

If you are reading this newsletter, please remember to pass it around your office.

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EDUCATION

Peter Veal's Article's on...

Regulatory Exams - An Update

The flavour of the month, and possibly every month until the end of the year, has to be the Regulatory Exams.

Perhaps I don't have the correct contacts, but it appears to me that the examining bodies and the Financial Services Board are keeping the actual pass rate very close to their chests, and I think I know why. Of the several hundred people that I know that have written either the Cat 1 Key Individual Exam and/or the Representative Exam (and many have written both), the failure rate is somewhere between 70% and 80%. What a pleasure for the examining bodies – this adds another 100,000 or so to the number that will have to re-sit the exams at R900 a time. One does not need to be a mathematician to work out that an extra R90 million will be lining their coffers.

If these failure rates are a true indication of what is happening, (I hope I'm wrong but somehow I don't think I am), it means that examining bodies have no chance of accommodating all new writes and rewrites by the end of the year. So this additional income for the examining bodies will continue into 2012.

Regulatory Exams - An Update cont...

The Financial Services Board believes that if practitioners were to study hard they would have no problem with the questions. In fact in their preparation guide the FSB states that the short term memory's capacity is very limited and therefore it is essential to start preparing for the regulatory exams at least 3 months prior to the examination date.

This is all well and good, but I also know a number of practitioners that have studied hard for more than 3 months yet they still failed. Is this from lack of knowledge? Somehow I don't think so.

I had a call from a colleague who wrote the Representative Exam (RE 5) and failed. In going through some of the questions that the practitioner remembered, I was informed that a question was asked regarding the Enforcement Department of FAIS, and the practitioner had no idea what this was.

I have studied the various Board Notices and there is no requirement for a Representative to learn about the 3 different Departments within the FAIS Division, so why was there a question in the exam?

There is such a requirement in respect of Key Individuals - it is clearly required in terms of 'Task 7'. So this must have slipped into the Representative's examination in error. How many other questions have slipped into it in error, I wonder.

And some of the questions need attention. This even arose in the 'example questions' provided by the Financial Services Board. In one, the question asks the practitioner to arrange the events in order of shortest to longest applicable period and select the CORRECT option. Two of the four options were:

- The FSP received cash funds, exceeding the cash threshold reporting requirement, and must inform the Financial Intelligence Centre;
- The FSP received client funds and must pay the funds into the bank account designated for client funds.

If we study the regulation, in respect of the first mentioned the circular issued by the Financial Intelligence Centre dated 23 December 2010 (see their website) states:

"A report in terms of section 28 of the Financial Intelligence Centre Act, Act 38 of 2001, (the FIC Act) **must** be sent to the Centre **as soon as possible** but no later than 2 business days after the entity becomes aware that a cash transaction exceeds the prescribed limit, in terms of Regulation 24(4) of the Money Laundering and Terrorist Financing Control Regulations, 2002, as amended (the Regulations), which came into operation on 01 December 2010."

In respect of the second possible choice, Section10, Subsection1 para (d)(i) of the Code of Conduct states:

"must within one business day of receipt pay into the account all funds held on behalf of clients".

So which one is the shortest time? It can be strongly argued that "as soon as possible" is the shortest which means that the choice relating to the FIC would be correct, but that selection would lose the practitioner the point. Is there any reference to interpretation of the questions in the rules of the exams? Sadly there isn't.

Also, the choice of answers can be intimidating. In another of the FSB's example questions, the question and choice of answers is:

"Jean Hill, the representative of DCB Investments must advise a client that is retiring on specific investments. Which of the following aspects is Jean NOT obliged to disclose about a recommended financial product unless enquired about by the client?

Regulatory Exams - An Update cont...

- A. The risk of possible capital loss in future due to fluctuations in the financial markets
- B. Information and graphs to illustrate the product's performance at intervals over a period of time
- C. Any income and other relevant tax issues of a material nature that need to be considered
- D. Any material illustrations about the product provided by the product supplier"

All of these possible answers are, one way or another, mentioned in Section 7 Sub-section 1 of the Code of Conduct. However, the correct choice (which is B) has been cleverly disguised. If the examiner had worded it so that it is recognisable, I believe the question would be acceptable. The actual wording in the Code of Conduct states:

"The FSP must provide, on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances"

The phrase "Information and graphs to illustrate the product's performance" in my mind is nothing more than a red herring. Why is there a need to make the questions more difficult than what they should be?

