



Marine Forum 2016



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Where we have come from...



Supervisor:

- ❑ Backward-looking
- ❑ Compliance-based
- ❑ “One-size-fits-all” – not risk-based
- ❑ “Industry silo” approach to regulation and supervision

Outcomes:

- ❑ Despite rules, too many examples of poor customer outcomes
- ❑ Culture not customer-centric
- ❑ Conduct and integrity risks not proactively managed

Conduct of business



Forward-looking

- FSCA / firms to identify future conduct risks
- Market and consumer research

Pre-emptive and proactive

- Not just responding to complaints
- On-site visits, thematic reviews, off-site reporting, mystery shopping
- Addressing risks at source (culture, governance, structural interventions)

Outcomes focused

- Firms to demonstrate delivery of TCF outcomes
- On-site / off-site testing of TCF commitment
- Testing TCF in complaints handling

Risk-based and proportionate

- Tiered regulatory framework based on risks to customer outcomes

Comprehensive and consistent

- Expanding scope of conduct supervision
- Cross-cutting activity-based focus areas
- Consolidated legislative framework

Intensive and intrusive

- Build up a centralised "conduct profile" of entities & groups
- Visible enforcement



Retail Distribution Review Update



Adviser categorisation

Conflict controls



- ❑ Confusing terminology - especially “multi-tied” – will not help customers understand advice status
- ❑ Main test of independence should be extent of product supplier influence
- ❑ Focus areas of potential conflict include:
 - ❖ **Production or sales targets**
 - ❖ **Ownership or other interests**
 - ❖ **Binders and outsourcing** – stricter conflict controls needed (see later in this presentation)
 - ❖ **Other conflicted arrangements** – covered by FAIS GC

A possible two-tier alternative



Two *licence* categories:

- (i) Registered product supplier agent;
- (ii) Registered financial adviser - adviser cannot be both

A registered financial adviser / adviser firm may also describe itself or its advice as “independent”, provided that:

- no binder or outsource arrangements/ no ownership interests either way/ no other forms of product supplier influence exist

Being “independent” would not be a separate licence category

Either a registered financial adviser or a registered product supplier agent may also describe themselves as a “financial planner”, provided they meet the applicable standards for financial planning

The principle that degree of product supplier responsibility in relation to advisers will be aligned to degree of influence, will be retained



Update on RDR Phase 1 proposals

Proposal Y



Advisers may not act as representatives of more than one juristic intermediary (adviser firm)

- ❑ Proposal may be modified disallow advisers from being a representative on more than one FSP licence where the FSPs concerned are licensed for the same FAIS product categories
- ❑ This should accommodate most valid arguments raised – for e.g. the ability to obtain experience under supervision for new products and certain group structures
- ❑ **New:** Same legal entity will not be permitted to hold more than one FSP licence
- ❑ **New:** Will also tighten fit & proper operational requirements and supervision of KIs to prevent “rent a KI” models

Proposals Z and AA



Tighter controls being considered for outsourcing by insurers to advisers:

- ❑ Adviser who holds binder to “enter into, vary or renew” policies may not also earn outsourcing fees for policy administration – this is implicit in binder function
- ❑ Other advisers may not earn outsourcing fees for policy administration unless parties prove administrative efficiency that enables “real time” data capture – through direct capturing on insurer platform
- ❑ Fees for such outsourced policy administration will also be capped, after further consultation on cap level – initially proposed as 2% of premium
- ❑ Conduct standards for outsourcing to be strengthened to further minimise conflicts and quality of insurer oversight

Proposal UU



Remuneration for selling and servicing short-term insurance policies

- ❑ RDR does not propose that insurers will move to up-front remuneration of advisers – will still be as-and-when premiums are received– what about selling without servicing
- ❑ Immediate concern is the s.8(5) fee under the STIA – currently no customer consent and purpose of fee unclear – inconsistent with RDR principles
 - Section 8(5) of STIA was repealed but repeal not yet effective
 - Fee to be replaced by advice fees but an alternative mechanism requiring customer to agree fee – and its purpose – in advance
 - Charging of these fees (and their purpose) and related disclosures will be monitored

Proposal VV



Conditions for short-term insurance cover cancellations

- ❑ Intent is to proceed with the proposal, with some changes:
- ❑ Cancellation by intermediary: Clarify that explicit consent by each customer is required – considering a review of standards where adviser holds a discretionary mandate
- ❑ Cancellation by insurer: Insurer remains on risk for shorter of:
 - 30 days after insurer receives proof that customer is aware of cover cancellation; and
 - period until insurer receives proof that customer has new cover

Proposal ZZ



- ❑ Very divergent feedback received – FSB intends to proceed with binder caps, but with further technical work to finalise levels of caps
- ❑ Conduct standards for binders – especially with advisers – to be strengthened. Focus on improved insurer oversight and operational efficiency.
- ❑ Considering disallowing binders with advisers (as opposed to underwriting managers) for purposes other than the “entering into, vary or renew” and “claims settlement” binder functions
- ❑ Questions re. appropriateness of binder agreements with advisers for S-T commercial lines business generally: – service efficiency gains not obvious; unclear whether sufficient specialist skills to mitigate underwriting and reinsurance risk; caps to mitigate conflicts difficult to set

