FINANCIAL SERVICES BOARD
Inspection report issued to the Registrar of Financial Services Providers
STOCK MARKET COLLEGE (PTY) LTD (COMPANY REGISTRATION NO. 2002/07025712/07)
Inspection under section 3 of the Inspection of Financial Institutions Act, No. 80 of 1998
Report by:
E PARRATT
Z MSHUNQANE A MELAPI
INSPECTORS OF FINANCIAL INSTITUTIONS

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FSB
FSB Act
FSP
FSP Category I
FSP Category II
Go Direct
Harper
Inspection Act

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FSP authorised to provide non-discretionary financial services
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Go Direct Stock Market Investment CC, Company Registration No. 2010/170199/23
Ms Esther Harper, trader at PSGKonsult
Inspection of Financial Institutions Act, No. 80 of 1998

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ANNEXURES

Explanation
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Ms Esther Harper, trader at PSGKonsult
Inspection of Financial Institutions Act, No. 80 of 1998
JSE Ltd, Registration No. 2005/022939/06
Mr Unathi Kamlana, complainant
Mr Isaac Mohapi, complainant and client of SMC
Mr Sam Mokgawa, former sales consultant at Go Direct
Mr Mbuso Abram Mthetwa, member of Go Direct
NCJ Commercial Insurance Brokers CC, Company Registration No. 97/58287/23, an authorised FSP
Category I with FSP No. 3531
North East South West Trading CC, trading as Newstrading with Company Registration No. 2004/105496/23, an authorised FSP Category I and II with FSP No. 25661
PSG Konsult Financial Planning (Pty) Ltd, Company Registration No. 1999/006725/07, an authorised
FSP Category I and II with FSP No. 728
Registrar of Financial Services Providers, in terms of section 2 of the FAIS Act
Representative as contemplated in terms of the FAIS Act
Mr Jonathan Skews, an independent financial planner and key individual of NCJ
SMC Stock Market College (Pty) Ltd, Company Registration No. 2002/025712/07
Mr Shaun Clive Taylor, authorised representative of NCJ
Trademar Futures (Pty) Ltd, Company Registration No. 2004/012865/07, a member of the South African Futures Exchange
Mr Hardus van Pletsen, director of SMC
Mrs Zelda Mary van Pletsen, director of SMC

The following annexures form part of this report and should be read in conjunction with the contents thereof. Please note that these documents are copies and not original documents.

Annexure Description
1. Instruction letter dated 12 July 2012
2. Email from Kamlana dated 30 May 2012
3. Email from Mohapi dated 25 June 2012
INTRODUCTION

1. The FSB is an autonomous regulatory body which exercises supervision over the business of financial institutions. The Executive Officer of the FSB is the Registrar of various financial institutions in terms of legislation relevant to such financial institutions. As such, the Executive Officer is also the Registrar of Financial Services Providers (Registrar).

1. We are duly appointed inspectors in terms of section 2(1) of the Inspection Act. We were instructed on 18 July 2012 in terms of section 3 of the Inspection Act to carry out an inspection of the affairs of Stock Market College (Pty) Ltd (SMC) and its associated institutions.

1. This inspection was performed in terms of the provisions of the Inspection Act which sets out the powers and duties of the Registrar and inspectors of financial institutions.

Background

1. This inspection was prompted by a complaint the FSB received from Mr Unathi Kamlana (Kamlana) on 30 May 2012, wherein Kamlana raised his concerns that SMC might be involved in an illegal deposit taking scheme, and/or pyramid scheme and that SMC was not registered with the FSB.

1. In his complaint, Kamlana stated, inter alia, that he had visited SMC’s website and “From what I can gather, these people require a fee to join their trading platform/investment clubs and then you become some sort of intermediary and earn some kind of fee or commission depending on the number of people who join through you. Apparently a few people have resigned from their day jobs to make money from the scheme”.