It will be apparent from this short article that I am opposed, not to the Regulatory Exams as a concept, but to the way the questions are asked and the choice of answers provided. If the staff of the FAIS division had to undergo the same exams (and I believe they should) I suspect that there would be a significant change in the pipeline. Vagueness and ambiguity must be eliminated from the questions and the choice of answers for this whole exercise to bear fruit.

Let's hope that intelligence prevails and the questions are properly revisited and adjusted as necessary.

Moonstone

The following is a release form Moonstone, one of the examining bodies;

Level 1 Regulatory Examination Time Extended by 30 minutes

The time allowed for the Representative examination (50 questions) was originall hours, and the Key Individual examination (80 questions) at two hours.

When the RE exams started in November last year, the FSB's project corr candidates could have an extra half an hour for both exam 1 and 5 should he/sh and above that originally allowed.

This extra half an hour was to be announced at the venue, but the official times fo were to remain as it originally was.

This matter caused some confusion and was taken up with the FSB who confir both examinations have been extended by half an hour.

New Examination times:

Representative examination now two hours. Key Individual examination now two and a half hours.

This should allow well-prepared candidates with more than enough time to comple

We do urge you to please study the tips in the FSB preparation guide on writir examinations – it will substantially alleviate unnecessary stress.

Transitional Representatives

The status of transitional representatives i.e. those appointed between 2004 and 2009 and their ability to be appointed as key individuals has been brought under the spotlight in recent weeks – and a moving spotlight at that.

The new Fit & Proper requirements imposed a rule that any new appointment from 2010 onwards would need a full qualification and from 2011 would also need to have successfully completed the first level regulatory exam for Kl's (RE1) Whilst many felt, ourselves included, that changing the goals posts for these people was a little unfair. However we got into 2010, experienced a few practical problems along the way but got used to the standard.

Then earlier this year we had a few cases where the FSB was making statements that these transitional reps in fact did not need a qualification or First level regulatory. Whilst surprised this seemed a positive move. Although we had received mails to this effect as had one client we sought confirmation and a meeting was held with the FSB and the questions were asked and verbal confirmation received that this was indeed the correct approach. We were so happy with this new practical approach that those clients with a problem were immediately contacted with the good news.

At a meeting of the CISA FAIS Exco committee a few days later this change in status was discussed however, the FSB representative present stated that this information was incorrect and that the original board notice applied in full. Deflated, this news was passed back to the office and our clients advised accordingly. Confused? Well you soon will be.

Then we received written confirmation from the FSB, following on from the meeting referred to above, that the new view was in fact correct i.e. no qualification or RE exam was needed for KI approval for transitional reps. Now we were officially confused – and a tad agitated.

The letter we received has been sent to the FSB with a request for clarity – for us, our clients' transitional reps at large and the FSB themselves.

We will keep you posted.

Leselo

Leselo, one of the Examination Bodies responsible for developing the Pension Benefits examination (level 2 regulatory examinations) will be conducting trials shortly, and is looking for interested parties to participate in these trials.

They have already started with trials on the following product categories:

Deposits more and less than twelve months

Short term insurance – personal lines

Short term insurance - commercial lines

For more information regarding these trials, please contact Daphnè Hamilton at: daphne@iob.co.za or (011) 011 481 7016.

Milpark Business School has introduced a new programme to the financial services sector

The primary purpose of the **Higher Certificate in Short-term Insurance** is to equip students with the knowledge and skills required by short-term insurance specialists operating within the South African short-term insurance environment. Students will be competent and able to provide short-term insurance advice across the fields of personal and commercial insurance.

The qualification consists of six modules: four compulsory and two elective modules.

Core Modules (compulsory)

- Legal Framework
- Risk Management
- Personal Lines Insurance
- Commercial Lines Insurance

Elective Modules (Choose two modules from this list)

- Reinsurance
- Marine and Aviation
- Construction and Engineering
- Business Management

Contact Milpark for further information.

Cape Town 021 673 9100 Johannesburg 011 718 4000 Durban 031 266 0444

FROM THE FSB

One significant circular this month from the FSB – FAIS Circular 2. Some of you, where we are not the contact person, would have received this already.

It dealt with the seemingly increasingly problematical issue of regulatory exams under the heading;

Circular on Regulatory Examinations: Frequently asked questions

The first two questions were;

Language of the regulatory examinations

The training material for the regulatory examinations is only available in English

And dealt with the issue of why the exams and training material were only available in English. Basically there are two reasons, one is that the legislation itself is in English and secondly, the logistics of providing for additional languages. As the circular stated;

If the regulatory examinations are made available in another language such as Afrikaans, then it follows that they must also be made available in all of the official languages. In total there are 39 examinations, and if all 39 examinations are offered in the eleven official languages, then there will be 429 examinations in total.

