

FAIS Compliance Irregularity Reporting Guidelines launched

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The Compliance Institute Southern Africa

Julie Methven, CEO of the Compliance Institute

A set of guidelines for reporting material compliance irregularities in terms of the Financial Advisory and Intermediary Services Act has been developed by the Compliance Institute Southern Africa.

“For some time, the Financial Services Board has been concerned about the small number of FAIS irregularity reports it receives and the fact that annual returns have, typically, been used for this purpose. Accordingly, the Institute’s FAIS sub-committee, in consultation with the Financial Services Board FAIS Department, developed a set of guidelines to assist compliance officers operating in this arena,” says Julie Methven, CEO of the Compliance Institute.

Section 17(1)(c) of the FAIS Act, read together with section 19(4), requires compliance officers of authorised financial services provider (FSP) to inform the Registrar of Financial Services Providers of any material irregularity – suspected or actual – in the conduct of an FSP’s affairs.

“This type of reporting should not be delayed to form part of the periodic compliance reports to the FSB,” says Richard Rattue, chairman of the Institute’s FAIS sub-committee. “However, many FAIS compliance officers are unsure of their responsibilities in this regard.”

The intention of the project was to provide guidance to compliance officers relating to their reporting responsibilities; assist them regarding procedure when issues of non-compliance are detected; and help them to make a decision about the materiality of the incident.

“That being said, compliance officers remain responsible for determining their FAIS obligations. The guidelines are not legal advice and the circumstances for reporting they outline are not exhaustive,” Rattue says. The guidelines spend some time on the issue of materiality, which is defined as being incidents of real importance or great consequence. “Reportable matters would thus be those that will have a significant adverse effect on the regulatory authorisation of the FSP or its clients,” says Rattue.

However, whether an irregularity is material or not will depend on the individual circumstances. The nature, scale and complexity of the business of an FSP may also affect whether a particular irregularity is material or not. Deciding whether an irregularity is material remains the compliance officer’s responsibility.

The guidelines distinguish between events that call for immediate reporting, and those that can be delayed, and provide detailed guidance in this regard. Irregularities that call for immediate reporting include those that relate to an FSP’s licence, its products, and its clients.

When it comes to an FSP’s license, there are various breaches that can occur from less serious issues, such as failing to notify the FSB when the firm’s demographics change, through to firms engaging in business that is not included in their license.

As regards products, breaches would include rendering services for which an FSP is not authorised and mis-selling to the public.

“Obviously all forms of fraud are material breaches,” Rattue says.

Delayed reporting is for less serious matters. In these instances compliance officers can allow an appropriate time period for the company to rectify the breach. Once the allowed time period has lapsed and nothing has been done to rectify the breach then further action must be taken and a report is to be made. "Even if the breach is rectified, the incident needs to be reported," says Rattue.

The FSB is currently looking at their systems to enable electronic breach reporting. "Once a report has been made, a significant portion of a compliance officer's obligations has been met. Then it's up to the Registrar to decide what they want to do," Rattue concludes.