

10 September 2010

LEGAL UPDATE BAW 12/2010: CONFLICT OF INTEREST

The General Code of Conduct for the Financial Advisory and Intermediary Services Act (FAIS) "the code", broadly covers conflicts of interest between Financial Product Providers (FSPs) and intermediaries. The code requires FSPs to disclose the existence of actual or potential conflicts of interest to clients. Amendments to the code were promulgated on 19 April 2010.

The amendments to the code intend to:

- provide clarity around conflicts of interest;
- bring about a consistent manner of disclosing conflicts of interest;
- ensure a common understanding of what has to be disclosed;
- ensure consistent and transparent disclosure in the industry;
- restore the credibility and integrity of the industry;
- prevent the risks brought about by conflicts of interest between intermediaries and the financial services companies that they represent; and
- ensure that intermediaries sell the most appropriate products to customers, without interference from providers or preference to certain financial services companies' products.

The code will be implemented in three phases:

Phase 1

19 July 2010

Avoid and where not possible mitigate and disclose any conflict of interest.

Phase 2

19 October 2010

Receive or pay only:

- regulated commission;
- unregulated commission, within the legal framework, as agreed by the client that the client can stop at their discretion;
- fees to third parties, not in breach of regulated commission; and
- immaterial financial interest.

Phase 3

19 April 2011

Every provider is required to develop, adopt, maintain and implement a conflict of interest management policy that provides for the management of conflicts of interest, mechanisms for identifying conflicts of interest and measures for the avoidance of conflicts of interest.

According to the code, conflict of interest is defined as any situation in which a provider or representative has an active or potential interest that may, in rendering financial service to a customer:

- a) Influence the objective performance of an intermediary's obligations to a customer; and
- b) Prevent a provider or intermediary from rendering an unbiased and fair financial service, or from acting in the best interests of a customer.

These interests include:

i) a financial interest, which includes:

- cash, or any cash equivalent, voucher, gift, service, advantage, benefit discount or local or foreign travel, hospitality, accommodation, sponsorship or other incentives or valuable consideration;
- giving preference to quantity of business secured to the exclusion of quality of service to clients; and
- giving preference to a specific product supplier or a specific product of a product supplier, where its representative may recommend more than one product of the product supplier;

and excludes:

- commission as permitted by legislation;
- fees as permitted by legislation;
- fees agreed to by a client in writing;
- fees for rendering service to a third party which are commensurate with the service rendered;
- training: on products and legal matters relating to those products, general financial information, industry information and specialised technology systems, provided that such training is not only available to a selected group of providers and representatives – travel and accommodation associated with such training is excluded; and
- an immaterial financial interest: any financial interest which does not exceed R1 000 in any calendar year from the same third party in that calendar year;

ii) an ownership interest - any equity or proprietary interest including dividends, profit share or similar benefits derived from the equity or proprietary interest; and

iii) any relationship with a third party.

The amendments to the code require that the provider / representative avoids or mitigates any conflict of interest between the provider / representative and the client. Where there is a conflict of interest, the provider / representative is required to disclose the conflict of interest in sufficient detail to the client and indicate the steps taken to avoid or mitigate the conflict of interest. The FSPs are also required to make their clients aware of the conflict of interest management policy and where they can find it.

The code aims to eradicate excessive incentives by removing all travel and accommodation benefits and limiting any gifts or entertaining to R1 000 per adviser per year.

Momentum may provide broker consultancy services, presentations to brokers on our products, changes in law, industry trends, technical training on the use of our systems, general market information and newsletters.

Momentum may not provide training only to a specific group of brokers or clients, pay travel and expenses relating to such training, assistance to brokers in the running of their business (compliance services, memory sticks, etc).

Any gifts to brokers/clients will be channelled through Momentum Distribution Services (MDS) and will form part of the immaterial financial interest cap of R1 000 per adviser per year.

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