And of course the cost would be pushed up dramatically.

On the training material, in theory a training provider could provide training in another language but the core detail of the legislation would obviously have to remain in English.

Then we had:

The fee for the regulatory examination is too high / it's a money making scheme

An explanation of the fee structure is provided and confirms that these fees will not change until the completion of the 2nd level regulatory exams in 2013 – nice to know.

It also confirmed that the FSB is paid a fee of R20 per exam to cover their costs for the regulatory process. If you work out the maths – with an estimated 140, 000 people having to complete the 1st level by the end of 2011, and excluding the re writes – that's some R2, 8M!! We are not aware of the numbers involved for the 2nd level but these will be in excess of 140, 000 as most reps have more than one licence category, notwithstanding the possibility of exemptions that may be applicable.

And one we get asked often;

Why should people write examinations if they have extensive experience?

Probably best to quote the FSB on this one;

The purpose of the regulatory examination level 1 is to ensure that all key individuals and representatives fully understand their regulatory role, and the accountability and responsibility they have in terms of this role.

Should any key individuals and/or representatives be in breach of the FAIS Act in future, they would not be able to say that they did not know what the requirements were and what their responsibilities are.

Experience does therefore not equate to sufficient knowledge regarding the FAIS Act and its requirements. And therefore all financial advisors and intermediaries are expected to complete the level 1 regulatory examination, regardless of the number of years experience gained in the industry.

And then another regular one;

The FSB is trying to put FSPs out of business

And the answer is;

The FSB is charged by the Government to administer, inter alia, the FAIS Act. The two main goals of the Act are the protection of consumers of defined financial services and the professionalisation of the intermediary/advisor.

For excellent reasons in pursuit of these goals, and after extensive consultation with representatives of all role players, it was deemed necessary to introduce the regulatory examinations as a requirement for intermediaries/advisors — a practice relevant to all professions. In any business there is a cost of doing business which include in professions ongoing learning and development, compliance with legislation and in service orientated business also investing in employees. It is not the intention of the FSB to put any financial services providers out of business but to ensure that industry is empowered to do its business better for its own and its clients benefit.

Also from the FSB

Also from the FSB this month was a Press Release on the 15th February. It deals with; ONE NUMBER FOR THE CONSUMERS BENEFIT

A central contact number has been introduced on the 1st January (OK we know the circular is a tad late) that will allow consumers to contact just one number and gain direct access to any of the following bodies:

- Credit Ombud
- Ombudsman for banking
- · Long term Ombud
- Short term Ombud
- FAIS Ombud
- National Credit Regulator
- · Financial Services Board

The number is run by an outsourced call centre and will ensure that any consumer is directed to the correct office from their initial call.

The number is:

0860 OMBUDS 0860 662837

The release makes no mention of how the number is meant to be communicated to consumers but one obvious one is via the existing disclosure process. This will mean your current document should be upgraded to provide this central number.

Withdrawals and suspensions

The FSB released their latest list of withdrawn and lifted suspensions at the end of January. If anyone needs a copy please liase with Pranisha at our offices, but be warned the withdrawal list is 135 pages long and has 1300 names on it!!

The reasons for withdrawal are, in the main, the neglect to carry out simple administrative tasks to ensure the required reports are submitted to the FSB, even after being reminded. Joe Kotze, the National Manager Compliance at the FIA had this to say on the subject;

The worrying aspect of these withdrawals is that all licenses have been withdrawn due to a failure on the part of the provider to submit compliance reports or financial statements or to pay the annual levies. As simple as that! No brain surgery or rocket science involved here.

It is my respectful submission that there can be no logical explanation why the serious provider will want to place a livelihood at stake by failing to comply with the above – three requirements that must be adhered to only once a year. If the financial burden of levies is an issue the provider can arrange with the finance department of the FSB for down payment of the amount due on receipt of your invoice. Non-submission of compulsory reports can have no excuse.

Treating Customers Fairly (TCF)

The planned roll out of the "road map" has been delayed until the end of March 2011. This road map will start to put structure on the FSB's plans of how they see the implementation happening across the different industry sectors.

See Interesting articles section

FROM PRETIUM

Branch and representative visits

For those of you affected by this additional level of monitoring we would advise that we have now got our plans in place and the required additional visits, if not already started, will take place from March to May.

We will make appointments directly with the offices/people concerned and all reports will be submitted to the head office with a copy of the local office/person.

