

**SO MUCH OWED BY SO MANY TO SO FEW:
HOW THE FINANCIAL ADVISORY
AND INTERMEDIARIES ACT 37 OF 2002
ADDRESSES “CONFLICT OF INTEREST”**

1 Introduction

Winston Churchill delivered his famous speech entitled “The Few” after the Battle of Britain of 1940 (<http://www.raf.mod.uk/bob1940/roll.html> accessed 2011-01-21; and see in particular Broad *Winston Churchill* (1941) 302-303). This historical conflict saw 2353 young men from Great Britain and 574 from overseas, pilots and other aircrew fly at least one authorized operational sortie with an eligible unit of the Royal Air Force or Fleet Air Arm during the period 10 July to 31 October 1940 (Broad *Winston Churchill* 303). These young men, also referred to as “the few”, were heralded by Churchill in these famous words:

“The gratitude of every home in our Island, in our Empire, and indeed throughout the world, except in the abodes of the guilty, goes out to the British airmen who, undaunted by odds, unwearied in their constant challenge and mortal danger, are turning the tide of the world war by their prowess and by their devotion. Never in the field of human conflict was so much owed by so many to so few” (<http://www.winston-churchill-leadership.com/speech-few.html> accessed 2011-10-20; and Broad 303).

Although conflict on the scale of a world war cannot be equated to conflicts of interest between financial-services providers (FSPs), representatives and clients, the potential damage that can be caused by intermediaries and representatives who act in their own interest can be devastating to that particular client. In addition, it also has wider implications for the financial-services industry. It is consequently up to the Financial Services Board (FSB) to ensure that conflict of interest between intermediaries and representatives and clients are managed in an acceptable way.

As a matter of background: The FSB was established by the Financial Services Board Act (97 of 1990) and has as its main objective the supervision of financial institutions in order to achieve maximum consumer protection. (Van Zyl *Financial Advisory and Intermediary Services Manual* (2004) 1-8; and Swart and Lawack-Davids “Understanding the South African Financial Markets: An Overview of the Regulators” 2010 *Obiter* 627-632.) As such, the FSB acts as statutory registrar of a variety of financial institutions. Hattingh and Millard (*The FAIS Act Explained* (2010) 3) explain that the FSB is currently in control of the Collective Investment Schemes Control Act (45 of 2002 (hereinafter “CISCA”)), the Financial Services Board Act (97 of 1990

(hereinafter “FSB Act”), Financial Institutions (Protection of Funds) Act (28 of 2001 (hereinafter “FI Act”), Financial Supervision of the Road Accident Fund Act (8 of 1993 (hereinafter “FSRAF Act”), Friendly Societies Act (25 of 1956 (hereinafter “FS Act”), Inspection of Financial Institutions Act (80 of 1998 (hereinafter “IFI Act”), Long-term Insurance Act (52 of 1998 (hereinafter “LTIA”), Pension Funds Act (24 of 1956 (hereinafter “PFA”), Short-term Insurance Act (53 of 1998 (hereinafter “STIA”), Supervision of the Financial Institutions Rationalisation Act (32 of 1996 (hereinafter “SFIR Act”), the Securities Services Act (36 of 2004 (hereinafter “SSA”), and the Financial Advisory and Intermediaries Act (37 of 2002 (hereinafter “FAIS Act”).

The FSB drafted the FAIS Act with the aim of creating a regulatory structure which regulates the way in which *intermediary and advisory services* in respect of financial products are rendered (Hattingh and Millard *The FAIS Act Explained* 5).

Conflict of interests is but one of the issues that arise between intermediaries, advisors, financial-services providers and clients and the purpose of this note is to analyse a number of key issues introduced by Board Notice 58 of 19 April 2010.

This note sets out to explain what the position was before the introduction of the new rules on the management of conflict of interest. It then proceeds to discuss the new definitions that now form part of the legislation. In addition, it discusses the detailed provisions pertaining to conflict of interest and explains what a conflict-of-interest management policy entails. Finally, the note evaluates the new regulations and asks whether they have the potential to eliminate unfair dealings by advisors and intermediaries and thereby enhancing the professionalism of those who work in the financial-services industry.

