

## MODULE 8: STUDY NOTES

---

### Custody of Client Funds and Premiums

---

The Key Individual must ensure that there are adequate systems in place to adhere to the prescribed procedures in terms of having:

#### Separate bank account

- The FSP must have a separate bank account at a bank, designated to receive funds and premiums from clients which is separate from any other funds.
- The FSP is responsible for bank charges except the charges which relate to deposit or withdrawal, which the client must pay.
- The FSP must pay all interest accumulating in the account to the client or owner of the funds.

#### Receipt of funds

- When the FSP receives funds from a client, without a bank being involved, it must issue a written confirmation when the money is received.
- The money must be paid into the bank account within one day of receipt.

#### Receipt of documents

- When title documents are lodged with a FSP on behalf of a client, the FSP must issue a written confirmation when the documents are received, indicating description of the documents so that they can be identified.

#### Safeguarding

- If the FSP or a designated third party receives funds or financial documents, reasonable steps must be taken to ensure that they are adequately safeguarded and that:
  - the funds or financial products are dealt with according to the client's mandate.
  - the funds or financial products are easily distinguished from the FSP's funds or assets.
  - the client has easy access to an amount paid into the separate account, less all relevant deductions but subject to other applicable laws. (For instance, if the funds are proceeds of crime, money laundering legislation may prevent the client from accessing it.)

### Disclosure Requirements

---

- Is the most important aspect of a financial service that an FSP renders to its clients.
- Disclosure requirements that are contained in the general Code of Conduct prescribe what, and how information about various aspects of the financial service, must be disclosed to clients.
- Key Individuals must ensure that the systems and procedures of the FSP are adequate and in place to meet disclosure requirements.
- Representatives are responsible for ensuring that they meet certain disclosure requirements with regard to the information about the FSP.

**INFORMATION ABOUT PRODUCT SUPPLIERS**

## General Code

Product information is required so that clients understand the nature of the product, as well as their obligations in terms of the product. The FSP must give clients information on product suppliers as soon as possible, where appropriate. Oral information must be confirmed in writing within 30 days. Disclosure must include the following:

- **name, physical location, postal and telephone contact** details of the product supplier;
- the **contractual relationship** between FSP and the product supplier (if any), and whether the FSP has contractual relationships with other product suppliers;
- names and **contact details** of the relevant **compliance** and **complaints departments** of the product supplier;
- if applicable, that the FSP holds more than **10% shares** or has the equivalent financial interest in the product supplier and that the FSP received more than 30% of total remuneration, including commission in the last 12 months, from the product supplier;
- A product supplier who is also a FSP and who has an **intermediary** or similar contract with another provider must ensure that when asked by the other provider, it provides all the required information about itself (product supplier) and the product, so that the provider can comply with the disclosure requirements.

**INFORMATION ABOUT FSPs**

## General Code

The FSP must give clients certain information as soon as possible. Oral information must be confirmed in writing within 30 days. Disclosure must include the following:

- Full **business and trade names, registration number** (if any), **postal and physical** addresses, **telephone** and, where applicable, **cellular phone number**, and **internet** and e-mail addresses, in respect of the relevant business carried on, as well as the **names and contact details of appropriate contact persons or offices**;
- detail about the **legal relationships** between **FSP, product supplier and Representative** (if any); so that it is clear to the client **who accepts responsibility** for the actions of the FSP or Representative or the **extent** to which the **client** must **accept** such **responsibility**;
- **names and contact** details of the relevant **compliance departments** or, in the case of a **Representative**, such detail concerning the **provider** to which the representative is contracted;
- details of **the financial services** which the provider is **authorised** to provide and of **any conditions or restrictions** applicable to the license and whether the **FSP has guarantees or professional indemnity or fidelity insurance** cover or not;
- whether a **Representative** of a provider is rendering **services under supervision** as defined in the Determination of Fit and Proper Requirements;
- the existence of a **specific exemption** applicable to the FSP with regard to any matter covered by the Act.

