

Financial Services Board

FAIS NEWSLETTER



Volume 4

August 2007

INSIDE THIS ISSUE:

Introduction	1
Relevant Legislation	2
For Your Information	3
Qualification & Experience	4 - 6
Comments and suggestion	6
Frequently asked questions	7- 8
FAIS Staff complement	8 -10

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 of the FAIS Act together with the subordinate legislation 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 themselves with the provision of the FAIS Act.

INTRODUCTION

One of the reasons behind the enactment of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) was to create uniform standards that must be adhered to by all applicants and holders of Financial Services Provider's license. Section 8(1) of the FAIS Act outlines these requirements as:

- Competency of the applicant key individuals, and representatives,
- Personal character qualities of honesty and integrity,
- Operational ability and,
- Solvency requirement.

This Newsletter addresses Competency as one of the requirements that must be complied with by applicants of the FAIS License. Competency consists of two components which are Qualification and Experience.

RELEVANT LEGISLATION

The following sections of the Act and subordinate legislation are applicable when considering the Fit and Proper status of an FSP, key individual or representative:

- Section 8(1) of the FAIS Act.
- Section 13 of the FAIS Act.
- Determination of Fit and Proper Requirements for Financial Services Providers. Published as Notice 91 in Government Gazette No.29132 dated 16 August 2006.
- Exemption of Financial Services Providers as regards representatives, Published as Notice 95 in Government Gazette No 25514 dated 30 September 2003.
- Exemption of certain Financial Services Providers from requirements pertaining to minimum qualifications. Published as Notice 104 in Government Gazette 26844, 29 September 2004.
- Amendment of Determination of Fit and Proper Requirements for Financial Services Providers, 2006 and exemption regarding certain minimum qualifications. Published as Notice 68 in Government Gazette No 29997 dated 19 June 2007.

The qualification and experience requirements entrenches one of the objectives of the FAIS Act, which is to create uniform standards that must be adhered to by all financial services pro-

viders. It is beyond argument that a person who is qualified and experienced will provide better financial services than one who is without qualification and experience.

The approach adopted by the Registrar of Financial Services Providers on qualifications and experience was to set the entry requirements at a reasonable minimum and accommodate as many entrants as possible. This approach had to be balanced with the ultimate intention of the FAIS Act which is to prescribe the highest acceptable qualification and experience for FSPs. With this in mind, the Registrar is steadily going to up the qualification and experience requirement over a period of time.

This in turn will mean that those FSPs, key individuals and representatives that have been authorised, approved or appointed on minimum qualification will be compelled to improve on their qualifications.

THEME VISITS - COMPLIANCE FRAMEWORK IN SMALL FSPs

The FAIS Supervision Department is currently performing theme visits relating to anti-money laundering legislation on all FSPs. The purpose of these visits is to determine compliance with the Financial Intelligence Centre Act and other anti-money laundering control legislation.

The Department is continuing with the evaluation of compliance practices that outsource their functions to FSPs to ensure that compliance practices fulfill their duties in terms of the FAIS Act.

The Department will conduct theme visits to all category II FSPs that apply to extend their license to category IIA (hedge fund FSPs).

NEW DEVELOPMENTS

The **FIT AND PROPER FORUM** was established by the FSB to consult widely with industry on changes required relating to the DETERMINATION OF FIT AND PROPER FINANCIAL SERVICES PROVIDERS AND THEIR REPRESENTATIVES. The Forum is currently liaising with the financial services industry representatives and educational bodies with the view of establishing the next set of Fit and Proper requirements. Comments and queries on this aspect may be e-mailed to fitandproper@fsb.co.za.

Compliance report 2007 will be published before the end of August 2007. The report, in *PDF* format, will be published on our website. Electronic compliance report- program updates will be e-mailed to those that have registered for electronic submission.

Financial statements can also now be submitted through the compliance software and FSPs that have not submitted previous years financials should take the opportunity to submit these as soon as possible.

