ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

July 2014 Edition

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From AC

FSB Annual reports: 15 August is the deadline for submission of annual reports. If you are one of the few who has yet to return their signature page expect to be hounded by us over the next few days.

New reporting formats

Clients will start to receive the new format reports as we move through the coming months and we would welcome your feedback.

If you have yet to have your first quarter visit for the 2015 season just be prepared for an intense initial and slightly longer than usual meeting as we revisit every aspect of your compliance program.

Annual levies

The levies are based on your register of representatives as at 31 August so please ensure that any changes are communicated to us well before then to allow us to process the changes. We cannot guarantee that changes notified to us on the 31 August will get processed.

If we are seeing you during the coming month you can of course provide details of your changes at that meeting – always remembering that changes are meant to be notified to the FSB within 15 days!

Call centres and the use of a principal's script

In monitoring the activities of a client that acts in the direct marketing space we had reason to review the script supplied by their principal, in this case Auto & General. We were trying to ascertain whether A&G deemed their script to be an advice based sale or not. Upon enquiry they (eventually) made the following statement:

"...Our scripting provides factual information which does not fall within the definition of providing advice. However, your consultants are authorised to provide advice as clients needs differ and based on this consultants may give advice or make certain recommendation to clients."

This does highlight the issue that where a call centre is supplied with a script by a principal they must check the principal's expectations when it comes to advice "when a client's needs differ" as the norm would be to follow the script as supplied (flaws and all) and not adapt it to suit the client's needs. We would recommend that our clients operating in this segment ensure they are aligned with the thinking of their principals when it comes to the need for advice.

Protected Disclosures Act – proposed amendments

A Bill has been published proposing various changes to this legislation. To quote from a summary of the changes we have read:

"The proposals contained in the Draft Ammendment Bill 2014(comment due date 4 July 2014) raise both welcome compliance measured and unncessary regulatory risks. The act is of great importance and the draft bill should have been given a longer comment period, and more prominence than on a department website."

Whilst not directly a FAIS issue we do, in our new monitoring report, ask about fraud and whistle blowing policies so we do need to bring these possible changes to your attention and recommend that you elevate the profile of this Act within your compliance universe controls.

Another piece of legislation to be looked at, and its proposed amendments, is the Employment Equity Act. The changes may well have an impact on us all.

From the FSB

Proposed amendments to the binder regulations

It would appear that the Regulator is not entirely happy with some of the binder arrangements that insurers have in place with Underwriting Managers. On 11 July, National Treasury produced a document for comment, and if the proposed measures are introduced some underwriting managers could be severely affected. The idea is to 'close' certain gaps and loopholes in the current regulation.

The proposed changes are:

1. Section 6.2(3) of the regulations currently prohibit a UMA from doing business with a conventional broker if that broker is an associate of that UMA. The definition of 'associate' has been extended in such a way as to prohibit any director, shareholder or senior member from engaging in both businesses, irrespective of 'control';
2. The exclusion of SASRIA from the scope of the Binder Regulations even though SASRIA issue binders to insurers;
3. The amendment of the definition of underwriting manager to prohibit the UMA from any act which may result in a policyholder entering into, varying or renewing a policy irrespective as to who that UMA is representing at the time. This would particularly affect those UMAs that provide ongoing services to policyholders on behalf of retailers or those that act in the name of an insurer.
4. The proposals authorise the Registrar to prescribe maximum fees (capping) for the binder functions rendered under the binder agreement; and
5. Section 6.4(3) of the regulations currently prohibits an NMI from earning any form of profit. This clause is amended to allow ownership of a cell captive if the Regulator approves such an ownership.

There are a number of other 'cosmetic' changes proposed, but the most significant changes

are summarized above. Should you wish to see the actual document it is available on the FSB website or you can e-mail info@associatedcompliance.co.za or click here to access a copy via our website in the July newsletter download section.

We will obviously keep you posted on developments.

Regulatory and Solvency Asset Management (SAM) workshops

The Insurance division will be hosting two workshops in November as follows:

Insurance Regulatory Seminar - Full Day

10 November 2014	Sanlam Head Office, 2 Strand Road, Bellville, Cape Town
14 November 2014	CSIR International Convention Centre, Meiring Naude Road, Brummeria, Pretoria

Solvency Assessment and Management (SAM) Workshop - Full Day

11 November 2014	Sanlam Head Office, 2 Strand Road, Bellville, Cape Town
21 November 2014	CSIR International Convention Centre, Meiring Naude Road, Brummeria, Pretoria

The registration process has not yet opened – we will keep you posted.

