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

www.acts.co.za
Notice No. 1453
15 December 2002

(English text signed by the President.)
(Assented to 15 November 2002.)

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

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

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;

“Board” means the Financial Services Board established by section 2 of the Financial Services Board Act;

“board of appeal” means the board of appeal established by section 26(1) of the Financial Services Board Act;

“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;

"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);
[Subparagraph (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;

[Subparagraph (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 marketed in the Republic and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (1), inclusive;

"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"
means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

"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 published under section 6A;

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

"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;
"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" means a web site as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), set up by the Board

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

"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]
"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]

"registrar" means the person referred to in section 2;  
[Definition amended by section 175(j) of Act No. 45 of 2013]

"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).

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.  
[Subsection 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
e) 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;
   } 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;
[Subparagraph (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.
[Subparagraph (iii) amended by section 175(m) of Act No. 45 of 2013]

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).
[Subsection 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.
I. Administration of Act

2. Registrar and deputy registrar of financial services providers

(1) The executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the registrar of financial services providers and has the powers and duties provided for by or under this Act or any other law.

(2) The deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the deputy registrar of financial services providers.

(3) The deputy registrar of financial service providers exercises the powers and duties of the registrar of financial services providers to the extent that such powers and duties have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).

[Section 2 amended by section 176 of Act No. 45 of 2013]

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) When anything is required or permitted to be done by the registrar in terms of this Act within a particular period, the registrar may on application or on own initiative before the expiry of that period, extend it for any sufficient cause.

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.

[Subsection 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 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) a) The registrar may—
   i) conduct an on-site visit under Chapter 1A of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001); or
   [Subparagraph (i) amended by section 177(b) of Act No. 45 of 2013]
5. Advisory Committee on Financial Services Providers [REPEALED]

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

6. Delegations and authorisations

1) The Minister may, on such conditions as the Minister may determine (which the Minister may at any time thereafter amend or withdraw), delegate any power conferred upon the Minister by this Act, excluding the power to make regulations under section 35 to the head of the National Treasury, any other official in the National Treasury, or the registrar.

2) The Board may –
   a) on such conditions as the Board may determine (which the Board may at any time thereafter amend or withdraw), delegate to the chairperson, any other member of the Board or the registrar, any power conferred on the Board by or under this Act, excluding the power to make rules under section 26; or
   b) so authorise the chairperson, any other member of the Board or the registrar, to carry out any duty assigned to the Board by or under this Act.

3) The registrar may –
   a) on such conditions as the registrar may determine (which the registrar may at any time thereafter amend or withdraw), delegate to –
      i) another member of the executive of the Board;
      ii) any person who has been appointed by the Board; or
      iii) any person or body recognised by the Board for that purpose, any power conferred upon the registrar by or under this Act, including a power delegated to the registrar under this Act; or
   b) so authorise such member of the executive, person or body to carry out any duty assigned to the registrar by or under this Act.
4) For the purposes of recognition by the Board of a body contemplated in subsection (3) (a)(iii), the following provisions apply:
   a) Any body of persons which represents a group of persons falling within the ambit of this Act, may apply to the registrar for recognition by the Board by notice on the official web site as a representative body for the purpose of performing the functions determined by the registrar;

   [Paragraph (a) amended by section 179(a) of Act No. 45 of 2013]

   b) an application for such recognition –
      i) must be made in the manner determined by the registrar by notice on the official web site;

   [Subparagraph (i) amended by section 179(b) of Act No. 45 of 2013]

      ii) must be accompanied by the fee determined in terms of this Act;

      iii) must be accompanied by information proving that the applicant has sufficient financial, management, and manpower resources and experience necessary for performing the functions determined by the registrar, and that the applicant is reasonably representative of the relevant group of persons which it purports to represent;

   c) if the registrar is satisfied that the applicant has complied with all requirements, the application must be submitted by the registrar to the Board for consideration;

   d) the Board may –
      i) grant an application unconditionally; or

      ii) grant an application subject to such conditions as it deems necessary, after having given the applicant a reasonable opportunity to make submissions on the proposed conditions and having considered any such submissions, and direct the registrar to inform the applicant accordingly; or

      iii) after having given the applicant a reasonable opportunity to make submissions and having considered any such submissions, refuse an application and direct the registrar to furnish the applicant with the written reasons of the Board for the refusal;

   e) a body recognised as a representative body contemplated in this subsection may at any time apply to the Board for the withdrawal or amendment of any condition imposed on the granting of the application;

   f) the Board may –
      i) grant any application, or portion thereof, referred to in paragraph (e) and direct the registrar to inform the applicant accordingly; or (ii) refuse any such application, or portion thereof, and direct the registrar to furnish the applicant with the written reasons of the Board for the refusal.

5) Any delegation or authorisation contemplated in this section does not prohibit the exercise of the power concerned or the carrying out of the duty concerned by the Minister, Board or registrar, as the case may be.

6) Anything done or omitted to be done under any delegation or authorisation contemplated in this section is deemed to have been done or omitted by the Minister, the Board or the registrar, as the case may be.

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
(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
(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]

II. Authorisation of Financial Services Providers

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.

[Subsection 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.

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 registrar in the form and manner determined by the registrar by notice on the official web site, and be accompanied by information to satisfy the registrar that the applicant complies with the fit and proper requirements determined for financial services providers or categories of providers, determined by the registrar by notice in the *Gazette*, in respect of—
   a) personal character qualities of honesty and integrity;
   b) competence;
   bA) operational ability; and
   c) financial soundness.

[Subsection 1 amended by section 182(a) of Act No. 45 of 2013]

(1A) If the applicant is a partnership, trust or corporate or unincorporated body, the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case the application must be accompanied by additional information to satisfy the registrar 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, in respect of—
   (a) personal character qualities of honesty and integrity;
   (b) competence; and
   (c) operational ability,
   to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.

[Subsection (1A) inserted by section 182(b) of Act No. 45 of 2013]

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.

[Subparagraph (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.

[Subsection 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 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
   iv) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.

[Subparagraph (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, 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.

[Subparagraph (iii) amended by section 182(f) and (g) of Act No. 45 of 2013]

5) a) Where an application for authorisation is granted, the registrar must issue to the applicant—
   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.

[Subsection 5(a) amended by section 182(h) of Act No. 45 of 2013]

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.

[Subparagraph (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).

[Subparagraph (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.

[Subparagraph (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.

e) 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
   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
   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.

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
    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.

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

[Paragraph (b) amended by section 182(n) of Act No. 45 of 2013]
8A. Compliance with fit and proper requirements...

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;
   [Paragraph (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;
   [Paragraph (c) amended by section 184(b) of Act No. 45 of 2013]
   c) has failed to comply with any other provision of this Act;
   [Paragraph (d) amended by section 184(b) of Act No. 45 of 2013]
   e) does not have an approved key individual;
   [Paragraph (e) inserted by section 184(c) of Act No. 45 of 2013]
   f) has failed to comply with any directive issued under this Act; or
   [Paragraph (f) inserted by section 184(c) of Act No. 45 of 2013]
   g) has failed to comply with any condition or restriction imposed under this Act.
   [Paragraph (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-
   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.

[Subparagraph (ii) amended by section 184(e) of Act No. 45 of 2013]
[Paragraph (b) amended by section 184(d) 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.

[Paragraph (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.

[Paragraph (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.

[Subsection 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 sequestrated; 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.

[Subsection 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.
III. Representatives of authorised Financial Services Providers

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 –
      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
      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
   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.

[Subsection 1 amended by section 186(a), (b), (c) and (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);

[Paragraph (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) The authorised financial services provider must maintain a register of representatives, and key individuals of such representatives, which must be regularly updated and be available to the registrar for reference or inspection purposes.

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) An authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in section 13(2)(a), or has contravened or failed to comply with any provision of this Act in a material manner, is prohibited by such provider from rendering any new financial service by withdrawing any authority to act on behalf of the provider, and that the representative’s name, and the names of the key individuals of the representative, are removed from the register referred to in section 13(3): Provided that any such provider must immediately take steps to ensure that the debarment does not prejudice the interests of clients of the representative, and that any unconcluded business of the representative is properly concluded.

2) For the purposes of the imposition of a prohibition contemplated in subsection (1), the authorised financial services provider must have regard to information regarding the conduct of the representative as provided by the registrar, the Ombud or any other interested person.

3)
   a) The authorised financial services provider must within a period of 15 days after the removal of the names of a representative and key individuals from the register as contemplated in subsection (1), inform the registrar in writing thereof and provide the registrar with the reasons for the debarment in such format as the registrar may require.
   b) The Registrar may make known any such debarment and the reasons therefore by notice on the official web site or by means of any other appropriate public media.

[Paragraph (b) amended by section 187 of Act No. 45 of 2013]

14A. Debarment by registrar

1) The registrar may, subject to subsection (2), at any time debar a person, including a representative, for a specified period from rendering financial services if satisfied on
the basis of available facts and information that the person—
a) does not meet, or no longer meets, the requirements contemplated in section 8(1)(a); or
b) has contravened or failed to comply with any provision of this Act.

2) The provisions of section 9(2) regarding a decision to suspend a licence, apply with the necessary changes to the debarment of a person contemplated in subsection (1).

3) An authorised financial services provider must within a period of five days after being informed by the registrar of the debarment of a representative or key individual, remove the names of that representative and key individuals from the register as contemplated in section 13 (3).

4) The registrar may make known any such debarment and the reasons therefor, or the lifting thereof, by notice on the official web site or by means of any other appropriate public media.  

[Subsection 4 amended by section 188 of Act No. 45 of 2013]

IV. Codes 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.  

[Paragraph (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.

V. Duties of authorised Financial Services Providers

17. Compliance officers and compliance arrangements

1) 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.

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

2)

a) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar.

i) 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.

[Subsection 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 referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph.

[Subsection 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

1) 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) 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. The financial statements must—
   a) fairly represent the state of affairs of the provider's business;
   b) refer to any material matter which has affected or is likely to affect the financial affairs of the provider; and
   c) 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
ddition 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.
[Subsection 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 authorise d
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.

