RE5 Exam - Task 1 Notes

Task 1 : Demonstrate understanding of the FAIS Act as a regulatory framework

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<tr><th>sbs study guide Topic number</th><th>Introduction, Definitions and Role Players</th></tr>
<tr><td>1.1</td><td>Introduction to the FAIS Act</td></tr>
<tr><td></td><td>Preamble:
to regulate the rendering of certain financial advisory and intermediary services to clients,
to repeal or amend certain laws, and
to provide for matters incidental thereto
<u>The purpose of the FAIS Act is</u>:

The FAIS Act regulates the rendering of financial advisory and intermediary services to clients. The Act's main objectives are;
to protect the interests of consumers, and
to professionalize the financial services industry.</td></tr>
<tr><td>1.2</td><td>Definitions and Role Players</td></tr>
<tr><td></td><td>“advice”
means; any recommendation, guidance or proposal of a financial nature furnished by any means or medium, to any client or group of clients:

(a) in respect of the purchase of any financial product; or
(b) in respect of the investment in any financial product: or
(c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or
(d) on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product,
(e) and irrespective of whether or not such advice:
(i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or
(ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected;

For the purposes of the FAIS Act, advice does not include:

a) factual advice given merely:
(i) on the procedure for entering into a transaction in respect of any financial product;</td></tr>
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	(ii) in relation to the description of a financial product; (iii) in answer to routine administrative queries; (iv) in the form of objective information about a particular financial product; or (v) by the display or distribution of promotional material; b) an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client; c) advice given by: (i) the board of management, or any board member, of any pension fund organisation or friendly society referred to in paragraph (d) of the definition of "financial product" in subsection (1) to the members of the organisation or society on benefits enjoyed or to be enjoyed by such members; or (ii) the board of trustees of any medical scheme referred to in paragraph (g) of the said definition of "financial product", or any board member, to the members of the medical scheme, on health care benefits enjoyed or to be enjoyed by such members; or d) any other advisory activity exempted from the provisions of this Act by the registrar by notice in the Gazette; **"authorised financial services provider"** or **"provider"** means a person who has been granted an authorisation as a financial services provider by the issue to that person of a licence by the Authority. **"Authority"** means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act; **"client"** means a specific person or group of persons, **excluding** the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service. ***However, very important! For the purposes of GCOC Section 14 (Advertising), "client" includes the general public***. **"complaint"** means a specific complaint relating to a financial service rendered by a financial services provider or representative to the complainant on or after the date of commencement of this Act, and in which complaint it is alleged that the provider or representative:

	1) has contravened or failed to comply with a provision of this Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage, 2) has willfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant, or which is likely to result in such prejudice or damage; or 3) has treated the complainant unfairly. **“compliance officer”** means a compliance officer for an authorised financial services provider. The role of a compliance officer is to assist management of an FSP to establish and maintain a compliance function within the risk management framework of the FSP. The role of a compliance officer can be defined into three main functions namely support, monitoring and training. The compliance officer could be an internal person or an outsourced function. **“continuous professional development”** means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act; **"Direct marketing",** means the rendering of financial services by way of telephone, internet, digital application platform, media insert, direct or electronic mail, but excludes the publication of an advertisement; **“financial product”** means, 1) securities and instruments, including: a) shares in a company other than a “share block company” as defined in the Share Blocks Control Act, 1980 (Act 59 of 1980); b) debentures and securitised debt; c) any money-market instrument; d) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (a), (b) and (c); e) any “securities” as defined in section 1 of the Financial Markets Act, 2012 (Act 19 of 2012); 2) a participatory interest in one or more collective investment schemes; 3) a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act 52 of 1998), and the Short-term Insurance Act, 1998 (Act 53 of 1998), respectively; 4) a benefit provided by: a) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act 24 of 1956), to the members of the organisation by virtue of membership; or

	b) a friendly society referred to in the Friendly Societies Act, 1956 (Act 25 of 1956), to the members of the society by virtue of membership; 5) a foreign currency denominated investment instrument, including a foreign currency deposit; 6) a deposit as defined in section 1(1) of the Banks Act, 1990 (Act 94 of 1990); 7) a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998); 8) any other product similar in nature to any financial product referred to in paragraphs (a) to (7), inclusive, declared by the registrar by notice in the Gazette to be a financial product for the purposes of this Act; 9) any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive; 10) any financial product issued by any foreign product supplier and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraph (a) to (i), inclusive; **“Financial Sector Regulation Act”** means the Financial Sector Regulation Act, 2017; **“financial service”** means any service which involves; (a) furnishes advice; or (b) furnishes advice and renders any intermediary service; or (c) renders an intermediary service; including any category of such services; **“financial services provider”** means any person, other than a representative, who as a regular feature of the business of such person: (d) furnishes advice; or (e) furnishes advice and renders any intermediary service; or (f) renders an intermediary service; **“fit and proper requirements”** means the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 **“intermediary service”** means any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier: (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or (b) with a view to: (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody,

	maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested; (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or (iii) receiving, submitting or processing the claims of a client against a product supplier; For the purposes of the FAIS Act**, intermediary service does not include:** 1) the rendering by a bank, mutual bank or co-operative bank of a service contemplated in paragraph (b)(ii) of the definition of ''intermediary service" where the bank, mutual bank or co-operative bank acts merely as a conduit between a client and another product supplier; 2) an intermediary service rendered by a product supplier: a) who is authorised under a particular law to conduct business as a financial institution; and b) where the rendering of such service is regulated by or under such law; 3) any other service exempted from the provisions of this Act by the registrar by notice in the Gazette. 4) The rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of "financial product" in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993), or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act 40 of 2007), is regulated by this Act in the code of conduct contemplated in section 15(2)(b). 5) Provisions of this Act relating to financial services providers, representatives and product suppliers apply to any natural person or group of natural persons acting within the scope of their official duties in the employ of the State, or any organisational unit of the State, or any public entity, unless the Minister by notice in the Gazette determines otherwise in respect of any such person, group, unit or entity. **"key individual"**, in relation to an authorised financial services provider, or a representative, carrying on business as: (a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or (b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person; ***Note: see Annexure G: (Guidance note on definition of Key Individual)***

	"licence" means a licence issued to a financial services provider by FSCA, authorising the financial services provider to render financial services in terms of the FAIS Act. **"licensee"** means a financial services provider to whom a licence has been issued by the Authority; **"Ombud"** means, the Ombud for Financial Services Providers and includes a deputy ombud; **"person"** means any natural person, partnership or trust, and includes: a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); b) any company incorporated or registered as such under any law; c) any body of persons corporate or unincorporate; **"Register"** means the Representative Register; an authorized FSP, must, among other things, maintain a register or representatives. **"registrar"** means the registrar or deputy registrar of financial services providers **"representative"** means any person, including a person employed or mandated by such first mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate; **<u>but excludes:</u>** a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service: a) does not require judgment on the part of the latter person; or b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;
	"long-term policy" means an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied; *source: Long-term Insurance Act 52, 1998 (Definitions)*
	''life insurance policy''

	means any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations: (a) on the happening of a life event, health event, disability event or death event; or (b) on or from a fixed determinable date or at the request of the policyholder, but excludes: (i) a deposit with an institution authorised under the Banks Act, 1990 (Act No. 94 of 1990), the Mutual BanksAct, 1993 (Act No. 124 of 1993), or the Co-operative Banks Act, 2007 (Act No. 40 of 2007); and (ii) participatory interests in a collective investment scheme registered in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and includes a renewal or variation of that arrangement; *source: Insurance Act 18, 2017*
Please note: Also study Annexure A: Guidance Note on Intermediary Services and Representative	

2.1 Authorisation of Financial Services Providers

An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, **been issued with a licence** for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of those financial services, **or is a representative** as contemplated in this Act.

GENERAL PROVISIONS

4.2.1 General duty of provider

A provider must at all times render financial services ***honestly***, ***fairly***, ***with due skill***, ***care and*** **diligence**, and ***in the interests of clients*** and the ***integrity of the financial services industry***.

4.2.2 Specific duties of provider

When a provider renders a financial service:

(a) **representations** made and information provided to a client by the provider:
  (i) must be factually correct;
  (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
  (iii) must be adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or reasonably assumed level of knowledge of the client;
  (iv) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;
  (v) may, subject to the provisions of this Code, be provided orally and, at the client's request, confirmed in writing within a reasonable time after such request;
  (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
  (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably predeterminable, its basis of calculation must be adequately described; and
  (viii) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant financial service renders it necessary, in which case a disclosure of the changes to the client must be made without delay;

(b) a provider and a representative must **avoid and where this is not possible mitigate, any conflict of interest** between the provider and a client or the representative and a client;

(c) a provider or a representative must, in writing, at the earliest reasonable opportunity:
  (i) **disclose to a client any conflict of interest** in respect of that client, including:
  aa) the measures taken, in accordance with the conflict-of-interest management policy of the provider, to avoid or mitigate the conflict;
  (*bb*) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;

(*cc*) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and

(ii) **inform a client of the conflict-of-interest management policy** and how it may be accessed.

