



Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)

The Financial Advisory and Intermediary Services Act 2002 (Act No. 37 of 2002), has been updated by the addition of the Determination of Fit and Proper Requirements for Financial Services Providers, as per Board Notice No. 194 of 2017 dated 15 December 2017.

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**Financial Advisory and Intermediary Services Act, 2002
(Act No. 37 of 2002)**

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Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002)

Notice No. 1453 of 2002

Act

Introductory Provisions

Chapter I : Administration of Act

Chapter II : Authorisation of Financial Services Providers

Chapter III : Representatives of authorised Financial Services Providers

Chapter IV : Codes of Conduct

Chapter VI : Enforcement

Chapter VII : Miscellaneous

Schedule

Notice No. 1453 of 2002

Notice No. 1453

15 December 2002

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 37 of 2002: Financial Advisory and Intermediary Services Act, 2002.

(English text signed by the President)

(Assented to 15 November 2002)

Act

To regulate the rendering of certain financial advisory and intermediary services to clients; to repeal or amend certain laws; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Introductory Provisions

1. Definitions and application

1A. Relationship between Act and Financial Sector Regulation Act

1B. Regulatory instruments

1. Definitions and application

- (1) In this Act, unless the context indicates otherwise—

"advice"

means, 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 —
 - (i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or
 - (ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected;

"Advisory Committee"

[Definition deleted by section 175(a) of Act No. 45 of 2013]

"application"

in relation to the performance of any act by the registrar, means, except where in a specific case other specific provision is made, an application referred to in section 3(2);

"auditor"

means an auditor registered in terms of the Auditing Profession Act; 2005 (Act No. 26 of 2005).

"authorised financial services provider" or "provider"

means a person who has been granted an authorisation as a financial services provider by the issue to that person of a licence under section 8;

"Authority"

means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act;

[Definition inserted by section 290, item 1(b) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"Board"

[Definition deleted by section 290, item 1(c) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"board of appeal"

[Definition deleted by section 290, item 1(c) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"client"

means a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service;

"code of conduct"

means any published code of conduct contemplated in section 15;

"collective investment scheme"

means a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002;

"Companies Act"

means the Companies Act, 2008 (Act No. 71 of 2008)

[Definition inserted by section 175(b) of Act No. 45 of 2013]

"complainant"

means, subject to section 26(1)(a)(ii), a specific client who submits a complaint to the Ombud;

"complaint"

means, subject to section 26(1)(a)(iii), a specific complaint relating to a financial service rendered by a financial services provider or representative to the complainant on or after the date of commencement of this Act, and in which complaint it is alleged that the provider or representative -

- (a) has contravened or failed to comply with a provision of this Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;
- (b) has wilfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or
- (c) has treated the complainant unfairly;

"compliance officer"

means a compliance officer for an authorised financial services provider referred to in section 17;

"conduct standard"

has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act, 2017;

[Definition inserted by section 290, item 1(d) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"continuous professional development"

means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act;

[Definition inserted by section 175(c) of Act No. 45 of 2013]

"Court"

means any court having jurisdiction;

"document"

includes a document created, recorded, transmitted or stored in digital or other intangible but readable form by way of electronic, magnetic, optical or any similar means.

"exempt"

means to exempt, on application by a person or on the registrar's own initiative, on any of the grounds mentioned in section 44(1)(a), (b) or (c) and (4)(a);

"financial product"

means, subject to subsection (2) –

- (a) securities and instruments, including –
 - (i) shares in a company other than a "share block company" as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980) ;
 - (ii) debentures and securitised debt;
 - (iii) any money-market instrument;
 - (iv) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii);
 - (v) any "securities" as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);

[Paragraph (a)(v) amended by section 175(d) of Act No. 45 of 2013]
 - (b) a participatory interest in one or more collective investment schemes;
 - (c) a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;
 - (d) a benefit provided by –
 - (i) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or
 - (ii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956), to the members of the society by virtue of membership;
 - (e) a foreign currency denominated investment instrument, including a foreign currency deposit;
 - (f) a deposit as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);
 - (g) a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);
 - (h) any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar by notice in the *Gazette* to be a financial product for the purposes of this Act;
- [Paragraph (h) amended by section 175(e) of Act No. 45 of 2013]***
- (i) any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive;
 - (j) any financial product issued by any foreign product supplier and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (1), inclusive;

[Paragraph (j) substituted by section 290, item 1(h) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"Financial Sector Regulation Act"

means the Financial Sector Regulation Act, 2017;

[Definition inserted by section 290, item 1(e) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"financial service"

means any service contemplated in paragraph (a), (b) or (c) of the definition of "financial services provider", including any category of such services;

"Financial Services Board Act"

[Definition deleted by section 290, item 1(f) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"financial services provider"

means 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;

"fit and proper requirements"

means the requirements referred to in section 6A;

[Definition substituted by section 290, item 1(i) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"intermediary service"

means, 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;

"joint standard"

has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

[Definition inserted by section 290, item 1(k) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"key individual"

in relation to an authorised financial services provider, or a representative, carrying on business as—

- (a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or
- (b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person ;

"licence"

means a licence contemplated in section 7(1);

"licensee"

means a financial services provider to whom a licence has been issued under section 8;

"Minister"

means the Minister of Finance;

"Office"

means the Office of the Ombud established by section 20(1);

"official web site"

[Definition deleted by section 290, item 1(l) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"Ombud"

means—

- (a) the Ombud for Financial Services Providers appointed in terms of section 21(1); and
- (b) for the purposes of sections 27, 28, 31 and 39, includes a deputy ombud;

"person"

means any natural person, partnership or trust, and includes—

- (a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (b) any company incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporate;

"prescribe"

means prescribe by regulation ;

"product supplier"

means any person who issues a financial product;

[Definition amended by section 175(h) of Act No. 45 of 2013]

"prudential standard"

has the same meaning ascribed to it in terms of section 1(1) of the Financial Sector Regulation Act;

[Definition inserted by section 290, item 1(n) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"publish"

means any direct communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of any other person, or all or part of the public;

[Definition inserted by section 175(i) of Act No. 45 of 2013]

"Register"

means the Financial Sector Information Register referred to in section 256 of the Financial Sector Regulation Act;

[Definition inserted by section 290, item 1(o) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"registrar"

[Definition deleted by section 290, item 1(p) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

"regulation"

means a regulation made under section 35;

"regulatory authority"

means an entity established in terms of national legislation responsible for regulating activities of an industry, or sector of an industry.

"representative"

means any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service -

- (a) does not require judgment on the part of the latter person; or
- (b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries ;

"rule"

means a rule made by the Board under section 26;

"this Act"

includes any regulation, rule or code of conduct, and any notice given, approval or exemption granted, determination made, requirement or condition determined or imposed, or any other decision referred to in section 3(1);

"Tribunal"

means the Financial Services Tribunal established in terms of section 219 of the Financial Sector Regulation Act;

[Definition inserted by section 290, item 1(q) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (2) For the purposes of this Act a financial product does not include any financial product exempted from the provisions of this Act by the registrar by notice in the *Gazette*, taking into consideration the extent to which the rendering of financial services in respect of the product is regulated by any other law.
[Section 1(2) amended by section 175(k) of Act No. 45 of 2013]
- (3) For the purposes of this Act –
- (a) advice does not include—
- (i) factual advice given merely –
- (aa) on the procedure for entering into a transaction in respect of any financial product;
- (bb) in relation to the description of a financial product;
- (cc) in answer to routine administrative queries;
- (dd) in the form of objective information about a particular financial product; or
- (ee) by the display or distribution of promotional material;
- (ii) an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client;
- (iii) advice given by—
- (aa) the board of management, or any board member, of any pension fund organisation or friendly society referred to in paragraph (d) of the definition of "financial product" in subsection (1) to the members of the organisation or society on benefits enjoyed or to be enjoyed by such members; or
- (bb) the board of trustees of any medical scheme referred to in paragraph (g) of the said definition of "financial product", or any board member, to the members of the medical scheme, on health care benefits enjoyed or to be enjoyed by such members; or
- (iv) any other advisory activity exempted from the provisions of this Act by the registrar by notice in the *Gazette*;
[Section 1(3)(a)(iv) amended by section 175(l) of Act No. 45 of 2013]
- (b) intermediary service does not include –
- (i) the rendering by a bank, mutual bank or co-operative bank of a service contemplated in paragraph (b)(ii) of the definition of "intermediary service" where the bank, mutual bank or co-operative bank acts merely as a conduit between a client and another product supplier;
- (ii) an intermediary service rendered by a product supplier –
- (aa) who is authorised under a particular law to conduct business as a financial institution; and
- (bb) where the rendering of such service is regulated by or under such law;
- (iii) any other service exempted from the provisions of this Act by the registrar by notice in the *Gazette*.
[Section 1(3)(b)(iii) amended by section 175(m) of Act No. 45 of 2013]

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- (4) The rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of "financial product" in subsection (1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990, or a mutual bank as defined in the Mutual Banks Act, 1993, or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007), is regulated by this Act in the code of conduct contemplated in section 15(2)(b).
[Section 1(4) amended by section 175(n) of Act No. 45 of 2013]
- (5) Provisions of this Act relating to financial services providers, representatives and product suppliers apply to any natural person or group of natural persons acting within the scope of their official duties in the employ of the State, or any organisational unit of the State, or any public entity, unless the Minister by notice in the *Gazette* determines otherwise in respect of any such person, group, unit or entity.
- (6) This Act must be construed as being in addition to any other law not inconsistent with its provisions and not as replacing any such law.
- (7) Unless the context otherwise indicates, words and expressions not defined in subsection (1) have the same meaning ascribed to them in terms of the Financial Sector Regulation Act.
[Definition inserted by section 290, item 1(s) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

1A. Relationship between Act and Financial Sector Regulation Act

- (1) A reference in this Act to the Board or the registrar must be read as a reference to the Authority.
- (2) Except as otherwise provided by this Act or the Financial Sector Regulation Act, the powers and duties of the Authority in terms of this Act are in addition to the powers and duties that it has in terms of the Financial Sector Regulation Act.
- (3) A reference in this Act to the Authority determining or publishing a matter by notice in the *Gazette* must be read as including a reference to the Authority determining or publishing the matter by notice published in the Register.
- (4) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed, a reference in this Act to a matter being—
 (a) prescribed must be read as a reference to the matter being prescribed in a prudential standard, a conduct standard or a joint standard; or
 (b) determined must be read as a reference to the Authority determining the matter in writing and registering the determination in the Register.
[Section 1A(4) inserted by section 290, item 2 in Schedule 4, of Act No. 9 of 2017 - has not yet commenced (paragraph (h) of Notice 169 of 2018)]
- (5) A reference in this Act to an on-site visit in terms of a provision of this Act must be read as a reference to a supervisory on-site inspection in terms of the Financial Sector Regulation Act.
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- (6) A reference in this Act to an inspection in terms of a provision of this Act must be read as a reference to an investigation in terms of the Financial Sector Regulation Act.
- (7)
- (a) A reference in this Act to the Authority announcing or publishing information or a document on a web site must be read as a reference to the Authority publishing the information or document in the Register.
 - (b) The Authority may also publish the information or document on its web site.
- (8) A reference in this Act to a determined or prescribed fee must be read as a reference to the relevant fee determined in terms of section 237 and Chapter 16 of the Financial Sector Regulation Act.
[Section 1A(8) inserted by section 290, item 2 in Schedule 4, of Act No. 9 of 2017 - has not yet commenced (paragraph (h) of Notice 169 of 2018)]
- (9) A reference in this Act to an appeal of a decision of the Authority must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.

[Section 1A inserted by section 290, item 2 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

1B. Regulatory instruments

For the purposes of the definition of "regulatory instrument" in section 1 of the Financial Sector Regulation Act, fit and proper requirements determined in terms of section 6A, codes of conduct drafted under section 15 and criteria and guidelines for the approval of compliance officers determined under section 17(2) are regulatory instruments.

[Section 1B inserted by section 290, item 2 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

Chapter I : Administration of Act

- 2. [Repealed] Registrar and deputy registrar of financial services providers
 - 3. General provisions concerning registrar
 - 4. Special provisions concerning powers of registrar
 - 5. [Repealed] Advisory Committee on Financial Services Providers
 - 6. Delegations
 - 6A. Fit and proper requirements
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2. [Repealed] Registrar and deputy registrar of financial services providers

[Section 1A repealed by section 290, item 3 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

3. General provisions concerning registrar

- (1) Subject to the provisions of this Act, any notice given, approval or exemption granted, determination made, requirement or condition determined or imposed, or any other decision taken by the registrar under an enabling provision of this Act, is valid only if it is reduced to a durable written or printed form or, where communicated electronically, has been correctly transmitted in a legible form.
- (2) Whenever the performance of any act contemplated in subsection (1) is sought by a person under this Act or any other law, application therefor must, subject to any other specific provision of this Act, be made in writing to the registrar and the application must –
 - (a) be made in the form and manner determined by or in terms of this Act, or any other law, or as otherwise required by the registrar;
 - (b) be accompanied by—
 - (i) the fees payable in terms of this Act; and
 - (ii) the information or documents required by the registrar.
- (3) The registrar must in connection with the application of any provision of this Act to or in respect of any financial product or financial service, consult with any regulatory or supervisory authority in the Republic, including the Registrar of Medical Schemes, referred to in section 42, who is by law empowered to perform a regulatory or supervisory function in respect of such product or service.

4. Special provisions concerning powers of registrar

- (1) ***[Section 4(1) deleted by section 290, item 5 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]***
 - (2) The registrar may by notice direct an authorised financial services provider, representative or compliance officer to furnish the registrar, within a specified period, with specified information or documents required by the registrar for the purposes of this Act.
[Section 4(2) amended by section 177(a) of Act No. 45 of 2013]
 - (3)
 - (a) If any advertisement, brochure or similar document relating to the rendering of a financial service by an authorised financial services provider or a representative is being, or is to be, published by any person, and any such document is misleading, or confusing, or contains any incorrect statement of
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- fact, the registrar may by notice direct that person not to publish it, to cease publishing it or to effect changes thereto.
- (b) A notice contemplated in paragraph (a) takes effect on a date specified in such notice after the registrar has—
 - (i) provided the person concerned with the reasons for the notice; and
 - (ii) afforded the person concerned a reasonable opportunity to be heard.
- (4) If there is reason to believe that a person is contravening or failing to comply with, or has contravened or failed to comply with, a provision of this Act, the registrar may –
- (a) by notice direct that person –
 - (i) to furnish the registrar within a specified period with any specified information or documents in the possession or under the control of that person and which relate to the subject-matter of such contravention or failure;
 - (ii) to appear before the registrar at a specified time and place for the purpose of discussing such matter with the registrar; or
 - (iii) to make arrangements for the discharge of all or any part of that person's obligations in terms of this Act;
 - (b) if satisfied that in the case concerned significant prejudice or damage to clients has occurred or may occur, apply to a Court for an order restraining such person from continuing business or dealing with the funds or other property held by such person on behalf of clients or other persons, pending the institution by the registrar of an application or action contemplated in section 33(1) and (2), or the exercising by the registrar of such other legal remedy as may be available to the registrar ; if prejudice or damage may have occurred to a client, refer the matter, together with any information or documentation in the registrar's possession, to the Office to be dealt with as a complaint by the client concerned.
- (5) ***[Section 4(5) deleted by section 290, item 5 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]***
- (6) ***[Section 4(6) deleted by section 290, item 5 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]***
- (7) ***[Section 4(7) deleted by section 177(e) of Act No. 45 of 2013]***

5. [Repealed] Advisory Committee on Financial Services Providers

[Section 5 repealed by section 178 of Act No. 45 of 2013]

6. Delegations

[Section 6 heading substituted by section 290, item 6 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (1) The Authority may, in writing, delegate to any person a power or duty conferred upon
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the Authority under this Act in respect of any matter relating to a conduct standard referred to in section 6A(2)(a), (b) and (e).

- (2) The Authority must, where the delegation is to a person other than a staff member of the Authority, be satisfied that the person has sufficient financial, management, human resources and experience necessary for performing the delegated power or duty.
- (3) A delegation is subject to the limitations and conditions specified in the delegation.
- (4) A delegation does not divest the Authority of responsibility in respect of the delegated power or duty and anything done by a delegate in accordance with a delegation is deemed to be done by the Authority.
- (5) A delegation made under this section may be amended or revoked in writing at any time, but an amendment or revocation does not affect any rights or liabilities accrued because of the acts of the delegate.

[Section 6 substituted by section 290, item 6 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

6A. Fit and proper requirements

- (1) The registrar, for purposes of this Act, by notice in the *Gazette*—
 - (a) must—
 - (i) classify financial services providers into different categories;
 - (ii) determine fit and proper requirements for each category of providers; and
 - (iii) in each category of providers determine fit and proper requirements for—
 - (aa) key individuals of providers;
 - (bb) representatives of providers;
 - (cc) key individuals of representatives of providers; and
 - (dd) compliance officers; and
 - (aA) may classify representatives into different categories; and

[Section 6A(1)(aA) inserted by section 290, item 7(b) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

 - (b) may determine fit and proper requirements for providers, key individuals, representatives, key individuals of representatives and compliance officers in general.
 - (2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to—
 - (a) personal character qualities of honesty and integrity;
 - (b) competence, including—
 - (i) experience;
 - (ii) qualifications; and
 - (iii) knowledge tested through examinations determined by the registrar;
 - (c) operational ability;
 - (d) financial soundness; and
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- (e) continuous professional development.
 - (3) Different fit and proper requirements may be determined for providers, representatives and compliance officers that are natural persons and for those that are partnerships, trusts or corporate or unincorporated bodies.
 - (4) The registrar may, by notice in the *Gazette*, amend the fit and proper requirements from time to time, and a provider, key individual, representative, key individual of a representative and compliance officer must comply therewith such period as determined by the registrar.

[Section 6A inserted by section 180 of Act No. 45 of 2013]

Chapter II : Authorisation of Financial Services Providers

- 7. Authorisation of financial services providers
- 8. Application for authorisation
- 8A. Compliance with fit and proper requirements after authorisation
- 9. Suspension and withdrawal of authorisation
- 10. (Repealed) Withdrawal of authorisation
- 11. Lapsing of licence
- 12. Exemptions in respect of product suppliers

7. Authorisation of financial services providers

- (1) 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—
 - (a) financial services provider, unless such person has been issued with a licence under section 8; or
 - (b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13.

[Section 7(1) amended by section 181 of Act No. 45 of 2013]

- (2) Subject to section 40, a transaction concluded on or after the date contemplated in subsection (1) between a product supplier and any client by virtue of any financial service rendered to the client by a person not authorised as a financial services provider, or by any other person acting on behalf of such unauthorised person, is not unenforceable between the product supplier and the client merely by reason of such lack of authorisation.
 - (3) An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, been issued with a licence for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of those financial services, or is a representative as contemplated in this Act.
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8. Application for authorisation

- (1) An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the Authority in the form and manner determined by the Authority by notice on the Authority's web site, and be accompanied by information to satisfy the Authority that the applicant complies with the fit and proper requirements.

[Section 8(1) substituted by section 290, item 8 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (1A) If the applicant is a partnership, trust or corporate or unincorporated body, the application must be accompanied by additional information to satisfy the Authority that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for, to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.

[Section 8(1A) substituted by section 290, item 8 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (2) The registrar may—

- (a) require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and
- (b) take into consideration any other information regarding the applicant or proposed key individual of the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.

[Section 8(2)(b) amended by section 182(c) of Act No. 45 of 2013]

- (3) The registrar must after consideration of an application –

- (a) grant the application if the registrar—
 - (i) is satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; and
 - (ii) approves the key individual or key individuals of the applicant, in the case of a partnership, trust or corporate or unincorporated body; or
- (b) refuse the application if the registrar—
 - (i) is not satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; or
 - (ii) does not approve the key individual or key individuals of the applicant in the case of a partnership, trust or corporate or unincorporated body.

[Section 8(3) amended by section 182(d) of Act No. 45 of 2013]

- (4)

- (a) Where an application is granted, the registrar may impose such conditions and restrictions on the exercise of the authority granted by the licence, and to be included in the licence, as are necessary, having regard to—
 - (i) all facts and information available to the registrar pertaining to the applicant and any key individual of the applicant;
 - (ii) the category of financial services which the applicant could

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- appropriately render or wishes to render;
 - (iii) the category of financial services providers in which the applicant is classified for the purposes of this Act; and
[Section 8(4)(a)(iii) amended by section 182(e) of Act No. 45 of 2013]
 - (iv) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.
[Section 8(4)(a)(iv) amended by section 182(e) of Act No. 45 of 2013]
 - (b) Conditions and restrictions contemplated in paragraph (a), may include a condition that where after the date of granting of the licence—
 - (i) any key individual in respect of the licensee's business is replaced by a new key individual; or
 - (ii) any new key individual is appointed or assumes office; or
 - (iii) any change occurs in the personal circumstances of a key individual which renders or may render such person to be no longer compliant with the fit and proper requirements for key individuals,
[Section 8(4)(b)(iii) amended by section 182(f) of Act No. 45 of 2013]

no such person may be permitted to take part in the conduct, management or oversight of the licensee's business in relation to the rendering of financial services, unless such person has on application been approved by the registrar as compliant with the fit and proper requirements for key individuals, in the manner and in accordance with a procedure determined by the registrar by notice on the official web site.
[Section 8(4)(b) amended by section 182(g) of Act No. 45 of 2013]
- (5)
- (a) Where an application for authorisation is granted, the registrar must issue to the applicant—
[Words preceding section 9(5)(a)(i) amended by section 182(h) of Act No. 45 of 2013]
 - (i) a licence authorising the applicant to act as a financial services provider, in the form determined by the registrar by notice in the *Gazette*; and
 - (ii) such number of certified copies of the licence as may be requested by the applicant.
 - (b) The registrar may at any time after the issue of a licence—
 - (i) on application by the licensee or on own initiative withdraw or amend any condition or restriction in respect of the licence, after having given the licensee a reasonable opportunity to make submissions on the proposed withdrawal or amendment and having considered those submissions, if the registrar is satisfied that any such withdrawal or amendment is justified and will not prejudice the interests of clients of the licensee; or
 - (ii) pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection (4)(b), impose new conditions on the licensee after having given the licensee a reasonable opportunity to be heard and having furnished the licensee with reasons, and must in every such case issue an appropriately amended licence to the licensee, and such number of certified copies of the amended licence as may be requested by the licensee.
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[Section 8(5)(b)(ii) amended by section 182(i) of Act No. 45 of 2013]

- (6) Where an application referred to in subsection (1) is refused, the registrar must—
- (a) notify the applicant thereof; and
 - (b) furnish reasons for the refusal.
- (7)
- (a) Despite any other provision of this section, a person granted accreditation under section 65(3) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must, subject to this subsection, be granted authority to render as a financial services provider the specific financial service for which the person was accredited, and must be issued with a licence in terms of subsection (5).
[Section 8(7)(a) amended by section 182(j) of Act No. 45 of 2013]
 - (b) The registrar must be satisfied that a person to be granted authority under paragraph (a), and any key individual of such person, comply with the fit and proper requirements.
[Section 8(7)(b) amended by section 182(j) of Act No. 45 of 2013]
 - (c) A person granted authority and licensed as contemplated in paragraph (a), together with any key individual, are thereafter subject to the provisions of this Act .
 - (d) If a licence –
 - (i) is refused in terms of this section;
 - (ii) is suspended in terms of section 9;
 - (iii) is withdrawn in terms of section 10; or
 - (iv) lapses in terms of section 11, the accreditation referred to in paragraph (a) is deemed to have lapsed in terms of the Medical Schemes Act, 1998, or to have been suspended or withdrawn, as the case may be.
 - (v) If an accreditation referred to in paragraph (a) is suspended or withdrawn or lapses in terms of the Medical Schemes Act, 1998, the licence issued in terms of that paragraph is deemed to have been suspended or withdrawn or to have lapsed in terms of sections 9, 10 and 11, respectively, of this Act.
- (8) A licensee must –
- (a) display a certified copy of the licence in a prominent and durable manner within every business premises of the licensee;
 - (b) ensure that a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional material; and
[Section 8(8)(b) amended by section 182(k) of Act No. 45 of 2013]
 - (c) ensure that the licence is at all times immediately or within a reasonable time available for production to any person requesting proof of licensed status under authority of a law or for the purpose of entering into a business relationship with the licensee.
- (9) No person may—
- (a) in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed, has been withdrawn or provisionally withdrawn or during any time when the licensee is under provisional or final suspension;
 - (b) perform any act which indicates that the person renders or is authorised to render financial services or is appointed as a representative to render financial services, unless the person is so authorised or appointed; and
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- (c) perform any act, make or publish any statement, advertisement, brochure or similar communication which—
 - (i) relates to the rendering of a financial service, the business of a provider or a financial product; and
 - (ii) the person knows, or ought reasonably to know, is misleading, false, deceptive, contrary to the public interest or contains an incorrect statement of fact.

[Section 8(9) amended by section 182(l) of Act No. 45 of 2013]

(10)

- (a) Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must—
 - (i) At all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of subsection 1(A); and
[Section 8(10)(i) amended by section 182(m) of Act No. 45 of 2013]
 - (ii) Within 15 days of the appointment of a new director, member, trustee or partner, inform the registrar of the appointment and furnish the registrar with such information on the matter as the registrar may reasonably require.
- (b) If the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of subsection 1(A), the registrar may suspend or withdraw the licence of the provider as contemplated in section 9.

[Section 8(10)(b) amended by section 182(n) of Act No. 45 of 2013]

8A. Compliance with fit and proper requirements after authorisation

An authorised financial services provider, key individual, representative of the provider and key individual of the representative must—

- (a) continue to comply with the fit and proper requirements; and
- (b) comply with the fit and proper requirements relating to continuous professional development.

[Section 8A inserted by section 183 of Act No. 45 of 2013]

9. Suspension and withdrawal of authorisation

- (1) The registrar may, subject to subsection (2) and irrespective of whether the registrar has taken or followed, or is taking or following, any step or procedure referred to in section 4, at any time suspend or withdraw any licence (including the licence of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee—
 - (a) does not meet or no longer meets the fit and proper requirements applicable

to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;

[Section 9(1)(a) amended by section 184(a) of Act No. 45 of 2013]

(b) did not, when applying for the licence, make a full disclosure of all relevant information to the registrar, or furnished false or misleading information;

(c) has failed to comply with any other provision of this Act or any requirement under the Financial Sector Regulation Act, including a conduct standard, a prudential standard or a joint standard;

[Section 9(1)(c) substituted by section 290, item 9(a) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

(d) is liable for payment of a levy under section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), a penalty under section 41(2) and (3) or an administrative sanction under section 6D(2) of the Financial Institutions (Protection of funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, penalty or administrative sanction and any interest in respect thereof;

[Section 9(1)(d) amended by section 184(b) of Act No. 45 of 2013]

(e) does not have an approved key individual;

[Section 9(1)(e) inserted by section 184(c) of Act No. 45 of 2013]

(f) has failed to comply a regulator's directive; or

[Section 9(1)(f) substituted by section 290, item 9(b) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

(g) has failed to comply with any condition or restriction imposed under this Act.

[Section 9(1)(g) inserted by section 184(c) of Act No. 45 of 2013]

(2)

(a) Before suspending or withdrawing any licence, the registrar—

(i) may consult any regulatory authority; and

(ii) must inform the licensee of the intention to suspend or withdraw and the grounds therefore and must give the licensee a reasonable opportunity to make a submission in response thereto.

(b) Where the registrar contemplates the suspension or withdrawal of any licence, the registrar must also inform the licensee of—

[Words preceding section 9(1)(b) amended by section 184(d) of Act No. 45 of 2013]

(i) The intended period of the suspension; and

(ii) Any terms to be attached to the suspension or withdrawal, including—

(aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and

(bb) terms designed to facilitate the lifting of the suspension.

[Section 9(1)(ii) amended by section 184(e) of Act No. 45 of 2013]

(c) The registrar must consider any response received, and may thereafter decide to suspend or withdraw, or not to suspend or withdraw, the licence, and must notify the licensee of the decision.

(d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto

by notice on the official web site and may make known such information by means of any other appropriate public media.

[Section 9(1)(d) amended by section 184(f) of Act No. 45 of 2013]

- (3) Notwithstanding the provisions of subsection (2), the registrar may under urgent circumstances, where the registrar is satisfied on reasonable grounds that substantial prejudice to clients or the general public may occur—
- (a) provisionally suspend or withdraw a licence, and inform the licensee of the—
 - (i) grounds therefor; and
 - (ii) period and terms of suspension as referred to in subsection (2)(b), and give the licensee a reasonable opportunity to respond thereto and to provide reasons why the provisional suspension or withdrawal should be lifted or why the period and terms should be changed; and
 - (b) make known such provisional suspension or withdrawal by notice on the official web site and, if necessary, by means of any other appropriate public media.

[Section 9(2)(b) amended by section 184(g) of Act No. 45 of 2013]

- (4)
- (a) The registrar must, within a reasonable time after receipt of any response contemplated in subsection (3)(a) consider the response, and may thereafter decide to—
 - (i) lift the provisional suspension or withdrawal; or
 - (ii) render the provisional suspension or withdrawal final, and must inform the licensee accordingly.
 - (b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice on the official web site and, if necessary, in any other appropriate public media.

[Section 9(4) amended by section 184(h) and (i) of Act No. 45 of 2013]

- (5) During any period of suspension, whether provisional or final, the license concerned is for the purposes of this Act regarded as a person who is not authorised to act as a financial services provider.
- (6)
- (a) A person whose licence has been withdrawn under this section is debarred for a period specified by the registrar from applying for a new licence.
 - (b) The registrar may, on good cause shown, vary any such period.

10. (Repealed) Withdrawal of authorisation

[Section 10 repealed by the Financial Services Laws General Amendment Act, 2008 (Act No. 22 of 2008)]

11. Lapsing of licence

- (1) A licence lapses—
 - (a) where the licensee, being a natural person –
 - (i) becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury;
 - (ii) is finally sequestered; or
 - (iii) dies;
 - (b) where the licensee, being any other person, is finally liquidated or dissolved;
 - (c) where the business of the licensee has become dormant; and
 - (d) in any other case, where the licensee voluntarily and finally surrenders the licence to the registrar.
- (2) The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons therefor and the registrar may make known any such lapsing of a licence by notice on the official web site and, if necessary, by means of any other appropriate public media announcement.
[Section 11(2) amended by section 185 of Act No. 45 of 2013]

12. Exemptions in respect of product suppliers

- (1) The registrar may exempt a product supplier who is authorised or approved under a particular law to conduct business as a financial institution, and who is required to apply for authorisation under section 8, from submitting some or all of the information otherwise required from an applicant: Provided that the product supplier—
 - (a) applies for exemption when submitting the application; and
 - (b) complies with the requirements of the registrar with regard to information still required.
- (2) Authorisation granted to a product supplier contemplated in subsection (1) is supplementary to, but separate from, the supplier's authorisation or approval under a particular law as a financial institution.

Chapter III : Representatives of authorised Financial Services Providers

13. Qualifications of representatives and duties of authorised financial services providers
 14. Debarment of representatives
 - 14A. [Repealed] Debarment by registrar
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13. Qualifications of representatives and duties of authorised financial services providers

- (1) A person may not—
 - (a) carry on business by rendering financial services to clients for or on behalf of any person who—
 - (i) is not authorised as a financial services provider; and
 - (ii) is not exempted from the application of this Act relating to the rendering of a financial service;
 - (b) act as a representative of an authorised financial services provider, unless such person —

[Words preceding section 13(1)(b)(i) amended by section 186(a) of Act No. 45 of 2013]

 - (i) prior to rendering a financial service, provides confirmation, certified by the provider, to clients—
 - (aa) that a service contract or other mandate, to represent the provider, exists; and
 - (bb) that the provider accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any such contract or mandate; and
 - (iA) meets the fit and proper requirements; and

[Section 13(1)(b)(iA) inserted by section 186(b) of Act No. 45 of 2013]
 - (ii) if debarred as contemplated in section 14, complies with the requirements determined by the registrar by notice in the *Gazette*, for the reappointment of a debarred person as a representative; or

[Section 13(1)(b)(ii) amended by section 186(c) of Act No. 45 of 2013]
 - (c) render financial services or contract in respect of financial services other than in the name of the financial services provider of which such person is a representative.

[Section 13(1)(c) amended by section 186(d) of Act No. 45 of 2013]

[Section 13(1) amended by section 186(d) of Act No. 45 of 2013]
- (2) An authorised financial services provider must—
 - (a) at all times be satisfied that the provider's representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with—
 - (i) the fit and proper requirements; and
 - (ii) any other requirements contemplated in subsection (1)(b)(ii);

[Section 13(2)(a) amended by section 186(e) of Act No. 45 of 2013]
 - (b) take such steps as may be reasonable in the circumstances to ensure that representatives comply with any applicable code of conduct as well as with other applicable laws on conduct of business .
- (3) An authorised financial services provider must—
 - (a) maintain a register of representatives, and key individuals of those representatives, which must be regularly updated and be available to the Authority for reference or inspection purposes; and
 - (b) within five days after being informed by the Authority of the debarment of a representative or key individual by the Authority, remove the name of that representative or key individual from the register referred to in paragraph (a).

[Section 13(3) substituted by section 290, item 10 in Schedule 4, of Act No. 9 of 2017 -

effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (4) Such register must –
 - (a) contain every representative's or key individual's name and business address, and state whether the representative acts for the provider as employee or as mandatory; and
 - (b) specify the categories in which such representatives are competent to render financial services.
- (5) The registrar may require information from the authorised financial services provider, including the information referred to in subsection (4), so as to enable the registrar to maintain and continuously update a central register of all representatives and key individuals, which register must be published in any appropriate media.
- (6) A person who on the date contemplated in section 7(1) complies with the requirements of this Act for a representative and on such date acts as employee or mandatory for any person who on or after such date becomes an authorised financial services provider, is, for the purposes of this Act, but subject to the provisions of this Act relating to representatives, regarded as a representative.

14. Debarment of representatives

- (1)
 - (a) An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be—
 - (i) a representative of the financial services provider; or
 - (ii) a key individual of such representative, if the financial services provider is satisfied on the basis of available facts and information that the person—
 - (iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or
 - (iv) has contravened or failed to comply with any provision of this Act in a material manner;
 - (b) The reasons for a debarment in terms of paragraph (a) must have occurred and become known to the financial services provider while the person was a representative of the provider.
 - (2)
 - (a) Before effecting a debarment in terms of subsection (1), the provider must ensure that the debarment process is lawful, reasonable and procedurally fair.
 - (b) If a provider is unable to locate a person in order to deliver a document or information under subsection (3), after taking all reasonable steps to do so, including dissemination through electronic means where possible, delivering the document or information to the person's last known e-mail or physical business or residential address will be sufficient.
 - (3) A financial services provider must—
 - (a) before debarring a person—
 - (i) give adequate notice in writing to the person stating its intention to
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- debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;
 - (ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and
 - (iii) give the person a reasonable opportunity to make a submission in response;
 - (b) consider any response provided in terms of paragraph (a)(iii), and then take a decision in terms of subsection (1); and
 - (c) immediately notify the person in writing of—
 - (i) the financial services provider's decision;
 - (ii) the persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act; and
 - (iii) any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.
- (4) Where the debarment has been effected as contemplated in subsection (1), the financial services provider must—
- (a) immediately withdraw any authority which may still exist for the person to act on behalf of the financial services provider;
 - (b) where applicable, remove the name of the debarred person from the register referred to in section 13(3);
 - (c) immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to;
 - (d) in the form and manner determined by the Authority, notify the Authority within five days of the debarment; and
 - (e) provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require within 15 days of the debarment.
- (5) A debarment in terms of subsection (1) that is undertaken in respect of a person who no longer is a representative of the financial services provider must be commenced not longer than six months from the date that the person ceased to be a representative of the financial services provider.
- (6) For the purposes of debarring a person as contemplated in subsection (1), the financial services provider must have regard to information regarding the conduct of the person that is furnished by the Authority, the Ombud or any other interested person.
- (7) The Authority may, for the purposes of record keeping, require any information, including the information referred to in subsection (4)(d) and (e), to enable the Authority to maintain and continuously update a central register of all persons debarred in terms of subsection (1), and that register must be published on the web site of the Authority, or by means of any other appropriate public media.
- (8) A debarment effected in terms of this section must be dealt with by the Authority as contemplated by this section.
- (9) A person debarred in terms of subsection (1) may not render financial services or act as a representative or key individual of a representative of any financial services
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provider, unless the person has complied with the requirements referred to in section 13(1)(b)(ii) for the reappointment of a debarred person as a representative or key individual of a representative.

[Section 14 substituted by section 290, item 11 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

14A. [Repealed] Debarment by registrar

[Section 14A repealed by section 290, item 12 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

Chapter IV : Codes of Conduct

15. Publication of codes of conduct

16. Principles of code of conduct

15. Publication of codes of conduct

- (1)
 - (a) The registrar must, after consultation with representative bodies of the financial services industry and client and consumer bodies, draft a code of conduct for authorised financial services providers.
[Section 15(1)(a) amended by section 189 of Act No. 45 of 2013]
 - (b) The code must, after consultation, be published by notice in the *Gazette*, and, on any such publication, becomes binding on all authorised financial services providers and representatives referred to therein.
- (2)
 - (a) Different codes of conduct may be so drafted in respect of the rendering of a financial service to different categories of clients and of different categories of authorised financial services providers and their operations in different sectors of the financial services industry, and different categories of representatives .
 - (b) A code of conduct must be drafted for the rendering of a financial service in respect of a deposit referred to in paragraph (f) of the definition of "financial product" in section 1(1) with a term not exceeding 12 months by a provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007).
- (3) Such codes of conduct may from time to time be amended or replaced in accordance with the procedure set out in subsection (1).

16. Principles of code of conduct

- (1) A code of conduct must be drafted in such a manner as to ensure that the clients being rendered financial services will be able to make informed decisions, that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied and that for those purposes authorised financial services providers, and their representatives, are obliged by the provisions of such code to—
 - (a) act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry;
 - (b) have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities;
 - (c) seek from clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required;
 - (d) act with circumspection and treat clients fairly in a situation of conflicting interests; and
 - (e) comply with all applicable statutory or common law requirements applicable to the conduct of business.
- (2) A code of conduct must in particular contain provisions relating to—
 - (a) the making of adequate disclosures of relevant material information , including disclosures of actual or potential own interests, in relation to dealings with clients;
 - (b) adequate and appropriate record-keeping;
 - (c) avoidance of fraudulent and misleading advertising, canvassing and marketing;
 - (d) proper safe-keeping, separation and protection of funds and transaction documentation of clients;
 - (e) where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the registrar in any particular case;
 - (eA) the control or prohibition of incentives given or accepted by a provider; and
 - (f) any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of this Act.

Chapter V : Duties of authorised Financial Services Providers

17. Compliance officers and compliance arrangements
18. Maintenance of records
19. Accounting and audit requirements

17. Compliance officers and compliance arrangements

(1)

- (a) Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c) and subsections (1)(b) and (2)(a)(i), appoint one or more compliance officers to oversee the provider's compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar.
- (b) Such person must comply with the fit and proper requirements.
- (bA) The provisions of section 8A apply with the necessary changes to a compliance officer.
- (c) The provisions of section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider, apply with the necessary changes to a compliance officer.

[Section 17(1) amended by section 190(a) and (b) of Act No. 45 of 2013]

(2)

- (a)
 - (i) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar.
 - (ii) The registrar may amend such criteria and guidelines, and an approved compliance officer must comply with the amended criteria and guidelines within such period as may be determined by the registrar.
- (b) The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information that the compliance officer—
 - (i) has contravened or failed to comply with any provision of this Act;
 - (ii) does not meet or no longer meets the fit and proper requirements; or
 - (iii) does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a).
- (c) The provisions of section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b).
- (d) The registrar may make known any withdrawal of approval under this subsection and the reasons therefor by notice on the official web site or by means of any other appropriate public media.

[Section 17(2) amended by section 190(c) of Act No. 45 of 2013]

- (3) An authorised financial services provider must establish and maintain procedures to be followed by the provider and any representative concerned, in order to ensure compliance with this Act.

(4)

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

[Section 17(4) amended by section 190(d) of Act No. 45 of 2013]

- (5) The provisions of subsections (3) and (4) apply with the necessary changes to any authorised financial services provider who carries on a business with only one key individual or without any representative.

18. Maintenance of records

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

- (a) known premature cancellations of transactions or financial products by clients of the provider;
- (b) complaints received together with an indication whether or not any such complaint has been resolved;
- (c) the continued compliance with the requirements referred to in section 8;
- (d) cases of non-compliance with this Act, and the reasons for such non-compliance; and
- (e) the continued compliance by representatives with the requirements referred to in section 13(1) and (2).

19. Accounting and audit requirements

- (1) Except to the extent exempted by the registrar, an authorised financial services provider must, in respect of the business carried on by the provider as authorised under the provider's licence —
 - (a) maintain full and proper accounting records on a continual basis, brought up to date monthly; and
 - (b) annually prepare, in respect of the relevant financial year of the provider, financial statements reflecting—
 - (i) the financial position of the entity at its financial year end;
 - (ii) the results of operations, the receipt and payment of cash and cash equivalent balances;
 - (iii) all changes in equity for the period then ended, and any additional components required in terms of South African Generally Accepted Accounting Practices issued by the Accounting Practices Board or International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and
 - (iv) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii).
- (2)
 - (a) An authorised financial services provider must cause the statements referred to in subsection (1)(b) to be audited and reported on in accordance with auditing pronouncements as defined in section 1 of the Auditing Professions Act, 2005 (Act No. 26 of 2005) by an external auditor approved by the registrar.
 - (b) the financial statements must—

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- (i) fairly represent the state of affairs of the provider's business;
 - (ii) refer to any material matter which has affected or is likely to affect the financial affairs of the provider; and
 - (iii) be submitted by the authorised financial services provider to the registrar not later than four months after the end of the provider's financial year or such longer period as may be allowed by the registrar.
 - (3) The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the registrar by notice on the official web site for different categories of financial services providers –
 - (a) the amount of money and financial products at year end held by the provider on behalf of clients;
 - (b) that such money and financial products were throughout the financial year kept separate from those of the business of the authorised financial services provider and, report any instance of non-compliance identified in the course of the audit and the extent thereof; and
 - (c) any other information required by the registrar.

[Section 19(3) amended by section 191(a) of Act No. 45 of 2013]
 - (4) Despite anything to the contrary contained in any law, the auditor of an authorised financial services provider must report to and inform the registrar in writing of any irregularity or suspected irregularity in the conduct or the affairs of the authorised financial services provider concerned of which the auditor.
 - (5) If the appointment of an auditor of an authorised financial services provider is terminated –
 - (a) the auditor must submit to the registrar a statement of what the auditor believes to be the reasons for that termination; and
 - (b) if the auditor would, but for that termination, have had reason to submit to the registrar a report contemplated in subsection (4), the auditor must submit such a report to the registrar.
 - (6)
 - (a) The registrar may by notice require an authorised financial services provider to terminate the appointment of an auditor of that provider, if the auditor concerned no longer complies with the requirements considered when the auditor was approved by the registrar in terms of subsection (2)(a) or otherwise fails to comply with any provision of this section in a material manner.
 - (b) A notice contemplated in paragraph (a) takes effect on a date specified in such notice and may only be sent out after the registrar –
 - (i) has given the authorised financial services provider and the auditor concerned the reasons why the notice is to be issued; and
 - (ii) has given the authorised financial services provider and the auditor concerned a reasonable opportunity to be heard; and
 - (iii) has considered any submissions made by or on behalf of the authorised financial services provider or the auditor concerned.
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(7)

- (a) A financial services provider may not change a financial year end without the approval of the registrar.
- (b) Despite paragraph (a), the approval of the registrar is not necessary where a change of a financial year end has been approved by another regulatory authority, other than the Companies and Intellectual Property Commission, regulating the financial soundness of the provider.
[Section 19(7)(b) amended by section 191(b) of Act No. 45 of 2013]
- (c) Where a change of a financial year end was approved by another regulatory authority as is contemplated in paragraph (b), the provider must inform the registrar of that approval within 14 days of the approval being granted.

Chapter VI : Enforcement

Part 1 : Ombud for financial services providers
Part 2 : Other enforcement measures

Part 1 : Ombud for financial services providers

- 20. Office of Ombud for Financial Services Providers
- 20A. Ombud scheme
- 21. Appointment of Ombud and deputy ombuds
- 22. Funding of Office
- 23. Accountability
- 24. General administrative powers of Ombud
- 25. Disestablishment and liquidation of Office
- 26. Powers of Board
- 27. Receipt of complaints, prescription, jurisdiction and investigation
- 28. Determinations by Ombud
- 29. Record-keeping
- 30. Report of Ombud
- 31. Penalties
- 32. [Repealed] Promotion of client education by registrar

20. Office of Ombud for Financial Services Providers

- (1) There is an office to be known as the Office of the Ombud for Financial Services Providers.
- (2) The functions of the Office are performed by the Ombud for Financial Services Providers.
- (3) The objective of the Ombud is to consider and dispose of complaints in a procedurally

fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, with due regard to—

- (a) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
 - (b) the provisions of this Act.
- (4) When dealing with complaints in terms of sections 27 and 28 the Ombud is independent and must be impartial.