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.
[Paragraph (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.

VI. Enforcement
Part 1. Ombud for Financial Service Providers
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.

21. Appointment of Ombud and deputy ombuds

1) The Board –
   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.
   [Subsection 1 amended by section 192(a) of Act No. 45 of 2013]

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

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

4) The Board 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.
   [Subsection 4 amended by section 192(b) of Act No. 45 of 2013]
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 Ombuds 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

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.
   [Subsection 1 amended by section 193 of Act No. 45 of 2013]

2) The accounting authority must comply with the Public Finance Management Act.
   [Subsection 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

1) 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 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) any matter which is required or permitted under this Act to be regulated by rule;

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;

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 with a provision of this Act.

[Subsection 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 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).

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 –
   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

   (ab) 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 thereof, 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.
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

1) 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. Promotion of client education by registrar

1) The registrar may take any steps conducive to client education and the promotion of awareness of the nature and availability of the Ombud and other enforcement measures established by or in terms of this Act, including arrangements with the Ombud, representative bodies of the financial services industry, client and consumer bodies, or product suppliers and authorised financial services providers and their
representatives to assist in the disclosure of information to the general public on matters dealt with in this Act.

Part 2. Other Enforcement Measures

33. Civil remedies [REPEALED]

[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.  
[Subsection 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.  
[Subsection 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 60(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) powers of the registrar to call for information from any person to which this Act applies, including the powers of the Court to issue orders, on application by the registrar, to enforce obligations in that regard; and
   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.

[Subsection 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 persons.

36. Offences and penalties

1) 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.

[Subsection 1 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

1) 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;
   [Paragraph (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 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) 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—
   (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 of appeal

1) Any person who feels aggrieved by any decision by the registrar or the Ombud under this Act which affects that person, may appeal to the board of appeal established by section 26(1) of the Financial Services Board Act, in respect of which appeal the said section 26 applies with the necessary changes.

VII. Miscellaneous

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.

[Paragraph (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 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. Exchange of information [REPEALED]

[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 website, exempt any person or category of persons from any provision of this Act. [Paragraph (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-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;

ii) a manager as defined in section 1 of the Collective Investment Schemes Control Act, 2002;

iii) a person performing the functions referred to in section 138 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
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;  

[Subparagraph (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.

[Section 1(a)(i) amended by Section 111 of the Financial Markets Act, 2012]

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 unconcluded business of any financial services provider in terms of such law on that date may be concluded 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, 1989 (Act No. 55 of 1989), and Custody and Administration of Securities Act,
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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
1. Laws Amended Or Repealed

(Section 45)

<table>
<thead>
<tr>
<th>Item</th>
<th>Number and year of Law</th>
<th>Short Title</th>
<th>Extent Of Amendment Or Year</th>
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| 11(a) | Act No. 1 of 1985 | Stock Exchanges Control Act, 1985 | 1. The amendment of section 4 by the - substitution for subsection (1) of the following subsection :
   a) 
   ”(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 do so in terms of the rules,” and
   b) deletion of subsections (1A), (2), (3), (4), (5), (6) and (7)(c). |

2. The amendment of section 12 by the substitution for paragraph (d) of subsection (1) of the following paragraph : |

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|   | "(d) that –
|   | i) a member carries on a business contemplated in section 4(1) in accordance with the provisions of the rules and
|   | ii) 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."
|   | 3. The amendment of section 39 by the deletion of subsections (2), (2A) and (2B).
|   | 4. The amendment of section 45 –
|   | a) by the deletion of subparagraph (iii) of paragraph (a) of subsection (1);
|   | 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);
|   | c) by the substitution for the words following on subparagraph (iii) of paragraph (b) of subsection (1) of the following words: "but who is carrying on the business of a stock exchange or of a member, [or of a person requiring approval in terms of section 4] as the case may be; and".
|   | 5. The amendment of section 47 by the deletion of paragraph (b) of subsection (1).
|   | 6. The amendment of section 48 by the substitution for paragraph (a) of subsection (1) of the following paragraph: "(a) contravenes a provision of section 3(1) or (2), 4(1)[or (2)] or 14;".
|   | 7. The substitution of the following heading and subsection for the heading and subsection (1) of 50: "Powers of court to declare member, officer or employee of member disqualified"
|   | "50. (1) If a court –
|   | a) convicts a member or an officer or employee of a member [or a person approved in terms of section 4]
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] such member’s officer’s or employee’s conduct is called in question, that [he] such member, officer or employee 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 [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 4] as the case may be.".

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<th>11(b)</th>
<th>Act No. 55 of 1989</th>
<th>Financial Markets Control Act, 1989</th>
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<tbody>
<tr>
<td>1.</td>
<td>The amendment of section 5 -</td>
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<td>a)</td>
<td>by the substitution for subsection(1) of the following subsection : &quot;(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.&quot;; and</td>
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<td>b)</td>
<td>by the deletion of subsections (1A), (2), (3), (4), (5), (6) and (7)(c).</td>
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<td>2.</td>
<td>The amendment of section 17-</td>
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<td>a)</td>
<td>by the substitution in subsection (1) for paragraph (dC) of the following paragraph : &quot;(dC) that a member carries on a business contemplated in section 5(1) in accordance with the provisions of the rules;&quot; and</td>
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| b)    | by the substitution in subsection (1) for paragraph (JB) of the following paragraph : "(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;"

3. The amendment of section 21A by the
deletion of subsections (2), (2A and (2B).

4. The amendment of section 26 -
   a) by the deletion in subsection (1) of
      subparagraph (iii) of paragraph (a);
   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
   c) by the substitution for the words
      following on subparagraph (iii) of
      paragraph (b) of subsection (1) of
      the following words :
      "but who is carrying on the business
      of a financial exchange or a
      member 
      of a person requiring
      approval in terms of section 5]; and"

5. The amendment of section 28 by the
deletion of paragraph (c).

6. The amendment of section 29 -
   a) by the substitution for paragraph (b)
      of subsection (1) of the following
      paragraph :
      "(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
   b) by the substitution for subsection (2)
      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."

7. 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 prima facie proof of the facts contained in such record, copy or extract."

8. 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 terms of section 5 or such person's officer or employee] is a party or in which such member's officer's or employee's [or person's] conduct is called in question, that such member, officer or 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."

| 11(c) | Act No. 140 of 1992 | Drugs and Drug Trafficking Act, 1992 | 1. The amendment of section 10, by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:
"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

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),". |
Codes of conduct for administrative and discretionary FSP's
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

Object and application of Code

1) 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.

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"

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

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.

General functions

4) 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.

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;
 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 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
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.

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.
Termination of relationship with client

6) 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.

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.

Insurance

8) 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.

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.

**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 : Short Title**

11) This Chapter is called the Code of Conduct for Administrative FSP’s, 2003.
Chapter II : Code of conduct for discretionary FSP's

Part I : Introductory provisions

Object and application of Code

1) 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.

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;

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

"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;

"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 -1 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;

"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;

"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.

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**

**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.
Duties of discretionary FSP

4) 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;
      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.

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 depositary 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;
      v) 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;

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.

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 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 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;

f) 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.

Insurance

7) 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.

Nominee companies

8) A discretionary FSP must 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.

Part III : Duties of Hedge Fund FSP’s, 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
codes of conduct for administrative and discretionary FSP's

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 of the hedge fund FSP, as disclosed and stated in the mandate;
  ii) 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.

9) This Chapter is called the Code of Conduct for Discretionary FSP’s, 2003.
Code of Conduct Financial Service Providers

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Code of Conduct for Authorised Financial Services Providers,

Notice No. 39 of 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 heir 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


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);


“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.

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

2. **Prohibitions**

1) 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

1) A forex investment intermediary must-

a) 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;

b) in the even 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 he 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;

c) observe high standards of integrity and fair dealing in all matters relating to intermediary services;

d) act in the interests of the clients;

e) act with due skill, care, diligence and good faith;

f) provide to a client, on request and if required by the General Code or this Code, in a 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;
j) 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;
k) 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;
l) 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;
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.
such report must confirm that all cash and documents of title relating to assets 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

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 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.

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.
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.

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

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.

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

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.

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.

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;
   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;
   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

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.
General code of conduct for authorised financial services providers and representatives, 2003

www.acts.co.za
General code of conduct for authorised financial services providers and representatives, 2003

Notice No 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) 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 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 directions or instructions of the person first-mentioned in this paragraph;
   
   ii) includes any trust controlled or administered by that person.

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

"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;

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;
“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 requirements.

“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;

“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);

“financial interest” means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than-

   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;

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

“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;

"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;

"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]

"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;

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

"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;

"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) 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 provision shall prevail; and
   ii) 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 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;

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;

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;

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 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.

[Subsection (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 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

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 III: Information on product suppliers

4) 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 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,
      iii) 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 extent to which the client will have to accept such responsibility;
   c) 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 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
            [Subparagraph (bb) amended 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;

[Subparagraph (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 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.

[Subparagraph (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 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

[Subparagraph (xiii) amended 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:

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.

[Section 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;  
[Subparagraph (i) amended by section 3(a) of Board Notice 43 of 2008]

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;  
[Subparagraph (ii) amended by section 3(a) of Board Notice 43 of 2008]

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;  
[Subparagraph (vii) amended by section 3(a) of Board Notice 43 of 2008]

viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and  
[Subparagraph (viii) amended by section 3(a) of Board Notice 43 of 2008]

ix) any incentive, remuneration, consideration, commission, fee 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.  
[Subparagraph (ix) inserted by section 3(b) 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).  
[Paragraph (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.

[Subsection 3 amended 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;

[Paragraph (b) amended 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

[Paragraph (c) amended 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:

[Paragraph (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;
   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) An advertisement by any provider must-

1) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
2) if it contains-
   a) 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
3) if 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, voicelogged record of all communications must be maintained. Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days;
2) a copy of all such records must be provided on request by the client or the registrar within seven days of the request;
3) 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) 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 sub-paragraphs (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) furnish 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;

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.

