

Money Marketing July 31 2004 (volume 5, Issue 7)

**FAIS, A JUNGLE OUT THERE?
By Leonardo d'Onofrio**

Complying with government regulations is an ongoing challenge for Financial Services Providers (FSP). The stakes are high and FSPs face a maze of compliance requirements and available options on how to meet them.

The enactment of The Financial Advisory and Intermediary Services Act (FAIS) in November 2002 has placed onerous obligations on FSPs regarding the manner in which they engage with clients.

The result of a breach to FAIS may include high penalties, orders for compensation and even imprisonment. Equally important is the reputational risk and consequent lack of confidence in the FSP should there be a highly publicised breach.

It is imperative that any organisation affected by FAIS embed a comprehensive compliance system within the organisation to protect against the possibility of a high risk breach.

FSPs with more than one Key Individual or representative should consider outsourcing their compliance function to compliance professionals for reasons such as lower costs, independence and objectivity and above all competence.

FSPs need a compliance partner that will ensure peace of mind for Key Individuals liable for the actions of their representatives. The compliance officer must ensure that the FSP is protected against any undesirable market conduct by representatives.

This leads to some difficult choices, as there has been a proliferation of compliance practices in the wake of FAIS. Furthermore, there is little room for error, the correct selection of an outsource compliance practice is crucial to the success and sustainability of the FSP.

So, what to look for?

Below is a “quick due diligence” that all FSPs should employ before engaging with a compliance practice:

Quick Check

- Is the compliance officer in a position to act independently and objectively with no conflict of interest when dealing with representatives?
- Do the officers in the compliance practice have compliance related qualifications
- All FSPs are unique and any proposed compliance system should be customised to existing processes
- The compliance practice should utilise a risk based methodology - this is considered an international best practice
- The compliance practice should be a member of The Compliance Institute of South Africa (CISA). CISA has established, and constantly enhances and promotes, high standards for compliance officers
- Is the outsourced compliance officer already FSB approved, if not, the FSP license application will be delayed, you can verify this through the FSB at www.fsb.co.za
- Experience your compliance officer should have:
 - track-record in financial compliance
 - legal experience
 - liaising with financial sector regulators
 - monitoring and auditing of controls

The relationship between FSP and compliance officer is a strategic one and should be a long term professional relationship with both parties committed to the mutual protection of the consumer’s and FSP’s rights.

It is therefore imperative that your compliance officer has the professional knowledge combined with the practical experience to provide this assurance.

Leonardo d’Onofrio is head of Oracle Compliance - a consultancy dedicated to regulatory risk management. Tel: 011 880-3593