of the Department of Trade and Industry, a representative of the Financial

Services Board (as an observer), a representative of ABSIP, a consumer representative and two representatives of the insurance industry who are also intimately involved with the Financial Sector Charter, namely Dr Eltie Links and Adam Samie. In January 2005 the composition of the Project Panel changed. ABSIP's member status changed to that of an observer due to time constraints and Phakama Nkosi, acting CEO of the INSETA, became the fifth voting member.

- This year will be the first year for Financial Sector Charter consumer education spend to be used on appropriate projects.
- Points for participating companies should be guaranteed.
- Results of projects should be measured.

Criteria

The workshop set the following criteria:

- The project must have a stated objective that is consistent with the Charter.
- The effectiveness of the outcome must be measurable, even if imprecisely.
- Projects must ensure full points on the FSC scorecard. Therefore, projects must meet these requirements:
 - They must be aimed at black people;
 - They must be aimed at LSMs 1-5;
 - They must be focused on financial knowledge/financial empowerment;
 - They must reach as wide a range of people as possible.
- Projects must have a lasting effect on people's lives.
- Projects should not be about marketing. They must be able to stand alone without overt branding.
- Projects must have a timeframe and timeline.
- The cost involved must be identified, monitored and adhered to.
- A project must have identified an appropriate target market, not necessarily current customers, as well as an appropriate delivery mechanism (place, medium to be used, etc.).
- Other consumer education initiatives should be identified and approached in order to find synergies and cooperation possibilities to maximise the effectiveness of the initiatives.

Project plan

Subsequent to the SAIA Consumer Education Workshop, a project plan had been adopted and is currently in the final stages of implementation. This project plan includes the following aspects:

- Opening of a separate bank account for the initiative - finalised
- Appointment of the Project Panel - finalised
- Collecting of pledged funds from participating members - finalised
- Drafting and approving a proposal regarding administration fees - finalised
- Drafting and approving a procedure to manage the accounts and inform members of points scored - finalised
- The selection and approval of projects - finalised
- The transferring of funds to such projects – in process.

Approximately R4 000 000 approved for projects

The SAIA Financial Sector Charter Consumer Education Initiative Project Panel approved support for consumer education projects to the approximate value of R3 000 000 at its meeting in December 2004. A further approximate R1 000 000 was allocated to an approved project.

The Panel decided to support two projects at its December meeting.

- Empowering teachers to teach financial literacy. This is a joint project between the SAIA and the FSB with the Delta Environmental Centre and Information Handling Services as the main service providers. The project is essentially about empowering Grade 10 to 12 Further Education and Training (FET) teachers to teach financial literacy by developing and providing the environmental resource for FET teachers. It also aims to facilitate teacher training workshops at all levels of the education system. The FSB has committed R500 000 to the project. The SAIA FSC Consumer Education Initiative will spend R1 000 000 on the project.
- Financial literacy workshops aimed at LSMs 1 – 5, focusing mostly on rural areas. This is an FSB project. Booklets

developed by the FSB in consultation with the financial services industry will be used as a resource at the workshops. Other resources will also be developed. The LSM 1 – 4 booklets will not be distributed without facilitation at a workshop. SAIA allocated R2 000 000 to this countrywide project. This will cover part of the cost. The first part of the project consists of the training of facilitators, printing of resource material, and execution of pilot workshops in all provinces. Assessments will be made before rolling out the full project. The Project Panel requested in December 2004 that a recommendation was to be made about an additional project to be supported. An approximate amount of more than R800 000 will be available after all funds have been received and the management fee deducted.

A recommendation was sent to the Project Panel on a round robin basis in January 2005. Three positive votes have been received (a quorum) and as soon as all funds are received, an agreement will be made with the FSB and activities regarding this project will commence.

This project is a joint financial literacy education drive with the FSB to take place over a period of approximately one month (depending on funds available and costs), covering all areas of South Africa. The project is aimed at reaching commuters using taxis, trains and buses using Comutanet's various mechanisms. The message/s will be determined jointly by the FSB and SAIA. It is recommended that the FSB LSM 1 – 4 and LSM 5 – 8 booklets be used as a guide. It is also recommended that the same type of general messages as published in the booklets be used. These include budgeting and debt management with a final emphasis on the nature and role of short-term insurance. The FSB has pledged R600 000 to the project.

Together we can do so much more

The SAIA, like all other sectors in the financial services industry, has been involved in the Financial Sector Consumer Education Initiative facilitated by the FSB for some time. This initiative has been hampered due to various factors, including a lack of funds. The SAIA has always believed that synchronised efforts with regard to consumer education would be more meaningful than individual efforts. This is why we are proud to be joining hands with the FSB on consumer education.

The FSB projects that were approved by the SAIA FSC Consumer Education Project Panel met the criteria set at the Consumer Education Workshop. With the FSB's resources and hard work supporting the projects we can start making a real difference in the lives of many with regard to financial literacy.