[Paragraph (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) To 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.

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.

[Subsection 4 amended by section 4(b) of Board Notice 43 of 2008]

5) A 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 voicelogged 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;
   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 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;
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) 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;

b) where the client makes the request on the advice of the provider, the provider must take reasonable steps to ensure that the client fully understands all the implications of the termination;

c) 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.
Rules on proceedings of the office of the ombud for financial services providers

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Rules on proceedings of the office of the ombud for financial services providers

Rules on proceedings of the office of the ombud for financial services providers, 2003

Notice No. 81 of 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 complainant’s 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 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 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
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.

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.

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
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.
Qualifications and experience of compliance officers in respect of financial services business
Qualifications and experience of compliance officers in respect of financial services

Qualifications and experience of compliance officers in respect of financial services

Notice No. 83 of 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

Schedule

(Section 17(1)(b))

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) 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 services 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 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.
Determinations

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Determinations

Determination of Fit and Proper Requirements, 2008

Board Notice 106 of 2008

I, DUBE PHINEAS TSHIDI, the Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under section 8(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), I determine the fit and proper requirements for financial services providers as set out in the Schedule.

D P Tshidi
Registrar of Financial Services Providers

This Determination should be read in conjunction with the Determination of Qualifying Criteria and Qualifications for Financial Services Providers, 2008, the Exemption in respect of Services under Supervision in terms of Requirements and Conditions, 2008, the Determination of Continuous Professional Development Requirements for Financial Services Providers, 2008, and the Determination of Examination Body Requirements, 2008.

Part I Definitions

1) In this Schedule-

"the Act"
means the Financial Advisory and Intermediary Services Act, 2002, including, unless the context indicates otherwise, any measure referred to in the definition of "this Act" in section 1(1) of the Act; and any word or expression shall have the meaning that it was assigned in the Act, and, unless the context indicates otherwise-

"ABET level 1"
means Adult Basic Education and Training which is aimed at adults learning to read, write and calculate, and is equivalent to grade 3 (standard 1) in public schools;

"administration of assistance policies"
means the range of activities connected with the organising of all activities relating to assistance policies, as defined in the Long-term Insurance Act, 1998, including work in connection with maintaining administrative records and the offsetting of claims or the processing of claims on behalf of the Insurer to the extent agreed to in terms of a written mandate between the insurer and the funeral business administrator;

"administrative FSP"
"annual expenditure" means the expenditure set out in the latest set of financial statements of the provider for the year in question or, in the case of an applicant commencing business, the budgeted expenditure as expressed in its budget or other accounts, less staff bonuses, employees' and directors' or member's shares in profits, other appropriation of profits to the directors or members and emoluments of directors, members, partners or sole proprietor;

"applicant" means the person who has submitted an application in terms of section 8(1) of the Act for authorisation to act as a financial services provider;

"application" means an application by an applicant submitted in the form and manner determined by the Registrar in the Application by Financial Services Providers for Authorisation by the Financial Services Board, 2008;

"appointment date" or "date of appointment" or "appointment as a representative" means the first date on which a representative was appointed by any financial services provider to render financial services in relation to a specific Category or subcategory;

"approval date" or "date of approval" or "approval as a key individual" means the first date on which a key individual was first approved by the Registrar to manage and oversee the rendering of financial services for any financial services provider in relation to a specific Category or subcategory;

"Assistance Business FSP" means an FSP that renders intermediary services in relation to the administration of assistance policies on behalf of the Insurer to the extent agreed to in terms of a written mandate between the Insurer and the Assistance Business FSP;

"authorisation" or "date of authorisation" means the date on which an FSP (who is a sole proprietor) was authorised by the Registrar to render financial services in relation to a specific Category or subcategory;

"Category I" in relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA, III and IV, who are authorised to render the financial services (other than financial services mentioned in Categories II, IIA, III and IV) as set out in the relevant application;

"Category II" in relation to a financial services provider, means all persons who are authorised as discretionary FSPs as set out in the relevant application;
"Category IIA"
in relation to a financial services provider, means all persons who are authorised as hedge fund FSPs as set out in the relevant application;

"Category III"
in relation to a financial services provider, means all persons who are authorised as administrative FSPs as set out in the relevant application;

"Category IV"
in relation to a financial services provider, means all persons who require licences as Assistance Business FSP;

"continuous professional development"
or "CPD" means a process of learning and development, with the aim to enable the applicant, key individual or representative to maintain capabilities to perform competently within the Categories or subcategories they render financial services in;

"discretionary FSP"
means a discretionary FSP as defined in the Notice of Codes of Conduct for Administrative and Discretionary FSPs, 2003;

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

"forex investment business"
means forex investment business as defined in the Code of Conduct for Authorised Financial Services Providers and their Representatives, involved in Forex Investment Business, 2004;

"friendly society benefits"
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"
or "provider" means an authorised financial services provider as defined in section 1(1) of the Act or an applicant;

"fund member policy"
means a fund member policy as defined in Part 5A of the Regulations under the Long-term Insurance Act, 1998;

"grade"
means the level of education obtained in the course of attending formal schooling, or adult basic education and training provided by a registered or recognised education institution in the Republic, or the equivalent school leaving level obtained outside the Republic and the equivalence to the South African requirement can be established;
"hedge fund FSP" means a hedge fund FSP as defined in the Notice of Codes of Conduct for Administrative and Discretionary FSPs, 2003, as amended;

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

"Higher Education Institution" or "Institution of Higher Education" means a registered Higher Education Institution as defined in the Higher Education Act, 1997;

"industry association" means a voluntary body, recognised by the Registrar, that is constituted to enable business or individuals with similar trades, occupations or services, to promote issues of common concern;

"Long-term Deposits" means deposits as defined in section 1(1) of the Banks Act, 1990, including foreign currency deposits, with a term exceeding 12 months;

"Long-term Insurance subcategory A" means assistance policies as defined in section 1(1) of the Long-term Insurance Act, 1998, but excludes policies referred to in the definitions of Long-term Insurance subcategories B1, B2 and C;


"Long-term Insurance subcategory B2" means long-term policies as defined in section 1 of the Long-term Insurance Act, 1998, which are-

a) investment policies as defined in Part 5B of the Regulations under the Long-term Insurance Act, 1998, which guarantee 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) disability, health and life policies that provide risk benefits as contemplated in the Regulations under the Long-term Insurance Act, 1998, and have a guaranteed investment value or a materially equivalent value;

c) annuities which guarantee a minimum annuity for the term of the policy which annuity is ascertainable in Rand terms at inception; or

d) any policy which combines the policy features included in paragraphs
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(a) to (c),
but excludes fund policies, fund member policies and policies referred to in the
definitions of Long-term Insurance subcategories A, B1 and C;

"Long-term Insurance subcategory C"
means long-term policies as defined in section 1(1) of the Long-term Insurance Act,
1998, excluding fund policies as defined in section 1(1) of the Long-term Insurance Act,
1998, fund member policies and policies referred to in the definitions of Long-term
Insurance subcategories A, B1 and B2;

"liquid assets"
means cash or cash equivalents that can be liquidated within seven (7) days without
realising a loss on liquidation;

"National Learner Record Database (NLRD)"
means an information system used and managed by SAQA to record the achievement
of individuals in terms of qualifications, unit standards, professional designations and
other information in order to manage the National Qualifications Framework;

"National Qualifications Framework"
or "NQF" means the National Qualifications Framework of SAQA;

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

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

"qualification"
means a qualification that is--
  a) 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 accredited training provider; or
  d) a foreign qualification similar to qualifications in (a) to (c) above,
     and has been evaluated against the qualifying criteria and is recognized by the
     Registrar, after consultation with the Advisory Committee;

"qualifying criteria"
means the criteria set by the Registrar, after consultation with the Advisory
Committee, by notice in the Gazette against which regulatory examinations will be set
and qualifications will be evaluated and recognised for inclusion on the list of
recognized qualifications; to ensure that it will enable the applicants, key individuals
and representatives concerned to meet the competency requirements for the
applicable categories or subcategories;
"qualification list" or "list of recognised qualifications" means the list of qualifications that have been evaluated against the qualifying criteria and recognised as appropriate by the Registrar, after consultation with the Advisory Committee, by notice in the Gazette;

"quality assurance" means the process of ensuring that the degree of excellence specified is achieved;

"regulatory examinations" means examinations prescribed by the Registrar, set in accordance with the qualifying criteria for the purpose of meeting the competency requirements of this Determination;

"related parties" means related parties as defined in International Accounting Standard (IAS 24) issued by the South African Institute of Chartered Accountants;

"retail pension benefits" means benefits provided by retirement annuity and/or preservation pension and/or preservation provident funds, as defined by the Income Tax Act, 1962, and includes such benefits provided by fund member policies, as defined in the Regulations to the Long-term Insurance Act, 1998, but excluding pension fund benefits;

"SAQA Act" means the South African Qualifications Authority Act, 1995, including any regulations promulgated thereunder;

"SAQA" means the South African Qualifications Authority established in terms of the provisions of the SAQA 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 an exemption granted by the Registrar under section 44 of the Act;

"Short-term Deposits" means deposits as defined in section 1(1) of the Banks Act, 1990, including foreign currency deposits, with a term not exceeding 12 months;

"Short-term Insurance Commercial Lines" means short-term insurance contracts or policies referred to in the Short-term Insurance Act, 1998, purchased by juristic persons and natural persons acting in a business capacity;

"Short-term Insurance Personal Lines" means short-term insurance contracts or policies referred to in the Short-term
Insurance Act, 1998 purchased by natural persons acting otherwise than in a business capacity;

"sole proprietor"
means an FSP who is a natural person;

"statutory professional body"
means a statutory body that governs a specific profession, and is registered as such in terms of the legislation applicable to such bodies;

"subcategory"
means, in relation to-
  a) Category I, a subcategory of financial products as it appears in Table A in paragraph 4(1) of this Determination; and/or
  b) Category II and III, subcategories referred to in Table B in paragraph 4(2) of this Determination;

"supervisor"
means -
  a) an authorised financial services provider that is a natural person;
  b) a representative of the provider who meets, to the satisfaction of the provider, the relevant requirements of this Determination; or
  c) a key individual of the financial services provider who meets, to the satisfaction of the provider, the relevant requirements of this Determination;

"training provider"
means a training provider as defined in the SAQA Act;

"voluntary professional body"
means a body, recognised by the Registrar, that governs a profession in a similar manner to a statutory professional body, but in respect of which membership is voluntary and not prescribed by legislation.

