

F S B

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QUARTER 3

BULLETIN



COOPERATION, COLLABORATION
AND CONSULTATION IN THE
**FINANCIAL
SERVICES SECTOR**

CONTENTS

FOCUS



FSB Bulletin

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EVENTS



PROFILE

- 03** EXECUTIVE OFFICER'S NOTE
- 04** EDITOR'S NOTE
- 06** COVER
How MoUs aid in regulation
- FOCUS**
Are international treaties binding on the South African government, regulators and other entities?
- 08**
Enhancing consumer protection through effective cooperation, collaboration and consultation in the financial services sector
- 10**
- 13** Legal Entity Identifier (LEI): an update
- 16** Phasing in Twin Peaks

- PROFILE**
19 Meet Olano Makhubela, the new DEO for Retirement Funds at the FSB
- 21** ENFORCEMENT SANCTIONS
- 23** FSB WARNINGS
- 24** IN THE MEDIA
Changes to the SARB's mandate
- 26** CONSUMER EDUCATION
The CBDA Investor Education Project
- EVENTS**
28 FSB elevates financial literacy in schools through the MylifeMymoney Speech Competition
- 30** FSB Insurance Conduct of Business Seminar 2017: Supervisory challenges in the funeral business industry



As we start the New Year in 2018 - a year of the final transition in the FSB mandate - it is important for us to keep our eyes fixed on the critical steps that the organisation must take in order to successfully discharge its new responsibilities. Underpinning this change is the ability for the sector to aggressively collaborate and share insights and ideas on how to make our sector function optimally.

This year, we plan to continue with our commitment to strengthen the sector and protect our consumers in every way we can. Our success is heavily dependent on the strength of our interactions and engagements with our stakeholders. Through our existing Twin Peaks forums, we will ensure that you are kept informed about the implementation process, regulatory developments and any opportunities for your greater participation in the twin peaks process.

It is in this spirit that we have dedicated this edition of the bulletin to the various perspectives of our industry stakeholders on the Twin Peaks journey, within the context of the importance of sector engagement and collaboration. The next step on our change journey will be to officially launch our strategy and the new brand as soon as it is procedurally permissible.

I want to once again thank FSB staff members and the leadership team for managing this change journey as well as they are. We finished 2017 on a high note and we are now geared and ready to become the Financial Sector Conduct Authority (FSCA).

Adv Dube Tshidi
Executive Officer



A common mandate that financial sector regulators share in their different jurisdictions is that of “consumer protection”. This is the protection of consumers from unfair treatment by some service providers and unscrupulous individuals who plan to deceive and defraud consumers at every available opportunity. Regulators and other law makers, therefore, need to work together to ensure that there aren't any regulatory cracks that will make room for this kind of exploitation to take place. To achieve this, there needs to be great cooperation, collaboration and consultation between regulators and all other stakeholders involved.

This is why in this issue we take a closer look at some of our agreements with regulators and law makers, both locally and internationally. Our cover story looks at how entering into Memoranda of Understanding (MoUs) strengthens cross-border ties with regulators

in other international jurisdictions. Most importantly, we explore how this supports our regulatory efforts.

Also in this issue, we get to know Mr Olano Makhubela, a former board member of the FSB, who was recently appointed as the Deputy Executive Officer (DEO) for Retirement Funds. We get his take on the retirement funds industry in South Africa and the impact he is hoping to have on it.

From an industry perspective, we discuss the change to the mandate of the South African Reserve Bank (SARB), especially with the enactment of Twin Peaks.

Of course as is always the case, we have plenty more for you and we look forward to receiving your feedback on what we've put together for you.

Enjoy!

Tembisa Marele



He may be your friend, your pastor or your child's teacher, but that does not mean you can trust him to give you financial advice. **Check with the Financial Services Board if he is authorised.**

Don't wait until it's too late!

Call the Financial Services Board on 0800 110 443 or visit www.fsb.co.za for more information.

The FSB is the regulator of the South African non-banking financial services industry.

COVER

By Nokuthula Mtungwa,
Media and Stakeholder Relation Manager, FSB



HOW MoUs AID IN REGULATION

The FSB, like any other regulator, does not operate in isolation and needs to engage with other regulators on issues of mutual interest. An instrument utilised to govern these relationships is a Memorandum of Understanding (MoU). Although MoUs are not legally binding and do not supersede the domestic laws of the parties, they set out arrangements about how information will be shared with each other, thus establishing a framework for collaboration on regulatory matters between the parties concerned. It is important for the parties to honour the obligations that each has in terms of the MoU, subject to their respective domestic laws.

As the Executive Officer of the FSB, Advocate Dube Tshidi, explains MoUs are: "...an opportunity to strengthen cross-border ties, thus promoting integrity, efficiency and financial soundness

through the effective regulation of their respective jurisdictions."

Tangible benefits attained from these arrangements

MoUs are important because they enable greater collaboration and cooperation on regulatory matters and facilitate the exchange of information in a systematic manner. Furthermore, they simplify the process by which regulators can cooperate with each other to facilitate the performance of their supervisory functions and the effective enforcement of the domestic laws governing financial institutions. Consequently, they help to promote investor protection and maintain the integrity of the financial sector through effective regulation of their respective jurisdictions.

