

THE ROAD AHEAD FOR FSPs

Conflict of Interest beefed up the current generic text in the FAIS General Code of Conduct with more specific requirements and limits for FSPs by augmenting what was first regarded as a 'disclosure principle' with some specific rules the entire insurance industry now has to take into account.

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When Conflict of Interest (COI) was introduced, the duties of Financial Services Providers (FSPs), and *anything* that keeps FSPs from adhering to or applying the primary regulatory requirements, effectively became a 'conflict of interest'.

While some sections had an immediate implementation date, and others had an effective 12 months after the Board Notice release for implementation date, the fact of the matter is that full implementation of COI had to take effect in April this year. This put industry role players such as FSPs under tremendous pressure, especially with regard to the execution and implementation of the following regulations that were maintained in the general provisions of the existing code:

- A provider must avoid (or mitigate where avoidance is not possible) any conflict of interest between the provider and a client
- A provider must make available to the client; at the earliest reasonable opportunity in writing; any conflicts of interest in respect of that client; and that
- The disclosure must specifically detail any ownership and/or financial and/or third party interests that the provider may become eligible for or rightly subscribe to.

FSPs also had to put a Conflict of Interest Management Policy in place which had to be signed off by management or the company board, and which had to detail the following: .

- What the FSP considers to be a conflict of interest;
- The internal procedures that will apply once a conflict has been identified;
- The controls that are in place to ensure that conflicts do not put the FSP or its representatives in an untenable position vis à vis the regulations.

In addition, the Conflict of Interest Management Policy, which needs to be reviewed by the FSP every year, had to be published in an appropriate media which was easily accessible for public inspection at reasonable times e.g. placing the policy on a website for download.

It was also stipulated that FSPs need to have a copy of the policy available at reception for client or staff viewing at all times. In addition it was required that they should refer to their COI Policy in all initial disclosure documents in which they need to make clients aware of their rights, specifically with regard to the fact that they may request to see and/or review the FSP's COI policy at any given time.

Furthermore, the Registrar placed limits on the way product providers may incentivise the broker channel. Current changes in regulation are seeking to discourage representatives from giving undue preference to certain product suppliers or products based upon financial interests or other benefits received as a result of securing business for a provider. Hence, the regulations codify important definitions of financial interest and immaterial financial

interest, which all Key Individuals had to study carefully so as to ensure that Representative/FSP incentivisation programmes do not inadvertently breach the regulations.

According to COI, representatives may only receive or offer financial interests that fall under commission as authorised by the long term/short term/medical schemes Acts or fees authorised under the same Acts; provided that such fees are reasonably commensurate to the service being rendered. Such fees must be specifically agreed to in writing by the client and may be stopped at any time at the discretion of the client.

Therefore, all policies and procedures relating to the offering or receiving of financial interests had to be duly reviewed. Senior management as well as marketing and distribution departments were also affected as they had to work together as a team to ensure that any undesirable practices were stopped (in good time) to avoid sanction being imposed by the Registrar.

To put it bluntly, the Registrar learned that when rules were published, clever people were paid to find ways of circumventing the rules to avoid any significant impact on the business. With this in mind, the Registrar made it an offence for any provider to seek to circumvent these new regulations either directly or via an associate arrangement; that the existence of non-cash incentives and other arrangements have reached the end of the line; and that if they were to survive into the future, the current practices would need to be amended to ensure that other criteria over and above production, are taken into account.

With that said, the challenge of course for the industry going forward - which has long paid reward for sales and little else - is to come up with such programmes. Clearly persistency levels will now need to be measured and taken into account when dishing out rewards, and even then such rewards may not exceed R1 000 in any calendar year.

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