Regulation of hedge fund FSPs (Category IIA) - The long awaited changes to subordinated legislation which will require Category II FSPs that manage hedge fund portfolios to be licensed, will be published in August. These FSPs will be afforded six months within which to apply and extend their licenses.

QUALIFICATION

“Qualification” means formal academic standard or professional standard. This means that a person should have studied, passed an examination related to studies and obtained a particular qualification.

There are three requirements that a qualification must comply with for it to be recognised for the purpose of the FAIS Act. Those requirements are as follows:

- The qualification must be registered with the South African Qualification Authority (“SAQA”) and allocated on National Qualification Framework (“NQF”) level. The NQF level of a qualification can be ascertained from the academic institution from which it was obtained or from the Insurance Sector Education and Training Authority’s websites, for instance www.bankseta.org.za or www.inseta.org.za (on the homepage double click on the phrase ‘[Qualifications & Skills Programmes](#)’ and thereafter double click on “[Qualifications Equivalence Matrix](#)”). Note that the institution that offered the qualification should have done so legally otherwise the qualification will not be recognised.
- The qualification should have credits allocated to it. The credits allocated to a qualification like the NQF level can be ascertained from the institution from which such qualification was obtained or may be ascertained from the INSETA or BANKSETA websites.
- The qualification must be appropriate. An appropriate qualification is a qualification obtained in the fields of commerce and /or commercial law which includes modules on financial accounting, financial markets, commercial law, insurance law, estate and trust law and similar subjects or a qualification that equips a person to render financial services in a specialised class of financial products.

Once the NQF Level, credits and appropriateness of a qualification has been established. The next step is to gauge such qualification against the Fit and Proper Requirements to determine whether it complies with the provisions as stipulated under Column 4. The applicant, key individual and/or representative whose qualification is lesser or does not comply with the provisions of Column 4 is required to improve or study and acquire a qualification that complies with the Column 4 requirements.

Steps to follow in determining whether one’s qualification complies with Column 4 requirements.

Category 1 FSPs

- Find Table A of the Fit and Proper Requirements.
- Locate financial products that you are authorised to render financial services under Column 1 of Table A.
- Move across in the same row to Column 4 and find the qualification that the applicant, key individuals and/or representatives of the applicant must have in order to be fully compliant.

Category 2 / 3 FSPs

- Find Table B or C of the Fit and Proper Requirements as the case may be.
- Locate financial products that you are authorised to render financial services under Column 1 of Table B or C.
- Move across in the same row to Column 3 and find the qualification that the applicant, key individuals and/or representatives of the applicant must have in order to be fully compliant.

QUALIFICATIONS (cont)

The period within which the FSP, key individuals and representatives must comply with above requirements:

APPROVAL DATE	COMPLIANCE DATE
Between 30 September 2004 and 31 December 2004	Not later than 31 December 2008
Between 01 January 2005 until 31 December 2009	Not later than 31 December 2009

The obligation is on the FSP to ensure that its key individuals and representatives obtain the prescribed qualification. The Registrar of Financial Services Providers must be informed once the applicant and key individuals have obtained the prescribed qualification. This information can be emailed (faispfc@fsb.co.za), faxed (012 422 2973) or posted (Box 35655, Menlo Park). The notification must have the FSP number, full names of the FSP, full names and surname of the representative and certified copy of the qualification

A copy of the Fit and Proper Requirements may be downloaded from our website www.fsb.co.za (on the homepage click on the word "FAIS" and thereafter click on phrase "Fit and Proper").

EXPERIENCE

"Experience", in relation to an applicant, means practical experience gained in the rendering of services similar or corresponding to financial services and where-

- (a) such experience involves the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;
- (b) at least 6 months of such experience is relevant to the subcategory as regards financial products, in respect of which the applicant requires an authorisation: and
- (c) with regard to providers of Category II, at least 50% of such minimum prescribed experience relates directly to the financial products in respect of which financial services are to be rendered, irrespective of whether the experience is gained-
 - (i) in the capacity as owner, trustee, associate, director, member, partner, employee, consultant or otherwise, of the business involved; or
 - (ii) in the course of undergoing practical training or a learnership: Provided that any experience referred to in this definition may have been gained outside the Republic, and may so be, or have been, gained during intermittent periods, and includes experience gained prior to the date envisaged in section 7(1) of the Act;

Experience of the person is usually deduced from a person's employment history including job title, period of employment, job responsibilities and reporting lines. The rationale behind the experience requirement is that the FSP, key individual and representative must have the know how on a particular product before rendering financial services. This requirement adds towards enhancement of the quality of financial services rendered and at the same time reduces the risk of furnishing wrong advice to the client.