The FSB's Unit Manager for International and Local Affairs, Ms Koko Kubelo, says it is important to understand the difference between bilateral and multilateral MoUs (MMoUs), with the former being an agreement between two parties and the latter being a multi-party arrangement. MMoUs are usually a framework for cooperation and information exchange between more than two signatories. According to Ms Kubelo, the confidentiality provisions set out in the MoUs (bilateral and multilateral) are of paramount importance. Parties have an obligation to retain the confidential treatment of assistance and information obtained pursuant to the signed bilateral and multilateral MoUs.

As a result of the MMoUs, the FSB now has access to information about the activity of regulated individuals and entities from many jurisdictions that it would otherwise not have. For example, the FSB may access relevant information from the following bodies:

- a. The Qatar Financial Centre Regulatory Authority through the International Association of Insurance Supervisors (IAIS) MMoU.
- b. The Securities Commission of the Bahamas through the International Organisation of Securities Commissions (IOSCO) MMoU.
- c. The Angolan Agency of Regulation and Supervision of Insurance through the Committee of Insurance, Securities and Non-Banking Authorities (CISNA) MMoU.

The FSB does not have bilateral MoUs with the above-mentioned bodies but can share information with them on the basis of the parties being signatories to the said MMoUs.

Over the years, the FSB has entered into a large number of MoUs with regional and international regulators. To date, there is a total of 92 bilateral MoUs at local, regional, and international level; as well as four MMoUs. From January 2017 to date, the FSB has dealt with over 70 requests for information and/or assistance on the basis of the signed MoUs and MMoUs. This sharing of information assists supervisors to realise their supervisory responsibilities and enforce their domestic laws.



By Tshifhiwa Mavhuthugu,
Senior Legislation Specialist, FSB



Are international treaties binding on the **South African government, regulators and other entities?**

International treaties assume a variety of titles, forms and styles and are useful in that they are instruments by which states and certain international organisations regulate matters of common concern to them. A treaty, the typical instrument of international relations, is defined by the 1969 Vienna Convention on the Law of Treaties as an agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. The FSB has entered into several cooperation agreements with various international institutions, but are these agreements binding for the South African regulator?

Section 231(1) of the constitution of the Republic of South Africa, 1996, clearly stipulates that the negotiating and signing of all international agreements is the responsibility of the national

executive, comprising of the President and his cabinet ministers. However, international agreements signed by the executive do not bind the Republic immediately after being signed.

The constitution prescribes a process that must be complied with before an international agreement takes effect and binds the Republic. Section 231 (2) of the constitution provides that an international agreement binds the Republic only after it has been approved by resolution in parliament. Agreements requiring parliamentary approval in terms of section 231 (2) of the constitution are agreements that:

- require ratification or accession (usually multilateral agreements).
- have financial implications that require an additional budgetary allocation from Parliament.

- have legislative or domestic implications (e.g. require new legislation or legislative amendments).
- upon been signed by the national executive, it provides for Parliamentary approval and ratification.
- the executive did not sign but can become a party thereto through accession.

So, before an agreement becomes binding on the Republic, the Constitution prescribes the following requirements:

- if it is a section 231(2) agreement, it must be approved by resolution in parliament.
- if it is a section 231(3) technical, administrative or executive agreement, it must only be tabled in parliament and does not have to be approved by a resolution in parliament before becoming binding.
- if it is a section 231(4), an agreement required to be enacted into law in the Republic, it becomes binding when it so enacted.

South African entities, regulators and departments are therefore duty bound to follow treaties that are binding within the Republic as outlined above.

However it is important to note that Regulators may enter into memoranda of understanding or agreements to foster cooperation, exchange of information, and so on with other

local or international institutions. Cooperation agreements of this nature are not legally binding on the signatories thereof. In other words, cooperation agreements of this nature are not enforceable as they do not create a legal obligation upon the parties.

The FSB is a signatory to a Multilateral Memorandum of Understanding concerning cooperation and the exchange of information. In terms of the memorandum, the FSB, as a member of the International Organization of Securities Commissions (IOSCO), undertakes with other members of IOSCO and considering the increasing international activity in the securities and derivatives markets, to foster mutual cooperation and consultation among IOSCO members to ensure compliance with, and enforcement of, their securities and derivatives laws and regulations.

The IOSCO MoU is not legally binding neither does it create a legal obligation upon the parties to act in a particular way. Although MoUs between regulators, as envisaged above, are not legally binding jurisdictions are duty bound to abide by and respect their obligations in terms of these memoranda because not doing so might very likely result in negative political and economic consequences and would defeat the purpose of entering into such memorandum.



By Thandolwethu Masango,
Internal Communications Coordinator, FSB



Enhancing consumer protection through **effective cooperation, collaboration and consultation** in the financial services sector

One of the key Twin Peaks changes is the step away from the 'silo' regulatory approach to a more cooperative, consultative and collaborative one. This shift offers a new financial regulatory architecture structured around the objectives of financial regulation and supervision that will see all role players work together to enhance consumer protection. These role players include the National Treasury (NT), the South African Reserve Bank (SARB), the Financial Sector Conduct Authority (FSCA), the Prudential Authority (PA), the National Credit Regulator (NCR), the Financial Intelligence Centre (FIC), the Council for Medical Schemes (CMS) and the National Consumer Commission (NCC).