The latest list of withdrawn and suspended licences has been issued by the FSB in late July. If you need a copy let us know by an e-mail to info@associatedcompliance.co.za

Pension Fund Trustee Professional Indemnity Cover

We reported last month that one of our FSPs was due to meet with the FSB to discuss this issue. We attended the meeting along with the UMA staff and insurer staff plus a high level delegation from the FSB. The focus of the discussion was on the cover provided, why this had apparently shrunk over recent years and the related increase in premiums over the same period. It was an open and frank discussion, one that has also been held with other players in the industry.

We will watch this space as the discussion develops.

DOFA date proof

We have spoken of the increased hassle factor around obtaining these dates over the past couple of Newsletters but we see one positive coming from the FSB when they do issue the proof in that they now use a well presented table that reflects the required information rather than a screen dump from their system. A small thing but a step in the right direction and something you as FSPs will recognise as a legitimate FSB document when asking your reps for this information.

A change to the deadline dates for qualifications and RE exams - AGAIN

We have heard a rumour that the recently introduced amendment on how the RE and full qualification deadlines are calculated i.e. the June following 24 (RE) and 72 months (qualification) from the date of first appointment, which shifted the deadlines from December of any given year to June will be changed again. Reportedly to December of any given year. We can only speculate as to the reason – we are assuming it is because this could provide up to 12 month extra to complete an RE or qualification if appointed after June in any given year and this is deemed too much. Surely this was tested and thought through before the initial change? What would annoy us if it is correct is that we spent a lot of time adjusting the initial change on your rep registers – which was to December of any given year and then we did the exercise again to the June deadline and now we may need to do it again. To quote a famous Queen – "we are not amused"!

We see that others have been writing on the confusion caused by the change to June. Click here to see article from Moonstone as reported by Insurance Gateway.

Credit Insurance

A joint Treasury and FSB document entitled " A technical report on the consumer credit insurance market in South Africa" was released on 3 July 2014. This follows on from the Nienaber report on this sector and needs to be looked at by all involved, or potentially involved, in this line of business. Click here to download a copy via our website in the July newsletter download section.

Click here to view a related article from Moonstone, as seen on Insurance Gateway, on this report.

From the FAIS Ombud

Inch V Impact Financial Consultants & Calitz (RVAF Investment)

The following summary of this matter courtesy of Moonstone;

"The reasons for the sad ending to the Relative Value Arbitrage Fund, for both investors and advisors, are evident from this, the first determination by the Ombud on the Herman Pretorius saga.

A client, who invested R500 000 in 2010, complained to the Ombud after losing all his savings when the mastermind behind the fund reportedly committed suicide.

The Ombud quotes the following "important points" from the complaint:

'I had trust in the respondent as he was correctly registered as a certified financial planner. He was a member of the FPI. His company was FSB licensed. I would never have invested my money in any investment platform by not doing it through a registered financial services provider/certified financial planner. The fact that he is a registered financial services provider makes it certain in my mind that whatever investment platform he would be investing my money in would be:

- legal
- correctly registered

- have all the necessary due diligence performed by himself
- the fund manager (of RVAF) would be FSB licensed
- there would be third-party verification of returns
- there would be valid financial statements
- the fund would be correctly audited

This, I understand, is not the case at all. I am dismayed that none of the above 7 points were fulfilled and I declare that the respondents acted unethically by investing my money in this "hedge fund". I would never have invested a cent of my money into this fund had I known this information' (own emphasis).

The Ombud then proceeds to dissect the evidence in terms of the legal obligations of the advisor, including the following:

- The duty to identify the client's needs
- Disclosures in terms of section 4 and 5 of the Code
- Information on the product supplier
- The Code of Conduct for Discretionary Financial Services Providers
- Risk and hedge fund strategies disclosure as required by the discretionary code and
- Authorisation to conduct business as a financial services provider

Having dealt at great length with all of the above, the Ombud concludes:

"There are so many areas where the respondent was clearly remiss and in direct contravention of the FAIS Act that it is difficult to recap without repeating all that has already been discussed. At its simplest, had the respondent just requested a set of properly audited financials, the scam would have been revealed. This would have been part of basic due diligence. Yet not only was this (sic) most elementary of steps clearly omitted, but similarly, deficiencies are evident in the complete lack of any form of proper due diligence into the investment vehicle, underlying investments or their structure."