2 Conflict of interest

2.1 Background

A practical example of conflict of interests is where a long-term insurance broker who acts on behalf of various companies, advises a client to enter into an agreement with company A, well-knowing that company B’s product is better suited to the needs of the client. However, because Company A invites the broker along on their annual hunting trips and golf days, the broker is partial to A and would rather send more business their way. The result of the broker’s advice is the client’s purchasing of a product that might not be the most suitable one taking into account the client’s circumstances. Even if the purchase of the product does not cause the client to suffer irreparable harm, the broker had still failed to provide the client with objective, suitable, honest advice.

There are those who would typically react and say that “business is business” and that nobody makes it in this life without being part of a network or being well-connected. Surely, in many instances advisors and intermediaries will act in a way which is not totally dishonest but also not completely objective and their acts will be inconsequential. However, many a consumer had in the past been sold an unsuitable product because an advisor served his own interests first and foremost, and the holiday in Mauritius or the hunting trip was just too tempting to resist (see the FAIS Ombud’s determination in *Nonhlanhla C. Kawula v African Life Assurance Company Ltd t/a Sanlam Sky solutions, Timir Financial Solutions t/a Southern Investment Corporation and Leonard Sandile Mqadi* FOC 3870/06-07/KZN (2): issued 30 September 2008 as discussed by Moolman, Pillai, Bam and Appasamy *Financial Advisory and Intermediary Services Guide* (2010) 242). What follows is a chronological background of the development of rules relating to conflict of interests in South African law.

2.2 Common law

At common law, the relationship between an intermediary or advisor and a client could be based on either mandate or representation (Havenga *The Law of Insurance Intermediaries* (2001) 1; Silke “Insurance Agents in South African Law” 1982 *SAILJ* 59; and Reinecke, Van der Merwe, Van Niekerk and Havenga *General Principles of Insurance Law* (2002) 337-338.) Where it was based on mandate, there was a contract between a client and an intermediary or advisor in terms of which the intermediary or advisor would advise a client on the most suitable financial product and then, if needed, proceed to intermediate this contract with a financial-services provider (Havenga *The Law of Insurance Intermediaries* 2; and Reinecke *et al General Principles of Insurance Law* 338). Where the advisor or intermediary was employed by a financial-services provider as an employee, this service took place under the supervision of the financial-services provider in terms of the rules that regulate the employment contract (Reinecke *et al General Principles of Insurance Law* 338).

The contract of mandate places certain duties upon the mandatary. These duties include carrying out the mandate (Havenga *The Law of Insurance Intermediaries* 3; and Reinecke *et al General Principles of Insurance Law* 348), not exceeding the terms of the mandate (Havenga *The Law of Insurance Intermediaries* 3; and Reinecke *et al General Principles of Insurance Law* 348), performing the mandate personally (Havenga *The Law of Insurance Intermediaries* 4) and acting with care and skill (Reinecke *et al General Principles of Insurance Law* 343). According to *Stander v Raubenheimer* (unreported OPD 11 November 1993, case no 1611/91), the duty to act with reasonable care and skill is a *naturale* of the agreement and the level of skill expected from the mandatary is that of members of the branch of the profession to which the mandatary belongs (*Durr v Absa Bank* [1997] 3 All SA 1 (SCA); and *Delphisure Group Insurance Brokers Cape v Kotze* (437/09) [2010] ZASCA 85 (31 May 2010)). In addition, the mandatary

is expected to act with good faith (Reinecke *et al General Principles of Insurance Law* 348) and to accounting to the mandatary (Havenga *The Law of Insurance Intermediaries* 5; and Reinecke *et al General Principles of Insurance Law* 348). In turn, the mandator undertakes to refund or compensate the mandatary for expenses and to pay the agreed remuneration (Havenga *The Law of Insurance Intermediaries* 5). As far as agreed remuneration in insurance business is concerned, legislation on fees and commission is very strict (this will be discussed in more detail in par 3 2 below).

As far as the duties of the mandatary are concerned, it is especially the duty to act with good faith that is important when it comes to conflicts of interest. At common law, the duty to perform a mandate in good faith originates from the fiduciary relationship that is created by the contract of mandate (Havenga *The Law of Insurance Intermediaries* 4; and Reinecke *et al General Principles of Insurance Law* 348). This fiduciary relationship has three components (Havenga *The Law of Insurance Intermediaries* 4). It is primarily required of the mandator to perform the mandate in the interest of the mandatary, which means that “[T]he mandatary must therefore choose the course of action which will not be to the detriment of the mandator” (Havenga *The Law of Insurance Intermediaries* 4). Second, it is required of the mandator to be open and honest and not to make any secret profit out of the mandate (Havenga *The Law of Insurance Intermediaries* 4; and Reinecke *et al General Principles of Insurance Law* 348). Havenga mentions that this means that the mandatary is not permitted to use private information or information gathered in the execution of the mandate to the detriment of the mandator (Havenga *The Law of Insurance Intermediaries* 4). In the third instance acting in good faith means that the mandatary may not make a secret profit out of the mandate. This means that the mandatary cannot keep any benefit without the consent of the mandator (Havenga *The Law of Insurance Intermediaries*).