20A. Ombud scheme

The scheme in relation to complaints implemented by this Part is declared to be a statutory ombud scheme for the purposes of the Financial Sector Regulation Act.

[Section 20A inserted by section 290, item 14 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

21. Appointment of Ombud and deputy ombuds

- (1) The Minister—
- (a) must appoint as Ombud a person qualified in law and who possesses adequate knowledge of the rendering of financial services ;
 - (b) may appoint one or more persons qualified in law and who possess adequate knowledge of the rendering of financial services, as deputy ombud.

[Section 21(1) substituted by section 290, item 15 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (2) The remuneration and other terms of appointment of the Ombud and a deputy ombud must be determined by the Board .

[Section 21(2) substituted by section 290, item 15 in Schedule 4, of Act No. 9 of 2017 - has not yet commenced (paragraph (h) of Notice 169 of 2018)]

- (3) The Ombud or deputy ombud may at any time resign by submitting a written resignation to the Minister at least three calendar months prior to the intended date of vacation of office, unless the Minister allows a shorter period.

[Section 21(3) substituted by section 290, item 15 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

- (4) The Minister may on good cause shown remove the Ombud or a deputy ombud from office on the ground of misbehaviour, incapacity or incompetence, after affording the person concerned a reasonable opportunity to be heard.

[Section 21(4) substituted by section 290, item 15 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

22. Funding of Office

- (1) The funds of the Office consist of —
 - (a) funds provided by the Board on the basis of a budget submitted by the Ombud to the Board and approved by the latter; and
 - (b) funds accruing to the Office from any other source.
- (2) The Ombud must deposit all funds in an account opened with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990).
- (3) The Ombud must utilise such funds for the defrayal of expenses incurred in the performance of functions under this Act, and may invest funds which are not required for immediate use.
- (4) The financial year of the Ombud ends on 31 March in every year.
- (5) Funds standing to the credit of the Ombud in the account mentioned in subsection (2) at the end of the financial year, as well as funds invested under subsection (3), must be carried forward to the next financial year.

23. Accountability

- (1) Despite the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the board of the Financial Services Board as defined in section 1 of the financial Services Board Act, 1990 (Act No. 97 of 1990), is the accounting authority of the Office.
[Section 23(1) amended by section 193 of Act No. 45 of 2013]
- (2) The accounting authority must comply with the Public Finance Management Act.
[Section 23(2) amended by section 193 of Act No. 45 of 2013]
- (3) The records and financial statements mentioned in subsection (2) must be audited by the Auditor-General.

24. General administrative powers of Ombud

The Ombud may for the performance of functions in the Office and as a charge against or for the benefit of the funds of the Office, as the case may be—

- (a) hire, purchase or otherwise acquire property, and let, sell or otherwise dispose of property so purchased or acquired;
 - (b) enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;
 - (c) insure the Office against any loss, damage, risk or liability;
 - (d) employ persons to assist the Ombud, determine their terms of appointment and, subject to such conditions as may be determined by the Ombud, delegate or assign to any such employee, including a deputy ombud, any administrative function vesting in
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- the Ombud in terms of this Part;
 - (e) obtain such professional advice as may reasonably be required; and
 - (f) in general, do anything which is necessary or expedient for the achievement of the objective of the Ombud.

25. Disestablishment and liquidation of Office

- (1) The Office may not be disestablished or liquidated except by an Act of Parliament.
- (2) In the event of any such disestablishment or liquidation, the surplus assets of the Office (if any) accrue to the Board.

26. Powers of Board

- (1) The Board may make rules , including different rules in respect of different categories of complaints or investigations by the Ombud, regarding –
 - (a)
 - (i) any matter which is required or permitted under this Act to be regulated by rule;
 - (ii) the category of persons qualifying as complainants ;
 - (iii) the type of complaint justifiable by the Ombud, including a complaint relating to a financial service rendered by a person not authorised as a financial services provider or a person acting on behalf of such first-mentioned person;
 - (iv) the rights of complainants in connection with complaints, including the manner of submitting a complaint to the authorised financial services provider or representative concerned;
 - (v) the rights and duties of any such provider or representative on receipt of any complaint, particularly in connection with the furnishing of replies to the complainant;
 - (vi) the rights of a complainant to submit a complaint to the Ombud where the complainant is not satisfied with any reply received from the provider or representative concerned;
 - (vii) the circumstances under which a complaint may be dismissed without consideration of its merits;
 - (viii) the power of the Ombud to fix a time limit for any aspect of the proceedings before the Ombud and to extend a time limit;
 - (b) the payment to the Office by the authorised financial services provider or representative involved in any complaint submitted to the Ombud, of case fees in respect of the consideration of the complaint by the Ombud;
 - (c) liaison between the Ombud and the registrar, and administrative duties of those functionaries regarding mutual administrative support, exchange of information and reports, other regular consultations and avoidance of overlapping of their respective functions; and
 - (d) any other administrative or procedural matter necessary or expedient for the better achievement of the objects of this Part, but which is not inconsistent
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with a provision of this Act.

[Section 26(1) amended by section 194 of Act No. 45 of 2013]

- (2) The Board must –
- (a) ensure that no rule made under subsection (1) detracts from or affects the independence of the Ombud in any material way;
 - (b) publish rules made under subsection (1) in the *Gazette*.

27. Receipt of complaints, prescription, jurisdiction and investigation

- (1) On submission of a complaint to the Office, the Ombud must—
- (a) determine whether the requirements of the rules contemplated in section 26(1)(a)(iv) have been complied with;
 - (b) in the case of any non-compliance, act in accordance with the rules made under that section; and
 - (c) otherwise officially receive the complaint if it qualifies as a complaint.
- (2) Official receipt of a complaint by the Ombud suspends the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period after such receipt of the complaint until the complaint has either been withdrawn, or determined by the Ombud or the board of appeal, as the case may be.
- (3) The following jurisdictional provisions apply to the Ombud in respect of the investigation of complaints—
- (a)
 - (i) The Ombud must decline to investigate any complaint which relates to an act or omission which occurred on or after the date of commencement of this Act but on a date more than three years before the date of receipt of such complaint by the Office.
 - (ii) Where the complainant was unaware of the occurrence of the act or omission contemplated in subparagraph (i), the period of three years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.
 - (b)
 - (i) The Ombud must decline to investigate any complaint if, before the date of official receipt of the complaint, proceedings have been instituted by the complainant in any Court in respect of a matter which would constitute the subject of the investigation.
 - (ii) Where any proceedings contemplated in subparagraph (i) are instituted during any investigation by the Ombud, such investigation must not be proceeded with.
 - (c) The Ombud may on reasonable grounds determine that it is more appropriate that the complaint be dealt with by a Court or through any other available dispute resolution process, and decline to entertain the complaint.
- (4) The Ombud must not proceed to investigate a complaint officially received, unless the Ombud—
- (a) has in writing informed every other interested party to the complaint of the
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- receipt thereof;
 - (b) is satisfied that all interested parties have been provided with such particulars as will enable the parties to respond thereto; and
 - (c) has provided all interested parties the opportunity to submit a response to the complaint.
 - (5) The Ombud—
 - (a) may, in investigating or determining an officially received complaint, follow and implement any procedure (including mediation) which the Ombud deems appropriate, and may allow any party the right of legal representation ;
 - (b) must, in the first instance, explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties ;
 - (c) may, in order to resolve a complaint speedily by conciliation, make a recommendation to the parties, requiring them to confirm whether or not they accept the recommendation and, where the recommendation is not accepted by a party, requiring that party to give reasons for not accepting it: Provided that where the parties accept the recommendation, such recommendation has the effect of a final determination by the Ombud, contemplated in section 28(1);
 - (d) may, in a manner that the Ombud deems appropriate, delineate the functions of investigation and determination between various functionaries of the Office; -
 - (e) may, on terms specified by the Ombud, mandate any person or tribunal to perform any of the functions referred to in paragraph (d).
 - (6) For the purposes of any investigation or determination by the Ombud, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes.

28. Determinations by Ombud

- (1) The Ombud must in any case where a matter has not been settled or a recommendation referred to in section 27(5)(c) has not been accepted by all parties concerned, make a final determination, which may include—
 - (a) the dismissal of the complaint; or
 - (b) the upholding of the complaint, wholly or partially, in which case –
 - (i) the complainant may be awarded an amount as fair compensation for any financial prejudice or damage suffered;
 - (ii) a direction may be issued that the authorised financial services provider, representative or other party concerned take such steps in relation to the complaint as the Ombud deems appropriate and just;
 - (iii) the Ombud may make any other order which a Court may make.
 - (2)
 - (a) A monetary award may provide for the amount payable to bear interest at a rate and as from a date determined by the Ombud.
 - (b) The Board may by rule determine –
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- (i) the maximum monetary award for a particular kind of financial prejudice or damage;
 - (ii) different maximum monetary awards for different categories of complaints;
 - (iii) the granting of costs, including costs against a complainant in favour of the Office or the respondent if in the opinion of the Ombud—
 - (aa) the conduct of the complainant was improper or unreasonable; or
 - (bb) the complainant was responsible for an unreasonable delay in the finalisation of the relevant investigation:

Provided that an amount payable under a cost award bears interest at a rate and as from a date determined by the Ombud.
 - (3) Any award of interest by the Ombud in terms of subsection (2) may not exceed the rate which a Court would have been entitled to award, had the matter been heard by a Court.
 - (4)
 - (a) the Ombud must reduce a determination to writing, including all the reasons therefor, sign the determination, and send copies thereof to the registrar and all parties concerned with the complaint and, if no notice of appeal to the board of appeal has been lodged within the period required therefor, to the clerk or registrar of court which would have had jurisdiction in the matter had it been heard by a Court.
 - (b) Where a notice of appeal has been lodged, the Ombud must send a copy of the final decision of the board of appeal to any such clerk or registrar.
 - (5) A determination –
 - (a) or a final decision of the board of appeal, as the case may be, is regarded as a civil judgment of a Court, had the matter in question been heard by a Court, and must be so noted by the clerk or registrar, as the case may be, of that Court;
 - (b) is only appealable to the board of appeal –
 - (i) with the leave of the Ombud after taking into consideration—
 - (aa) the complexity of the matter; or
 - (bb) the reasonable likelihood that the board of appeal may reach a different conclusion; or
 - (ii) if the Ombud refuses leave to appeal, with the permission of the chairperson of the board of appeal.
 - (6)
 - (a) A writ of execution may, in the case of a determination or a final decision of the board of appeal amounting to a monetary award, be issued by the clerk or the registrar referred to in subsection (3) and may be executed by the sheriff of such Court after expiration of a period of two weeks after the date of the determination or of the final decision of the board of appeal, as the case may be.
 - (b) Any other determination must be given effect to in accordance with the applicable procedures of a Court after expiration of a period of two weeks after the date of the determination or of the final decision of the board of appeal.
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29. Record-keeping

- (1) The Ombud must keep proper files and records in respect of complaints as well as a record of any determination proceedings conducted in terms of section 28.
- (2) The registrar has, for the purposes of the performance of the registrar's functions under this or any other law, access to the Ombud's files and records and may without further proof rely on a copy of any record of proceedings signed by the Ombud.
- (3) Any interested person may, subject to the discretion of the Ombud and applicable rules of confidentiality, obtain a copy of any record on payment of a fee determined by the Ombud.

30. Report of Ombud

- (1) The Ombud must during every year, within six months after the end of the financial year of the Ombud, submit a report to the Board on the affairs and functions of the Ombud during the financial year in question, including the annual financial statements referred to in section 23(2)(b).
- (2) The Ombud must at the same time submit a copy of the report to the Minister.

31. Penalties

Any person who—

- (a) commits any act in respect of the Ombud or an investigation by the Ombud which, if committed in respect of a court of law, would have constituted contempt of court, is guilty of an offence and liable on conviction to any penalty which may be imposed on a conviction of contempt of court; or
- (b)
 - (i) anticipates a determination of the Ombud in any manner calculated to influence the determination; or
 - (ii) wilfully interrupts any proceedings conducted by the Ombud, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

32. [Repealed] Promotion of client education by registrar

[Section 32 repealed by section 290, item 19 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

Part 2 : Other enforcement measures

- 33. [Repealed] Civil remedies
- 34. Undesirable practices
- 35. Regulations
- 36. Offences and penalties
- 37. Consideration of quantum of fines and penalties [REPEALED]
- 38. Voluntary sequestration, winding-up and closure
- 38A. Business rescue
- 38B. Application by registrar for sequestration or liquidation
- 38C. Directives
- 39. Right to consideration of decision

33. [Repealed] Civil remedies

[Section 33 repealed by section 195 of Act No. 45 of 2013]

34. Undesirable practices

- (1) Subject to subsections (2) and (3), the registrar may by notice in the *Gazette* declare a particular business practice to be undesirable for all or a category of authorised services providers, or any such provider.
[Section 34(1) amended by section 196(a) of Act No. 45 of 2013]
- (2) The following principles must guide the registrar in considering whether or not a declaration contemplated in subsection (1) should be made –
 - (a) That the practice concerned, directly or indirectly, has or is likely to have the effect of—
 - (i) harming the relations between authorised financial services providers or any category of such providers, or any such provider, and clients or the general public;
 - (ii) unreasonably prejudicing any client;
 - (iii) deceiving any client; or
 - (iv) unfairly affecting any client; and
 - (b) that if the practice is allowed to continue, one or more objects of this Act will, or is likely to, be defeated.
- (3) The registrar may not make such a declaration unless the registrar has by notice in the *Gazette* published an intention to make the declaration, giving reasons therefor, and invited interested persons to make written representations thereanent so as to reach the registrar within 21 days after the date of publication of that notice.
- (4) An authorised financial services provider or representative may not, on or after the

date of the publication of a notice referred to in subsection (1), carry on the business practice concerned.

[Section 34(4) amended by section 196(b) of Act No. 45 of 2013]

- (5) The registrar may direct an authorised financial services provider who, on or after the date of the publication of a notice referred to in subsection (1), carries on the business practice concerned in contravention of that notice, to rectify to the satisfaction of the registrar anything which was caused by or arose out of the carrying on of the business practice concerned: Provided that the registrar may not make an order contemplated in section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).
- (6) An authorised financial services provider concerned who is under subsection (5) directed to rectify anything, must do so within 60 days after such direction is issued.

35. Regulations

- (1) The Minister may by notice in the *Gazette*, after consultation with the registrar, make regulations relating to –
 - (a) any matter which is required or permitted to be prescribed under this Act;
 - (b) a prohibition on—
 - (i) canvassing for, or marketing or advertising (whether within or outside the Republic) of any business relating to the rendering of financial services by any person who is not an authorised financial services provider or a representative of such a provider;
 - (ii) the publication by any person, who is not an authorised financial services provider or a representative of such a provider, of any advertisement, communication or announcement directed to clients and which indicates that such person is an authorised financial services provider or a representative of such a provider; and
 - (iii) the use by any person who is not an authorised financial provider or a representative of any such provider, of any name, title or designation indicating that the person is an authorised financial services provider or a representative of such a provider;
 - (c) compliance arrangements, compliance monitoring systems and keeping of records;
 - (d) **[Section 35(1)(d) substituted by section 290, item 20 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]**
 - (e) generally, any matter which it is expedient or necessary to prescribe for the better achievement of the objects of this Act, the generality of this provision not being restricted by the provisions of any foregoing paragraph.
- [Section 35(1) amended by section 197 of Act No. 45 of 2013]**
- (2) The regulations may provide for offences in cases of contravention or non-compliance with the provisions thereof, and for penalties not exceeding a fine of R500 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
 - (3) Different regulations may be made in respect of different matters or categories of
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persons.

36. Offences and penalties

Any person who—

- (a) contravenes or fails to comply with a provision of section 7(1) or (3), 8(8), 8(10)(a), 13(1) or (2), 14(1), 17(4), 18, 19(2), 19(4) or 34(4) or (6);
 - (b) in any application in terms of this Act, deliberately makes a misleading, false or deceptive statement, or conceals any material fact, 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.
 - (c) in the execution of duties imposed by this Act gives an appointed auditor or compliance officer information which is false, misleading or conceals any material fact; or
 - (d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another representative,
- is guilty of an offence and is on conviction liable to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both such fine and such imprisonment.

[Section 36 amended by section 198(a) and (b) of Act No. 45 of 2013]

37. Consideration of quantum of fines and penalties [REPEALED]

[Section 37 repealed by section 199 of Act No. 45 of 2013]

38. Voluntary sequestration, winding-up and closure

No—

- (a) application for the acceptance of the voluntary surrender of the estate, in terms of section 3 of the Insolvency Act, 1936 (Act No. 24 of 1936), of;
 - (b) special resolution relating to the winding-up in terms of the Companies Act, and registered in terms of that Act, of;
[Section 38(b) amended by section 200 of Act No. 45 of 2013]
 - (c) written resolution relating to the winding-up, as contemplated in section 67 of the Close Corporations Act, 1984 (Act No. 69 of 1984), and registered in terms of that section, of; and
 - (d) voluntary closure of business by, any authorised financial services provider, or representative of such provider, and no special resolution in terms of the constitution of such a provider or representative which is not a company, to close its business, have legal force—
 - (i) unless a copy or notice thereof has been lodged with the registrar and the registrar has, by notice to the provider or representative concerned, as the
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- case may be, declared that arrangements satisfactory to the registrar have been made to meet all liabilities under transactions entered into with clients prior to sequestration, winding-up or closure, as the case may be; or
- (ii) if the registrar, by notice to the provider or representative concerned, as the case may be, declares that the application, resolution or closure, as the case may be, is contrary to this Act.

38A. Business rescue

- (1)
- (a) Notwithstanding the provisions of the Companies Act or any other law under which a provider is incorporated, Chapter 6 of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the business rescue of a provider, whether or not it is a company.
- (b) This section does not apply if another registrar is authorised in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to make an application for the business rescue of a provider.
- (2) The registrar may make an application under section 131 of the Companies Act in respect of a provider if the registrar is satisfied that it is in the interests of the clients of the provider or the financial services industry.
- (3) The following acts are subject to the approval of the registrar:
- (a) The resolution of a provider to begin business rescue proceedings;
- (b) the appointment of a business rescue practitioner;
- (c) the adoption of a business rescue plan; and
- (d) the exercise of a power by the business rescue practitioner under the Companies Act.
- (4) In the application of Chapter 6 of the Companies Act—
- (a) any reference to the Commission shall be construed as a reference also to the registrar;
- (b) the reference to creditors shall be construed as a reference also to clients of the provider;
- (c) any reference relating to the ability of a provider to pay all debts, shall be construed as relating also to the provider's inability to comply with the financial soundness requirement under section 8(1)(c) of this Act;
- (d) there shall be considered, in addition to any question relating to the business of a provider, also the question whether any cause of action is in the interests of the clients.
- (5) If an application to a Court for an order relating to the business rescue of a provider is made by an affected person other than the registrar—
- (a) the application shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the registrar, before the application is set down for hearing;
- (b) the registrar may, if satisfied that the application is not in the interests of the

clients of the provider, join the application as a party and file affidavits and other documents in opposition to the application.

- (6) As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a provider shall not conduct any new business unless the practitioner has been granted permission to do so by a court.

[Section 38A inserted by section 201 of Act No. 45 of 2013]

38B. Application by registrar for sequestration or liquidation

- (1) Subject to subsection (3), if the registrar, after an on-site visit in terms of section 4(5) or an inspection in terms of the Inspection of Financial Institutions Act, 1998 (Act No. 80 of 1998), considers that the interests of the clients of a financial services provider or of members of the public so require, the registrar may apply to the court for the sequestration or liquidation of that provider, whether or not the provider is solvent, in accordance with—
- (a) the Insolvency Act, 1936 (Act No. 24 of 1936);
 - (b) the Companies Act;
 - (c) the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - (d) the law under which that provider is incorporated.
- (2) In deciding an application contemplated in subsection (1), the court—
- (a) may take into account whether sequestration or liquidation of the financial services provider concerned is reasonably necessary—
 - (i) in order to protect the interests of the clients of the provider; and
 - (ii) for the integrity and stability of the financial sector;
 - (b) may make an order concerning the manner in which claims may be proved by clients of the financial services provider concerned; and
 - (c) shall appoint as trustee or liquidator a person nominated by the registrar.
- (3) This section does not apply if another registrar is authorised in terms of Financial Services Board legislation as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to apply to the court for the sequestration or liquidation of that provider.

[Section 38B inserted by section 201 of Act No. 45 of 2013]

38C. Directives

- (1) The registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply.
- (2) A directive issued in terms of subsection (1) may—
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- (a) apply generally; or
 - (b) be limited in its application to a particular person or category of persons.
- (3) A directive issued in terms of subsection (1) takes effect on the date determined by the registrar in the directive.
- (4) In the event of a departure from section 3(2) or 4(1), (2) or (3) of the Promotion of Administrative Justice Act (Act No. 3 of 2000), the directive must include a statement to that effect and the reasons for such departure.
- (5) The registrar must, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.

[Section 38C inserted by section 201 of Act No. 45 of 2013]

39. Right to consideration of decision

[Section 39 heading substituted by section 290, item 21 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

Any person aggrieved by a decision of a financial services provider to debar that person in terms of section 14 may apply for the reconsideration of the decision to the Tribunal.

[Section 39 substituted by section 290, item 21 in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]

Chapter VII : Miscellaneous

- 40. Saving of rights
- 41. Fees and penalties
- 42. [Repealed] Exchange of information
- 43. [Repealed] Limitation of liability
- 44. Exemptions by registrar and Minister
- 45. Exemptions, and amendment or repeal of laws
- 46. Commencement and short title

40. Saving of rights

No provision of this Act, and no act performed under or in terms of any such provision, may be construed as affecting any right of a client, or other affected person, to seek appropriate legal redress in terms of this Act, the common law or any other statutory law, and whether relating to civil or criminal matters, in respect of the rendering of any financial service by an

authorised financial services provider, or representative of such provider, or any act of a person who is not an authorised financial services provider or a representative of such a provider.

[Section 40 amended by section 202 of Act No. 45 of 2013]

41. Fees and penalties

- (1)
- (a) The Minister must, after consultation with the registrar, by notice in the *Gazette*, determine the fees payable to the registrar by any person, or category of persons, seeking a decision or the performance of any other act by the registrar under this Act and referred to in section 3(1).
 - (b) The fees are payable in the manner, and are subject to the requirements, determined by the registrar by notice on the official web site.
[Section 41(1)(b) amended by section 203 of Act No. 45 of 2013]
- (2)
- (a) A person who fails to furnish the registrar with a return, information or document, as provided by this Act, within the period specified or any extension thereof, is, irrespective of any criminal proceedings instituted against the person under this Act, but subject to paragraph (b), liable to a penalty not exceeding R1 000 or any greater amount prescribed, for every day during which the failure continues, unless the registrar, on good cause shown, waives the penalty or any part thereof.
 - (b) The penalty may be imposed by the registrar by notice to the person concerned, and such imposition must be preceded by a procedure giving such person a reasonable opportunity to be heard, and takes effect on a date specified in such notice which may be a date prior to the date of the notice.
- (3)
- (a) A person who is liable to pay the fees or a penalty contemplated in subsection (1)(a) or (2)(a), respectively, and who fails to pay the amount due on the date or within the period specified, must pay interest on the amount outstanding and on unpaid interest at such rate, and calculated in such manner as may be determined by the Minister from time to time in respect of debts due to the state.
 - (b) The fees and penalties, and interest owed in respect thereof, are regarded as debts due to the Board and may be recovered by the Board in a Court.

42. [Repealed] Exchange of information

[Section 42 repealed by section 204 of Act No. 45 of 2013]

43. [Repealed] Limitation of liability

[Section 43 repealed by the Financial Services Laws General Amendment Act, 2008 (Act No. 22 of 2008)]

44. Exemptions by registrar and Minister

- (1) The registrar may on or after the commencement of this Act, but prior to the date determined by the Minister in terms of section 7(1), exempt any person or category of persons from the provisions of that section if the registrar is satisfied that—
 - (a) the rendering of any financial service by the applicant is already partially or wholly regulated by any other law; or
 - (b) the application of the said section to the applicant will cause the applicant or clients of the applicant financial or other hardship or prejudice; and
 - (c) the granting of the exemption will not—
 - (i) conflict with the public interest;
 - (ii) prejudice the interests of clients; and
 - (iii) frustrate the achievement of the objects of this Act.
 - (2) The registrar –
 - (a) having regard to the factors mentioned in subsection (1), may attach to any exemption so granted reasonable requirements or impose reasonable conditions with which the applicant must comply either before or after the effective date of the exemption in the manner and during the period specified by the registrar; and
 - (b) must determine the period for which the exemption will be valid.
 - (3) An exemption in respect of which a person has to comply with requirements or conditions, lapses whenever the person contravenes or fails to comply with any such requirement or condition: Provided that the registrar may on application condone any such contravention or failure and determine reasonable requirements or conditions with which the applicant must comply on or after resumption of the exemption as if such requirements or conditions had been attached or imposed on the first granting of the exemption.
 - (4)
 - (a) The registrar may in any case not provided for in this Act, on reasonable grounds, on application or on the registrar's own initiative by notice on the official web site, exempt any person or category of persons from any provision of this Act.
[Section 44(4)(a) amended by section 205 of Act No. 45 of 2013]
 - (b) The provisions of subsections (1), (2) and (3) apply with the necessary changes in respect of any exemption contemplated in paragraph (a).
 - (5) The Minister, after consultation with the registrar, may, on such conditions as the Minister may determine, by notice in the *Gazette* exempt a financial services provider or representative, or category of financial services providers or representatives, from any provision of the Policyholder Protection Rules made under section 62 of the Long-
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term Insurance Act, 1998 (Act No. 52 of 1998), and section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively.

45. Exemptions, and amendment or repeal of laws

- (1) The provisions of this Act do not apply to the rendering of financial services by—
 - (a)
 - (i) any "authorised user", "clearing member", "licensed clearing house", "licensed central securities depository", "licensed exchange" or "participant" as defined in section 1 of the Financial Markets Act, 2012 that is authorised by that Act to render those financial services;
[Section 45(1)(a)(i) amended by Section 111 of the Financial Markets Act, 2012]
 - (ii) **[Section 45(1)(a)(ii) deleted by section by section 290, item 23(a) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]**
 - (iii) a person performing the functions referred to in section 13B of the Pension Funds Act, 1956 (Act No. 24 of 1956), if such person complies with the requirements and conditions contemplated in that section; or
 - (iv) a person carrying on the business referred to in section 58 of the Medical Schemes Act, 1998 (Act No. 131 of 1998), if such person complies with the requirements contemplated in that section, to the extent that the rendering of financial services is regulated by or under those Acts, respectively;
 - (b)
 - (i) the executor, administrator or trustee of any deceased or insolvent estate, or a person acting on behalf of such executor, administrator or trustee ;
 - (ii) the curator of a person under curatorship, or a person acting on behalf of such curator;
 - (iii) the liquidator of a company in liquidation, business rescue practitioner of a company subject to business rescue proceedings, or a person acting on behalf of such liquidator or business rescue practitioner;
[Section 45(1)(iii) amended by section 206 of Act No. 45 of 2013]
 - (iv) the trustee of an *inter vivos* trust as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), not being a business trust created for the purpose of profit-making achieved through the combination of capital contributed by the beneficiaries of the trust and through the administration or management of the capital by trustees on behalf of and for the benefit of the beneficiaries, or a person acting on behalf of such first-mentioned trustee;
 - (v) the parent, tutor or guardian of a minor, or a person acting on behalf of such parent, tutor or guardian, unless the financial services are rendered as a regular feature of any such person's business; or
 - (c) any other trustee or custodian appointed under any law to the extent that the rendering of such services is regulated by or under such law.
- (1A) The provisions of this Act do not apply to the—
 - (a) performing of the activities referred to in paragraph (b)(ii) and (iii) of the

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- definition of "intermediary service" by a product supplier—
- (i) who is authorised under a particular law to conduct business as a financial institution; and
 - (ii) where the rendering of such service is regulated under such law; and ***Section 45(1A)(a) inserted by section 290, item 23(b) in Schedule 4, of Act No. 9 of 2017 - has not commenced (paragraph (h) of Notice 169 of 2018)]***
- (b) rendering of financial services by a manager as defined in section 1 of the Collective Investment Schemes Control Act, 2002, to the extent that the rendering of financial services is regulated under that Act. ***Section 45(1A)(b) inserted by section 290, item 23(b) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]***
- (1B) The exemption referred to in—
- (a) subsection (1A)(a) does not apply to a person to whom the product supplier has delegated or outsourced the activity, or any part of the activity, contemplated in paragraph (a), and where the person is not an employee of the product supplier; and ***Section 45(1B)(a) inserted by section 290, item 23(b) in Schedule 4, of Act No. 9 of 2017 - has not commenced (paragraph (h) of Notice 169 of 2018)]***
 - (b) subsection (1A)(b) does not apply to an authorised agent as defined in section 1 of the Collective Investment Schemes Control Act, 2002. ***Section 45(1B)(b) inserted by section 290, item 23(b) in Schedule 4, of Act No. 9 of 2017 - effective 1 April 2018 (paragraph (h) of Notice 169 of 2018)]***
- (2)
- (a) The law referred to in item I of the Schedule is hereby amended to the extent indicated in the fourth column of the Schedule.
 - (b) The laws referred to in item II of the Schedule are hereby, with effect from the date determined in terms of section 7(1), amended or repealed to the extent indicated in the fourth column of the Schedule: Provided that any uncompleted business of any financial services provider in terms of such law on that date may be completed within the prescribed period as if any such amendment or repeal has not taken effect.
- (3) Until such time as the Collective Investment Schemes Control Act, 2002, referred to in sections 1(1) and 45(1)(a)(ii) of this Act comes into operation, any reference in this Act to—
- (a) a collective investment scheme and manager must be construed as references to a unit trust scheme and management company, and scheme and manager, referred to in the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), and the Participation Bonds Act, 1981 (Act No. 55 of 1981), respectively; and
 - (b) any word or expression defined in the Unit Trusts Control Act, 1981, and the Participation Bonds Act, 1981, unless clearly inappropriate or inconsistent with this Act, has the meaning so defined.
- (4) Until such time as the Securities Services Act, 2002, referred to in sections 1(1) and 45(1)(a)(i) of this Act comes into operation, any reference in this Act to—
- (a) an authorised user, exchange, a clearing house, central securities depository and participant, must be construed as references to a member, stock exchange, clearing house, financial exchange, recognised clearing house, central securities depository and depository institution referred to in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), Financial Markets Control Act,
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- 1989 (Act No. 55 of 1989), and Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992), respectively; and
- (b) any word or expression defined in the Stock Exchanges Control Act, 1985, Financial Markets Control Act, 1989, and Custody and Administration of Securities Act, 1992, unless clearly inappropriate or inconsistent with this Act, has the meaning so defined.

46. Commencement and short title

This Act is called the Financial Advisory and Intermediary Services Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

Schedule 1 : Laws Amended Or Repealed

Schedule 1 : Laws Amended Or Repealed

(Section 45)

| Item | Number and year of Law | Short Title | Extent Of Amendment Or Year |
|-------|------------------------|------------------------------------|---|
| | Act No. 97 of 1990 | Financial Services Board Act, 1990 | The amendment of section 1 by the addition of the following subparagraph to paragraph (a) of the definition of "financial institution" : " <u>(xii) any 'authorised financial services provider' or 'representative' as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, 2001;</u> ". |
| 11(a) | Act No. 1 of 1985 | Stock Exchanges Control Act, 1985 | 1. The amendment of section 4 by the - a) substitution for subsection (1) of the following subsection : " <u>(1) No member may, as a regular feature of the business of the member, under - take the management of investments on behalf of another person and for such management receive any remuneration in whatever form unless the member is authorised to</u> |

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| | | | <p>do so in terms of the rules." and</p> <p>b) deletion of subsections (1A), (2), (3), (4), (5), (6) and (7)(c).</p> <p>2. The amendment of section 12 by the substitution for paragraph (d) of subsection (1) of the following paragraph : <u>"(d) that –</u></p> <p>i) <u>a member carries on a - business contemplated in section 4(1) in accordance with the provisions of the rules and</u></p> <p>ii) <u>a member may not effect a transaction with a person whom the member reasonably believes requires authorisation as a financial services provider or the status of a representative in terms of the Financial Advisory and Intermediary Services Act, 2001, without having taken reasonable measures to ascertain that such person has the required authorisation or status."</u></p> <p>3. The amendment of section 39 by the deletion of subsections (2), (2A) and (2B).</p> <p>4. The amendment of section 45 –</p> <p>a) by the deletion of subparagraph (iii) of paragraph (a) of subsection (1);</p> <p>b) by the deletion of the word "or" at the end of subparagraph (ii) of paragraph (b) of subsection (1), and of subparagraph (iii) of the said paragraph (b);</p> <p>c) by the substitution for the words following on subparagraph (iii) of paragraph (b) of subsection (1) of the following words : <u>"but who is carrying on the business of a stock exchange <u>or</u> of a member, [or of a person requiring approval in terms of section 4] as the case may be; and"</u>.</p> <p>5. The amendment of section 47 by the deletion of paragraph (b) of subsection (1).</p> <p>6. The amendment of section 48 by the substitution for paragraph (a) of subsection (1) of the following paragraph : <u>"(a) contravenes a provision of section 3(1) or (2), 4(1)[or (2)] or 14;"</u>.</p> <p>7. The substitution of the following heading and subsection for the heading and subsection (1) of 50: "Powers of court to</p> |
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| | | | <p>declare member, officer or employee of member disqualified</p> <p>"50. (1) If a court –</p> <p>a) convicts a member or an officer or employee of a member [or a person approved in terms of section 4] under this Act or of an offence of which any dishonest act or omission is an element; or</p> <p>b) finds, in proceedings to which a member or an officer or employee of a member [a person approved in terms of section 4 or such person's officer or employee] is a party or in which [his] <u>such member's officer's or employee's</u> conduct is called in question, that [he] <u>such member, officer or employee</u> has been guilty of dishonest conduct,</p> <p>the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare that member, officer or employee of a member [person or such person's officer or employee] to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a member <u>or</u> from being an officer or employee of a member, [or from carrying on the business referred to in section 4] as the case may be."</p> |
| 11(b) | Act No. 55 of 1989 | Financial Markets Control Act, 1989 | <p>1. The amendment of section 5 -</p> <p>a) by the substitution for subsection(1) of the following subsection : <u>"(1) No member may, as a regular feature of the business of the member, undertake the management of investments on behalf of another person and for such management receive any remuneration in whatever form unless the member is authorised to do so in terms of the rules."</u>; and</p> <p>b) by the deletion of subsections (1A), (2), (3), (4), (5), (6) and (7)(c).</p> <p>2. The amendment of section 17-</p> <p>a) by the substitution in subsection (1) for paragraph (dC) of the following paragraph : <u>"(dC) that a member carries on a business contemplated in section</u></p> |

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| | | | | <p><u>5(1) in accordance with the provisions of the rules;" and</u></p> <p>b) by the substitution in subsection (1) for paragraph (JB) of the following paragraph :</p> <p><u>"(JB) that no member may effect a transaction with a person who the member reasonably believes requires authorisation as a financial services provider or the status of a representative in terms of the Financial Advisory and Intermediary Services Act 2001, with out having taken reasonable measures to ascertain that such person has the required authorisation or status;"</u></p> <p>3. The amendment of section 21A by the deletion of subsections (2), (2A and (2B).</p> <p>4. The amendment of section 26 -</p> <p>a) by the deletion in subsection (1) of subparagraph (iii) of paragraph (a);</p> <p>b) by the deletion of the word "or" at the end of subparagraph (ii) of paragraph (b) of subsection (1), and of subparagraph (iii) of the said paragraph (b); and</p> <p>c) by the substitution for the words following on subparagraph (iii) of paragraph (b) of subsection (1) of the following words :</p> <p>"but who is carrying on the business of a financial exchange <u>or</u> of a member [or of a person requiring approval in terms of section 5]; and".</p> <p>5. The amendment of section 28 by the deletion of paragraph (c) .</p> <p>6. The amendment of section 29 -</p> <p>a) by the substitution for paragraph (b) of subsection (1) of the following paragraph :</p> <p>"(b) direct a financial exchange or a member thereof or a recognised clearing house [or a person approved in terms of section 5] to take any other steps, or to refrain from performing or continuing any act, in order to terminate or to obviate any undesirable practice or state of affairs brought to light by the inspection."; and</p> <p>b) by the substitution for subsection (2)</p> |
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| | | | | <p>of the following subsection : "(2) A financial exchange or a member thereof or a recognised clearing house [or a person approved in terms of section 5] shall upon receipt of a request in writing by the Registrar to that effect immediately discontinue the publication or the issue of any advertisement, brochure, prospectus or similar document relating to financial instruments specified in the request which is not a correct statement of fact or is objectionable, or effect such adjustments thereto as the Registrar deems fit."</p> |
| | | | 7. | <p>The substitution of the following section for section 30 : "30. Evidence A record purporting to have been made or kept in the ordinary course of the carrying on of the business of a financial exchange or the business of a member, or of a recognised clearing house [or the business of a person approved in terms of section 5] or a copy of or an extract from such record certified to be correct by the public prosecutor, shall on its mere production by the public prosecutor in any criminal proceedings under this Act, any other law or the common law against the person who carries or carried on the business in question or any other person, be admissible in evidence and be <i>prima facie</i> proof of the facts contained in such record, copy or extract."</p> |
| | | | 8. | <p>The substitution of the following heading and subsection for the heading and subsection (1) of section 31 "31. Power of court to declare member or officer or employee of member disqualified (1) If a court – a) convicts a member or officer or employee of a member [or a person approved in terms of section 5] of an offence under this Act or of an offence of which any dishonest act or omission is an element; or b) finds, in proceedings to which a member or officer or employee of a member [or a person approved in</p> |

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| | | | <p>terms of section 5 or such person's officer or employee] is a party or in which such member's officer's <u>or</u> employee's [or person's] conduct is called in question, that such member, officer <u>or</u> employee [or person] has been guilty of dishonest conduct, the court may (in addition, in a case referred to in paragraph (a) to any sentence it may impose) declare that member, officer or employee of a member [or person or such person's officer or employee] to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a member or from being an officer or employee of a member [or from carrying on the business referred to in section 5], as the case may be."</p> |
| 11(c) | Act No. 140 of 1992 | Drugs and Drug Trafficking Act, 1992 | <p>1. The amendment of section 10, by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs :</p> <p>"a) any stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) [or any person contemplated in paragraph (d), (e) or (for section 4(1) of that Act]; or</p> <p>b) any financial instrument trader as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989) [or any person contemplated in paragraph (f) (g), or (h) of section 5(1) of that Act],".</p> |





Board Notices

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Board Notices

Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2002 : Board Notice 83 of 2003

Exemption in respect of Services under Supervision in terms of Requirements and Conditions, 2008 : Board Notice 104 of 2008

Application by Financial Services Providers for Authorisation by The Financial Services Board : Board Notice 60 of 2009

Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009 : Board Notice 123 of 2009

Exemption of Banks, 2009 : Board Notice 172 of 2009

Exemption in respect of Services under Supervision by Compliance Officers, 2010 : Board Notice 126 of 2010

Qualifications, Experience and Criteria for Approval as Compliance Officer, 2010 : Board Notice 127 of 2010

Amendment of Exemptions No. 2, 2011 : Board Notice 176 of 2011

Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2002

Board Notice 83 of 2003

1. Definitions
2. Qualifications and experience of compliance officers
3. Short title and commencement

Board Notice 83 of 2003

Board Notice 83 of 2003
8 August 2003

Financial Services Board

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby, after consultation with the Advisory Committee on Financial Services Providers, determine under section 17(1) (6) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), the qualifications and experience of persons who may be appointed as compliance officers in respect of financial services business, as set out in the Schedule.

J van Rooyen
Registrar of Financial Services Providers

1. Definitions

In this Schedule "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning has been assigned in the Act, read with the definition of "this Act" in section 1(1) of the Act, has that meaning, and for purposes of this Board Notice only—

"compliance officer"

includes, in a case where such officer operates in a corporate, partnership or trust format, any natural person, whether an employee of such entity, a particular partner or trustee, or a member of the management of the entity, as the case may be, appointed by such body to take personal responsibility for the performance of compliance monitoring functions contemplated in section 17(1)(a) of the Act in respect of a particular authorised financial services provider, and to be approved by the registrar for that purpose.

2. Qualifications and experience of compliance officers

A person to be appointed as compliance officer other than a director, member, auditor, trustee, principal officer, public officer or company secretary of a particular authorised financial service provider as contemplated in section 17(1)(b) of the Act must be a person complying with the following qualifications and experience, namely, the person must—

- (a) hold a legal or accountancy university degree, and with at least 3 years experience as regards the financial services industry; or
- (b) have passed any specific financial services industry, or compliance related course recognised by the registrar by notice in the *Gazette*, with 3 year's experience as regards the of financial services industry; or
- (c) already be appointed as a compliance officer by virtue of a law other than the Act relating to the financial services industry; or
- (d) be an accredited member of the Compliance Institute of South Africa, or any other organisation recognised by the registrar by notice in the *Gazette*, and who has at least 3 years' experience as regards the financial services industry.

3. Short title and commencement

This Notice is called the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business 2002, and comes into operation on the date determined by the Minister under section 7(1) of the Act.

Exemption in respect of Services under Supervision in terms of Requirements and Conditions, 2008

Board Notice 104 of 2008

1. Definitions
2. Objectives of exemption
3. Extent of exemption
4. Requirements and conditions
5. Amendment or withdrawal
6. Miscellaneous
7. Short title and commencement

Board Notice 104 of 2008

Board Notice 104 of 2008
15 October 2008

Financial Services Board

I, DUBE PHINEAS TSHIDI, the Registrar of Financial Services Providers, hereby under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), exempt any person or category of persons involved in the rendering of services under supervision as provided for in the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, read with the Schedule to this Exemption, from any provision of the said Act or any other measure promulgated thereunder, which is irreconcilable with any provision of the said Determination or Schedule.

D P Tshidi
Registrar of Financial Services Providers

1. Definitions

In this Schedule "**the Act**" means the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002), and any word or expression to which a meaning has been assigned in the Act, or in any measure promulgated under the Act as referred to in the definition of "this Act" in section 1(1) of the Act, shall, unless the context otherwise indicates, have that meaning; and the following words and expressions shall, unless the context otherwise indicates, have the following meanings:

"appointment date"

or "date of appointment" or "appointment as a representative" means the date on which a

representative was first appointed by any financial services provider to render financial services in relation to a specific Category or subcategory;

"direct supervision"

means the supervision of the financial services rendered by a representative under the guidance, instructions and supervision of a supervisor, and which occurs on a regular (ranging between daily and weekly) basis;

"investment team meetings"

means morning meetings and/or similarly structured meetings that refer to the practice of discretionary financial service providers where the investment team discusses and decides on the investment policy, strategy or the implementation of a specific investment decision;

"ongoing level of supervision"

means the way in which supervision is exercised after the initial period of services under direct supervision has been completed, but the supervisee still requires supervision, and such supervision occurs on at least a biweekly to monthly basis;

"product training"

means the way in which a specific product supplier provides training regarding the features, benefits, cost structures, risk profiles and other information required for advice or the rendering of intermediary services for a specific financial product provided;

"representative register"

or "register of representatives" means the register of representatives that must be maintained by the financial services provider and submitted to the Registrar in terms of section 13 of the Act;

"services under supervision"

means financial services rendered by a representative who does not meet the prescribed experience, qualification and/or regulatory examination requirements and which services are rendered under the guidance, instruction and supervision of a supervisor in terms of the provisions of an exemption by the Registrar under section 44 of the Act;

"supervisee"

means the representative who acts under supervision until the requirements for experience and qualifications have been met;

"supervision agreement"

means the written agreement regarding the execution of the services under supervision on behalf of the financial services provider, or the arrangement between employer and employee which requires the employee to submit to supervision under certain circumstances;

"supervisor"

means—

- (a) an authorised financial services provider being a natural person; or
 - (b) a representative of the provider who meets, to the satisfaction of the provider, the relevant requirements of this Exemption; or
 - (c) a key individual of the financial services provider who meets, to the satisfaction of the provider, the relevant requirements of this Exemption;
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"the General Code of Conduct"

means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, as amended.

2. Objectives of exemption

Section 13(2)(a) of the Act determines that an authorised financial services provider must, *inter alia*, at all times be satisfied that a representative is in the rendering of financial services competent to act with reference to the same fit and proper requirements contemplated in section 8(1)(a) and (b) as set out in the Determination on Fit and Proper Requirements, 2008. The objective of this Exemption is to relieve the provider of the obligation under section 13(2)(a) as regards the competency requirements. This implies that a representative will, with regard to the experience and qualification and regulatory examination requirements, not have to comply with the standards set for the provider at date of appointment. The Registrar is satisfied that this Exemption meets the requirements of section 44(4) of the Act read with section 44(1) of the Act.