1. Furthermore, the Office of the Registrar received a complaint from Mr Isaac Mohapi (Mohapi) against SMC. In his complaint, Mohapi stated that: “during March 2011 I was approached by Sam a representative from Johannesburg Stock Exchange to invest money. Sam referred me to Mzo and Abram who advised me to withdraw money from my account ... I also invested an amount of R40 000-00. I have never heard from them for almost one year and when I tried to contact them their cellphone were off”.

1. On 13 June 2012, the Office of the Registrar sent a letter to SMC regarding the allegations that SMC could be carrying on business as an FSP in contravention of the FAIS Act and requested SMC to provide the Registrar with certain information and documentation in this regard.

1. Mr WP Steyn (Steyn), SMC’s legal representative, responded to said letter on 22 June 2012, stating, inter alia, that it appeared that the FSB was on a “fishing expedition” and requested to be provided with the complaint.

1. The Office of the Registrar provided Steyn with a copy of Kamlana’s complaint. Mohapi’s complaint was not given to Steyn.

1. Subsequently, in a letter dated 28 June 2012, Steyn responded to Kamlana’s complaint wherein he, inter alia, stated that the complaint by Kamlana did not provide justifiable reasons to believe that SMC was in contravention of the FAIS Act and that there was no legitimate basis for an investigation into the affairs of SMC by the FSB. Steyn further denied that SMC’s business or any aspect thereof was in contravention of the FAIS Act.

Scope of the inspection

1. The Registrar requested us to determine the following:

1 “Whether SMC is in contravention of section 7 of the FAIS Act; 1 Whether client funds have been received by the entity;
1 Full description of the business activities of the entity;
1 Whether its representatives solicit investments and/or collect premiums; and
1 Whether such representatives receive commission or remuneration, for so doing.”

Inspection work performed
analysed the correspondence and documents received from the Office of the Registrar. Conducted interviews with, inter alia, the following people:

1. We requested and analysed information from SMC which included the following:

1. We obtained and analysed the following information related to Mohape’s complaint:
   1. Mr Sam Mokgawa (Mokgawa), previous sales consultant at Go Direct, on 20 July 2012;
   2. Mr Hardus van Pletsen (H van Pletsen), director of SMC, on 31 July 2012 and 14 August 2012;
   3. Mohapi, the complainant and a client of SMC, on 31 July 2012;
   4. Messrs Shaun Taylor (Taylor) and Jonathan Skews (Skews), on 7 August 2012; and

   1. The software program sold to clients;
   2. The training material used for the training given to clients;
   3. The referral agreement between SMC and Newstrading;
   4. The referral agreement between SMC and Trademar;
   5. The referral agreement between SMC and NCJ; and
   6. The share sales agreement between SMC and Trademar.

1. The software program sold to clients;
   2. The training material sold to clients;
   3. The referral agreement between SMC and Newstrading;
   4. The referral agreement between SMC and Trademar;
   5. The referral agreement between SMC and NCJ; and
   6. The share sales agreement between SMC and Trademar.

   1. Bank statements we received from ABSA; and
   2. Mandate and trading account documents we received from PSG Konsult.

FINDINGS

Inspected party

1. We obtained SMC’s CIPC certificate and in terms thereof SMC was registered as a private company on 17 October 2002 (Registration No. 2002/25712/07). The certificate describes the principal business of SMC as “To render commercial, industrial, business services, sales and support”. H van Pletsen and Z van Pletsen are listed as the only directors.

SMC’s business activities

1. During our interview with H van Pletsen on 31 July 2012, he referred us to SMC’s website in order to explain SMC’s business activities. He informed us that SMC dealt with the general public who had no or very little knowledge of the stock market and which was, in his opinion, the main reason why people did not invest on the stock market.

1. According to H van Pletsen, SMC provided the following products to its clients:
   1. Stock market education;
   2. Software; and

Stock market training

1. H van Pletsen informed us that SMC had designed a course to train the man on the street to invest his own money on the stock market. The course covers very basic information, for example, what the stock market is, how it works, what a stock broker is and how to read stock prices in the newspapers. According to H van Pletsen, the purpose of said course is to turn people into successful private investors.

1. Said course contains various components, namely theory, a practical part where clients use a simulator to practise investing on the stock market, and information and back up classes which clients can also attend.