**INFORMATION ABOUT COMMISSION****General Code**

Clients must be advised of the commission payable in respect of a financial product or service. Disclosure must include the following:

- the **nature, extent and frequency** of any incentive, remuneration, consideration, commission, fee or brokerages ("**valuable consideration**"), which will or may become payable to the provider, **directly or indirectly**, by any **product supplier** or **any person** other than the client,
- Fees or Commissions for which the **provider may become eligible**, as a result of rendering of the financial service,
- **the identity of the product supplier** or **other person** providing or offering the valuable consideration;
- if the **maximum amount or rate of the valuable consideration** is **prescribed by law**, the provider may **disclose the actual amount in monetary terms** or the **basis** for the **calculation** must be described if the amount is not determinable;
- where a **financial product** is being **replaced** (the **terminated product**) by another financial product (the **replacement product**), **full details** must be **disclosed** of any incentive, remuneration, consideration, **commission**, fee or brokerages **received, directly or indirectly**, by the **provider on the terminated product** and the same by the provider on the **replacement product** where the provider rendered financial services on **both** the terminated and replacement product.

**INFORMATION ABOUT COMMISSION- Forex investment business, administrative and discretionary FSPs**

- The forex intermediary must disclose to client non-cash incentives offered or other indirect consideration payable to the forex intermediary because of the intermediating on the client's investments.
- The **mandate** between a **client and a forex investment intermediary** must state whether **the forex investment intermediary receives commission**, incentives, fee reductions or rebates **from a foreign forex services provider** or **any other applicable institution** for **placing a client's funds** with them;
- The **mandate between** a client and a **discretionary FSP** must state whether the discretionary FSP **receives commission**, incentives, fee reductions or rebates from an **administrative FSP** or **product supplier** for **placing a client's funds with them**.

**INFORMATION ABOUT PRODUCTS****General Code**

**Clients must get adequate information on financial products. Disclosure must include the following:**

- the provider must at the earliest reasonable opportunity, provide, where applicable, **information of the name, class or type** of the financial product concerned;
- **nature and extent of the benefits** as well as the way they are derived or calculated and the manner in which they will accrue or be paid;

Where the financial product is marketed or positioned as an investment, or having an investment component:

- i. **concise details** of the manner in which the **value of an investment is determined**, including concise details of any underlying assets or other financial instruments;
- ii. **separate disclosure of fees and charges** to be levied against the product, including amount and frequency, the identity of the recipient, the services or other purpose for which each fee or charge is levied;
- iii. where any charges or fees are to be levied in respect of investment performance, details of the **frequency, performance measurement period** and **performance benchmarks** or other criteria applicable to such charges or fees;
- iv. where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner that the client can determine the **net investment amount** ultimately invested for the benefit of the client;
- v. on request, information about the **past investment performance** of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that **past performances are not necessarily indicative of future performances**;

**INFORMATION ABOUT PRODUCTS****General Code**

**Clients must get adequate information on financial products. Disclosure must include the following:**

- any **rebate arrangements** and thereafter on a regular basis (at least annually) where initially disclosed in percentage, an example using actual monetary amounts must be given
- any **platform fee arrangements**
- where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner that the client can determine the **net investment amount** ultimately invested for the benefit of the client;
- details of any **special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances** in which benefits will not be provided and details of guaranteed minimum benefits or other guarantees;
- any restrictions on or penalties for early termination of or withdrawal from the product if the product is readily realisable or the funds accessible
- **material tax considerations** and whether **cooling off rights** are offered and, if so, procedures for the exercise of such rights;
- any **material investment or other risks** associated with the product including any risk of loss of any capital amount(s) invested due to market fluctuations;

**INFORMATION ABOUT PRODUCTS****General Code**

**Clients must get adequate information on financial products. Disclosure must include the following:**

- amounts of **insurance premium** increases of an insurance product, for the **first five years thereafter on a five year** basis not more than 20 years;
- **written statement** to the client, at least once a year, which identify the products and state the ongoing monetary obligations of the client, main benefits of the product, value of an investment and how much is accessible to the client and ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of the product/s

**INFORMATION ABOUT PRODUCTS****General Code**

**Clients must get adequate information on financial products. Disclosure must include the following:**

- where a **financial product** is being **replaced** (the **terminated product**) by another financial product (**the replacement product**) held by the client, disclosure must be made of the actual and potential **financial implications**, costs and consequences of the replacement – including:
  - **comparison of fees and charges** between the two products;
  - **special terms and conditions**, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, applicable to the replacement product compared to the terminated product;
  - to what extent the **replacement product** is readily **realisable** or the relevant funds accessible, compared to the terminated product;
  - **loss of rights and minimum guaranteed benefits** which will be lost due to the replacement.

