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FINANCE & BANKING ALERT

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Taking stock of FSPs: The reasons behind the FSCAs enquiries

If you are running a financial services business with a licence in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS), you may have recently received a notice from the Financial Sector Conduct Authority (FSCA) requesting further information in relation to your business activities.

Taking stock of FSPs: The reasons behind the FSCAs enquiries

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Financial services providers (FSPs) who have been authorised to provide advice and intermediary services in respect of derivative instruments are being examined by the FSCA to determine whether any of those FSPs are in fact issuing derivative instruments (and not merely advising on or brokering derivatives transactions).

A distinction must be made between a broker who acts as a middleman, either providing advice or providing another intermediary service, to assist South African clients to enter into derivative transactions versus an OTC derivative provider who issues, sells or makes a market in derivative instruments.

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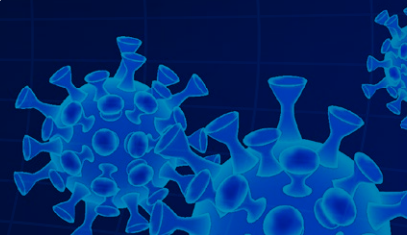
The reason for the recent enquiries is likely aimed at determining whether any FSPs operating in South Africa are also required to be registered as an over-the-counter derivatives provider (ODP) in terms of the Financial Markets Act, 2012 (FMA) and the regulations published pursuant thereto.

True brokers acting as a "conduit" require a FAIS licence but not an ODP licence. However, brokers who also issue, sell, or make a market in derivative instruments as principal as a regular feature of their business, must apply to the FSCA on the prescribed form FM6, accompanied by a registration fee of R50,000.00, to become a duly authorised ODP under the FMA.

Whilst the South African banks have submitted their applications as early as the first half of 2019, FSPs must also examine whether they are obliged to submit an application for registration as an ODP as well.

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Taking stock of FSPs: The reasons behind the FSCAs enquiries...*continued*

Any issuers of derivatives who submitted an application before 14 June 2019 and who are awaiting approval of their ODP licence, may continue to trade with South African clients pending adjudication of their licence application.

Any FSP who is issuing derivatives as principal (and who has not submitted an application for approval to operate as an ODP), is trading illegally and in contravention of the FMA and the regulations thereto. One of the key factors to consider is whether the issuer of the derivative is selling and/or making a market in derivatives in South Africa, with South Africa as its main place of business.

The FSCA is taking stock of all FAIS FSPs with the authority to provide advice and intermediary services in respect of derivative instruments in order to determine if any market participants are unlawfully trading without an ODP licence.

Any issuers of derivatives who submitted an application before 14 June 2019 and who are awaiting approval of their ODP licence, may continue to trade with South African clients pending adjudication of their licence application. However, new entrants to the market, for example companies wishing to issue contracts for difference and other over-the-counter derivatives, must not commence trading until their licence has been submitted and finally granted.

All FSPs with a FAIS licence that includes derivative instruments, should carefully examine their business model to determine whether they also require an ODP licence in addition to their existing FAIS licence.

Bridget King



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 BUSINESS IN
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OUR TEAM

For more information about our Finance & Banking practice and services, please contact:



Deon Wilken
National Practice Head
Director
T +27 (0)11 562 1096
E deon.wilken@cdhlegal.com



Stephen Boikanyo
Director
T +27 (0)11 562 1860
E stephen.boikanyo@cdhlegal.com



Adnaan Kariem
Director
T +27 (0)21 405 6102
E adnaan.kariem@cdhlegal.com



Bridget King
Director
T +27 (0)11 562 1027
E bridget.king@cdhlegal.com



Jacqueline King
Director
T +27 (0)11 562 1554
E jacqueline.king@cdhlegal.com



Izak Lessing
Director
T +27 (0)21 405 6013
E izak.lessing@cdhlegal.com



Mashudu Mphafudi
Director
T +27 (0)11 562 1093
E mashudu.mphafudi@cdhlegal.com



Preshan Singh Dhulam
Director
T +27 (0)11 562 1192
E preshan.singh@cdhlegal.com



Pierre Swart
Director
T +27 (0)11 562 1717
E pierre.swart@cdhlegal.com

Vusiwe Ngcobo
Senior Associate
T +27 (0)11 562 1329
E vusiwe.ngcobo@cdhlegal.com

Jennifer Begg
Associate
T +27 (0)21 481 6361
E jennifer.begg@cdhlegal.com

Kuda Chimedza
Associate
T +27 (0)11 562 1737
E kuda.chimedza@cdhlegal.com

Stephanie Goncalves
Associate
T +27 (0)11 562 1448
E stephanie.goncalves@cdhlegal.com

Andile Sangweni
Associate
T +27 (0)11 562 1046
E andile.sangweni@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

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