



## *A new year and new names*

We wish to advise that the names of the two FAIS online systems will be changing in 2017.

The names of the two systems will change as follows:

- The FAIS online reporting system will change to the FAIS ePortal; and
- The FAIS new license application system will change to the FAIS eLicensing system

We ask that our users take note of the proposed changes so as to avoid any confusion when the name changes are rolled out.



As the holiday season approaches, the FAIS Division would like to take this opportunity to wish all our FSPs, Compliance Officers and other stakeholders a joyous festive season and the very best for the New Year.

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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.*

# ***Invitation to comment on the proposed amendments to the fit and proper requirements***

## **BACKGROUND**

The Registrar, previously on 17 December 2015, published proposed amendments to the fit and proper requirements (First Publication). Stakeholders were invited to submit their comments to the Registrar by 15 March 2016.

The Registrar considered the comments received and where appropriate incorporated these into the current proposed amendments to the fit and proper requirements. The Registrar's response to the comments received has been set out in the Regulatory Response Matrix which was published on the FSB website.

As indicated in the Explanatory Memorandum that accompanied the First Publication, the amendments proposed at the time did not address those aspects of the competency framework that were under review by the Registrar. The objective of which was to build on the existing competency requirements by establishing an effective and proportionate regulatory framework to ensure financial services providers (FSPs) have the right levels of product related knowledge, meet appropriate standards of professionalism and undergo continuous professional development.

The Registrar has completed the review, the outcome of which was incorporated into the current proposed amendments to the fit and proper requirements which was published on the FSB website on **21 October 2016**.

## **PURPOSE OF THE PROPOSED AMENDMENTS**

The proposed amendments are designed to meet the consumer protection objectives of the Act and to ensure clarification of applicable requirements.

The new requirements do not propose any amendment to the current categorisation of financial services providers as it is a matter that will be addressed through the Retail Distribution Review.

## **SIGNIFICANT AMENDMENTS**

Those requirements that are significantly different to the First Publication are set out below. For ease of reference, the changes are dealt with under the proposed new Chapters.

### **1. Chapter 1 – Definitions**

Definitions are proposed -

- (a) for existing subcategories of financial products, *inter alia*, to provide clarity that products -
  - (i) that are issued by foreign product suppliers that are similar in nature to such subcategories of products; and

- (ii) with a foreign currency denomination,  
are included under those subcategories;
- (b) to provide for a participatory interest in a hedge fund as a new subcategory of financial product;
- (c) to provide for structured deposits as a new subcategory of financial product;
- (d) to provide for the concept of 'automated advice'; and
- (e) to define concepts relevant to the proposed new competency requirements.

## **2. Chapter 2 – Honesty, Integrity and Good Standing**

The Registrar clarified that the honesty and integrity of a person that is not a natural person must be demonstrated through its corporate behaviour and through the personal behaviour of its directors and key individuals.

## **3. Chapter 3 and 4- Competency and CPD Requirements**

Significant changes to the First Publication are proposed most of which are as a result of the review that was conducted in respect of the competency framework.

The following principles, *inter alia*, informed the proposed amendments to the competency requirements:

(a) *Principle based requirements focused on outcomes*

The Registrar, in line with Government's stated objective to provide for regulation that is outcomes focused, is proposing, in addition to the rules-based standards, requirements that are more principle in nature to ensure the right outcomes for consumers are achieved by doing away with a 'tick-box' compliance approach.

(b) *Product related knowledge and continuous professional development (CPD)*

Product knowledge requirements through the level 2 regulatory examinations and CPD requirements were originally introduced into law in 2008 with the publication of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008 (Board Notice 106 of 2008).

Subsequent to the effective date of the requirements referred to above, the Registrar granted general exemptions to industry from complying with those requirements to a date that had to be determined by the Registrar. This allowed the Registrar, in keeping with good regulatory practices and based on lessons learned from the introduction of the first level regulatory examination, to conduct a review of the competency framework. It remained an objective of the review that persons providing financial services to consumers must have adequate and appropriate knowledge of the financial products in respect of which they render financial services and that they must maintain their overall competence.

The Registrar, based on the outcome of the review, is proposing to replace the level 2 regulatory examinations with the following requirements:

- (i) class of business training (generic knowledge relevant to a particular product and market or particular business sector); and
- (ii) product specific training (specialist or specific knowledge of a particular product).