According to the FSR Act (2017), the financial sector regulators and the SARB must, not later than six months after the act takes effect, enter into one or more MoUs with respect to how they must cooperate, collaborate and provide assistance to each other.

Licensing approach

In instances where licence applications are under the supervision of multiple regulatory authorities, the FSCA will work with the other authorities, such as the PA and the NCR. These MoUs will govern the relationships, cooperation and obligations of the different authorities.

The NCR remains responsible for licences issued under the National Credit Act (Act 35 of 2005). In the first phase of Twin Peaks implementation, the PA will be the licensing authority for the Banks Act (Act 94 of 1990, as amended) and the Long-term and Short-term Insurance Acts (1998). The FSCA will be the licensing authority for most of the other financial sector laws. In the second phase of Twin Peaks implementation, certain entities will need to be licensed by both the FSCA and the PA, under their respective laws. The MoUs between the authorities will ensure that this process is streamlined and co-ordinated.

Dual licencing means authorised entities will be subject to the highest level of scrutiny - this incidentally translates into better consumer protection as consumers will deal with adequately licenced entities.

More collaboration by financial sector regulators

The FSCA, PA, NCR, FIC and SARB must cooperate and collaborate when performing their functions. This includes generally assisting and supporting each other in pursuing their objectives; sharing information about matters of common interest; striving to adopt consistent regulatory strategies; co-ordinating, to the extent appropriate, actions in terms of financial sector laws. The entities must, at least annually, as part of their annual reports or on request, report to

the Minister, the Cabinet member and the National Assembly on measures taken to cooperate and collaborate with each other.

Financial System Council of Regulators (FSCR)

A Financial System Council of Regulators (FSCR) will also be established to facilitate cooperation and collaboration, and, where appropriate, consistency of action, by providing a forum for senior representatives to discuss, and inform themselves about, matters of common interest.

Financial Sector Inter-Ministerial Council

A Financial Sector Inter-Ministerial Council will be established for Cabinet members administering legislation relevant to the regulation and supervision of the financial sector by providing a forum for discussion and consideration of matters of common interest.

The Cabinet members responsible for consumer protection and consumer credit matters may request the Council to consider and inform the Minister and the Cabinet members.

If not, Council can make recommendations to amend the relevant provision, or to take other lawful and appropriate action, to ensure protection. This may include an independent evaluation of the effectiveness of agreements between FSCA, PA, NCR, FIC, SARB, CMS and the CC.



Financial Stability Oversight Committee

A Financial Stability Oversight Committee (FSOC) will be established to support the SARB in performing its functions in relation to financial stability; facilitate co-operation and co-ordination of action among the FSCA, PA, NCR, FIC and SARB in respect of matters relating to financial stability.

The FSOC has the following functions:

- To exchange views, about the activities of the FSCA, PA, NCR, FIC and SARB regarding financial stability.
- Advise the Minister of Finance and the SARB on steps to be taken to prevent risks to financial stability and matters relating to crisis management and prevention.
- Make recommendations to other organs of State regarding steps that are appropriate for them to take to prevent risks to financial stability.

The Governor must establish a Financial Sector Contingency Forum (FSCF), which will include a representation from FSCA to assist the FSOC with identification of potential risk that systemic events will occur and the coordination of appropriate plans to mitigate those risks.

According to the RED book: A safer financial sector to serve South Africa better published by the National Treasury: "The financial services sector is at the heart of the South African economy and touches the lives of each and every citizen. Financial services allow people to make daily economic transactions, save and preserve wealth to meet future aspirations and retirement needs, and insure against personal disaster". It is thus important that organisations tasked with ensuring a safer financial sector work together to the benefit of all South Africans.





Legal Entity Identifiers: an update

A member of the Regulatory Oversight Committee (ROC) the FSB acted as the Sponsoring Authority (SA) that facilitated the submission of applications by pre-Local Operating Units (pre-LOUs) to the ROC and provided confirmation to the ROC that all pre-LOU endorsement requirements have been complied with, both at the time of the application, and on an on-going basis. In 2014 the FSB made an announcement regarding the introduction of LEIs.

A LEI is a 20-digit, alpha-numeric code that uniquely identifies entities when entering into financial transactions both locally and abroad. This follows the allocation of a globally unique 4 digit prefix for utilisation in the issuance of LEIs to Strate, South Africa's Central Securities Depository.

LEIs were introduced following the global financial crisis of 2008, so that all participants in the financial system would be easily identifiable in order to facilitate assessment and monitoring of financial stability.

In January 2013, the Global LEI System (GLEIS) was launched by the Financial Stability Board after being tasked by the G-20 with creating a global public interest system of legal identifiers for counterparties to financial transactions in order to, inter alia:

- meet the G-20 objectives of improved transparency, mitigation of systemic risk and protection against market abuse;
- assist regulatory authorities in conducting market surveillance and enforcement, supervision of market participants and resolution activities and in preparing high quality financial data for regulatory purposes;
- facilitate OTC derivatives central reporting to trade repositories by market participants;
- support improved risk management, increased operational efficiency, the more accurate calculation of exposures.