3. Extent of exemption

An authorised financial services provider is, in respect of a representative, exempted from the obligations under section 13(2)(a) of the Act regarding-

- (a) the experience requirements required in terms of paragraph 4(1)(b), (2)(b), (3)(b), (4)(b) and (5)(b) of the Determination of Fit and Proper Requirements, 2008;
- (b) qualifications in terms of paragraph 5(1)(d) and (2)(d) of the Determination of Fit and Proper Requirements, 2008;
- (c) the first and second level regulatory examinations referred to in subparagraphs (2)(c) and (3)(c) of paragraph 6 of the Determination of Fit and Proper Requirements, 2008; and
[Paragraph 3(c) substituted by section 3(a)(i) of Board Notice 260 of 2013, dated 19 December 2013]
- (d) the Continuous Professional Development Requirements in terms of paragraph 7(1) of the Determination of Fit and Proper Requirements, 2008:

Provided such provider complies with the requirements and conditions in paragraph 4 below.

4. Requirements and conditions

- (1) A financial services provider that provides representatives with the opportunity to render financial services under supervision, must satisfy the Registrar, that it—
 - (a) has the operational ability to provide such services under supervision; and
 - (b) can itself, or through a key individual that meets the same requirements as provided for in subparagraph (3) below or another competent representative act as supervisor, and meets the relevant requirements for the specific

subcategory of financial services wherein the supervisor will oversee the representative(s) that render services under supervision.

- (2) A financial services provider that intends to provide representatives with the opportunity to render financial services under supervision must—
 - (a) indicate on the representative register whether the representative is acting under supervision, and
 - (b) differentiate on the representative register between representatives that are acting under supervision and those that meet all the requirements and are not acting under supervision.
- (3) A supervisor must have completed and meet the relevant requirements regarding experience and qualification and at least the first level regulatory examination in relation to the specific Categories or subcategories before the supervisor is allowed to act as a supervisor for a specific Category or subcategory.
- (4) A representative may only work for a period not exceeding six (6) years after date of appointment under supervision, whilst obtaining the required experience, qualification and regulatory examination(s) as they apply.
- (5) Supervisees are expected to obtain experience across the subcategories in respect of which they are appointed as a representative, but should this prove to be problematic during the minimum period under supervision due to business reasons, the financial services provider should make arrangements to either—
 - (a) place the supervisee in a position where he or she can gain experience in the specific Subcategory; or
 - (b) extend the period under supervision to ensure that the supervisee receives sufficient exposure to the specific subcategory, provided that the maximum period under supervision of six (6) years is not exceeded.
- (6) The following will apply to the period a representative acts under supervision:
 - (a) The supervision period is linked to the Category or subcategory;
 - (b) the maximum period any representative can act under supervision in any Category or subcategory, is six (6) years from date of appointment;
 - (c) representatives who give advice and/or render intermediary services in respect of multiple Categories or subcategories can gain the experience at the same time, and will remain under supervision until the experience requirements for the most onerous Category or subcategory is met;
 - (d) the relevant minimum and maximum periods commence on the date the representative is appointed to render services in relation to the specific Category or subcategory; and
 - (e) the representative must—
 - (i) successfully complete the relevant first level regulatory examination by 30 June after the expiry of 24 months from the date of first appointment as a representative;
 - (ii) successfully complete the relevant second level regulatory examination(s) by 30 June after the expiry of 72 months from the date of first appointment as a representative; and
 - (iii) obtain the relevant qualification by 30 June after the expiry of 72 months from the date of first appointment as a representative.

[Paragraph 4(6)(e) substituted by section 3(a)(ii) of Board Notice 260 of 2013,

dated 19 December 2013]

- (7) Supervision may include one or more of the following activities:
- (a) Sign-off by a supervisor on the advice given to a client;
 - (b) pre-transaction sign-off by a supervisor where intermediary services are rendered;
 - (c) attending meetings with supervisee and clients where the purpose of the meeting is the rendering of financial services;
 - (d) appropriate post-transaction sampling;
 - (e) follow-up calls to clients after the rendering of financial services by the supervisee to confirm certain aspects of the interaction with the client; or
 - (f) any other activity that enables the supervisor to scrutinise the activities of the supervisee in respect of rendering of financial services:
- Provided that in the case of Category I financial services providers the intensity of supervision is aligned to the phase of supervision (direct or ongoing supervision), referred to in Table A below, which applies.
- (8) In the case of Categories II and IIA financial services providers, the following will also be recognised for supervision purposes:
- (a) Minutes of the "investment team meetings", will be accepted as signoff; or
 - (b) sign-off on transactions regarding intermediary services will require that the supervisor checks that the representative carries out instructions accurately and in line with the relevant mandate and/or consensus decision.
- (9) Supervision arrangements must be arranged in accordance with the following specific requirements:
- (a) Selection of the supervisor:
The financial services provider must ensure that the normal working relationship between the supervisee and supervisor allows the supervisor oversight of the activities performed by the supervisee as per agreement, and that there is regular contact that enables the transfer of skills, which may include face-to-face and/or contact via electronic means, between the supervisee and supervisor in the execution of their duties.
 - (b) Supervision agreement:
There must be a written agreement, which may or may not form part of the employer's performance management processes, that details the procedures regarding the rendering of services under supervision.
 - (c) Supervisor responsibilities:
 - (i) The financial services provider is required to ensure that supervisees are supervised at all times when executing their duties in terms of the supervisory arrangement;
 - (ii) the supervisor must ensure that the supervisee has a good understanding of and exposure to the Categories and/or subcategories he or she is providing financial service in;
 - (iii) the supervisor must observe selected meetings between the supervisee and customers, the frequency of which may vary according to the complexity of the service that is provided; and/or the complexity of the products offered; and/or the experience of the supervisee; and/or the qualifications of the supervisee;
 - (iv) the financial services provider must ensure that the supervisor is able to provide evidence of the supervision actions undertaken and such
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- evidence must be available for scrutiny by the Registrar;
- (v) the supervisor must assess the advice given by the supervisee for appropriateness based on a review of the analysis conducted and the record of the advice as provided for in terms of the General Code of Conduct, and ensure that the FSP takes the necessary action to protect the client where it is found that the supervisee's actions may not have been in the interest of the client; and
 - (vi) the supervisor and supervisee must have properly documented evidence of the supervision, the method followed and frequency thereof that took place during the period under supervision.
- (d) The supervisee must—
- (i) adhere to the requirements of the supervision contract;
 - (ii) provide the supervisor upon request, where applicable, with any records and or documents regarding the advice given and/or intermediary services rendered;
 - (iii) disclose to clients that he or she is acting under supervision;
 - (iv) actively pursue the completion of the required qualifying criteria within the prescribed time limits; (v) undertake the relevant product training; and
 - (v) request guidance from the supervisor if in doubt when performing any duties in relation to the supervision contract.
- (e) Supervision applicable to representatives of Categories I and IV financial services providers:

Table A below sets out the level of supervision required in respect of representatives acting under supervision of Categories I and IV financial service providers:

| TABLE A: CATEGORIES I AND IV: LEVEL OF SUPERVISION REQUIRED | | | |
|--|---|--|---|
| | COLUMN ONE: SUBCATEGORY | COLUMN TWO: DIRECT SUPERVISION | COLUMN THREE: ONGOING LEVEL OF SUPERVISION |
| 1.1 | Long-term Insurance subcategory A | The first 2 months of the period under supervision | After 2 months for the rest of the period under supervision |
| 1.2 | Short-term Insurance Personal Lines | | |
| 1.3 | Long-term Insurance: subcategory B1 | | |
| 1.3.1 | | | |
| 1.3.2 | subcategory B2 | | |
| 1.4 | Long-term Insurance subcategory C | | |
| 1.5 | Retail Pension Benefits | | |
| 1.6 | Short-term Insurance Commercial Lines | | |
| 1.7 | Pension Fund Benefits (excluding Retail Pension Benefits) | | |

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|-------------|---|--|---|
| 1.8 | Securities and instruments: Shares | The first 4 months of the period under supervision | After 4 months for the rest of the period under supervision |
| 1.9 | Securities and Instruments: Money Market Instruments | | |
| 1.10 | Securities and Instruments: Debentures and Securitised Debt | | |
| 1.11 | Securities and Instruments: Warrants, certificates and other instruments acknowledging debt | | |
| 1.12 | Securities and Instruments: Bonds | | |
| 1.13 | Securities and Instruments: Derivative Instruments | | |
| 1.14 | Participatory Interests in one or more Collective Investment Schemes | | |
| 1.15 | Forex Investment Business | | |
| 1.16 | Health Service Benefits | The first 2 months of the period under supervision | After 2 months for the rest of the period under supervision |
| 1.17 | Long-term Deposits | The first 6 weeks of the period under supervision | After 6 weeks for the rest of the period under supervision |
| 1.18 | Short-term Deposits | | |
| 1.19 | Friendly Society Benefits | The first 2 weeks of the period under supervision | After 2 weeks for the rest of the period under supervision |
| Category IV | Assistance Business FSP | The first 6 weeks of the period under supervision | After 6 weeks for the rest of the period under supervision |

- (f) Supervision applicable to representatives of Categories II, IIA and III financial services providers:
- (i) The supervisor must, where the representative is rendering discretionary financial services (Categories II and IIA), review and approve in writing the rendering of such services prior to conclusion or

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- execution of any transaction;
 - (ii) the supervisor must, where the representative is rendering discretionary financial services (Categories II and IIA), approve a transaction before it is finalised in respect of all representatives acting under supervision of Category III providers or, if the transaction is of such a nature where prior approval is not feasible, within a reasonable period thereafter;
 - (iii) in respect of Categories II and IIA providers, the supervisor is required to ensure that all actions taken by the representative adheres to the mandate and/or morning meeting decisions;
 - (iv) the supervisor must conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings;
 - (v) the supervision requirements may not be lessened in intensity during the duration of the period under supervision.

5. Amendment or withdrawal

This Exemption is subject to any amendment thereof published from time to time by the registrar in the *Gazette* (if any), and remains operative until withdrawn in like manner.

6. Miscellaneous

(1) Repeals

The Amendment Notice of the Exemption of Authorised Financial Services Providers as regards Representatives, No. 1 of 2008, published by BN 565 of 2008 in Gazette No. 31244 of 14 July 2008, is hereby repealed.

(2) Transitional arrangements

For the purposes of this Exemption, the following transitional arrangements apply:

- (a) A supervisor who does not meet the qualification requirements or has not completed the relevant first or second level Regulatory Examination(s), in relation to a specific Category or subcategory that he or she was appointed for before the date of coming into operation of this Exemption, may continue to function as a supervisor until he or she has met the requirements as set out in the Determination of Fit and Proper Requirements, 2008, as they apply.
 - (b) Paragraph 4(9)(b), (d) and (e) in respect of a representative, exempted from the obligation under 13(2) of the Act, will only come into effect six (6) months after the date of coming into operation of this Exemption: Provided that during the transitional period-
 - (i) such representative must render services under supervision until the required minimum experience has been attained to the satisfaction of the provider;
 - (ii) such representative must inform clients prior to the rendering of the
-

- (iii) financial service that he or she renders services under supervision; the provider must have procedures in place to ensure that a representative is appropriately supervised; and
- (iv) the provider must maintain and retain records of how the supervision of a representative is carried out, the assessments and reviews of the financial services rendered and the approvals by the supervisor.

7. Short title and commencement

This Exemption is called the Exemption of Services under Supervision in terms of Requirements and Conditions, 2008, and comes into operation on 31 December 2008.

Application by Financial Services Providers for Authorisation by The Financial Services Board

Board Notice 60 of 2009

Board Notice 60 of 2009

Board Notice 60 of 2009

Financial Services Board

I, DUBE PHINEAS TSHIDI, the Registrar of Financial Services Providers, hereby under section 8(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determine that any application for authorisation as a financial services provider under the said section made after the date on which this notice is published must be submitted in writing in the format set out in the schedule.

This notice replaces Board Notice 98 of 2003 published in Government Gazette 25523 of 3 October 2003.

D P Tshidi
Registrar of Financial Services Providers

Index of Forms

| Form Number | Description |
|-------------|---|
| FSP 1 | Business Information of Financial Services Provider |

| | |
|---------|---|
| FSP 2 | Licence categories |
| FSP 3 | Directors, officers and applicable shareholders |
| FSP 4 | Key individuals / Applicant Sole proprietor |
| FSP 5 | Representatives |
| FSP 6 | Compliance officer of FSP |
| FSP 7 | Operational ability |
| FSP 8 | Financial soundness |
| FSP 9 | External auditor |
| FSP10 | Nominee company or independent custodian of discretionary or administrative FSP |
| FSP 11 | Clearing firm or foreign forex services provider of forex services provider |
| FSP12 | Application for specific exemptions |
| FSP13 | Application for the approval of a compliance officer (separate form) |
| FSP14A | Attachments, list of all completed forms and declarations |
| FSP 14B | Calculation of application fee if applying directly to the FSB |
| FSP 15 | Hedge fund Application form |

The following forms can be found in Government Gazette No. 32227 dated 15 May 2009.

Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009

Board Notice 123 of 2009

1. Interpretation
2. Application
3. Categories I, II, IIA, III and IV providers
4. Time of licensing
5. Amendments and adjustments
6. Construction of Notice
7. Repeal
8. Short title and commencement

Board Notice 123 of 2009

Board Notice 123 of 2009

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Financial Services Providers, hereby under section 13 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, require all providers to maintain suitable professional indemnity and fidelity insurance cover to the extent set out in the Schedule.

D P Tshidi
Registrar of Financial Services Providers

1. Interpretation

In this Schedule "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning is assigned in the Act or in any code of conduct or other measure promulgated under the Act, has, unless the context indicates otherwise, that meaning, and-

"[date of commencement](#)" means the date on which this Notice, in terms of paragraph 8 of this Schedule, comes into operation;

"[General Code](#)" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003.

2. Application

This Schedule only applies to providers and not to representatives.

3. Categories I, II, IIA, III and IV providers

Subject to the provisions of this Schedule-

- (a) A person who is a Category I or IV provider and who does not receive or hold clients' financial products or funds on the date of commencement must, with effect from a date 12 months after that date, maintain in force in respect of clients—
 - (i) suitable guarantees of a minimum amount of R1 million; or
 - (ii) suitable professional indemnity cover of a minimum amount of R1 million.
- (b) A person who is a Category I or IV provider and who receives or holds clients' financial products or funds of or on behalf of a client on the date of commencement must, with

-
- effect from a date 12 months after that date, maintain in force in respect of clients—
- (i) suitable guarantees of a minimum amount of R1 million; or
 - (ii) suitable professional indemnity and fidelity insurance cover of a minimum amount of R1 million.
- (c) The provisions of paragraphs (a) and (b) apply to any person who after the commencement date becomes a Category I or IV provider.
- (d) A person who is a Category II provider and who does not receive or hold clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients—
- (i) suitable guarantees of a minimum amount of R1 million; or
 - (ii) suitable professional indemnity cover of a minimum of R1 million.
- (e) A person who is a Category II provider and who receives or holds clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients—
- (i) suitable guarantees of a minimum amount of R5 million; or
 - (ii) suitable professional indemnity and fidelity insurance cover of a minimum amount of R5 million, respectively.
- (f) A person who is a Category IIA provider and who does not receive or hold clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients—
- (i) suitable guarantees of a minimum amount of R5 million; or
 - (ii) suitable professional indemnity cover of a minimum amount of R5 million.
- (g) A person who is a Category IIA provider and who receives or holds clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients—
- (i) suitable guarantees of a minimum amount of R5 million, or
 - (ii) suitable professional indemnity and fidelity insurance cover of a minimum amount of R5 million, respectively.
- (h) A person who is a Category III provider and who receives or holds clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients—
- (i) suitable guarantees of a minimum amount of R5 million; or
 - (ii) professional indemnity and fidelity insurance cover of a minimum amount of R5 million, respectively.
- (i) The provisions of paragraphs (d), (e), (f), (g) and (h) apply to any person who after the commencement date becomes a Category II, IIA or III provider.

4. Time of licensing

Any person who is licensed as a financial services provider after the date of commencement must comply with the requirements in terms of paragraph 3 above, within 6 weeks of the date of authorisation.

5. Amendments and adjustments

- (a) The Registrar may at any time by notice in the *Gazette* amend any provision of this Schedule to the extent as the Registrar may deem necessary.
- (b) The Registrar may at any time adjust the application of paragraph 3 of this Schedule in the case of a provider-
 - (i) on the Registrar's own initiative; or
 - (ii) on written application of the provider.

6. Construction of Notice

No provision of this Notice shall be construed as in any way restricting or otherwise prejudicially affecting a legally enforceable claim of any person for delictual or contractual damages against a provider resulting from or connected with the rendering of financial services by the provider to such person.

7. Repeal

The Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009, published in Board Notice 37 of 2009 in Gazette 32037 of 25 March 2009 is hereby repealed.

8. Short title and commencement

This Notice is called the Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009, and comes into operation on the date of publication in the *Gazette*.

Exemption of Banks, 2009: Board Notice 172 of 2009

Board Notice 172 of 2009

- 1. Definitions
 - 2. Extent of exemption and conditions
 - 3. Amendment of exemption
 - 4. Short title and commencement
-

Board Notice 172 of 2009

Board Notice 172 of 2009

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Financial Services Providers (registrar), acting under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002, hereby exempt the banks to the extent and subject to the conditions set out in the Schedule.

D P Tshidi
Registrar of Financial Services Providers

1. Definitions

In this Schedule, "**the Act**" means the Financial Advisory and Intermediary Services Act, 2002, any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates—

"bank"

means—

- (a) a 'bank', 'branch', 'branch of a bank', 'mutual bank' or 'representative office' as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990); or
- (b) a 'co-operative bank' as defined in section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);

"intermediary"

in relation to a bank, means a person who renders financial services in respect of forward exchange contracts without authorisation, and with whom the bank conducts financial services related business.

2. Extent of exemption and conditions

Banks are exempted until 31 May 2010 from section 7(3) of the Act when conducting financial services related business with an intermediary, subject to the following conditions:

- (a) The banks may only conduct financial services related business with an intermediary whilst the intermediary embark on the process of—
 - (i) transferring the business of rendering financial services in respect of forward exchange contracts to an authorised financial services provider; or
 - (ii) closing down the business of rendering financial services in respect of forward exchange contracts; and
 - (b) the banks may not conduct new financial services related business with the intermediary.
-

3. Amendment of exemption

This Exemption is subject to—

- (a) amendment thereof published by the registrar by notice in the *Gazette*; and
- (b) withdrawal in like manner.

4. Short title and commencement

This Exemption is called the Exemption of Banks, 2009, and comes into operation on the date of publication in the *Gazette*.

Qualifications, Experience and Criteria for Approval as Compliance Officer, 2010

Board Notice 127 of 2010

Part I

Part II

Part III

Part IV

Part V

Part VI

Part VII

Annexure 1 : Qualifying Criteria

Board Notice 127 of 2010

Board Notice No. 127

9 September 2010

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Financial Services Providers, hereby determine under section 17(1)(b) and (2)(a) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), after consultation with the Advisory Committee on Financial Services Providers, the qualifications, experience and criteria for approval as compliance officer, as set out in the Schedule.

D P Tshidi

Registrar of Financial Services Providers

Part I

1. Definitions

1. Definitions

In this Schedule "**the Act**" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning has been assigned in the Act, read with the definition of "this Act" in section 1(1) of the Act, shall have that meaning and, unless the context otherwise indicates—

"applicant"

means the natural person applying to the Registrar for approval as a compliance officer, including the natural person appointed by the compliance practice to render compliance services in respect of a particular provider;

"application form"

means Forms 6 and 13 of the Application by Financial Services Providers for Authorisation by the Financial Services Board, Board Notice 60 of 2009, in Gazette 32227 of 15 May 2009;

"compliance officer"

means—

- (i) a natural person appointed to render compliance services, including a natural person appointed by a compliance practice; or
- (ii) a compliance practice appointed to render compliance services, and approved, on application, by the Registrar for such purpose;

"compliance practice"

means a company, close corporation or partnership that appoints one or more natural persons to render compliance services in respect of a particular provider and such natural persons are approved by the Registrar for that purpose as compliance officers;

"compliance services"

means the performance by a compliance officer of functions contemplated in section 17 of the Act;

"continuous professional development" or "CPO"

means a process of ongoing learning and development, with the aim to enable the compliance officer to maintain the required competencies to render compliance services competently;

"external compliance officer"

means a compliance officer other than an internal compliance officer and includes a compliance practice;

"generic recognised compliance qualification"

means a qualification recognised by the Registrar that addresses knowledge, skills and competence that are broadly applicable to the rendering of compliance services;

"internal compliance officer"

means a compliance officer that is a natural person in the permanent employ of a financial services provider and that renders compliance services in respect of that particular provider or another financial services provider that is a subsidiary, holding company or subsidiary of the holding company, of the first-mentioned provider;

"list of recognised compliance qualifications"

means the qualifications recognised by the Registrar as either generic recognised compliance qualifications or specific recognised compliance qualifications and published by notice in the *Gazette* as part of Annexure 2;

"Phase I approval"

means the approval by the Registrar of, inter alia, an applicant's qualifications, experience and personal character qualities of honesty and integrity;

"Phase II approval"

means the approval granted by the Registrar to an applicant to render compliance services to a specific provider;

"qualifying criteria"

means the qualifying criteria in Annexure 1;

"regulatory examination"

means the examination determined by the Registrar subject to the qualifying criteria, after consultation with the Advisory Committee;

"specific recognised compliance qualification"

means a qualification recognised by the Registrar that addresses specific and/or specialized knowledge, skills, and competence applicable to the compliance function.

Part II

2. Application for approval as compliance officer

2. Application for approval as compliance officer

- (1) An applicant and compliance practice must apply on the application forms to the Registrar for Phase I and Phase II approvals.
- (2)
 - (a) The entities that may apply for approval as a compliance practice are—

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- (i) a partnership of which all the partners are natural persons who are themselves approved compliance officers;
 - (ii) a company or close corporation that is incorporated and registered in terms of applicable legislation, and of which only individuals who have Phase 1 approval are directors and members of the company or dose corporation.
 - (b) Where a member of a close corporation dies, the estate of the member may continue to hold the relevant interest for a period of six months as from the date of the death or for such longer period as the Registrar may approve.
 - (c) Where a member of a dose corporation ceases to conform to any requirement of this subparagraph, the member may continue to hold the relevant interest for a period of six months as from the date on which the member ceases so to conform or for such longer period as the Registrar may approve.
- (3) If the Registrar is satisfied that the applicant or compliance practice complies with the criteria for—
- (a) Phase I approval, the Registrar must grant Phase I approval and issue an approval number on payment of the prescribed fee;
 - (b) Phase II approval, the Registrar must grant Phase II approval on payment of the prescribed fee.
- (4) No person may render compliance services without having obtained Phase I and Phase II approvals, except for the persons referred to in paragraph 8(2)(a)(i) and (ii).

Part III

3. Criteria for Phase I approval

3. Criteria for Phase I approval

- (1) An applicant must—
 - (a) hold a qualification on the list of recognised compliance qualifications;
 - (b) have passed the regulatory examination;
 - (c) have at least three years' experience in performing a compliance or risk management function;
 - (d) comply with the same requirements determined by the Registrar under section 8(1)(a) or the Act in respect of personal character qualities of honesty and integrity;
 - (e) have at least one year's experience in performing a compliance or risk management function in respect of the specific category of providers the applicant seeks to obtain approval to render compliance services;
 - (f) not be an unrehabilitated insolvent, have entered into a compromise with creditors or have been provisionally sequestered or liquidated; and
 - (g) have adequate access to communication facilities, including at least a telephone or cell phone service and typing and document duplication facilities.
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- (2) A person applying for approval as an external compliance officer must—
- (a) have a fixed business address;
 - (b) maintain the operational ability to render compliance services efficiently, including—
 - (i) adequate storage and filing systems for the safe—keeping of records, business communications and correspondence;
 - (ii) control structures, processes and procedures with reference to—
 - (aa) segregation of duties where such segregation is appropriate from an operational risk mitigation perspective;
 - (bb) control of access to the premises;
 - (cc) access rights and data security on electronic data;
 - (dd) physical security of the compliance officer's records;
 - (ee) business policies and controls;
 - (ff) system application testing;
 - (gg) disaster recovery and back-up procedures on electronic data;
 - (hh) a business continuity plan.
- (3) Individuals referred to in paragraph 2(2)(a) must—
- (a) comply with the same requirements determined by the Registrar under section 8(1)(a) of the Act in respect of personal character qualities of honesty and integrity;
 - (b) not be an unrehabilitated insolvent, have entered into a compromise with creditors or have been provisionally sequestrated or liquidated.

Part IV

4. Criteria for Phase II approval

4. Criteria for Phase II approval

- (1) An applicant and compliance practice must have Phase I approval.
 - (2) The Registrar must be satisfied that an applicant and compliance practice have—
 - (a) adequate resources available to ensure the efficient rendering of compliance services; and
 - (b) direct access to, and demonstrable support from, the senior management of the provider.
 - (3) The Registrar must be satisfied that an applicant and compliance practice will be able to—
 - (a) render compliance services independently and objectively;
 - (b) avoid conflicts of interest in the rendering of compliance services;
 - (c) keep records and supporting documentation of activities undertaken in the course of compliance reviews, visits or monitoring;
 - (d) assist the provider in the compilation of an appropriate compliance risk
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- management strategy as part of the provider's overall risk management strategy;
 - (e) liaise directly with the Registrar; and
 - (f) conduct regular reviews of financial services rendered by the provider and any representative.
- (4) The Registrar must be satisfied that—
- (a) an applicant and compliance practice who applied for approval as an external compliance officer are able, in respect of—
 - (i) categories I and IV providers, to conduct regular visits to the business premises, business units and/or branches of the provider. The intervals of such visits may not be less than once a quarter and in respect of representatives of the provider, twice a year;
 - (ii) categories II, IIA and III providers, to conduct regular visits to the business premises, business units and branches of the provider and any representative. The intervals of such visits may not be less than once a month;
 - (b) an applicant who applied for approval as an internal compliance officer is able in respect of—
 - (i) categories I and IV providers, to conduct regular visits to the business premises, business units and branches of the provider and any representatives, and the intervals of such visits may not be less than once a year;
 - (ii) categories II, IIA and III providers, to conduct regular visits to the business premises, business units and branches of the provider and any representative, and the intervals of such visits may not be less than once a quarter;
 - (c) an applicant and compliance practice be able to provide the provider with reports at intervals not less than the intervals referred to in subparagraphs (a) and (b) on the rendering of financial services, including the making of a recommendation to the provider regarding the rendering of compliance services.
- (5) An applicant and a compliance practice must ensure that the number of clients allocated to any applicant or compliance officer representing such practice, are at all relevant times sufficient to ensure the rendering of proper and appropriate compliance services to such clients.

Part V

- 5. Compliance with CPO requirements after approval
 - 6. Recognition and qualifying criteria of compliance qualifications
-

5. Compliance with CPO requirements after approval

A compliance officer and the individuals referred to in paragraph 2(2)(a) must comply with the CPO requirements as determined by the Registrar by notice in the *Gazette* from time to time.

6. Recognition and qualifying criteria of compliance qualifications

- (1) A person may, in the form and manner determined by the Registrar by notice in the *Gazette*, apply to the Registrar for recognition of a generic compliance qualification or a specific compliance qualification.
- (2) A qualification, subject to paragraph 7, will be recognised by the Registrar based on the extent to which the qualification addresses the qualifying criteria.
- (3) The list of recognised compliance qualifications is published in Annexure 2.

Part VI**7. Criteria for recognition of a specific and generic compliance qualification****7. Criteria for recognition of a specific and generic compliance qualification**

- (1) A qualification, to be recognised as a specific qualification, must be—
 - (a) a qualification registered by SAQA; or
 - (b) an extracurricular specialist programme offered at a post-graduate level by an Institution of Higher Education.
 - (2) A qualification referred to in subsection (1) must—
 - (a) in respect of non-unit standards based qualifications, the qualification must correspond with at least 80% of the qualifying criteria; or
 - (b) in respect of unit standards based qualifications, at least 80% of the relevant qualifying criteria is met by the core and elective unit standards of the qualification.
 - (3) A qualification, to be recognised as a generic qualification, must be—
 - (a) a qualification registered by SAQA;
 - (b) an extracurricular specialist programme offered at a post-graduate level by an Institution of Higher Education;
 - (c) an industry or professional programme offered through a professional body recognised by the Registrar or an accredited training provider; or
 - (d) a foreign qualification that is similar to a qualification referred to in subparagraphs (a) to (c).
 - (4) A qualification referred to in sub-section (3) must-
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- (a) in respect of non-unit standards based qualifications. the individual must have successfully completed a minimum of three subjects listed in Table A and at least one of the subjects must be—
- (i) in the field of commerce, corporate governance or law; and
 - (ii) a major subject on final year level, where applicable; or
- (b) in respect of unit standards based qualifications, at least 60% of the qualifying criteria is met by the core and elective unit standards of the qualification.

Table A: Subjects

| SUBJECTS | |
|------------------------------|---|
| Accounting | Financial Planning |
| Auditing | Financial/Securities Markets |
| Business Assurance | Fraud Risk Management |
| Business Economics | Health Care Benefits |
| Business Environment | Informatics |
| Business Finance | Insurance |
| Business Information Systems | Interpretation of Statutes |
| Business Integration | Law of Contract or Delict |
| Business Management | Legal Environment |
| Commercial Law | Mercantile Law |
| Companies Law | Money Laundering Control |
| Compliance Management | Network Administration |
| Computer Architecture | Process Management (Process Modeling and Control) |
| Corporate Finance | Retirement Planning |
| Corporate Governance | Risk Management |
| Estate and Trust Law | Strategic Communication Management Skills |
| Estate planning | Strategic Management |
| Finance | Strategy |
| Financial Management | Wealth Management |

Part VII

8. Delegation of rendering of compliance services
9. Withdrawal and lapsing of approval
10. Transitional provisions
11. Repeals
12. Updating
13. Short title and commencement

8. Delegation of rendering of compliance services

- (1) No compliance officer, other than an internal compliance officer and subject to the conditions referred to in subparagraph (2), may delegate the rendering of compliance services, including compliance monitoring to another person.
- (2) An internal compliance officer may delegate the rendering of compliance services to another person subject to the following conditions:
 - (a) Such other person must—
 - (i) be a natural person in the employ of the provider or a subsidiary, holding company or subsidiary of the holding company of the provider; and
 - (ii) comply with paragraph 3(1) unless the person conducts compliance monitoring in terms of a documented procedure and such person will exercise no judgment in the performance of the procedure; or
 - (iii) be an approved compliance practice.
 - (b) the internal compliance officer must have appropriate oversight of such other person;
 - (c) the internal compliance officer remains accountable for the rendering of compliance services; and
 - (d) the internal compliance officer must maintain a register with the names of the persons to whom the rendering of compliance services has been delegated, a description of the rendering of compliance services delegated and confirmation that the requirements of subparagraph (a)(ii) have been complied with.

9. Withdrawal and lapsing of approval

- (1) The Registrar may withdraw—
 - (i) a compliance officer's approval if such officer no longer complies with any provision of this Notice; and
 - (ii) the Phase I approval granted to an individual referred to in paragraph 2(2)(a) if such individual no longer complies with the criteria for Phase 1 approval and paragraph 5.
- (2) Phase I approval of an applicant or compliance practice lapses if the applicant or compliance practice fails to obtain Phase II approval within twelve months of the date of Phase I approval.
- (3) Phase I approval granted to an individual referred to in paragraph 2(2)(a) lapses after twenty four months of the date of approval unless such individual reapplies for approval before the expiry of the twenty four months.

10. Transitional provisions

- (1) Compliance officers approved by the Registrar before or on the date of commencement of this Notice—
 - (a) do not have to comply with paragraph 3(1)(a);
 - (b) who do not meet a requirement of paragraph 3(1)(b) and (e), have three years (ending 31 December of the third year) to comply with the requirement from the date of publication of this Notice in the *Gazette*.
- (2) A compliance practice approved by the Registrar before or on date of commencement of this Notice who do not comply with paragraph 2(2) have nine months to comply with the requirements from the date of publication of this Notice in the *Gazette*.
- (3) Compliance officers approved by the Registrar after commencement of this Notice until 31 December 2011 have two years (ending 31 December of the second year) to comply with paragraph 3(1)(b).
- (4) Must within three months from the commencement of this Notice comply with any other provisions thereof.

11. Repeals

The Determination of Criteria and Guidelines for the Approval of Compliance Officers, 2002, and the Notice on Qualifications and Experience of Compliance Officer in respect of Financial Services Business, 2008, are hereby repealed.

12. Updating

The Registrar may from time to time, after consultation with the Advisory Committee, publish by notice in the *Gazette* an updated version of this Schedule, including the Annexures.

13. Short title and commencement

This Notice is called the Notice on Qualifications, Experience and Criteria for Approval of Compliance Officers, 2010, and comes into operation on the date of publication thereof in the *Gazette*.

Annexure 1 : Qualifying Criteria

The Annexure "Annexure 1 : Qualifying Criteria" of this Act can be found in Government Gazette No. 33537 dated 9 September 2010.

Exemption in respect of Services under Supervision by Compliance Officers, 2010

Board Notice 126 of 2010

1. Definitions
2. Objectives of exemption
3. Extent of exemption
4. Requirements and conditions
5. Amendment or withdrawal
- 5A. Transitional arrangements
6. Short title and commencement

Board Notice 126 of 2010

Board Notice 126
9 September 2010

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Financial Services Providers, hereby under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), exempt any person rendering compliance services under supervision in accordance with the requirements and conditions set out in the Schedule, from—

- (a) any provision of the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2008, or of any measure promulgated thereunder; and
- (b) whenever that Notice is repealed and replaced by a corresponding Notice on the qualifications and experience of compliance officers, from any provision of the latter Notice, or any measure promulgated thereunder,

which is irreconcilable with a provision set out in the Schedule.

D P Tshidi
Registrar of Financial Services Providers

1. Definitions

In this Schedule "**the Act**" means the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002), any word or expression to which a meaning has been assigned in the Act, or in any measure promulgated under the Act as referred to in the definition of "this Act" in section 1(1) of the Act, shall, unless the context otherwise indicates, have that meaning, and-

"approval" or "approved" or "date of approval"

means the date on which a supervisee was first granted Phase I and Phase II approval;

"direct supervision"

means the supervision of the compliance services rendered by a supervisee under the guidance, instructions and supervision of a supervisor, and which occurs on a regular (ranging between daily and weekly) basis;

"ongoing level of supervision"

means the way in which supervision is exercised after the initial period of services under direct supervision has been completed, but the supervisee still requires supervision, and such supervision occurs on at least a fortnightly to monthly basis;

"services under supervision"

means compliance services rendered in relation to one or more Categories of providers, by a supervisee who does not meet the required experience and regulatory examination requirements and which services are rendered under the guidance, instruction and supervision of a supervisor in terms of the provisions of an exemption by the registrar under section 44 of the Act;

"supervises"

means a person who meets the qualification requirements and who renders services under supervision until the required requirements for, experience and regulatory examination have been met by that person;

"supervision agreement"

means the written agreement by the financial services provider and supervisor with a supervisee regarding the rendering of services under supervision by the supervisee;

"supervisor"

means an approved compliance officer responsible for direct supervision and ongoing level of supervision of a supervisee.

2. Objectives of exemption

Section 17(1)(b) of the Act determines that an approved compliance officer must, *inter alia*, at all times be competent to act with reference to qualifications and experience requirements contemplated in section 17(1)(b) of the Act. The objective of the exemption is to relieve persons (supervisees) rendering services under supervision of the obligation under section 17(1)(b) as regards the experience and regulatory examination requirements. This implies that a supervisee will, with regard to the experience and regulatory examination requirements, not have to comply with the standards set for the compliance officer at date of first appointment. The registrar is satisfied that the exemption meets the requirements of section 14(4) of the Act, read with section 44(1), (2) and (3) of the Act.

3. Extent of exemption

The extent of the exemption is set out in the registrar's enacting clause to the exemption and operates subject to the requirements and conditions set out in this Schedule.

4. Requirements and conditions

- (1) A compliance officer or compliance practice that provides a supervisee with the opportunity to render services under supervision, must satisfy the registrar that the compliance officer or compliance practice—
 - (a) has the operational ability to monitor the rendering of services under supervision; and
 - (b) can through or as an approved compliance officer act as supervisor of the supervisee that renders services under supervision.
 - (2) A compliance officer or compliance practice that intends to provide a supervisee with the opportunity to render services under supervision must—
 - (a) ensure that the supervisee is co-appointed with the supervisor as compliance officer of the FSP concerned;
 - (b) ensure that the supervisee is monitored under the direct supervision and ongoing level of supervision of the supervisor concerned.
 - (3) A supervisee that only meets the required qualification requirements on approval may render services under supervision whilst obtaining the required experience and regulatory examination.
 - (4) The following will apply to the period a supervisee renders services under supervision:
 - (a) The maximum period any supervisee may render services under supervision is three years from date of approval;
 - (b) the supervisee must pass the applicable regulatory examination within 24 months from the date of approval; and
[Paragraph 4(4)(b) substituted by paragraph 2 of Board Notice 149 of 2016, dated 31 August 2016]
 - (c) any significant interruption (six consecutive weeks or longer) while obtaining the required experience and regulatory examination must be compensated for by arranging for an additional period for monitoring the rendering of services under supervision, equal to the period interrupted.
 - (5) Supervision may include one or more of the following activities:
 - (a) Sign-off by a supervisor on services rendered under supervision;
 - (b) pre-reporting sign-off by a supervisor where services are rendered under supervision;
 - (c) attending meetings with supervisee where the purpose of the meeting is the rendering of services under supervision;
 - (d) appropriate post-monitoring sampling;
 - (e) follow-up calls to confirm certain aspects of the rendering of services under supervision;
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- (f) any other activity that enables the supervisor to scrutinise the activities of the supervisee in respect of the rendering of services under supervision.
- (6) In the case of Categories II and IIA providers, the supervisor must check and sign-off that the supervisee has monitored mandate compliance controls implemented by the FSP.
- (7) Supervision arrangements must be arranged in accordance with the following specific requirements:
- (a) Selection of the supervisor:
The FSP, compliance practice or compliance officer must ensure that the normal working relationship between the supervisee and supervisor allows the supervisor oversight of the activities performed by the supervisee as per supervision agreement, and that there is regular contact that enables the transfer of skills, which may include face-to-face contact or contact via electronic means, between the supervisee and supervisor in the execution of duties.
 - (b) Supervision agreement:
There must be an agreement that details the procedures regarding the rendering of services under supervision.
 - (c) Supervisor responsibilities:
 - (i) The supervisor must supervise at all times the proper execution of duties by the supervisee;
 - (ii) the supervisor must ensure that the supervisee has a good understanding of duties in the rendering of services under supervision which must include but, not be limited to-
 - (aa) conducting a risk assessment of the business;
 - (bb) compilation of an appropriate risk management plan; and
 - (cc) implementation of appropriate processes and procedures;
 - (iii) the supervisor must observe selected meetings by the supervisee in the rendering of services under supervision, the frequency of which may vary according to the complexity of the financial service rendered by the financial services provider; the complexity of the financial products offered; the experience of the supervisee; or the qualifications of the supervisee;
 - (iv) the supervisor must be able to provide evidence of the supervision actions undertaken and such evidence must be available for scrutiny by the registrar;
 - (v) the supervisor must assess the compliance related advice given by the supervisee for appropriateness; and
 - (vi) the supervisor and supervisee must have documented properly evidence of rendering services under supervision, the method followed and frequency thereof that took place during the period under supervision.
 - (d) The supervisee must—
 - (i) adhere to the requirements of the supervision agreement;
 - (ii) provide the supervisor with any records and or documents regarding
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- the rendering of services under supervision;
 - (iii) where such supervisee is a compliance officer other than an internal compliance officer, in interaction with FSPs, disclose that the supervisee acts under supervision;
 - (iv) request guidance from the supervisor if in doubt when performing any duties in relation to the rendering of services under supervision.
 - (e) Supervision applicable to compliance officers of Categories I and IV providers:
 - (i) A supervisee rendering services under supervision is not allowed to conduct any unaccompanied monitoring of financial services rendered to clients during the first year under supervision;
 - (ii) A supervisee rendering services under supervision may conduct unaccompanied monitoring reviews during the second and third year under supervision, but is not allowed to provide the final sign-off on compliance reports submitted to senior management and the registrar in respect of the rendering of financial services to clients;
 - (iii) A supervisee rendering services under supervision is not allowed to complete the annual compliance report on behalf of a financial services provider.
 - (f) Supervision applicable to compliance officers of Categories II, IIA and III providers:
 - (i) The supervisor must, where the supervisee is rendering services under supervision with respect to Categories II and IIA providers, review and approve in writing the rendering of such services prior to conclusion of any review;
 - (ii) a supervisee rendering services under supervision is not allowed to conduct any unaccompanied monitoring of financial services rendered to clients during the first two years under supervision;
 - (iii) a supervisee rendering services under supervision may conduct unaccompanied monitoring reviews during the third year under supervision, but is not allowed to provide the final sign-off on compliance reports submitted to senior management and the registrar in respect of the rendering of financial services to clients;
 - (iv) a supervisee rendering services under supervision is not allowed to complete the annual compliance report on behalf of a financial services provider.

5. Amendment or withdrawal

This Exemption is subject to any amendment thereof published from time to time by the registrar in the *Gazette* (if any), and remains operative until withdrawn in like manner.

5A. Transitional arrangements

A person who—

- (a) at 1 September 2016 renders services under supervision as a supervisee; and
 - (b) was approved between 1 September 2013 and 31 August 2015,
- must pass the applicable regulatory examination by 31 August 2017.

[Paragraph 5A inserted by paragraph 3 of Notice 149 of 2016, dated 31 August 2016]

6. Short title and commencement

This Exemption is called the Exemption in respect of Services under Supervision rendered by Compliance Officers, 2010, and comes into operation on the date of publication thereof in the *Gazette*.

Amendment of Exemptions No. 2, 2011

Board Notice 176 of 2011

Board Notice No. 176
4 November 2011

Financial Services Board

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby under paragraph 4(a) of—

- (a) the Exemption of Banks in respect of Certain Clients, 2004;
 - (b) the Exemption of Morgan Stanley and AMB Holdings in respect of Certain Clients, 2004;
 - (c) the Exemption of UBS South Africa and Deutsche Securities in respect of Certain Clients, 2007;
 - (d) the Exemption of First Africa and RMB Investments and Advisory in respect of Certain Clients, 2008;
 - (e) the Exemption of Nomura International in respect of Certain Clients, 2009;
 - (f) the Exemption of certain Merrill Lynch Entities in respect of Certain Clients, 2009;
 - (g) the Exemption of Goldman Sachs International in respect of Certain Clients, 2009;
 - (h) the Exemption of The Bank of New York Mellon in respect of Certain Clients, 2010;
 - (i) the Exemption of Marlow Advisors in respect of Certain Clients, 2010;
 - (j) the Exemption of African Alliance Securities in respect of Certain Clients, 2010,
 - (k) the Exemption of Allianz Global Investors Advisory and Allianz Global Investors Europe in respect of Certain Clients, 2011;
 - (l) the Exemption of Raymond James & Associates and Raymond James Financial International in respect of Certain Clients, 2011;
 - (m) the Exemption of Renaissance BJM Securities in respect of Certain Clients, 2011,
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amend paragraph 3 of the abovementioned Exemptions by the substitution for the date "31 October 2011" of the date "31 May 2012".

This Notice is called the Notice on Amendment of Exemptions No. 2, 2011, and comes into operation on 1 November 2011.

G E Anderson
Deputy Registrar of Financial Services Providers

General Exemption : Level 1 Regulatory Examination, 2011

Board Notice 199 of 2011

1. Definitions
2. Extent of exemption and condition
3. Amendment and withdrawal of exemption and conditions
4. Short title and commencement

Board Notice 199 of 2011

Board Notice 199 of 2011

Financial Services Board

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), providers to the extent and subject to the conditions set out in the schedule.

G E Anderson
Deputy Registrar of Financial Services Providers

1. Definitions

In this Schedule, "the Act" means the Financial Advisory and Intermediary Services Act. 2002 (Act No. 37 of 2002), any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

"[Determination of Fit and Proper Requirements](#)"

means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

"provider"

means an authorised financial services provider, a key individual and representative who are required to successfully complete the first level regulatory examination by 31 December 2011 as applicable to the categories or subcategories in Table E of the Determination of Fit and Proper Requirements.

2. Extent of exemption and condition

- (1) A provider is exempted from section 10 of the Determination of Fit and Proper Requirements to the extent reference is made to the first level regulatory examination provided that the provider successfully complete the first level regulatory examination by—
 - (a) 30 June 2012; or
 - (b) 30 September 2012 subject to the condition that the provider must, on or before 30 June 2012, have had written the first level regulatory examination and have failed to successfully complete it.
- (3) This exemption shall, subject to paragraph 3, be valid until 30 September 2012.

3. Amendment and withdrawal of exemption and conditions

The exemption and conditions mentioned in paragraph 2 are subject to—

- (a) amendment thereof published by the Registrar by notice in the *Gazette*; and
- (b) withdrawal in like manner.