From the interactions we have held so far we believe there have been obvious benefits as it gives your staff an opportunity to interact and ask questions and get answers "from the horses' mouth" as it were. The trick will be to keep these visits relevant going forward.

Consumer Protection Act & New Companies Act

We have been asking around as we go from client to client – specifically the short term brokers- about what plans they have to incorporate CPA and Companies Act issues into their analysis process. It scares us that the responses have usually been one of ignorance. Why is it an issue? We are asked.

Many of the insurer markets seem to have been slow to react and provide meaningful input to their brokers. If we may mention one notable exception – and this does involve one of our clients. We usually try and avoid being seen to be biased, but in this case Camargue Underwriting Managers – specialists in broad form liabilities, D&O, Pension fund trustee and similar niche liability covers, have stepped up to the plate and are out there helping both broker and insurer in this area. They have an arrangement with M&F that will surely add value to those brokers doing business with M&F when it comes to this oh so important area of a brokers responsibilities going forward. If there are others assisting the brokers in this niche products, please let us know.

See Interesting articles we have read for some back ground reading that you may find useful.

CIPRO returns

We hope that you all met the 21 February deadline for the submission of your annual returns for 2010?

Other FSP verification standards

The requirement that one FSP has to verify the licence status of another FSP, including their representatives, is proving problematical, especially in the short term space. The life industry has generally had a system whereby individuals within an FSP need accreditation and their details are linked to new applications so the majority of the control structures were already in place. The short term people however are another story.

The structures the short term FSP's have are usually limited to checking on the existence of a licence and verifying PI, FG and IGF covers as required. The rep verification is usually not there.

We have, via the CISA FAIS forum, asked SAIA to investigate the services offered by Astute, who have been working on various data sharing procedures within the life and investment industry for a number of years. They now have the capability to share the FSB data on FSP's. There is obviously a cost but our view is that if SAIA members or SAUMA members can gain access to this data via their respective governing bodies them the cost would be less of an issue. Despite having raised this with them over 6 months ago there has been little or no activity in this area – but we will keep pushing. To be honest we don't believe the people at SAIA actually realise the burden that (should) sit at the various agency departments to comply with this requirement.

Pension Funds Act

The gazetted amount, that a member loan or guarantee may not be equal to or exceed, is now the repurchase rate as determined by the South African Reserve Bank from time to time plus 5.5% per annum.

Duty of Board to the Principal Officers and vice versa

The Board will also have several contractual law, common law and statutory duties towards the Principal Officer including, but not limited to, considering whether the Registrar applied their mind to their administrative discretion in terms of the Promotion of Administrative Justice Act, and whether an administrative review may be warranted before an appeal; and

A Principal Officer will also have several contractual, common law and statutory duties towards the Board, including ensuring that he or she has a reasonable belief (i.e a reasonable person in a similar situation would also form that belief) that a matter should be reported and make a reasonable effort to determine whether any such belief is actually grounded in fact.

FROM THE PENSION FUND ADJUDICATOR

6 recent rulings;

Probably the most interesting one, Hill v Momentum, is the ruling that a pension fund and its administrator could not be held liable for poor advice received from an independent financial advisor, which resulted in meagre investment returns on a complainant's pension preservation fund.

(But maybe the independent advisor can??)

The interesting one involved a case of lost records which affected the ability to recognise and pay its benefits to a member. The PFA made it very clear that errors in this area meant the pension fund were liable. If they outsourced the administration, as they did in this case, which had also changed a number of times, which was the cause of the members' data getting lost; the fund still had the responsibility for oversight of these administrators.

You can outsource the responsibility but not the accountability!!

The others are issues more around administrative matters on the fund and one complicated legal matter around a divorce overseas and local benefit. If you want the full details just let us know.

INTERESTING ARTICLES WE HAVE READ

RiskSA Wired

RiskSA Wired (the electronic version of this magazine www.risksawired.co.,za) has an article on the changes brought about by the CPA. www.enterpriserisk.co.za covers the same ground.

FANews

Their daily newsletter of 15 February and full article on their website on Treating Customers Fairly.

COVER Magazine

February edition- contains a separate brochure dealing with specialist underwriting managers' products. We see many of these but as this is a consolidated list in a separate document it is a little more user friendly.

Meanwhile Risk SA continues their summary of Niche providers in their January and February issues.

Also in the February COVER an article by Freddie Eilers and Alan Holten – this starts off by saying;

"Brokers may be charging fees in contravention of current legislation"

So this caught our eye. It's a technical read but one we would suggest you go through – to make sure your fee structures are by the book.

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