2) Unless the context indicates otherwise, a reference in this Determination to Category I, II, IIA, III or IV, or to any subcategory, shall not be construed as preventing an applicant from applying for a licence in respect of one or more Categories or subcategories, subject to compliance with the requirements of this Determination as regards each such Category or subcategory.

3) A reference in this Determination to any key individual or any representative of a financial services provider will include any new key individual and representative appointed after the date of the provider's authorisation.

Part II : Personal Character Qualities of Honesty And Integrity

2. 
1) An FSP, key individual or representative must be a person who is honest and has integrity.

2) In determining whether an FSP, key individual or representative complies with subparagraph (1), the Registrar may refer to any information in possession of the Registrar or brought to the Registrar’s attention.

3) Without prejudice to the generality of subparagraphs (1), (2) and (4), any of the following factors constitutes prima facie evidence that an FSP, key individual or representative does not qualify in terms of subparagraph (1), namely that the FSP, key individual or representative-

   a) has within a period of five years preceding the date of application or the proposed date of appointment or approval, as the case may be, been found guilty in any criminal proceedings or liable in any civil proceedings by a court of law (whether in the Republic or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;

   b) has within a period of five years preceding the date of application or the proposed date of appointment or approval, as the case may be, been found guilty by any statutory professional body or voluntary professional body (whether in the Republic or elsewhere) recognized by the Board, of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative;

   c) has within a period of five years preceding the date of application or the proposed date of appointment or approval, as the case may be, been denied membership of any body referred to in subparagraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative;

   d) has within a period of five years preceding the date of application, or the proposed date of appointment or approval, as the case may be -

      i) been found guilty by any regulatory or supervisory body (whether in the Republic or elsewhere), recognised by the Board; or

      ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body, on account of an act of dishonesty, negligence, incompetence or mismanagement sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative;

   e) has within a period of five years preceding the date of application, appointment or approval, as the case may be, had any licence granted to the financial services provider by any regulatory or supervisory body referred to in subparagraph (d) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the FSP, key individual or representative; or

   f) has at any time prior to the date of application, appointment or approval, as the case may be, been disqualified or prohibited by any court of law (whether in the Republic or elsewhere) from taking part in the management of any company or other statutorily created,
recognised or regulated body, irrespective whether such disqualification has since been lifted or not.

4) An FSP and key individual must in the application to the Registrar, and a representative must at appointment by the FSP, be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to, the FSP, key individual or representative, and which may be relevant for purposes of a decision by the Registrar, or in the case of a representative, by the FSP, that the FSP, key individual or representative complies or does not comply with subparagraph (1).

Part III : Competency Requirements

3.

1) Subject to the provisions of the Act, and after consultation with the Advisory Committee, the Registrar must by notice in the Gazette publish qualifying criteria against which-
   a) regulatory examinations will be set; and
   b) the Registrar will evaluate and recognise qualifications for inclusion on the list of recognised qualifications.

2) Subject to paragraphs (3) to (7) below, an FSP of any Category and, where applicable, any key individual and/or representative of such FSP must-
   a) comply with the applicable minimum experience requirements referred to in Part IV below;
   b) have the relevant qualification referred to in Part V below;
   c) have successfully passed the relevant first and/or second level Regulatory Examination(s), as may from time to time be set by the Registrar and as set out in Part VI below; and
   d) comply with the CPO requirements as set out in Part VII below.

3) An FSP (who is a sole proprietor) must meet the minimum experience and all applicable qualification requirements, and must have completed the relevant regulatory examinations as required for an FSP and key individual for the specific Categories or subcategories before a licence will be granted.

4) A key individual must meet the minimum experience and all applicable qualification requirements and must have completed the relevant regulatory examination before the Registrar will approve the appointment.

5) An FSP must at all times ensure that at least one or more of the key individuals approved by the Registrar meet the same experience, qualifications and regulatory examination requirements as would apply to an FSP (who is a sole proprietor), in relation to anyone or more Categories or subcategories the provider is authorised for, and in respect of which that key individual will manage or oversee the provider’s activities.

6) An FSP must ensure that each juristic representative must at all times have at least one key individual responsible for the managing and overseeing of the
A representative must at the date of appointment by an FSP comply with the applicable minimum experience and all applicable qualification requirements, and must have completed the relevant regulatory examination(s), provided that the Registrar may exempt representatives from these requirements while rendering financial services under supervision.

8) An FSP or any representative that renders financial services in respect of health service benefits must be accredited as a broker, and a representative that renders financial services under supervision in respect of health services benefits must be accredited as an apprentice broker, in terms of the provisions of Regulation 28 B under the Medical Schemes Act, 1998.

9) An FSP, who is a sole proprietor, a Key individual and a representative must, after completion of all relevant qualification, experience and regulator examinations, meet the requirements relating to CPO as set out in Part VII of this Determination.

### Part IV: Experience Requirements

4.  

1) **Experience Requirements for Category I:**

   a) Subject to the provisions of the Act, an FSP (who is a sole proprietor) in respect of Category I must meet the minimum experience applicable to the subcategories as described in either column two and/or three of Table A below. The experience must be practical experience gained in the rendering of financial services in respect of Category I and the subcategories concerned: Provided that-

      i) such experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;

      ii) such experience was obtained through the active involvement of in rendering such financial services, irrespective of whether the experience was gained in the course of rendering such services under supervision;

      iii) such experience could have been gained either within or outside the Republic of South Africa;

      iv) such experience could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

      v) such experience may have been gained simultaneously in multiple subcategories, provided that proof of such experience can be provided;

      vi) where an FSP changes its licence restrictions to include additional financial services or renders services in relation to additional subcategories, the FSP is required to meet the
experience requirements relating to the additional subcategories with the proviso that where the change in restriction will include-

aa) additional financial service (advice or the rendering of intermediary services, as applicable), the FSP is required to obtain 50% of the experience requirements applicable to the additional financial services;

bb) an additional subcategory, the FSP is required to gain 100% of the experience requirements relation to the additional subcategory.

b) A representative of a FSP in respect of Category I at the date of appointment by the FSP comply with the same relevant experience requirements as referred to in subparagraph 1(a), provided that a representative who does not meet such requirement on date of authorisation, may be exempted by the Registrar to acquire the required minimum experience while working under supervision.

c) A key individual of an FSP in respect of Category I, must, on the date of approval by the Registrar, have at least one (1) year's practical experience in the management or oversight of the activities of a business or part thereof. Provided that such experience -

i) could have been gained either within or outside the Republic of South Africa;

ii) could have been gained during intermittent periods, not more than 5 years prior to the application for approval and includes experience gained prior to the date envisaged in section 7(1) of the Act;

iii) may have been gained in the management or oversight of services similar to or corresponding to the financial services rendered by the FSP.

| TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE |
|-----------------------------------------------|-----------------------------------------------|
| COLUMN ONE SUBCATEGORY | COLUMN TWO ADVICE: MINIMUM EXPERIENCE | COLUMN THREE INTERMEDIARY SERVICES: MINIMUM EXPERIENCE |
| 1.1 Long-term Insurance subcategory A | 6 months | 2 months |
| 1.2 Short-term Insurance Personal Lines | 1 year | 6 months |
| 1.3 Long-term Insurance: | | |
| 1.3.1 subcategory B1 | 1 year | 6 months |
| 1.3.2 subcategory B2 | 1 year | 6 months |
| 1.4 Long-term Insurance subcategory C | 1 year | 6 months |
1.5 Retail Pension Benefits
1.6 Short-term Insurance Commercial Lines
1.7 Pension Fund Benefits
1.8 Securities and instruments: Shares
1.9 Securities and Instruments: Money market instruments
1.10 Securities and Instruments: Debentures and securitized 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 excluding warrants
1.14 Participatory Interests in one or more collective Investment schemes
1.15 Forex Investment Business
1.16 Health Service Benefits
1.17 Long-term Deposits
1.18 Short-term Deposits
1.19 Friendly Society Benefits

2) **Category II - Experience Requirements:**

a) Subject to the provisions of the Act, an FSP (who is a sole proprietor) in respect of Category II must meet the minimum experience applicable to the subcategories as described in column two of Table B below. The experience must be practical experience gained in the rendering of financial services in respect of Category II and the subcategories concerned: Provided that -

i) such experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;

ii) such experience was obtained through the active involvement in rendering such financial services, irrespective of whether the experience was gained in the course of undergoing services under supervision;

iii) the experience could have been gained either within or outside the Republic of South Africa;
iv) the experience could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

v) the experience may have been gained simultaneously in multiple subcategories, provided that proof of such experience can be provided;

vi) may have been gained in a team environment where the person participated in the process of making investment decisions whilst working under supervision;

vii) where a Category II FSP applies for the amendment of the restrictions on its licence to allow such FSP to render the financial services referred to in subparagraph (a) in additional subcategories, the FSP must comply with the experience requirements applicable to the additional subcategories.

b) A representative of an FSP in respect of Category II, must at appointment by the FSP comply with the same relevant experience requirements as referred to in subparagraph 2(a) above, as the FSP with authorisation, provided that a representative who does not meet such requirement on date of authorisation, may be exempted by the Registrar to acquire the required minimum experience while working under supervision.

c) A key individual of a provider in respect of Category II, must have at least one (1) year's practical experience in the management and oversight of services similar to or corresponding to the financial services rendered by the provider and must have actually provided the financial services in relation to the subcategories or part thereof on date of approval. Provided that-

i) the experience could have been gained either within or outside the Republic of South Africa;

ii) the experience could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

iii) the experience may have been gained in the management and oversight of services similar to or corresponding to the financial services rendered by the provider.