Proposal BBB



Outsourcing fees for issuing insurance policy documents

- This proposal is to be withdrawn
- This service is only operationally justified where a binder to “enter into, vary or renew” is in place or an outsourcing agreement for policy admin with “real time” data exchange
- In both these cases, issuing policy documents will be incidental to the binder / outsource activities



Trends In Compliance



Landscape



9699 (Category I)

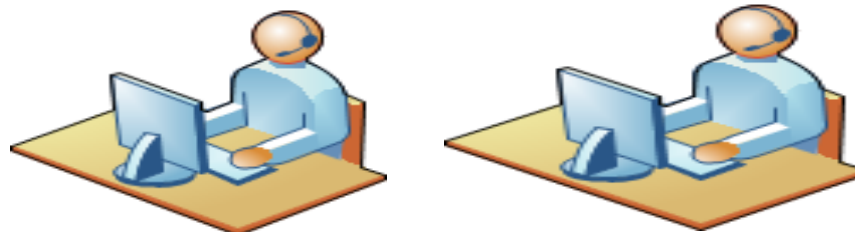
693 (Category II and IIA)

27 (Category III)

94 (Category IV)

4 035 Approved Compliance Officers

**10 513
FSPs
167 000
Reps
13 500 KI**

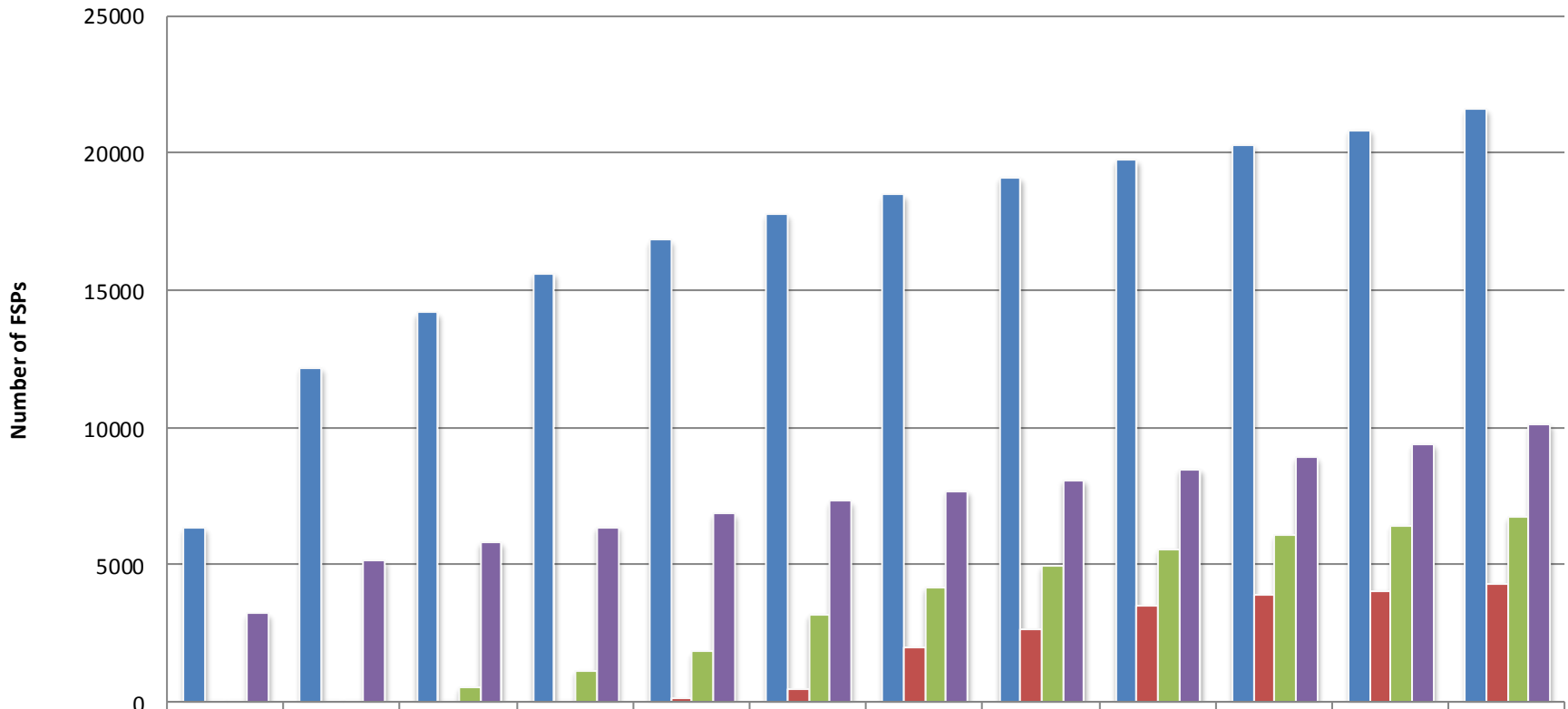


**132 FAIS Division Staff Complement
65 (FAIS Supervision Department)**

Financial Services Landscape



2004 - 2015

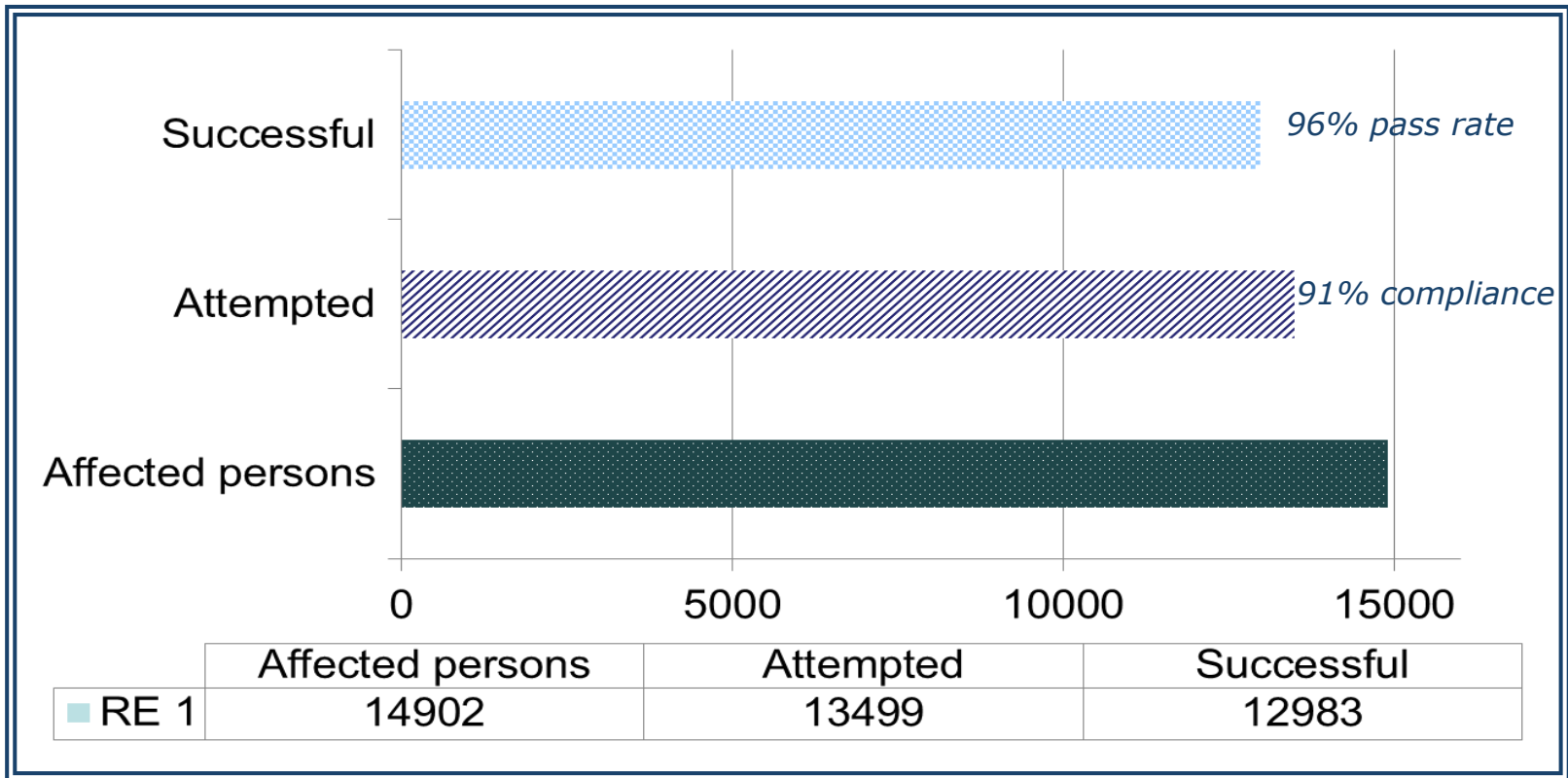


	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
■ Approvals	6333	12160	14167	15609	16807	17763	18458	19103	19733	20280	20829	21597
■ withdrawals	4	4	16	39	111	427	1976	2628	3491	3870	4046	4280
■ Lapsed	4	49	534	1138	1825	3178	4172	4936	5550	6043	6409	6717
■ Authorised	3209	5148	5809	6356	6847	7290	7674	8075	8465	8890	9365	10107

Compliance with RE Level 1:



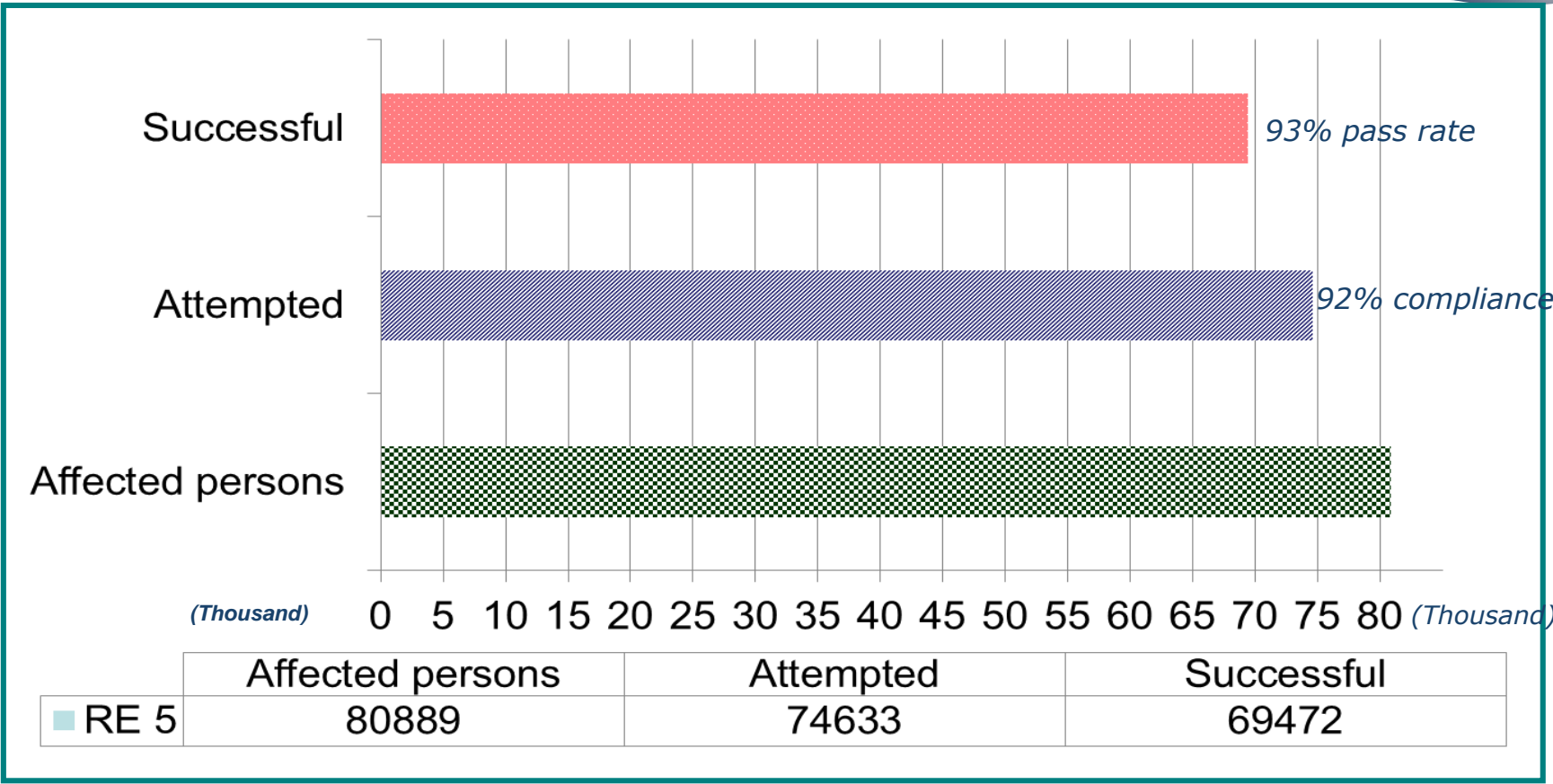
RE1: KIs for Category I, II, IIA, III and IV & Sole Proprietors