The GLEIS comprises of a three-tier federated structure made up of –

- an upper-level regulatory oversight body, the Regulatory Oversight Committee (“ROC”) designed to oversee the system (<http://www.leiroc.org/>);
- a middle-level Central Operating Unit governed by a foundation, the Global LEI Foundation (“GLEIF”) that operationally co-ordinates the system; and
- a lower-level of registrars, called Local Operating Units (“LOUs”) that assign LEIs.

From 7 October 2015, new institutions that wished to become LEI issuers needed to be accredited by the GLEIF. The GLEIF assumed this responsibility of accreditation following the conclusion of a Memorandum of Understanding between the GLEIF and the ROC. Prior to that date, the ROC was responsible for endorsing organisations as LEI issuers. Existing LEI issuers, previously endorsed by the ROC, are referred to as ‘pre-LOUs’.

Each LEI issuer endorsed by the ROC is required to apply to become GLEIF accredited. They are subject to the same evaluation criteria as any new organisation seeking accreditation. Only GLEIF accredited organisations will be authorised to issue LEIs.

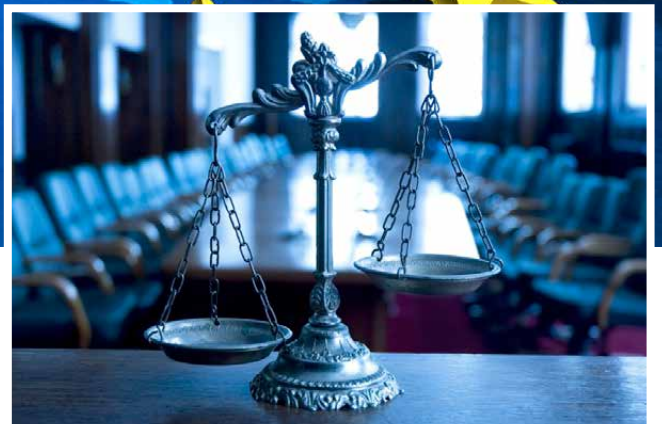
Organisations currently operating based on ROC endorsement will continue issuing LEIs while they undergo the GLEIF accreditation process. All LEIs issued remain valid regardless of whether the issuer succeeds in becoming GLEIF accredited or not. In the event that an organisation currently issuing LEIs fails to meet the requirements of the GLEIF accreditation, the LEIs already issued by that organisation would be transferred to a GLEIF accredited issuer.

SA DEVELOPMENTS (PROGRESS TO DATE)

The FSB serves on the ROC Plenary and Executive Committee. The following developments should be noted with regards to the implementation of LEI’s in South Africa:

- On 18 December 2015 the ROC endorsed Strate (Pty) Ltd (Strate) as a pre-Local Operating Unit (pre-LOU). As of the date of this endorsement, all certified codes issued by Strate are globally recognised by the ROC for reporting purposes.
- Strate (as a pre- LOU) went live with the LEI application program in February 2016. Strate is currently in the process of being accredited as a Local Operating Unit (LOU) by the GLEIF
- In South Africa the obligation, on OTC Derivatives Providers, to use LEI’s when OTC Derivatives





transactions are reported to a Trade Repository was created on 9 February 2018 when the FMA Regulations were published. This obligation will become effective once the standards prescribing the reporting obligations are finalised.

EUROPEAN UNION (EU) REGULATIONS

The use of LEIs is already required or recommended under a number of European Union regulations, in particular:

- European Markets Infrastructure Regulation (EMIR) - as from 1 November 2017, the EU trade repositories are mandated to reject trade reports that do not contain an LEI (irrespective of whether they pertain to the EU or non-EU market participants),
- Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR) - With effect from 3 January 2018, the implementation date of the Markets in Financial Instruments Directive (MiFID II), reporting entities must identify each and every client using their LEI identifying code. Firms subject to MiFID II reporting obligations will not be able to trade on behalf of a client or with a counterparty, either within the EU or globally, who is eligible for a LEI code and does not have one.
- Market Abuse Regulation (MAR), Capital Requirements Regulation (CRR), and Central Securities Depositories Regulation (CSDR) and Transparency Directive.

By Caroline Da Silva,
DEO FAIS and Insurance, FSB



Phasing in TWIN PEAKS

Now that the FSR Act (2017) is approved, the envisioned Twin peaks architecture is now a reality, but what does that mean for regulated entities and when will the changes start to be felt?

The FSR Act (2017)

The FSR Act (2017) not only designs the architecture for supervising the financial sector but also shifts the approach and mandate of the conduct authority which essentially amounts to an overhaul of the regulatory approach.

The Act (2017) introduces the Prudential Authority (PA) under the SARB and determines that the FSB will become a dedicated market conduct supervisor over all financial institutions. The first change that was seen is the Insurance Department's move to the SARB in October 2017. The department still reports

to the FSB under Caroline Da Silva, who is the acting DEO for Insurance at the FSB. They will continue to report to the FSB under the current Long-term and Short-term Insurance Acts (Acts 52 and 53 of 1998, respectively) until the PA goes live - which is anticipated to be at the end of the first quarter of 2018.