4. Short title and commencement

This Exemption is called the General Exemption: Level 1 Regulatory Examination, 2011, and comes into operation on the date of publication in the *Gazette*.



Codes of Conduct

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Codes of Conduct

Notice on Codes of Conduct for Administrative and Discretionary FSP's, 2003 : Board Notice 79 of 2003

General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 : Board Notice 80 of 2003

Code of Conduct for Authorised Financial Services Providers, and their Representatives, involved in Forex Investment Business, 2004 : Board Notice 39 of 2004

Notice on Codes of Conduct for Administrative and Discretionary FSP's, 2003

Board Notice 79 of 2003

Chapter I : Code of conduct for Administrative FSP's

Chapter II : Code of conduct for discretionary FSP's

Board Notice 79 of 2003

Board Notice 79

8 August 2003

Financial Services Board

Section 15(1)(a) of Financial Advisory and Intermediary Services Act, 2002 (Act No. of 2002)

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), publish a general code of conduct for administrative and discretionary FSP's, as respectively contained in Chapter I and II of the Schedule hereto, after consultation with the Advisory Committee on Financial Services Providers

This Notice is called the Notice on Codes of Conduct for Administrative and Discretionary FSP's, 2003, and comes into operation on the date determined by the Minister of Finance in terms of section 7(1) of the said Act.

J van Rooyen

Registrar of Financial Services Providers

Chapter I : Code of conduct for Administrative FSP's

Part I : Introductory provisions

Part II : Operational requirements

Part III : Transitional provision and short title

Part I : Introductory provisions

1. Object and application of Code

2. Definitions

1. Object and application of Code

The object of this Code is to ensure that clients to whom financial services are rendered, subject to the provisions of this Code will be able to make informed decisions, that their financial needs regarding financial products are appropriately and suitably satisfied and that for those purposes, administrative FSP's and their representatives are obliged to comply with the provisions of this Code.

2. Definitions

- 2.1 In this Code "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it and, unless the context indicates otherwise—

"administrative FSP"

means a FSP, other than a discretionary FSP—

- (a) that renders intermediary services in respect of financial products referred to in paragraphs (a), (b), (c) (excluding any short-term insurance contract or policy referred to therein), (d) and (e), read with paragraphs (h), (i) and (f) of the definition of "financial product" in section 1(1) of the Act, on the instructions of a client or another FSP and through the method of bulking; and
- (b) acting for that purpose specifically in accordance with the provisions of this Code, read with the Act, the General Code (where applicable), and any other applicable law;

"bulking"

means the aggregation by an administrative FSP of—

- (a) clients' funds when buying or investing in financial products on behalf of clients, and the subsequent allocation of such financial products to each client separately in the records of the FSP;
- (b) the financial products belonging to clients when selling such financial products

on their behalf, and the subsequent allocation of the proceeds of such sale to each client separately in the records of the FSP;

"completed day"

means a period commencing at 16h00 on any business day and ending at 16h00 on the next business day;

"discretionary FSP"

means a FSP—

- (a) that renders intermediary services of a discretionary nature as regards the choice of a particular financial product referred to in the definition of "administrative FSP" in this subsection, but without implementing any bulking; and
- (b) acting for that purpose specifically in accordance with the provisions of the Code set out in Chapter II of this Schedule, read with the Act, the General Code (where applicable) and any other applicable law;

"FSF"

means an authorised financial services provider;

"General Code"

means the General Code of Conduct for Authorised Financial Services Providers, 2002;

"independent nominee",

in relation to an administrative FSP, means a company or trust referred to in section 9;

"netting"

means an offsetting of offers to purchase and repurchase financial products and where the administrative FSP buys and sells the financial products on behalf of clients;

"regulations"

means the Financial Advisory and Intermediary Services Regulations, 2002.

- 2.2 In the case of any inconsistency or conflict between a provision of this Code and a provision of the General Code, the first mentioned provision shall prevail.

Part II : Operational requirements

- 3. Prohibitions and duties
 - 4. General functions
 - 5. Dealing with clients
 - 6. Termination of relationship with client
 - 7. Record-keeping
 - 8. Insurance
 - 9. Independent nominees
 - 10. Reporting to clients
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3. Prohibitions and duties

- 3.1 An administrative FSP may not directly or indirectly without the relevant client's prior written approval—
 - (a) sell to or provide a third party with a client's details, unless obliged by, or in terms of, any law;
 - (b) exercise a vote in a ballot conducted by a unit trust management company;
 - (c) exercise voting rights on behalf of clients to gain control of a listed or unlisted company, except where such voting rights are exercised to protect the interests of clients on whose behalf the listed or unlisted securities involved are held, or on the instructions of such clients;
- 3.2 An administrative FSP may not directly or indirectly engage in the netting of transactions.
- 3.3 An administrative FSP may not directly or indirectly—
 - (a) sell any financial products owned by the administrative FSP to any client;
 - (b) buy for own account any financial products owned by any client.
- 3.4 An administrative FSP must—
 - (a) render to the client, on request and in a comprehensible and timely manner, any reasonable information regarding the financial products of the client and market practices and the risks inherent in the different markets and products concerned;
 - (b) obtain and transmit to a client any information which a relevant product supplier must disclose in terms of any law, unless the client specifically has requested in writing the administrative FSP not to provide such information.

4. General functions

An administrative FSP must, prior to accepting instructions from a person who is providing intermediary services on behalf of another person, ascertain whether that person is an authorised financial services provider and, if not, whether that person is required to be so authorised and, if so, decline to accept instructions from that person until that person is so authorised.

5. Dealing with clients

- 5.1 An administrative FSP must obtain a signed mandate from a client, before rendering any intermediary service to that client: Provided that the parties may agree to complete an electronic mandate in respect of which appropriate controls and personal identification procedures have been put in place that ensures security of information.
 - 5.2 The mandate must comply with the following minimum requirements:
 - (a) State whether the client will deal with the administrative FSP through another person or in a personal capacity;
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- (b) if the client will deal with the administrative FSP through another person—
 - (i) state the name of the person;
 - (ii) state whether that person is an authorised FSP;
 - (iii) state whether that FSP is appointed with full or limited discretion and where the discretion is limited, indicate those limits;
 - (iv) authorise the administrative FSP to accept from that FSP instructions given on behalf of the client;
 - (c) record the names, telephone and fax numbers, and postal and e-mail addresses of the client and the other FSP;
 - (d) indicate that the financial products will be registered in the name of the independent nominee of the administrative FSP;
 - (e) provide in bold font an indication of the time period involved with regard to the following administrative processes:
 - (i) The cut-off times within which an instruction must be received by the administrative FSP to enable it to render an intermediary service on that particular day;
 - (ii) once an instruction has been received, the maximum number of working days it will take to render that intermediary service and an indication of the day that will determine the price that the client eventually receives;
 - (iii) maximum number of working days that it will take to process a switch or withdrawal instruction and an indication of the day that will determine the price that the client eventually receives;
 - (f) stipulate separately in respect of the administrative FSP and the other FSP (if any), the total fees and benefits to be received by each in respect of a client's financial products, whether by way of a deduction from the financial product or not, including—
 - (i) the initial fees or costs;
 - (ii) ongoing fees or costs;
 - (iii) any other benefit, fees or costs, whether in cash or kind;
 - (iv) costs (if any) to have the financial products registered in the name of the client or in the name of the nominee company of another administrative FSP at the request of the client or at termination;
 - (v) any fees or costs that will be levied on additional investment in or purchase of the same financial product; 2nd
 - (g) The signatures of the client, as well as the other FSP, where applicable.
- 5.3 Further to paragraph 5.2 above, an administrative FSP may, subject to the approval of the registrar, provide the said information either in the mandate or in a combination of the mandate and the administrative FSP's written terms or guides of business.
- 5.4 The registrar must initially approve a specimen of the mandate and where relevant, the administrative FSP's terms of business, and may grant approval subject to the conditions that the registrar may determine. The registrar may subsequent to approval require that any other information that is deemed necessary, be disclosed in the interest of the client. An administrative FSP may not substantially amend' the documents approved by the registrar, without the prior written approval of the registrar.
- 5.5 The administrative FSP must ensure that it has, in relation to the financial products offered by it, appropriate forms available to enable the client or the other FSP to
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conduct business with it. These forms include application, instruction, transfer, switch, withdrawal or additional investment forms.

- 5.6 An administrative FSP must—
- (a) within 14 days of receipt of a notice from a product supplier of an increase in costs, notify the client or the other FSP (if any) in writing of such increase, who in turn must inform the client in writing within 14 days;
 - (b) if it wishes to increase costs unrelated to the costs referred to above, give the client or such other FSP three months prior written notice thereof, who in turn must notify the clients of the other FSP in writing within 14 days, provided that the cost of the increase may not become effective during the notice period.
- 5.7 If a client notifies an administrative FSP in writing that the client has terminated the client's relationship with a particular FSP and wishes to continue with the relationship with an administrative FSP through another FSP, such notification must be sent by the administrative FSP to the terminating FSP.
- 5.8 An administrative FSP may accept telephonic or electronic instructions without written confirmation, provided that appropriate controls and personal identification procedures have been put in place to ensure security of information and transactions, and that records of such telephonic or electronic instructions must be made and stored for a period of five years from the date when the instruction was received.
- 5.9 Where another FSP intends to provide, through an administrative FSP, a client with its own personalised range of financial products, such other FSP and the administrative FSP must first enter into a written agreement, which must provide for termination of the agreement by either party on written notice of not less than 30 days.
- 5.10 An administrative FSP must enter into an appropriate written agreement with each product supplier from or to whom it buys or sells financial products on behalf of clients, which agreement records their particular arrangements and makes provision for termination of the agreement by either party on written notice of not less than 30 days.
- 5.11 In relation to new investments placed with an administrative FSP, no interest shall be payable to a client until the expiry of the first completed day after receipt of the funds. After the expiry of the first completed day, interest earned shall be payable to the client.
- 5.12 No interest shall be payable to clients in relation to funds held in bulk during the execution of a switching instruction, provided that the administrative FSP adheres to the time standards, which are stipulated as part of the service levels to clients. In the event of non-adherence, the client shall be entitled to interest for the period in excess of the stipulated time period.
- 5.13 If an administrative FSP has made a mistake in executing an instruction or allocating client funds in such a manner that a client is entitled, in law, to be placed in the position that the client would have been in had the administrative FSP not made the mistake, the client shall only be entitled to compensation to the extent that the client is placed in said position. The administrative FSP shall not be required to pay interest to the client in addition to restoration.
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- 5.14 Where an administrative FSP effects payment of an investment to a client, whether in whole or in part, no interest shall be payable to that client on funds that are paid within the first complete day after the receipt of the funds from the liquidation of the underlying investment by the administrative FSP: Provided that should the administrative FSP issue a cheque for the amount received within the abovementioned time period, the issuing of the cheque shall be deemed to be payment and no interest liability shall accrue to the administrative FSP in respect of the time period between the issuing of the cheque and the actual payment of the cheque by the drawee bank.

6. Termination of relationship with client

When a client either personally or through a properly mandated FSP terminates the relationship with a particular administrative FSP, such administrative FSP must at once, subject to the wishes of the client and depending on the nature of the financial product involved—

- (a) return the client's cash (if any) to the other FSP or client, as the case may be;
- (b) provide the other FSP or client, as the case may be, with a detailed final statement of account; and
- (c) issue an instruction to the independent nominee to either return the client's assets or documents of title in the name of the client to the other FSP or client, as the case may be, or to sell the relevant financial products and pay the realised amount to the other FSP or client; or
- (d) issue an instruction to the independent nominee to transfer the financial products into the name of an independent nominee of an administrative FSP specified by the client: Provided that the written instruction in this regard is signed personally by the client and is accompanied by written confirmation from the client that the client had received full disclosure of the relevant implications and costs and of incentives due to the other FSP as a result of the transfer.

7. Record-keeping

- 7.1 An administrative FSP must maintain records recording the financial products owned by each client clearly maintaining the linkage between the client and each financial product.
- 7.2 If a client is a pension fund as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956), or other financial institution whose members, policyholders or participants have the right to select the financial products allocated to their accounts, the linkage must also be maintained between those members, policyholders or participants and the financial products selected by them if the administrative FSP has undertaken to provide such record-keeping service to the client, but the foregoing is not to be construed so as to mean that ownership of such a financial product vests in such a member, policyholder or participant, as ownership remains with the said pension fund or other financial institution.

8. Insurance

An administrative FSP must if, and to the extent, required by the registrar, maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

9. Independent nominees

- 9.1 An administrative FSP must prior to commencing business, subject to such conditions and restrictions as may be imposed by the registrar under section 8(4) of the Act, and the applicable provisions of regulations made under the Act, enter into a written agreement with a company or trust, whether local or foreign, the main object of which is being the registered holder and custodian of the investments of clients, and which agreement provides for termination of the agreement by either party on written notice of not less than 90 days.
- 9.2 An administrative FSP must make any report contemplated in section 17(4) of the Act available at all meetings of its independent nominee.

10. Reporting to clients

- 10.1 An administrative FSP must furnish a written report, that complies with subsection 10.2, to the client or other FSP (if any)—
- (a) on request; and
 - (b) at regular intervals, which may not exceed three months at a time, unless the client consents in writing not to receive the report because the other FSP or client, as the case may be, is able to access the information continuously, as made available by the administrative FSP through other means such as the Internet or a facsimile service: Provided that administrative FSP may only furnish such a report on behalf of a client to another FSP, on the written instruction of that client.
- 10.2 A report to a client or another FSP on behalf of a client must contain such information as is reasonably necessary to enable the other FSP or client to—
- (a) produce a set of financial statements;
 - (b) determine the composition of the financial products comprising the investment and the changes therein over the period reported on; and
 - (c) determine the market value of the financial products comprising the investment and the changes therein over the period reported on.
- 10.3 Despite subsection 10.2, the other FSP or the client, as the case may be, is on request entitled to detailed information about the following matters with regard to all financial products:
- (a) All monies received by the administrative FSP from the other FSP or client, as

- the case may be;
- (b) financial products purchased with the monies referred to in paragraph (a) and the price at and date on which purchased;
- (c) financial products repurchased on the instructions of the other FSP or client, as the case may be, in order to disinvest from a particular financial product;
- (d) payment of the proceeds to the other FSP or the client or the administrative FSP, as the case may be;
- (e) financial products purchased with the proceeds and the price at and date on which purchased;
- (f) price at and date on which financial products referred to in paragraph (e) were repurchased; and
- (g) as at the date of the report, all financial products held on behalf of the client and the current market value thereof.

Part III : Transitional provision and short title

11. Transitional provision and short title

11. Transitional provision and short title

11.1 In this section—

"Conditions"

means the Conditions applicable to Investment Managers and Linked Investment Services Providers determined under section 4(1)(c) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), and section 5(1)(c) of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), and published by Board Notice 1584 of 2001 and Board Notice 1583 of 2001, respectively;

"LISP"

means a linked investment services provider as defined in the Conditions and approved in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985, or section 5(1)(a) of the Financial Markets Control Act, 1989, before the date determined by the Minister in terms of section 7(1) of the Act.

- 11.2** A mandate and/or application form entered into before the date determined by the Minister in terms of section 7(1) of the Act between a LISP and a client and approved by the Registrar of Stock Exchanges or the Registrar of Financial Markets in terms of the Conditions is, if the LISP becomes an administrative FSP with effect from that date, and until lawful termination of the mandate thereafter, deemed to be a mandate fully complying with section 5(1) of this Chapter, notwithstanding that the mandate does not in all respects comply with the requirements set out in section 5(2) thereof.

- 11.3** This Chapter is called the Code of Conduct for Administrative FSP's, 2003.

[Part III of Chapter I substituted by sections 2 and 3 of Notice 3294 of 2003, dated 14 November

2003]

Chapter II : Code of conduct for discretionary FSP's

Part I : Introductory provisions

Part II : Operational requirements

Part III : Duties of hedge fund FSPs, transitional provision and short title

Part I : Introductory provisions

1. Object and application of Code

2. Definitions

1. Object and application of Code

The object of this Code is to ensure that clients to whom financial services are rendered subject to the provisions of this Code will be able to make informed decisions, that their financial needs regarding financial products are appropriately and suitably satisfied and that for those purposes, discretionary FSP's and their representatives are obliged to comply with the provisions of this Code.

2. Definitions

2.1 In this Code "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it and, unless the context indicates otherwise—

"administrative FSP", "bulking", "discretionary FSP", "FSP", "netting" and "General Code" have the respective meanings assigned thereto in section 2 of the Code of Conduct for Administrative FSP's, 2002, contained in Chapter 1 of this Schedule;

"fund of hedge funds"

means a portfolio that, apart from assets in liquid form, consists of an interest, holding or investment in one or more other hedge funds;

[Definition inserted by section 2(a) of Board Notice 89 of 2007]

"hedge"

in relation to a hedge fund, means to enter into transactions that protect against adverse price movements and limit exposures to specific risks;

[Definition inserted by section 2(a) of Board Notice 89 of 2007]

"hedge fund"

means a portfolio which uses any strategy or takes any position which could result in the portfolio incurring losses greater than its aggregate market value at any point in time, and which strategies or positions include but are not limited to—

- (a) leverage; or
- (b) net short positions;

[Definition inserted by section 2(a) of Board Notice 89 of 2007]

"hedge fund FSP"

means a financial services provider—

- (a) that renders intermediary services of a discretionary nature in relation to a particular hedge fund or fund of hedge funds in connection with a particular financial product referred to in the definition of 'administrative FSP' in subsection 2.1 of section 2 of Chapter 1 of this Schedule; and
- (b) acting for that purpose specifically in accordance with the provisions of the respective codes set out in this Chapter and Chapter III of this Schedule, read with the Act, the General Code of Conduct for Authorised Financial Services Providers, 2002 (where applicable), and any other applicable law;

"leverage",

means—

- (a) any position in which the delta factor would be less than -nil or greater than 1 ; or
- (b) a position in which the nominal exposures to assets in the portfolio is less than nil or more than 100% of the market value of the portfolio;

[Definition inserted by section 2(a) of Board Notice 89 of 2007]

"net short position"

means a condition in which a portfolio has a greater nominal exposure to short positions than long positions in any asset class or in aggregate across the portfolio, meaning that more capital (including collateral) supports short positions than is invested in long positions and which may in certain cases require additional capital to be invested in the portfolio over and above the initial capital investment;

[Definition inserted by section 2(a) of Board Notice 89 of 2007]

"nominee company"

means a nominee company referred to in section 8;

"regulations"

means the Financial Advisory and Intermediary Services Regulations, 2002.

"short position"

means—

- (a) a position where an asset is sold by a seller for delivery at a future date or time, and the seller does not own such asset at the time of the sale; or
- (b) in the case of a derivative instrument, a position where—
 - (i) a decrease in the price of the underlying asset has a positive impact on the value of the derivative instrument; or
 - (ii) an increase in the price of the underlying asset has a negative impact

on the value of the derivative" instrument.

[Definition inserted by section 2(b) of Board Notice 89 of 2007]

- 2.2 In the case of any inconsistency or conflict between a provision of this Code and a provision of the General Code, the first mentioned provision shall prevail.

Part II : Operational requirements

- 3. Prohibitions
- 4. Duties of discretionary FSP
- 5. Mandates
- 6. Reporting to clients
- 7. Insurance
- 8. Nominee companies

3. Prohibitions

- 3.1 A discretionary FSP may not directly or indirectly without the relevant client's prior written approval—
- (a) sell to or provide a third party with a client's details, unless obliged by, or in terms of, any law;
 - (b) exercise a vote in a ballot conducted by a unit trust management company;
 - (c) exercise voting rights on behalf of clients to gain control of a listed or unlisted company, except where such voting rights are exercised to protect the interests of clients on whose behalf the financial products involved are held as investments or on the instructions of such clients;
- 3.2 A discretionary FSP may not directly or indirectly engage in the netting of transactions.
- 3.3 A discretionary FSP may not directly or indirectly—
- (a) sell any financial products owned by the discretionary FSP to any client;
 - (b) buy for own account any financial products owned by any client.

4. Duties of discretionary FSP

A discretionary FSP must—

- (a) provide to the client, on request in a comprehensible and timely manner, any reasonable information regarding the financial products of the client, market practices and the risks inherent in the different markets and products;
- (b) prior to entering into a written or electronic mandate with the client—
 - (i) obtain information with regard to the client's financial circumstances, needs and objectives and such information that is necessary to enable the FSP to render suitable intermediary services to the client;

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- (ii) identify the financial products that best suit the client's objectives, risk profile and needs, subject to the limitations and restrictions imposed on the FSP by its licence issued under the Act.

5. Mandates

- 5.1 A discretionary FSP must obtain a signed mandate from a client, before rendering any intermediary service to that client: Provided that the parties may agree to complete an electronic mandate in respect of which appropriate controls and personal identification procedures have been put in place that ensures security of information, and that the mandate records the arrangements made between the parties, and must —
- (a) authorise the discretionary FSP to act on behalf of the client, indicating whether the authorisation is given with full or specified limited discretion;
 - (b) state the investment objectives of the client and whether there are any investment or jurisdiction restrictions that apply to the rendering of intermediary services in relation to the financial products involved;
 - (c) contain a general statement pertaining to the risks associated with investing in local and foreign financial products, with particular reference to any currency risk;
 - (d) stipulate in whose name the financial products are to be registered and whether they are, for example, to be registered in the name of—
 - (i) the client or a nominee company nominated by the client;
 - (ii) the nominee company of the discretionary FSP or a nominee company within the group of companies of which the discretionary FSP forms part;
 - (iii) the nominee company of a product supplier;
 - (iv) a nominee company of any depository institution or central securities depository registered or licensed in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992), or of any bank registered or licensed in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (v) an administrative FSP's independent nominee, in the case of a FSP who deals through an administrative FSP;
 - (vi) stipulate the bank account details of the trust account opened at a bank or other bank account opened in the name of the client in which the discretionary FSP must deposit and, where applicable, from which the discretionary FSP must withdraw moneys received in connection with the rendering of intermediary services;
 - (e) stipulate, where applicable, at which intervals any cash accruals (including dividends and interest) which the discretionary FSP receives on behalf of a client, must be paid to the client;
 - (f) stipulate the basis on which, the manner in which and the intervals at which the client will remunerate the discretionary FSP for the rendering of intermediary services on the client's behalf: Provided that for the purposes of this paragraph it shall be deemed that the basis of the remuneration has not been stipulated if the remuneration must be calculated with reference to a source outside the mandate or if it is placed within the discretion of any person;
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- (g) state whether the discretionary FSP receives commission, incentives, fee reductions or rebates from an administrative FSP or product supplier for placing a client's funds with them;
 - (h) if the discretionary FSP is capable to do so, provide a client with the option to receive reports and statements in electronic or printed format;
 - (i) empower either party to the mandate to terminate the mandate after notice in writing of not more than 60 calendar days;
 - (j) stipulate whether the discretionary FSP may vote on behalf of its clients in respect of their financial products;
 - (k) obtain and transmit to a client any information which a relevant product supplier must disclose in terms of any law, unless the client in writing specifically requested the discretionary FSP not to provide such information;
 - (l) where applicable, obtain a statement to the effect that the discretionary FSP may, in order to render an intermediary service to the client, utilise the services of its own staff or that of another approved FSP.
- 5.2 The mandate of a discretionary FSP must initially, be approved by the registrar, who may grant approval subject to such conditions as the registrar may determine. The initially approved mandate is hereinafter referred to as the "specimen mandate". The registrar may subsequent to approval require that specific amendments be made to the specimen mandate or that any other information be disclosed that is deemed necessary in the interest of the client.
- 5.3 A discretionary FSP may not amend the specimen mandate substantially, without the prior written approval of the registrar.
- 5.4 When the mandate of a discretionary FSP is terminated, such FSP must at once return all cash, financial products and documents of title to the client and must simultaneously provide the client with a detailed final statement of account. If the financial products and documents of title are in possession of a nominee company, the discretionary FSP must at once issue an instruction to such nominee company to return such financial products or documents of title to the client.

6. Reporting to clients

- 6.1 A discretionary FSP must furnish a written report to a client which complies with subsection 6.2—
- (a) on request; and
 - (b) at regular intervals which may not exceed three months at a time, unless the client consents in writing not to receive the report because such client is able to access the information made available by the discretionary FSP through electronic means, such as the Internet or a facsimile service, on a continuous basis.
- 6.2 A report to a client must contain such information as is reasonably necessary to enable the client to—
- (a) produce a set of financial statements;
 - (b) determine the composition of the financial products comprising the
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- (c) investment and the changes therein over the period reported on; and determine the market value of the financial products comprising the investment and the charges therein over the period reported on.

6.3 Despite subsection 6.2, the a discretionary FSP must on request by a client, furnish detailed information about the following matters:

- (a) Original cost of financial products held, as well as the current market value thereof;
- (b) financial products purchased or sold during the period;
- (c) cash receipts and payments during the period;
- (d) income earned and expenditure incurred during the period;
- (e) non-cash transactions during the period including, without limiting the generality of the foregoing, capitalisation issues and scrip dividends and option expiries;
- (f) financial products received or delivered to a client or nominee company during the period;
- (g) profits and losses realised during the period;
- (h) with regard to foreign financial products—
 - (i) the conditions in terms of which the rendering of intermediary services with regard to a financial product will take place;
 - (ii) the manner in which such financial product may be acquired;
 - (iii) the jurisdictions from which the financial products may be acquired;
 - (iv) the specific licensed exchange or other exchange on which the financial products are listed or traded, if applicable;
 - (v) the country in which the financial products are licensed or registered, if applicable;
 - (vi) the name and address of the foreign FSP's used, if applicable;
 - (vii) the name and address of the foreign regulator regulating the foreign FSP and if such FSP is approved or registered by such regulator;
 - (viii) the name and address of the foreign regulator under whose jurisdiction the rendering of intermediary services in relation to specific financial products falls.

7. Insurance

A discretionary FSP must if, and to the extent, required by the registrar, maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

8. Nominee companies

A discretionary FSP may establish a nominee company with the main object of being the registered holder and custodian of the investments of clients, subject to such conditions and restrictions as may be imposed by the Registrar under section 8(4) of the Act, and the applicable provisions of regulations made under the Act, and enter into a written agreement with the company, which provides for termination of the agreement by either party on written notice of not less than 90 days. Where a discretionary FSP elects not to establish such a

nominee company, an appropriate existing nominee company, approved by the Registrar, must be utilised by the discretionary FSP.

[Section 8 of Part II of Chapter II substituted by section 5 of Notice 3294 of 2003, dated 14 November 2003]

Part III : Duties of hedge fund FSPs, transitional provision and short title

[Part III of Chapter II heading substituted by section 2(c) of Board Notice 89 of 2007]

8A. Duties of hedge fund FSPs

9. Transitional provision and short title

8A. Duties of hedge fund FSPs

- 8A.1 The relevant requirements for discretionary FSPs apply to hedge fund FSPs and their clients as if they were originally enacted for that purpose, but subject to—
- (a) the necessary changes;
 - (b) the provisions of this section, and provisions of the Act or any other law, which may render a particular provision applying to discretionary FSPs clearly inapplicable to a hedge fund FSP and its clients, in general or in a particular case.
- 8A.2 A hedge fund FSP must before rendering any intermediary services to a client who has clearly indicated to the FSP that the client requires intermediary services in connection with a financial product governed by the Act to be rendered specifically by a hedge fund FSP, provide a written disclosure to the client—
- (a) of the applicability in terms of subsection 8A.1 to the relationship between the client and the FSP of the requirements for discretionary FSPs referred to in that subsection; and
 - (b) in the format from time to time determined by the registrar, on risks involved in hedge funds, and obtain from the client a written confirmation of receipt of such written disclosures.
- 8A.3 A hedge fund FSP must, after having complied with subsection 8A.2, with the introductory provisions of subsection 5.1 and with subsection 5.2, and before rendering any intermediary services to the client, obtain an additional signed mandate from the client, in accordance with the proviso to the introductory provisions of subsection 5.1 and subsection 5.2, which apply with the necessary changes.
- 8A.4 The mandate from a client must confirm the existence and contents of the first mandate, if applicable as contemplated by virtue of subsections 8A.1 and 8A.3, and in particular the utilisation of a hedge fund portfolio for purposes of executing the intermediary services required by the client, and must contain express confirmation by the client that the client—
- (a) approves of—
 - (i) the clients investment objectives, guidelines and trading philosophy

- (ii) of the hedge fund FSP, as disclosed and stated in the mandate; utilisation by the hedge fund FSP of the process to be implemented in the form of strategies or positions (including leverage and/or net short positions, borrowing limits and risk management principles to be applied to mitigate interest rate, liquidity, and credit and derivative risk), risk profile and risk management (for instance a sensitivity analysis), as disclosed and stated in the mandate; and
- (b) takes note of the FSP's affirmation, as stated in the mandate, that the establishment of the relevant portfolio does not conflict with any law, and that the operation and management thereof continuously comply with any law that may be applicable thereto.

[Section 8A inserted by section 2(d) of Board Notice 89 of 2007]

9. Transitional provision and short title

9.1 In this section –

"Conditions"

means the Conditions applicable to Investment Managers and Linked Investment Services Providers determined under section 4(1)(c) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), and section 5(1)(c) of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), and published by Board Notice 1584 of 2001 and Board Notice 1583 of 2001, respectively;

"investment manager"

means an investment manager as defined in the Conditions and approved in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985, or section 5(1)(a) of the Financial Markets Control Act, 1989. before the date determined by the Minister in terms of section 7(1) of the Act:

- 9.2 A mandate entered into before the date determined by the Minister in terms of section 7(1) of the Act between an investment manager and a client and approved by the Registrar of Stock Exchanges or the Registrar of Financial Markets in terms of the Conditions is, if the investment manager becomes a discretionary FSP with effect from that date, and until lawful termination of the mandate thereafter, deemed to be a mandate fully complying with section 5(1) of this Chapter, notwithstanding that the mandate does not in all respects comply with the requirements set out in that section.

- 9.3 This Chapter is called the Code of Conduct for Discretionary FSP's, 2003.

[Part III of Chapter II substituted by sections 4 and 6 of Notice 3294 of 2003, dated 14 November 2003]

Notice on General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003

Board Notice 80 of 2003
Part I : Introductory provisions
Part II : General provisions
Part III : Information on product suppliers
Part IV : Information on providers
Part V : Contacting of client
Part VI : Information about financial service
Part VII : Furnishing of advice
Part VIII : Custody of financial products and funds
Part IX : Risk Management
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Part XI : Complaints
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Board Notice 80 of 2003

Board Notice 80 of 2003

Financial Services Board

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), publish a general code of conduct for authorised financial services providers, and their representatives, as contained in the Schedule hereto, which I have drafted after consultation with the Advisory Committee on Financial Services Providers.

This notice is called the Notice on the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and comes into operation on the date determined by the Minister of Finance in terms of section 7(1) of the said Act.

J van Rooyen
Registrar of Financial Services Providers

Part I : Introductory provisions

1.
 - (1) In this Code "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), a word or expression to which a meaning has been assigned in the Act shall have that meaning, and, unless the context
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indicates otherwise-

"advertisement"

in relation to a provider, means any written, printed, electronic or oral communication (including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such person, which is intended merely to call attention to the marketing or promotion of financial services offered by such person, and which does not purport to provide detailed information regarding any such financial services; and "advertising" or "advertises" has a corresponding meaning;

"associate"

- (a) in relation to a natural person, means—
 - (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
 - (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;
 - (iii) a parent or step-parent of that person;
 - (iv) a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
 - (v) a person who is the spouse, life partner or civil union partner of a person referred to in subparagraphs (ii) to (iv);
 - (vi) a person who is in a commercial partnership with that person;
 - (b) in relation to a juristic person—
 - (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
 - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
 - (iii) which is not a company or a close corporation as referred to in subparagraphs (i) or (ii), means another juristic person which would have been a subsidiary or holding company of the first-mentioned juristic person—
 - (aa) had such first-mentioned juristic person been a company; or
 - (bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
 - (iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;
 - (c) in relation to any person—
 - (i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the
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directions or instructions of the person first-mentioned in this paragraph;

- (ii) includes any trust controlled or administered by that person.

[Definition inserted by section 2(a) of Board Notice 58 of 2010]

"company"

means a company under the Companies Act, 1973 (Act No. 61 of 1973);

[Definition inserted by section 2(a) of Board Notice 58 of 2010]

"conflict of interest"

means 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;

[Definition inserted by section 2(a) of Board Notice 58 of 2010]

"Direct marketing"

means the rendering of financial services by way of telephone, internet, media insert, direct mail, or electronic mail, excluding any such means which are advertisements not containing transaction requirement;

"Direct marketer"

means a provider who, in the normal course of business, provides all or the predominant part of the financial services concerned in the form of direct marketing;

"distribution channel"

means—

- (a) any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client;
- (b) any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;
- (c) any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

[Definition inserted by section 2(b) of Board Notice 58 of 2010]

"fair value"

has the meaning assigned to it in the financial reporting standards adopted or issued under the Companies Act, 1973 (Act No. 61 of 1973);

[Definition inserted by section 2(b) of Board Notice 58 of 2010]

"financial interest"

means any cash, cash equivalent—

- (a) an ownership interest;
- (b) training, that is not exclusively available to a selected group of providers or representatives, on—
 - (i) products and legal matters relating to those products;
 - (ii) general financial and industry information;
 - (iii) specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;

[Definition inserted by section 2(b) of Board Notice 58 of 2010]

"holding company"

means a holding company as defined in section 1(4) of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition inserted by section 2(b) of Board Notice 58 of 2010]

"immaterial financial interest"

means 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 received by—

- (a) a provider who is a sole proprietor; or
- (b) a representative for that representative's direct benefit;
- (c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;

[Definition inserted by section 2(b) of Board Notice 58 of 2010]

"new entrant"

means a person who has never been authorised as a financial services provider or appointed as a representative by any financial services provider"

[Definition inserted by section 2(a) of Board Notice 146 of 2014]

"provider"

means an authorised financial services provider, and includes a representative;

"ownership interest"

means—

- (a) 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 an approved nominee on behalf of another person; and
- (b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

[Definition inserted by section 2(c) of Board Notice 58 of 2010]

"sign-on-bonus"

means—

- (a) any financial interest offered or received directly or indirectly, upfront or deferred, and with or without conditions, as an incentive to become

- a provider; and
- (b) a financial interest referred to in paragraph (a) includes but is not limited to—
- (i) compensation for the—
- (aa) potential or actual loss of any benefit including any form of income, or part thereof; or
- (bb) cost associated with the establishment of a provider's business or operations, including the sourcing of business, relating to the rendering of financial services; or
- (ii) a loan, advance, credit facility or any other similar arrangement.

[Definition inserted by section 2(b) of Board Notice 146 of 2014]

"subsidiary"

means a subsidiary as defined in section 1(3) of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition inserted by section 2(c) of Board Notice 58 of 2010]

"third party"

means—

- (a) a product supplier;
- (b) another provider;
- (c) an associate of a product supplier or a provider;
- (d) a distribution channel;
- (e) any person who in terms of an agreement or arrangement with a person referred to in paragraphs (a) to (d) above provides a financial interest to a provider or its representatives;

[Definition inserted by section 2(c) of Board Notice 58 of 2010]

"transaction requirement"

means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, a product supplier by or on behalf of a client relating to the purchase of or investment in any financial product, including any amendment thereof or variation thereto;

"writing"

includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and "written" has a corresponding meaning.

(2)

- (a) This Code must be construed—
- (i) in conjunction with the provisions of the Act and in manner conducive to the promotion and achievement of the objectives of codes of conduct as stated in section 16 of the Act; and
- (ii) as being in addition to any other law not inconsistent with its provisions and not as replacing any such law.
- (b) In the case of any inconsistency or conflict between—
- (i) a provision of this Code and a provision of any other specific Code drafted under section 15 of the Act, the last mentioned

- (ii) provision shall prevail; and a provision of this Code and a provision of any other law specifically regulating market conduct in the rendering of financial services in respect of one or more specific financial products, the last mentioned provision, unless inconsistent or in conflict with the Act, shall prevail.
- (3) The provisions of this Code apply, unless stated otherwise in this Code or otherwise by law, to all financial services providers and representatives.

Part II : General provisions

2. General duty of provider

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

3. Specific duties of provider

- (1) When a provider renders a financial service—
 - (a) representations made and information provided to a client by the provider—
 - (i) must be factually correct;
 - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (iii) must be adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or reasonably assumed level of knowledge of the client;
 - (iv) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;
 - (v) may, subject to the provisions of this Code, be provided orally and, at the client's request, confirmed in writing within a reasonable time after such request;
 - (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
 - (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (viii) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant financial service renders it necessary, in which case a disclosure of the changes to the client must be made

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- without delay;
 - (b) a provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;
[Part II, section 3(1)(b) substituted by section 2(c) of Board Notice 58 of 2010]
 - (c) a provider or a representative must, in writing, at the earliest reasonable opportunity—
 - (i) disclose to a client any conflict of interest in respect of that client, including—
 - (aa) the measures taken, in accordance with the conflict of interest management policy of the provider referred to in section 3A(2), to avoid or mitigate the conflict;
 - (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
 - (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement with the conflict of interest; and
 - (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed;
[Part II, section 3(1)(c) substituted by section 2(c) of Board Notice 58 of 2010]
 - (d) the 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;
 - (e) non-cash incentives offered and/or other indirect consideration payable by another provider, a product supplier or any other person to the provider could be viewed as a potential conflict of interest;
 - (f) the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider;
 - (g) transactions of a client must be accurately accounted for; and
 - (h) the provider involved must not deal in any financial product for own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with clients, or on any non-public information the disclosure of which would be expected to affect the prices of such product.
 - (2)
 - (a) A provider must have appropriate procedures and systems in place to —
 - (i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act;
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- (ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and
 - (iii) keep such client records and documentation safe from destruction.
 - (b) All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.
 - (c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar's request.
 - (d) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.
- (3) A provider may not disclose any confidential information acquired or obtained from a client or, subject to section 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.

3A. Financial interest and conflict of interest management policy

- (1)
- (a) A provider or its representatives may only receive or offer the following financial interest from or to a third party—
 - (i) commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
 - (ii) commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);
 - (iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;
 - (iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if those fees—
 - (aa) are specifically agreed to by a client in writing; and
 - (bb) may be stopped at the discretion of that client;
 - (v) fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered;
 - (vi) subject to any other law, an immaterial financial interest; and
 - (vii) a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.
 - (b) A provider may not offer any financial interest to a representative of

that provider for—

- (i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
 - (ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
 - (iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.
- (c) For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to section 3A(1)(b), in respect of its representatives.

(1A)

- (a) A Category I provider that is authorised or appointed to give advice may not receive a sign-on bonus from any person.
- (b) No person may offer or provide a sign-on bonus to any person, other than a new entrant, as an incentive to become a Category I provider that is authorised or appointed to give advice.

[Part II, section 3A(1A) inserted by section 3 of Board Notice 146 of 2014]

(2)

- (a) Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.
 - (b) A conflict of interest management policy must—
 - (i) provide for the management of conflicts of interest as defined in section 1, and—
 - (aa) mechanisms for the identification of conflicts of interest;
 - (bb) measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;
 - (cc) measures for the disclosure of conflicts of interest;
 - (dd) processes, procedures and internal controls to facilitate compliance with the policy; and
 - (ee) consequences of non-compliance with the policy by the provider's employees and representatives; and
 - (ii) specify the type of and the basis on which a representative will qualify for a financial interest that the provider will offer a representative and motivate how that financial interest complies with section 3A(1)(b);
 - (iii) include a list of all its associates;
 - (iv) include the names of any third parties in which the provider holds an ownership interest;
 - (v) include the names of any third parties that holds an ownership interest in the provider; and
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- (vi) include the nature and extent of the ownership interest referred to in subparagraph (v) and (vi); and
 - (vii) be drafted in an easily comprehensible form and manner.
 - (c) A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.
 - (d) A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.
 - (e) A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
 - (f) A provider must publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.
- (3) A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.
- (4)
- (a) A compliance officer or, where the provider need not, in terms of the Act, have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.
 - (b) The report referred to in paragraph (a) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

[Part II, section 3A, inserted by section 4 of Board Notice 58 of 2010]

Part III : Information on product suppliers

- 4.
- (1) A provider other than a direct marketer must at the earliest reasonable opportunity, and only where appropriate, furnish the client with full particulars of the following information about the relevant product supplier and, where such information is provided orally, must confirm such information within 30 days in writing:
 - (a) Name, physical location, and postal and telephone contact details of the product supplier;
 - (b)
 - (i) the contractual relationship with the product supplier (if any), and whether the provider has contractual relationships with other product suppliers;
 - (ii) names and contact details of the relevant compliance and complaints departments of the product supplier.
 - (c) the existence of any conditions or restrictions imposed by the product
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- supplier with regard to the types of financial products or services that may be provided or rendered by the provider; and
 - (d) where applicable, the fact that the provider—
 - (i) directly or indirectly holds more than 10% of the relevant product supplier's shares, or has any equivalent substantial financial interest in the product supplier;
 - (ii) during the preceding 12 month period received more than 30% of total remuneration, including commission, from the product supplier,
 and the provider must convey any changes thereafter in regard to such information at the earliest opportunity to the client.
 - (2) A product supplier which is an authorised financial services provider, and which has entered into an intermediary contract or similar contractual relationship with another provider (not being a representative) for the purpose of rendering a financial service in respect of its financial products, must within a reasonable time after being requested to do so by such other provider, provide such other provider with sufficient particulars to enable the provider to comply with the disclosure requirements of this Code relating to the furnishing of details of the product supplier and the product in question.
 - (3) A provider must, where the relevant licence, terms of employment or mandate enables such provider to provide clients with financial services in respect of a choice of product suppliers, exercise judgment objectively in the interest of the client concerned.
 - (4) A provider may not, in dealing with a client, compare different financial products, product suppliers, providers or representatives, unless the differing characteristics of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, provider or representative.

Part IV : Information on providers

- 5. Where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of the following information and, where such information is provided orally, must confirm such information within 30 days in writing:
 - (a) Full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of the relevant business carried on, as well as the names and contact details of appropriate contact persons or offices;
 - (b) concise details of the legal and contractual status of the provider, including details as regards the relevant product supplier (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative in the rendering of the financial service involved and the
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- (c) extent to which the client will have to accept such responsibility; names and contact details of the relevant compliance department or, in the case of a representative, such detail concerning the provider to which the representative is contracted;
- (d) details of the financial services which the provider is authorised to provide in terms of the relevant licence and of any conditions or restrictions applicable thereto;
- (e) whether the provider holds guarantees or professional indemnity or fidelity insurance cover or not.
- (f) whether a representative of a provider is rendering services under supervision as defined in the Determination of Fit and Proper Requirements; and
- (g) the existence of a specific exemption that the Registrar may have granted to the provider with regard to any matter covered by the Act.

Part V : Contacting of client

6. A provider must—
 - (a) in making contact arrangements, and in all communications and dealings with a client, act honourably, professionally and with due regard to the convenience of the client; and
 - (b) at the commencement of any contact, visit or call initiated by the provider, explain the purpose thereof and at the earliest opportunity, provide the information referred to in section 5.

Part VI : Information about financial service

7.
 - (1) Subject to the provisions of this Code, a provider other than a direct marketer, must—
 - (a) provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision;
 - (b) whenever reasonable and appropriate, provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider;
 - (c) in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:
 - (i) Name, class or type of financial product concerned;
 - (ii) nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid;
 - (iii) where the financial product is marketed or positioned as an investment or as having an investment component—
 - (aa) concise details of the manner in which the value of the

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- investment is determined, including concise details of any underlying assets or other financial instruments;
- (bb) separate disclosure (and not mere disclosure of an all inclusive fee or charge) of any charges and fees to be levied against the product, including—
- (A) the amount and frequency thereof;
 - (B) the identity of the recipient;
 - (C) the services or other purpose for which each fee or charge is levied;
 - (D) where any charges or fees are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees; and
 - (E) where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and

[Part VI, section 7(1)(c)(iii)(bb), substituted by section 2(a) of Board Notice 43 of 2008]

- (cc) on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances;
- (dd) any rebate arrangements and thereafter on a regular basis (but not less frequently than annually): Provided that where the rebate arrangement is initially disclosed in percentage terms, an example using actual monetary amounts must be given and disclosure in specific monetary terms must be made at the earliest reasonable opportunity thereafter: Provided further that for the purposes of this subparagraph, "rebate" means a discount on the administration, management or any other fee that is passed through to the client, whether by reduced fees, the purchase of additional investments or direct payment, and that the term "rebate" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition;

[Part VI, section 7(1)(c)(iii)(dd), inserted by section 2(b) of Board Notice 43 of 2008]

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

[Part VI, section 7(1)(c)(iii)(ee), inserted by section 2(b) of Board Notice 43 of 2008]

- (iv) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and, subject to subparagraph (xiv), any anticipated or contractual escalations, increases or additions;
- (v) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including the manner of payment or discharge thereof, the frequency thereof, and the consequences of non-compliance;
- (vi) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration"), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration: Provided that where the maximum amount or rate of such valuable consideration is prescribed by any law, the provider may (subject to clause 3(l)(a)(vii)) elect to disclose either the actual amount applicable or such prescribed maximum amount or rate;
- (vii) concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
- (viii) any guaranteed minimum benefits or other guarantees;
- (ix) to what extent the product is readily realisable or the funds concerned are accessible;
- (x) any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such

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- termination or withdrawal;
 - (xi) material tax considerations;
 - (xii) whether cooling off rights are offered and, if so, procedures for the exercise of such rights;
 - (xiii) any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations; and
[Part VI, section 7(1)(c)(iii)(dd), substituted by section 2 of Board Notice 152 of 2008]
 - (xiv) in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years;
 - (d) fully inform a client in regard to the completion or submission of any transaction requirement—
 - (i) that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility;
 - (ii) that if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details;
 - (iii) of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information; and
 - (iv) that the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.
- (2) No provider may in the course of the rendering of a financial service request any client to sign any written or printed form or document unless all details required to be inserted thereon by the client or on behalf of the client have already been inserted.
- (3) A provider must, where applicable, at the request of a client, provide the client with a statement of account in connection with any financial service rendered to the client.
- (4) A provider who has provided advice to a client or is rendering ongoing financial services to the client in respect of one or more financial products, must on a regular basis (but not less frequently than annually) provide the client with a written statement identifying such products where they are still in existence, and providing brief current details (where applicable), of—
- (a) any ongoing monetary obligations of the client in respect of such products;
 - (b) the main benefits provided by the products;
 - (c) where any product was marketed or positioned as an investment or as having an investment component, the value of the investment and the amount of such value which is accessible to the client; and
 - (d) any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products:
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Provided that such a statement need not be provided where the client is aware, or ought reasonably to be aware, that the provider concerned does not render or has ceased rendering ongoing financial services in respect of the client or the products concerned.

