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S REFERENCE UPDATE

For the information of member offices, I attach hereto the latest media release in regard to the phasing out of the S Reference system.

For further information, kindly contact me at bfrank@asisa.org.za.

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Media Release
Association for Savings and Investment South Africa (ASISA)
10 June 09

Life industry phases out S Reference system

The Association for Savings and Investment South Africa (ASISA) has imposed its last debarment ruling - referred to as S Reference ruling by the long-term insurance industry - on a financial adviser.

Peter Dempsey, deputy CEO of ASISA, says the promulgation of the Financial Services Laws General Amendment Act of 2008 at the end of September last year finally handed the Financial Services Board (FSB) the long awaited powers needed to debar intermediaries who can not be debarred by financial services providers, because they are either working independently or because they terminated their contracts before debarment could be effected.

"It therefore does not make sense for the long-term insurance industry to continue self-regulating by means of the S Reference system when the FSB has been given powers that stretch so much wider," says Dempsey.

He says in line with the provisions of the new law, ASISA stopped accepting S Reference recommendations from the beginning of October last year. By mutual agreement with the FSB the association did, however, continue to clear cases received before 1 October last year.

He says the last hearing was held in March this year, at which one intermediary was S Referenced for five years. This ruling was made final at the end of April.

Dempsey says the S Reference Code will therefore continue to apply for five years, until this S Reference ruling expires.

"This is important as it ensures that all S Reference rulings imposed on intermediaries in recent years will only lapse after either three or five years from the date on which they were imposed. After the expiry of this period, the S Reference will lapse and the intermediary is free to apply for a new Financial Services Provider Licence."

The S Reference System

Dempsey says that since the inception of FAIS, financial services providers have always been able to debar intermediaries in their employ who were found to be no longer fit to practise. However, if a tied agent (an intermediary employed by a life company) resigned before being debarred by the company, there was nothing the life industry could do. This intermediary was then free to take up employment with another company or become an independent broker.

Equally, explains Dempsey, life companies had no recourse against independent brokers who were not acting in the best interest of clients.

For this reason the old Life Offices' Association (LOA) maintained the S Reference system aimed at protecting consumers from financial advisers considered unfit to be marketing the products of the long-term insurance industry. The S Reference system was only open to members of the former LOA.

The LOA could S Reference an intermediary recommended for S Referencing by a life insurer for either three or five years if found guilty of misconduct such as submitting unauthorised policies (policies written

without a client's consent), misrepresentation, misappropriation of funds and failing to render financial services honestly and fairly, and with due skill, care and diligence.

Once S Referenced a life office would not employ, accept new business from, or pay commission to the intermediary. S Referenced intermediaries could also not be employed in a position that would give them control over advisers or their training.

ASISA inherited the S Reference system in October last year, when it replaced the Association of Collective Investments (ACI), the Investment Management Association of South Africa (IMASA), the Linked Investment Service Providers Association (LISPA) and the Life Offices' Association (LOA).

However, at the same time the Financial Services Laws General Amendment Act came into effect, giving the FSB the power to debar an intermediary where the financial services provider is unable to do so.

New Debarment Procedure

Financial services providers remain responsible for debarring intermediaries in their employ who are found to be unfit to practise. The FSB must be informed of such a debarment within 15 days and is responsible for updating the register of debarred intermediaries to reflect this.

Financial services providers wanting to recommend the debarment of an intermediary not in their employ need to inform the FSB and submit any evidence collected.

The FSB will consider the matter and if it agrees with the debarment recommendation it will issue a notification of intention to debar and give the recommended intermediary time to respond.

Intermediaries who request an opportunity to state their case will be allowed to do so, although no hearings will take place.

The Registrar will notify the intermediary in writing of the debarment together with reasons as well as the condition for lifting the debarment. The debarment will also be made public.

An intermediary, who has been debarred, is not permitted to practise for at least one year.

Ends