Acting in good faith as a principle therefore underlies any rules that have to do with conflicts of interest. Mandatories who do not act in the interest of the mandator, fail to be open and honest and do make a secret profit, do not act with good faith. A secret profit need not necessarily be a fee or commission but may for all intents and purposes be a vacation or other non-cash incentive.

Good faith is a solid, well-known common-law principle which is construed wide enough to allow for all instances which may give rise to conflicts of interest. When looked at from a practical perspective it also seems neither vague nor abstract. However, it does seem that there was not a “common understanding” of exactly what would qualify as indirect benefits, why these need to be disclosed (in order for it not to be “secret”) and how disclosure should be made to clients.

The soundness of the common law principle of good faith notwithstanding, it was necessary in the financial services industry and more specifically in the insurance industry, to create rules that were “less abstract” in order to

address this aspect of conflict of interest. Initially, the General Code of Conduct (GCC) merely stated the following, namely:

“[T]he provider must disclose to the client the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the client” (CI 3(1)b) of the GCC).

Note that this clause merely dealt with disclosure but failed to define “conflict of interest.” The disclosure of a personal interest was, however, not sufficient to ensure the rendering of fair services to the client and this prompted the legislator to enact more detailed rules. Moolman *et al* (*Financial Advisory and Intermediary Services Guide* 168) explain:

“The Code [GCC] now has clearer provisions around conflicts, with a view to bringing about a consistent manner of dealing with and disclosing all conflicts. The desired outcome is that consumers will be exposed to fewer conflict situations, and where there are conflicts, these will have been clearly disclosed.”

One needs only read the FAIS Ombud’s determination in *Nonhlanhla C Kawula v African life Assurance Company Ltd t/a Sanlam Sky solutions, Timir Financial Solutions t/a Southern Investment Corporation and Leonard Sandile Mqadi* FOC 3870/06-07/KZN (2): issued 30 September 2008 to understand that it was necessary to formulate these provisions more clearly (see Moolman *et al* *Financial Advisory and Intermediary Services Guide* 168 for a discussion of these determinations).

The next paragraph scrutinises the new conflict of interest provisions.

3 New conflict of interest

3 1 Definitions

Board Notice 58 of 10 April 2010 (“BN 58 of 2010”) introduces a number of matters into the GCC. As was alluded to in paragraph 2.2 above, “conflict of interest” now has a statutory as opposed to a common law definition and in addition, concepts such as “financial interest”, “ownership interest”, “immaterial financial interest” and “third party” are clearly defined.

Perhaps it is sensible to provide some background on the GCC before discussing these new definitions. The GCC was published on 8 August 2003 (in terms of Board Notice 80 of 2003). This Code is applicable to all FSPs and their representatives and it aims to ensure that clients are treated fairly by someone who acts with due care, skill and diligence and in the best interest of the client (Hattingh and Millard *The FAIS Act Explained* 116; and Moolman *et al* *Financial Advisory and Intermediary Services Guide* 166). Services rendered by FSPs and their representatives must be factually correct (CI 3(1)(a)(i) of the GCC; Hattingh and Millard *The FAIS Act Explained* 116), should not be misleading (CI 3(1)(a)(ii) of the GCC; Hattingh and Millard *The FAIS Act Explained* 116), must be provided in plain

language (CI 3(1)(a)(ii) of the GCC; and Hattingh and Millard *The FAIS Act Explained* 116) and must be adequate and appropriate in the circumstances (CI 3(1)(a)(iii) of the GCC; and Hattingh and Millard *The FAIS Act Explained* 117). In addition, a financial service should be provided timeously (CI 3(1)(a)(iv) of the GCC; Hattingh and Millard *The FAIS Act Explained* 117; and Moolman *et al Financial Advisory and Intermediary Services Guide* 167) and should be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client (CI 3(1)(d) of the GCC; Hattingh and Millard *The FAIS Act Explained* 117; and Moolman *et al Financial Advisory and Intermediary Services Guide* 167). Financial services should also be executed as soon as possible and with the interest of the client in mind and very importantly, it should be afforded priority over any interest of the provider (CI 3(1)(d) of the GCC; Hattingh and Millard *The FAIS Act Explained* 117; and Moolman *et al Financial Advisory and Intermediary Services Guide* 167).