[Part VI, section 7(4) inserted by section 2(c) of Board Notice 43 of 2008]

Part VII : Furnishing of advice

8. Suitability

- (1) A provider other than a direct marketer, must, prior to providing a client with advice—
 - (a) take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;
 - (b) conduct an analysis, for purposes of the advice, based on the information obtained;
 - (c) identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement; and
 - (d) where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, full details of—
 - (i) fees and charges in respect of the replacement product compared to those in respect of the terminated product;
 - (ii) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product;
 - (iii) in the case of an insurance product, the impact of age and health changes on the premium payable;
 - (iv) differences between the tax implications of the replacement product and the terminated product;
 - (v) material differences between the investment risk of the replacement product and the terminated product;
 - (vi) penalties or unrecovered expenses deductible or payable due to termination of the terminated product;
 - (vii) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;
 - (viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and
 - (ix) any incentive, remuneration, consideration, commission, fee
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or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.

[Part VII, section 8(1)(d)(ix) inserted by section 3(b) of Board Notice 43 of 2008]

[Part VII, section 8(1)(d) substituted by section 3(a) of Board Notice 43 of 2008]

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

[Part VII, section 8(1)(e) inserted by section 3(c) of Board Notice 43 of 2008]

- (2) The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.

- (3) A provider providing advice to a client to replace an existing long-term insurance contract or policy with any other financial product must at the earliest practicable opportunity after providing such advice, but in any event no later than the date on which any transaction requirement is submitted to a product supplier in respect of any replacement product, notify the issuer of the existing and the replacement long-term insurance contract or policy of such advice.

[Part VII, section 8(3) substituted by section 3(d) of Board Notice 43 of 2008]

- (4) Where a client—
 - (a) has not provided all information requested by a provider furnishing advice, as part of the analysis referred to in subsection (1)(b), or where the provider has been unable to conduct such an analysis because in the light of the circumstances surrounding the case, there was not reasonably sufficient time to do so, the provider must fully inform the client thereof and ensure that the client clearly understands that—
 - (i) a full analysis in respect of the client referred to in subsection (1)(b) could not be undertaken;
 - (ii) there may be limitations on the appropriateness of the advice provided; and
 - (iii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs; or
 - (b) elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.

9. Record of advice

- (1) A provider must, subject to and in addition to the duties imposed by section 18 of the Act and section 3(2) of this Code, maintain a record of the advice furnished to a client as contemplated in section 8, which record must reflect the basis on which the advice was given, and in particular—
 - (a) a brief summary of the information and material on which the advice was based;
 - (b) the financial products which were considered;
[Part VII, section 9(1)(b) substituted by section 3(e) of Board Notice 43 of 2008]
 - (c) the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives; and
[Part VII, section 9(1)(c) substituted by section 3(e) of Board Notice 43 of 2008]
 - (d) where the financial product or products recommended is a replacement product as contemplated in section 8(1)(d)—
 - (aa) the comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product; and
 - (bb) the reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product:
[Part VII, section 9(1)(d) inserted by section 3(f) of Board Notice 43 of 2008]

Provided that such record of advice is only required to be maintained where, to the knowledge of the provider, a transaction or contract in respect of a financial product is concluded by or on behalf of the client as a result of the advice furnished to the client in accordance with section 8.
- (2) A provider, other than a direct marketer, must provide a client with a copy of the record contemplated in 9(1) in writing.

Part VIII : Custody of financial products and funds

10.

- (1) Subject to the provisions of any other applicable Act, a provider who receives or holds financial products or funds of or on behalf of a client must account for such products or funds properly and promptly and—
 - (a) when documents of title are lodged with the provider on behalf of the client, the provider must immediately provide written confirmation of receipt thereof which contains a description of the documents that is sufficient to identify them;
 - (b) when a provider receives funds into safe custody without the mediation of a bank, the provider must on receipt of the money, issue a written confirmation of receipt thereof;

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- (c) where the provider, or a third party on behalf of either of them, is in control of such financial products or funds, take reasonable steps to ensure that they are adequately safeguarded;
 - (d) open and maintain a separate account, designated for client funds, at a bank and—
 - (i) must within one business day of receipt pay into the account all funds held on behalf of clients;
 - (ii) ensure that the separate account only contains funds of clients and not those of the provider;
 - (iii) pay all bank charges in respect of the separate account except that bank charges specifically relating to a deposit or withdrawal of the funds of the client are for the client's own account; and
 - (iv) ensure that any interest accruing to the funds in the separate account is payable to the client or the owner of the funds;
 - (e) take reasonable steps to ensure—
 - (i) that at all times such financial products or funds are dealt with strictly in accordance with the mandate given to the provider;
 - (ii) that client financial products or funds are readily discernible from private assets or funds of the provider; and
 - (iii) that, subject to any applicable contractual or statutory provisions, a client has ready access to any amount paid into the separate account, less any deductions which are authorised, and charges and fees required or authorised to be paid by law.
- (2) Where a transaction or agreement has been recorded in writing, the provider who dealt with the client, must ensure that the original agreement is delivered to the client for safe custody.
- (3) Section 10(1)(d) is not applicable to a provider—
- (a) who receives, holds or in any other matter deals with premiums payable under a short-term reinsurance policy; or
 - (b) who is subject to section 45 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), if the provider complies with the requirements contemplated in that section.

Part IX : Risk Management

11. Control measures

A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

12. Specific control objectives

A provider, excluding a representative, must, without limiting the generality of section 11, structure the internal control procedures concerned so as to provide reasonable assurance that—

- (a) the relevant business can be carried on in an orderly and efficient manner;
- (b) financial and other information used or provided by the provider will be reliable; and
- (c) all applicable laws are complied with.

13. Insurance

A provider, excluding a representative, must, if, and to the extent, required by the registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.

Part X : Advertising and direct marketing

14.

- (1) An advertisement by any provider must—
 - (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
 - (b) if it contains—
 - (i) performance data (including awards and rankings), include references to their source and date;
 - (ii) illustrations, forecasts or hypothetical data—
 - (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
 - (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
 - (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
 - (iii) a warning statement about risks involved in buying or selling a financial product, prominently render or display such statement; and
 - (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
 - (c) the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.
- (2) Where a provider advertises a financial service by telephone—
 - (a) an electronic, voicellogged record of all communications must be maintained. Where no financial service is rendered as a result of the

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- advertisement, such record need not be maintained for a period exceeding 45 days;
 - (b) a copy of all such records must be provided on request by the client or the registrar within seven days of the request;
 - (c) all the information required by sections 4(1)(a) and (c) and 5(a) and (c) shall not be required: Provided that the client is provided with basic details (such as business name and telephone number or address) of the provider or relevant product supplier, and of their relevant compliance departments: Provided further that, if the promotion results in the rendering of a financial service, the full details required by those sections are provided to the client in writing within 30 days of the relevant interaction with the client.
- (3) Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.

15.

- (1) A direct marketer must, when rendering a financial service to or on behalf of a client, at the earliest reasonable opportunity furnish the client with the following particulars:
 - (a) the business or trade name of the direct marketer;
 - (b) confirmation whether the direct marketer is a licensed financial service provider and details of the financial services which the direct marketer is authorised to provide in terms of the relevant license and any conditions or restrictions applicable thereto;
 - (c) telephone contact details of direct marketer (unless the contact was initiated by the client);
 - (d) telephone contact details of the compliance department of the direct marketer;
 - (e) whether the direct marketer holds professional and indemnity insurance;

Provided that where the direct marketer is a representative, the information contemplated in subparagraphs (a) to (c) above must be provided in respect of the provider to which the representative is contracted.
 - (2) When providing a client with advice in respect of a product, a direct marketer must at the earliest reasonable opportunity:
 - (a) make enquiries to establish whether the financial product or products concerned will be appropriate, regard being had to the client's risk profile and financial needs, and circumstances;
 - (b) the client with the following particulars where appropriate:
 - (i) business or trade name of the product supplier;
 - (ii) legal status and relationship with product supplier;
 - (iii) the following details in respect of the product:
 - (aa) Name, class or type of financial product concerned;
 - (bb) Nature and extent of benefits to be provided;
 - (cc) Manner in which such benefits are derived or calculated, with specific reference to the underlying assets of any investment component and the manner in which the value of such investment component is determined;
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- (dd) Monetary obligations assumed by the client as well as manner of payment;
 - (ee) Whether cooling off rights are offered and, if so, procedures for the exercise of such rights;
 - (ff) Any material investment or other risks associated with the product;
- (c) take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and, if it is such a replacement, inform the client of actual and potential financial implications, costs and consequence set out in clause 8(1)(d) of this Code before any transaction is concluded.

[Part X, section 15(2(c), substituted by section 4(a) of Board Notice 43 of 2008]

- (3) A direct marketer must prior to the conclusion of any transaction and where a contract is concluded provide the client with the following information, provided where such information is provided orally, it must be confirmed in writing within 30 days:
 - (a) Telephone contact details of the compliance department of the product supplier;
 - (b) what extent the product is readily realisable or the funds concerned are accessible where appropriate;
 - (c) Details of manner in which benefits will be paid;
 - (d) Any restrictions on or penalties for early termination or withdrawal from the product, or other effects, if any, of such termination or withdrawal;
 - (e) Charges and fees to be levied against the product including the amount and frequency thereof and where the product has an investment component, the net investment amount ultimately invested for the benefit of the client;
 - (f) Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, or by the product supplier or by any other person;
 - (g) On request, the past investment performance of the product, where applicable, over periods and at intervals which are reasonable with regard to the type of product involved;
 - (h) Consequences of non-compliance with monetary obligations assumed by the client and any anticipated or contractual escalations, increases or additions;
 - (i) In the case of an insurance product in respect of which provision is made for increase of premiums, abbreviated disclosures of such contractual increases;
 - (j) Concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
 - (k) Any guaranteed minimum benefits or other guarantees where appropriate;
 - (l) That recordings of telephone discussions (where applicable) will be made available to the client on request.

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- (4) A direct marketer must provide a client (where appropriate) with a record of advice as contemplated in section 9(1)(a) to (d) in writing.
[Part X, section 15(4), amended by section 4(b) of Board Notice 43 of 2008]
 - (5) direct marketer shall be obliged to record all telephone conversations with clients in the course of direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings. Records of advice furnished to a client telephonically need not be reduced to writing but a copy of the relevant voicellogged records must be provided, on request, to the client or Registrar within a reasonable time.
 - (6) Notwithstanding the above or contrary provision in the code, such of the information required to be provided to the client in terms of clauses 4, 5 and 7 of this Code as has not yet been recorded or provided to the client in writing before the conclusion of any transaction, must be provided to the client in writing within 30 days thereafter.

Part XI : Complaints

16. General

- (1) In this Part—

"complaint"

means a complaint as defined in section 1(1) of the Act (excluding the reference to section 26(1)(a)(iii) therein), submitted by a client to a provider for purposes of resolution by the provider;

"internal complaint resolution system and procedures",

in relation to a provider and a client, means the system and procedures established and maintained by the provider in accordance with this Code for the resolution of complaints by clients;

"Ombud"

means the Ombud for Financial Services Providers referred to in section 20(2) of the Act;

"resolution" or "internal resolution"

in relation to a complaint and a provider, means the process of the resolving of a complaint through and in accordance with the internal complaint resolution system and procedures of the provider;

"Rules"

means the Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2002.

- (2) A provider must—
 - (a) request that any client who has a complaint against the provider must lodge such complaint in writing;
 - (b) maintain a record of such complaints for a period of five years;
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- (c) handle complaints from clients in a timely and fair manner;
- (d) take steps to investigate and respond promptly to such complaints; and
- (e) where such a complaint is not resolved to the client's satisfaction, advise the client of any further steps which may be available to the client in terms of the Act or any other law.

17. Basic principles of systems and procedures

A provider, excluding a representative must maintain an internal complaint resolution system and procedures based on the following:

- (a) Maintenance of a comprehensive complaints policy outlining the provider's commitment to, and system and procedures for, internal resolution of complaints;
- (b) transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;
- (c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and
- (d) fairness; ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.

18. Resolution of complaints

The internal complaint resolution system and procedures of the provider excluding a representative must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:

- (a) availability of adequate manpower and other resources;
- (b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, the Rules and this Code with regard to resolution of complaints;
- (c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- (d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- (e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary; and

19. Specific obligations

- (1) Subject to the other provisions of this Part, the internal complaint resolution system and procedures of a provider excluding a representative must contain arrangements which—
 - (a) must—
 - (i) reduce the details of the internal complaint resolution system and procedures of the provider, including all subsequent updating or upgrading thereof, to writing;
 - (ii) provide that access to the procedures is at all times available to clients at any relevant office or branch of the provider, or by

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- electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing clients;
 - (iii) include in the details envisaged in subparagraph (i), a reference to the duties of the provider and the rights of a client set out in Rule 6(a) and (b) of the Rules;
 - (iv) include in such details a clear summary of the provisions of the Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud; and
 - (v) include in such details the name, address and other contact particulars of the Ombud;
 - (b) must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
 - (c) must provide that the receipt of complaints is promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with section 18(b) and (d) of the Act;
 - (d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that—
 - (i) the complaint receives proper consideration;
 - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
 - (iii) the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
 - (2) In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.

Part XII : Termination of agreement or business

- 20. Subject to the Act, and sections 3(2) and (3) of this Code—
 - (a)
 - (i) a provider must, subject to any contractual obligations, give immediate effect to a request of a client who voluntarily seeks to terminate any agreement with the provider or relating to a financial product or advice;
 - (ii) where the client makes the request on the advice of the provider, the
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- provider must take reasonable steps to ensure that the client fully understands all the implications of the termination;
- (b) a provider, other than a representative who ceases to operate as such, must immediately notify all affected clients accordingly and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to ensure that any outstanding business is completed promptly or transferred to another provider; and
 - (c) where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.

Part XIII : Waiver of rights

- 21. No provider may request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of any provision of this Code, or recognise, accept or act on any such waiver by the client, and any such waiver is null and void.

Part XIV : Short title and commencement

- 22. This Code is called the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and comes into operation on the date determined by the Minister under section 7(1) of the Act.

Code of Conduct for Authorised Financial Services Providers, and their Representatives, involved in Forex Investment Business, 2004

Board Notice 39 of 2004

Part I : Introductory Provisions

Part II : General Prohibitions and Duties applying to Forex Investment Intermediaries

Part III : Special Provisions applying to Forex Investment Intermediaries

Part IV : Special Provisions applying to Forex Investment Advisors

Part V : Miscellaneous, Title and Commencement

Board Notice 39 of 2004

Board Notice 39 of 2004

30 March 2004

Financial Services Board

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 15 of the Financial Advisory and Intermediary Services Act 2002 (Act No. 37 of 2002), publish a code of conduct for authorised financial services providers, and their representatives, involved in forex investment business, as contained in the Schedule hereto, drafted after consultation with the Advisory Committee on Financial Services Providers, representative bodies of the financial services industry and client and consumer bodies determined by that Committee, as well as the regulatory and supervisory authorities concerned.

J van Rooyen
Registrar of Financial Services Providers

Part I : Introductory Provisions

1. Definitions and application

1. Definitions and application

- (1) In this Code "**the Act**" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), a word or expression to which a meaning has been assigned in the Act or in the Exchange Control laws, shall, unless clearly inappropriate, have that meaning and, unless the context indicates otherwise—

"churn"

means excessive trading in a client's account by a forex investment intermediary to maximise the commissions or the revenue of the intermediary regardless of the client's interests;

"clearing firm"

means an entity outside the Republic which complies with the requirements set out in, and has been approved in accordance with, the Regulations, and which handles confirmation, delivery and settlement of foreign exchange transactions in the foreign exchange market;

"currency pair"

means the two individual currencies involved in a foreign exchange transaction:

"drawdown"

means the reduction in a managed forex account or a self directed forex account value because of a trade or series of trades in the relevant account;

"ensure"

means, in relation to a person and any matter mentioned in a provision of this Code, to take any necessary steps in order that the clear objective of the provision is

achieved;

"Exchange Control laws"

means the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), and any exchange control regulations, rules and rulings promulgated or issued under or by virtue of that Act;

"foreign forex services provider"

means a person outside the Republic of South Africa who complies with the requirements set out in, and has been approved in accordance with, the Regulations, to the extent that the person carries on, as a regular feature, business corresponding to and complementing the business of a forex investment intermediary in the Republic;

"forex investment"

means an investment in a financial product referred to in paragraph (e) of the definition of "financial product" in section 1(1) of the Act, in foreign exchange trading based on price fluctuations in the foreign exchange market, but excluding transactions in foreign exchange conducted under Exchange Control laws by authorised dealers and their *bureaux de change* or commercial agencies;

"forex investment advisor"

means a financial services provider carrying on, as a regular feature of business, the rendering of advice on forex investments;

"forex investment business"

means the business carried on by forex investment advisors and forex investment intermediaries;

"forex investment intermediary"

means a financial services provider carrying on, as a regular feature of business, the rendering of intermediary services in respect of forex investments;

"forex services provider"

means an authorised financial services provider carrying on business as a forex investment advisor or a forex investment intermediary (including any representative of any such advisor or intermediary);

"General Code"

means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, published by Board Notice No. 80 of 2003, in *Gazette* No 25299 of 8 August 2003;

"introducing broker"

means a forex services provider who in terms of a written agreement introduces clients' funds to a foreign forex services provider for the purpose of discretionary or non-discretionary dealing on such introduced funds;

"leverage"

means the usage or gearing of a relatively small foreign currency margin deposit to control a much larger foreign currency amount usually expressed as the ratio of the

margin deposit to the total value of levered foreign currency;

"managed forex account"

means a forex investment resulting from the advice or the intermediary services of a forex investment advisor or a forex investment intermediary, and which account is managed for or on behalf of a client by that intermediary or another forex investment intermediary appointed by the first mentioned intermediary;

"margin"

means a specified amount of money used as collateral to insure against potential losses from outstanding positions;

"margin call"

means a call from a clearing firm to a client to deposit additional collateral to cover outstanding commitments arising from outstanding loss-making positions;

"margin requirement"

means the amount of margin required by a specified amount of leveraged currency;

"omnibus account"

means an account that one forex investment intermediary or foreign forex services provider carries for another foreign forex services provider in which the deposits of multiple individual account holders are combined in such a manner that the funds are at all times identifiable as belonging to a specific person;

"Regulations"

means Chapter VI of the Financial Advisory and Intermediary Services Regulations, 2003, as inserted by Government Notice No. 297 of 12 March 2004 in *Gazette* No. 261 12 of that date;

"self-directed forex account"

means a forex investment, arranged by a forex investment advisor or forex investment intermediary, on which the client involved has full discretionary dealing power.

- (2) In the case of any inconsistency or conflict between—
- (a) a provision of this Code and a provision of the General Code, the first mentioned provision shall prevail;
 - (b) a provision of this Code, or of the General Code as applicable to this Code, and a provision of the Exchange Control laws, the last mentioned provision shall prevail.

Part II : General Prohibitions and Duties applying to Forex Investment Intermediaries

- 2. Prohibitions
 - 3. General duties of a forex investment intermediary
 - 4. Ceasing of business
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2. Prohibitions

A forex investment intermediary may not directly or indirectly—

- (a) by means of any statement, promise, forecast or by any other action that it knows to be misleading or which is likely to be misleading —
 - (i) induce a client to enter into a mandate with the forex investment intermediary; or
 - (ii) induce the client to enter into any other agreement relating to forex investments;
- (b) sell to or provide a third party with a client's details, without the client's prior written approval;
- (c) charge the client any kind of fee for terminating a mandate other than accrued fees for services rendered before the termination;
- (d) receive or intermediate on or deal with client funds in the Republic for purposes of forex investment without such funds being cleared under the applicable provisions of the Exchange Control laws;
- (e) advise a client to deal in a self-directed forex account or, in the case of a managed forex account, deal on behalf of a client, where the minimum leverage applied to the client's funds will on a regular basis exceed widely used industry norms;
- (f) churn a client's account for fees or commissions; or
- (g) in the promotion or advertising of forex investments—
 - (i) quote hypothetical investment returns;
 - (ii) quote real investment returns applicable to a specific product for a period shorter than twelve months, or shorter than the existence of the managed forex account if it has been in existence for a period shorter than 12 months: or
 - (iii) state or imply that the investment performance of the forex investment intermediary or of a particular product, achieved in the past, will be repeated.

3. General duties of a forex investment intermediary

A forex investment intermediary must—

- (a)
 - (i) deposit, transfer or arrange for the transfer of money received from or on behalf of a client for investment in a forex investment without undue delay to the final destination agreed with the client in terms of the mandate received from the client;
 - (ii) in the event that the intermediary performs the function of an introducing broker for a foreign forex services provider, in which it has managerial powers and authority to in any manner whatsoever accept or handle clients' funds, disclose such facts to the client and assure that clients' funds will at all times be separated from its own funds and be separately identifiable as the funds of each separate client;
 - (b) observe high standards of integrity and fair dealing in all matters relating to intermediary services;
 - (c) act in the interests of the clients;
 - (d) act with due skill, care, diligence and good faith;
 - (e) observe high standards of market conduct;
 - (f) provide to a client, on request and if required by the General Code or this Code, in a
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- comprehensible and timely manner, any reasonable information regarding the investment of the client, market practices and the risks inherent in the different products;
- (g) wherever and whenever appropriate, obtain from a client the necessary information about the financial situation, investment experience and investment objectives of the client to enable the forex investment intermediary to act in the interests of that client at all times;
 - (h) avoid any conflict between own interests and the interests of a client and where a conflict of interest does arise, the forex investment intermediary must —
 - (i) adequately disclose details of such conflict to the client while maintaining the confidentiality of other clients; or
 - (ii) decline to act for that client;
 - (i) disclose to a client all fees and other charges, whether direct or indirect, relating to the intermediary services rendered in relation to that client's forex investments;
 - (j) disclose to a client non-cash incentives offered or other indirect consideration payable by another provider, a product supplier or any other person to the forex investment intermediary as a result of intermediating on the investments of that client;
 - (k) explain to a client how fees and other charges are calculated and charged in sufficient detail to enable the client to understand the method of calculation;
 - (l) ensure that its staff and representatives are at all times properly trained in accordance with the Act;
 - (m) must, prior to appointing a clearing firm or a foreign forex services provider to accept funds or instructions on behalf of clients, apply for approval by the Registrar of such clearing firm or foreign services provider in accordance with the Regulations; and
 - (n) disclose to a client—
 - (i) the name and address of the foreign forex services provider or clearing firm used, if applicable;
 - (ii) the name and address of the foreign regulator regulating the foreign forex services provider or clearing firm, and whether such provider or firm is approved or registered by such regulator;
 - (iii) the name and address of the foreign regulator under whose jurisdiction the dealing activity falls;
 - (iv) whether the foreign forex service provider or clearing firm, which holds investments on behalf of clients, maintains insurance cover to cover the risk of losses due to fraud, dishonesty and negligence by such foreign forex services provider or clearing firm and the extent of such cover.

4. Ceasing of business

- (1) A forex investment advisor or intermediary must notify the registrar at once in writing if it is to cease conducting business or if its business is to be wound up or liquidated.
 - (2)
 - (a) When a forex investment advisor or intermediary ceases to conduct business or its authorisation under the Act lapses, the forex investment advisor or intermediary must within 45 days of such ceasing or lapsing, as the case may be, furnish a report to the registrar. In the case of a winding up or liquidation, the liquidator involved must furnish the report.
 - (b) Such report must confirm that all cash and documents of title relating to assets
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and a final statement of account have been delivered to the various clients: Provided that if a forex investment advisor or intermediary is unable to fully comply, the report must contain full particulars concerning the documents which have been delivered, full reasons therefor, as well as a plan with dates on which compliance will be effected.

Part III : Special Provisions applying to Forex Investment Intermediaries

- 5. Mandate from client
- 6. Reporting to clients
- 7. Insurance

5. Mandate from client

- (1) A forex investment intermediary must enter into a written mandate with a client irrespective of whether the client invests in a managed forex account or in a self-directed forex account. The intermediary and the client may agree to enter into an electronic mandate, provided that appropriate controls and personal identification procedures have been put in place. The mandate records the arrangements made between the parties, and must—
 - (a) stipulate whether the investment concerned is a self-directed forex investment or a managed forex investment;
 - (b) state the investment objectives of the client and whether in the case of managed forex investments, there are any investment or jurisdiction restrictions that apply to the intermediary services with specific reference to—
 - (i) the regulatory environment of the foreign forex services provider where the investments are made;
 - (ii) specific currency pairs;
 - (iii) any limitations on maximum drawdown;
 - (iv) any limitations on leverage to be employed;
 - (v) applicable margin requirements and margin call rules;
 - (c) contain a general statement pertaining to the risks associated with investing in forex investments, with particular reference to any—
 - (i) currency risk;
 - (ii) event risk;
 - (iii) operational risk;
 - (iv) leverage risk;
 - (d) stipulate in whose name the forex investments are to be made, for example, whether they are to be made in the name of—
 - (i) the client at the foreign forex services provider acting as clearing firm;
 - (ii) an omnibus account holder under control of a foreign forex services provider, other than the foreign forex services provider acting as clearing firm;
 - (iii) an omnibus account holder at a foreign forex services provider under direct or indirect control of the forex investment intermediary

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- concerned;
- (e) stipulate the name of the bank, name of the account and account number of the bank, and the account number and name of the foreign forex services provider or clearing firm, as the case may be, in which the forex investment must be deposited;
 - (f) stipulate, where applicable in the case of a managed forex account, the basis on which, the manner in which and the intervals at which any cash accruals which the forex investment intermediary receives on behalf of a client, must be paid to the client and, where applicable, any restrictions on withdrawals of principal amounts or profits by the client, where the account is in the client's own name;
 - (g) stipulate the basis on which, the manner in which and the intervals at which the client will remunerate the forex investment intermediary for intermediary services rendered on behalf of the client: Provided that for the purposes of this paragraph it shall be deemed that the basis of the remuneration has not been stipulated if the remuneration must be calculated with reference to a source outside the mandate or if it is placed within the discretion of any person;
 - (h) state whether the forex investment intermediary receives commission, incentives, fee reductions or rebates from a foreign forex services provider or any other applicable institution for placing a client's funds with them;
 - (i) in the case of managed forex investments, provide for the availability to the client of reports and statements compiled by the foreign forex services provider acting as clearing firm within 24 hours of same being made available by that provider to the financial services provider or foreign forex services provider, as the case may be, detailing all transactions;
 - (j) empower either party to the mandate to terminate the mandate after notice in writing of not more than 60 calendar days; and
 - (k) must include details of insurance cover sufficient to cover the risk of losses due to fraud, dishonesty and negligence.
- (2) The mandate of a forex investment intermediary must be approved by the registrar who may grant approval subject to such conditions as the registrar may determine. The initially approved mandate is hereinafter referred to as the specimen mandate. The registrar may subsequent to approval require that specific amendments be made to the specimen mandate or that any other information be disclosed that is deemed necessary in the interest of the client.
- (3) A forex investment intermediary may not amend the specimen mandate substantially, without the prior written approval of the registrar.
- (4) When the mandate of a forex investment intermediary with respect to a managed forex account is terminated, such intermediary must at once return all cash, assets and documents of title to the client and must simultaneously provide the client with a detailed final statement of account. If the assets and documents of title are in possession of a bank or another forex investment intermediary the first-mentioned forex investment intermediary must at once issue an instruction to such entity to return such assets or documents of title to the client.
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6. Reporting to clients

- (1) A forex investment intermediary must furnish a written report to a client, which complies with subsection (2)—
 - (a) on request; and
 - (b) in the case of managed forex investments, providing for reporting in printed format, or electronically if so desired by the client, on a monthly basis, detailing investment performance up to and including the last day of the previous calendar month, if applicable.
- (2) A report to a client must contain such information as is reasonably necessary to enable the client to —
 - (a) produce a set of financial statements;
 - (b) determine the changes in the market value of the investment over the period reported on; and
 - (c) determine the charges levied over the period reported on.
- (3) Despite subsection (2), a client may request detailed information about the following matters:
 - (a) Original value of the forex investment, as well as the current market value thereof;
 - (b) currency pairs purchased or sold during the period;
 - (c) cash receipts and payments during the period;
 - (d) profits and losses realised during the period; and
 - (e) the leverage employed during the reporting period.

7. Insurance

- (1) A forex services provider must if, and to the extent, required by the registrar, maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.
- (2) A forex services provider who does not hold investments in safe custody on behalf of clients must ensure that the foreign forex services provider or clearing firm that holds such deposits does maintain insurance cover as is required by its regulators to cover the risk of losses due to fraud, dishonesty and negligence;

Part IV : Special Provisions applying to Forex Investment Advisors

8. General functions
 9. Arrangements between forex investment advisors and clients and cost disclosure
 10. Records of advice
-

8. General functions

- (1) A forex investment advisor must, prior to referring clients to a forex investment intermediary, ascertain whether that intermediary is an authorised financial services provider. If not, the forex investment advisor must determine whether that intermediary is by law required to be authorised as such and if so, decline to refer clients to such intermediary.
- (2) A forex investment advisor must conduct its business with a representative in the same manner that must conduct its business with a forex investment intermediary.
- (3) The provisions of—
 - (a) sections 2(1)(a) to (e) and (g), 3(1)(b) to (n) and 4 of this Code; and
 - (b) section 8(1) to (5), of the General Code,apply, with the necessary changes and unless clearly inappropriate taking into consideration the particular features of forex investment business, to forex investment advisor and any client of the advisor.

9. Arrangements between forex investment advisors and clients and cost disclosure

- (1) A forex investment advisor must commence its business relationship with a client by way of a written application form signed by the client and, where applicable, the forex investment intermediary involved. The forex investment advisor and the client may agree to complete an electronic application form, provided that appropriate controls and personal identification procedures have been put in place that ensures security of information. This application form or supplementary documentation made available to the client in addition to the application form, must record the arrangements made between the parties, and must, if applicable in a particular case, disclose clearly—
 - (a) if the forex investment advisor deals with one or more forex investment intermediaries;
 - (b) if the client will deal directly with the forex investment intermediary or through the advisor;
 - (c) whether the application is for advice on a managed forex account or a self-directed forex account;
 - (d) the names and postal addresses of the client and the forex investment intermediary concerned, and the telephone, facsimile and other contact detail, if any, of the forex investment intermediary;
 - (e) that the forex investment intermediary concerned is an authorized financial services provider and state the applicable licence number;
 - (f) a list of the available investment options and leverage, drawdown and foreign regulatory environment options, and explain the type and the nature of the applicable risks;
 - (g) whether the investments in the case of managed forex accounts will be made in the name of the client at the foreign forex services provider acting as clearing firm or whether it will be made in the name of an omnibus account holder under direct or indirect control of the forex services provider;
 - (h) information on applicable exchange control measures regarding the forex investment;
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- (i) the amount of the investment and the term of the investment; and
 - (j) separately, in respect of the forex investment advisor and the forex investment intermediary concerned, the total fees and benefits to be received by each in respect of a client's investment, whether by way of a deduction from the investment or not, including—
 - (i) the initial fees or costs;
 - (ii) the ongoing fees or costs;
 - (iii) any other benefit, fees or costs, whether in cash or kind.
 - (2) The registrar must initially approve the application form referred to in subsection (1), and may grant approval subject to the conditions that the registrar may determine. The registrar may subsequent to approval require that specific amendments be made to such application form (hereunder referred to as the specimen application form) or that any other information that is deemed necessary be disclosed in the interest of the client. The forex investment advisor may not amend the specimen application form substantially without the prior written approval of the registrar.
 - (3) If a client decides to terminate the relationship with a particular forex investment intermediary but wishes to continue to make use of the services of the originally chosen forex investment advisor through another forex investment intermediary, the last-mentioned forex investment intermediary must ensure that the client sign the applicable application form referred to in subsection (1) and the forex investment advisor must inform the client of all changes pertaining to subsection (1) (a) to (j) of this section.
 - (4) If a client decides to terminate the relationship with the forex investment advisor but wishes to continue to make use of the services of the originally chosen forex investment intermediary through another forex investment advisor, then the last-mentioned forex investment advisor must ensure that the client sign the applicable application form referred to in subsection (1) and must inform the client of all changes pertaining to subsection (1)(a) to (j).
 - (5) Where a forex investment advisor solicits additional funds for an existing forex investment intermediary involved, the advisor must provide the client with the information referred to in subsection (1)(a) to (j) of this section if any of the terms of the previous/initial investment had changed.
 - (6) A forex investment advisor must enter into an appropriate written agreement with each forex investment intermediary to whom it refers clients, which records their particular arrangements and makes provision for termination of the agreement by either party on written notice of not less than 60 days.

10. Records of advice

- (1) A forex investment advisor must, subject to and in addition to the duties imposed by section 18 of the Act, maintain a record of any advice furnished to a client, and which record must reflect the basis on which the advice was given, and in particular—
 - (a) a brief summary of the information and material on which the advice was based;
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- (b) the financial products which were considered; and
 - (c) a description of the particular forex investment that was recommended and an explanation of why a forex investments is likely to satisfy the client's identified needs and objectives.
 - (2) A forex investment advisor must provide a client with a copy of the record contemplated in subsection (1) in writing.
 - (3) A forex investment advisor must maintain records recording the investments owned by each client individually.
 - (4) The agreement between the forex investment advisor and any forex investment intermediary must provide for the furnishing of a written report corresponding with the report provided to a client in terms of section 6(1)(b).

Part V : Miscellaneous, Title and Commencement

11. Additional applicability of General Code

12. Title and commencement

11. Additional applicability of General Code

Subject to the provisions of this Code, the provisions of Parts V, VI, X, XI, XII and XIII, and of sections 11 and 12, of the General Code apply to any forex services provider, with the necessary changes and unless inappropriate taking into consideration the particular features of forex investment business.

12. Title and commencement

This Code is called the Code of Conduct for Authorised Financial Services Providers, and their Representatives, involved in Forex Investment Business, 2004, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.



Determinations

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Determinations

Determination of Fit and Proper Requirements for Financial Services Providers, 2017 : Board Notice 194 of 2017

Determination of Fit and Proper Requirements for Financial Services Providers, 2017

Board Notice 194 of 2017

Chapter 1 : Interpretation, Purpose and Application of Determination

Chapter 2 : Honesty, Integrity and Good Standing

Chapter 3 : Competence Requirements

Chapter 4 : Continuous Professional Development

Chapter 5 : Operational Ability

Chapter 6 : Financial Soundness

Chapter 7 : Miscellaneous: Repeal of previous Board Notices on fit and proper requirements, savings, and transitional provisions

Annexures

Board Notice 194 of 2017

Board Notice 194 of 2017

15 December 2017

Financial Services Board

I, Caroline Dey da Silva, the Deputy Registrar of Financial Services Providers, hereby under section 6A of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determine the fit and proper requirements for financial services providers as set out in the Schedule.

C D da Silva

Deputy Registrar of Financial Services Providers

Chapter 1 : Interpretation, Purpose and Application of Determination

1. Definitions
 2. Purpose of Determination
 3. Categories of FSPs
 4. Fit and proper requirements
 5. On-going compliance with fit and proper requirements
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6. Specific requirement for FSPs and representatives rendering financial services in respect of the financial product: Health Service Benefit

1. Definitions

In this Schedule a word or expression to which a meaning has been assigned in the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), has the same meaning as in that Act, and—

"accredited provider"

means a person that is recognised and certified or accredited by a Quality Council as having the capacity or provisional capacity to offer a qualification or part-qualification registered on the NQF at the required standard, or a foreign person that is so recognised and certified or accredited by a foreign authority that is equivalent to a Quality Council;

"administration of assistance policies"

means work performed by a person relating to the offsetting of claims, processing of claims or payment of fees or commission in respect of an assistance policy;

"Administrative Code of Conduct"

means the code of conduct for administrative FSPs published under section 15 of the Act;

"administrative FSP"

means an administrative FSP as defined in the Administrative Code of Conduct;

"applicant"

means a person who submits an application for authorisation;

"assessed"

in relation to competence requirements, means the structured process of gathering reliable evidence to determine the level of a person's competence in relation to a pre-determined standard, and the extent to which the person's competence meet the pre-determined standard;

"assistance business FSP"

means a person that performs the administration of assistance policies and includes a person who is a binder holder as defined in the Regulations under the Long-term Insurance Act, where such administration is performed by that binder holder;

"assistance policy"

means an assistance policy as defined in section 1 of the Long-term Insurance Act;

"automated advice"

means the furnishing of advice through an electronic medium that uses algorithms and technology without the direct involvement of a natural person;

"Banks Act"

means the Banks Act, 1990 (Act No. 94 of 1990);

"bonds"

in relation to financial product means—

- (a) bonds as contemplated in the definition of "securities" as defined in the Financial Markets Act; and
- (b) bonds as contemplated in paragraph (a) that have a foreign currency denomination;

"category of FSP"

means a specific category of FSPs referred to in section 3;

"category II financial services"

means the financial services referred to in the definition of 'discretionary FSP';

"category IIA financial services"

means the financial services referred to in the definition of 'hedge fund FSP';

"category III financial services"

means the financial services referred to in the definition of 'administrative FSP';

"category IV financial services"

means the financial services referred to in the definition of 'assistance business FSP';

"cash"

means—

- (a) physical currency consisting of Reserve Bank notes and coins;
- (b) any balance in an account with a—
 - (i) bank as defined in section 1(1) of the Banks Act;
 - (ii) 'branch', 'branch of a bank' or a 'mutual bank' as defined in section 1(1) of the Banks Act;
 - (iii) bank established in a country other than the Republic and which lawfully conducts in such other country a business similar to the business of a bank, excluding a facility that extends credit;

"class of business"

means the respective classes of business set out in Table 1 in Annexure Four;

"class of business training"

means the training referred to in section 29(4) in respect of a class of business and which training is provided and assessed by an accredited provider or an education institution;

"collective investment scheme"

means a collective investment scheme as defined in section 1(1) of the Collective Investment Schemes Control Act, and includes a portfolio as defined in section 1(1) of that Act;

"Collective Investment Schemes Control Act"

means the Collective Investment Schemes Control Act, No. 45 of 2002;

"competence"

means having the skills, knowledge and expertise needed for the proper discharge of a person's responsibilities in the performance of his or her functions;

"CPD"

means continuous professional development;

"CPD activity"

means an activity that is—

- (a) accredited by a Professional Body;
- (b) allocated a hour value or a part thereof by that Professional Body; and
- (c) verifiable,

and excludes—

- (i) an activity performed towards a qualification; and
- (ii) product specific training;

"CPD cycle"

means a period of 12 months commencing on 1 June of every year and ending 31 May of the following year;

"debentures and securitised debt"

in relation to financial product means —

- (a) debentures and securitised debt as referred to in paragraph (a)(ii) of the definition of 'financial product' in section 1 of the Act;
- (b) debentures as contemplated in the definition of "securities" as defined in the Financial Markets Act; and
- (c) debenture and securitised debts contemplated in paragraph (a) and (b) that have a foreign currency denomination;

"derivative instrument"

in relation to financial product means—

- (a) a derivative instrument as defined in the Financial Markets Act; and
- (b) a derivative instrument contemplated in paragraph (a) that has a foreign currency denomination,

excluding—

- (i) warrants, certificates or other instruments; and
- (ii) a forex investment;

"Discretionary Code of Conduct"

means the code of conduct for discretionary FSPs published under section 15 of the Act;

"discretionary FSP"

means a discretionary FSP as defined in the Discretionary Code of Conduct;

"education institution"

has the meaning assigned to it in section 1(1) of the NQF Act;

"examination body"

means a body that, in terms of section 6 of the Act, has been delegated the function of setting, administering and/or conducting regulatory examinations on behalf of the Registrar;

"execution of sales"

means an intermediary service performed by a person on instruction of a client to buy, sell, deal, invest or disinvest in, replace or vary one or more financial products;

"experience"

means continuous practical working experience that entails the active and on-going gaining of knowledge, skills and expertise relevant to a particular category of FSP, particular financial service and, where applicable, a financial product that was—

- (a) in relation to an FSP and representative, gained through the rendering of a particular financial service in respect of a particular category of FSP and a particular financial product; or
- (b) in relation to a key individual, gained through the management or oversight of the rendering of a particular financial service in respect of a particular category of FSP; and
- (c) gained either within or outside the Republic of South Africa, with no break in service of more than 5 years between the individual's last working experience and the date of assessment of that individual's experience;

"family member"

means a natural person who is—

- (a) recognised in law or the tenets of religion as a spouse, life partner or civil union partner;
- (b) a child, including a stepchild, adopted child and a child born out of wedlock;
- (c) a parent or stepparent;
- (d) a grandparent; or
- (e) dependent on another person who is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the dependent person;

"Financial Markets Act"

means the Financial Markets Act, 2012 (Act No. 19 of 2012);

"financial product"

includes—

- (a) any subcategory of a financial product; and
- (b) in respect of each financial product or subcategory of a financial product, a product that is issued by a foreign product supplier that is similar in nature to such product or subcategory of product;

"foreign professional programme"

means a programme offered by a foreign body that is equivalent to an education institution or a professional body which sets an internationally accepted standard for a specialised profession relevant to the financial services industry;

"forex investment"

has the meaning assigned to it in section 1(1) of the Code of Conduct for Authorised Financial Services Providers and their Representatives involved in Forex Investment Business, 2004;

"friendly society benefit"

means a benefit provided by a friendly society contemplated in paragraph (d)(ii) of the definition of "financial product" in section 1(1) of the Act;

"FSP"

means a financial services provider as defined in section 1(1) of the Act;

"General Code of Conduct"

means the general code of conduct for authorised FSPs published under section 15 of the Act;

"fund member policy"

means a fund member policy as defined in Part 5A of the Regulations under the Long-term Insurance Act;

"health service benefit"

means a benefit referred to in paragraph (g) of the definition of 'financial product' in section 1(1) of the Act;

"CIS hedge fund"

means a hedge fund as defined in the Declaration made by the Minister under section 63 of the Collective Investment Schemes Control Act;

"hedge fund FSP"

means a hedge fund FSP as defined in in the Discretionary Code of Conduct;

"juristic"

in relation to a representative, means a representative that is not a natural person;

"key individual"

includes a key individual of a juristic representative of an FSP;

"limited underwriting"

means where the only requirements a prospective policyholder or life insured must comply with in order for a product supplier to accept risk or pay a claim are—

- (a) the furnishing of a health declaration by such policy holder of life insured, structured as answers to no more than eight questions relating to specific medical conditions;
- (b) a requirement that the policyholder of life assured must undergo an HIV test;
- (c) the requirements imposed by the National Credit Act, No. 34 of 2005; or
- (d) a combination of any of the requirements referred to in paragraphs (a), (b) and (c).