<table>
<thead>
<tr>
<th>COLUMN ONE: SUBCATEGORY</th>
<th>COLUMN TWO: MINIMUM EXPERIENCE</th>
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<td>2.1.1 subcategory B1</td>
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<td>2.2 Long-term Insurance Category C</td>
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<td>2.7</td>
<td>Securities and Instruments: Debentures and securitised debt</td>
</tr>
<tr>
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<td>Securities and Instruments: Warrants, certificates and other instruments acknowledging debt</td>
</tr>
<tr>
<td>2.9</td>
<td>Securities and Instruments: Bonds</td>
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<td>Securities and Instruments: Derivative instruments excluding warrants</td>
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<td>Participatory Interests in one or more collective Investment schemes</td>
</tr>
<tr>
<td>2.12</td>
<td>Forex Investment Business</td>
</tr>
<tr>
<td>2.13</td>
<td>Long-term Deposits</td>
</tr>
<tr>
<td>2.14</td>
<td>Short-term Deposits</td>
</tr>
</tbody>
</table>

3) **Category IIA - Experience Requirements:**

a) Subject to the provisions of the Act, an FSP (who is a sole proprietor) in respect of Category IIA must have 3 years experience. The experience must be practical experience gained in the rendering of financial services in respect of Category IIA: Provided that-
   i) such experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;
   ii) such experience was obtained through the active involvement in rendering such financial services, irrespective of whether the experience was gained in the course of undergoing services under supervision;
   iii) the experience could have been gained either within or outside the Republic of South Africa;
   iv) the experience could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act.

b) A representative of an FSP in respect of Category II, must at appointment by the FSP comply with the same relevant experience requirements as referred to in subparagraph 3(a) above, as the FSP with authorisation, provided that a representative who does not meet such requirement on date of authorisation, may be exempted by the Registrar to acquire the required minimum experience while working under supervision.

c) may have been gained in the management and/or oversight of services similar to or corresponding to the financial services rendered by the provider. A key individual of a provider in respect of Category IIA, must have at least one (1) year's practical experience in the management
and oversight of services similar to or corresponding to the financial services rendered by the provider and must have actually provided the financial services in relation to Category IIA on date of approval. Provided that-

i) the experience could have been gained either within or outside the Republic of South Africa;

ii) the experience could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

iii) the experience may have been gained in the management and oversight of services similar to or corresponding to the financial services rendered by the provider.

4) **Category III - Experience Requirements:**
   a) Subject to the provisions of the Act, the key individual of a Category III FSP must have 3 year's practical experience gained in the rendering of financial services as referred to in the definition of "administrative FSP": and must have at least one (1) year's practical experience in the management and/or oversight of services similar to or corresponding to the financial services rendered by the FSP: Provided that such practical experience-

   i) involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;

   ii) was obtained through the active involvement in the rendering of such financial services;

   iii) could have been gained either within or outside the Republic of South Africa;

   iv) could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

   v) may have been gained simultaneously in multiple subcategories provided that proof of such experience can be provided and irrespective of whether the experience was gained whilst rendering such services under supervision.

   b) A representative of a Category III FSP must, unless exempted, at the date of appointment by the FSP comply with the same relevant experience requirement as referred to in subparagraph 4(a), excluding the requirement to have at least one year's practical experience in the management and/or oversight of services similar to or corresponding to the financial services rendered by the FSP.

5) **Experience Requirements for Category IV:**
   a) Subject to the provisions of the Act, a Category IV FSP (who is a sole proprietor), must have one (1) year's experience gained in the rendering of financial services as referred to in the definition of "administration of assistance policies": Provided that such practical experience-

   i) involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;

   ii) was obtained through the active involvement in the rendering
of such intermediary services and irrespective of whether the experience was gained whilst rendering such services under supervision: provided that proof of such experience can be provided;

iii) could have been gained either within or outside the Republic of South Africa;

iv) could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

b) A representative of an FSP in respect of Category IV must with authorisation by the FSP meet the same relevant practical experience requirement, mentioned in subparagraph 1(a) above, as an FSP (who is a sole proprietor) on authorisation, provided that a representative who does not meet such requirement on date of authorisation by the FSP, may be exempted by the Registrar to acquire the required minimum experience while working under supervision for the minimum experience period.

c) A key individual of an FSP in respect of Category IV must, on the date of approval by the Registrar, have at least one (1) year’s practical experience in the management and/or oversight of services similar to or corresponding to the financial services rendered by the FSP:
Provided that such practical experience-

i) could have been gained within or outside the Republic of South Africa;

ii) could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in section 7(1) of the Act;

iii) may have been gained in the management and/or oversight of services similar to or corresponding to the financial services rendered by the provider.

Part V Qualifications

5. 1) Categories I and IV - Qualifications:

a) Subject to the qualifying criteria, the Registrar must, after consultation with the Advisory Committee, publish a list of recognised qualifications in the Gazette in respect of Category I and the subcategories listed in Table A above and Category IV.

b) An FSP (who is a sole proprietor) in respect of Category I or IV must have a recognised qualification, as determined by the Registrar by notice in the Gazette, as it applies to the applicable Categories or subcategories the FSP is authorised for.

c) A key individual of a Category I FSP must, at approval, have a recognised qualification, as determined by the Registrar by notice in the Gazette, as it applies to the applicable Categories or subcategories of the FSP.

d) A representative of a Category I provider must, on appointment, have a recognised qualification as determined by the Registrar by notice in
the Gazette, as it applies to the applicable Categories or subcategories he or she is appointed for: Provided that the Registrar may, by notice in the Gazette, exempt representatives that on appointment only meet the following entry level qualifications while working under supervision until the recognised qualification is obtained:

i) Matric;
ii) Grade 12; or
iii) an equivalent school leaving certificate at NQF Level 4,

with the proviso that in respect of representatives in subcategory 1.1 Long Term Insurance Category A and/or 1.19 Friendly Society Benefits, the entry level qualification requirement is either ABET level 1, or the proven ability to read, write and calculate to the satisfaction of the provider.

e) Subject to subparagraphs (a) to (d) above, an FSP (who is a sole proprietor), key individual and/or a representative only need to have the most onerous qualification required in respect of all subcategories he or she is authorised, approved or appointed for.

Categories II, IIA and III - Qualifications:

a) Subject to the qualifying criteria, the Registrar must, after consultation with the Advisory Committee, publish in the Gazette a list of recognized qualifications in respect of Category II and the subcategories listed in Table B above, as well as Categories IIA and III.

b) A FSP (who is a sole proprietor) in respect of Categories II and IIA must have a recognised qualification, as determined by the Registrar by notice in the Gazette, as it applies to the applicable Categories or subcategories the FSP is authorised for.

c) A key individual of a FSP in respect of Category II, IIA and/or III must, on date of appointment, have a recognised qualification as determined by the Registrar by notice in the Gazette, as it applies to the applicable Categories or subcategories the FSP is authorised for.

d) A representative of a Category II, IIA or III provider must on appointment by the FSP have a recognised qualification as determined by the Registrar by notice in the Gazette, applicable to the Categories or subcategories he or she is authorised for: Provided that the Registrar may, by notice in the Gazette, exempt representatives that with authorisation only meet the entry level qualification requirements as published by the Registrar by notice in the Gazette, as they apply to the Categories or subcategories he or she is authorised for, while the representative works under supervision.

Part VI Regulatory Examinations

6.

1) Principles applicable to the regulatory examinations subject to the provisions of this Act, the qualifying criteria referred to in section 3(1) determines the scope and content of the regulatory examination(s) as it applies to an FSP (who is a sole proprietor), key individuals and/or representatives of providers in accordance with the following principles:

a) An FSP (who is a sole proprietor) applying for a licence of any Category
and, where applicable, any key individual and representative of a Gazette are reproduced under provider must take and successfully pass such regulatory examinations as may from time to time be set by the Registrar.

b) The Registrar may approve examination bodies, in accordance with the criteria as published by the Registrar after consultation with the Advisory Committee by notice in the Gazette.

c) The regulatory examinations include a set of core examinations (referred to as first level regulatory examinations) dealing in particular with legislation directly binding on an FSP, its key individuals and representatives in terms of the Act (particularly the provisions of the Act and the Financial Services Board Act, 1990, and of all measures promulgated there under), and specific examinations (referred to as second level regulatory examinations) relating to the Category or subcategories thereof in respect of which an FSP is authorised to render financial services.

d) The regulatory examinations will focus in particular on testing the application of factual knowledge of the examinees in relation to-
   i) the rendering of financial services applicable to specific Categories or subcategories to clients; and
   ii) the relevant legal provisions, particularly of the rights and duties which they vest in providers and clients, their appreciation of the legal meaning and implications of these provisions, and their competence to apply correctly these provisions.

e) The Registrar, after consultation with the Advisory Committee, determines by notice in the Gazette all required necessary and incidental matters relating to the setting and taking of such examinations, including the curricula to be covered, the drafting of the examination papers, the criteria to be applied in the determination of whether an examinee has passed the examination successfully, the persons or bodies, if any, appointed to apply such criteria as examiners, the time, place and date set for the examinations, the carrying out of supervision powers during the taking of the examinations, the evaluation and marking of the completed examinations, the moderation of examinations and the communications to examinees and the Financial Services Board of the results achieved.

2) Categories I and IV: Regulatory Examinations

a) Subject to paragraph 3(3) of Part III, an FSP (who is a sole proprietor) in respect of Category I or IV must meet the first and second level regulatory examination requirements, as determined by the Registrar by notice in the Gazette, as applicable to the Categories or subcategories the provider is authorised for:
   i) In relation to the first level regulatory examination, the FSP must meet the requirements as determined in column two of Table C below;
   ii) in relation to the second level regulatory examination, the FSP must meet the requirements as determined in column three of Table C, below;
b) Subject to paragraph 3(4) of Part III, a key individual in respect of Category I or IV must meet the first level regulatory examination requirements, as determined by the Registrar by notice in the *Gazette* as applicable to the Categories or subcategories the provider is authorised for.

c) Subject to paragraph 3(7) of Part III, a representative in respect of Category I or IV must meet the first and second level regulatory examination requirements, as determined by the Registrar by notice in the *Gazette*, as applicable to the subcategory or subcategories he or she is authorised for, as required in column two and three of Table C below: Provided that a representative in respect of subcategory 1.1 Long-term Insurance Category A and/or 1.19 Friendly Society Benefits does not need to meet the first level regulatory examination requirements as referred to in respect of column two of Table C below.