1. SMC’s purchase price for this product (the training) was R15 000 and SMC offered various payment methods.

1. On 22 August 2012, we obtained SMC’s training material from H van Pletsen. The training manual is called “Profit” and states that its purpose is to “empower investors to successfully invest on the JSE”. The contents of the said manual include, inter alia, the following:
   1. The origin and function of the JSE;
   2. The types of shares to invest in;
   3. The types of investors;
   4. Procedures to follow when investing on the JSE;
   5. The meaning and process of fundamental analysis;
   6. The meaning and process of technical analysis;
   7. The meaning and process on how to follow trends in share prices;
   8. Explaining “patterns and formation”; and
   9. Explaining the meaning of “indicators” and how to use them;
   10. Explaining “market sentiments”; and
   11. Explaining tax related matters; and

Software

1. SMC also sold a software program called QCL, which included two licences, which SMC installed onto clients computers. The licences were valid for a period of 36 months and were sold to clients at an additional cost.
1. According to H van Pletsen, there were two types of stock market software, namely predictive and technical analysis charting software. SMC sold the latter one to clients.

1. The technical analysis charting software provided clients with, *inter alia*, graphs of the stock market performance for individual or collective shares. Said software provided tools for the clients to do analysis and research of the stock market. Said graphs also contained data points which users (clients) could plot. Once users had plotted data points, they could start doing mathematical calculations (also called indicators). This was called technical analysis. Therefore, mathematics was used to analyse a share's price. The users of the software had to interpret the information obtained through the software tools and make decisions based on said information to establish whether it was viable to buy specific shares.

1. The technical analysis charting software contained the following components:
   1. A program (computer programming);
   2. A database (which contained 20 years of history on the stock market);
   3. A downloader (which assisted the clients to upload new information from the stock market);
   4. An upgrader (a computer program which assisted clients to upgrade new software); and
   5. Training material relating to the stock market which clients could access in PDF format.

1. According to H van Pletsen, SMC had a contract with the Johannesburg Stock Exchange (JSE) in terms of which SMC obtained and provided clients with a data download. Clients could then update their data daily with new trading information from the stock market.

1. On 14 August 2012, we visited SMC’s offices and requested H van Pletsen to show us how SMC’s software operates. We witnessed how H van Pletsen navigated the various functions of the software and could find no indication that said software provides any prediction or forecast in respect of the future performance of shares. It should be noted that we did not perform any investigative work ourselves on the software.

**Business opportunities**

1. H van Pletsen informed us that SMC provided clients with business opportunities. Previously, SMC had distribution agreements in place with franchises/distributors who sold SMC’s products to the public. These franchises employed sales consultants who visited potential clients and made presentations to them. When a sale was concluded with a client, SMC provided the client with the purchased product/s.

1. Once a sale was concluded by a distributor, it provided SMC with a copy of the agreement as well as proof of payment by the client. Payments for SMC’s products were made directly into its bank account.

1. H van Pletsen informed us that Go Direct Stock Market Investment CC (Go Direct) was one of SMC’s franchises/distributors until the beginning of 2012 after which SMC ceased using distributors/franchises. According to him, the owners of Go Direct were Messrs’ Mzoxolo Bezu (Bezu) and Mbuso Mthetwa (Mthetwa).

1. According to H van Pletsen, SMC started with network marketing approximately years ago. Network marketing refers to direct selling of products to consumers by direct sellers (independent contractors) who are financially compensated for the marketing and distribution of products to consumers. H van Pletsen further informed us that at the end of October 2011, SMC had made some adjustments to its business model and since then network marketing “really took off”. SMC was also a member of the Direct Selling Association of South Africa (DSA), the regulator of network marketing in South Africa. We went onto the DSA’s website where we established that SMC was a full member of the DSA, and its products were described as “stock market education and charting software”.

1. According to H van Pletsen, SMC entered into formal agreements with sales consultants, whereby SMC provided the sales consultants with licences, at a fee, to sell SMC’s products to clients, and SMC in return, provided said consultants with the necessary training and other supporting services. SMC called these consultants intermediaries due to the fact that they represented SMC.