The Insurance Bill is the law that will govern the Prudential aspects of insurance and this is currently going through the Parliamentary process. As soon as this Bill is promulgated, all insurers will be subject to this Act for prudential purposes. They will also, however, be subject to the current Long-term and Short-term Insurance Acts (1998), as amended by the FSR Act and the Insurance Bill for market conduct purposes. In other words, what will remain with the FSB and the future FSCA is the market conduct



aspects of the current insurance legislation. This includes the Policyholder Protection Rules, which are in the process of being significantly strengthened. This means that insurers will essentially be subject to two supervisors as soon as the PA goes live and they will also be subject to two sets of law, prudential and separate market conduct standards.

Conduct of Financial Institutions

The FSR Act also makes consequential amendments to all sectoral laws to align them with the market conduct approach and empowers the FSCA to draft standards for conduct in addition to its market conduct rule-making powers under existing sector specific laws or where no such specific sectoral market conduct law exists - such as for banking. Once the FSCA goes live, all institutions currently regulated by the FSB will still be subject to the same sectoral laws, as amended by the FSR Act, as well as potential new conduct standards that may be developed under it. The FSR Act will therefore operate as an “overlay”

over the existing sectoral laws. This status quo will remain until such time that the Conduct of Financial Institution (COFI) Act is drafted and all current licences are converted to a market conduct licence.

The COFI Act will be a risk-based and proportionate piece of market conduct law. This means that when the FSCA sets conduct standards under the intended COFI legislation, it will take into consideration the regulatory and compliance burden on small institutions which do not pose significant risk to customers while at the same time ensuring that those institutions which do pose significant risk are subject to more intrusive supervision. This should provide some alleviation for small organisations with regard to regulatory complexity but not from their duty to treat customers fairly. The Treating Customers Fairly (TCF) principles will be embedded into the COFI law and the FSCA's approach will require that financial institutions are able to demonstrate delivery of fair outcomes for financial customers, rather than just ticking a compliance box.





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The FSB is the Regulator of the South African non-banking financial services industry.

A portrait of Olano Makhubela, a Black man with short dark hair, smiling. He is wearing a dark blue suit jacket over a red and white checkered shirt and a blue and white striped tie. The background is a blurred architectural structure with a grid pattern.

MEET
**OLANO
MAKHUBELA**

THE NEW DEPUTY EXECUTIVE OFFICER
FOR RETIREMENT FUNDS
AT THE FSB

For those who might not know you, please tell us a little bit about yourself.

(Laugh) Where do I begin? I grew up in Pretoria, Soshanguve, and attended boarding schools in Giyani and Kyalami. I have a sister who works in the medical field. I completed a Bachelor of Commerce (BComm) (Law) degree at the University of Durban-Westville (now the University of KwaZulu-Natal). I also completed a Bachelor of Laws (LLB) degree at the University of the Witwatersrand (Wits), an Honours degree in Economics at the University of South Africa (UNISA) and a Master's degree in Development Economics at SOAS University of London. My career started as an intern at the National Treasury in 2000, and for the 17 years I was there I assisted on various policy issues dealing with financial inclusion, exchange controls, macro-prudential foreign exposure limits, banks, pensions, insurance, investment funds and anti-money laundering/combating the financing of terrorism.

How is your experience at the NT going to aid you in executing your duties in your current role?

The work at the NT entails policy formulation to address complex problems, whereas the work at the FSB is largely about implementing and enforcing policies and laws. However,

the FSB also formulates many regulatory and guidance instruments to aid in the enforcement of laws or address industry practices. Over the last six years of my career at the NT, I was part of the team responsible for retirement reforms. This gave me an opportunity to learn and understand various complex concepts and issues about retirement funds.

You join the FSB at a time when it is going through significant organisational transformation (Twin Peaks) - what is going to be your prime focus in assisting the executive team to spearhead this change successfully?

Firstly, I must learn the culture, operations and functions of the organisation, as some of these key aspects will remain even though the organisation is transitioning. This will also enable me to understand areas which might need improvement in the new organisation. Secondly, I must familiarise myself with, and assist in finalising, the new organisational strategy. Thirdly, we should work out how best to “tailor-fit” and implement the important Treating Customers Fairly (TCF) principles for the retirement industry.

What will be your approach in communicating with external stakeholders on matters related to retirement funds?

It is very important to maintain good relations with all stakeholders and this requires regular interactions. I intend to continue engaging with our stakeholders because they can assist us (whether as policymakers or regulators) to understand the business we are regulating so that the regulations do not have unintended consequences. A regulator must solve problems before they become major ones. This requires constant engagement with the trustees, members of funds and service providers.

In light of the launch of the FSB’s Unclaimed Benefits Search Engine, how important is research and innovation in retirement funds within the regulatory space?