The Registrar is further proposing to replace the current prescriptive CPD requirements with requirements that are more principle based.

The Registrar is satisfied that the proposed requirements will achieve the required outcome, namely that persons who render financial services have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that those persons perform and that they maintain their competence.

(c) *Competency requirements that are proportionate and fit for purpose*

The proposed amendments further introduce proportionate requirements depending on the nature, scale and complexity of the financial services rendered and the financial products in respect of which those services are rendered.

In this regard see the proposed-

- (i) classification of Tier 1 and Tier 2 financial products and the differentiation of requirements applicable to persons rendering financial services in respect of those products; and
- (ii) definition of 'execution of sales' and the exclusions applicable to persons performing that activity from certain competency requirements.

Tier 2 financial products are generally simpler and better understood than Tier 1 products and, therefore, are subject to lighter competency standards but still subject to product specific training requirements.

(d) *Alignment with education, training and development practices and standards*

Where appropriate the proposed competency requirements have made provision for, and have been aligned with the standards and requirements of the South African Qualifications Authority (SAQA), the Quality Councils, Professional Bodies and the relevant Sector Education and Training Authorities insofar as CPD requirements and training and assessment practices are concerned. The Registrar, therefore, proposes that-

- (i) class of business training must be provided by an accredited provider to ensure appropriate oversight by SAQA of such providers thereby ensuring that training and training providers are of the appropriate quality; and
- (ii) CPD activities must be accredited and tracked by a Professional Body as the latter is recognised by SAQA for setting professional standards in respect of a specific sector or occupation and therefore possess the expertise required to set and maintain those standards.

The Registrar has carefully considered the regulatory and financial impact of the proposed new competency requirements and is satisfied that an appropriate balance has been achieved between the likely cost to industry in respect of the current requirements *viz-a viz* the costs likely to be incurred as a result of the proposed new requirements. This assumption will be tested through an impact analysis.

#### 4. Chapter 5 – Operational ability

The requirements relating to the operational ability of an FSP have been enhanced to ensure the proper achievement of the objects of the Act. In particular, additional requirements are proposed relating to governance, outsourcing of functions to persons other than representatives, the appointment of representatives and automated advice.

#### 5. Chapter 6 - Financial Soundness Requirements

The Registrar is proposing to extend the solvency requirement (assets must exceed liabilities) to juristic representatives of Category I FSPs. The Registrar is of the view that the requirements will mitigate the risk posed to the FSP by such juristic representative and it will mitigate the risk posed to clients of such arrangements.

FSPs will further be required to monitor its juristic representative's compliance with the liquidity requirements where those requirements apply.

#### 6. Chapter 7 – Miscellaneous

The Chapter has been amended to provide for transitional arrangements to accommodate the proposed competency requirements.

### **\* INVITATION TO COMMENT \***

Interested parties are invited to submit written submission on the proposed amendments to [FAIS.Consultation@fsb.co.za](mailto:FAIS.Consultation@fsb.co.za) by no later than **15 December 2016**.

All information (including name and address details) contained in submissions will be made available to the public on the FSB's official web site.

Submissions should please include the name of your organisation (or your name if the submission is made as an individual) and contact details. For accessibility reasons, please email submission in a Word format. An additional PDF version may also be submitted.

*As mentioned above, the closing date for submissions is **15 December 2016** and no submission received after that date will be considered.*



## ***Proposed Conduct of Business Report***

The Registrar of Financial Services Providers (“Registrar”) intends on publishing the proposed Conduct of Business Report for comment on the web site of the Financial Services Board (“FSB”). Communication will be sent to all Financial Services Providers (FSPs) and Compliance Officers once the report is published on the FSB website.

### **PURPOSE OF THE REPORT**

Since the implementation of the Financial Advisory and Intermediary Services Act, the regulatory framework has evolved with the focus now on market conduct. This shift in focus together with the trends identified during analysis of the current compliance reports has necessitated a change in the form and manner of reporting by the FSPs.

The current compliance report is a tick box approach and experience has shown that the same responses and out-dated attachments are submitted every year, even though there may have been changes within the FSP. Templates that are not customised to the business of the FSP are submitted as a generic response to questions relating to policies and procedures. The proposed conduct of business report aims to eradicate this problem and hone into the business model and nature of activities of the specific FSP. This will enable the Registrar to understand the business model of the FSP and its activities. The report will be customised to the nature and type of business within the specific licence category of the FSP.