1. H van Pletsen informed us that its business model of network marketing did not constitute a pyramid scheme, as SMC sold valid products, which was the main focus of SMC. According to him, SMC had been selling its products for many years prior to changing its business plan to networking marketing. In addition to selling the products, SMC also provided a support system to clients by way of training, installing the software on clients’ computers, and providing clients with data from the stock exchange on a daily basis.

**Referral agreements**

1. We noted that SMC’s website also referred to trading accounts and financial planning. We asked H van Pletsen to provide us with details regarding said services. We discuss his explanations relating to each of these services below.

**Trading accounts**

1. According to H van Pletsen, SMC did not provide investment advice to any of its clients. He informed us that SMC previously had referral agreements in place with other stock broking firms, but that these had been cancelled.

1. According to H van Pletsen, SMC currently has referral agreements in place with two stock brokerage firms, namely Trademar and Newstrading. H van Pletsen also provided us with the referral agreements between SMC Trademar11 and Newstrading.12

1. Upon analysis of the agreement between SMC and Newstrading, we identified the following salient features: 1 The effective date of the agreement was 1 December 2010;
1. The share sales agreement between SMC and Trademar stipulates, same date.

1 The effective date of the sale of shares agreement and the referral agreement between SMC and Trademar came into effect on the same date.

1 The agreement was subject to a suspensive condition that the seller (Trademar) and purchaser (SMC) would simultaneously with the signature of the agreement, also sign the referral agreement;

1 H van Pletsen represented SMC, the purchaser of the shares;

1 SMC purchased 20% of the ordinary issued shares of Trademar from its shareholders. Furthermore, SMC purchased 20% of all claims (including loans) which said shareholders had against Trademar. The total purchase price for said shares and claims was R600 000;

1 The agreement was subject to a suspensive condition that the seller (Trademar) and purchaser (SMC) would simultaneously with the signature of the agreement, also sign the referral agreement;

1. We analysed the referral agreement between SMC and Trademar and found it to be similar to the referral agreement between SMC and Newstrading, with one exception, namely that: “SMC is entitled to [a] 40% ongoing introduction commission for all introduced business”. 15

1. H van Pletsen informed us that in instances where a client approached either Trademar or Newstrading, the brokerage firm would provide the client with a trading application form which the client could complete. Once said client’s application had been approved, the client would receive communication directly from the relevant brokerage firm with the brokerage’s bank account into which the client could deposit funds for purposes of trading. Once the client had transferred funds into said account, the brokerage firm would allocate said funds, to the client’s trading account.

1. The client would then meet with a trader from the relevant brokerage firm, who would provide trading advice to the client and also trade on behalf of the client.

Financial planning

1. H van Pletsen informed us that SMC had a referral agreement in place with NCJ, an insurance brokerage, in terms of which SMC would refer its clients to NCJ for purposes of financial planning and advice.

1. Skews informed us that NCJ paid 20% commission to SMC for any financial products NCJ sold to any of the referred clients.

1. Skews informed us that NCJ paid 20% commission to SMC for any financial products NCJ sold to any of the referred clients.

1. van Pletsen informed us that when one of its products was sold to clients, SMC consultants introduced the clients to NCJ and informed them that in the event that the clients were interested in financial planning, they could sign a letter of consent document from NCJ as well as a financial needs questionnaire/document. This was confirmed by Skews.

1. According to H van Pletsen, SMC agents were provided with these two NCJ documents and in instances where clients bought the SMC product, the SMC consultants requested the clients to fill in and
sign the NCJ questionnaire and consent document. H van Pletsen stated that agents were not obliged to get clients to sign said NCJ documents. However, consultants did receive additional commission from SMC in instances where the clients filled in and signed said NCJ documents.

1. H van Pletsen informed us that said letters would be collected and provided to Taylor from NCJ, who would then contact the clients and meet with them in order to assist them with their financial planning.

1. We obtained a copy of a referred client’s file from NCJ. Said file contained a letter of consent document, signed by the client, as well as a completed and signed financial needs questionnaire.