Various forms of technology and innovation will assist us to reach and be reached by as many people as possible and to provide them with a good experience. For example, the search engine takes advantage of the prevalence and convenience of the internet. The SMS system is very convenient as it enables potential beneficiaries to check potential unclaimed benefits regardless of where they are, given that nearly every person has a cellphone. Research will also help us to design better regulatory standards; for example, the major contribution of behavioural economics in getting people to do the right things.

What are the key objectives you would like to achieve as DEO for Retirement Funds?

To improve the compliance culture and reduce litigation in the industry. I’d also like to improve the cost effectiveness of funds and to ensure that members are always treated fairly.

What is your view on the relationship the FSB ought to have with the NT and other regulators?

A good relationship with NT facilitates engagements on what needs to be addressed in the financial sector and how best to do so. Regulation is a public good, and for it to be effective, for example by closing regulatory gaps and coordinating regulatory responses, the FSB must have good working relationships with other regulators, locally and internationally. In certain instances we can work with industry associations to do the right things without having to prescribe such conduct in law. Further, there is also better compliance when everyone buys into the rationale of the policy and regulations.

On a lighter note, what is a typical day for you at the office?

Meetings, meetings, and more meetings! I spend a great deal of time reading and signing regulatory letters to various regulated entities, going through court affidavits and making difficult decisions.

FSB FINES REFINERY R20 000 FOR CONTRAVENING THE FAIS ACT (2002)



The Registrar of Financial Services Providers (the Registrar) referred a case against Refinery 5 (Pty) Limited (Refinery) to the Enforcement Committee of the FSB.

The referral related to a contravention of section 7(1) of the Financial Advisory and Intermediary Services Act, (FAIS Act, 37 of 2002) in that, during the period from February until April 2017, Refinery acted as a financial services provider in respect of shares when it was not permitted to render financial services in respect of this product category.

As aggravating factors, the Registrar considered,

among other things, that Refinery earned commission in the amount of R6 000 as a result of the contravention and that Refinery's conduct had the potential of causing prejudice to clients. In mitigation, the Registrar took into account, among other things, that Refinery accepted responsibility for the contravention and cooperated with the Registrar's investigation and the subsequent enforcement action.

The Registrar and Refinery agreed on a penalty of R20 000 which was imposed by the Enforcement Committee on 20 October 2017.

FSB FINES HANNO VAN DYK R750 000 FOR CONTRAVENING THE SECURITIES SERVICES ACT (2004)

The DMA referred a case against Mr Hanno van Dyk (Mr van Dyk) to the Enforcement Committee of the FSB.

The referral related to contraventions of section 75 of the Securities Services Act (36 of 2004), in that Mr van Dyk manipulated the share price of Convergenet Holdings Limited during December 2008. An administrative penalty of R750 000 was imposed on Mr van Dyk by the Enforcement Committee of the FSB.

The Enforcement Committee took several mitigating circumstances into account, including that Mr Van Dyk cooperated with the FSB during the enforcement process, accepted responsibility for the contraventions and had shown remorse for his actions. As aggravating factors, the Enforcement

Committee took into account, among others, that Mr van Dyk's trades created an artificial price for the Convergenet share and undermined the integrity of the South African financial market.

Consequently, the DMA agreed to a penalty of R750 000, which was imposed by the Enforcement Committee on Mr van Dyk on 19 October 2017.



The FSB has a mandate to ensure that consumers of financial services are treated fairly by the financial services providers they deal with, and that they enjoy a safe investment environment in South Africa. In line with this, the FSB has issued a number of public warnings to warn the public to act with caution when dealing with the following entities:

TD Markets

The FSB warns the public against conducting financial services business with TD Markets, purporting to be registered in UK and Saint Vincent.

TD Markets and/or George van der Riet are not authorised to render financial services in

South Africa and are not representatives of an authorised financial services provider, as required by the FAIS Act, (2002).

BCI Business Consultants International (Pty) Ltd

It was brought to the attention of the FSB that BCI Business Consultancy International (Pty) Ltd and Jacques Magliolo were advising clients to invest in, among others, US oil options (derivatives). Preliminary investigations into the affairs of BCI Business Consultancy

International (Pty) Ltd and Jacques Magliolo revealed that clients' monies deposited into the bank account were utilised for other purposes other than investments in US oil options or financial products.

Neither BCI Business Consultancy International (Pty) Ltd nor Jacques Magliolo is an authorised financial services provider and/or representative to render financial services in derivatives.

Choice Lifestyle, a division of Agape Free Enterprises (Pty) Ltd

The FSB has received information that Choice Lifestyle, a division of Agape Free Enterprises (Pty) Ltd, operates as a financial services provider and is offering investment opportunities to clients.

Choice Lifestyle, is not authorised in terms of the FAIS Act (2002), to render any financial advice and intermediary services.

Capital Financial Management

The FSB has received information that Capital Financial Management operates as a financial services provider, offering loans of up to R 30 million, at an interest rate of 4.5%.

Capital Financial Management is not authorised in terms of the FAIS Act (2002), to render any financial advice and intermediary services.

Convenient Cash Loans

It has been brought to the Registrar of Financial Services Providers' attention that Convenient Cash Loans requires loan applicants to be registered with the FSB for short and/or long term loans, thereafter requesting a fee for such a registration.

