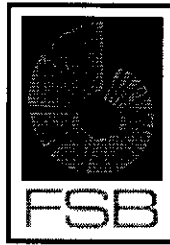


FINANCIAL SERVICES BOARD



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

GUIDELINE ON SECTION 14(A) DEBARMENT PROCESS

DATE: 03 March 2011

1. PURPOSE OF THE GUIDELINE

The purpose of this guidance note is to explain the process followed from the moment the Registrar of Financial Services Providers (“the Registrar”) receives information from a Financial Services Provider (“provider”) or any person regarding a person who is no longer fit and proper and the latter needs to be debarred by the Registrar in terms of section 14(A) of the Financial Advisory and Intermediary Services Act (“the Act”).

2. BACKGROUND

Prior to the amendment of the Act in 2008, only a provider could debar a representative who no longer complied with the fit and proper requirements in terms of section 14(1). Such debarment could only be

effected if a representative was still in the employ of the provider. Some representatives could not be debarred because the conduct was only discovered after the contract or mandate between the provider and the representative had been terminated or if the representative had left the employ of the provider. In terms of section 14(1) of the Act, a provider cannot debar a representative that is no longer in its employ. This process still applies.

A provider can only debar a representative appointed in terms of section 13 and cannot debar a key individual or any person rendering financial services unless a key individual is also appointed as a representative of the provider. This is the case because the appointment of key individuals are approved by the Registrar.

Section 54 of the Financial Services Laws General Amendment Act (no 22 of 2008) effected an amendment to the Act, by inserting section 14A therein. This section empowers the Registrar to debar any person, including a representative if satisfied that the person:

- does not meet, or no longer meets the requirements contemplated in section 8(1)(a); or
- has contravened or failed to comply with the provisions of the Act.

It is imperative therefore that a provider that lodges a complaint to be investigated in terms of section 14A furnishes the Registrar with full details of its findings with the necessary evidence. Of great importance is the correct contact details as the process cannot be finalised if no response is received from the person to be debarred and no proof of service takes place.

3. SECTION 14A DEBARMENT PROCESS

The process within followed by the Office of the Registrar is as follows:

- 3.1 An acknowledgement of receipt of a case or a request is sent within 14 days of receipt to the compliance officer or to the person that reported the matter, which will include a case number as well as the name and contact details of the person dealing with the case or request.
- 3.2 The information is analysed and further information may be required from the provider or the person who has reported same to the Registrar.
- 3.3 Once all the pertinent information required, is received, then a notice of intention to debar is issued to the person in question. Such notice should be issued within thirty (30) days after receipt of any further information. The notice must state the grounds for the intended debarment, the reasons therefor, the intended period of debarment as well as the terms attached to the debarment, including prohibition from furnishing any advice or rendering intermediary services to clients by such person.
- 3.4 The person to be debarred is issued with the notice in order to afford him or her a reasonable opportunity to respond thereto.
- 3.5 The respondent is granted a period of fourteen days (14 days) of the date of the notice, within which to respond.
- 3.6 A notice of intention to debar is dispatched by registered post to the address furnished by the provider or any person, or by fax or electronically.

- 3.7 Upon receipt of a response the Registrar considers such response and takes a final decision.
- 3.8 In cases where no response is received, the Registrar will only make a decision if satisfied that proof of delivery of service exists. If the letter is returned or there is no proof of delivery, then the name of the person concerned is flagged on the FSB's system.
- 3.9 The Registrar will then issue a notice of debarment. Such notice is issued after (14) days of the date of the notice of intention to debar the said person.
- 3.10 The notice must state the grounds for the debarment, the reasons thereof, the period of debarment as well as the terms attached to the debarment, including prohibition from furnishing any advice or rendering intermediary services to clients by such person. Furthermore, the person is allowed to appeal the decision of the Registrar in terms of section 39 of the FAIS Act and section 22 of the FSB Act.
- 3.11 The notice of debarment is dispatched by registered post to the address furnished by the provider or any person, or by fax or by e mail.
- 3.12 The name of the debarred person is then placed on the central register of debarred persons and flagged on the FSB's website for public viewing.
- 3.13 The period of debarment is dependent on the severity of the transgression and is usually between two and five years.

- 3.14 If such debarred person is linked to any other financial services provider, in terms of section 14A(3) then the Registrar will inform such provider to remove the name of the person from its register of representatives or as a key individual within 15 days of being notified.
- 3.15 If the person who has been debarred is an authorised financial services provider, regulatory action will ensue in terms of section 9 of the Act.
- 3.16 The Registrar is of the view that because, an individual is debarred in his or her personal capacity, there is no obligation for the Registrar to inform any other person other than the person concerned.
- 3.17 In most instances the respondents do not respond at all and majority of such notices are returned as being uncollected.
- 3.18 In the event where a person cannot be traced, the details of the person are entered into the central database of the FSB.

4. CONCLUSION

- 4.1 In order for the Registrar to expedite investigations in terms of section 14A of the Act, the Registrar requests that providers should submit the following:
- the most recent contact details of the person to be debarred in terms of section 14A of the Act.

- documentary evidence and proof of allegations when requesting a debarment in terms of the said section of the Act.

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a series of loops and a long horizontal stroke extending to the right.

GE ANDERSON

DEPUTY REGISTRAR: FINANCIAL SERVICES PROVIDERS