1. We analysed the letter of consent document and noticed that the questions contained therein related to, *inter alia*, clients’ health, educational level and current financial products.

1. H van Pletsen informed us that Taylor also attended SMC training sessions where they introduced Taylor to the SMC clients. Taylor was introduced as a financial planner to clients who were interested in Taylor’s financial services. Taylor would then give his documents to interested clients, who would sign the authorisation documents and make an appointment with him for financial planning.

1. During our interview with Taylor, he confirmed that he often attended presentations at SMC’s premises in order to introduce himself to SMC clients. However, as stated above, NCJ also received letter of consent documents from SMC, signed by SMC clients. In these instances, Taylor contacted the clients telephonically to establish whether they were interested in financial planning and to arrange a meeting with them.

1. According to H van Pletsen, Taylor did not remunerate SMC for his marketing at said training sessions. SMC only received the agreed referral commission of 20% for all business which NCJ obtained from SMC clients.

1. Skews provided us with a document containing details of all SMC clients who had purchased financial products from NCJ, as well as all payments which had been made to SMC, relating to these clients.

1. According to both Skews and Taylor, SMC had no involvement in the financial planning services which NCJ provided to SMC clients. SMC simply referred its clients to NCJ.

**Investment clubs**

1. We established from H van Pletsen that he was once approached by a stock broker who suggested that SMC should involve its clients in investment clubs. However, even though SMC indicated “investment clubs” on its website, no further information was provided on the website and same did not materialise.

**Mohapi’s complaint**

1. We conducted an interview with Mohapi on 31 July 2012. He informed us that he was approached by Mokgawa, a former employee of Go Direct, to purchase SMC’s training and QCL software products.

1. According to Mohapi, he paid an amount of R22 000 on 13 July 2011 for said products which included the software as well as the training products. Shortly after he purchased said products, Bezu and Mthethwa approached him and convinced him to “invest” some of his money. They visited him at his home and gave him forms to fill in. Mohapi informed us that he invested an amount of R45 000 and that they (Bezu and Mthethwa) told him that they were going to trade said R45 000 on his behalf on the stock market. During our interview with Mohapi he appeared to be unsure whether said amount was R40 000 or R45 000.

1. According to Mohapi, Bezu and Mthethwa gave him a business account number into which he transferred R45 000 for investment purposes. He gave us a copy of a bank statement which he alleged reflected said payment. Said bank statement reflects an ABSA bank account (number 9257497796), of which Mr Mohapi is the account holder.

1. Mohapi informed us that for two months, after having transferred the R45 000 into the bank account he was provided with by Bezu and Mthethwa, he received no word from them. During the third month, Mohapi contacted them and they assured him that everything was in order. According to Mohapi, he eventually called Bezu at the end of 2011 and told him that he wanted a refund of his money. According to Mohapi, Bezu told him that he should not withdraw his funds as they had already made a profit of R33 000 from the R45 000 he deposited for trading purposes. According to Mohapi, Bezu got angry with him and that was the last time he spoke to either Bezu or Mthethwa as they never answered their phones again after this call.

1. Mohapi further informed us that he once received a text message on his phone that an amount of R33 000 had been deposited into his bank account. However, when he went to the bank, he was informed that there was no such deposit made into his account. According to Mohapi, he had not received any payments from said investment.

1. We also conducted an interview with Mokgawa, a former sales agent at Go Direct. According to him, Go Direct was a franchise of SMC and belonged to Bezu and Mthethwa.

1. He informed us that he had received training from SMC as a sales consultant for a period of approximately days. He only received commission for sales he concluded and left the employment of Go Direct after less than months. According to him, he had very little contact with SMC as he worked at Go Direct which was based in Braamfontein.

