

NATIONAL COUNCIL OF PROVINCES
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 441 [CW546E]
DATE OF PUBLICATION: 24 August 2012

441. Mr K A Sinclair (COPE-NC) to ask the Minister of Finance:

Whether the Financial Services Board has (a) sufficient investigative capacity and (b) an early warning system in place to prevent loss to investors; if not, why not; if so, what are the relevant details?

CW546E

REPLY:

From a legislation perspective the FSB has the following legislative investigation tools:

The Inspection of Financial Institutions Act, 1998 (Inspection Act) empowers the registrar (which is defined as the executive officer of the FSB) to instruct an inspection at any time or when he or she has reason to believe that a person is conducting unregistered business. This means that the registrar may instruct routine inspections as an on-going supervisory measure as well as to react to information or complaints received. The Inspection Act is of general application, which means that the registrars of all the sectors for which the FSB is responsible, i.e. pension funds, insurance, capital markets, and financial intermediaries, may act in terms of this Act. The Act empowers the inspectors to gather evidence relating to the affairs of institutions by inter alia examining witnesses and seizing documentary evidence.

The inspectorate department consists of 16 employees, including inspectors, investigators and administrative personnel. The inspectors are either qualified lawyers or accountants.

Relating to the investigation of abuses of the formal markets (exchange related), the Securities Services Act, 2004 (which is to be replaced by the Financial Markets Bill shortly) empowers the FSB to investigate insider trading and other market abuse offences.

The staff compliment of the department of market abuse is ten employees, including management, administrative assistants and seven investigators. One of the investigators is a chartered accountant and the rest are lawyers.

It does sometimes happen that these two departments have capacity constraints due, for example, to the scope or nature of an investigation. In such instances, the investigation is outsourced.

In addition, different line departments of the FSB has compliance departments; responsible for the supervision of the market conduct of registered financial institutions, as well as prudential departments which supervises financial soundness of institutions.

With regard to financial services providers and pension funds, the Registrars of Financial Services Providers and Pension Funds have formal powers to conduct on-site visits in terms of the Financial Advisory and Intermediary Act, 2004. In the proposed amendments to the Collective Investment Schemes Act, 2002, Long-term Insurance Act, 1998 and Short-term Insurance Act, 1998 similar powers are proposed to be provided to the Registrars of Short-, and Long-term Insurance and Collective Investments Schemes. And the proposed Financial Markets Bill and the Credit Rating Services Bill, which are currently being considered by Parliament, also contain these powers.

In the context of the Twin Peaks' regulatory model a further assessment will be made of the capacity requirements of the relevant agencies.