She quotes from the ground-breaking Durr vs ABSA Bank Ltd and Another 1997 (3) SA

448 (SCA), case which states:

> ***"The important issue is that even if the adviser himself does not have the personal competence to make the enquiries, I believe it is incumbent upon him to harness whatever resources are available to him or if necessary to ask for professional, legal or accounting opinion before committing his client's funds to such an investment".***

Concerning the respondent's obligations as a member of a professional body, she states:

> ***"The Code of Ethics requires that the 2nd respondent undertake to act in a manner that displays exemplary professional conduct and maintain the abilities, skills and knowledge necessary to provide professional services competently. In short, the 2nd respondent was certified to a standard above and beyond that of the average financial adviser and must be held to this standard."***

A thorough reading of this determination is highly recommended to all investment advisors. In particular, the views of the Ombud on due diligence will clarify an aspect which is still very murky for many of us"

Click here to download the full determination via our website in the July newsletter download section.

Moonstone did a follow up article on the matter;

"In his response to the complaint, the advisor stated, amongst other arguments that he, after reading about possible problems,"…contacted Mr. Pretorius to further investigate the matter. Mr. Pretorius advised me in a meeting at his office that the FSB had visited him and found nothing untoward."

"If the FSB with all the investigative means at its disposal was not able to detect improper "hedge fund" activities by Pretorius, it surely cannot expect me to have done so" stated the advisor.

He also attached a copy of an e-mail dated the 11 May 2009 from a manager at the FSB which states:

"Hedge funds are currently not regulated in South Africa - we only regulate a person who manages a hedge fund portfolio. This means that a person who renders financial services to a client to invest in hedge funds is not a financial services provider and not required to be licensed."

The Ombud responded to this as follows:

"It is neither considered necessary nor appropriate of this Office to comment on the allegation that the FSB failed to pick up contraventions despite, according to the respondent, the FSB having investigated the business activities of Pretorius on more than one occasion."

"Whatever the alleged failure on the part of the Financial Services Board, (no opinion is expressed by this Office on this allegation), the respondent's failure to conduct even the most basic due diligence is inexcusable. Even more so, given that not only was the respondent directly and regularly interacting with Pretorius and the RVAF, …the respondent was more than amply qualified to pick up on any irregularities."

The Ombud then expands on the respondent's membership of a professional body, his obligations under its code of conduct and his professional qualifications.

FA News also ran a review of this case: Click here to read the full article which continues on their website.

And FA News detailed a related matter later in the month: Click here to read the full article which continues on their website.

From our perspective it seems that what is good for goose is not always good for the gander.

Another recent determination was Jordaan v Catsicadellis & Rabie. Another dodgy investment based matter. Interestingly the respondents were seen to be acting as Key Individuals of the FSP but were not licenced as such. The Ombud awarded the complainant R 180,000 plus interest. As the FSP no longer exists as a trading entity it would be interesting to know if the money will actually get paid. We wish these determinations would make specific reference to the actual payments made and not just the award! If you would like to read the full determination. Click here to download the full determination via our website in the July newsletter download section.

The fourth edition of the FAIS Ombud's newsletter for 2014 has recently been published. If you would like a copy Click here to download it via our website in the July newsletter download section.

From the Financial Intelligence Centre (FIC)

The Financial Intelligence Centre has released Public Communication No. 29 (PCC) which deals with the Application and Use of Exemption 4 on the 18 July 2014.

This PCC advises that the requirement for Exemption 4 is if one Accountable Institution (secondary accountable institution) verifies the client's identity for another Accountable Institution (primary institution). The institution that is conducting the verification needs to confirm in writing that they verified the identity of the client and kept record of the identification process.

Exemption 4 can only be applied when one Accountable Institution introduces business to another Accountable Institution.

If the FIC require proof of the verification, both parties must be able to provide such proof to the centre.

For a copy of PCC 29, please email info@associatedcompliance.co.za.