**continued to tell him this for a period of time, saying that they would get back to him.**

**Mohapi contacted them and they assured him that everything was in order. According to Mohapi, he was provided with by Bezu and Mthethwa, he received no word from them.**

**During the third month,** **1. Mohapi informed us that for two months, after having transferred the R45 000 into the bank account to purchase SMC’s training and QCL software products.**

**1. We conducted an interview with Mohapi on 31 July 2012. He informed us that he was approached by Go Direct which was based in Braamfontein.**

**According to him, he had very little contact with SMC as he worked at Go Direct which was based in Braamfontein.**
1. Mokgawa informed us that he had received leads from the franchise and contacted potential clients, introduced them to the SMC’s products and marketed said products to them. Mokgawa informed us that when a client was interested in purchasing an SMC product, he would fill in the agreement, the client would sign said agreement and he (Mokgawa) would then send the completed and signed form to SMC. Once SMC received this agreement together with the payment, Mr Mokgawa would provide the client with the product/s. He also gave the clients details of the training which the clients could attend at SMC’s offices.

2. According to Mokgawa, SMC clients were referred to Newstrading for trading purposes; SMC did not trade on behalf of its clients. Mokgawa, in his capacity as the sales agent, would take the Newtrading application forms for the opening of a trading account to the SMC clients who would complete said forms. Mokgawa would then return the completed application forms to SMC, and SMC would send said forms to Newtrading.

3. Mokgawa informed us that SMC told the sales consultants that SMC had the facilities to provide financial advice if clients required such advice. However, he was unaware of any instances where SMC provided such advice to clients, and he did not know who NCJ were.

4. Mokgawa further indicated that he had no knowledge of any investment clubs offered by SMC. According to him, investment clubs were never discussed during his initial training as a sales consultant.

5. He informed us that he was the agent who had sold SMC’s training and software products to Mohapi. He gave Mohapi details regarding the training, but was unsure as to whether Mohapi had attended said training.

6. According to Mokgawa, subsequent to purchasing the SMC products, Mohapi also made an investment for trade purposes. However, he was not involved with this. He further stated that Mohapi had informed him that he filled in “brokerage forms” for this purpose.

7. Mokgawa indicated to us that he was in regular contact with Mohapi after the sale and got the impression that Mohapi failed to fully understand the products and how the stock market and trading processes worked.

8. As stated above, during our interview with Mohapi, he provided us with a copy of his bank statement (account number 9257497796). We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

9. We requested and obtained Mohapi’s bank statement from ABSA for the period 1 July 2011 to 25 June 2012 for ABSA bank account number 9257497796. We analysed said statements and established that an amount of R40 000 was transferred from Mohapi’s bank account on 21 September 2011, into an account (number 622253569491870). We were unable to trace a transfer of R45 000 from Mohapi’s bank account.

10. We further established that an amount of R36 660.21 was transferred into Mohapi’s bank account (number 9257497796) on 9 November 2011 by PSG Konsult. We were unable to trace a transfer of R45 000 from Mohapi’s bank account.

11. We received documents from H van Pletsen indicating that Mohapi did in fact have a trading account with PSG Konsult. According to him, he received said documents from Mohapi.

12. PSG Konsult is a private company with Registration No. 1999/006725/07 and is an FSP Category I and II with FSP No. 728, which, inter alia, manages investments in collective schemes on behalf of clients.

13. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We requested and obtained Mohapi’s bank statement from ABSA for the period 1 July 2011 to 25 June 2012 for ABSA bank account number 9257497796. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

14. We requested and obtained Mohapi’s bank statement from ABSA for the period 1 July 2011 to 25 June 2012 for ABSA bank account number 9257497796. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

15. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

16. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

17. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

18. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

19. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

20. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

21. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

22. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

23. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

24. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

25. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

26. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

27. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.

28. We conducted a telephonic interview with Mrs Esther Harper (Harper), a trader with PSG Konsult, on 11 November 2011. We established that the amount of R45 000 which reflected on his bank statement was in fact credited into said account from account number 9260479816. Subsequently, we established from ABSA that Mohapi was the account holder of account number 9260479816.
1. Supporting Mohapi’s allegations;
2. Which indicated misappropriation of Mohapi’s funds;
3. Which indicated irregular conduct.

