

4.6 Representatives' compliance with the Code of Conduct

Section 13(2)(b) of the Act and Section 5(f) of the Code of Conduct

4.6.1 Did you (compliance officer) perform monitoring procedures on a sample basis to ensure that representatives adhered to the procedures stipulated in the Codes of Conduct applicable to the FSP?

Section 13(2)(b) of the Act provides that an authorised financial services provider must take such steps as may be reasonable in the circumstances to ensure that representatives comply with any applicable code of conduct as well as with other applicable laws on conduct of business.

In addition, Section 5(f) of the Code of Conduct provides that where a provider (other than a direct marketer) renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of whether a representative of a provider is rendering services under supervision as defined in the Determination of Fit and Proper Requirements and, where such information is provided orally, must confirm such information within 30 days in writing. The question above (4.5.3.4) determines whether or not clients are so advised. This question requires details of the procedures that are used to ensure compliance with this requirement.

The provider must have actual procedures in place to ensure that these requirements are met. It is suggested that each representative be supplied with a copy of the Code of Conduct and that he be required to confirm in writing that he has read the document, that he understands the requirements and that he undertakes to abide by the Code of Conduct.

All subscribers to the services offered by Compliance Monitoring Systems CC (www.cmsys.co.za) who have appointed representatives are provided with monitoring procedures in respect of each representative to ensure that each representative is aware of and complies with the requirements of the General Code of Conduct.

The compliance officer should actually interview a sample of all the representatives of the provider to determine the extent to which the representatives have been exposed to the Code of Conduct and the extent to which the provisions of the Code have been adopted as standard operating procedure.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as requiring either a YES or NO response.

4.7 Debarment of representatives

Section 14 of the Act

4.7.1 **Did the FSP debar any representatives in terms of section 14(1) of the Act during the reporting period?**

Section 14(1) provides that an authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in section 13(2)(a), is prohibited by such provider from rendering any new financial service.

The requirements of this Section relate to the representative's personal character qualities of honesty and integrity, and the competence and operational ability of the representative to fulfil the responsibilities imposed by this Act. These considerations include all aspects of the so-called 'fit and proper' requirements.

In terms of Section 14(1) of the Act, the provider is required, in these circumstances, to withdraw any authority that has been given to the representative to act on behalf of the provider. The representative's name, and the names of the key individuals of the representative, must be removed from the register referred to in section 13(3). The provider must also take immediately steps to ensure that the debarment does not prejudice the interests of clients of the representative, and that any business of the representative is properly concluded.

Section 36 of the Act provides that any person who contravenes or fails to comply with a provision of section 14(1) is guilty of an offence and is on conviction liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as requiring either a YES or NO response.

5 Insurance Cover

Sections 5(e) and 13 of the General Code of Conduct

5.1 **Does the FSP have professional indemnity cover? If Yes, provide the extent (numeric amount) of the cover in column 5**

Section 13 provides that a provider, excluding a representative, must, if and to the extent required by the registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

Currently there are no requirements that have been imposed by the registrar.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as having either a YES or NO answer. If the answer is YES then the amount of the cover must be reflected in Column 5. If the provider is filing this Report electronically, please provide the amount without cents and no spaces, e.g. 1000000.

5.2 *Does the FSP have fidelity insurance cover?
If Yes, provide the extent (numeric amount) of the cover in column 5*

Section 13 provides that a provider, excluding a representative, must, if, and to the extent, required by the registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

Currently there are no requirements that have been imposed by the registrar.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as having either a YES or NO answer. If the answer is YES then the amount of the cover must be reflected in Column 5. If the provider is filing this Report electronically, please provide the amount without cents and no spaces, e.g. 1000000.

5.3 *Does the FSP have guarantees in place as contemplated in section 13 of the General Code?
If Yes provide the extent (numeric amount) of the guarantees in column 5*

Section 13 of the Code of Conduct provides that a provider must, if and to the extent required by the registrar, maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

Currently there are no requirements that have been imposed by the registrar.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as having either a YES or NO answer. If the answer is YES then the amount of the cover must be reflected in Column 5. If the provider is filing this Report electronically, please provide the amount without cents and no spaces, e.g. 1000000.

5.4 *Does the FSP disclose to clients in terms of section 5(e) of the General Code whether it holds guarantees or professional indemnity or fidelity insurance cover?*

Section 5 (e) of the Code of Conduct provides that where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable

opportunity furnish the client with full particulars of whether the provider holds guarantees or professional indemnity or fidelity insurance cover, or not.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as having either a YES or NO answer.

If there are any controls, processes or compliance issues associated with this requirement that have been identified during the monitoring of compliance as areas in respect of which there is some need for improvement, and plans are in place to effect such improvements within a reasonable time, an indication should be given in Column 4 that this is a developmental concern.

6 Compliance function

Section 17 of the Act and Chapter IV of Regulations

6.1 *Is the compliance function established as part of the risk management framework of the business of the FSP in compliance with section 17(3) of the Act and Regulation 5?*

Section 17(1)(3) of the Act provides that every authorised financial services provider must establish and maintain procedures to be followed by the provider in order to ensure compliance with this Act.

Paragraph 5 of Chapter IV of the Regulations provides as follows:

- (1) Subject to the provisions of the Act, an authorised financial services provider shall ensure that a compliance function exists or is established as part of the risk management framework of the business, supervised by an approved compliance officer (where required in terms of the Act), or otherwise managed under control and responsibility of the provider alone.
- (2) The compliance function must be exercised with such diligence, care and degree of competency as may reasonably be expected from a person responsible for such function.

Response Required

Yes	No	N/A	Dev	Note /Annexure
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This question is indicated as requiring either a YES or NO.

If there are any controls, processes or compliance issues associated with this requirement that have been identified during the monitoring of compliance as areas in respect of which there is some need for improvement, and plans are in place to effect such improvements within a reasonable time, an indication should be given in Column 4 that this is a developmental concern.