From SAIA

The latest list on the status of IGF intermediaries as at 30 June is available. If you need a copy let us know at info@associatedcompliance.co.za.

From the FIA

The next series of road shows by the FIA will take place in August and September. The dates are:

- **Pretoria** – 27 Aug
- **Johannesburg** – 28 Aug
- **Bloemfontein** – 2 Sep
- **Durban** – 4 Sep
- **Port Elizabeth** – 9 Sep
- **East London** – 10 Sep
- **Rustenburg** – 12 Sep (mini conference)
- **Nelspruit** – 16 Sep (mini conference)
- **Mpumalanga** – 18 Sep
- **Cape Town** – 23 Sep

And the agenda is;

07h30 - 08h30	Registration
08h30 - 08h45	FIA History
08h45 - 09h00	Welcome address - FIA President
09h00 - 10h00	FSB keynote address - Caroline da Silva/Jonathan Dixon Retail Distribution Review / Twin Peaks
10h00 - 10h30	Building a future in Financial Services - Tracker
10h30 - 10h50	Tea break
10h50 - 12h15	Hollard - Nic Kohler / Paolo Cavalieri / Saks Ntombela Hollard: external speaker: Ross Tucker

12h15 - 12h30 Closing - FIA CEO

The Key note address is obviously the one to be there for.

At the recent executive meeting of the FIA a number of issues were discussed – we will see what comes of these issues. Here are some of issues currently being discussed:

- VAT review - mainly affecting the marine and travel products,
- Binder updates (as detailed above),
- Healthcare demarcation debate,
- RDR, and
- Credit insurance – see the comments under the FSB section above.

From SARS

We provided some detail on the FACTA legislation in our April Newsletter. Since then SARS has issued notices (508 & 509) that detail of the records that need to be retained by the affected person. If you need a copy please send a request to info@associatedcompliance.co.za.

Interesting things we have read

Insurance Gateway July 2014

An article by Julius Strydom on the impact of RDR. Click here to read.

COVER June 2014

The FSB is not a criminal court by Brian Martin of Renasa gives an interesting perspective on the workings of the FSB's enforcement committee.

Using POPI as a defence against cyber crime

An article by Nerushka Deosaran and Kerri Crawford of Norton Rose. With POPI a soon

to be piece of legislation any material on the subject is worth a read.

FA News Magazine June 2014

A POPI related article by Caroline Yeo of Camargue Underwriting Managers is also worth a read once you have read the Norton Rose one.

Why a UMA?

An article by George Parrott of Lireas that highlights the possibilities that still exist for UMAs.

Is importing legislation good, bad or just ugly?

An article b Richard Rattue of Compliserve. We are sure Richards's utterances will strike a chord with many FSPs.

On a similar theme is an article by Adel Walker of Compass who makes the statement that "South Africa should take the lead when it comes to compliance" Are they saying the same thing?

FA News

The PFA Paints a Poor TCF Picture of the Retirement Industry: 25 June a statement by the Pension Fund Adjudicator that TCF should be entrenched by making them legislation rather than just principals as she believes in their current format they are not working for the pension fund industry. Click here to read the full article which continues on their website.

Risk SA: They ran a brief summary of Day 2 of the IISA conference and to quote:

> ***"Challenges facing intermediaries were also highlighted, with a big focus on the impact of regulation on the insurance industry.. Caroline da Silva from the Financial Services Board (FSB) said that the release of the Retail Distribution Review discussion document, has been delayed again, and could now be expected in August.***
>
> ***Da Silva said that the FSB was not going to prohibit commission in the short-term space, although the levels may change, and these would be capped, while commission in the investment space may be prohibited. She added that it would not be in the best interest to scrap binder fees, but these would also likely be capped"***

This was further reported on in Money web by Hanna Barry, to quote the opening paragraph of that article;

The shift away from commision-based fees on investment and savings products in favour of fees for advice will eliminate charges on these products, the Financial Services Board (FSB) said on Wednesday

This RDR document when it gets released is increasingly looking as though it will be explosive.

Fin24.com

Debarred Old Mutual adviser opens can of worms: The story of the top Old Mutual rep that was debared by them late on 2013 continues. We clearly have not heard the end of this one – especially on what the FSB will be doing – if anything. Click here to read the rest of the story.

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