The FSB can confirm that is not associated with Convenient Cash Loans and that the FSB does not register short and/or long terms loans.



The FSB again reminds consumers who wish to conduct financial services with an institution or person to check beforehand with the FSB on either the toll-free number (0800 110 443) or on the website: www.fsb.co.za as to whether or not such institution or person is authorised to render financial services.

By Thulani Dyasi

CHANGES TO THE SARB'S MANDATE

The Public Protector's recent call to amend the constitutional mandate of the South African Reserve Bank (SARB), stirred up significant controversy. Yet, a few months ago, the bank's mandate was in fact changed with little or no fanfare.

The change took place in June 2017, when Parliament passed the Financial Sector Regulation Bill, aimed at preserving and enhancing financial stability in South Africa by conferring certain additional powers on the bank.

This has been a long time coming. Since the 2008 global financial crisis, there has been widespread recognition that more responsibility must be given to the Bank to look after financial stability in South Africa.

Expanded role in financial stability

Financial stability is defined to mean that financial institutions must provide financial products and services in terms of the law, and must be capable of continuing to service clients without interruption despite changes in economic circumstances; there must also be general public confidence on that score.

The advent of the new Financial Sector Regulation Act (2017) effectively expands the SARB's responsibilities concerning financial stability. It is now not only responsible for protecting and enhancing financial stability, but also has to restore or maintain financial

stability should a 'systemic event' occur - including an event or circumstances arising from outside South Africa. Interestingly, the bank is also required to consider events that may result in a loss of confidence in our financial institutions and the economy.

The FSR Act (2017) empowers the bank to take all reasonable steps to prevent systemic events from occurring and, if such an event has already occurred or is imminent, to mitigate the adverse effects of the event on financial stability and to manage the event and its effects.

Other financial institutions brought into the net

The SARB already looks after the financial stability of South African registered banks. What is new and significant is that it must now look after all South African financial institutions – including those currently supervised by the FSB.

Hence, the current financial stability oversight structures will be consolidated into a single regulatory unit within the bank, called the Prudential Authority, which is established by the FSR Act.

The Act has not yet come into effect, and a date for its commencement will be determined by the Minister of Finance. Different sections of the Act will come into effect in stages. Final details on the dates of implementation will be contained in the Minister's commencement notice.



The Bank itself has welcomed the expansion of its mandate with enthusiasm, as the Governor acknowledged in its latest Annual Report.

Of course, the SARB has not been given unfettered power or discretion to look after South Africa's financial stability. Although its independence is constitutionally entrenched, it must always act in consultation with the Minister of Finance, and in line with its establishing provisions contained in the Constitution. Further, it must also give regard to the roles and functions of other organs of State that exercise powers affecting the South African economy.

When amendment is controversial

Clearly, amending the SARB's mandate is not controversial or radical in and of itself. What matters is that this is done by considering the role central banks generally play in regulating financial systems. That is to say, if a central bank's mandate is to be amended, it is the 'why' and the 'how' that is important. Bearing in mind the current debate around what role the bank should play in developing the South African economy, it will be interesting to observe how commentators receive the Act.

CONSUMER EDUCATION

By Stanley Phashe,
Community Relations Officer, FSB



THE CBDA INVESTOR EDUCATION PROJECT

In the wake of the global financial crisis, investor education is one of the most important life skills that is lacking in developing and developed countries. The financial crisis has shown that consumers, in general, do not have the financial understanding and awareness necessary to make sound financial decisions. It is clear that regulation by itself cannot protect consumers but consumers

need to be empowered with the necessary information to ensure that they make sound and informed decisions when they invest.

Financial education can enhance market conduct and prudential regulation. There is an ever increasing number of new investment products coming into the market. These products are complicated and pose a significant risk to ill or





uninformed consumers. Furthermore, we have also seen an increase in the number of fraudsters, investment scams and pyramid schemes. Examples of these would be the notorious MMM pyramid scheme or the recent spike in so-called forex traders who trick people into believing they are trading forex, only to find that they are trading on demo accounts. It is thus important that consumers are able to detect such schemes from the onset.

It is for these reasons that the FSB is piloting an investor education project with the Co-operative Banks Development Agency (CBDA), an agency of the NT, which was established to regulate, promote and develop co-operative banking, including deposit-taking and lending co-operatives.

The broader objective is to introduce basic investor education to cooperative members covering variety of topics such as, the role of financial advisors, types of investment products, benefit and risks associated with them and how can they protect their investments.

This investor education pilot project started with member's cooperatives in the Limpopo province. The aim is to capacitate members to make more informed decisions when investing their funds. So far, the FSB's Consumer Education Department (CED), in conjunction with the CBDA, has conducted 27 workshops reaching 530 members as part of the pilot project. It is envisaged that the project will be rolled out to other co-operatives countrywide.



EVENTS

By Thandolwethu Masango,
Internal Communications Coordinator, FSB

FSB elevating financial literacy in schools through the **MylifeMymoney** Speech Competition

The FSB recently hosted the inter-provincial finale of the MylifeMymoney Financial Literacy Speech Competition in Gauteng.