FAIS licence update

As of 24 March 2005, the FSB has recorded the submission of about 14 500 licence applications in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002 (FAIS).



Of these, 8 000 applications have been fully processed, considered, and where successful, licences issued and dispatched to applicants. A further 700 applications were considered on 29 March 2005.

The FSB's FAIS project, together with its delegated recognised bodies, has more or less reached the stage where the backlog experienced in the processing of applications has been largely eliminated.

The FSB's Deputy Executive Officer of Market Conduct and Consumer Education, Gerry Anderson, says the majority of the 6 500 applications that have not been finalised is due to the applications being incomplete. "Recently a lot of effort has gone into getting the required information from the

applicants. The ball is now in the applicants' court.

"A decision has been taken to decline the licence application, if, after several unsuccessful attempts to get the required information, this has not been forthcoming. Applicants whose applications are declined must cease their FAIS related activities forthwith.

"This decision has been implemented from 15 March 2005 and it will be applicable to applicants who have been contacted by our office (or that of the recognised body) repeatedly (there must be sufficient evidence that the applicants were contacted at least twice)."

Reasons

Anderson says these are some of the reasons for incomplete applications:

- Lack of proof of qualifications. Either no qualifications were indicated on the application, or the information was incorrect or incomplete. In a number of instances evidence of qualifications had not been submitted.
- Unwillingness to disclose financial information about the applicant's business.

- Failure to pay the prescribed licence fee. It is a requirement that no application for a licence will be processed unless the licence fee accompanies the application.
- Qualification certificates not certified.

Anderson added that of the remaining 5 000 applications submitted directly to it, the FSB had outsourced the processing of a portion thereof to PriceWaterhouseCoopers and Moonstone Information Refinery in order to speed up the process. Many of these outsourced applications have been analysed and returned to the FSB.

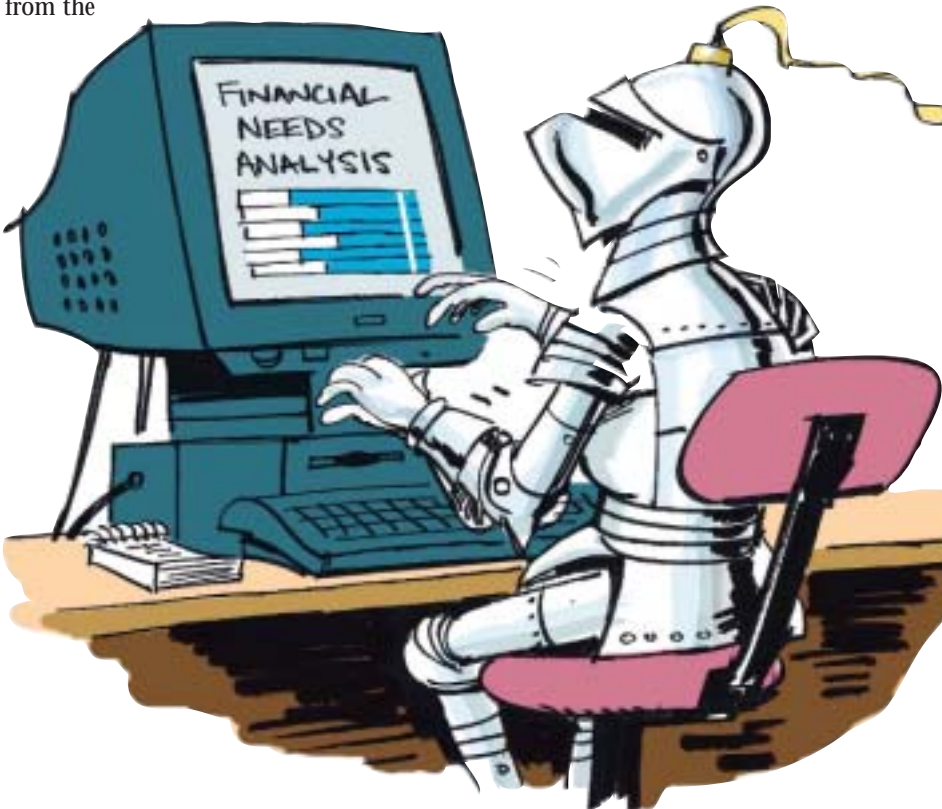
However, the remaining outsourced applications as well as over 1 200 applications submitted directly to PriceWaterhouseCoopers remain unfinalised and can therefore not be transmitted to the FSB for approval because of the above issues.

Withdraw

It must be pointed out that if an applicant has submitted an application but afterwards indicates that he or she wants to withdraw the application, the prescribed fees still apply.

Applications that were submitted timeously, but where the required information was not provided, the prescribed fee not paid or the required proof of payment has not been provided, will not be authorised. Such advisers and intermediaries will not be able to conduct business and it will be unlawful for product providers to do business with them. They will be dealt with in terms of FAIS as unlicensed entities, which means that ongoing payment of certain commission and fees will cease. Legal action will also be taken for the conducting of unauthorised business.

