FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
("FAIS ACT")

CIRCULAR ON LATE NOTIFICATIONS OF SECTION 14 (1) OF THE
FAIS ACT DEBARMENTS BY FINANCIAL SERVICES PROVIDERS

FAIS CIRCULAR 8/2011

DATE: 15 JULY 2011

1. PURPOSE OF THE CIRCULAR

The purpose of this circular is to notify the Financial Services Providers
(‘Provider’) about the penalties that the Registrar of Financial Services Providers
(‘the Registrar’) will be imposing on the Providers with regard to late notifications
of debarments of representatives by the latter.

2. BACKGROUND

In terms of section 14 (1) of the FAIS Act, a Provider must ensure that any
representative of the Provider who no longer complies with the requirements
referred to in section 13(2)(a) or has contravened or failed to comply with any
provision of this Act in a material manner, is prohibited by such 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): Provided that 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 uncompleted business of the representative is properly concluded.

Furthermore, in terms of section 14 (3) (a) of the FAIS Act, a Provider must within a period of 15 days after the removal of the names of a representative and key individual (of a juristic representative) from the register as contemplated in subsection (1), inform the Registrar in writing thereof and provide the Registrar with the reasons for the debarment in such format as the Registrar may require.

This means that where a representative or key individual (of a juristic representative) has been found to no longer meeting the requirements of personal character qualities of honesty and integrity as well as the competence and operational ability to fulfil the responsibilities imposed by the FAIS Act, the Provider must debar such a representative without exception.

The responsibility to debar representatives or key individuals (of a juristic representative) is first and foremost that of the authorised Providers and not the Registrar.

It is clear from the contents of section 14 (3) of the FAIS Act, that Providers should furnish information to the Registrar within a specified period of time, being 15 days in this regard.

The purpose of this legislation to prescribe the time period is to ensure that other Providers become aware of persons who are undesirable and unfit to render financial services and generally to achieve consumer protection.
3. ENFORCEMENT MEASURES TO BE TAKEN AGAINST DEFAULTING FSP

The Office of the Registrar has observed a steady increase in the number of notifications submitted late in respect of representatives and key individuals (of juristic representative) who have been debarred by Providers. In some instances such notices are received way after a debarred representative had been appointed by other Providers.

The Registrar has deemed it necessary to bring to the attention of all authorised Providers that failure to comply with the requirements of timeous notification is viewed in a serious light and enforcement measures will be put in place to deal with the contravention.

In order to achieve effective regulation of the FAIS Act, the Registrar will with effect from the date of issue of this Circular impose penalties on any Provider who fails to comply with the requirements of section 14(3)(a) of the FAIS Act. The amount of the penalty to be imposed by the Registrar will be R300 per day during which the failure continues. The waiver of the penalty or any part thereof will be in the absolute discretion of the Registrar and on good cause shown:

Debarment notifications should be sent to the following e mail address:

debarment@fsb.co.za

DEPUTY REGISTRAR OF FINANCIAL SERVICES PROVIDERS