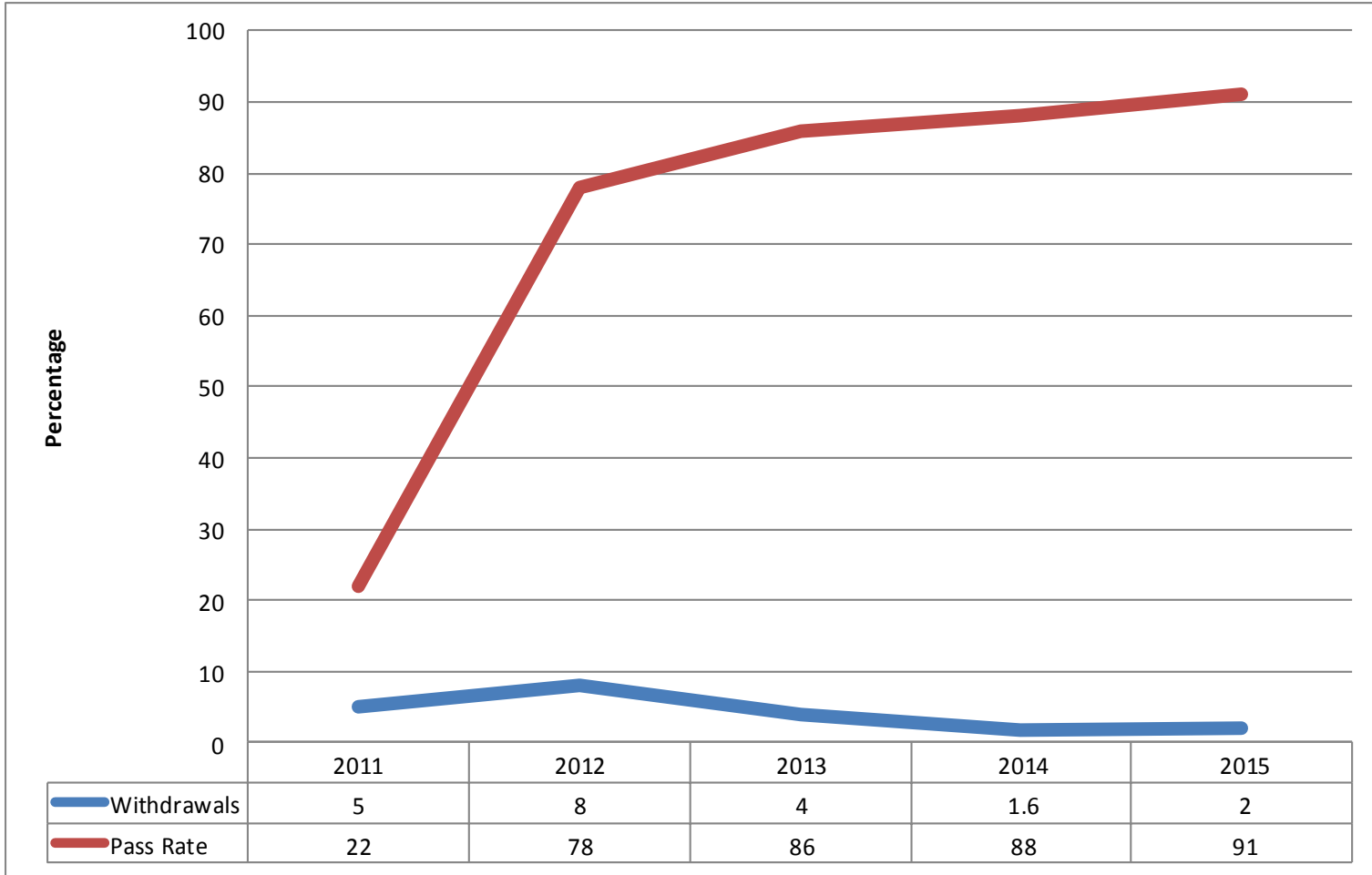
Compliance with RE Level 1:



RE5: Representatives & Sole Proprietors



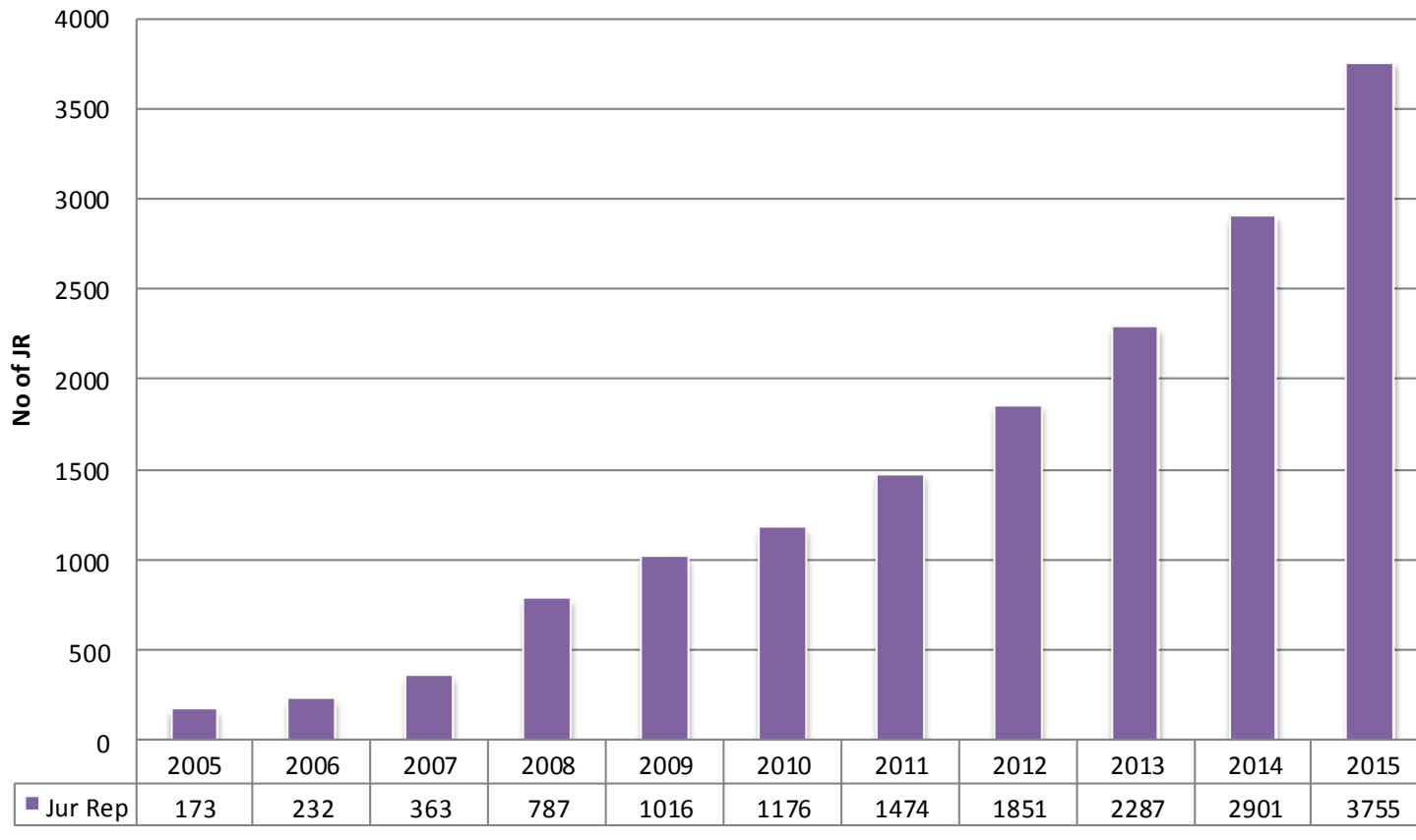
Pass Rate vs. Withdrawals



JR Growth



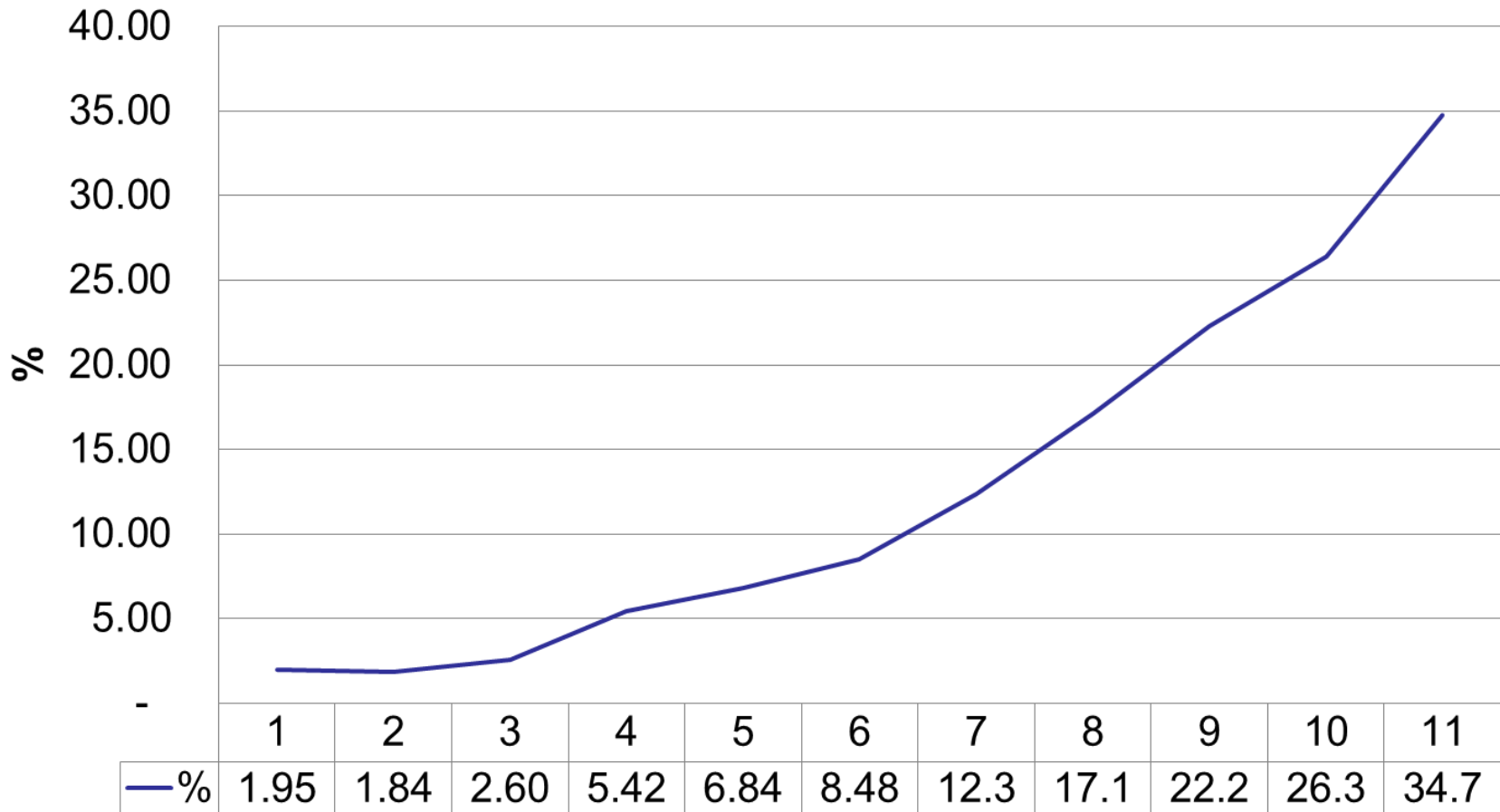
JR Growth



JR as a % of FSP



JR AS % OF FSP



Emergence of the JR



The FSP

- ❖ Strict fit and proper requirements
- ❖ Annual levy payment
- ❖ Onsite visits
- ❖ Statutory returns submission
- ❖ Compliance officer

JR Solution

- ❖ Financial soundness not required
- ❖ Platform fees
- ❖ No visits by the FSB
- ❖ No submission of statutory returns
- ❖ No compliance officer