The winner of the 2017 competition was Lindokuhle Dlamini from the Little Flower Combined School in KwaZulu-Natal. He delivered a well-crafted speech on the topic: "So many people and so few financial plans" in which he highlighted the importance of proactively managing one's money. The first runner-up was Fisokuhle Lushaba of Pace College in Gauteng and the second-runner up was Sinegugu Goge of Mthusi High School also in KwaZulu-Natal.

The competition was a result of a pilot project that took place in Gauteng last year. This year, the competition was extended to two other provinces; Eastern Cape and KwaZulu-Natal. The objective is to promote financial literacy and create awareness of consumer rights among Grade 11 learners. Ultimately the vision is to positively impact the trajectory of the South African economy through the financial empowerment of young people.

The competition had four rounds; classroom, district, provincial and the overall inter-provincial round (the finals), which saw the top two learners from



Adv. Dube Tshidi, Executive Officer of the FSB, Mr Artwell Hlengwa, chair of the KZN Financial Literacy Association and the participants of the speech competition

each province competing for the ultimate prize. The Grade 11 finalists presented a five-minute speech on an approved financial topic which required the finalists to conduct in-depth research. This helped in integrating theory and practice as an important principle in the National Curriculum Statement. The topics focused on the importance of financial planning, debt management and entrepreneurship.



Winner: Lindokuhle Dlamini

The top three learners received an investment prize of R20 000 for the winner, R10 000 first runner-up and R5 000 for the second runner-up. In addition, the Financial Planning Institute (FPI) will provide free financial planning services for the learners and for their families.



Second runner-up: Sinegugu Goge

The panel of adjudicators for the final competition comprised of: Prem Govender, Chairperson of the Financial Services Consumer Education Foundation (FSCEF), Caroline da Silva, DEO for FAIS and Consumer Education at the FSB, Navin Rampard, Chairperson-Elect at the Financial Planning Institute (FPI) and Mpho Ramapala, Manager: Education and Communication at the NCR.



First runner up: Fisokuhle Lushaba



Lindokuhle Dlamini and family

By: *Reneilwe Mthelebofu,*
Communication Liaison, FSB

FSB Insurance Conduct of Business Seminar 2017:

Supervisory challenges in the funeral business industry

The FSB recently hosted its annual Insurance Seminar in Pretoria and Cape Town. The seminar was a two-day event with the second day focusing mainly on insurance conduct of business. Speaking at the seminar, Ms Jacky Huma, the Head of Micro Insurance at the FSB, highlighted the supervisory challenges experienced in the funeral business industry noting that from a supervisory perspective, some of the challenges the FSB experiences come from insurers, administrators and funeral parlours within the assistance and funeral business.

According to Ms Huma, Insurers struggle particularly with Section 53 of the Long-term Insurance Act that is the option of payment of policy benefits in money and Rule 16 of the said Act, which is the notification to policyholders about repudiation of claims. The lack of proper oversight over administrators or intermediaries also proves to be a challenging issue while funeral parlours are still being referred to as policyholder under assistance business group schemes, which is incorrect.

Administrators on the other hand pose challenges by not submitting premiums collected to insurers on time, presenting themselves as insurer or underwriters and mismanage data. "They perform functions outside their mandate like the repudiation of claims, determining premiums and level of cover, unauthorised sub-delegation of duties said." Ms Huma.

Funerals parlours often operate unregistered, providing informal funeral insurance and where there is no separation between insurance and funeral service business. Cover in these instances is also provided without a monetary option and inadequate disclosures on what is included with the funeral product.

The FSR Act which has been recently passed will see the establishment of two new entities one, the new the Financial Sector Conduct Authority (FSCA), which will replace the FSB, will focus on market conduct issues, while the Prudential Authority (PA) will look at the financial soundness of the financial institutions. The FSCA, in its capacity will also ensure that it sets market conduct standards in the Micro Insurance sector, on how to treat customers fairly.

Incidentally, the Insurance Bill which is currently making rounds in parliament is also set to address the aforementioned challenges as it will set clear guidelines for all insurance businesses including Micro Insurance. Additionally, an alternative regulatory framework for funeral parlours is recommended.





VISION

The FSB's vision is to promote and maintain a sound financial investment environment in South Africa.

MISSION

The FSB's mission is to promote the:

- fair treatment of consumers of financial services and products;
- financial soundness of financial institutions;
- systemic stability of financial services industries; and
- the integrity of financial markets and institutions.

VALUES

At the FSB, we will act professionally at all times in all that we say and do. To this end, we undertake to:

- demonstrate the highest level of technical competence;
- conduct all our business at the highest level of confidence;
- collaborate effectively as team members to deliver effective services;
- enhance stakeholder synergy through collaboration;
- apply the regulatory framework in a consistent and fair manner; and
- treat all people with respect and empathy.



When it comes to your hard earned money, insist on more than just a pretty smile. Insist on seeing a valid FSB licence before accepting investment advice.

Use only authorised Financial Services Providers and regulated entities

Call the Financial Services Board on 0800 110 443 or visit www.fsb.co.za for more information.

The FSB is the Regulator of the South African non-banking financial services industry.