**Managing Transparency**

---

- Disclosure requirements ensure that there is transparency between clients and FSPs, as well as between product suppliers and Representatives.
- Transparency starts before a financial service has been rendered.
- All information, e.g. brochures, the information pieces etc, that a client receives about products, financial services, FSP and product suppliers must all be transparent.

**Managing Conflict of Interest**

---

- A situation where a provider or Representative has an actual or potential interest that may influence the objective exercising of obligations to the client, or that may prevent them rendering a financial service in an unbiased and fair manner. An example of this is where product sales are linked to incentives, whether monetary or lavish rewards.
- When Representatives are influenced by the incentives, the result is that they do not take care of the client's needs.

## **Conflict of interest requirements**

---

When a provider renders a financial service, the provider must disclose to the client:

- The existence of any personal interest in the relevant service.
- Any circumstance, which gives rise to a conflict of interest in relation to the service.

## **The Code of Conduct for FSPs and their Representatives involved in Forex investment business requires the following in respect of Conflict Interest Management:**

---

Avoid any conflict between own interests and the interests of a client, and where a conflict of interest does arise, the Forex intermediary must:

- Adequately disclose details of such conflict to the client while maintaining the confidentiality of other clients, or decline to act for the client.

## **Ethics**

---

- Deals with morality and the difference between right and wrong behaviour.
- The code of ethics is there for staff to consult and to consider with regard to what is expected of them within the company's structure.

## **Ethical conduct in the financial services sector**

---

- Disclosure and transparency by FSPs when they apply for a licence.
- Disclosure, Honesty and Integrity of Representatives, Key Individuals and FSPs.
- Internal measures in a FSP such as a conflict of interest policy and Code of Ethics.
- Interaction between product suppliers and FSPs should also be transparent if based on mutual understanding.
- Ethical conduct also includes proper and appropriate record keeping, which is required in terms of the FAIS Act.

## **Complaints Handling**

---

- A Key Individual must ensure that there are appropriate systems and procedures in place to deal with complaints.
- The general code prescribes the requirements for complaints handling. These are very important because when the FSB does an investigation into the activities of a FSP, that investigation can be as a result of complaints.
- If a FSP does not have a complaints policy, which meets the requirements of the general code, the investigation could have a negative outcome for the FSP being investigated.

**A FSP must:**

---

- Request clients who want to complain, to do so in writing and attach relevant documentation.
- Maintain records of complaints for five years.
- Handle complaints from clients in a timely and fair manner.
- Take steps to investigate and respond promptly to complaints.
- Where such a complaint is not resolved to the clients satisfaction, advise the client of any further steps, which may be available to the client in terms of the Act or any other law.

**The internal complaint resolution system and procedures of a FSP must include the following:**

---

- Written version of the complaints resolution system and procedures plus all updates to it.
- Access to the procedures by clients at branches, through electronic media and announcements.
- Include the following in the written complaints policy:
  - duties of the FSP and rights of clients.
  - clear summary of the provisions of the Act, which will apply whenever the client wishes to pursue further proceedings before the Ombud.
  - name, address and contact details of the Ombud.

**The FSP must also:**

---

- Acknowledge complaints received in writing, with communication details of contact staff and record complaints internally.
- After receipt and recording, the complaint must be forwarded to the relevant staff and provision must be made that:
  - the complaint receives proper consideration.
  - appropriate management controls are available to exercise effective control and supervision of the consideration process.
  - the client is informed of the results of the consideration within the required time:
    - if the outcome is not favourable to the client- full written reasons provided and advised to pursue with Ombud within six months.
  - where a complaint is resolved in favour of a client, the provider must ensure that the full and appropriate level of redress is offered to the client without any delay.

**Risk Management**

---

Contingency planning is part of the risk management obligation. It ensures:

- That clients will still be serviced even if the FSP is terminated for a particular reason.

The FSB feels strongly about the fact that FSPs must have adequate contingency methods in place especially when the FSP is a sole proprietor.