The data obtained in the current compliance report is not aligned to the business of the FSP whereas the data required in the proposed Conduct of Business report will assist the Registrar in trend analysis and identification of regulatory gaps. The Registrar will be proactive rather than reactive in line with the market conduct approach.

The proposed Conduct of Business report is a pool of questions that have been developed for various types and categories of FSPs. Not all questions will be required to be answered by all FSPs. The idea is to customise the report for a particular FSP based on their activities.

The FAIS Online Reporting System, which is currently used for the electronic submission of compliance reports and financial statements, will change and the developments will cater for the above proposals in customising the report for each type of FSP. As a result only specific questions will be generated aligned to the type of FSP completing the report in relation to the nature of the entity’s business. The report further aims to avoid duplication of information and supports the direction of working towards centralisation of information received by the FSB from dual-regulated entities.

The proposed conduct of business report was published on 6 December 2016 for comment and we would encourage FSPs and COs report and make comments.



## Does the debarment of a representative lead to dismissal?

During the first quarter of 2015, the Registrar issued an article “To debar or not to debar.” The article was aimed at *inter alia* giving clarity on the processes that FSP’s should embark upon when considering a debarment of a representative. The Registrar herein emphasises that FSP’s should follow due process and use the debarment tool for the purpose for which it was intended.

It should be borne in mind that the contractual or employment relationship that exists between the employer (FSP) and the employee (the representative) is governed by the Labour Relations Act (“LRA”). To the extent that the representative is rendering financial services on behalf of the FSP, that relationship is governed by the FAIS Act. The FAIS Act makes provision for the debarment of representatives and key individuals in circumstances where they *inter alia* do not comply with the fit and proper requirements, more specifically where they have not obtained the necessary qualification for the rendering of financial services for which they were authorised.

There seems to be a growing trend of FSP’s who seek to debar the representatives for competency and use the debarment to dismiss employees from employment. The Registrar wishes to emphasise that the two processes, labour process as governed by LRA regime as well as withdrawal of authority of the representative to render financial services governed by the FAIS Act must be observed, however the two should not be conflated. A debarment of the representative does not always lead to dismissal, depending on the reasons for the debarment. A representative who does not meet the competency requirements published by the Registrar may be simply moved to a non FAIS related role instead of being dismissed.

In circumstances where the representative is no longer competent to render financial services in respect of product categories or subcategories for which he was previously authorised the FSP may remove those products from the representative’s profile or remove the representative from the FSP’s representatives register before they are in breach of the FAIS Act thereby avoiding, the debarment of the representative.

Upon removal of the products or the representative from the FSP’s representatives’ register, the Registrar must be informed of the removal within 15 days. Where an FSP has withdrawn the authority of the representative either by removing him/her from the representative register or removed the products on the representative’s profile due to competency or lack of the necessary qualification, the representative will not be in the position to render those financial services in future even if they are employed by another FSP. The representative will not be able to work or apply for re-employment until such time as he/she has completed the required qualification. Another FSP will not be able to add them to the representative register as their date of first appointment will indicate that they need to qualify for certain categories of products if not all categories. The Registrar monitors the date of first appointment (“DOFA”) of all representatives to ensure compliance with the FAIS Act.



# ***Electronic updates to the central representative register***

## **BACKGROUND**

A financial services provider (“FSP”) must in terms of Condition 3 of its licence, inform the Registrar of Financial Services Providers (“Registrar”) within 15 days after any change to its register of representatives has taken place. The FSP may use different notification methods in order to comply with Condition 3.

One such method is the electronic notification method which is more commonly referred to as the “Excel spreadsheet for rep imports”. In terms of this method, an FSP must complete a pro forma Excel spread sheet that contains the particulars of the FSP’s representatives and submit same to the Registrar via electronic mail to [reps@fsb.co.za](mailto:reps@fsb.co.za) or [faispfc@fsb.co.za](mailto:faispfc@fsb.co.za).

The information provided in the spread sheet is uploaded automatically into the central register kept by the Registrar as contemplated in section 13(5) of the Financial Advisory and Intermediary Services Act, 2002.