<table>
<thead>
<tr>
<th>TABLE C: CATEGORIES I and IV: REGULATORY EXAMINATIONS</th>
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</thead>
<tbody>
<tr>
<td><strong>Category I</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1.1 Long-term Insurance subcategory A</td>
<td>Applies</td>
<td>Applies (key individual only)</td>
<td></td>
</tr>
<tr>
<td>1.2 Short-term Insurance Personal Lines</td>
<td>Applies</td>
<td>Applies</td>
<td></td>
</tr>
<tr>
<td>1.3.1 Long-term Insurance: subcategory B1</td>
<td>Applies</td>
<td>Applies</td>
<td></td>
</tr>
<tr>
<td>1.3.2 subcategory B2</td>
<td>Applies</td>
<td>Applies</td>
<td></td>
</tr>
<tr>
<td>1.4 Long-term Insurance subcategory C</td>
<td>Applies</td>
<td>Applies</td>
<td></td>
</tr>
<tr>
<td>1.5 Retail Pension Benefits</td>
<td>Applies</td>
<td>Applies</td>
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<tr>
<td>1.6 Short-term Insurance Commercial Lines</td>
<td>Applies</td>
<td>Applies</td>
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<tr>
<td>1.7 Pension Fund Benefits</td>
<td>Applies</td>
<td>Applies</td>
<td></td>
</tr>
<tr>
<td>1.8 Securities and instruments: Shares</td>
<td>Applies</td>
<td>Applies</td>
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<td></td>
<td>Category</td>
<td>Applies</td>
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<tr>
<td>1.9</td>
<td>Securities and Instruments: Money market instruments</td>
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<td>1.10</td>
<td>Securities and Instruments: Debentures and securitised debt</td>
<td></td>
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<tr>
<td>1.11</td>
<td>Securities and Instruments: Warrants, certificates and other instruments acknowledging debt</td>
<td></td>
<td></td>
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<tr>
<td>1.12</td>
<td>Securities and Instruments: Bonds</td>
<td></td>
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<tr>
<td>1.13</td>
<td>Securities and Instruments: Derivative instruments excluding warrants</td>
<td></td>
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<tr>
<td>1.14</td>
<td>Participatory Interests in one or more collective Investment schemes</td>
<td></td>
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<tr>
<td>1.15</td>
<td>Forex Investment Business</td>
<td></td>
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<tr>
<td>1.16</td>
<td>Health Service Benefits</td>
<td></td>
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<td>1.17</td>
<td>Long-term Deposits</td>
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<tr>
<td>1.18</td>
<td>Short-term Deposits</td>
<td></td>
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<tr>
<td>1.19</td>
<td>Friendly Society Benefits</td>
<td></td>
<td>Applies (key individual only)</td>
</tr>
<tr>
<td></td>
<td>Category IV: Assistance Business FSP</td>
<td></td>
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</tr>
</tbody>
</table>

3) **Categories II, IIA and III: Regulatory Examinations**

   a) Subject to paragraph 3(3) of Part III, an FSP (who is a sale proprietor) must meet the first and second level regulatory examination requirements, as determined by the Registrar by notice in the *Gazette*, as applicable to the Categories or subcategories the provider is authorised for.

   b) Subject to paragraph 3(4) of Part III, a key individual must meet the first level regulatory examination requirements, as determined by the Registrar by notice in the *Gazette*, as applicable to the FSP in respect of the Categories the provider is authorised for, and in respect of which that key individual will manage or oversee the provider's activities.

   c) Subject to paragraph 3(7) of Part III, a representative must meet the first and second level regulatory examination requirements, as determined by the Registrar by notice in the *Gazette*, as applicable to the Categories or subcategories he or she is authorised for.
Determinations

Part VII Continuous Professional Development

7. Subject to paragraph 3(2) of Part III, the Registrar may determine, after consultation with the Advisory Committee, by notice in the Gazette, the requirements for continuous professional development in accordance with the following principles:

1) An FSP (who is a sole proprietor), a key individual and/or a representative, must meet the continuous professional development requirements, as determined by the Registrar, as applicable to the Categories and subcategories he or she is authorised, approved or appointed for:
   a) Continuous professional development will require fifteen (15) to sixty (60) notional hours of development over a three year cycle as provided for in Table D below;
   b) the three year cycle will start upon completion of the highest level (first or second level) of regulatory examination(s) as it applies to either the FSP (who is a sole proprietor), the key individual or the representative, as the case may be, and will not start later than on the completion of a six year period from date of authorisation, approval or appointment;
   c) where an FSP (who is a sole proprietor), key individual or representative is authorised, approved or appointed to provide financial services for a specific Category and subcategory, and already complies with the qualifications and regulatory examinations requirements, and is required to meet the continuous professional development requirements, such requirements will not be affected should the licensing restrictions or appointment requirements be amended to include additional subcategories that may require additional qualification and/or regulatory examinations to be achieved;
   d) where an FSP (who is a sole proprietor), key individual or representative is authorised, approved or appointed to provide financial services in respect of multiple Categories and subcategories, the highest requirement in terms of notional hours will apply;
   e) the FSP (who is a sole proprietor), key individual and representative, as the case may be, must record the outcomes of any continuous professional development activities with the Registrar’s office, in the form and manner as determined by the Registrar from time to time.
   f) a representative is required to meet the requirements in column two of Table D as it would apply to the FSP in the Categories or subcategories concerned: Provided that a representative is not required to meet the requirements in respect of subcategory 1.1 Long-term Insurance Category A, 1.17 Long-term Deposits, 1.18 Short-term Deposits and 1.19 Friendly Society Benefits.

2) The Registrar will maintain a list of programmes that is suitable for purposes of CPD. Industry associations, statutory professional bodies, voluntary professional bodies, employers, Higher Education Institutions and training providers may apply to the Registrar, in the prescribed format, for recognition of their programmes for the purposes of CPD, which will, upon such approval, be added to the Registrar’s reporting mechanism for recording purposes.
3) The Registrar may, after consultation with the Advisory Committee, by notice in the Gazette, exempt any group of persons from meeting the prescribed CPO requirements, if such person(s) holds membership in a statutory or voluntary professional body that must comply with similar CPD requirements, provided that the professional body records its membership on the Registrar's reporting mechanism and satisfies the Registrar on an annual basis that CPD requirements are monitored and enforced as a condition of membership of the professional body.

<table>
<thead>
<tr>
<th>TABLE D: CONTINUOUS PROFESSIONAL DEVELOPMENT REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COLUMN ONE CATEGORY</td>
</tr>
<tr>
<td>Category I</td>
</tr>
<tr>
<td>1.1 Long-term Insurance subcategory A (key individual only)</td>
</tr>
<tr>
<td>1.2 Short-term Insurance Personal Lines</td>
</tr>
<tr>
<td>1.3 Long-term Insurance:</td>
</tr>
<tr>
<td>1.3.1 subcategory B1</td>
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<tr>
<td>1.3.2 subcategory B2</td>
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<tr>
<td>1.4 Long-term Insurance subcategory C</td>
</tr>
<tr>
<td>1.5 Retail Pension Benefits</td>
</tr>
<tr>
<td>1.6 Short-term Insurance Commercial Lines</td>
</tr>
<tr>
<td>1.7 Pension Fund Benefits</td>
</tr>
<tr>
<td>1.8 Securities and Instruments: Shares</td>
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<tr>
<td>1.9 Securities and Instruments: Money market instruments</td>
</tr>
<tr>
<td>1.10 Securities and Instruments: Debentures and securitised debt</td>
</tr>
<tr>
<td>1.11 Securities and Instruments: Warrants, certificates and other instruments acknowledging debt</td>
</tr>
<tr>
<td>1.12 Securities and Instruments: Bonds</td>
</tr>
</tbody>
</table>
8.  

1) An FSP must have and be able to maintain the operational ability to fulfill the responsibilities imposed by the Act on authorised financial services providers, including but not limited to the following:  
   a) A fixed business address;  
   b) adequate access to communication facilities including at least a fulltime telephone or cell phone service, and typing and document duplication facilities;  
   c) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence;  
   d) an account with a registered bank including, where required by the Act, a separate bank account for client funds; and  
   e) an FSP who is an accountable institution as defined in the Financial Intelligence Centre Act, 2001, must have in place all the necessary policies, procedures and systems to ensure full compliance with that Act and other applicable anti-money laundering or terrorist financing legislation.  

2) An FSP that utilises any third party to render administrative or system functions in relation to the rendering of financial services on its behalf must have in place a detailed service level agreement, specifying the agreed services, time standards, roles and responsibilities and any penalties that might be applicable.  

3) An FSP must ensure that internal control structures, procedures and controls are in place which include at the least the following:  
   a) segregation of duties and roles and responsibilities where such segregation is appropriate from an operational risk mitigation
perspective;
b) application of logical access security;
c) access rights and data security on electronic data, where applicable;
d) physical security of the providers assets and records, where applicable;
e) documentation relating to business processes, policies and controls, and technical requirements;
f) system application testing, where applicable;
g) disaster recovery and back-up procedures on electronic data, where applicable;
h) appropriate training for all key individuals and/or representatives regarding the requirements of the Act;
i) training for all key individuals and/or representatives regarding the giving of advice and/or rendering of intermediary services by the provider; and
j) a business continuity plan.

4) An FSP must ensure that the necessary system controls and compliance measures are in place to manage and monitor the relevant system(s) in use.