## Insurance

---

- One of the risks for consumers in the provision for financial services in relation to the FAIS define financial products, is the recourse they have when the FSP fails in one way or another.
- The general code states that the Registrar may require providers to have suitable guarantees, professional indemnity or fidelity insurance cover in place.

### July 2008 edition of the FSB FAIS newsletter.

The insert reads as follows:

*" One of the areas of concern is the business approach and business continuity plans of "small" FSPs. 29% of FSPs visited operate and are registered as sole proprietors. During the visits to these FSPs, it became evident that the majority of sole proprietors have not made plans for their own retirement/future of the business. This poses a real threat to the relevant FSP and the FSB. The above is also true for other "small" FSPs such as close corporations, but they will be able to sell the business, or appoint other people on their behalf should they wish to.*

*It is important to take note of the following in case of the passing away or any other limiting factor of a key individual:*

#### **a. Sole Proprietors**

*The sole proprietorship is attached to the key individual. If the key individual passes away or any situation occurs that will lead to the key individual not being able to perform his/her duties in terms of the FAIS Act, the license will be lapsed and the business will cease to exist. The FSB needs to be informed of the above situation or of the passing away of the key individual. The license can not be transferred to another person. The license can therefore not be inherited by anyone. The sole proprietor can make an arrangement with another FSP to take over his client book in the case of the above circumstances occurring and clients must be notified of this transfer.*

#### **b. Close Corporations and Companies**

*A close corporation is a legal entity. The business is therefore not attached to the key individual. In a close corporation with more than one key individual the passing away or occurrence of any situation that will lead to the key individual not being able to perform his/her duties in terms of the FAIS Act will not have any affect on the status of the FSP. Where the close corporation only has one key individual and one of the above circumstances occurs the business will continue to exist. For this business to continue as an authorised FSP, a new key individual will have to be appointed and authorised as such by the FSB. It is important to take note that the FSP is not allowed to perform any regulated function until such time as the new key individual is approved by the FSB. The same principle applies to companies."*



WHO	BY WHEN	WHAT
<p><b>Category I or IV provider</b></p> <p>Who <b>does not</b> receive or hold client's financial products or funds on behalf of clients on 21 September 2009 MUST</p>	<p><b>BY</b></p> <p><b>21 SEPTEMBER 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R1 million</b> OR</li> <li>• suitable <b>professional indemnity</b> cover of a <b>minimum of R1 million.</b></li> </ul>
<p><b>Category I or IV provider</b></p> <p>Who <b>does</b> receive or hold client's financial products or funds on behalf of clients on 21 September 2009 MUST</p>	<p><b>BY</b></p> <p><b>21 SEPTEMBER 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• have suitable <b>guarantees</b> of a <b>minimum R1 million</b> OR</li> <li>• suitable <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum amount of R1 million. .</b></li> </ul>
WHO	BY WHEN	WHAT
<p><b>Category II provider</b></p> <p>Who <b>does not</b> receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 MUST</p>	<p><b>BY</b></p> <p><b>21 MARCH 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• have suitable <b>guarantees</b> of a <b>minimum R1 million</b> OR</li> <li>• suitable <b>professional indemnity</b> cover of a <b>minimum of R1 million.</b></li> </ul>
<p><b>Category II provider</b></p> <p>Who <b>does</b> receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 MUST</p>	<p><b>BY</b></p> <p><b>21 MARCH 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R5 million</b> OR</li> <li>• suitable <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum amount of R5 million RESPECTIVELY.</b></li> </ul>
<p><b>Category IIA provider</b></p> <p>Who <b>does not</b> receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 MUST</p>	<p><b>By 21 MARCH 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum amount of R5 million</b> OR</li> <li>• suitable <b>professional indemnity</b> cover of a <b>minimum of R5 million.</b></li> </ul>
<p><b>Category IIA provider</b></p> <p>Who <b>does</b> receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 MUST</p>	<p><b>BY</b></p> <p><b>21 MARCH 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R5 million</b> OR</li> <li>• suitable <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum amount of R5 million RESPECTIVELY.</b></li> </ul>
<p><b>Category III provider</b></p> <p>Who <b>does</b> receives or holds clients' financial products or funds of or on behalf of clients on 21 September 2009 MUST</p>	<p><b>BY</b></p> <p><b>21 MARCH 2010</b></p>	<p>have in force, in respect of the clients</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum amount of R5 million</b> OR</li> <li>• <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum of R5 million, respectively.</b></li> </ul>