CONCLUSIONS

Full description of SMC’s business activities

1. We established that SMC’s main business was to provide clients with stock market related training and software. The training course covers very basic information, for example, what the stock market is, how it works, what a stock broker is and how to read stock prices in the newspapers.
2. SMC’s software program (technical analysis charting software) included two licences, which SMC installed onto clients’ computers. The licences would be valid for a 36-month period and said licences were sold to clients at an additional cost.
3. Said software provided tools for the clients to do analysis and research of the stock market. SMC also obtained and provided clients with a data download which SMC obtained from the JSE. Clients could update their data daily with new trading information from the stock market.
4. SMC sold its products by way of networking marketing and was a member of the DSA.
5. SMC entered into formal agreements with sales consultants (intermediaries), whereby SMC provided the sales consultants with a licence at a fee to sell SMC’s products to clients. In return SMC provided said consultants with the necessary training and other supporting services.
6. We found no evidence to suggest that SMC was involved in any investment clubs.

Section 7(1) of the FAIS Act

1. We were requested to determine whether or not SMC had acted in contravention of the provisions of section 7(1) of the FAIS Act.
2. Section 7(1) of the FAIS Act states that “with effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a financial services provider unless such person has been issued with a licence under section 8” [own emphasis]. Furthermore, in terms of section 36(a) of the FAIS Act:
   “any person who contravenes or fails to comply with a provision of section 7(1) ... is guilty of an offence and is on conviction liable to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment” [own emphasis].
3. Section 1 of the FAIS Act defines “financial services provider” to mean:
   “any person, other than a representative, who as a regular feature of the business of such person –
   (a)furnishes advice; or
   (b)furnishes advice and renders any intermediary service; or (c)renders an intermediary service”.
4. Section 1 of the FAIS Act defines “intermediary services” to mean:
   “subject to subsection (3)(b), 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”. 1. Section 1 of the FAIS Act defines “advice” as follows:
   “... subject to subsection (3) (a), 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, and irrespective of whether or not such advice –
   1. (i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or
   2. (ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected”.

Software

1. As stated above, we established that SMC’s main business was to provide clients with stock market related training and software.
2. Our analysis of SMC’s training material showed that the software program provided to SMC clients was purely a tool which assisted clients to do analysis and research of the stock market.
3. The software program contained 20 years of history and information of the stock market and also contained a data download tool which enabled SMC’s clients to download current and daily information of the stock market.
1. This information (previous and current), including the tools contained in the software program, enabled the clients to do technical analysis on the performance of individual or collective shares.

1. We did not find any evidence that said software program either contained any advice of a financial nature or that it was used as a medium to provide advice as defined in section 1 of the FAIS Act.

1. We are of the view that SMC, by providing said software and information to clients, cannot be construed as having committed “any act other than the furnishing of advice ... the result of which is that a client may enter into ... any transaction in respect of a financial product ...” as defined under the definition of “intermediary services” in Section 1 of the FAIS Act.

1. Clients who purchased the SMC product (software program and training) did so due to the fact that they were already interested in trading on the JSE, and thus bought said product in order to obtain the skills and tools to do so.

1. We, therefore, find that SMC did not furnish advice to clients by selling said software program to them; neither did it render intermediary services.

**Training**

1. We also analysed SMC’s training material, as stated above. The purpose of the training material was to educate clients on the stock market. The training material appeared to contain basic information such as, *inter alia*, the history of the stock market, different types of shares, different types of investors, and procedures to follow when a client wants to trade on the stock market.

1. As stated above, clients who purchased the SMC product did so in order to educate themselves about the stock market. We are of the view that the training material contained very basic information which cannot be construed as financial advice, as defined in section 1 of the FAIS Act. For the same reason we find that SMC did not render intermediary services by providing training based on said training manual.

**Financial planning**

1. H van Pletsen informed us that SMC saw financial planning as a business opportunity and SMC concluded a referral agreement with NCJ whereby SMC received 20% commission of total commission received from NCJ, for all financial products sold to clients referred by SMC.

1. According to H van Pletsen, SMC in no way provided financial services to any of its clients. This was confirmed by Skews and Taylor. It appears that SMC purely referred clients to NCJ with no further involvement regarding financial planning for said clients.

