

# FINANCIAL SERVICES BOARD



## FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (“FAIS ACT”)

**FAIS CIRCULAR 01/2010**

**DATE: 31 MARCH 2010**

### **Circular on section 14 of the FAIS Act relating to the debarment of representatives failing to meet the Fit and Proper competency (qualifications) requirements**

#### **1. Background**

The competency requirements for FSPs (sole proprietors), Key Individuals and Representatives are set out in the Determination of Fit and Proper Requirements for Financial Services Providers (Fit and Proper), as published in Board Notice 106 of 2008, on 15 October 2008.

When reading the requirements of Fit and Proper together with the provisions in the FAIS Act, Section 13(2)(a)(b) of the FAIS Act states that an authorised financial services provider must at all times be satisfied that the provider’s representatives, and key individuals of such representatives, are, when rendering a financial service on behalf of the provider, **competent to act**, and comply with the requirements contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable; and take such steps as may be reasonable in the circumstances to ensure that representatives comply with any applicable code of conduct as well as with other applicable laws on conduct of business.

#### **2. Date of first appointment: 2004 to 2007**

For FSPs (sole proprietors), Key Individuals and Representatives who were approved or appointed in terms of the FAIS Act between **2004 (when the Act went into effect) and 31 December 2007**, the requirements are that they must have met the relevant qualification requirements by **31 December 2009**. These requirements can be found in Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers.

### **3. Date of first appointment: 2008 - 2009**

The competence requirements for representatives, who were appointed for the first time in respect of a specific product category in 2008 or 2009, are also provided for in Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers.

Representatives with a date of first appointment in 2008, have a choice of either completing an appropriate skills programme by 31/12/2011 or a qualification as published by the Registrar, by 31/12/2013.

Failure by a representative to meet the competency requirements by the relevant date, means that the FSP is required to take appropriate action, as explained in this circular.

### **4. Implications if a representative does not meet the qualification requirements:**

Failure by the representative to meet the necessary qualification requirements means that the representative is no longer fit and proper in terms of section 8(1) of the FAIS Act. Therefore, in terms of section 14(1) of the FAIS Act, an authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in section 13(2)(a) is removed from the register referred to in section 13(3) of the Act. This also applies to any representative who has contravened or failed to comply with any provision of this Act in a material manner. This means that any such representative is prohibited by the provider from rendering any new financial service by withdrawing any authority to act on behalf of the provider, and that the representative's name, and the names of the key individuals of the representative, are removed from the register referred to in section 13(3). Any such provider must immediately take steps to ensure that the debarment does not prejudice the interest of clients of the representative, and that any unconcluded business of the representative is properly concluded.

Debarment in terms of the Act means that the provider stops the representative concerned from rendering further financial services and removes his or her name from the register mentioned above. Implementation of the debarment provisions in terms of section 14 (1) is obligatory whenever the representative no longer complies with the requirements referred to in section 13 (2) (a) of the Act.

Section 3 of the FAIS Act states that, subject to the provisions of this Act, any notice given, approval or exemption granted, determination made, requirement or condition determined or imposed, or any other decision taken by the Registrar under an enabling provision of this Act, is valid only if it is reduced to a durable written or printed form or, where communicated electronically, has been correctly transmitted in a legible form.

**5. Appropriate action by the FSP:**

The Registrar of Financial Services Providers has deemed it proper that if the representative does not meet the required qualifications or appropriate skills programme as specified in Table E, Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers, the FSPs may do as follows:

- Debar the representative and request the Registrar to list the latter on the list of debarred persons;  
or
- Request a profile change to remove the product/s for which the representative is not qualified for; or
- Remove the said representative from the register of the particular FSP and subsequently request the Registrar to remove that representative from the central register.

In terms of condition 1 of the licensing conditions imposed on FSPs, an FSP is required to inform the Registrar within 15 days of any change to its licensing conditions. This means that the FSP is required to inform the Registrar of the failure to meet the qualification requirements by a FSP (sole proprietor) or Key Individual within 15 days after the due date for meeting the relevant qualification requirements.

Where FSPs have failed to inform the Registrar of any instances as described above by 15 January 2010, in respect of the 31 December 2009 deadline, the Registrar will accept such notification up to and including 30 April 2010. Any omissions in this regard will be regarded as a failure to comply with Section 8 of the Act, and the Registrar will take regulatory action such FSPs.

**REGISTRAR OF FINANCIAL SERVICES PROVIDERS**

**DATE: 31 MARCH 2010**