## Advertising

### FSPs or Representatives must adhere to:

---

#### Advertising Principles:

- Advertisements may not contain any statement, promise or forecast, which is fraudulent, untrue or misleading.
- Advertisements, which include performance data, must include references to the source and date.
- Advertisements, which include illustrations, forecasts or hypothetical data, must:
  - show support through clearly stated basic assumptions with a reasonable prospect of being met under current circumstances.
  - make it clear that they are not guaranteed and are provided for illustrative purposes only.
  - show dependence on performance of underlying assets or variable market forces.
- Advertisements, which include a warning statement about risks involved in buying or selling a financial product, must clearly be identified as a warning statement.
- Advertisements, which include information about past performance, must also have a warning that past performances are not necessarily indicative of future performances.
- If the investment value of a financial product mentioned in the advertisement is not guaranteed, there must be a warning that no guarantees are provided.

#### Principles applying to situations where a provider advertises a financial service by telephone

---

- An electronic, voice logged record of all communications must be maintained. If no financial service is rendered as a result of the advertisement, the record need not be kept for longer than forty-five days.
- A copy of all the electronic records must be provided on request by the client or the Registrar within seven days of request.
- If the basic details of the product supplier are mentioned in the telephone conversation, then detailed disclosures are not required.
- Where a financial service is advertised by means of a public radio service, the advertisement must include the business name of the provider as well as the fact that the provider is an authorised or licensed FSP.

## Direct Marketing

---

### When a direct marketer provides a financial service to or on behalf of a client, he/she must provide the following info:

- The business or trade name of the direct marketer.
- Confirmation if the direct marketer is an authorised FSP including the license categories and applicable restrictions.
- Telephone contact details of direct marketer.
- Telephone contact details of the compliance department of the direct marketer.

- Whether the direct marketer holds professional and indemnity insurance.

**When a direct marketer provides advice to clients in respect of a product, he/she must:**

- Make enquiries to establish whether the financial product or products concerned will be appropriate.
- Provide the following information to the client where appropriate:
  - business or trade name of the product supplier.
  - legal status and relationship with product supplier.
- Provide the following information on the product:
  - name, class or type of financial product concerned.
  - nature and extent of benefits to be provided.
  - manner in, which the value of underlying assets in the investment is determined.
  - clients monetary obligations and the manner of payment.
  - existence of cooling rights and the procedures to exercise the rights.
  - only material investment or other risks associated with the product.
- Take reasonable steps to find out if the financial product under discussion is a wholly or partial replacement for an existing product and advise client of the cost and financial implications before finalisation.

**Before concluding the transaction, the direct marketer must provide the client with the following information:**

- Telephone contact details of compliance department.
- To what extent the product is readily realisable.
- Details of the manner in, which benefits will be paid.
- Any restrictions on or penalties for early termination from the product.
- Charges and fees to be levied against the product.
- Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client.
- Past investment performance of the product.
- Consequences of non-compliance with monetary obligations.
- Concise details of any special terms and conditions in, which benefits will not be provided.
- Any guaranteed minimum benefits or other guarantees where appropriate.
- Recordings of telephone discussions must be made available to the client on request.
- Direct marketer must give the client a record of advice.

## Termination

---

- Direct marketer must ensure that the information regarding the product supplier, the FSP and the record of advice, must be provided to the client in writing within thirty days after the conclusion of the transaction.
- This relates to how clients are able to terminate contractual agreements and how FSPs and Representatives are able to terminate their business operations and services.

### First area of termination

In terms of any contractual obligations, a provider must:

- Allow a request from a client for voluntary termination of an agreement.
- The provider must take reasonable steps to ensure that the client understands the implications of the termination request.

### Second area of termination

If an FSP wishes to terminate its operations, it is responsible for informing its clients immediately.

- The provider must take the appropriate steps in consultation with clients and product suppliers, to inform them of the change of position and ensure that all outstanding business is concluded/ transferred to another FSP.

### Third area of termination

When a representative terminates their employment or mandate with a FSP, thus ending their representation, the provider must then take appropriate steps to inform clients of the changes and ensure that all outstanding business is concluded.