In addition to these specific duties, clause 3(1)(b) of the GCC also stipulated that a provider had a duty to disclose any personal interest he may have in rendering financial services or circumstances that may give rise to actual or potential conflict. Importantly, this clause also stipulated that a provider may not deal in any financial product for his own benefit, account or interest “where the dealing is based upon privileged knowledge of pending transactions for or with clients” (Hattingh and Millard *The FAIS Act Explained* 117; and CI 3(1)(f) of the GCC). Other than stating that a provider may not deal on any non-public information if the disclosure thereof would be expected to affect the price of such product (Hattingh and Millard *The FAIS Act Explained* 117; and CI 3(1)(f) of the GCC), the GCC did not include a statutory definition of “conflict of interest.” However, according to BN 58 of 2010, “conflict of interest” now denotes:

“any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, –

- (a) influence the objective performance of his, her or its obligations to that client, or
- (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client, including, but not limited to –
 - (i) a financial interest;
 - (ii) an ownership interest;
 - (iii) any relationship with a third party” (CI 1 of the GCC, *sv* “conflict of interest” (author’s own emphasis); and also Moolman *et al Financial Advisory and Intermediary Services Guide* 168-169).

The definition makes it clear that the Regulator aimed at outlawing all behaviour that may prevent an FSP or representative from acting with good faith. It is not only the payment of bonuses but also ownership interests or any other “spin-off” that is included in the definition of conflict of interest. Ultimately, the behaviour that is outlawed is the failure to render an unbiased financial interest to the client.

The definition of “financial interest” which was inserted by BN 58 of 2010 is also very specific. Henceforth, “financial interest” denotes any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration other than an ownership interest or training (Cl 1 of the GCC, sv “financial interest”; and see also Moolman *et al Financial Advisory and Intermediary Services Guide* 169). Training will not qualify to be a financial interest, provided that it is not exclusively available to a selected group of providers or representatives and provided that the training is on products and legal matters relating to these products, general financial and industry information, specialised technological systems of a third party necessary for the rendering of a financial service (Cl 1 of the GCC, sv “financial interest”; and see also Moolman *et al Financial Advisory and Intermediary Services Guide* 169). In addition, in order for training not to be considered a financial interest, it should exclude travel and accommodation associated with that training (Cl 1 of the GCC, sv “financial interest”; Moolman *et al Financial Advisory and Intermediary Services Guide* 169).

“Ownership interest”, according to the new statutory definition, denotes any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or a proprietary interest held as a nominee on behalf of another person and it includes any dividend, profit share or similar benefit derived from that equity or ownership interest (Cl 1 of the GCC, sv “ownership interest”; Moolman *et al Financial Advisory and Intermediary Services Guide* 169).

The notice does not define “relationship” but it does define “third party” and includes in the meaning thereof a product supplier, another provider, an associate of a product supplier or provider, a distribution channel or any person who in terms of an agreement or an arrangement with a product supplier, another provider, an associate of a product supplier or a distribution channel provides a financial interest to a provider or its representatives (Cl 1 of the GCC, sv “third party”).

Interestingly, the GCC now also contains a definition of “immaterial financial interest.” This refers to “any financial interest with a determinable monetary value, the aggregate of which does not exceed R1 000 in any calendar year from the same third party in that calendar year” (Cl 1 of the GCC, sv “immaterial financial interest”). In addition, it should have been received by a provider who is a sole proprietor (Cl 1(a) of the GCC, sv “immaterial financial interest”), a representative for the direct benefit of that representative (Cl 1(b) of the GCC, sv “immaterial financial interest”) or a provider who aggregates the immaterial financial interest paid to its representatives for the benefit of the provider itself or some or all of its representatives (Cl 1(c) of the GCC, sv “immaterial financial interest”; and Moolman *et al Financial Advisory and Intermediary Services Guide* 169).

With these definitions in mind, let us now turn to the amended section 3 of the GCC.