5) An FSP must record all financial and system procedures to ensure that the FSP is able to report in terms of applicable accounting requirements.

6) An FSP must have general administration processing, accounting transactions and risk control measurements in place to ensure accurate, complete and timeous processing of data, information reporting and the assurance of data integrity.

7) An applicant must, if and to the extent required by the Registrar, maintain in force suitable guarantees or professional indemnity insurance or fidelity insurance cover to cover the risks of losses due to fraud, dishonesty or negligence.

8) A key individual, in respect of an FSP, must have and be able to maintain the operational ability to fulfill the responsibilities imposed by the Act on FSPs, including oversight of the financial services (regarding the giving of advice and rendering of intermediary services) provided by the representatives of the FSP.

Part IX Financial Soundness

9.

1) An FSP must not be an unrehabilitated insolvent or under liquidation or in provisional liquidation.

2) An FSP in respect of category I that does not hold client assets or receive premiums or money must comply with the following requirement, namely, that the assets of the FSP (excluding goodwill, other intangible assets and investments in related parties) must at all times exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors).
3) An FSP in respect of Category I that holds client assets or receive premiums or money must at all times comply with the following requirements:
   a) The assets of the FSP (excluding goodwill, other intangible assets and investments in related parties) must exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors);
   b) the FSP must maintain current assets which are at least sufficient to meet current liabilities; and
   c) the FSP shall at all times maintain liquid assets equal to or greater than $4/52$ weeks of annual expenditure.

4) An FSP in respect of Category II must at all times comply with the following requirements:
   a) The assets of the FSP (excluding goodwill, other intangible assets and investments in related parties) must exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors);
   b) the FSP must maintain current assets which are at least sufficient to meet current liabilities; and
   c) the FSP shall at all times maintain liquid assets equal to or greater than $8/52$ weeks of annual expenditure.

5) An FSP in respect of Categories IIA and III must at all times comply with the following requirements:
   a) The assets of the FSP (excluding goodwill, other intangible assets and investments in related parties) must exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors) by at least R3 million;
   b) the FSP must maintain current assets which are at least sufficient to meet current liabilities; and
   c) the FSP shall at all times maintain liquid assets equal to or greater than $13/52$ weeks of annual expenditure.

Part X Transitional Provisions

10.

1) Subject to the provisions of the Act and Parts I to IX above, the transitional requirements will be applicable to all FSPs, key individuals and representatives that was authorised, approved or appointed in relation to a specific Category or subcategory on 31 December 2009 and provides for the transitional arrangements until 31 December 2014 as applicable.

2) For purposes of this Part-
   a) "foreign qualification recognised by the Registrar" means an appropriate qualification recognised by notice in the Gazette for purposes of this Determination by the Registrar, after consultation with the Advisory Committee;
   b) "foreign qualification evaluated by SAQA" means an appropriate qualification recommended by SAQA as being equivalent to a South African qualification;
c) "qualification" includes-
   i) an appropriate qualification registered by SAQA which can be either a certificate, diploma or degree at undergraduate or postgraduate level;
   ii) an appropriate foreign qualification recognised by the Registrar or evaluated by SAQA;
   iii) an appropriate skills programme registered by a registered training provider with a SETA ETQA which must be based on core or elective unit standards: Provided that a reference to "a skills programme consisting of a minimum of" can be interpreted to refer to one or more skills programmes, provided that the cumulative number of credits, and the level are at the same level or higher than is required;
   iv) a fully completed appropriate qualification obtained prior to the promulgation of the South African Qualifications Act, 1995, or before the implementation of the National Qualifications Framework in 2001, that does not consist of unit standards registered by SAQA: Provided that-
      aa) such qualification was obtained through a South African educational institution or training provider and recorded by the Human Sciences Research Council; and
      bb) the modules or subjects are clearly identified on the learner record provided by the educational institution or training provider;
   v) a partially completed appropriate qualification that does not consist of unit standards registered by SAQA: Provided that-
      aa) such qualification is registered on the National Qualifications Framework;
      bb) the level and credits assigned to the completed modules or completed subjects are clearly identified on the learner record provided by the educational institution;
      cc) the completed subjects or completed modules meet the requirements regarding "appropriate";
      dd) the level and credits of the completed modules or completed subjects are equivalent to the level and credits required for the skills programmes in respect of the subcategories of financial products in Column Two of Table E below in respect of which the person intends to render financial services;
      ee) such qualification is recognised by the Registrar, after Consultation with the Advisory Committee, by notice in the Gazette; and
      ff) such qualification must be completed by 31 December 2011; or
   vi) an appropriate credit-bearing short course registered by an accredited institution of higher education in accordance with the prescriptions of the Council for Higher Education is acceptable: Provided that-
      aa) the level and credits of such short course is clearly identified; and
bb) such course is recognised by the Registrar, after consultation with the Advisory Committee, by notice in the Gazette:

Provided further that all qualifications or skills programmes must meet the requirements of appropriateness, which means:

1A) that an "appropriate" certificate, diploma, skills programme or degree, refers to such qualifications obtained in the fields of commerce and/or commercial law which includes modules on financial accounting, financial markets, commercial law, insurance law, estate and trust law, economics, insurance, investments and similar subjects; or

1B) other particular fields of study which equip such person to render a financial service in a specialised class of financial product, registered by SAQA and provided by a registered higher institution whether local or foreign.

3) The provisions of this Schedule apply to all FSPs (who are sole proprietors), key individuals and representatives of providers that have been authorised, approved or appointed before or on the date of coming into operation of this Schedule as follows:

a) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 30 September 2004 and 31 December 2007 must comply with the qualification requirements in column two requirements of Table E by 31 December 2009, as applicable to the Categories or subcategories they are authorised, approved or appointed for.

b) All FSPs (who are sole proprietors) authorised during the period 30 September 2004 to 31 December 2007, that changed their licensing restrictions during this period to include additional Categories or subcategories must comply with the qualification requirements in column two of Table E by 31 December 2009, as applicable to the additional Categories or subcategories they are authorised for.

c) All key individuals and representatives appointed during the period 30 September 2004 to 31 December 2007, whose approval and/or appointment conditions were amended during this period to include additional Categories and/or subcategories, must comply with the qualification requirements in column two of Table E by 31 December 2009, applicable to the additional Categories or subcategories they are approved or appointed for.

d) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 30 September 2004 to 31 December 2007 must comply with the first level of Regulatory Examinations requirements in column three of Table E, applicable to the Categories or subcategories they are authorised, approved or appointed for, by the date stated.

e) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period
30 September 2004 to 31 December 2007 must, unless exempted by the Registrar, comply with the second level of Regulatory Examinations requirements in column four of Table E, applicable to the Categories or subcategories they are authorised, approved or appointed for, by 31 December 2013.

<table>
<thead>
<tr>
<th>COLUMN ONE CATEGORY</th>
<th>COLUMN TWO QUALIFICATION REQUIREMENTS</th>
<th>COLUMN THREE FIRST LEVEL REGULATORY EXAMINATION</th>
<th>COLUMN FOUR SECOND LEVEL REGULATORY EXAMINATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Long-term Insurance subcategory A</td>
<td>Representatives: ABET Level 1 or the proven ability to read and write to the satisfaction of the provider.</td>
<td>Not applicable</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>FSPS and key individuals:</strong> Recognised qualification at NQF level 2; or a recognised skills programme of 30 credits at NQF level 2 by 31 December 2011.</td>
<td>31/12/2013</td>
</tr>
<tr>
<td>1.2</td>
<td>Short-term Insurance Personal Lines</td>
<td>An appropriate NQF level 4 skills programme consisting of a minimum of 30 credits; or an appropriate qualification at NQF level 4</td>
<td>31/12/2011</td>
</tr>
<tr>
<td>1.3</td>
<td>Long-term Insurance:</td>
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</tr>
<tr>
<td>1.3.1 subcategory B1</td>
<td>An appropriate NQF level 4 skills programme consisting of a minimum of 30 credits; or an appropriate qualification at NQF level 4.</td>
<td>31/12/2011</td>
<td>31/12/2013</td>
</tr>
<tr>
<td>1.3.2 subcategory B2</td>
<td>An appropriate NQF level 4 skills programme consisting of a minimum of 30 credits; or an appropriate qualification at NQF level 4.</td>
<td>31/12/2011</td>
<td>31/12/2013</td>
</tr>
<tr>
<td>1.4</td>
<td>Long-term Insurance Category C</td>
<td></td>
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<tr>
<td>1.5 Retail pension benefits</td>
<td>An appropriate NQF level 5 skills programme consisting of a minimum of 60 credits; or an</td>
<td>31/12/2011</td>
<td>31/12/2013</td>
</tr>
<tr>
<td>Determinations</td>
<td>Short-term Insurance Commercial Lines</td>
<td>An appropriate NQF level 4 skills programme consisting of a minimum of 60 credits; or an appropriate qualification at NQF level 4.</td>
<td>31/12/2011</td>
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</tr>
<tr>
<td>1.7 Pension Fund Benefits</td>
<td>An appropriate NQF level 5 skills programme consisting of a minimum 60 credits; or an appropriate qualification at NQF level 5.</td>
<td>31/12/2011</td>
<td>31/12/2013</td>
</tr>
<tr>
<td>1.8 to 1.13 Securities and Instruments</td>
<td>An appropriate NQF level 6 skills programme consisting of a minimum 60 credits; or an appropriate qualification at NQF level 6, provided 3 years of experience is obtained; or an appropriate qualification at NQF level 5, provided 2</td>
<td>31/12/2011</td>
<td>31/12/2013</td>
</tr>
<tr>
<td></td>
<td>Participatory Interests in one or more collective investment schemes</td>
<td>An appropriate NQF level 5 skills programme consisting of a minimum of 60 credits; or an appropriate qualification at NQF level 5.</td>
<td>31/12/2011</td>
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<tr>
<td>1.1 4</td>
<td>Participatory Interests in one or more collective investment schemes</td>
<td>An appropriate NQF level 5 skills programme consisting of a minimum of 60 credits; or an appropriate qualification at NQF level 5.</td>
<td>31/12/2011</td>
</tr>
<tr>
<td>1.1 5</td>
<td>Forex Investment Business</td>
<td>An appropriate NQF level 6 skills programme consisting of a minimum of 60 credits; or an appropriate qualification at NQF level 5 or 6.</td>
<td>31/12/2011</td>
</tr>
<tr>
<td>1.1 6</td>
<td>Health Service Benefits</td>
<td>An appropriate NQF level 5 skills programme consisting of a minimum of 60 credits; or an appropriate certificate at NQF level 5.</td>
<td>31/12/2011</td>
</tr>
<tr>
<td>Determinations</td>
<td>1.17</td>
<td>Long-term Deposits</td>
<td>An appropriate NQF level 4 skills programme consisting of a minimum of 30 credits; or an appropriate qualification NQF level 4.</td>
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<td>1.18</td>
<td>Short-term Deposits</td>
<td>An appropriate NQF level 2 skills programme consisting of a minimum of 30 credits; or an appropriate qualification at NQF level 2.</td>
</tr>
<tr>
<td></td>
<td>1.19</td>
<td>Friendly Society Benefits</td>
<td>Representatives: ABET Level 1 or the proven ability to read, write and calculate to the satisfaction of the provider.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FSPs and key individuals: Recognised qualification at NQF level 2 or a recognised skills programme of 30 credits at level 2 by 31 December 2011.</td>
</tr>
<tr>
<td>Category II</td>
<td></td>
<td>An</td>
<td>31/12/2011</td>
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</tbody>
</table>
### Category IIA
An appropriate qualification at NQF level 6 consisting of a minimum of 360 credits (full business degree/diploma).