"long-term deposit"

means a deposit as defined in section 1(1) of the Banks Act, including a foreign currency deposit, with a term exceeding 12 months but excluding a structured deposit;

"Long-term Insurance Act"

means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

"long-term insurance subcategory A"

means an assistance policy;

"long-term insurance subcategory B1"

means a disability, health and life policy as defined in section 1(1) of the Long-term Insurance Act which provides only risk benefits as contemplated in the Regulations under that Act, but excludes—

- (a) a fund policy as defined in section 1(1) of that Act;
- (b) a fund member policy;
- (c) an investment policy as defined in Part 5B of those Regulations; and
- (d) a policy referred to in the definitions of long-term insurance subcategories A, B1-A, B2, B2-A and C;

"long-term insurance subcategory B1-A"

means those long-term insurance policies referred to in the definition of long-term insurance subcategory B1 which require no or limited underwriting;

"long-term insurance subcategory B2"

means a long-term policy as defined in section 1 of the Long-term Insurance Act which is—

- (a) an investment policy as defined in Part 5B of the Regulations under that Act and which guarantees a minimum return of any premium paid at a specified future date or dates, and where such minimum is ascertainable in Rand terms at inception;
- (b) a disability, health or life policy that provides risk benefits as contemplated in the Regulations under that Act and has a guaranteed investment value or a materially equivalent value;
- (c) an annuity which guarantees a minimum annuity for the term of the policy which annuity is ascertainable in Rand terms at inception; or
- (d) a policy which combines the any of the policy features referred to in paragraphs (a) to (c),

but excludes a fund policy, a fund member policy and a policy referred to in the definitions of long-term insurance categories A, B1, B1-A, B2-A and C;

"long-term insurance subcategory B2-A" means those long-term insurance policies referred to in the definition of long-term insurance subcategory B2 which provide for the premiums to be invested in an investment portfolio managed by the product supplier with no option by the policyholder to request a change or amendment to that portfolio;

"long-term insurance subcategory C"

means a long-term policy as defined in section 1(1) of the Long-term Insurance Act, but excludes—

- (a) a fund policy as defined in section 1(1) of that Act;
- (b) a fund member policy; and
- (c) a policy referred to in the definitions of long-term insurance subcategories A, B1, B1-A, B2 and B2-A;

"money-market instruments"

in relation to financial product means —

- (a) money-market instruments as referred to in paragraph (a)(iii) of the definition of 'financial product' in section 1 of the Act; and
- (b) money-market instruments contemplated in paragraph (a) that have a foreign currency denomination;

"no underwriting"

means there is no requirement by a product supplier for any medical, financial, demographic or lifestyle information to be provided by a prospective policyholder or life insured in order for such product supplier to accept risk or pay a claim;

"NQF"

has the meaning assigned to it in the NQF Act and includes the sub-frameworks as defined in section 1 of that Act;

"NQF Act"

means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);

"offsetting of claims"

means the payment of policyholder's claims and the offsetting of such claims against premium received from policyholders for remittal to a long-term insurer;

"participatory interest in a CIS hedge fund"

means a participatory interest in a collective investment scheme that is a hedge fund;

"participatory interest in a collective investment scheme"

means a participatory interest in one or more collective investment schemes as referred to in paragraph (b) of the definition of 'financial product' in section 1(1) of the Act excluding a participatory interest in a CIS hedge fund;

"particular financial product"

in relation to product specific training, means a specific product of a product supplier with its own specific characteristics, features, terms and conditions and which product is a financial product;

"particular financial service"

means the financial services performed by a category of FSP referred to in section 3, and in respect of a Category I FSP, advice or intermediary services;

"part qualification"

has the meaning assigned to it in section 1(1) of the NQF Act;

"pension fund benefit"

means a financial product contemplated in paragraph (d)(i) of the definition of "financial product" in section 1(1) of the Act, including a fund policy, but excluding a retail pension benefit;

"product specific training"

means the training referred to in section 29(5) in respect of a particular financial product and which training is assessed, including any amendments to that particular financial product;

"professional body"

means a body recognised by the SAQA as a professional body for purposes of the NQF Act;

"professional programme"

means a programme at post-graduate level offered by an education institution or a professional body for the purposes of providing specialised competence in a specific field of the financial services industry;

"qualification"

means a—

- (a) qualification as defined in the NQF Act, excluding a part qualification as defined in that Act, that is offered by an education institution or an accredited provider;
- (b) professional programme; or
- (c) foreign qualification or foreign professional programme that has been evaluated by SAQA as being equivalent to a qualification or programme referred to in paragraphs (a) and (b) above;

"Quality Council"

has the meaning assigned to it in section 1 of the NQF Act;

"qualifying criteria"

in relation to a regulatory examination, means the criteria against which a regulatory examination must be set;

"RE 1"

means the regulatory examination developed in terms of the criteria set out in Table 1 of Annexure Five;

"RE 3"

means the regulatory examination developed in terms of the criteria set out in Table 2 of Annexure Five;

"RE 4"

means the regulatory examination developed in terms of the criteria set out in Table 3 of Annexure Five;

"RE 5"

means the regulatory examination developed in terms of the criteria set out in Table 4 of Annexure Five;

"recognised qualification"

means a qualification that is recognised by the Registrar in terms of section 24 and that is published as a recognised qualification on the official web site of the Financial Services Board;

"regulatory examination"

means a regulatory examination based on the qualifying criteria set out in the Tables in Annexure Five, the purpose of which is to test a person's knowledge, understanding and application of legislation, including a financial sector law as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and all measures promulgated in terms of those Acts, directly applicable to an FSP, representative or key individual;

"related parties"

means related parties as defined in International Accounting Standard (IAS 24);

"regulatory authority"

includes—

- (a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996, responsible for the supervision or enforcement of legislation, or a similar body designated in the laws of a country other than the Republic to supervise or enforce legislation of that country;
- (b) a market infrastructure that is responsible for the supervision of persons authorised by such infrastructure under the Financial Markets Act, 2012 (Act No. 19 of 2012); and
- (c) an Ombud established under Financial Services Board legislation or a recognised Scheme under the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004);

"retail pension benefit"

means a benefit provided by a retirement annuity fund, preservation pension fund or

preservation provident fund, as defined by the Income Tax Act, 1962 (Act No. 58 of 1962), and includes a benefit provided by a fund member policy, as defined in the Regulations to the Long-term Insurance Act, but excludes a pension fund benefit;

"securities and instruments"

means—

- (a) securities and instruments that are not defined in this Determination as separate product categories; and
- (b) securities and instruments contemplated in paragraph (a) that have a foreign currency denomination,

"shares"

in relation to financial product means —

- (a) shares referred to in paragraph (a)(i) of the definition of 'financial product' in section 1 of the Act; and
- (b) shares that have a foreign currency denomination;

"short-term deposit"

means a deposit as defined in section 1(1) of the Banks Act, including a foreign currency deposit, with a term not exceeding 12 months but excluding a structured deposit;

"Short-term Insurance Act"

means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

"short-term insurance commercial lines"

means short-term insurance policies referred to in the Short-term Insurance Act purchased by juristic persons and natural persons acting in a business capacity;

"short-term insurance personal lines"

means short-term insurance policies referred to in the Short-term Insurance Act purchased by natural persons acting otherwise than in a business capacity, but excludes a policy referred to in the definition of short-term insurance personal lines A1;

"short-term insurance personal lines A1"

means the short-term insurance policies referred to in the definition of 'short-term insurance personal lines', excluding—

- (a) marine policies; and
- (b) engineering policies and guarantee policies as defined in section 1 of the Short-term Insurance Act, and which policies—
 - (i) require no or limited underwriting;
 - (ii) define policy benefits as a sum insured, provide for the replacement of the insured asset or provide for the settlement of outstanding balances due and payable to credit providers;
 - (iii) have contract terms of 24 months or less;
 - (iv) are not subject to the principle of average; and
 - (v) do not provide for any exclusions or conditions from liability of the insurer other than—
 - (aa) exclusions relating to unlawful conduct, provided that such exclusions may only be applied or relied on if there is a direct link between the cause of the loss and the unlawful conduct;

- (bb) special risks referred to in the Conversion of the SASRIA Act, No. 134 of 1998;
- (cc) exclusions relating to the condition of any asset insured at inception of the policy other than exclusions relating to the wear and tear of the asset;
- (dd) exclusions relating to the maintenance and usage of the insured asset under a policy that insures against unforeseen mechanical or electrical component failure;
- (ee) exclusions relating to consequential loss; or
- (ff) any combination of (aa) to (ee);

"SAQA"

has the meaning assigned to it in section 1 of the NQF Act;

"structured deposit"

means a—

- (a) combination of a short-term deposit or a long-term deposit and another Tier 1 financial product; or
- (b) a short-term deposit or long-term deposit where the return or value is dependent on the performance of or is derived from the return or value of one or more underlying financial product, asset, rate or index, on a measure of economic value or on a default event;

"sole proprietor",

in relation to an FSP, means an FSP who is a natural person;

"the Act"

means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"Tier 1 financial products"

means the financial products listed in column A of Table 1 in Annexure Three;

"Tier 2 financial products"

means the financial products listed in column B of Table 1 in Annexure Three;

"verifiable"

in relation to CPD activities means activities that can be objectively verified and includes evidence of the identity of the person who partook in such activities and proof of the completion thereof;

"warrants, certificates or other instruments"

in relation to financial product means—

- (a) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments as referred to in paragraph (a)(iv) of the definition of 'financial product' in section 1 of the Act; and
- (b) warrants, certificates or other instruments as contemplated in paragraph (a) that have a foreign currency denomination;

"wear and tear"

means the normal expected deterioration of the insured asset arising from normal usage and age.

2. Purpose of Determination

The purpose of this Determination is to determine—

- (a) the categories of FSPs envisaged in section 6A of the Act; and
- (b) the fit and proper requirements for—
 - (i) each of the categories of FSPs;
 - (ii) representatives in each of the categories of FSPs; and
 - (iii) key individuals in each of the categories of FSPs.

3. Categories of FSPs

The categories of FSPs are:

- (a) Category I FSPs, i.e. FSPs who are not Category II, IIA, III or IV FSPs;
- (b) Category II FSPs, i.e. discretionary FSPs;
- (c) Category IIA FSPs, i.e. hedge fund FSPs;
- (d) Category III FSPs, i.e. administrative FSPs; and
- (e) Category IV FSPs, i.e. assistance business FSPs.

4. Fit and proper requirements

- (1) The fit and proper requirements for each of the categories of FSPs, key individuals and representatives are—
 - (a) personal character qualities of honesty and integrity, as set out in Chapter 2;
 - (b) good standing, as set out in Chapter 2;
 - (c) competence, as set out in Chapter 3;
 - (d) continuous professional development, as set out in Chapter 4;
 - (e) operational ability, as set out in Chapter 5; and
 - (f) financial soundness, as set out in Chapter 6.
- (2) To qualify for authorisation, approval or appointment as an FSP, key individual or representative a person must comply with the fit and proper requirements to the extent applicable to FSPs, key individuals and representatives in the relevant categories.

5. On-going compliance with fit and proper requirements

For an FSP, key individual or representative to remain authorised, approved or appointed that person must, as required by section 8A of the Act, at all times comply with the fit and proper

requirements referred to in section 4 to the extent applicable to FSPs, key individuals and representatives in the relevant categories.

6. Specific requirement for FSPs and representatives rendering financial services in respect of the financial product: Health Service Benefit

To qualify for authorisation as an FSP or appointment as a representative of an FSP or to remain so authorised or appointed to render financial services in respect of the financial product: Health Service Benefit, a person must be accredited as a broker or an apprentice broker in terms of regulation 28B of the Regulations issued in terms of section 67 of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

Chapter 2 : Honesty, Integrity and Good Standing

7. Application of Chapter

8. Honesty, integrity and good standing

9. Incidents without indicating when persons are not honest, or lack integrity or good standing

10. Disclosure of information relating to honesty, integrity and good standing

7. Application of Chapter

- (1) The fit and proper requirements relating to honesty, integrity and good standing contained in this Chapter apply to all FSPs, key individuals and representatives.
- (2) A reference in this Chapter to the Registrar must be read as including a reference to an FSP insofar it relates to the FSP's responsibilities in respect of its key individuals and representatives.

8. Honesty, integrity and good standing

- (1) A person referred to in section 7(1) must be a person who is—
 - (a) honest and has integrity; and
 - (b) of good standing.
 - (2) In determining whether a person complies with subsection (1), the Registrar may refer to any information in possession of the Registrar or brought to the Registrar's attention.
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9. Incidents without indicating when persons are not honest, or lack integrity or good standing

- (1) Without limiting the generality of section 8(1), any of the following constitutes *prima facie* evidence that a person does not qualify in terms of section 8(1):

The person—

- (a) has been found guilty (and that conviction has not been expunged) in any criminal proceedings or liable in any civil proceedings by a court under any law in any jurisdiction of—
 - (i) an offence under a law relating to the regulation or supervision of a financial institution as defined in the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001) or a corresponding offence under the law of a foreign country;
 - (ii) theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty, breach of fiduciary duty, dishonourable or unprofessional conduct; or
 - (iii) an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992) or Parts 1 to 4, or section 17, 20 or 21, of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or a corresponding offence under the law of a foreign country;
 - (b) has been convicted (and that conviction has not been expunged) of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, where the penalty imposed for the offence was or may be imprisonment without the option of a fine, or a significant fine;
 - (c) has accepted civil liability for, or has been the subject of a civil judgment in respect of, theft, fraud, forgery, uttering a forged document, perjury or an any conduct involving dishonesty, breach of fiduciary duty, misrepresentation, or negligent, dishonourable and unprofessional conduct;
 - (d) has been the subject of frequent or material preventative, remedial or enforcement actions by the Registrar or a regulatory authority;
 - (e) has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation, dishonesty, breach of fiduciary duty or business conduct;
 - (f) has breached a fiduciary duty;
 - (g) has been suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) under any law or any action to achieve one of the aforementioned outcomes has been instituted against the person;
 - (h) has been refused a registration, approval, authorisation or licence to carry out a trade, business or profession, or has had that registration, approval, authorisation or licence suspended, revoked, withdrawn or terminated by a regulatory authority;
 - (i) has been denied registration or membership of any professional body or has had that registration or membership revoked, withdrawn or terminated by a professional body because of matters relating to honesty, integrity, or business conduct;
 - (j) has been disciplined, reprimanded, disqualified, or removed in relation to matters relating to honesty, integrity, incompetence or business conduct by a —
 - (i) professional body; or
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- (ii) regulatory authority, or any action to achieve one of the aforementioned outcomes has been instituted against the person;
 - (k) has knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealings with, the Registrar or a regulatory authority;
 - (l) has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards;
 - (m) has been found to be not fit and proper by the Registrar or a regulatory authority in any previous assessments of fitness and propriety and the reasons for being found not fit and proper have not been remedied;
 - (n) has been involved or is involved as a director, trustee, member, partner, controlling shareholder or managing executive, or is concerned in the management, of a business that has been—
 - (i) the subject of any matter referred to in subparagraphs (a), (b), (c), (d), (f), (h), (j)(ii), (k), (l), (m), or (o); or
 - (ii) placed in liquidation or business rescue; while that person has been connected with that organisation or within one year of that connection; or
 - (o) has failed to disclose information required to be disclosed in terms of the Act, including a failure to disclose information in accordance with section 10.
- (2) Without limiting subsection (1), compliance with section 8(1) by a person that is not a natural person must be demonstrated through its corporate behaviour or conduct and through the personal behaviour or conduct of the persons who control or govern that first mentioned person or who is a member of a body or group of persons which control or govern that person, including directors, members, trustees, partners or key individuals of that person.
- (3) Notwithstanding subsection (1), the Registrar must, in assessing whether a person meets the requirements in section 8(1) have due regard to—
- (a) the seriousness of a person's conduct, whether by commission or omission, or behaviour, and surrounding circumstances to that conduct or behaviour that has or could potentially have a negative impact on a person's compliance with section 8(1);
 - (b) the relevance of such conduct or behaviour that has or could potentially have a negative impact on the persons' compliance with section 8(1), to the duties that are or are to be performed and the responsibilities that are or are to be assumed by that person; and
 - (c) the passage of time since the occurrence of the conduct or behaviour that had a negative impact on the person's compliance with section 8(1).

10. Disclosure of information relating to honesty, integrity and good standing

An FSP and key individual must disclose to the Registrar, and a representative must disclose to its FSP, promptly and on own initiative, fully and accurately, all information, not limited to information in relation to matters referred to in section 9, which may be relevant in determining whether that person complies or continues to comply with the requirements relating to honesty, integrity and good standing.

Chapter 3 : Competence Requirements

- Part 1 : Application and General Requirements
- Part 2 : Minimum experience
- Part 3 : Minimum qualifications
- Part 4 : Regulatory examinations
- Part 5 : Class of business Training and Product Specific Training

Part 1 : Application and General Requirements

- 11. Application of Part
- 12. General competence requirements
- 13. Responsibilities of an FSP

11. Application of Part

The fit and proper requirements relating to competence contained in this Part apply to all FSPs, key individuals and representatives.

12. General competence requirements

An FSP, key individual and representative must—

- (a) have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that it performs;
- (b) comply with the minimum requirements set out in Part 2, 3, 4 and 5 of this Chapter; and
- (c) maintain their competence.

13. Responsibilities of an FSP

- (1) An FSP must establish, maintain and apply adequate policies, internal systems, control and monitoring mechanisms to ensure that it, its key individuals and representatives —
 - (a) comply and continue to comply with section 12 and, where applicable, the minimum requirements set out in Part 2, 3, 4 and 5 of this Chapter;
 - (b) are aware of the procedures which must be followed for the proper discharge of their responsibilities in the performance of their functions;
 - (c) possess appropriate general and technical knowledge so as to be able to

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- comply with all relevant disclosure obligations to clients;
 - (d) are appropriately trained regarding the requirements of the Act and the financial services and financial products in respect of which they are appointed;
 - (e) undertake CPD to maintain and update the knowledge and skills that are appropriate for their activities;
 - (f) are able to assess whether it is appropriate to offer or provide a client a particular financial service or product taking into account the needs, circumstances, risk tolerance and capacity of the client and the client's capacity to understand the features and complexity of the service or product; and
 - (g) who do not meet the competency requirements, and staff of the FSP who are not appointed as representatives, do not render financial services.
 - (2) A Category I FSP that appoints representatives to perform the execution of sales as contemplated in section 22(b)(ii) must be able to demonstrate compliance with the requirements set out in that section.
 - (3) An FSP must be able to demonstrate and record that it has evaluated and reviewed at regular and appropriate intervals—
 - (a) its representatives' and key individuals' competence and has taken appropriate action to ensure that they remain competent for the activities they perform; and
 - (b) the appropriateness of the training and CPD referred to in subsection 1(d) and (e).
 - (4) The evaluation and review contemplated in subsection (3) must, *inter alia*, take into account—
 - (a) technical knowledge and its application;
 - (b) skills and expertise; and
 - (c) changes in the market, to financial products, financial services and legislation.
 - (5) An FSP must establish, maintain and update on a regular basis a competence register in which all qualifications, successfully completed regulatory examinations, product specific training, class of business training and CPD of the FSP, its key individuals and representatives are recorded.
 - (6) An FSP must, in the form and manner and at the intervals prescribed by the Registrar, furnish to the Registrar the information in the register referred to in paragraph (5).
 - (7) An FSP must notify the Registrar immediately after it becomes aware, or has information which reasonably suggests, that a key individual does not comply or no longer complies with any requirement set out in this Determination.
 - (8) The requirements set out in Parts 2, 3, 4 and 5 of Chapter 3 and Chapter 4 are minimum requirements and compliance with that requirements does not in itself serve as evidence that a person complies with the general competence requirements in section 12.
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Part 2 : Minimum experience

14. Application of Part

15. General experience requirement

16. Lapsing of experience

Minimum experience requirements per Category of FSPs

14. Application of Part

The competence requirements relating to experience contained in this Part apply to all FSPs, key individuals and representatives.

15. General experience requirement

- (1) An FSP and representative must have adequate and appropriate experience in the rendering of a particular financial service in respect of a—
 - (a) particular financial product; and
 - (b) particular category of FSP,for which it is authorised or appointed or in respect of which authorisation or appointment is sought.
- (2) A key individual must have adequate and appropriate experience to manage or oversee the rendering of a particular financial service in respect of a particular category of FSP for which it is approved or in respect of which approval is sought.

16. Lapsing of experience

- (1) The experience gained by an FSP or a representative lapses when the FSP or representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category of FSP for a period of five consecutive years.
- (2) The experience gained by a key individual lapses when the key individual has not managed or overseen the rendering of a particular financial service in respect of a particular category of FSP for a period of five consecutive years.

Minimum experience requirements per Category of FSPs

17. Category I FSPs

18. Category II FSPs

- 19. Category IIA FSPs
- 20. Category III FSPs
- 21. Category IV FSPs

17. Category I FSPs

- (1) A Category I FSP and its representatives must in relation to the financial products listed in Column A of Table 1 in Annexure One have the minimum experience listed in column B and/or C of that Table in respect of the particular financial services for which it is authorised or appointed or in respect of which authorisation or appointment is sought.
- (2) A key individual of a Category I FSP must have at least one year's experience in the management or oversight of the rendering of a particular financial service by a Category I FSP.

18. Category II FSPs

- (1) A Category II FSP and its representative must in relation to a financial product listed in Column A of Table 2 in Annexure One have the minimum experience in the rendering of Category II financial services in respect of the financial products listed in column B of the Table.
- (2) A key individual of a Category II FSP must have at least one year's experience in the management or oversight of category II financial services.

19. Category IIA FSPs

- (1) A Category IIA FSP and its representatives must have at least three years' experience in the rendering of category IIA financial services.
- (2) A key individual of a Category IIA FSP must have at least one year's experience in the management or oversight of category IIA financial services.

20. Category III FSPs

- (1) A Category III FSP and its representatives must have at least three years' experience in the rendering of category III financial services.
- (2) A key individual of a Category III FSP must have at least one year's experience in the management or oversight of category III financial services.

21. Category IV FSPs

- (1) A Category IV FSP and its representatives must have at least one year's experience in the rendering of category IV financial services.
- (2) A key individual of a Category IV FSP must have at least one year's experience in the management or oversight of category IV financial services.

Part 3 : Minimum qualifications

22. Application of Part
23. General requirement
24. Recognition of qualifications

22. Application of Part

The competence requirements relating to qualifications contained in this Part—

- (a) subject to paragraph (b), apply to all FSPs, key individuals and representatives;
- (b) do not apply to—
 - (i) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed only to render financial services or manage or oversee financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and
 - (ii) a representative of a Category I FSP that is appointed only to perform the execution of sales in respect of a financial product provided that—
 - (aa) the representative has a Grade 12 National Certificate or an equivalent qualification;
 - (bb) the execution of sales is performed—
 - (aA) in accordance with a script approved by a key individual and the relevant governance structure of the FSP; and
 - (aB) under the direct oversight of a key individual;
 - (cc) where the execution of sales is performed by telephone, all conversations with clients are recorded and the recordings are stored and retrievable;
 - (dd) the FSP has sufficient and adequate controls in place to ensure and to monitor that—
 - (aA) the representative does not furnish clients with advice; and
 - (aB) the sales practices and techniques employed by the representative are not misleading, false, inappropriate to the expected target clients or will not result in unfair outcomes for clients; and
 - (ee) the FSP on a regular basis—
 - (aA) reviews the recordings referred to in (cc) and/or monitors the

- representatives, to ensure that they do not deviate from the script or supplement the script with content not approved as contemplated in (bb);
- (aB) reviews and monitors the adequacy and efficiency of its controls and quality assurance processes in relation to the execution of sales; and
- (aC) reviews the script for appropriateness and compliance with applicable legislation.

23. General requirement

An FSP, a key individual and a representative must have a qualification recognised by the Registrar in terms of section 24.

24. Recognition of qualifications

- (1) The Registrar, on application or on own initiative and subject to subsection (2), may recognise a qualification as appropriate for—
 - (a) each of the categories of FSPs;
 - (b) representatives of in each of the categories of FSPs;
 - (c) key individuals in each of the categories of FSPs; or
 - (d) different types of financial services and financial products.
- (2) The following criteria must be considered by the Registrar in assessing the appropriateness of a qualification:
 - (a) it must provide a person with the relevant, abilities, knowledge and skills based on an appropriate curriculum framework containing a body of knowledge and learning outcomes that is necessary for the person to discharge his or her responsibilities under the Act;
 - (b) the curriculum, body of knowledge and learning outcomes referred to in (a) must be quantitatively and qualitatively relevant to the role of and functions to be performed by the person under the Act;
 - (c) in the case of a non-unit standards based qualification—
 - (i) it must contain at least three modules/subjects that appear in the Appropriate Subject List in Table 1 in Annexure Two;
 - (ii) where the qualification is at Certificate or Diploma level and it provides for major subjects, at least one of the subjects referred to in subparagraph (i) must be a major subject at final year level; and
 - (iii) where the qualification is at Degree level, at least one of the subjects referred to in subparagraph (i) must be a major subject at final year level;
 - (d) in the case of a unit standards based qualification, the core and elective unit standards must relate to at least three modules/subjects that appear in the Appropriate Subject List in Table 1 in Annexure Two; and
 - (e) for purposes of a Category II, IIA or III FSP and a key individual, or representative of such FSP, the qualification must be at degree level.

- (3) An application for recognition of a qualification must be submitted in the form and manner determined by the Registrar.

Part 4 : Regulatory examinations

25. Application of Part
26. Regulatory examination requirements
27. Setting and taking of regulatory examinations

25. Application of Part

The competence requirements relating to regulatory examinations contained in this Part—

- (a) subject to paragraph (b), apply to all FSPs, key individuals and representatives;
- (b) do not apply to—
 - (i) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed only to render financial services or manage or oversee financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and
 - (ii) a representative of a Category I FSP that is appointed only to—
 - (aa) perform the execution of sales in respect of a Tier 1 financial product provided that the requirements in section 22(b)(ii) are complied with; and/or
 - (bb) render financial services in respect of a Tier 2 financial product.

26. Regulatory examination requirements

- (1) A *Category I* FSP, its key individuals and representatives must successfully pass the applicable regulatory examination listed in Column A of Table A.
- (2) A *Category II* FSP, its key individuals and representatives must successfully pass the applicable regulatory examination listed in Column B of Table A.
- (3) A *Category IIA* FSP, its key individuals and representatives must successfully pass applicable the regulatory examination listed in Column C of Table A.
- (4) A *Category III* FSP, its key individuals and representatives must successfully pass the applicable regulatory examination listed in Column D of Table A.
- (5) A *Category IV* FSP, its key individuals and representatives must successfully pass the applicable regulatory examination listed in Column E of Table A.
- (6) An FSP, a key individual and a representative must successfully pass the applicable regulatory examinations before that person's authorisation, approval or appointment.

| TABLE A | | | | | |
|----------------|--------------------------|---------------------------|----------------------------|----------------------------|---------------------------|
| | Column A (Category I) | Column B (Category II) | Column C (Category IIA) | Column D (Category III) | Column E (Category IV) |
| FSP | RE 1 | RE 1; and RE 3 | RE 1; and RE 3 | RE 1; and RE 4 | RE 1 |
| Key Individual | RE 1 | RE 1; and RE 3 | RE 1; and RE 3 | RE 1; and RE 4; | RE 1 |
| Representative | RE 5 | RE 5 | RE 5 | RE 5 | RE 5 |

27. Setting and taking of regulatory examinations

- (1) Regulatory examinations may be set and delivered by examination bodies recognised for that purpose by the Registrar.
- (2) All regulatory examinations must be set in accordance with the criteria set out in the applicable Tables in Annexure Five.

Part 5 : Class of business Training and Product Specific Training

28. Application of Part

29. Class of business training and product specific training

30. Record keeping and reporting requirements

28. Application of Part

- (1) Subject to subsection (2) and (3), the competence requirements relating to class of business and product specific training contained in this Part apply to all FSPs, key individuals and representatives.
- (2) The competence requirements relating to class of business training contained in this Part do not apply to—
 - (a) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed only to render financial services or manage or oversee financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and
 - (b) a representative of a Category I FSP that is appointed to only—
 - (i) perform the execution of sales in respect of a Tier 1 financial product provided that the requirements in section 22(b)(ii) are complied with; and/or
 - (ii) render financial services in respect of a Tier 2 financial product.
- (3) The competency requirements relating to product specific training contained in this Part do not apply to—
 - (a) a Category II, Category IIA or a Category III FSP or its representatives; and
 - (b) key individuals of all categories of FSPs, provided they comply with section 12.
- (4) The competency requirements relating to class of business training apply to key individuals only in respect of the classes of business for which they are approved to act as key individuals or in respect of which approval is sought.

29. Class of business training and product specific training

- (1) An FSP and representative must, prior to the rendering of any financial service in respect of a particular financial product, complete—
 - (a) the class of business training; and
[Section 29(1)(a) will become effective from 1 August 2018, in terms of section 53(1) of this Notice]
 - (b) product specific training,
relevant to that financial product and for which they are authorised or appointed or in respect of which authorisation or appointment is sought.
- (2) A key individual must, prior to managing or overseeing the rendering of any financial service, complete the class of business training in respect of the classes of business it manages or oversees and for which it is approved to act as key individual or for which approval is sought.
[Section 29(2) will become effective from 1 August 2018, in terms of section 53(1) of this Notice]
- (3) An FSP must ensure that it, its key individuals and representatives are proficient in respect of, understand, and have completed adequate and appropriate class of business training and product specific training relevant to, the particular financial products in respect of which they render financial services or manages or oversees the rendering of financial services.
- (4) Class of business training, where appropriate, must include training on—
 - (a) the range of financial products within the class of business;
 - (b) the general characteristics, terms and features of financial products in the class of business and any specialist characteristics, terms and features in respect of financial products in the class of business;
 - (c) the typical fee structures, charges and other costs associated with products in the class of business;
 - (d) general risks associated with investing, purchasing or transacting in the products in the class of business;
 - (e) investment and risk principles, options and strategies in respect of products in the class of business;
 - (f) the appropriateness of different products or product features in the class of business for different types of clients or groups of clients;
 - (g) the typical role players or market participants in respect of products in the class of business, including their legal structure;
 - (h) the impact of applicable legislation, including taxation laws, on products in the class of business;
 - (i) the impact of applicable economic and environmental factors such as—
 - (i) the economic and business environment and cycles;
 - (ii) inflation;
 - (iii) government monetary and fiscal policies; and
 - (iv) interest rates and exchange rates,on the products in the class of business and the performance of those products;
 - (j) any inter-relationship within and between particular classes of business; and
 - (k) industry standards and codes of conduct relevant to the class of business.

-
- (5) Product specific training, where appropriate, must include training on—
- (a) the specific characteristics, terms and features of the product, including any specific complexities or material differentiation from the general characteristics, terms and features of products in the class of business concerned;
 - (b) the nature and complexity of the financial product and any underlying components of that product;
 - (c) how the financial product and any underlying components of the product are structured and priced;
 - (d) the fee structure, charges and other costs associated with the product and their impact on the real return or benefits of the product;
 - (e) the nature and features of any guarantees and the costs associated with them;
 - (f) the risks associated with investing, purchasing or transacting in the product and any underlying components of the product;
 - (g) the risks associated with particular investment concepts and strategies in respect of the product;
 - (h) the impact of tax on the benefits or real return of the product;
 - (i) the potential impact of abnormal or extreme market, economic or other relevant conditions on the performance of the product;
 - (j) any investment options or strategies within the product;
 - (k) any flexible benefit or service options available within the product;
 - (l) the accessibility of benefits or funds under the product and any restrictions or limitations on such accessibility;
 - (m) the level of liquidity of the product or its underlying components;
 - (n) the intended target market of the product and the outcomes it is intended to deliver for customers, including identifying customers or groups of customers for whom the product is not expected to be suitable;
 - (o) the identity of the product supplier and the providers of any underlying components of the product, including their good standing and regulatory status;
 - (p) particular disclosures, whether or not prescribed by legislation, applicable or relevant to the product, its underlying components and the product supplier;
 - (q) the lock-in periods and relevant termination conditions, exit options and associated costs;
 - (r) the accessibility of benefits or funds under the financial product and any associated restrictions or limitations; and
 - (s) the expected outcomes that will be achieved for clients.
- (6) The class of business training may be undertaken separately from or in combination with—
- (i) product specific training; or
 - (ii) a recognised qualification provided a person is able to demonstrate that the content of the qualification meets the criteria referred to in subsection (3).
- (7) Where a financial product incorporates one or more other underlying financial products, the training referred to in subsections (1) and (2) must include class of business training in respect of the underlying products.
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30. Record keeping and reporting requirements

An FSP must—

- (a) within 15 days after the training has occurred, record in the competence register of the FSP the product specific or class of business training of the FSP, its key individuals and representatives;
- (b) retain all information and documentation relating to the training referred to in (a) for a period not less than five years after—
 - (i) the FSP or the representative on behalf of that FSP, has ceased to render financial services in respect of a particular financial product or a particular class of business; and
 - (ii) the key individual has ceased to manage or oversee the rendering of financial services by the FSP in respect of a particular financial product or a particular class of business;
- (c) within a reasonable time after being requested to do so—
 - (i) by a product supplier, provide confirmation to that product supplier that it, or its representatives have obtained the requisite class of business and product specific training, where the product supplier requires the confirmation in order to ensure compliance with its own legal obligations; and
 - (ii) by a key individual or representative of, or a former key individual or representative of the FSP, provide confirmation to the key individual or representative of the product specific and class of business training completed by that key individual or representative.

Chapter 4 : Continuous Professional Development

- 31. Application of Chapter
- 32. General requirements
- 33. Minimum CPD hours
- 34. Reduction of CPD hours

31. Application of Chapter

- (1) Subject to subsection (2) the fit and proper requirements relating to CPD contained in this Chapter apply to all FSPs, key individuals and representatives.
- (2) The fit and proper requirements relating to CPD contained in this Chapter do not apply to—
 - (a) a Category I FSP, its key individuals and representatives that are authorised, approved or appointed only to render financial services or manage or oversee financial services in respect of the financial products: Long-term Insurance subcategory A and/or Friendly Society Benefits; and
 - (b) a representative of a Category I FSP that is appointed to only—
 - (i) render a financial service in respect of a Tier 2 financial product; and/or
 - (ii) render an intermediary service in respect of a Tier 1 financial product.

32. General requirements

- (1) An FSP, key individual and representative must—
 - (a) maintain the required competence to render or manage or oversee the financial services for which the FSP, key individual and representative are authorised, approved or appointed;
 - (b) comply with the minimum CPD requirements set out in this Chapter;
 - (c) ensure that the type and combination of CPD activities undertaken—
 - (i) are relevant to the functions and role of the FSP, key individual and representative;
 - (ii) contributes to the skill, knowledge, expertise and professional and ethical standards of the FSP, key individual and representative;
 - (iii) addresses any identified needs or gaps in—
 - (aa) the technical knowledge of the FSP, key individual and representative;
 - (bb) the generic knowledge and understanding of the environment in which the financial service is rendered or managed or overseen; and
 - (cc) the knowledge and understanding of applicable laws; and
 - (iv) adequately takes into account changing internal and external conditions relevant to the classes and subclasses of business, the category of financial services and the financial products for which the FSP, key individual or representative is authorised, approved or appointed.
- (2) An FSP must establish and maintain policies and procedures on CPD that include:
 - (a) how the FSP, key individual and representative will—
 - (i) maintain knowledge and skills that are appropriate for their activities and responsibilities;
 - (ii) update their knowledge and skills; and
 - (iii) develop new knowledge and skills to assist with their current functions and responsibilities or functions contemplated in the future;
 - (b) training plans for each CPD cycle to ensure that CPD—
 - (i) is relevant and appropriate for the authorisation, approval and appointment of the FSP, key individual and representative;
 - (ii) addresses any identified needs, knowledge and skills gaps; and
 - (iii) continually improves the professional standards and practices of the FSP, its key individuals and representatives.
- (3) An FSP must—
 - (a) within 30 days after the expiry of each CPD cycle, record in the competence register the—
 - (i) CPD activities of the FSP, its key individuals and representatives; and
 - (ii) reduction of CPD hours of a representative as contemplated in section 34;
 - (b) calculate the total number of CPD hours completed by each person referred to in (a) as at the end of each CPD cycle;
 - (c) obtain and retain relevant supporting evidence of the CPD activities recorded

- in the competence register;
- (d) record the dates of, reasons for and retain supporting evidence for, any decision of the FSP to reduce CPD requirements in accordance with section 34; and
- (e) retain the evidence referred to in (c) and (d) for a period not less than five years from the end of the CPD cycle concerned.

33. Minimum CPD hours

- (1) An FSP, key individual and representative authorised, approved or appointed to render or manage or oversee the rendering of financial services in respect of—
 - (a) a single subclass of business within a single class of business must complete a minimum of 6 hours of CPD activities per CPD cycle;
 - (b) more than one subclass of business within a single class of business must complete a minimum of 12 hours of CPD activities per CPD cycle; or
 - (c) more than one class of business must complete a minimum of 18 hours of CPD activities per CPD cycle.
- (2) Key individuals and representative must submit evidence of their CPD activities to the FSP within 15 days after expiry of the CPD cycle.
- (3) An FSP, key individual and representative must ensure that the CPD activities are tailored to meet the specific knowledge and skills, needs and/or gaps arising from changing internal and external conditions having cognisance of classes and subclasses of business and the financial product category for which it is authorised, approved or appointed.
- (4) An FSP, key individual and representative that is authorised, approved or appointed for a period of less than 12 months in a particular CPD cycle, must by the end of that CPD cycle complete a pro-rated minimum number of CPD hours calculated as follows:

| | | |
|--|-----|--|
| $(X \div 12) \times Y = Z$ | X = | Number of annual required CPD hours |
| | Y = | number of months authorised, approved or appointed during a particular CPD cycle |
| | Z = | Required pro rata CPD hours |

34. Reduction of CPD hours

- (1) An FSP may pro rata reduce the CPD hours in respect of a representative for the period of time during which that representative is continuously absent from work if that absence is due to—
 - (a) maternity, paternity or adoption leave;
 - (b) long-term illness or disability; or
 - (c) the representative's responsibilities to care for a family member of that representative who has a long-term illness or disability.

- (2) The reduced CPD hours must be calculated as follows:

| | |
|-----------------------------------|--|
| $(X \div 12) \times (12 - Y) = Z$ | X = Number of annual required CPD hours |
| | Y = number of months absent from work in a particular CPD cycle |
| | Z = Required pro rata CPD hours |

- (3) An FSP may not reduce the CPD hours of a representative for consecutive CPD cycles except where the absence referred to in subsection (1) commenced in a particular CPD cycle and uninterruptedly continues into the consecutive CPD cycle.
- (4) The reduction referred to in subsection (3) may only be applied for a maximum period of three consecutive CPD cycles.

Chapter 5 : Operational Ability

- 35. Application of Chapter
- 36. General requirements
- 37. Governance requirements
- 38. Additional requirements applicable to FSPs that provide automated advice
- 39. Outsourcing of functions to a person other than a representative of the FSP
- 40. Appointment of representatives
- 41. Representatives
- 42. Key individuals

35. Application of Chapter

The fit and proper requirements relating to operational ability contained in this Chapter apply to the extent set out in this Chapter to FSPs, representatives and key individuals.

36. General requirements

- (1) An FSP must—
- (a) have the operational ability, including adequate and appropriate human, technical and technological resources, to effectively function as a particular category of FSP and to render the financial services in relation to the financial product for which it is authorised;
 - (b) adopt, document and implement an effective governance framework that provides for the fair treatment of clients and prudent management and oversight of the business of the FSP; and
 - (c) at all times have—
 - (i) a fixed physical business address from where the business is operated

- or controlled;
 - (ii) adequate access to communication facilities, including a full-time telephone or cell phone service;
 - (iii) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence;
 - (iv) a bank account with a registered bank, including, where required in the Act, a separate bank account for client funds; and
 - (v) adequate and appropriate key individuals to effectively manage or oversee the activities of the FSP relating to the rendering of financial services, including having at least one key individual per class of business in respect of which the FSP is authorised.
- (2) The key individual referred to in subsection (1)(c)(v) insofar it relates to the requirement that the FSP must have at least one key individual per class of business in respect of which the FSP is authorised, could be a single person responsible for managing or overseeing the rendering of financial services in respect of all or multiple classes of business of the FSP provided that it—
 - (a) is approved for all such classes of business; and
 - (b) has the operational ability to oversee or manage the rendering of financial services in respect of all such classes of business.

37. Governance requirements

The governance framework of an FSP must—

- (1) be proportionate to the nature, scale, risks and complexity of the business of the FSP;
- (2) include, but not limited to, effective and adequate systems of corporate governance, risk management (including conduct risk management) and internal controls that subject to subsection (1) includes—
 - (a) a business plan setting out the aims and scope of the business, the business strategies and related matters;
 - (b) risk management policies, procedures and systems, including—
 - (i) effective procedures for risk assessment, which identify the risks relating to the FSP's activities, processes and systems, and where appropriate, set the level of risk tolerated by the FSP;
 - (ii) effective procedures and systems—
 - (aa) to ensure compliance by the FSP, its officers, employees, key individuals and representatives with the Act and other applicable laws, including the Financial Intelligence Centre Act, 2001 and other applicable anti-money laundering or terrorist financing legislation;
 - (bb) to ensure compliance with decisions and decision-making procedures at all levels of the FSP;
 - (cc) to detect any risk of failure by the FSP to comply with applicable legislation, and put in place measures and procedures to minimise such risk; and
 - (dd) that provide for corrective actions to be taken in respect of non-compliance, weak oversight, failure of controls or lack of sufficient management;
 - (ii) systems and procedures that are adequate to safeguard the security,

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- integrity and confidentiality of information, including—
 - (aa) electronic data security and internal and external cybersecurity;
 - (bb) physical security of assets and records;
 - (cc) system application testing;
 - (dd) back-up and disaster recovery plans and procedures for systems and electronic data; and
 - (iii) systems and processes to ensure accurate, complete and timeous processing of data, reporting of information and the assurance of data integrity;
 - (c) accounting policies and procedures to enable the FSP to record, report and deliver in a timely manner to the Registrar financial reports which reflect a true and fair view of its financial position and which comply with the applicable reporting and accounting standards and requirements;
 - (d) sound and sustainable remuneration policies and practices which promote the alignment of interests of the FSP with those of its clients and which avoid excessive risk taking and unfair treatment of customers;
 - (e) a business continuity policy aimed at ensuring, in the case of an interruption to the FSP's systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its regulated activities, or where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities;
 - (f) a recovery plan for the restoration of the FSP's financial situation following a significant deterioration and viable resolution plan setting out options for the orderly resolution of the FSP in the case of failure; and
 - (g) provide for regular monitoring and evaluation of the adequacy and effectiveness of its systems, processes and internal control mechanisms and measures to address any deficiencies and to determine whether it serves reasonably to ensure—
 - (i) risk detection and compliance with applicable legislation;
 - (ii) the integrity of the FSP's practices, including the treatment of clients with due care, skill and diligence and in a fair, honest and professional manner; and
 - (iii) appropriate segregation of key duties and functions, particularly those duties and functions which, when performed by the same individual, may result in undetected errors or may be susceptible to abuses which expose the FSP or its clients to inappropriate risks.

38. Additional requirements applicable to FSPs that provide automated advice

In addition to the requirements set out in section 37, an FSP that provides automated advice must—

- (a) have adequate and appropriate human resources that have the required competence to—
 - (i) understand the technology and algorithms used to provide the automated advice;
 - (ii) understand the methodological approaches, including assumptions, embedded in the algorithms;
 - (iii) understand the preferences or biases that exist in the approaches referred to
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- in (ii);
 - (iv) understand the risks and rules underpinning the algorithms;
 - (v) identify the risks to clients arising from the automated advice; and
 - (vi) monitor and review the automated advice generated by algorithms to ensure quality and suitability of the advice and compliance with the Act;
- (b) establish, implement and maintain adequate policies and procedures—
 - (i) to monitor, review and test the algorithms and the advice generated by it;
 - (ii) to monitor, review and test the filters implemented to ensure clients for whom the automated advice is not suitable are filtered out; and
 - (iii) that set out the level of human review that will be undertaken on the advice generated;
- (c) in relation to the monitoring and testing of the algorithms and filters referred to in (b), —
 - (i) have appropriate system design documentation that sets out the purpose, scope and design of the algorithms and filters;
 - (ii) have a documented test strategy that explains the scope of testing, including test plans, test cases, test results, defect resolution, and final test results;
 - (iii) have appropriate processes for managing any changes to an algorithm and filters that include having security arrangements in place to monitor and prevent unauthorised access to the algorithms;
 - (iv) be able to control, monitor and reconstruct any changes to algorithms or filters;
 - (v) review and update algorithms whenever there are factors that may affect their relevance (such as market changes and changes in the law);
 - (vi) have in place controls and processes to suspend the provision of advice if an error within an algorithm or filters is detected; and
 - (vii) be able to frequently monitor and supervise the performance of algorithms and filters through an adequate and timely review of the advice provided;
- (d) have adequate and sufficient technological resources to—
 - (i) maintain client records and data integrity;
 - (ii) protect confidential and other information; and
 - (iii) meet current and anticipated operational needs, including in relation to system capacity.