The FSP will receive a system generated report that indicates whether or not the upload was successful.

## **IMPORTANT INFORMATION**

- There is no human interference when the Excel spread sheet is submitted electronically. Therefore, the information that is contained in the Excel spread sheet is the information that will be imported.
- You may expect a system generated report within 48 hours at the most. This report will contain information that will confirm if the import was successful or not. If not, then the report will also provide details in respect of the errors that were encountered. In order to ensure a successful import, you will have to correct the errors on the Excel spread sheet. After correcting the errors, you will have to repeat the process to resubmit the Excel spread sheet.
- The FSB may send a FSP a copy of its representatives that are recorded on the central representative if required, but the FSB will not reconcile the representative register on behalf of the FSP. This is the responsibility of the FSP. All the information regarding the authorised FSP, including the registered representatives of the FSP, is also available on the FSB website.
- When annual levy invoices are based on the number of key individuals and representatives that are recorded on the FSP’s licence as at 31 August of every year. To ensure that the central representative register is accurate, all changes, additions and removals must be done prior to 31 August as no changes submitted after 31 August will be taken into consideration in respect of the levies.
- Please do not submit the Excel spread sheet with all representatives every time that an amendment, addition or removal of a representative must be made. Only submit the relevant amendments, additions or removals.

## PLEASE TAKE NOTE:

Quality checks and verification of data is extremely important, and FSPs must take great care to ensure that the data provided in the Excel spread sheet is correct at all times.

When incorrect data is imported in the correct format, then this incorrect data will be successfully imported, and the representative register will then contain errors. The example below illustrates a mistake that is often made and which have serious consequences:

*Correct data imported on 1 June:*

ID number	Name and Surname
7310105056081	Abel Letaba
7011162525081	Moses Sithole

*Incorrect data imported on 21 June:*

ID number	Name and Surname
7011162525081	Abel Letaba
7310105056081	Moses Sithole

**The ID numbers of the representatives were swapped around!**

If the Excel spread sheet of 21 June was completed correctly, then the import will be successful, but the data in respect to the ID numbers will be incorrect. If the ID number of Abel Letaba is used to search on the FSB website, then the name of Moses Sithole will appear in the search result.

It is critically important that the FSP checks and verifies that all the ID numbers and the names / surnames provided in the Excel spread sheet match. When an ID number of one person is swapped in error with the ID number of another person then that incorrect information is imported. This means that the ID number will reflect the incorrect name of the representative.

## Correcting errors

When the FSP receives the system generated report back after the import was completed, then the report must be checked to see if all the data contained in the Excel spread sheet was imported successfully.

If there are errors listed on this system generated report, then the errors must be corrected by correcting the data contained in the Excel spread sheet, and importing the spread sheet again to ensure that the data is imported successfully.

It is therefore important to understand what the various different errors mean.

Below is a list of the error messages that may appear on the system generated report, and an explanation of what the error message mean and how to correct this error:

Invalid ID number according to ID type	<p>The ID number provided does not correspond with the ID type e.g. a SA ID number has been provided and the type of identification was indicated to be a passport.</p> <p>The SA ID number could have been incorrectly captured and our validations have noted that the number is not a valid SA ID number.</p>	Verify the correct ID number / details and resubmit
Please complete hard copy	Foreign passport number was provided and these changes to the central representative register must be done manually by FAIS Registration.	Complete form FSP 5 and submit to <a href="mailto:Faispfc@fsb.co.za">Faispfc@fsb.co.za</a>
Qualification number not approved/qualification code missing	The incorrect qualifications number was used or there was no code completed	Refer to a list of approved qualification
Date of appointment and date of experience per product is not the same ....	Different dates used	Appointment date and experience should be the same
Person cannot be appointed as they have no RE 5	The individual being appointed is required to have passed RE 5 and they have not.	<p>Person cannot be appointed if they are required to have already passed the RE5.</p> <p>If they have proof that they have passed the RE 5 it may have been under another passport / ID number to the one being used for the representative import. Verify the facts and if this is the case then send an e-mail to <a href="mailto:FAIS.Exams@fsb.co.za">FAIS.Exams@fsb.co.za</a></p>
Date of appointment/removal date/date of experience in a wrong format	Date was captured in a yyyy/mm/dd format	Re-capture the date in a dd/mm/yyyy format

## CONTACT DETAILS

### 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
- 0800202087

### Website :

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

On the FSB homepage select "FAIS" from the drop down list of departments.