All representatives have to meet minimum fit and proper requirements, whether they act in the capacity of a key individual of an applicant or as a representative of the applicant. The appropriate action will be taken against those who seek to circumvent the requirements by seeking representative status.





FSB call centre expands

The FSB's call centre, which opened its doors two-and-a-half years ago, has grown into a state-of-the-art centre boasting the latest technology and well trained staff.

T

the centre has grown from four to 13 staff members and fulfils the following functions:

- Handles all e-mails requesting general informa-

tion from the FSB.

- Assists walk-in clients.
- Plays a significant role in the outbound campaign for financial advisory and intermediary services (FAIS).
- Handles the FSB's information technology help desk.
- Deals with all section 14 pension enquiries.
- Handles general enquiries for the FSB and other regulators.

"We handle between 400 to 600 calls, 100 e-mails and between three to five walk-in clients daily," says Call Centre Supervisor, Selvan Govender. "After the

The FSB call centre's toll-free phone numbers are 0800202087 or 0800110443. The centre can also be contacted at fax number (012) 347 0870 or e-mail info@fsb.co.za

FSB has issued a media release, we can expect between 900 to 3 000 calls. I am very proud of the commitment and teamwork shown by the call centre staff during these peak periods."

The call centre has also installed voice recording and televisions for displaying statistics.

"We have worked extensively on reporting which was finalised by the end of March 2005," explains Govender. The centre has also increased the number of incoming telephone lines from 12 to 42.

FSB to get high honours

*By Astrid de Vos,
Communication and
Liaison, FSB*

The School of Public Management and Administration (SPMA) at the Faculty of Economic and Management Sciences, University of Pretoria, annually presents awards to distinguished South Africans for their contributions to South Africa and nation building.

On 19 November 2004, several awards were conferred on citizens and compatriots for their services in this regard. FSB Executive Officer, Jeff van Rooyen, and Deputy Executive Officer, Market Conduct and Consumer Education, Gerry Anderson, also received these awards.

Van Rooyen's citation for the award was: "In recognition for long standing service to the public and private sector development" and Anderson's was "In recognition for dedicated service in public and private administration and regulatory policies".

Professor Jerry Kuye, Director: School of Public Management and Administration, presented FSB Deputy Executive Officer, Gerry Anderson's, award.



Professor Jerry Kuye, Director: School of Public Management and Administration, presented FSB Executive Officer, Jeff van Rooyen's award.



PCOF visits FSB

Delegates of the Portfolio Committee on Finance, headed by its Chairperson, Rob Davies, visited the FSB in January to familiarise themselves with the day-to-day activities of the organisation.

Pictured in the Call Centre were Rodha Rosaline Joemat of the ANC, John Martin Stephons of the UDM, Joanmariae Louise Fubbs of the ANC and Spetho Enoch Asiya of the ANC.



Fedbond Collective Investment Scheme in Participation Bonds

The Pretoria High Court has again extended the Fedbond Collective Investment Scheme court order issued on 4 February 2004 until 21 June 2005, with minor adjustments.

The order of 4 February 2004 provisionally placed the collective investment scheme business of Fedbond Participation Mortgage Bond Managers (Pty) Ltd

(Fedbond) and Fedbond Nominees (Pty) Ltd under the joint management and control of Mr Edwin Marcus Letty and Fedbond.

The reason for the order having been extended is that more time is needed to resolve certain issues that could affect the financial soundness of the scheme.

The extension of the court order means that the status quo that has pertained since 4 February 2004 remains unchanged. No new investments may be accepted by the

scheme and capital may not be repaid to investors other than at the discretion of management in cases of significant hardship.

The monitor has to report back to the court on a number of matters specified in the order of 21 June 2005.

Source:
FSB Media Release,
23 February 2005

Masterbond curatorship cancelled

At the instance of the FSB's Executive Officer, Jeff van Rooyen, the Cape High Court on 14 March 2005 issued an order cancelling the Masterbond curatorship which had been in existence for more than 13 years.

The court simultaneously ordered the final distribution of R15 million to 9 500 Masterbond investors.

This closed the book on the sensational collapse of Masterbond in 1991 and the intervention of the FSB.

The latest distribution brought the total recoveries for the investors, i.e. capital and interest, to some R400 million. In addition, a debt of R128 million in the Club



Mykonos development on the West Coast was restructured in terms of section 311 of the Companies Act, 1973. This scheme of arrangement proved to be extremely successful as the investors received shares and debentures in the development in exchange for what they had invested.

Masterbond originally invested R595 million on behalf of more than 22 000 investors in a large number of projects. The smallest payout to investors amounted

to 46,25 cents in the rand.

In one of his earlier submissions to the Court, Van Rooyen said that from the point of investor funds salvaged and recovered, the curatorship has been remarkably successful. "A 'no hope' situation has through the dedication, perseverance and legal and business acumen of the curators, been converted to substantial payouts or successful restructuring arrangements for the investors," he said.

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