(e) **the service must be rendered in accordance with the contractual relationship** and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider;

(f) **transactions of a client must be accurately accounted for**; and

(g) **the provider involved must not deal in any financial product for own benefit**, account or interest where the dealing is based upon advance knowledge of pending transactions for or with clients, or on any non-public information the disclosure of which would be expected to affect the prices of such product.

4.3	INFORMATION ON PRODUCT SUPPLIERS
	A provider other than a direct marketer must at the earliest reasonable opportunity, and only where appropriate, furnish the client with full particulars of the following **information about the relevant product supplier** and, where such information is provided orally, must confirm such information **within 30 days in writing**: (a) Name, physical location, and postal and telephone contact details of the product supplier; (b) the: (i) **contractual relationship with the product supplier** (if any), and whether the provider has contractual relationships with other product suppliers; (ii) names and contact details of the **relevant compliance and complaints departments of the product supplier;** (c) **the existence of any conditions or restrictions imposed by the product supplier** with regard to the types of financial products or services that may be provided or rendered by the provider; and (d) where applicable, the fact that the provider: (i) **directly or indirectly holds more than 10% of the relevant product supplier's shares**, or has any equivalent substantial financial interest in the product supplier; (ii) **during the preceding 12-month period received more than 30% of total remuneration, including commission, from the product supplier**, and the provider must convey any changes thereafter in regard to such information at the earliest opportunity to the client.
4.4	INFORMATION ON PROVIDERS
	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 the following information and, where such information is provided orally, must confirm such information **within 30 days in writing**: (a) **Full business and trade names**, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and email addresses, in respect of the relevant business carried on, as well as the names and contact details of appropriate contact persons or offices; (b) concise details of the **legal and contractual status of the provider, including details as regards the relevant product supplier** (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative in the rendering of the financial service involved and the extent to which the client will have to accept such responsibility; (c) **names and contact details of the relevant compliance department** or, in the case of a representative, such detail concerning the provider to which the representative is contracted;

	(d) **details of the financial services which the provider is authorised to provide** in terms of the relevant licence and of any conditions or restrictions applicable thereto; (e) **whether the provider holds guarantees or professional indemnity or fidelity insurance cover or not**; (f) **whether a representative of a provider is rendering services under supervision** as defined in the Determination of Fit and Proper Requirements; and (g) **the existence of a specific exemption that the Registrar may have granted to the provider** with regard to any matter covered by the Act.
4.5	**INFORMATION ABOUT FINANCIAL SERVICE**
	A provider, must: (a) provide a reasonable and appropriate general explanation of **the nature and material terms of the relevant contract or transaction to a client**, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision; (b) whenever reasonable and appropriate, **provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider;** (c) in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following: (i) Name, class or type of financial product concerned; (ii) nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid; (iii) where the financial product is marketed or positioned as an investment or as having an investment component: *aa*) concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments; (*bb*) separate disclosure (and not mere disclosure of an all inclusive fee or charge) of any charges and fees to be levied against the product, including: (A) the amount and frequency thereof; (B) the identity of the recipient; (C) the services or other purpose for which each fee or charge is levied; (D) where any charges or fees are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees; and (E) where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; (*cc*) on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product

involved including a warning that past performances are not necessarily indicative of future performances;

(*dd*) any rebate arrangements and thereafter on a regular basis (but not less frequently than annually): Provided that where the rebate arrangement is initially disclosed in percentage terms, an example using actual monetary amounts must be given and disclosure in specific monetary terms must be made at the earliest reasonable opportunity thereafter: Provided further that for the purposes of this subparagraph, "rebate" means a discount on the administration, management or any other fee that is passed through to the client, whether by reduced fees, the purchase of additional investments or direct payment, and that the term "rebate" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition;

(*ee*) any platform fee arrangements, which may be disclosed by informing the client that a platform fee of up to a stated percentage may be paid by the product supplier to the administrative financial services provider concerned, rather than disclosing the actual monetary amount: Provided that for the purposes of this subparagraph, "platform fee" means a payment by a product supplier to an administrative financial services provider for the administration and/or distribution and/or marketing cost savings represented by the distribution opportunity presented by the administrative platform, and may be structured as a stipulated monetary amount or a volume based percentage of assets held on the platform, and that the term "platform fee" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition.