39. Outsourcing of functions to a person other than a representative of the FSP

- (1) An FSP must exercise due skill, care and diligence when entering into (including the selection process), managing or terminating any arrangement for the outsourcing to any person other than a representative of the FSP of—
 - (a) a function that the Act or another law requires to be performed or requires to be performed in a particular way or by a particular person;
 - (b) a function that is integral to the nature of the financial services for which the FSP is authorised; or
 - (c) any material important operational function of the FSP.
- (2) An FSP, where it outsources a function or activity referred to in (1), must—
 - (a) ensure that the person to whom the function or activity has been outsourced —
 - (i) has the ability, capacity, and any authorisation required by law to

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- perform the outsourced functions, services or activities reliably and professionally;
 - (ii) is able to carry out the outsourced services effectively, to which end the FSP must establish methods for assessing the standard of performance of that person;
 - (b) have a written contract that governs the outsource arrangement and which clearly provides for all material aspects of the outsourcing arrangement, including—
 - (i) addressing the rights, responsibilities, and service-level requirements of all parties;
 - (ii) providing for access by the FSP and the Registrar to the person's business and information in respect of the outsourced function or activity;
 - (iii) addressing sub-outsourcing; and
 - (iv) addressing confidentiality, privacy and the security of information of the FSP and clients of the FSP;
 - (c) properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing, including any risks to the FSP's clients;
 - (d) take appropriate action if it appears that the person may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (e) retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing;
 - (f) be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of financial services to clients;
 - (g) establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities;
 - (h) have effective access to data related to the outsourced activities, including any data relating to the FSP's clients, as well as to the business premises of the person; and
 - (i) ensure that the outsourcing arrangement does not—
 - (i) compromise the fair treatment of or continuous and satisfactory service to the FSP's clients; or
 - (ii) result in key decision making responsibilities being removed from the FSP.

40. Appointment of representatives

- (1) An FSP must ensure that where it appoints a person as a representative—
 - (a) the person—
 - (i) is not declared insolvent or provisionally insolvent;
 - (ii) is not under liquidation, provisional liquidation or business rescue; and
 - (iii) is not subject to any pending proceedings which may lead to an outcome referred to in subparagraph (i) to (ii);
 - (b) the person, in the case of a juristic representative, has sufficient operational ability and financial resources to perform the activities for which it is
-

-
- appointed as a representative; and
 - (c) such appointment does not—
 - (i) materially increase any risk to the FSP or to the fair treatment of its clients;
 - (ii) materially impair the quality of the governance framework of the FSP, including the FSP's ability to manage its risks and meet its legal and regulatory obligations;
 - (iii) compromise the fair treatment of or continuous and satisfactory service to clients;
 - (iv) prevent the FSP from acting in the best interests of its clients; or
 - (v) result in key decision making responsibilities being removed from the FSP.
 - (2) An FSP must ensure that any remuneration or fee paid in respect of an activity or function for which a person is appointed as a representative—
 - (a) is reasonable and commensurate with the actual function or activity; and
 - (b) is not structured in a manner that may increase the risk of unfair treatment of clients.
 - (3) An FSP must develop appropriate contingency plans to ensure the continued function of the FSP's business and continued service to its clients in the event that the appointment of the representative is terminated or becomes ineffective.
 - (4) An FSP may not permit a representative to outsource or sub-delegate any activity or part thereof relating to the rendering of financial services that that representative performs on behalf of the FSP.

41. Representatives

- (1) A representative of an FSP must have the operational ability to effectively function as a representative of the FSP or perform the activities for which that person was appointed.
- (2) A juristic representative must at all times have at least one key individual responsible for managing or overseeing the financial services rendered by the representative.

42. Key individuals

- (1) A key individual must have the operational ability to effectively manage and oversee the financial services related activities of the FSP or juristic representative and the financial services in relation to the financial product for which the key individual was approved or appointed.
 - (2) A key individual, where he or she is—
 - (a) approved or appointed as a key individual of more than one FSP or juristic representative; or
-

-
- (b) approved or appointed as a key individual of an FSP or juristic representative and appointed as a representative of an FSP other than the first mentioned FSP,
must be able to demonstrate to the Registrar, in a form and manner which may be determined by the Registrar, that he or she has the required operational ability to effectively and adequately manage or oversee the financial services related activities of all the FSPs or juristic representatives for which the key individual was approved or appointed.
 - (3) An FSP must, on a regular basis, assess the operational ability of its key individuals to adequately and effectively perform their functions taking into account individual circumstances, the nature, scale, range and complexity of the FSP's financial services related activities and whether the key individuals are approved as key individuals or appointed as representatives of other FSPs.

Chapter 6 : Financial Soundness

Part 1 : Application and General Requirements

Part 2 : Requirements for specific Category I FSPs and their juristic representatives

Part 3 : Requirements applicable to specific Categories of FSPs and juristic representatives

Part 1 : Application and General Requirements

43. Application of Chapter

44. General requirements

43. Application of Chapter

The fit and proper requirements relating to financial soundness contained in this Chapter—

- (a) subject to paragraph (b), apply to—
 - (i) all FSPs; and
 - (ii) juristic representatives;
 - (b) do not apply to—
 - (i) a key individual or a representative that is a natural person; and
 - (ii) an FSP who is a registered Bank as defined in section 1 of the Banks Act, or a registered insurer as defined in sections 1 of the Short-term Insurance Act or Long-term Insurance Act, provided that the FSP complies with the financial soundness requirements prescribed by those Acts.
-

44. General requirements

- (1) An FSP and a juristic representative must at all times maintain financial resources that are adequate both as to amount and quality to carry out their activities and supervisory arrangements and to ensure that liabilities are met as they fall due.
[Section 44(1) will become effective from 1 March 2019, but only insofar it relates to a juristic representative, in terms of section 53(1) of this Notice]
- (2) An FSP, other than a Category I FSP that does not hold or receive monies in respect of a financial product, and a juristic representative of such FSP, must have sound, effective and comprehensive strategies, processes and systems to assess and maintain, on an ongoing basis, the amounts, types and distribution of financial resources that it considers adequate to cover:
 - (a) the nature and level of the risks to which it is, or might be, exposed;
 - (b) the risk that the FSP or juristic representative might not be able to meet the requirements set out in this Chapter.***[Section 44(1) will become effective from 1 March 2019, but only insofar it relates to a juristic representative, in terms of section 53(1) of this Notice]***
- (3) No person may become or continue as an FSP or juristic representative if—
 - (a) declared insolvent or provisionally insolvent;
 - (b) placed under liquidation or provisional liquidation;
 - (c) subject to section 9(3), it is subject to any pending proceedings which may lead to an outcome referred to in paragraph (a) to (b); or
 - (d) subject to section 9(3), it seriously and persistently failed or fails to manage any of its financial obligations satisfactorily.
- (4) No person may become an FSP or a juristic representative if business rescue proceedings have commenced in respect of that person.

Part 2 : Requirements for specific Category I FSPs and their juristic representatives

45. Application of Part and Requirement

45. Application of Part and Requirement

- (1) This part applies to a Category I FSP and a juristic representative of a Category I FSP that does not hold, control or has access to client assets or that does not collect, hold or receive premiums or other monies in respect of a financial product.
- (2) The assets of a –
 - (a) Category I FSP; and
 - (b) juristic representative of a Category I FSP,must at all times exceed the liabilities of that FSP or that juristic representative.

[Section 45 will become effective from 1 March 2019, but only insofar it relates to a juristic

representative, in terms of section 53(1) of this Notice]

Part 3 : Requirements applicable to specific Categories of FSPs and juristic representatives

- 46. Application of Part
- 47. Definitions
- 48. Specific requirements
- 49. Early warning requirements
- 50. Multiple Category FSPs

46. Application of Part

- (1) The requirements contained in this Part—
 - (a) apply, subject to paragraph (b) to—
 - (i) a Category I FSP that holds, controls or has access to client assets or that collects, holds or receives premiums or other monies in respect of a financial product;
 - (ii) a Category II, IIA, III and IV FSP; and
 - (iii) a juristic representative of an FSPs referred to in subparagraph (ii);
 - (b) does not apply to—
 - (i) a Category I FSP that does not hold, controls or has access to client assets or that does not collect, hold or receive premiums or other monies payable in respect of a financial product.

47. Definitions

For purposes of this Part, unless the context indicates otherwise,—

"additional asset requirement"

means the additional asset requirement referred to in Table B of this Part;

"annual expenditure"

means—

- (a) the expenditure set out in the latest set of financial statements of an FSP; or
 - (b) in the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or financial accounts,
- less—
- (i) staff bonuses;
 - (ii) employees' and directors', partners' or members' share in profit;
 - (iii) emoluments of directors, members, partners or sole proprietor;
 - (iv) other appropriation of profits to directors, members and partners;
 - (v) remuneration that is linked to—
 - (aa) a percentage of the FSP's revenue; or
 - (bb) a percentage of the revenue generated by an employee,

- representative or contractor of the FSP; and
- that in the absence of such revenue the FSP has no obligation to pay the remuneration;
- (vi) depreciation;
- (vii) bad debts; and
- (viii) any loss resulting from the sale of assets;

"assets"

in relation to the general solvency requirement and the additional asset requirement means the assets of an FSP excluding the following assets:

- (a) goodwill;
- (b) intangible assets; and
- (c) investments in and loans to related parties;

"general solvency requirement"

means the requirement referred to in section 48(1);

"liabilities"

in relation to the general solvency requirement means the liabilities of the FSP excluding loans subordinated in favour of other creditors;

"liquid assets"

means—

- (a) cash;
- (b) a participatory interest in a money market portfolio;
- (c) 70% of the market value of a participatory interest in a collective investment scheme, other than an investment in a money market portfolio or a CIS hedge fund; or
- (d) 70% of the market value of a security listed on a licensed exchange provided it does not constitute more than 50% of total liquid assets,
- (e) provided that—
 - (i) the assets referred to in paragraphs (a) and (b) are capable of being converted, without any penalty on capital in terms of the conditions of the asset, into cash as follows:
 - (aa) 50% within 7 days; and
 - (bb) 50% within 30 days; and
 - (ii) the assets referred to in paragraphs (c) and (d) are capable of being converted into cash within 7 days;

"liquidity requirement"

means the liquidity requirement referred to in Table B of this Part;

"money market portfolio"

means a money market portfolio as contemplated in the Collective Investments Schemes Control Act;

"remuneration"

for purposes of the definition of 'annual expenditure', includes salaries, wages, commissions, fees and any other payment, paid directly or indirectly by an FSP to an employee, representative or contractor of that FSP either directly or indirectly;

"working capital requirement"

means the working capital requirement referred to in Table B of this Part.

48. Specific requirements

- (1) The assets of a person referred to in section 46(1)(a) must at all times exceed the liabilities of that person.
- (2) A person referred to in section 46(1)(a) must at all times comply with the additional asset, working capital and liquidity requirements as set out in Table B.
- (3) An FSP referred to in section 46(1)(a) must submit to the Registrar Form A in Annexure Six—
 - (a) in the case of a Category II, IIA and III FSP, on a half yearly basis calculated in terms of the FSP's financial year;
 - (b) in the case of a Category I and IV FSP, on an annual basis.
- (4) A juristic representative referred to in section 46(1)(a) must submit to its FSP, on a half yearly basis calculated in terms of the representative's financial year, Form A in Annexure Six.
- (5) The form referred to in subsections (3) and (4) must be submitted –
 - (a) in the case of persons referred to in subsections (3)(a) and (4), within 45 days after every half year-end of the FSP or juristic representative as the case may be; and
 - (b) in the case of Category I and IV FSPs, simultaneously with the financial statements of the FSP as contemplated in section 19 of the Act.

| TABLE B | | | |
|---|--|--|--|
| Category of FSP and juristic representative | Additional Asset Requirement | Working Capital Requirement | Liquidity Requirement |
| Category I | N/A | Current assets must exceed current liabilities | Liquid assets equal to or greater than 4/52 weeks of annual expenditure |
| Category II | N/A | Current assets must exceed current liabilities | Liquid assets equal to or greater than 8/52 weeks of annual expenditure |
| Category IIA | Assets of the FSP must exceed the FSP's liabilities by at least R3 million | Current assets must exceed current liabilities | Liquid assets equal to or greater than 13/52 weeks of annual expenditure |

| | | | |
|---------------------|--|--|--|
| Category III | Assets of the FSP must exceed the FSP's liabilities by at least R3 million | Current assets must exceed current liabilities | Liquid assets equal to or greater than 13/52 weeks of annual expenditure |
| Category IV | N/A | Current assets must exceed current liabilities | Liquid assets equal to or greater than 4/52 weeks of annual expenditure |

[Section 48 will become effective from 1 March 2019, but only insofar it relates to a juristic representative, in terms of section 53(1) of this Notice]

49. Early warning requirements

- (1) An FSP referred to in section 46(1)(a) must, in writing, immediately notify the Registrar when—
 - (a) the assets of the FSP or that of its juristic representative exceed the liabilities by less than 10%;
 - (b) the current assets of the FSP or that of its juristic representative exceeds the current liabilities by less than 10%;
 - (c) in respect of a Category IIA and III FSP and juristic representatives of that FSPs, the additional assets of the FSP or that of its juristic representative exceeds the minimum requirement by less than 10%;
 - (d) the FSP or its juristic representative does not meet any of the requirements in this Chapter; or
 - (e) the FSP becomes aware of an event or situation that may or will result in the effect contemplated in paragraphs (a), (b) and (c).
- (2) The notification referred to in subsection (1) must be certified by the chief executive officer, controlling member, managing or general partner, or trustee, of the FSP as the case may be.
- (3) The requirements set out in subsection (1) apply, with the necessary changes to a juristic representative referred to in section 45(1)(a)(iii), provided that the notification referred to in that subsection must be made to the FSP of the juristic representative.
- (4) If any of the factors in subsection (1) arises, the FSP may not directly or indirectly make any payment by way of a loan, advance, bonus, dividend, repayment of capital or a loan or any other payment or other distribution of assets to any director, officer, partner, shareholder, related party or associate without the prior written approval of the Registrar.

[Section 49 will become effective from 1 March 2019, but only insofar it relates to a juristic representative, in terms of section 53(1) of this Notice]

50. Multiple Category FSPs

A person authorised as an FSP or appointed as a juristic representative under more than one category of FSP must comply with the most onerous of the financial soundness requirements applicable to the different categories of FSPs for which that person is authorised or appointed.

Chapter 7 : Miscellaneous: Repeal of previous Board Notices on fit and proper requirements, savings, and transitional provisions

51. Repeals
 52. Transitional provisions
 53. Short title and commencement
-

51. Repeals

- (1) The following are hereby repealed:
 - (a) the Notice on Determination of Qualifying Criteria and Qualifications for Financial Services Providers, Number 1 of 2008, published by Board Notice 105 of 2008 in *Government Gazette* 31514 of 15 October 2008;
 - (b) the Notice on Determination of Fit and Proper Requirements for Financial Services Providers, 2008, published by Board Notice 106 of 2008 in *Government Gazette* 31514 of 15 October 2008; and
 - (c) the Notice on Exemption of Certain Persons from the Level 1 Regulatory Examination Requirements, 2012, published by Board Notice 102 of 2012 in *Government Gazette* 35422 of 6 June 2012.

52. Transitional provisions

Qualifications

- (1) The qualifications obtained by an FSP, key individual or a representative—
 - (a) relating to a particular financial product and particular financial service in relation to a specific category of FSP in respect of which the FSP, key individual or representative was authorised, approved or appointed prior to 1 January 2010; and
 - (b) that complied with the relevant requirements set out in section 10 of the Notice referred to in section 51(1)(b),is deemed to meet the minimum qualification requirements set out in Part 3 of Chapter 3 but only insofar it relates to that particular financial product and particular financial service in respect of which it was so authorised, approved or appointed.
- (2) The qualifications recognised by the Registrar and published on the List of Recognised Qualifications in terms of the Notices referred to in section 51(1)(a) and (b) is deemed to be recognised in terms of Part 3 of Chapter 3 for the particular financial product and particular financial service for which the qualification was recognised.

Experience

- (3) The experience gained by an FSP or a representative, excluding a representative working under supervision, who was authorised or appointed for a particular financial product and particular financial service in relation to a specific category of FSP prior to the commencement of this Notice is deemed to meet the minimum experience requirements set out in Part 2 of Chapter 3 for that particular financial product and particular financial service.
- (4) The experience gained by a key individual approved prior to the commencement of this Notice to manage or oversee the rendering of a particular financial service in respect of a particular financial product in relation to a specific category of FSP is deemed to meet the minimum experience requirements set out in Part 2 of Chapter

3.

Product specific training

- (5) Subject to subsection (6), an FSP or representative, excluding representatives working under supervision, authorised or appointed prior to the commencement of this Notice is deemed to have completed the product specific training contemplated in Part 5 of Chapter 3 for the financial products for which they were authorised or appointed.
- (6) The deeming provision in subsection (5)—
 - (a) is limited to the particular financial products for which the FSP or representatives was authorised or appointed and in respect of which financial services were rendered prior to the commencement of this Notice; and
 - (b) does not apply to the requirement to complete product specific training on amendments to particular financial products where those amendments occurred after the commencement of this Notice.
- (7) A representative working under supervision at commencement of this Notice has three months from the date on which section 29(1)(b) comes into effect to comply with the product specific training requirements set out in Part 5 of Chapter 3.
- (8) A person authorised or appointed after commencement of this Notice but prior to the date on which section 29(1)(b) comes into effect has three months from the effective date of section 29(1)(b) to comply with the product specific training requirements set out in Part 5 of Chapter 3.

Class of business training

- (9) An FSP, key individual, other than a key individual of a Category I FSP, or representative, excluding a representative working under supervision, authorised, approved or appointed prior to commencement of this Notice is deemed to have completed the class of business training contemplated in Part 5 of Chapter 3 in respect of the financial products for which they were so authorised, approved or appointed.
- (10) A key individual of a Category I FSP approved prior to commencement of this Notice is deemed to have completed the class of business training contemplated in Part 5 of Chapter 3 in respect of the financial products for which the—
 - (a) key individual was approved to manage or oversee; or
 - (b) Category I FSP, in respect of which the key individual was approved, was authorised, during any period prior to the commencement of this Notice.
- (11) A key individual referred to in subsection (10) must –
 - (a) within six months after commencement of this Notice inform the Registrar of the classes of business it currently manages and oversees in respect of all FSPs for which it is approved; and
 - (b) submit the information referred to in paragraph (a) in the manner and format prescribed by the Registrar.
- (12) A representative working under supervision at commencement of this Notice has 12 months from the date on which section 29(1)(a) comes into effect to comply with the class of business training requirements set out in in Part 5 of Chapter 3 for the financial

products in respect of which they are working under supervision.

- (13) A person authorised, approved or appointed after commencement of this Notice but prior to the date on which section 29(1)(a) comes into effect has 12 months from the effective date of section 29(1)(a) to comply with the class of business training requirements set out in in Part 5 of Chapter 3.

Restrictions on licence

- (14) The restrictions on the licence of an FSP authorised at the date of commencement of this Notice for the financial products listed in Column A of Table C will be—
- amended by the Registrar to include the corresponding financial products listed in Column B of the Table; and
 - deemed to be authorised for the corresponding financial products listed in column B until such time the Registrar has amended the restrictions of its licence.

| TABLE C | |
|-------------------------------------|---|
| Column A | Column B |
| Short-term Insurance Personal Lines | Short-term Insurance Personal Lines A-1 |
| Long-term Insurance subcategory B1 | Long-term Insurance subcategory B1-A |
| Long-term Insurance subcategory B2 | Long-term Insurance subcategory B2-A |

- (15) The FSP referred to in subsection (14) must within three months after the amendment by the Registrar of the restrictions on its licence update the central representative register to correctly reflect the financial products in respect of which a representative is appointed to render financial services.
- (16) The first date on which an FSP, key individual or representative was authorised, approved or appointed for the financial products referred to in Column A of Table C, where that date occurred prior to the commencement of this Notice, will be deemed to be the date on which the FSP, key individual or representative was first authorised, approved or appointed for the financial products referred to in Column B.
- (17) An FSP that—
- renders financial services in respect of a financial product listed in Column A of Table D; and
 - at commencement of this Notice is authorised to render the services in respect of the financial product referred to in paragraph (a);
- is deemed to be authorised for the corresponding financial product listed in Column B of Table D—
- provided the FSP submits an application for authorisation to render the services in respect of the financial product listed in Column B of Table D to the Registrar within three months after commencement of this Notice; and
 - until such time the Registrar has finally approved or rejected the application referred to in subparagraph (i).

| TABLE D |
|---------|
|---------|

| Column A | Column B |
|--|--|
| Participatory interest in a collective investment scheme | Participatory interest in a CIS hedge fund |
| Short-term deposit | Structured deposit |
| Long-term deposit | Structured deposit |

53. Short title and commencement

- (1) This Notice is called the Determination of Fit and Proper Requirements, 2017, and comes into operation on 1 April 2018, except those sections of the Notice specified in the first column of the Table hereunder, which will take effect on the dates as indicated in the second column of the Table.

| Section in Notice | Effective Date |
|--|----------------|
| Sections 13(3) and (5) | 1 May 2018 |
| Section 29(1)(a) | 1 August 2018 |
| Section 29(1)(b) | 1 May 2018 |
| Section 29(2) | 1 August 2018 |
| Sections 31 - 34 | 1 June 2018 |
| Section 38 | 1 May 2018 |
| Sections 44(1) and (2); 45; 48 and 49 but only insofar it relates to a juristic representative | 1 March 2019 |

Annexures

Annexure One : Minimum Experience
 Annexure Two : Appropriate Subject List
 Annexure Three : Tier 1 and Tier 2 Financial Products
 Annexure Four : Classes of Business
 Annexure Five : Regulatory Examinations
 Annexure Six : Form A - Liquidity calculation

Annexure One : Minimum Experience

Table 1: Experience requirements for and in relation to Category I FSPs
 Table 2: Experience requirements for and in relation to Category II FSPs

Table 1: Experience requirements for and in relation to Category I FSPs

ANNEXURE ONE : MINIMUM EXPERIENCE

| TABLE 1 TABLE 1: EXPERIENCE REQUIREMENTS FOR AND IN RELATION TO CATEGORY I FSPs | | | |
|--|--|---|---|
| | <i>Column A</i> <i>Financial products</i> | <i>Column B</i> <i>Advice: Min. experience</i> | <i>Column C:</i> <i>Intermediary services: Min. experience</i> |
| 1.1 | Long-term Insurance subcategory A | 6 months | 2 months |
| 1.2 | Short-term Insurance Personal Lines 1 year 6 months | 1 year | 6 months |
| 1.3 | Long-term Insurance subcategory B1 | 1 year | 6 months |
| 1.4 | Long-term Insurance subcategory C | 1 year | 6 months |
| 1.5 | Retail Pension Benefits | 1 year | 6 months |
| 1.6 | Short-term Insurance Commercial Lines | 1 year | 6 months |
| 1.7 | Pension Fund Benefits | 1 year | 6 months |
| 1.8 | Shares | 2 years | 1 year |
| 1.9 | Money-market instruments | 2 years | 1 year |
| 1.10 | Debentures and securitised debt | 2 years | 1 year |
| 1.11 | Warrants, certificates or other instruments | 2 years | 1 year |
| 1.12 | Bonds | 2 years | 1 year |
| 1.13 | Derivative instruments | 2 years | 1 year |
| 1.14 | Participatory interest in a collective investment scheme | 1 year | 1 year |
| 1.15 | Forex Investment | 2 years | 1 year |
| 1.16 | Health Service Benefits | 2 years | 2 years |
| 1.17 | Long-term Deposits | 6 months | 3 months |
| 1.18 | Short-term Deposits | 6 months | 3 months |
| 1.19 | Friendly Society Benefits | 6 months | 2 months |
| 1.20 | Long-term Insurance subcategory B2 | 1 year | 6 months |
| 1.21 | Long-term Insurance subcategory B2-A | 1 year | 6 months |
| 1.22 | Long-term Insurance subcategory B1-A | 1 year | 6 months |
| 1.23 | Short-term Insurance Personal Lines A1 | 1 year | 6 months |
| 1.24 | Structured Deposits | 2 years | 1 year |
| 1.25 | Securities and instruments | 2 years | 1 year |
| 1.26 | Participatory interest in a CIS hedge fund | 2 years | 1 year |

Table 2: Experience requirements for and in relation to Category II FSPs

ANNEXURE ONE : MINIMUM EXPERIENCE

| TABLE 1 | | |
|--|--|---|
| TABLE 1: EXPERIENCE REQUIREMENTS FOR AND IN RELATION TO CATEGORY I FSPs | | |
| | <i>Column A</i> <i>Financial products</i> | <i>Column B:</i> <i>Minimum Experience</i> |
| 2.1 | Long-term Insurance subcategory B1 | 2 years |
| 2.2 | Long-term Insurance subcategory C | 2 years |
| 2.3 | Retail Pension Benefits | 2 years |
| 2.4 | Pension Fund Benefits | 2 years |
| 2.5 | Shares | 3 years |
| 2.6 | Money market instruments | 3 years |
| 2.7 | Debentures and securitised debt | 3 years |
| 2.8 | Warrants, certificates and other instruments | 3 years |
| 2.9 | Bonds | 3 years |
| 2.10 | Derivative instruments | 3 years |
| 2.11 | Participatory Interests in a collective investment scheme | 2 years |
| 2.12 | Forex Investment | 3 years |
| 2.13 | Long-term Deposits | 1 year |
| 2.14 | Short-term Deposits | 1 year |
| 2.15 | Long-term Insurance subcategory B2 | 2 years |
| 2.16 | Long-term Insurance subcategory B2-A | 2 years |
| 2.17 | Long-term Insurance subcategory B1-A | 2 years |
| 2.18 | Structured Deposits | 3 years |
| 2.19 | Securities and instruments | 3 years |
| 2.20 | Participatory interest in a CIS hedge fund | 3 years |

Annexure Two : Appropriate Subject List
ANNEXURE TWO : APPROPRIATE SUBJECT LIST

| TABLE 1 APPROPRIATE SUBJECT LIST | | |
|---|---|---|
| All Categories | | |
| Accounting | Equities Settlement | Mercantile Law |
| Actuarial Science | Equity Investments | Micro-economics |
| Advanced Investment Advice | Equity/Equities | Money Laundering Control |
| Agricultural Economics | Estate and Trust Law | Money laundering schemes |
| Applied Accountancy Skills | Estate Planning | Money Market |
| Applied Mathematics | Ethics | Money Market Settlement |
| Applied Statistics | Finance | Network Administration |
| Applied Time Value of Money | Finance For Non-Financial Managers | Operational Risk Management |
| Asset Classes & Basic Investment Principles | Financial Accounting | Payment Of Entitlement |
| Auditing | Financial Advice | Performance and Risk Strategy |
| Auditing and Internal Control | Financial Analysis | Personal Financial Planning |
| Authorisations And Approvals (Trading) | Financial Calculations | Personal Insurance Products and Practice |
| Banking | Financial Engineering | Portfolio Management |
| Banking Operations | Financial Governance | Practical Accounting Data Processing |
| Basic Economic Principles | Financial Management | Primary, secondary and wholesale markets |
| Behavioural Finance & Economics | Financial Market Operations | Principles Of Ethics In A Business Environment |
| Blockchain | Financial Market Regulatory Environment | Principles of Insurance |
| Bond and stock markets | Financial Markets | Principles of Life Insurance |
| Bonds | Financial Mathematics | Principles of Strategy, Financial Management and Risk |
| Bonds Settlement | Financial Operations | Principles of Taxation |
| Business Administration | Financial Planning | Process Management (Process Modeling And Control) |
| Business Assurance | Financial Planning Principles | Production Management |
| Business Economics | Financial Reporting | Prudential Requirements |
| Business Entities | Financial Services Industry | Quality Control In Call Centres |
| Business Environment | Financial Services Operations | Quantitative Economics |
| Business Ethics | Financial Services Preparations | Quantitative Finance |

| | | |
|---|--|--|
| Business Finance | Financial Statements | Quantitative Investment Analysis |
| Business Informatics | Forex Exposure Management | Quantitative Techniques |
| Business Information Systems | Fundamentals Of Financial Services | Regulatory Environment |
| Business Insurance | General Management | Responsibilities of financial institutions |
| Business Integration | Global Business Environment | Retirement Finance |
| Business Management | Governance, Risk And Compliance Management | Retirement Planning |
| Business Management & Financial Risk Assessment | Group Retirement Benefits | Retirement Related Legislation |
| Business Mathematics | Health Benefits/ Health Care Benefits | Retirement Wealth Preservation |
| Business to Business Marketing | Human Computer Interaction | Risk Financing |
| Call Centre Management | Independent audits and reviews | Risk Management |
| Capital market frameworks and concepts | Informatics | Risk Management and Insurance |
| Claims Management | Information Technology Architecture | Securities Information and Market Conditions |
| Client / Customer Services | Information Technology Enterprise | Securities Markets |
| Client Investment Needs | Insurance | Settlement (Finance) |
| Client Services and Financial Advice | Insurance & Risk Management | Small Business Management |
| Collateral Management | Interest-Bearing Investment | South African Financial System |
| Collective Investment Scheme Product Solutions | International Finance | Statistics or Analytical Techniques |
| Commercial Insurance Products and Practice | International Trade | STRATE |
| Commercial Law | Interpretation Of Statutes | Strategic Communication Management Skills |
| Companies Law | Introduction To The Financial Markets | Strategic Management |
| Complaints And Disputes | Introductory Financial Accounting | Strategy |
| Compliance function | Investment Management | Structured Systems Analysis and Design |
| Computer Architecture | Investment or Portfolio Management | Tax/ taxation |
| Conduct Of Business (Regulation) | Investment Planning | Taxation Law |
| Consumer Behaviour | Investor Psychology | Taxation Planning |

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| Corporate Finance | Law Of Contract Or Delict | The Bond Market |
| Corporate Financial Planning | Law Of Succession | The Derivatives Market |
| Corporate Governance | Legal Environment | The Equity Market |
| Corporate Law | Legislative Impact On Financial Advisors/ Planners | The Regulation And Ethics Of The South African Financial Markets |
| Cost Accounting | Long-Term Product Solutions | The South African Foreign Exchange Market |
| Cost and Financial Management | Macro Economics | Trade and Business Law |
| Costing and Estimating | Management | Trading On The Exchange |
| Creation of Wealth | Management Accounting | Treasury Management |
| Credit Risk Management | Managing Client Assets | Trustee management |
| Crypto Banking | Market Conduct | Visual Programming |
| Crypto Currency | Market Risk Management | Wealth Creation |
| Debt Instrument Solutions | Marketing | Wealth Management |
| Descriptive Statistics and Probability | Mathematical Analysis | |
| E-commerce in Business | Mathematical Economics | |
| Econometrics | Mathematical Statistics | |
| Economics | Mathematics | |
| Employee Benefits | Mathematics for Finance and Business | |
| Entrepreneurship | Medical Schemes | |

Annexure Three : Tier 1 and Tier 2 Financial Products
ANNEXURE THREE : TIER 1 AND TIER 2 FINANCIAL PRODUCTS

| TABLE 1 FINANCIAL PRODUCTS | |
|--|---|
| Column A Tier 1 Financial Products | Column B Tier 2 Financial Products |
| Structured Deposits | Short-term Insurance Personal Lines A1 |
| Short-term Insurance Personal Lines | Long-term Insurance subcategory A |
| Short-term Insurance Commercial Lines | Long-term Insurance subcategory B1-A |
| Long-term Insurance subcategory B1 | Long-term Insurance subcategory B2-A |
| Long-term Insurance subcategory B2 | Friendly Society Benefits |
| Long-term Insurance subcategory C | Short-term Deposits |
| Retail Pension Benefits | Long-term Deposits |
| Pension Fund Benefits | |
| Participatory interest in a collective investment scheme | |
| Participatory interest in a CIS hedge fund | |
| Forex Investment | |
| Health Service Benefits | |
| Shares | |
| Money market instruments | |
| Debentures and securitised debt | |
| Warrants, certificates and other instruments | |
| Bonds | |
| Derivative instruments | |
| Securities and Instruments | |

Annexure Four : Classes of Business**ANNEXURE FOUR : CLASSES OF BUSINESS****1. In this Annexure –****"Accident and health policy"**

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

"Assistance policy"

has the meaning assigned to it in section 1(1) of the Long-term Insurance Act but excludes a reinsurance policy in respect of such a policy;

"Engineering policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

"Fund policy"

has the meaning assigned to it in section 1(1) of the Long-term Insurance Act but excludes a reinsurance policy in respect of such a policy;

"Guarantee policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

"Long-term investment policy"

means a life policy as defined in section 1(1) of the Long-term Insurance Act other than a life risk policy;

"Liability policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

"Life risk policy"

means a disability, health or life policy as defined in section 1(1) of the Long-term Insurance Act that provides risk benefits only;

"Long-term reinsurance policy"

means a reinsurance policy as defined in section 1(1) of the Long-term Insurance Act;

"Miscellaneous policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

"Motor policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

"Property policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but

excludes a reinsurance policy in respect of such a policy;

"Short-term reinsurance policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act;

"Sinking fund"

has the meaning assigned to it in section 1(1) of the Long-term Insurance Act but excludes a reinsurance policy in respect of such a policy;

"Transportation policy"

has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy.

| TABLE 1 CLASSES OF BUSINESS | |
|--------------------------------|---|
| 1. | Short-term Insurance: Personal Lines |
| Subclasses | |
| 1.1 | Personal lines: Accident and health policy |
| 1.2 | Personal lines: Liability policy |
| 1.4 | Personal lines: Miscellaneous policy |
| 1.5 | Personal lines: Motor policy |
| 1.6 | Personal lines: Property policy |
| 1.7 | Personal lines: Transportation policy |
| 1.8 | Personal lines: Short-term reinsurance policy |
| 2. | Short-term Insurance: Commercial Lines |
| Subclasses | |
| 2.1 | Commercial lines: Accident and health policy |
| 2.2 | Commercial lines: Engineering policy |
| 2.3 | Commercial lines: Guarantee policy |
| 2.4 | Commercial lines: Liability policy |
| 2.5 | Commercial lines: Miscellaneous policy |
| 2.6 | Commercial lines: Motor policy |
| 2.7 | Commercial lines: Property policy |
| 2.8 | Commercial lines: Transportation policy |
| 2.9 | Commercial lines: Short-term reinsurance policy |
| 3. | Long-term Insurance |
| Subclasses | |
| 3.1 | Assistance policy |
| 3.2 | Life risk policy |
| 3.3 | Life investment, policy |
| 3.4 | Fund policy |
| 3.5 | Sinking fund policy |
| 3.6 | Long-term reinsurance policy |
| 4. | Pension Fund Benefits |

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| 5. | Short-term and Long-term Deposits |
| | |
| 6. | Structured Deposits |
| | |
| 7. | Investments |
| | <i>Subclasses</i> |
| 7.1 | Shares |
| 7.2 | Money market instruments |
| 7.3 | Debentures and securitised debt |
| 7.4 | Bonds |
| 7.5 | Derivative instruments, warrants, certificates or other instruments |
| 7.6 | Securities and Instruments |
| 7.7 | Participatory interests in a collective investment scheme |
| 7.8 | Participatory interest in a CIS hedge fund |
| 7.9 | Retail Pension Benefits |
| | |
| 8. | Forex Investments |
| | |
| 9. | Health Services Benefits |

Annexure Five : Regulatory Examinations

Table 1: Regulatory Examination: FSPs and Key Individuals in all Categories of FSPs

Table 2: Regulatory Examination: FSPs and Key Individuals in Categories II and IIA

Table 3: Regulatory Examination: FSPs and Key Individuals in Category III

Table 4: Regulatory Examination: Representatives in all Categories of FSPs

Table 1: Regulatory Examination: FSPs and Key Individuals in all Categories of FSPs

ANNEXURE FIVE : REGULATORY EXAMINATIONS

TABLE 1: REGULATORY EXAMINATION: FSPs AND KEY INDIVIDUALS IN ALL CATEGORIES OF FSPs

| TABLE 1 | | | | |
|----------|---|----|--|----------------------------|
| Task No. | Task | QC | Qualifying Criteria | Knowledge (K) or Skill (S) |
| 1 | Demonstrate understanding of the FAIS Act as a regulatory framework | 1 | Describe the FAIS Act and subordinate legislation | K |
| | | 2 | Explain how the FAIS Act is integrated with other Financial Services Board legislation | K |
| | | 3 | Describe the requirements when interaction between FSPs takes place | K |
| | | 4 | Explain in general which departments of the Registrar's office deal with which FSP matters | K |
| | | 5 | Interact with the Registrar when and where required | S |
| | | 6 | Explain what is the correct format of communication with the Registrar | K |
| | | 7 | Explain what processes are required to remain updated with regards to published changes to legislation that will affect the FSP. | K |
| 2 | Define financial products and financial services. | 1 | Provide an overview of the financial services and different types of financial products an FSP can deal with | K |
| | | 2 | Apply knowledge of the financial products within the financial services environment | S |
| | | 3 | Explain the different financial | K |

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| | | | products with examples of products in each category | |
| 3 | Maintain the licence of the FSP | 1 | Describe the requirement for licensing of an FSP | K |
| | | 2 | Apply for an FSP licence | S |
| | | 3 | Describe the requirements for changing any aspect of an FSP licence | K |
| | | 4 | Explain the impact of licensing conditions on an FSP. | K |
| | | 5 | Manage the licensing conditions. | S |
| | | 6 | Describe what changes to the FSP licensing details must be communicated to the Registrar | K |
| | | 7 | Confirm that the Registrar is informed within the prescribed timeframes of any changes to the FSP licensing details. | S |
| | | 8 | Describe the implications for the FSP if any of the licensing conditions are not met | K |
| | | 9 | Discuss the requirements around the display of licences. | K |
| | | 10 | Verify that the FSP has internal controls and procedures in place to ensure that financial services are rendered within the limitations on categories and subcategories for which the licence is issued. | S |
| | | 11 | Explain the implications when a Key Individual leaves the employ of the FSP | K |
| | | 12 | Explain the implications for a Key Individual and/or FSP if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998, or any other enabling legislation | K |
| | | 13 | Explain what levies are payable to the Registrar and when they should be paid. | K |
| | | 14 | Verify that there are processes in place to pay the levies within the prescribed timeframes | S |
| | | 15 | Explain the reasons why a licence can be suspended or withdrawn. | K |

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| | | | 16 | Describe the conditions under which suspensions, withdrawals and reinstatements of authorisation may be imposed. | K |
| | | | 17 | Explain what recourse an FSP has where its licence has been suspended or withdrawn. | K |
| | | | 18 | Discuss why a licence would be lapsed | K |
| | | | 19 | Describe how lapsing a licence differs from suspension or withdrawal of a licence | K |
| | | | 20 | Discuss the effect of voluntary sequestration, winding-up or closure of a business on its licensing status | K |
| | | | 21 | Describe the requirements where business rescue or application by Registrar for sequestration or liquidation takes place | K |
| | | | 22 | Explain what is meant by "undesirable practices." | K |
| | | | 23 | Check that there are processes in place to check whether the Registrar has published notices regarding undesirable practices | S |
| | | | 24 | Verify that there are processes in place to ensure that the business is aware of declared undesirable practices and that they cease any such practices | S |
| | | | 25 | Describe the implications for an FSP if the Registrar declares a business practice to be undesirable | K |
| | | | 26 | Explain the reparation measures available to the Registrar if an FSP continues with undesirable business practices. | K |
| | | | 27 | Explain the implications where the Registrar issues a directive | K |
| | | | 28 | Describe the process of On-site inspections by the Registrar | K |
| | | | 29 | Describe the FAIS Act offences | K |
| | | | 30 | Ensure that there are processes in place to avoid actions that can be regarded as offences under the | S |

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| | | | FAIS Act. | |
| | | 31 | Define the recourse that an FSP has in the event of a decision made by the Registrar | K |
| | | 32 | Explain the process of enforcement as provided for in legislation | K |
| 4 | Operate as a key individual in terms of the FAIS Act | 1 | Describe the roles and responsibilities of key individuals as defined in the FAIS Act. | K |
| | | 2 | Explain the requirements for approval of a key individual by the Registrar | K |
| | | 3 | Describe the regulated management and oversight responsibilities of a key individual | K |
| | | 4 | Perform the regulated management and oversight responsibilities of a key individual | S |
| | | 5 | Explain the controls required to ensure sufficient management and oversight of the financial services that are rendered | K |
| | | 6 | Explain when an individual can commence acting as a key individual. | K |
| | | 7 | Describe the good standing, honesty and integrity requirements for a key individual. | K |
| | | 8 | Check whether a current/potential key individual meets the good standing, honesty and integrity requirements. | S |
| | | 9 | Explain the implications for a key individual should the key individual no longer meet the good standing, honesty and integrity requirements | K |
| | | 10 | Take appropriate action where a current key individual no longer meets the good standing, honesty and integrity requirements. | S |
| | | 11 | Explain the implications for an FSP should a key individual no longer meet the good standing, honesty and integrity requirements | K |
| | | 12 | Describe the competence | K |

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| | | | requirements for a key individual | |
| | | 13 | Check whether a current/potential key individual meets the competence requirements. | S |
| | | 14 | Describe the on-going training and development requirements for key individuals. | K |
| | | 15 | Verify that the record keeping required for the on-going meeting of | S |
| 5 | Manage and oversee the operational ability of the FSP. | 1 | Describe the operational ability requirements prescribed in the FAIS Act. | K |
| | | 2 | Confirm that there is adequate storage and filing systems for the safe keeping of records, business communications and correspondence. | S |
| | | 3 | Verify that the FSP has the required bank accounts | S |
| | | 4 | Implement and maintain the prescribed professional indemnity or fidelity insurance cover | S |
| | | 5 | Ensure that disaster recovery and business continuity plans are in place | S |
| | | 6 | Describe the financial soundness requirements for an FSP | K |
| | | 7 | Confirm that the financial soundness requirements are met | S |
| | | 8 | Describe the requirements when outsourcing an administration or system function relating to financial services | K |
| | | 9 | Ensure, where activities are outsourced, that written service level agreements are in place | S |
| | | 10 | Check that there are processes in place to ensure that suitable providers are selected for any outsourced functions | S |
| | | 11 | Confirm that where outsourced entities provide financial services, that they are authorised FSP's | S |
| 6 | Adhere to the General Code of Conduct | 1 | Describe the general and specific duties of a provider | K |

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| | | | 2 | Describe the processes that need to be in place to manage conflict of interest | K |
| | | | 3 | Describe what could possibly be a conflict of interest | K |
| | | | 4 | Define what needs to be in a conflict of interest policy | K |
| | | | 5 | Ensure that the FSP is managing potential conflicts of interest. | S |
| | | | 6 | Apply the requirements of the General Code of Conduct for FSPs and Representatives. | S |
| | | | 7 | Explain the disclosures that need to be made before rendering a financial service | K |
| | | | 8 | Explain disclosures that must be made when rendering a financial service | K |
| | | | 9 | Check that disclosures are adequate to enable client's to make an informed decision. | S |
| | | | 10 | Explain the requirements for an FSP when custody of financial products and funds occurs. | K |
| | | | 11 | Confirm that there is a separate bank account with a registered bank into which client monies are deposited. | S |
| | | | 12 | Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to risk management and insurance | K |
| | | | 13 | Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to marketing and advertising | K |
| | | | 14 | Explain the manner in which complaints are to be handled by the FSP as required by General Code of Conduct for FSPs and Representatives. | K |
| | | | 15 | Verify that complaints procedures and processes are in place. | S |
| | | | 16 | Follow the complaints procedures and processes that are in place for the FSP. | S |

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| | | 17 | Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to the termination of agreement or business | K |
| 7 | Manage and oversee the compliance functions as required by the FAIS Act | 1 | Describe the compliance arrangements required by the FSP | K |
| | | 2 | Explain the requirements of the compliance function within the FSP. | K |
| | | 3 | Establish the compliance function within the FSP | S |
| | | 4 | Establish and maintain compliance and reporting arrangements for the FSP | S |
| | | 5 | Check that the compliance arrangements specify frequency of monitoring and reporting | S |
| | | 6 | Implement and maintain a documented process to ensure the adequacy of the FSP's compliance and monitoring arrangements. | S |
| | | 7 | Describe when a Compliance Officer should be appointed | K |
| | | 8 | Explain the criteria for approval of a Compliance Officer by the Registrar. | K |
| | | 9 | Ensure that the Compliance Officer is approved by the Registrar | S |
| | | 10 | Describe the role and function of a Compliance Officer. | K |
| | | 11 | Confirm that the compliance function / compliance practice has sufficient resources to provide an efficient compliance service | S |
| | | 12 | Explain why it is important for the Compliance Officer to act independently from the management of the FSP | K |
| | | 13 | Confirm that the Compliance Officer / compliance practice can function objectively and sufficiently independently of the FSP and avoids conflicts of interest | S |
| | | 14 | Explain why it is important for the Compliance Officer to be able to | K |

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| | | | avoid conflicts of interest during the execution of their duties | |
| | | 15 | Manage potential conflict of interest where there is not a specifically appointed Compliance Officer / compliance practice | S |
| | | 16 | Understand the content of the compliance report(s) in order to be able to sign it off | K |
| | | 17 | Confirm that where the Compliance Officer found any instances of non-compliance that this is addressed and rectified. | S |
| | | 18 | Replace the Compliance Officer if he/she does not have the required approval of the Registrar | S |
| 8 | Comply with regulated record keeping requirements | 1 | Explain the record keeping obligations as prescribed by the FAIS and FIC Acts | K |
| | | 2 | Verify that record keeping and retrieval of records is carried out in terms of the obligations prescribed by the FAIS and FIC Acts | S |
| | | 3 | Describe the requirements imposed when record keeping is outsourced to a third party | K |
| | | 4 | Confirm that third party outsourcing agreements are executed correctly. | S |
| | | 5 | Explain the security requirements for record keeping in terms of confidentiality and access to records. | K |
| 9 | Manage and oversee the accounting and auditing requirements | 1 | Describe the accounting and auditing requirements prescribed by the FAIS Act | K |
| | | 2 | Check that the required accounting and auditing requirements are in place and carried out accurately and timeously. | S |
| | | 3 | Describe the requirements for appointing an auditor or accounting officer | K |
| | | 4 | Ensure that the audit report submitted to the Registrar where funds are received meets the regulatory requirements | S |