3.2 Amendment of section 3 of the GCC

Prior to the insertion of sections 3A(1)(a) to (c) in the GCC, section 3(1)(b) stipulated that a provider had a duty to disclose personal interests in a financial service or any circumstance which gives rise to an actual or potential conflict of interest in relation to a financial service and take all reasonable steps to ensure fair treatment of the client. From 19 July 2010, a provider and a representative must avoid, or where this is not possible, mitigate any conflict of interest between a provider or representative and a client (Moolman *et al Financial Advisory and Intermediary Services Guide* 169). In addition, a provider and representative must at the earliest reasonable opportunity disclose any conflict of interest to a client in writing (Moolman *et al Financial Advisory and Intermediary Services Guide* 170). This disclosure should be clear and detailed enough and should address measures taken to avoid or mitigate the conflict, a disclosure of any ownership interest or financial interest that the provider or representative may be eligible for or may become eligible for and the nature of the relationship or arrangements with a third party that gives rise to a conflict of interest (Moolman *et al Financial Advisory and Intermediary Services Guide* 170). The purpose of this additional duty to disclose is to enable a client to evaluate whether the conflict of interest influences the recommendation that has been made to him (Moolman *et al Financial Advisory and Intermediary Services Guide* 170). These disclosures must be made in such a way as to enable a client to understand the impact of conflicts of interest on the advice or intermediary service offered to him (Moolman *et al Financial Advisory and Intermediary Services Guide* 170).

The amendments brought about by Board Notice 58 of 19 April 2010 have the effect of limiting the financial interest that may be received or offered by a provider or its representative from or to a third party to commission authorised under the insurance legislation (see LTIA; STIA; MSA; also refer to CI 3A(1)(a)(i) of the GCC; and CI 3A(1)(a)(ii) of the GCC). In respect of fees, it is allowed for a provider or its representative to receive or offer fees authorised under the LTIA, the STIA and the MSA, provided that those fees are “reasonably commensurate to a service being rendered” (CI 3A(1)(a)(iii) of the GCC).

The new clause 3A(1)(a)(iv) also provides for receiving or offering fees for the rendering of a financial service other than those fees or commission authorised by insurance legislation provided that such fees should be specifically agreed to by a client in writing (CI 3A(1)(a)(iv)(aa) of the GCC) and it may be stopped at the discretion of that client (CI 3A(1)(a)(iv)(bb) of the GCC). The remainder of the new section 3A(1)(a) makes provision for the payment of fees or remuneration for the rendering of services to a third party provided that the fees or remuneration is reasonably commensurate to the service being rendered (CI 3A(1)(a)(v) of the GCC), an immaterial financial interest (CI 3A(1)(a)(vi) of the GCC) and finally, a financial interest for which a consideration, fair value or remuneration that is reasonably

proportionate to the value of the financial interest is paid by the provider or representative at the time of receipt thereof (CI 3A(1)(a)(vii) of the GCC).

Of particular interest are the prohibitions contained in clause 3A(1)(b) of the GCC. First, a provider may not offer any financial interest to a representative of the provider for giving preference to the quantity of business that was secured by the representative "to the exclusion of the quality of the service rendered" (CI 3A(1)(b)(i) of the GCC). Second, a financial interest may not be offered for giving preference to a specific product supplier, where a representative may recommend more than one product supplier (CI 3A(1)(b)(ii) of the GCC). In the final instance, it is forbidden for a provider to offer any financial interest to a representative of the provider for giving preference to a specific product of a product supplier where more than one product may be recommended (CI 3A(1)(b)(iii) of the GCC).

3 3 *Conflict of interest policy*

So far, it is evident that the legislator aims to achieve transparency. In addition to the strict new requirements as discussed in paragraph 3 2 above, BN 58 of 19 April 2010 also requires every provider, other than a representative, to adopt, maintain and implement a conflict of interest management policy (CI 3A(2)(a) of the GCC; and refer to Moolman *et al* *Financial Advisory and Intermediary Services Guide* 170). This policy requires providers to identify and manage conflicts of interest and in addition, this policy should be brought to the attention of its employees, representatives and associates (CI 3A(2)(d) of the GCC; and Moolman *et al* *Financial Advisory and Intermediary Services Guide* 170-171). This policy should be seen as a compass which guides all those involved in the area of conflicts of interest in order to ensure that they remain on the right side of the law. Furthermore, the policy should not be regarded as another document in the compliance file but as an honest and hard look at the dealings of a services provider. In addition, the all-important values of fairness and honesty should remain at the core of any of these policies so as to ensure that the policy serves the purpose as intended by the FAIS Act.