EXPERIENCE (cont.)

The question that arises mostly when this aspect is discussed is, how new entrants into the financial services industry, who are without experience, must be treated. The Registrar has made provision for new entrants (only Category I representatives) into the financial services industry to render financial services under supervision. This means that such representative's activities will be rendered under supervision of an approved key individual. In this way the representative who is without experience is allowed an opportunity to gain the practical experience required for the purpose of the FAIS Act. Rendering of financial services under supervision does not apply to key individuals.

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COMMENTS & SUGGESTIONS

We invite comments on this Newsletter and suggestions as to which topics you wish us to address in the coming publications. Any person who wishes to be included in the FAIS Newsletter circulation must forward an e-mail to faiscomment@fsb.co.za. The FAIS Newsletter is for free

FSB Call Centre: Are you aware that the Financial Services Board has a Call Centre/ Contact Centre that is dedicated to resolving all your queries? The following toll free numbers may be used to contact the FSB Call Centre:

0800110443 or 0800202087

Per email: info@fsb.co.za

Website : All the important information applicable to financial services business is posted on our website. You are encouraged to frequently visit our website for latest information and updates. Our website address is www.fsb.co.za. On the homepage click on the word "FAIS"

FREQUENTLY ASKED QUESTIONS

1. Does the FSB keep a record of the number of credits that a key individual has obtained?

The FSB does not keep the register of credits of qualifications. We do note on our system whether key individual meet the Column 4 conditions. Key individuals that are required to study further are approved conditionally.

2. The key individual is conditionally approved for three financial products (for example, Short-Term Insurance Category A, Long-Term Insurance Category B and Participatory Interest in a collective investment scheme). Which qualification must he obtain to be fully compliant or must he do three separate qualifications?

The key individual need only obtain one qualification, provided that the qualification in question is at the highest NQF level required (Column 4) and satisfies the minimum credits requirement at the said NQF level.

3. How do I know if the qualification will be considered for the purpose of the FAIS Act?

The qualification must be of the prescribed NQF level, credits and be appropriate for the purpose of the FAIS Act. The term appropriate is explained above (at least three subjects of the qualification must be appropriate).

4. I need to extend my current license to include other financial products. Will I be required to study further for these?

The key individual will only be required to study further when their highest qualification does not satisfy the Column 4 qualification requirements.

5. I do not have a formal qualification but I have extensive experience in the financial services industry. Can my experience not be equated to qualification?

The FAIS Act is very clear on qualification and experience. These are two requirements that are separate from each other and thus cannot substitute each other. A person with extensive experience but with no qualification can undergo a Recognition of Prior Learning (RPL) assessment where the experience is tested and if successful a formal qualification is awarded.

6. I need to study further in order to be fully compliant with the FAIS Act. What qualification do I need to study?

The FSB does not prescribe which qualification one must study. It is therefore your choice as long as the qualification complies with the prescribed requirements.

7. I have passed two qualifications both at the same NQF level and with the same credits. Can I add the unit standard together in order to comply with the FAIS Act?

No, because these qualification are the same.

FREQUENTLY ASKED QUESTIONS (cont.)

8. I am left with one module towards completing my degree, diploma and certificate. Does the Registrar recognize the modules/subjects that I have passed for the purpose of the FAIS Act.

No. We recognize full qualifications only.

9. I am a key individual of two FSPs. I am required to send two separate notifications to the FSB informing them of my complete qualification?

Yes. You need to submit proof of qualification on each individual license. Please ensure that the license number is clearly stated on all correspondences.

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