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| 10 | Manage and oversee the requirements of the FIC Act and Money Laundering and Terrorist Financing control regulations, as it applies to the FSP. | 1 | Explain the requirements specific to an FSP prescribed by the FIC Act | K |
| | | 2 | Verify that all requirements for internal rules as required by the FIC Act are in place | S |
| | | 3 | Verify that the FSP has processes in place to ensure compliance with the identification, verification, record-keeping and reporting obligations under the FIC Act. | S |
| | | 4 | Check that there are processes in place to ensure that employees receive training in respect of, and are aware of, their obligation to report suspicious transactions. | S |
| 11 | Deal with complaints that have been submitted to the Ombud for FSPs | 1 | Explain the role and authority of the Ombud for FSPs | K |
| | | 2 | Discuss the obligations of the FSP in respect of an investigation conducted by the Ombud for FSPs | K |
| | | 3 | Check that there are processes in place to ensure that the FSP cooperates in the case of an investigation by the Ombud. | S |
| 12 | Define the role of the representative in terms of the FAIS Act. | 1 | Describe the roles and responsibilities of representatives as defined in the FAIS Act. | K |
| | | 2 | Explain when an individual must be appointed as a representative in terms of the FAIS Act | K |
| | | 3 | Describe the purpose and requirements of the register of representatives | K |
| | | 4 | Verify that the FSP maintains a register of representatives that meets the requirements of the FAIS Act | S |
| 13 | Manage and oversee the appointment of representatives | 1 | Explain what needs to be in place when appointing a representative | K |
| | | 2 | Verify that there are processes that enable the FSP to check that a representative meets the fit and proper requirements and can be appointed | S |
| 14 | Manage the rendering of services under supervision | 1 | Explain when representatives can act under supervision. | K |

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| | | 2 | Confirm that there are sufficient qualified individuals to act in the role of supervisor | S |
| | | 3 | Describe the requirements that must be in place when representatives act under supervision. | K |
| | | 4 | Ensure that the supervisors understand their role and have the capacity for the number of supervisees | S |
| | | 5 | Verify that there is supervision in place to oversee representatives | S |
| | | 6 | Perform the necessary supervision functions on representatives | S |
| | | 7 | Explain the disclosure requirements for a representative under supervision | K |
| 15 | Manage and oversee the representatives appointed by an FSP | 1 | Describe the on-going Fit and Proper requirements for representatives. | K |
| | | 2 | Verify that the record keeping required for the on-going meeting of Fit and Proper requirements for representatives is in place | S |
| | | 3 | Implement and maintain a documented process to ensure that all representatives are competent and will provide financial services on behalf of the FSP in accordance with the FAIS Act | S |
| | | 4 | Check that there are processes to ensure that representatives are making progress towards the Fit and Proper requirements. | S |
| | | 5 | Describe the implications if a representative no longer meets the Fit and Proper requirements | K |
| 16 | Debar representatives that have failed to comply with any provision of the FAIS Act in a material manner | 1 | Define the purpose of debarment | K |
| | | 2 | Describe when debarment should be considered | K |
| | | 3 | Check that the employment/ mandatory agreement with representatives include scope of activities as a representative and reasons for possible debarment | S |

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| | | 4 | Explain the debarment process that should be followed in the event of a possible contravention of the FAIS Act | K |
| | | 5 | Confirm that all role players in the FSP are informed about the reasons why debarment would be considered, the process that would be followed and any recourse that a representative may have | S |
| | | 6 | Verify that there are internal processes and procedures in place for the debarment of representatives | S |
| | | 7 | Explain the timeframe and process to notify the Registrar of a debarment | K |

Table 2: Regulatory Examination: FSPs and Key Individuals in Categories II and IIA

ANNEXURE FIVE : REGULATORY EXAMINATIONS**TABLE 2: REGULATORY EXAMINATION: FSPs AND KEY INDIVIDUALS IN CATEGORIES II AND IIA**

| TABLE 2 | | | |
|---------|---|--|--|
| No. | Task | Knowledge Criteria | Skill Criteria |
| 1 | Apply the Category II and/or IIA FSP business model | Describe the characteristics of a Category II and/or IIA FSP and how that differentiates it from other financial services providers in Cat I and/or III. | Take the difference between Category II and/or IIA FSPs and other financial services providers into account when making business related decisions |
| | | Discuss the separation of client assets from category II and/or IIA FSP's assets. | Perform the fiduciary duty of the CAT II and/or IIA FSP. |
| | | | Identify which assets belong to the client and which belong to the category II and/or IIA FSP. |
| | | | Interpret basic financial systems. |
| | | | Implement systems and processes to separate client and CAT II and/or IIA FSP assets. |
| | | Explain the role and responsibilities of the different parties involved, including but not limited to: <ul style="list-style-type: none"> different parties/ legal entities involved, nominee, MANCO, insurers, pension funds, 3rd party FSPs, Financial Advisors, brokers, clients | |
| | | Describe the need for relevant contractual agreements to be in place with the relevant other party. | Verify that the relevant contractual agreements are in place with the relevant other party. |

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| | | | Business is conducted in accordance with the contractual agreements. |
| 2 | Manage the role of the independent nominee | Describe the duties the nominee company is responsible for. | Verify that there are processes in place to check that the nominee company executes its' responsibilities towards the Category II and/or IIA FSP. |
| | | Explain the purpose of the nominee company. | Confirm the nominee company complies with its duties. |
| 3 | Manage and oversee client mandates | Explain why the category II and/or IIA FSP must use mandates that have been approved by the FSB. | Manage client mandates in accordance to mandatory requirements. |
| | | Explain why a mandate cannot be used if it is not approved by the FSB. | |
| | | Explain why a mandate cannot be used if it is not signed by the client or his duly authorised representative. | |
| | | Explain why such a mandate must adhere to the requirements in the Discretionary Code of Conduct. | |
| | | Explain what the requirements are for mandates. | |
| 4 | Manage and oversee typical daily transactions | Explain how different products have different turnaround times and should be adhered to. | Check that the systems and processes enable the implementation and execution of different turnaround times for different products. |
| | | Describe how there should be adequate controls in place to manage risks. | Check that the systems and processes have embedded controls to manage and contain risk. |
| 5 | Manage and oversee disclosures | Explain how to ensure transparency and manage conflict of interests. | Confirm that disclosures are adequate to enable client's ability to make an informed decision. |

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| 6 | Understand the legal environment of the CAT II and/or IIA FSP | Explain the liquidity requirement. | Apply the liquidity requirements to own business. |
| | | Explain the implications of the liquidity requirements, | |
| | | Describe the fidelity cover requirements. | Apply the fidelity requirements to own business. |
| | | Explain the implications of the fidelity cover requirements. | |
| | | Describe the applicable capital requirement. | Apply the applicable capital requirements to own business. |
| | | Explain the implications of the capital requirements. | |
| | | Explain why the Category II and/or IIA FSP is not allowed to engage in the netting of transactions. | Verify that there are systems in place to check that netting of transactions will not take place. |
| | | Explain why a Category II and/or IIA FSP must ensure that it only conducts business with another FSP that has the appropriate categories/subcategories on its license, and that business must also be conducted within the parameters of the client mandate. | Verify that it only conducts business with another FSP that has the appropriate categories/ subcategories on its license, and that business must also be conducted within the parameters of the client mandate, to ensure that all business is legitimate. |
| | | Describe what the continual compliance with the license requirements and conditions are. | Check that there are systems in place to check that new products or proposed business ventures will meet the limitations of the license requirements and conditions are. |
| 7 | Apply the record keeping requirements | Explain the period for which records must be kept. | Incorporate the record keeping requirements when planning system updates and strategic initiatives. |
| | | Describe the requirements specifically applicable to telephone and/or electronic requirements. | Verify that systems are in place to manage the record keeping risks of electronic and telephonic |

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| | | | transactions. |
| 8 | Comply with requirements when reporting to clients | Explain why clients must receive written reports at quarterly intervals, that provide them with investment and related information. | Verify that there are systems and processes that enable the preparation and delivery of accurate quarterly reports. |
| 9 | Institute a personal account Trading policy | Describe why a Discretionary FSP should have a personal account policy and why this is important. | Check that there is a personal account trading policy and that there are controls to check that this is adhered to. |
| 10 | Apply prohibitions in terms of the Discretionary Code of Conduct | Explain the prohibitions in terms of the Discretionary Code of Conduct. | Check that there are processes and controls in place to ensure that the FSP adheres to the prohibitions in terms of the Discretionary Code of Conduct. |
| 11 | Deal with Nominee Regulations | Describe the requirements of the Nominee Regulations, and what the FSP and the nominees must adhere to. | Check that there are processes and controls in place to ensure that the FSP adheres to the requirements in terms of the Nominee Regulations. |

Table 3: Regulatory Examination: FSPs and Key Individuals in Category III

ANNEXURE FIVE : REGULATORY EXAMINATIONS**TABLE 3: REGULATORY EXAMINATION: FSPs AND KEY INDIVIDUALS IN CATEGORY III FSPs –
correct all references to discretionary code to admin code**

| TABLE 3 | | | |
|---------|---|--|--|
| No. | Task | Knowledge Criteria | Skill Criteria |
| 1 | Apply the Category III FSP business model | Describe the characteristics of a category III FSP and how that differentiates it from other product providers such as insurers and unit trusts. | Take the difference between Category III FSPs and other product providers into account when making business related decisions. |
| | | Describe the reason for separation of client assets from Category III FSP's assets. | Perform the fiduciary duty of the category III FSP. |
| | | | identify which assets belong to the client and which belong to the category III FSP. |
| | | | Interpret basic financial systems. |
| | | | Check that there are systems and processes to separate client and Category III FSP assets. |
| | | Explain the role and responsibilities of the different parties involved, including but not limited to: <ul style="list-style-type: none"> • different parties/ legal entities involved, • nominee, • MANCO, • insurers, • pension funds, • 3rd party FSPs, • Financial Advisors, • brokers, • clients | |
| | | Explain the concept of bulking and pooling of assets into a single account with investment provider. | Verify that the relevant contractual agreements are in place with the relevant other party. |

| | | | |
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| | | Explain the relevant contractual agreements need to be in place with the relevant other party. | Confirm that the relevant contractual agreements are in place with the relevant other party and business is conducted in accordance with the contractual agreements. |
| 2 | Understand the role of the independent nominee | Explain the duties the nominee company is responsible for. | Verify that there are processes in place to check that the nominee company executes its' responsibilities towards the Category III FSP – reporting independence |
| | | Explain the purpose of the nominee company | Check the nominee company complies with its duties. |
| 3 | Manage and oversee client mandates | Explain why the category III FSP must use mandates that have been approved by the FSB. | Manage client mandates in accordance to mandatory requirements. |
| | | Explain why a mandate cannot be used if it is not approved by the FSB. | |
| | | Explain why a mandate cannot be used if it is not signed by the client or his duly authorised representative. | |
| | | Explain why such a mandate must adhere to the requirements in the Administrative Code of Conduct. | |
| | | Explain what the requirements are for mandates. | |
| 4 | Manage/oversee typical daily transactions | Explain how different products have different turnaround times and should be adhered to. | Check that the systems and processes enable the implementation and execution of different turnaround times for different products. |
| | | Describe how there should be adequate controls in place to manage risks. | Check that the systems and processes have embedded controls to manage and contain risk. |

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| | | Explain how Category III FSPs are only allowed to take in one day's interest. | Check that the processes and systems only take one day's interest. |
| 5 | Manage and oversee disclosures | Explain how to ensure transparency and manage conflict of interests. | Confirm that disclosures are adequate to enable client's ability to make an informed decision. |
| 6 | Understand the legal environment of the Category III FSP. | Explain the liquidity requirement. | Apply the liquidity requirements to own business. |
| | | Explain the implications of the liquidity requirements | |
| | | Describe the fidelity cover requirements. | Apply the fidelity requirements to own business. |
| | | Explain the implications of the fidelity cover requirements. | |
| | | Describe the applicable capital requirement. | Apply the applicable capital requirements to own business. |
| | | Explain the implications of the capital requirements. | |
| | | Explain why the Category III FSP is not allowed to engage in the netting of transactions. | Verify that there are systems in place to check that netting of transactions will not take place. |
| | | Explain how a Category III FSP must ensure that it only conducts business with another FSP that has the appropriate categories/ subcategories on its license, and that business must also be conducted within the parameters of the client mandate | Confirm that it only conducts business with another FSP that has the appropriate categories/ subcategories on its license, and that business must also be conducted within the parameters of the client mandate, to ensure that all business is legitimate. |
| | | Describe what the continual compliance with the license requirements and conditions are. | Check that there are systems in place to check that new products or proposed business ventures will meet the limitations of the license requirements and conditions are. |
| 7 | Apply the record keeping | Explain the period for | Incorporate the record |

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| | requirements. | which records must be kept. | keeping requirements when planning system updates and strategic initiatives. |
| | | Describe the requirements specifically applicable to telephone and/or electronic requirements. | Verify that systems are in place to manage the record keeping risks of electronic and telephonic transactions. |
| 8 | Comply with requirements when reporting to clients | Explain why clients must receive written reports at quarterly intervals, that provide them with investment and related information. | Verify that there are systems and processes that enable the preparation and delivery of accurate quarterly reports. |
| 9 | Apply knowledge of the accounting and unit reconciliations | Explain how the accounting and unit reconciliations work. | |
| 10 | Apply knowledge of how intermediaries must be licensed before they can do business. | Explain how intermediaries must be licensed before they can do business. | |
| 11 | Deal with rebates | Explain how rebates work. | |
| | | Explain all the related disclosures as it applies to rebates. | |

Table 4: Regulatory Examination: Representatives in all Categories of FSPs

ANNEXURE FIVE : REGULATORY EXAMINATIONS**TABLE 4: REGULATORY EXAMINATION: REPRESENTATIVES IN ALL CATEGORIES OF FSPs**

| TABLE 4 | | | | |
|-----------------|---|-----------|--|-----------------------------------|
| Task No. | Task | QC | Qualifying Criteria | Knowledge (K) or Skill (S) |
| 1 | Demonstrate understanding of the FAIS Act as a regulatory framework | 1 | Describe the FAIS Act and subordinate legislation | K |
| | | 2 | Provide an overview of the financial services and different types of financial products a Representative can deal with. | K |
| | | 3 | Apply knowledge of the financial products within the financial services environment. | S |
| | | 4 | Describe the role and function of a Compliance Officer. | K |
| 2 | Contribute towards maintaining an FSP licence | 1 | Explain the requirements an FSP must meet to maintain an FSP licence. | K |
| | | 2 | Assist required actions as a Representative, in terms of the Act. | S |
| | | 3 | Discuss the requirements around the display of licences. | K |
| | | 4 | Explain the implications for a Representative if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998, or any other enabling legislation | K |
| | | 5 | Explain what is meant by "undesirable practices." | K |
| | | 6 | Check that the execution of duties and actions as a Representative does not constitute undesirable business practices. | S |
| | | 7 | Describe the implications for a Representative if the Registrar | K |

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| | | | declares a business practice to be undesirable | |
| | | 8 | Explain the reparation measures available to the Registrar if a Representative continues with undesirable business practices. | K |
| | | 9 | Describe the offenses prescribed by the FAIS Act | K |
| 3 | Define the role of the key individual in terms of the FAIS Act. | 1 | Describe the roles and responsibilities of key individuals as defined in the FAIS Act. | K |
| | | 2 | Describe the regulated management and oversight responsibilities of a key individual | K |
| | | 3 | Explain the implications for a Representative should a key individual no longer meet the good standing, honesty and integrity requirements | K |
| 4 | Adhere to the specific Codes of Conduct | 1 | Describe the general and specific duties of a provider | K |
| | | 2 | Describe what could possibly be a conflict of interest | K |
| | | 3 | Define the requirements and impact of the disclosure rules on the FSP. | K |
| | | 4 | Apply the requirements of the General Code of Conduct for FSPs and Representatives. | S |
| | | 5 | Explain the disclosures that need to be made by a Representative before rendering a financial service | K |
| | | 6 | Explain disclosures that must be made by a Representative when rendering a financial service | K |
| | | 7 | Describe the required disclosures regarding the provider, product supplier and financial service | K |
| | | 8 | Explain the specific disclosure requirements regarding fees and commission | K |
| | | 9 | Apply disclosure requirements in terms of financial services | S |
| | | 10 | Explain the process of advice that should be followed by a | K |

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| | | | Representative | |
| | | 11 | Explain the requirements when a Representative receives custody of financial products and funds | K |
| | | 12 | Explain the manner in which complaints are to be handled by a Representative as required by the General Code of Conduct for FSPs and Representatives. | K |
| | | 13 | Follow the complaints procedures and processes that are in place for Representatives. | S |
| | | 14 | Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to the termination of an agreement | K |
| 5 | Comply with regulated record keeping requirements | 1 | Explain the record keeping obligations by a Representative as prescribed by the FAIS and FIC Acts. | K |
| | | 2 | Carry out the record keeping and retrieval of records functionality correctly | S |
| 6 | Comply with the requirements of the FIC Act and Money Laundering and Terrorist Financing control regulations, as it applies to the FSP. | 1 | Explain the requirements specific to an FSP prescribed by the FIC Act | K |
| | | 2 | Describe how the FIC Act impacts a Representatives' interaction with a client. | K |
| 7 | Dealing with complaints that have been submitted to the Ombud for FSPs | 1 | Explain the role and authority of the Ombud for FSPs | K |
| 8 | Operate as a Representative in terms of the FAIS Act. | 1 | Describe the roles and responsibilities of Representatives as defined in the FAIS Act. | K |
| | | 2 | Apply knowledge of the role of the Representative in terms of the FAIS Act. | S |
| | | 3 | Explain the fit and proper requirements that apply to a Representative (good standing, honesty, integrity, qualifications, experience, knowledge tested through regulated examinations and continuous professional | K |

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| | | | development) | |
| | | 4 | Distinguish between advice and intermediary services in terms of the FAIS Act. | K |
| | | 5 | Describe the purpose and requirements of the register of Representatives | K |
| | | 6 | Explain when a Representative should be under supervision. | K |
| | | 7 | Explain the disclosure requirements for a Representative under supervision | K |
| | | 8 | Describe the implications if a Representative no longer meets the Fit and Proper requirements | K |
| | | 9 | Define the purpose of debarment | K |
| | | 10 | Describe when debarment should be considered. | K |
| | | 11 | Explain the debarment process that should be followed in the event of a possible contravention of the FAIS Act | K |
| | | 12 | Explain what recourse a debarred Representative may have. | K |

Annexure Six : Form A - Liquidity calculation**ANNEXURE SIX****FORM A: LIQUIDITY CALCULATION****FSP Name****FSP No.****(Liquidity calculation as at _____ with comparative figures as at _____**

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Notes

- (1) This form must be completed by the key individual/s of the FSP or in the case of an FSP that is a natural person by such natural person.
- (2) A person that is authorised for multiple categories must submit a single form based on the calculation of the most onerous liquidity requirement.

| Component | | Current reporting period | Previous reporting period |
|----------------------|---|---------------------------------|----------------------------------|
| LIQUID ASSETS | | | |
| 1. | Cash | | |
| | Capable of being converted without any penalty on capital into cash within 7 days | | |
| | Capable of being converted without any penalty on capital into cash within 30 days | | |
| 2. | 100% of market value of a participatory interest in a money market portfolio | | |
| | Capable of being converted without any penalty on capital into cash within 7 days | | |
| | Capable of being converted without any penalty on capital into cash within 30 days | | |
| | [Note: The total assets referred to in line 1 and 2 that are capable of being converted into cash within 30 days may not constitute more than 50% of the total assets in line 1 and 2] | | |
| 3. | 70% of the market value of a participatory interest in a collective investment scheme, other than a participatory interest in a money market portfolio or CIS hedge fund, provided that participatory interest are capable of being converted into cash within 7 days | | |
| 4. | 70% of the market value of a security listed on a licensed exchange provided it does not | | |

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| | constitute more than 50% of total liquid assets | | |
| 5. | TOTAL LIQUID ASSETS | | |
| ANNUAL EXPENDITURE | | | |
| 6. | Total annual expenditure (including sales costs, finance costs and operational costs) | | |
| 7. | Less staff bonuses | | |
| 8. | Less employees' and directors', partners' or members' share in profit | | |
| 9. | Less emoluments of directors, members, partners or sole proprietor | | |
| 10. | Less other appropriation of profits to directors, members and partners | | |
| 11. | Less remuneration that is linked to— (a) a percentage of the FSP's revenue; or (b) a percentage of the revenue generated by an employee, representative or contractor of the FSP; and that in the absence of such revenue the FSP has no obligation to pay the remuneration | | |
| 12. | Less depreciation | | |
| 13. | Less bad debt | | |
| 14. | Less any loss resulting from the sale of assets | | |
| 15. | TOTAL ADJUSTED ANNUAL EXPENDITURE | | |
| CALCULATION | | | |
| 16. | Divide total adjusted annual expenditure by 52 (no. of weeks per year) | | |
| 17. | Multiply the amount reflected in line 16 with— | | |
| | (a) 4, in the case of a Category I FSP | | |
| | (b) 8, in the case of Category II FSP | | |
| | (c) 13, in the case of a Category IIA FSP | | |
| | (d) 13, in the case of a Category III FSP | | |
| | (e) 4, in the case of a Category IV FSP | | |
| 18. | Total liquid assets required (Amount reflected in line 17) | | |
| 19. | Deduct total liquid assets required from total liquid assets (Line 5 minus line 18) | | |

Management Declaration

This declaration must be signed by the Chief Financial Officer of the FSP or in the absence of such a person, a person of equivalent status, or the provider in the case of a provider being a sole proprietor (responsible person).

I,, (name of responsible person)
declare that the information provided in this form is true and correct.

I am aware that the information provided may be subject to verification by the Registrar of Financial Services Providers, and should I submit false, incorrect or misleading information to the Registrar, this may impact on my compliance with the fit and proper requirements contemplated in section 6A of the Act.

.....
Date

.....
Signature



Regulations

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Regulations

Financial Advisory And Intermediary Services Regulations, 2003 : Notice No. 879 of 2003

Financial Advisory And Intermediary Services Regulations, 2003

Notice No. 879 of 2003

Chapter I : Definitions

Chapter II : Matters required or permitted by Act to be Prescribed (Section 35(1)(a) of Act)

Chapter III : Prohibitions on Canvassing for, and Marketing or Advertising of Unauthorised Financial Services (Section 35(1)(b) of Act)

Chapter IV : Compliance Arrangements (Section 35(1)(C) of Act)

Chapter V : Matters relating to Administrative and Discretionary FSPs (Section 35(1)(d) and (e) of Act)

Chapter VI : Matters relating to Foreign Forex Services Providers and Clearing Firms

Chapter VII : Miscellaneous

Notice No. 879 of 2003

Notice No. 879

13 June 2003

National Treasury

I, Trevor Andrew Manuel, Minister of Finance, hereby after consultation with the Registrar of Financial Services Providers and the Advisory Committee on Financial Services Providers, in terms of section 35 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), make the Regulations set out in the attached Schedule.

The Regulations will come into effect on the date determined by the Minister of Finance in terms of section 7(1) of the Financial Advisory and Intermediary Services Act, 2002.

T A Manuel, MP
Minister of Finance
Date: 20 May 2003

Chapter I : Definitions

1. Definitions

1. Definitions

In this Schedule "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and any word or expression to which a meaning has been assigned in the Act, read with the definition of "this Act" in section 1(1) of the Act, shall have that meaning.

Chapter II : Matters required or permitted by Act to be Prescribed (Section 35(1)(a) of Act)**2. Period contemplated in section 45(2)(b) of Act****2. Period contemplated in section 45(2)(b) of Act**

The period contemplated in section 45(2)(b) of the Act for the conclusion of unconcluded business referred to therein, is a period of 12 months with effect from the date determined in terms of section 7(1) of the Act.

Chapter III : Prohibitions on Canvassing for, and Marketing or Advertising of Unauthorised Financial Services (Section 35(1)(b) of Act)**3. No person****3. No person**

- (1) No person—
 - (a) may in any manner or by any means, whether within or outside the Republic, canvass for, market or advertise any business related to the rendering of financial services by any person who is not an authorised financial services provider or a representative of such a provider;
 - (b) who is not an authorised financial services provider or a representative of such a provider, may in any manner or by any means -
 - (i) publish any advertisement, communication or announcement directed to clients; or
 - (ii) use any name, title or designation, which implies that such person is an authorised financial services provider or a representative of such a provider.
-

Chapter IV : Compliance Arrangements (Section 35(1)(C) of Act)

4. Application for approval
5. Establishment of compliance function

4. Application for approval

An authorised financial services provider must submit an application for the approval of a compliance officer under section 17(2) of the Act to the registrar in writing on a form determined by the registrar from time to time, and must furnish all information required for that purpose by the registrar as indicated on the form, or otherwise requested by the registrar.

5. Establishment of compliance function

- (1) Subject to the provisions of, an authorised financial services provider shall ensure that a compliance function exists or is established as part of the risk management framework of the business supervised by an approved compliance officer (where required in terms of the Act), or otherwise managed under control and responsibility of the provider alone.
- (2) The compliance function must be exercised with such diligence care and degree of competency as may reasonably be expected from a person responsible for such function.
- (3) An approved compliance officer (where required by the Act) must provide a provider with written reports on the course of, and progress achieved with, compliance monitoring duties and make recommendations to the provider as regards any aspect of the required compliance or monitoring functions.

Chapter V : Matters relating to Administrative and Discretionary FSPs (Section 35(1)(d) and (e) of Act)

6. Nominee companies of discretionary FSPs
 7. Independent nominees of administrative FSPs
 8. Written agreement with independent nominee
 9. Requirements for independent nominee
 10. Duties of independent nominee
 11. Enforcing court orders
 12. Construction of certain references
-

6. Nominee companies of discretionary FSPs

- (1) The functions of the nominee company of a discretionary FSP must be limited to its object and to such other functions as may be necessary to achieve the said object.
- (2) A discretionary FSP must, prior to obtaining authorisation, apply to the registrar for approval of its nominee company.
- (3) The Memorandum and Articles of Association of a nominee company must preclude it from incurring any liabilities other than those to persons on whose behalf it holds assets and, if any other liabilities are incurred in the name of the nominee company, the discretionary FSP shall be liable to meet them.
- (4) The nominee company must enter into an agreement with the discretionary FSP in terms of which the provider must pay all expenses for and incidental to its formation, activities, management and liquidation, unless the Memorandum and Articles of Association of the nominee company already provide for such an obligation.

7. Independent nominees of administrative FSPs

- (1) An administrative FSP must prior to commencing business apply to the registrar for approval of its independent nominee which complies with regulation 9.
- (2) The application must be made in accordance with section 3(2) of the Act and be accompanied by the latest audited annual financial statements relating to the independent nominee.
- (3) The administrative FSP remains responsible for ensuring that its independent nominee executes its duties in accordance with these Regulations.

8. Written agreement with independent nominee

- (1) The written agreement between the administrative FSP and its independent nominee must be approved by the registrar.
 - (2) If the administrative FSP gives or receives notice of termination of the agreement for any reason, the FSP must at once inform the registrar thereof.
 - (3) The administrative FSP must within 30 days after giving or receiving such notice apply to the registrar in the manner contemplated in section 3(2) of the Act, for approval of a replacement independent nominee.
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9. Requirements for independent nominee

- (1) More than 50% of the directors, trustees or other persons responsible for the management and control of the independent nominee, must be persons independent not only from the administrative FSP, but also from companies within the same group as the FSP: Provided that persons holding office in or representing the FSP in a professional or non-professional capacity, excluding a person acting only in a non-executive director capacity in one of the companies within the group, are not deemed independent for the purposes of this subregulation.
- (2) The independent nominee must be structured in such a way that clients' investments are at all times protected from its creditors or those of the administrative FSP and anyone else, especially if the nominee is sequestered or wound-up.

10. Duties of independent nominee

- (1) The investments of clients, as recorded by a product supplier (excluding cash held in a separate bank account as contemplated in the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, as published in the *Gazette*) must be held in the name of the independent nominee on behalf of such clients, except in instances where because of the nature of a specific client, such registration is prohibited by other legislation.
 - (2) The independent nominee must satisfy itself and submit a written statement to the registrar, within three months after the financial year end of the administrative FSP for which it acts, that—
 - (a) the FSP has adequate procedures in place for ensuring that proper reconciliation, of the number of investments held in its name and reflected in the client records of the FSP, and the number of investments reflected in the records of the collective investment scheme or company, takes place on an ongoing basis;
 - (b) such procedures are followed by the FSP;
 - (c) procedures are implemented by the independent nominee in order to ensure that the duties stipulated in this regulation are carried out on a continuous basis;
 - (d) summarises the nature of the errors and or difficulties that impacted on the ability of the FSP to conduct its business in accordance with these Regulations during the year under review; and
 - (e) highlights the co-operation or lack thereof extended by the FSP to the independent nominee during the year under review.
 - (3) The independent nominee must maintain fidelity guarantee and professional indemnity insurance sufficient to cover the risk of losses due to fraud, dishonesty and negligence that can reasonably be expected in an organisation of the size and complexity of the nominee and with due regard to the relationship with the administrative FSP concerned.
 - (4)
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- (a) Where an administrative FSP ceases to conduct business or its authorisation as a financial services provider lapses or is withdrawn, or its business is wound up or liquidated, the independent nominee of the FSP must with regard to investments, transfer the investments out of the bulk account of the independent nominee held with the relevant product supplier, into an account held in the name of a client concerned with that product supplier or the independent nominee of another administrative FSP: Provided that where the client is a long-term insurer as defined in section 1(1) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or a pension fund organization as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), the transfer of the investments will be subject to the contract with the relevant insurer and the Long-term Insurance Act, 1998, or the rules of the relevant pension fund organisation and the Pension Funds Act, 1956, as the case may be.
 - (b) The provisions of paragraph (a) apply with the necessary changes where the mandate of an administrative FSP is terminated, in which case the FSP must ensure that instructions by clients concerned for the transfers are carried out.

11. Enforcing court orders

The provisions of section 4(4)(b) of the Act apply with the necessary changes to any nominee company and independent nominee where the registrar is of the opinion on the basis of information available to the registrar that prejudice contemplated in that section has occurred or may occur.

12. Construction of certain references

A reference in any law or document to an independent custodian, an investment manager or a linked investment services provider (LISP) must, unless clearly inappropriate or inconsistent with a provision of the Act, be construed as a reference to an independent nominee, a discretionary FSP and an administrative FSP, respectively.

Chapter VI : Matters relating to Foreign Forex Services Providers and Clearing Firms

- 13. Definitions
 - 14. Approval of foreign entities
 - 15. Requirements
 - 16. Granting or refusal of approval
 - 17. Interpretation
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13. Definitions

In this Chapter—

"authorisation"

means authorised, licensed, approved or registered;

"Forex Code"

means the Code of Conduct for Authorised Financial Services Providers, and their Representatives, involved in Forex Investment Business, 2003.

14. Approval of foreign entities

(1) Procedure

A forex services provider seeking, in accordance with a provision of the Forex Code, an approval by the Registrar of a clearing firm or a foreign forex services provider, must submit an application for approval to the Registrar in accordance with section 3(2) of the Act, containing at least the following information:

- (a) Full particulars as regards the name and physical location and all other identification particulars of the relevant clearing firm or foreign forex services provider;
- (b) full particulars as regards any authorisation required by such , firm or provider for the conduct of business in the country in which it is located, and of the terms of any such authorisation so wanted; and
- (c) full particulars as regards the nature of the regulatory environment under which the firm or provider operates in the country concerned.

15. Requirements

It is a requirement for the granting of approval by the Registrar of any application contemplated in regulation 14, that the regulatory framework of the country in which the clearing firm or provider is located must, to the satisfaction of the Registrar, be substantively of the same nature and standing as that obtaining in respect of the applicant in the Republic.

16. Granting or refusal of approval

- (1) The Registrar may, on consideration of any application contemplated in regulation 14, require any further information from the applicant deemed necessary by the Registrar, and may after consideration of all available information but subject to the provisions of these Regulations, grant or refuse the application.
 - (2) Where the Registrar has decided to refuse the application, the Registrar must before
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finally deciding thereon, afford the applicant concerned a reasonable opportunity to respond to the reasons for refusal as determined by the Registrar and disclosed to the applicant.

17. Interpretation

A reference in any law or document to a forex broker, an introducing forex broker, forex money manager, forex investment manager, forex advisor, forex market maker must, unless clearly inappropriate or inconsistent with a provision of the Act, be construed as a reference to a forex services provider.

Chapter VII : Miscellaneous

- 18. Penalties
- 19. Powers of registrar to call for information
- 20. Short title

18. Penalties

A person who contravenes or fails to comply with a provision of these Regulations is guilty of an offence and liable on conviction to a fine not exceeding R500 000 or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

19. Powers of registrar to call for information

Any authorised financial service provider and any particular nominee company or independent nominee referred to in Chapter V must furnish the registrar with such information regarding the relevant shareholders, directors, trustees and senior employees, or regarding their operations, as the registrar may from time to time in writing reasonably require from any of them.

20. Short title

These Regulations are called The Financial Advisory and Intermediary Services Regulations, 2003.



Rules

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Rules

Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2003 : Board Notice 81 of 2003

Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2003

Board Notice 81 of 2003

1. Definitions and application
2. Fundamental principles
3. Category of persons qualifying as complainants
4. Type of complaint justiciable by Ombud
5. Rights of complainants in connection with complaints
6. Rights and duties of respondent
7. Summary dismissal of complaints
8. Time limits
9. Case fees, costs and interest
10. Liaison between Ombud and Registrar
11. Administrative and procedural matters
12. Appeals
13. Short title and commencement

Board Notice 81 of 2003

Board Notice 81 of 2003
8 August 2003

Financial Services Board

The Financial Services Board has under section 26 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and after consultation with the Advisory Committee on Financial Services Providers, made the Rules on proceedings of the Office of the Ombud for Financial Services Providers, set out in the Schedule hereto.

This Notice is called the Notice on Rules on proceedings of the Office of the Ombud for Financial Services Providers, 2003, and comes into operation on the date determined by the Minister of Finance in terms of section 7(1) of the said Act.

J van Rooyen
Registrar of Financial Services Providers

1. Definitions and application

- (a) In these Rules, "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and unless the context indicates otherwise, words and expressions used in these Rules bear the same meaning as that of similar words and expressions used in the Act.
- (b) These Rules apply in particular to the proceedings of the Ombud conducted in terms of Part I of Chapter VI of the Act, and must be read in conjunction with the provisions of the Act.
- (c) "These Rules" mean the Rules on Proceedings of the Office of the Ombud for Financial Service Providers made under section 26 of the Act, as amended or re-enacted from time to time.

2. Fundamental principles

- (a) In disposing of a complaint the Ombud acts independently and objectively and takes no instructions from any person regarding the exercise of authority.
- (b) The complainant and any other party to the complaint are expected to give their fullest co-operation to the disposal of the complaint within a reasonable time.
- (c) The services rendered by the Ombud are not to be construed as being similar to those of a professional legal adviser and are confined to the investigation and determination of complaints in terms of the Act and these Rules.

3. Category of persons qualifying as complainants

Where appropriate, a complainant includes the complainants lawful successor in title or the nominated beneficiary of the financial product which is the subject of the relevant complaint.

4. Type of complaint justiciable by Ombud

- (a) For a complaint to be submitted to the Office:
 - (i) The complaint must fall within the ambit of the Act and these Rules;
 - (ii) the person against whom the complaint is made must be subject to these Rules (hereafter referred to as "the respondent");
 - (iii) the act or omission complained of must have occurred at a time when these Rules were in force; and
 - (iv) the respondent must have failed to address the complaint satisfactorily within six weeks of its receipt.
 - (b) A complainant may seek any relief relating to the subject matter of the complaint, but a complaint constituting a claim for a monetary award, must relate to the redress of financial prejudice or damage suffered or likely to be suffered by the complainant.
 - (c) The complaint must not constitute a monetary claim in excess of R800 000,00 for a
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- particular kind of financial prejudice or damage, unless the respondent has agreed in writing to this limitation being exceeded, or the complainant has abandoned the amount in excess of R800 000,00.
- (d) The Ombud may also entertain a complaint relating to a financial service rendered by a person not authorised as a financial services provider or by a person acting on behalf of such person.
 - (e) When the Ombud receives a referral from the registrar as contemplated in section 4(4)(c) of the Act, the Ombud must in writing notify the client concerned thereof and require the client to inform the Ombud whether the client wishes to pursue the complaint in accordance with the provisions of Part I of Chapter VI of the Act.
 - (f) The complaint must not relate to the investment performance of a financial product which is the subject of the complaint, unless such performance was guaranteed expressly or implicitly or such performance appears to the Ombud to be so deficient as to raise a prima facie presumption of misrepresentation, negligence or maladministration on the part of the person against whom the complaint is brought, or that person's representative.

5. Rights of complainants in connection with complaints

- (a) The complainant must qualify as such in terms of the Act and these Rules.
- (b) Before submitting a complaint to the Office, the complainant must endeavour to resolve the complaint with the respondent.
- (c) The complainant has six months after receipt of the final response of the respondent, or after such response was due, to submit a complaint to the Office.
- (d) On submitting a complaint to the Office, the complainant must satisfy the Ombud of having endeavoured to resolve the complaint with the respondent, and must produce the final response (if any) of the respondent as well as the complainant's reasons for disagreeing with the final response.
- (e) A complaint must be submitted to the Office in writing or, in circumstances deemed appropriate, the Ombud may receive a complaint in any other manner, which conveys the complaint in comprehensible form.
- (f) A complaint must, where necessary, be accompanied by available documentation in the complainant's possession.
- (g) The complainant must be advised by the Ombud of the response of the respondent to the extent necessary to react to such response and to decide whether the complaint should be proceeded with, and must thereafter within two weeks advise the Ombud of such reaction and decision.
- (h) Subsequent to lodging a complaint with the Ombud, the complainant is entitled to submit further facts, information or documentation in connection with the complaint and must do so, to the extent possible, if requested by the Ombud.

6. Rights and duties of respondent

- (a) Where a complaint cannot within three weeks be addressed by the respondent, the respondent must as soon as reasonably possible after receipt of the complaint send to the complainant a written acknowledgment of the complaint with contact references

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- of the respondent.
- (b) If within six weeks of receipt of a complaint the respondent has been unable to resolve the complaint to the satisfaction of the complainant, the respondent must inform the Complainant that-
 - (i) the complaint may be referred to the Office if the complainant wishes to pursue the matter; and
 - (ii) the complainant should do so within six months of receipt of such notification.
 - (c) Any respondent must be informed of the complaint submitted to the Office to the extent necessary to respond thereto fully.
 - (d) The respondent is entitled to submit any fact, information or documentation in relation to the complaint and must disclose relevant information or documentation to the Ombud.
 - (e) If deemed necessary by the Ombud, the respondent must discuss the complaint with the Ombud and furnish such further relevant information as the Ombud may require.
 - (f) A respondent is required to act professionally and reasonably and to co-operate with a view to ensuring the efficient resolution of the complaint.

7. Summary dismissal of complaints

- (a) Subject to Rule 4, the Ombud has the power to determine whether or not a complaint falls within the ambit of the Act and these Rules and must reject a complaint, which falls outside such ambit.
- (b) The Ombud may dismiss a complaint without referral to any other party if on the facts provided by the complainant it appears to the Ombud that—
 - (i) the complaint does not have any reasonable prospect of success;
 - (ii) the respondent has made an offer which is fair and reasonable and which is still open for acceptance by the complainant;
 - (iii) the matter has previously been considered by the Ombud;
 - (iv) the essential subject of the complaint has been decided in court proceedings;
 - (v) the subject of the complaint is pending in court proceedings; or
 - (vi) the complaint or relief sought is of the nature that the Ombud can be of no assistance to the complainant.
- (c) A complaint received officially may thereafter be dismissed if the complainant fails to co-operate in the pursuance or resolution of the complaint.
- (d) If in the discretion of the Ombud a complaint is being pursued in a frivolous, vexatious or abusive manner, it may be dismissed summarily.
- (e) The Ombud must in a manner deemed appropriate, inform parties of any dismissal of a complaint referred to in this Rule.

8. Time limits

- (a) Time limits for any aspect of the proceedings in connection with a complaint may be fixed by the Ombud and must be honoured by the parties to the complaint.
 - (b) Extensions of time limits imposed by the Act or these Rules or fixed by the Ombud, may in the discretion of the Ombud be granted, and the parties involved notified accordingly.
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- (c) If in the discretion of the Ombud a party has in a particular case not responded within a reasonable time, the Ombud may proceed to dispose of a complaint on the available facts and information.

9. Case fees, costs and interest

- (a) The Ombud may, when accepting a complaint in terms of section 27(5) of the Act, require the respondent to pay a case fee to the Office not exceeding R1 000.00.
- (b) The case fee referred to in paragraph (a) is non-refundable irrespective of the outcome of the matter.
- (c) Payment of a case fee, raised in terms of paragraph (a), may be enforced by the Office as a final determination by the Ombud.
- (d) When making a final determination in terms of section 28 of the Act, the Ombud may grant costs against the respondent or, in the circumstances contemplated by section 28(2)(b)(iii), against the complainant, in either case in favour of the other party to the complaint or in favour of the Office.
- (e) Any costs award by the Ombud must be quantified by the Ombud with due regard to the nature of the complaint, the time spent on the complaint, the expense and inconvenience caused to a party, the conduct of a party in resolving the complaint and any other factor deemed by the Ombud to be appropriate.
- (f) Any award of interest and costs forms part of the relevant final determination of the Ombud.

10. Liaison between Ombud and Registrar

- (a) The Ombud must report to the Registrar such facts or information arising from complaints as may be capable of prompting the Registrar to consider action under the Act, either generally or in relation to a particular matter.
- (b) Notwithstanding confidentiality constraints applicable to the Registrar's office, the Ombud is entitled to information or sight of documentation in the Registrar's possession, which may be relevant in the consideration of a complaint.
- (c) The Ombud and the Registrar must in addition regularly liaise and consult with one another as regards any matter relating to mutual administrative support and avoidance of overlapping of their respective functions.

11. Administrative and procedural matters

- (a) The Ombud may decline to investigate a complaint, or may suspend the investigation, when to the knowledge of the Ombud the complainant intends proceeding to or has already embarked on litigation.
 - (b) Information provided to the Ombud is confidential and may only be disclosed by the Ombud to the registrar or to another party to the complaint to the extent necessary to resolve the complaint, or where required under the Act or any other law.
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- (c) The Ombud is not liable to be subpoenaed to give evidence on the subject of a complaint in any proceedings.
 - (d) The Ombud may take such steps as deemed expedient to advise the public on the existence of the Office, the procedure for submitting a complaint to the Office, or on any other aspect concerning the Office in order to facilitate the submission or disposal of complaints.

12. Appeals

- (a) A party against whom the Ombud has made a determination may apply to the Ombud for leave to appeal against the determination.
- (b) Such application must be in writing, must be submitted to the Ombud within one month of the date of the determination, and must set out the grounds on which the application is made.
- (c) In weighing the application the Ombud must consider the factors set out in section 28(5)(b) of the Act, and may request and consider submissions by any other party to the complaint concerning the merits of the application.
- (d) If the Ombud refuses leave to appeal, the applicant must be advised in writing and given reasons for such refusal.
- (e) The applicant may within one month of such refusal apply to the chairperson of the board of appeal for leave to appeal against the determination, and advise the Ombud in writing accordingly.
- (f) The application referred to in paragraph (e) must be submitted to the secretary of the board of appeal and must thereafter be dealt with as directed by the chairperson of that board.
- (g) On receipt of the written advice referred to in paragraph (e), the Ombud must transmit to the secretary of the board of appeal all the records concerning the complaint together with a copy of the determination and the Ombud's reasons therefor, and the Ombud's reasons for refusing leave to appeal.
- (h) If the Ombud grants leave to appeal, the applicant must be advised accordingly and the provisions of paragraph (9) apply with the necessary amendments, in which case the Ombud must also transmit the reasons for granting leave to appeal (if any).
- (i) When granting or refusing leave to appeal, the Ombud must advise the other party to the proceedings of the outcome of the application for leave to appeal.
- (j) If the board of appeal becomes seized with the appeal, the appeal must be dealt with in terms of the rules applicable to that board, with the necessary amendments, and, unless requested by the board of appeal, the Ombud shall not take part in the appeal proceedings and the appeal will continue between the parties to the complaint.
- (k) On receipt of the final decision of the board of appeal the Ombud must forward the decision to the clerk or registrar of the court as contemplated in section 28(4) of the Act.

13. Short title and commencement

These Rules are called the Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2002, and come into operation on the date of commencement of Part 1 of

Chapter VI of the Act.

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