E-MAIL INBOX	PURPOSE
<a href="mailto:Faisinfo@fsb.co.za">Faisinfo@fsb.co.za</a>	General FAIS related enquiries.
<a href="mailto:Faispfc@fsb.co.za">Faispfc@fsb.co.za</a>	Submission of profile change requests specifically relating to FSPs.
<a href="mailto:Reps@fsb.co.za">Reps@fsb.co.za</a>	Submission of the excel rep import spread sheet. This e-mail address should <b>only</b> be used where the person submitting the excel spreadsheet is registered to submit on behalf of the FSP.  Where the person is not registered to submit an excel spreadsheet on behalf of the FSP then the request should be sent to the <a href="mailto:faispfc@fsb.co.za">faispfc@fsb.co.za</a> inbox.
<a href="mailto:Fais.Lapse@fsb.co.za">Fais.Lapse@fsb.co.za</a>	Submission of any requests to lapse licenses and enquiries relating to lapse requests that have been submitted.
<a href="mailto:Fais.Licensecopies@fsb.co.za">Fais.Licensecopies@fsb.co.za</a>	Requests for duplicate copies of FAIS licenses and annexures. Please ensure that proof of payment accompanies the request for a duplicate license copy.
<a href="mailto:Fais.Newlicense@fsb.co.za">Fais.Newlicense@fsb.co.za</a>	E-mail submissions of new license applications for FSPs.
<a href="mailto:Fais.COapprovals@fsb.co.za">Fais.COapprovals@fsb.co.za</a>	E-mail submissions for application for phase 1 approval of compliance officers.
<a href="mailto:Fais.Mandates@fsb.co.za">Fais.Mandates@fsb.co.za</a>	Submission of specimen mandates for approval.

E-MAIL INBOX	PURPOSE
<a href="mailto:Fais.Exams@fsb.co.za">Fais.Exams@fsb.co.za</a>	All queries relating to the regulatory examinations e.g. queries related to duplicate certificates, how to register for exams, authentication etc.
<a href="mailto:Fais.Qualifications@fsb.co.za">Fais.Qualifications@fsb.co.za</a>	Queries relating to qualifications e.g. credits, recognition of qualifications.
<a href="mailto:Fitandproper@fsb.co.za">Fitandproper@fsb.co.za</a>	Queries relating to the Fit and Proper Requirements e.g. new entrants wanting to know what competency requirements they have to meet.
<a href="mailto:Fais.Compliance@fsb.co.za">Fais.Compliance@fsb.co.za</a>	Submission of documents and queries in response to an intention to suspend or suspension letter sent to an FSP.
<a href="mailto:Faisfins2@fsb.co.za">Faisfins2@fsb.co.za</a>	Extension requests for the submission of annual financial statements.
<a href="mailto:Faisfins3@fsb.co.za">Faisfins3@fsb.co.za</a>	Extension requests for the submission of annual financial statements.
<a href="mailto:Faiscomp1@fsb.co.za">Faiscomp1@fsb.co.za</a>	Queries on compliance reports and queries related to the FAIS online reporting system.
<a href="mailto:FaisComplaints@fsb.co.za">FaisComplaints@fsb.co.za</a>	Submission of FAIS related complaints against key individuals, representatives and FSPs.
<a href="mailto:Debarment@fsb.co.za">Debarment@fsb.co.za</a>	Submission of debarment notifications relating to representatives.
<a href="mailto:Fais.Exemptions@fsb.co.za">Fais.Exemptions@fsb.co.za</a>	Submission of exemption applications for exemptions specific to a person or FSP.
<a href="mailto:Fais.Examexemptions@fsb.co.za">Fais.Examexemptions@fsb.co.za</a>	Submission of excel spread sheets to register for the regulatory examination exemptions that published under Board Notice 102 of 2012.
<a href="mailto:Fais.conditions@fsb.co.za">Fais.conditions@fsb.co.za</a>	Submission of proof that conditions associated with exemptions that were granted have been complied with.
<a href="mailto:Fais.Dofa@fsb.co.za">Fais.Dofa@fsb.co.za</a>	Submission of DOFA related enquiries and requests for DOFA reports.