4 **Comment**

It seems from the lengthy section 3A as well as the insertion of detailed definitions as discussed in paragraph 3 1 above that the legislator intended for conflicts of interest to be taken seriously. On the one hand one can argue that the principle of acting honestly and in good faith should be sufficient and that there was no need to enact such elaborate rules. Also, when replacing principles with detailed rules, there is always the danger of losing aim of the objective, which is to act honestly and in good faith. However, if one takes the view that concepts such as honesty and good faith are too abstract, it helps to have detailed rules. A financial services provider or representative

who ensures that section 3A is followed to the letter would thus give effect to the underlying principles and act honestly and in good faith.

One must also bear in mind that the detail in which the Regulator decided to deal with this aspect illustrates the complexity of the financial landscape. Financial services providers have for long formed alliances with representatives who would market their products. In a capitalist society where competition between services providers is both desired and encouraged, it is to be expected that services providers need to do more than to advertise in order to have a competitive advantage or just to remain in business.

Unfortunately it is not possible to provide statistics or empirical evidence of how detrimental these liaisons were to clients with the result that an accurate before and after picture cannot be painted. One will therefore only speculate on whether these changes to the GCC will improve matters for clients and ultimately result in the rendering of honest, efficient services.

There is no doubt those in the financial services industry who criticise the new legislation as being excessive and one sympathises with those who had always acted honestly and in the best interest of clients and to whom incentives were no more than welcome windfalls. However, it is submitted that there are reasons why the new rules pertaining to conflict of interest should indeed be welcomed.

First, the rules drive home the importance of conflicts of interest as part of consumer orientated legislation. In the past there were grey areas and the typical argument was that the odd golf day was something that everybody did and that it could not possibly influence anybody's judgment. Legislation is now very specific and it is impossible for FSPs and representatives to be involved in fee- and commission-generating activities that are expressly prohibited. However, in training employees and representatives on the matter of conflict of interest, the emphasis should still be on the principles, namely to act honestly and in good faith. The underlying principles cannot be compromised. Also, key individuals and compliance officers should take care not to allow for those fundamental principles to be obscured by rules that are enforced in a disjointed way.

Second, by forcing FSPs and representatives to identify possible and potential conflicts of interest, these role players have no choice but to have a long and hard look at the way in which they conduct their business. In scrutinising their business relationships and practices for outlawed behaviour, they are forced to be ever mindful of the client's right to objective advice and fair financial services. After such an honest evaluation, steps must be taken to avoid or mitigate conflicts of interest.

In the third instance, a compulsory conflict of interest policy will serve as a moral compass for an FSP or a representative. One is not unsympathetic towards the smaller role players who find it hard to compete and to comply with strict legislation in an ever-changing financial landscape. Large services providers who can afford to pay a compliance officer to formulate and

enforce policies need not fret unnecessarily over matters such as policy documents. However, it is harder for a sole proprietorship to formulate policies that comply with the legislation and it is also in many instances an overkill to burden an already honest, compliant representative or services provider with more paperwork. Nevertheless, it is submitted that policies such as these are necessary evils. Smaller role players can just as easily fail to negotiate their way through the murky waters where temptation lurks and cause great harm to consumers.

5 Conclusion

At the very core of the new conflict of interest legislation lies the principles of acting with good faith and integrity and being honest. It is unfortunate that that which should be ingrained in the minds of FSPs and representatives have become a minefield that can only be negotiated with more rules. Billy Joel's lament might as well have been a call from the FSB to FSPs and representatives when he sang: "Honesty is such a lonely word, everyone is so untrue. Honesty is hardly ever heard and mostly what I need from you." (Lyrics <http://www.azlyrics.com/lyrics/billyjoel/honesty.html> accessed 2011-01-18.)

Only time will tell whether the detailed legislation on conflict of interest that was introduced by the legislator into the GCC will in fact have the effect of forcing role players to serve the interests of their clients first. In the same way in which the Battle of Britain was but one conflict in an ongoing war, conflict of interest is one aspect that affects the rights of consumers. Perhaps in a few years' time we will look back and thank the few who designed the new rules for saving so many from unscrupulous, dishonest dealings, thereby ensuring that the rights of consumers of financial services triumph and thus achieving the most important objective of the FAIS Act.

Daleen Millard
University of Johannesburg