

FINANCIAL SERVICES BOARD



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

FAIS INFORMATION CIRCULAR 4/2012

DATE: 12 April 2012

INFORMATION CIRCULAR ON BULK CLIENT TRANSFERS AND THE RE-SIGNING OF CLIENT MANDATES

1. BACKGROUND:

The Office of the Registrar of Financial Services Providers has received numerous queries regarding the re-signing of mandates by clients in instances where a bulk transfer of clients from one financial services provider ("FSP") to another due to the sale of a FSP or where a sole proprietor changes its structure and becomes a close corporation or company, takes place.

2. INFORMATION REGARDING THE APPLICABILITY OF SIGNING MANDATES:

Section 5(1) of the Code of Conduct for Administrative and Discretionary FSPs requires a FSP to obtain a signed mandate from a client before rendering any intermediary service to that client.

- Should a FSP sell its business or transfer its clients to another FSP, this involves the termination of the existing agreement between the two parties, new mandates will have to be signed between the client and the receiving FSP as the contractual obligations are between different parties.

Under these circumstances the Registrar will not merely accept the notification of the transfer to the affected clients without new mandates being signed.

- The Registrar does not consider it a "conversion" where a FSP that is a sole proprietor, changes its structure to a close corporation or company. When this happens the close corporation or company has to apply for a new FAIS license and as such a separate legal entity is formed which

is distinctly different from the sole proprietor licensee. It must be noted that the analysis of the business activities of a sole proprietor in terms of the FAIS legal framework, is substantially different from the analysis and supervision of a FAIS licensee of which the structure is a close corporation or company.

Your attention is also drawn to the fact that the contractual relationship that existed between the client and a natural person (sole proprietor) will now be between such client and a juristic entity and as such, a new mandate will have to be signed.

3. CESSION CLAUSES:

The only circumstances in which a client will not be required to re-sign mandates is if the original mandate contained a cession clause authorising the transfer of contractual obligations to another FSP.

4. REGULATORY ACTION:

FSPs who do not comply with the above requirements will be seen as being in contravention of the FAIS Act and regulatory action may ensue.

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DEPUTY REGISTRAR: FINANCIAL SERVICES PROVIDERS