1. We were unable to obtain information indicating that said referrals can be defined as advice of a financial nature as defined in section 1 of the FAIS Act.

1. We are of the view that SMC’s referral of interested clients to NCJ for purposes of financial advice cannot be construed as “any act other than the furnishing of advice ... the result of which is that a client may enter into ... any transaction in respect of a financial product ...” as defined under the definition of “intermediary services” in section 1 of the FAIS Act.

1. SMC had referral agreements in place with two stock brokerage firms, namely Trademar and Newstrading. According to H van Pletsen, clients who approached SMC with trading related matters were referred to one of the stated brokerage firms. Said brokerage firms assisted said clients by opening trading accounts on their behalf, providing trading advice, and trading on their behalf.

1. SMC recently purchased 20% shares in Trademar. However, SMC is not actively involved with the daily running of Trademar, nor does it or its directors provide advice or financial services to Trademar’s clients.

1. For the same reasons as discussed above under “financial planning”, we are of the view that SMC, in instances where it referred clients to Trademar and/or Newstrading, did not provide advice or services as an intermediary as defined in section 1 of the FAIS Act.

**Whether SMC’s representatives solicited investments and/or collected premiums**

1. SMC informed us that it previously used franchisees/distributors to sell SMC’s products. SMC subsequently changed its business model and no longer sells its products through franchisees/distributors.

1. Currently, SMC sells its products by way of network marketing and is a registered member of the DSA.

1. According to H van Pletsen, SMC entered into formal agreements with sales consultants (intermediaries), whereby SMC provided the sales consultants with a licence, at a fee, to sell SMC’s products to clients. In turn, SMC provided said consultants with the necessary training and other supporting services.

1. Said intermediaries performed the same duties as the previous sales consultants and were also remunerated by way of commission for sales of SMC products.

1. We, therefore, conclude that SMC’s intermediaries/sales consultants did not solicit investments and/or collect premiums from clients; they only marketed and sold SMC’s products to them.

**Whether SMC’s representatives received commission or remuneration, for soliciting investments and/or collecting premiums**

1. SMC sales consultants did not solicit any investments nor did they receive any commission for such.

1. As stated above, SMC’s representatives only marketed and sold SMC’s products as discussed above and only received commission for products sold on behalf of SMC.

**Mohapi’s complaint**
1. Mohapi purchased SMC products (the software and training) from Go Direct, previously a franchise of SMC. According to Mohapi, after said purchase, he transferred R45 000 into a business account in the name of either Bezu or Mthetwa, for trading purposes.

1. Mohapi further informed us that he was unable to reclaim any of said money, and that Bezu and Mthetwa simply ignored his telephone calls after he asked them to repay said funds.

1. We have established that on 21 September 2011, an amount of R40 000 was paid to PSG Konsult for trading purposes. No transfer of R45 000 reflected on Mohapi's bank account. We also established that PSG Konsult credited Mohapi's bank account in the amount of R36 660.21 on 9 November 2011.

1. According to PSG Konsult, a trading account was opened in Mohapi's name on 15 September 2011 and shares were purchased on his behalf. PSG Konsult informed us that they sold said shares on 1 November 2011 and that Mohapi suffered a loss of R3 425.78.

1. We further established from Harper that Mohapi had visited her once at her office where she provided him with explanations regarding his investments.

1. Harper could not recall who had referred Mohapi to her, and we, therefore, were unable to establish what role Bezu and Mthethwa played in the referral and investments of Mohapi. However, we found no evidence which indicated irregular action on their part.

1. We are of the view that none of the information we obtained supports Mohapi’s complaint and find that his funds were in fact deposited into a trading account with PSG Konsult and that shares were purchased on his behalf. We also found that at his request, he did receive said funds, and that PSG Konsult credited his bank account with said funds.

RECOMMENDATIONS

1. In light of the above findings, we recommend that the Registrar of FSPs does not take any regulatory action against SMC.

INSPECTOR

INSpectors of Financial Institutions

DATE

Inspector Date

Inspector Date