Observation and Comments



❖ **The size of the JR**

- Financial soundness

❖ **Sole Proprietors with large JR**

- Business continuity
- Operational ability

❖ **Some FSP with hundreds of JR**

- Operational ability
- Financial soundness

❖ **Comments:**

- Introduce financial Soundness requirements for JR
- Prohibit sole prop JR relationships
- 13(1)(c) prohibitions

Recent Amendments



Section 13(1)(c)

"A representative may not render financial services or contract in respect of financial services other than in the name of the FSP of which such person is a representative"

Rationale for requirement

- ❖ Ensure consumers know with whom they are contracting and who is ultimately responsible to perform in terms of the contract
- ❖ Remove any uncertainty as to whether the representative is acting for or on behalf of a principal
- ❖ Prevent the undesirable business practice of *"renting a licence"*.
- ❖ Ensure all monies received by a FSP and its representatives are reported on by the auditor of the FSP



Enforcement Updates, Debarments

Enforcement Orders



Cases referred to the Enforcement Committee for the period 1 January 2013 to 15 February 2016.

Date penalty imposed	Respondent	Contravention	Amount imposed
27-Oct-15	Rowe Hooper Insurance and Investment Brokers Cc	Sec 7(3) of the FAIS Act and sec 2 and 8 of the General Code of Conduct of Authorised Users "GCoC	R 150 000
16-Sep-15	Mpiti Funeral Services CC	Sec 7(1) of the Long Term Insurance Act (LTIA)	R 200 000
29-Jul-15	Mhlangaveza Family Assurance (Pty) Limited	Sec 7(1) of LTIA as well as sec 7(1) FAIS Act	R 200 000
22-May-15	Nestlife Assurance Corporation Ltd	Sec 7(3) of the FAIS Act	R 100 000
26-Feb-15	Jacobus Gouws	Sec 7(3) of the FAIS Act and sec 2 of the GCoC	R 200 000
27-Jan-15	Talksure Trading (Pty) Limited	Sec 2 of the GCoC	R 250 000
02-Oct-14	Clifford May	Sec 7(3) of the FAIS Act as well as sec 2 of the GCoC	R 800 000
29-Jan-14	Dominion Consulting (Pty) Limited	Sec 3(3) of the GCoC	R 50 000
22-Jul-13	Insurance Underwriting Managers (Pty) Limited	Sec 3(3) of the GCoC	R 50 000
15-Jul-13	Finstate CC	Sec 13(2)(a) of the FAIS Act and sec 2 of the GCoC	R 40 000
09-May-13	Hippo Comparative Services	Sec 3A(1)(b) of the GCoC	R1.5m
23-Apr-13	Martindale Securities and Investments (Pty) Limited	Sec 3A(2)(a) and 11 of the GCoC	R 20 000
19-Mar-13	EQ FIN (Pty) Limited	Regulation 3(b) of the FAIS Act	R 150 000
08-Feb-13	Cucamia Finansiele Dienste CC	Sec 7(1) of the FAIS Act	R 100 000

Debarment Action



- ❑ Debarments of representatives operate on two levels.
- ❑ Section 14(1): This section empowers and enjoins FSP's to debar representatives who are
 - ❖ No longer competent to render financial services;
 - ❖ Have contravened the FAIS Act and
 - ❖ who are no longer fit and proper to render financial services.
- ❑ It is the responsibility of the FSP to ensure that wrongdoers are not permitted to render financial services. These measures are meant to protect the public and the integrity of the financial services industry.

Debarment Action



- The debarment by an FSP has industry wide consequences. The representative is not only precluded from rendering services for the debarring FSP. **Barthram judgment** (2015)
- The debarment of representatives is not without problems. There are complaints of apparent abuse of the debarment tool by the FSP's.
- Debarment should not be used to satisfy a provider's contractual or other grievances against a representative, unrelated to fitness or competency requirements.

Debarment Action



- ❑ The Registrar has no power to set aside a debarment effected by the FSP.
- ❑ The Registrar plays no role in terms of this debarment.
- ❑ Registrar is only notified of the debarment and upon notification the Registrar updates the central register.
- ❑ The recourse for the aggrieved representative lies in the review of the decision by High Court.
- ❑ That is often way beyond the financial means of many representatives who firmly believe that there were in fact no valid reasons for the debarment and who often believe that the debarment was malicious.

Debarment Action



- ❑ Amendments to section 14(1) of the Act have been proposed in the FSR.
- ❑ Of importance:
 - ❖ it is proposed that the aggrieved representative may lodge an appeal with the Appeal Board established in terms of section 26 of the of the FSB Act as opposed to representatives approaching the High Court.
- ❑ If this Bill is passed into law the new appeal process will simplify and expedite a remedy at minimal cost to the representative as compared with the current remedies available.
- ❑ Other amendments proposed relate to the procedure to be followed by FSP' s when debarring representatives.

Debarment Action



CCMA Arbitration Awards And Debarments

- The core function of the CCMA is to resolve labour disputes arising from unfair labour practices in terms of the Labour Relations Act.
- Debarred representatives often approach the CCMA to have the decision of the employer reviewed. This is on the grounds of the LRA.
- At the CCMA the parties either enter into a settlement or the employer is ordered to reinstate the representative to his/her employment.
- The Arbitration award is binding on the parties before the CCMA.