(iv) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of noncompliance and, any anticipated or contractual escalations, increases or additions;

(v) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including:

(*aa*) the amount, frequency and payment method thereof;

(*bb*) details of the services that are to be provided by the provider or its representatives in exchange therefor; and

(*cc*) the client's rights in relation to terminating those obligations and the consequences of terminating or failing to meet those obligations;

which information should, wherever feasible, be included in a written agreement between the client and the provider;

(vi) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration"), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration: Provided that where the maximum amount or rate of such valuable consideration is

	prescribed by any law, the provider may elect to disclose either the actual amount applicable or such prescribed maximum amount or rate; (vii) concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided; (viii) any guaranteed minimum benefits or other guarantees; (ix) to what extent the product is readily realisable or the funds concerned are accessible; (x) any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal; (xi) material tax considerations; (xii) whether cooling off rights are offered and, if so, procedures for the exercise of such rights; (xiii) any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations; and (xiv) in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years; (d) fully inform a client in regard to the completion or submission of any transaction requirement: (i) that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility; (ii) that if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details; (iii) of the possible consequences of the misrepresentation or nondisclosure of a material fact or the inclusion of incorrect information; and (iv) that the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.
	Rendering ongoing financial services A provider who has provided advice to a client or is rendering ongoing financial services to the client in respect of one or more financial products, must on a regular basis (but not less frequently than annually) provide the client with a written statement identifying such products where they are still in existence, and providing brief current details (where applicable), of (a) any ongoing monetary obligations of the client in respect of such products; (b) the main benefits provided by the products; (c) where any product was marketed or positioned as an investment or as having an investment component, the value of the investment and the amount of such value which is accessible to the client; and (d) any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products: Provided that such a statement need not be provided where the client is aware, or ought reasonably to be aware, that the provider concerned does not render or has ceased rendering ongoing financial services in respect of the client or the products concerned.

FURNISHING OF ADVICE
4.6.1 Suitability

A provider must prior to providing a client with advice:

(a) obtain from the client such information regarding the client's needs and objectives, financial situation, risk profile and financial product knowledge and experience as is necessary for the provider to provide the client with appropriate advice, which advice takes into account:

(i) the client's ability to financially bear any costs or risks associated with the financial product;
(ii) the extent to which the client has the necessary experience and knowledge in order to understand the risks involved in the transaction; and
(iii) where the client is a pension fund, medical scheme, friendly society, employer or other entity that is being advised on entering into a financial product or transaction aimed at providing benefits for its members, employees or other underlying natural persons, the reasonably identified collective needs and circumstances of such members, employees or other natural persons;

(b) conduct an analysis, for purposes of the advice, based on the information obtained;
(c) identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement; and
(*c*A) where as a result of limitations referred to in paragraph (*c*) the provider is not able to identify a financial product or products that will be appropriate to the client's needs and objectives, financial situation, risk profile and product knowledge and experience, the provider must make this clear to the client, decline to recommend a product or transaction and suggest to the client that they should seek advice from another appropriately authorised provider:
(d) where the financial product ("the replacement product") is to replace another financial product ("the terminated product"), fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, full details of:

(i) fees and charges in respect of the replacement product compared to those in respect of the terminated product;
(ii) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product;
(iii) in the case of an insurance product, the impact of age and health changes on the premium payable;
(iv) differences between the tax implications of the replacement product and the terminated product;
(v) material differences between the investment risk of the replacement product and the terminated product;
(vi) penalties or unrecovered expenses deductible or payable due to termination of the terminated product;

(vii) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;

(viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and

(ix) any incentive, remuneration, consideration, commission, fee or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.

(e) take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and if it is such a replacement, the provider must comply with subparagraph (*d*).

5.1 Establishment of compliance function

Subject to the provisions of the FAIS 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.

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.

An approved compliance officer (where required by the Act) must provide a provider with written reports on the course of, and progress achieved with, compliance monitoring duties and make recommendations to the provider as regards any aspect of the required compliance or monitoring functions.

5.1.1 Compliance officers and compliance arrangements

(a) Any authorised financial services provider with more than one key individual or one or more representatives must appoint one or more compliance officers to oversee the provider's compliance function and to monitor compliance with the FAIS Act by the provider and such representative or representatives, and to take responsibility for liaison with the registrar.

(b) Such person must comply with the fit and proper requirements, and must continue to comply as required.

(c) The authorized financial services provider must comply with the accounting and audit requirements of the FAIS Act

Compliance reports

(a) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar in the manner and regarding the matters, as from time to time determined by the registrar by notice on the official web site for different categories of compliance officers.
(b) An authorised financial services provider must ensure that the reports referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph.

Maintenance of records

An authorised financial services provider must, except to the extent exempted by the registrar, maintain records for **a minimum period of five years** regarding:

(a) known premature cancellations of transactions or financial products by clients of the provider;
(b) complaints received together with an indication whether or not any such complaint has been resolved;
(c) the continued compliance with the FAIS fit-and-proper requirements
(d) cases of non-compliance with this Act, and the reasons for such non-compliance; and
(a) the continued compliance by representatives in terms of maintaining a contract or mandate with an authorized FSP and the compliance with the fit-and-proper requirements and the general code of conduct