CCMA Arbitration Awards And Debarments

- CCMA does not take into account the requirements of the FAIS Act as they have no jurisdiction to do so when granting relief to employees.
- The CCMA determination is then sent to the Registrar to reinstate the representative.
- The Registrar will not reinstate the person unless reappointment process is followed or the case is reviewed by the High Court.
- The Registrar will abide by an order of court where it was cited as a party.

Debarment Action



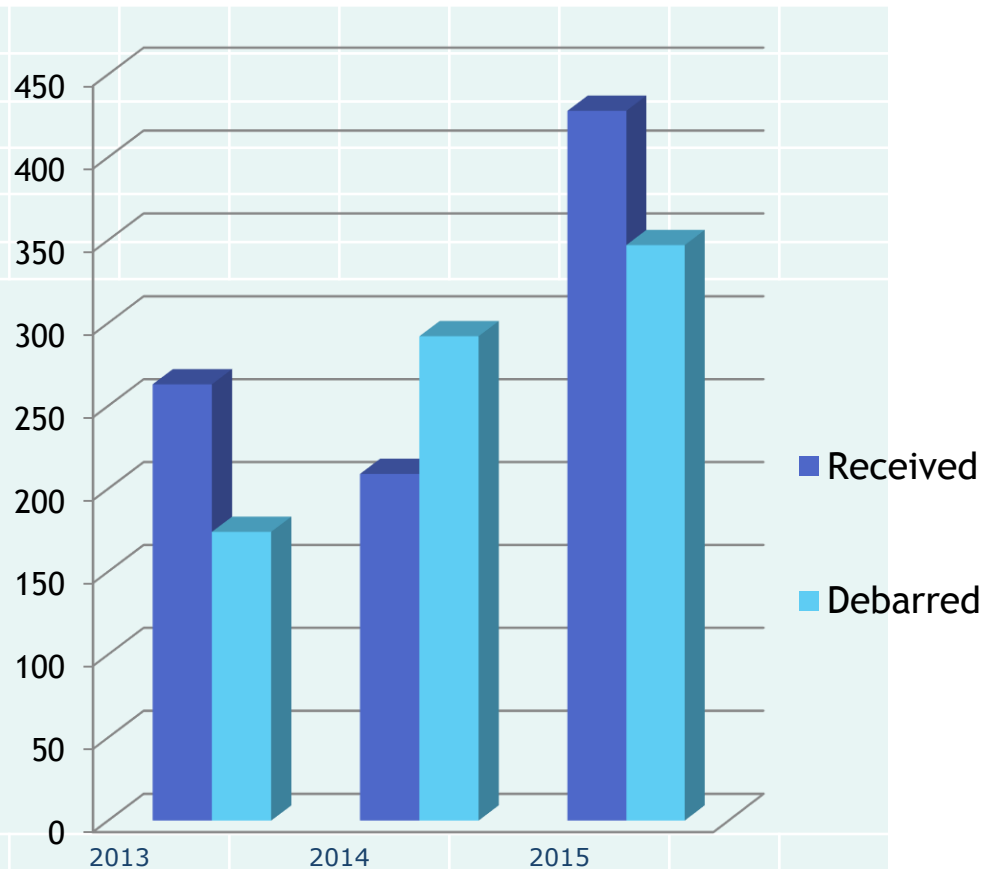
- ❑ The Registrar is also empowered to debar any person who is not longer fit and proper to render financial service (Section 14A).
- ❑ This process follows thorough investigations against the representative concerned.
- ❑ The representative is afforded an opportunity to respond to the allegations (*Audi alteram partem rule*) and based on the response and the facts in totality, a decision is taken by the Registrar to either debar or not to debar.
- ❑ During 2015 the Appeal Board heard 13 cases brought by the representatives against the Registrar's decision to debar.
- ❑ In all the cases the Registrar's decision was confirmed.

Debarment Function



1 January 2013– 31 December 2015

Debarment	Section 14 A	
	Year Received	Debarred
2013	263	174
2014	209	292
2015	428	347





REII – The Future Of Competency

Competency: Where we are now



Competency: Where we are going...



Where to From Here to Implement Product Knowledge Standards and CPD?

In process...

In process...

In process...

Conduct Research

- International Research
- Local Research

Consultation

- CPD Workshops
- CPD work group
- MCRF Steerco sub-committee (on-going)

Consider Future Landscape

- RDR
- FSR Bill
- Market Conduct / Twin Peaks

Draft "Straw Man" Model

- Draft a model which takes into consideration product specific knowledge requirements and CPD

Competency: Where we are going...



Proportionality: Who Should Be Professional?

1. Financial Advisors

- *Financial Planners*
- *Tier 1 – Complex Products*
- *Tier 2 – Simple Products*

2. Asset Management & Administration

- *Investment management*
- *Hedge fund management*
- *Pooled investment fund management (Equity Management)*
- *Asset administration*

3. Sales Execution Only (Intermediary Services)

- *Tier 1 – Complex Products*
- *Tier 2 – Simple Products*

4. Other Intermediary Services