- **Date:** 31/12/2012
- **Compliance:** 31/12/2013

### Category III
An appropriate NQF level 6 skills programme of 60 credits; or an appropriate qualification at NQF level 5 or 6.

- **Date:** 31/12/2011
- **Compliance:** 31/12/2013

### Category IV
A minimum of an appropriate NQF level 2 skills programme consisting of a minimum of 30 credits; or an appropriate qualification at NQF level 2.

- **Date:** 31/12/2011
- **Compliance:** Not applicable

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**f) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 1 January 2008 to 31 December 2008 are required to:**

- **aa) comply with the qualification requirements in column two of Table E by 31 December 2011, as applicable to the Categories or subcategories they are authorised, approved or appointed for; or**

- **bb) complete a qualification, from the list of recognized qualifications, in accordance with Part V of this Determination,**
Determinations

as applicable to the Categories or subcategories they are
authorised, approved or appointed for, by 31 December 2013.

g) All FSPs (who are sole proprietors) authorised during the period 30
September 2004 to 31 December 2008, that changed their licensing
restrictions during the period 1 December 2008 to 31 December 2008 to
include additional Categories or Subcategories are, in relation to the
additional Categories or subcategories they are authorised for,
required to-

aa) comply with the qualification requirements in column two of
Table E by 31 December 2011, as applicable to the Categories or
subcategories they are authorised, approved or appointed for;
or

bb) complete a qualification, from the list of recognized
qualifications, in accordance with Part V of this Determination,
as applicable to the Categories or Subcategories they are
authorised, approved or appointed for, by 31 December 2013.

h) All key individuals and representatives appointed during the period 30
September 2004 to 31 December 2008, whose approval and/or
appointment conditions were amended during the period 1 December
2008 to 31 December 2008 to include additional Categories or
subcategories, are, in relation to the additional Categories or
subcategories they are approved, required to-

aa) meet the column two requirements of Table E by 31 December
2011, as applicable to the Categories or subcategories they are
authorised, approved or appointed for; or

bb) complete a qualification, from the list of recognized
qualifications, in accordance with Part V of this Determination,
as applicable to the Categories or subcategories they are
authorised, approved or appointed for, by 31 December 2013.

i) All FSPs (who are sole proprietors), key individuals and representatives
authorised, approved or appointed during the period 1 January 2008 to
31 December 2008 must meet the requirements relating to the first
level of Regulatory Examinations, as applicable to the Categories or
subcategories they are authorised, approved or appointed for by the
date stated in column three of Table E.

j) All FSPs (who are sole proprietors), key individuals and representatives
authorised, approved or appointed during the period 1 January 2008 to
31 December 2008 must meet the requirements relating to the second
level of Regulatory Examinations, as they apply to the Categories or
subcategories they are authorised, approved or appointed for, by 31
December 2013, unless exempted by the Registrar by notice in the
Gazette.

3) All FSPs (who are sole proprietors), key individuals and representatives
authorised, approved or appointed during the period 1 January 2009 to 31
December 2009 must comply as follows:

a) All FSPs (who are sole proprietors), key individuals and
representatives authorised, approved or appointed during the period 1
January 2009 to 31 December 2009 are required to complete a
qualification, from the list of recognized qualifications, in accordance
with Part V of this Determination, as applicable to the Category or
Determinations

subcategory they are authorised, approved and/or appointed for, by 31 December 2013.

b) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 1 January 2009 to 31 December 2009 must meet the requirements relating to the first level of Regulatory Examinations, as applicable to the Categories or subcategories they are authorised, approved or appointed for, by the date stated in column three of Table E.

c) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 1 January 2008 to 31 December 2008 must meet the requirements relating to the second level of Regulatory Examinations, applicable to the Categories or subcategories they are authorised, approved or appointed for, by 31 December 2013.

4) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 30 September 2004 to 31 December 2009 must comply with the Continuous Professional Development requirements, as described in Part VIII of this Determination, from the date of completion the applicable requirements as set out in paragraphs 2 and 3 above.

5) All FSPs (who are sole proprietors), key individuals and representatives authorised, approved or appointed during the period 30 September 2004 to 31 December 2009 that have met the applicable experience requirements as provided for in the Determination of Fit and Proper Requirements for Financial Services Providers, 2006, are not required to render financial services under supervision while they complete their qualifications or obtain the relevant regulatory examinations.

6) This Part X (Transitional Arrangements) does not apply to any applicants, key individuals or representatives authorised, approved or appointed on or after 1 January 2010 in respect of the experience and qualification requirements. All FSPs (who are sole proprietors), and key individuals authorised or approved during the period 1 January 2010 to 31 December 2010-
   a) have until 31 December 2012 to meet the requirements for the relevant first level regulatory examination and until 31 December 2014 to meet the requirements for the relevant second level regulatory examination as applicable to the Categories or subcategories they are authorised or approved; and
   b) must comply with the Continuous Professional Development Requirements, as described in Part VIII of this Determination, from the date of completion the applicable requirements as set out in paragraphs (a) above

7) All FSPs and key individuals that have been authorised or approved before the coming into operation of this Schedule must meet the operational ability requirement in paragraph 8(3) to (8) within 12 months from such date.

8) All FSPs that have been authorised before the coming into operation of this Schedule must meet the financial soundness requirements as required in paragraph 9(2), (3)(b) and (c), (4)(b) and (c), and (5)(b) and (c) within 24 months
Part XI Miscellaneous

11. **Repeals**

The following are hereby repealed:

- The Determination of Fit and Proper Requirements for Financial Services Providers, 2006, promulgated in Board Notice 91 of 16 August 2006;
- the Exemption Regarding Certain Minimum Qualifications, Board Notice 104 of 29 September 2004;

12. **Short title and commencement**

This Determination is called the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, and comes into operation on 31 December 2008.

**Determination of Continuous Professional Development Requirements, 2008**

**Board Notice No. 103 of 2008**

Board Notice 103 of 2008

Financial Services Board

I, Dube Phineas Tshidi, the Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under section 8(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determine the continuous professional development requirements as set out in the Schedule.
Part I: Definitions

1. In this Schedule:-

"the Act" means the Financial Advisory and Intermediary Services Act, 2002, including, unless the context indicates otherwise, any measure referred to in the definition of "this Act" in section 1(1) of the Act; and any word or expression to which a meaning has been assigned in the Act and in the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, has that meaning, and unless the context otherwise indicates-

"accredited training provider" means a provider of occupational learning programmes accredited through SETAs;

"CHE" or "Council for Higher Education" means the independent statutory body responsible for advising the Minister of Education on all higher education policy issues, and for quality assurance in higher education and training;

"continuous professional development" or "CPD" means a process of learning and development, with the aim to enable an FSP (who is a sole proprietor), key individual or representative to maintain capabilities to perform competently within the Categories or subcategories they render financial services in;

"CPD programmes or activities" means industry or professional conferences, seminars, workshops, financial services specific or professional qualifications, structured self-study programmes, product seminars, attendance at industry road shows and industry training, as approved by the Registrar, for purposes of this Determination;

"FSP" or "provider" means an authorised financial services provider as defined in section 1(1) of the Act;

"institutions of higher education" means institutions, whether public or private, that are accredited by the Council for Higher Education to provide learning programmes at the higher education level;

"learning" means a broad range of processes whereby an individual acquires capabilities, including systematic, formal processes such as education, or processes such as
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attendance of less formal programmes;

"professional knowledge" means topics that make up subjects related to the financial services industry as well as other related business disciplines that, together, constitute the essential body of knowledge of professionals in the financial services industry;

"professional skills" means the various abilities required to apply professional knowledge and professional values, ethics, and attitudes appropriately and effectively in a professional context, including technical and functional skills, organisational and business management skills, personal, interpersonal and communication skills, as well as intellectual skills;

"SETA" means a Sector Education and Training Authority which is responsible for the organisation of education and training programmes within a specific sector;

"verifiable" in relation to CPD programmes or activities, means that the attendance and/or participation in the CPD programme or activity is confirmed by the provider of the CPD programme or activity.

Part II: Purpose of CPD

2. Subject to Part VII of the Determination of Fit and Proper Requirements, 2008, CPD is applicable to FSPs (who are sole proprietors), key individuals and representatives. The purposes of Continuous Professional Development are-

1) to ensure that FSPs (who are sole proprietors), key individuals and representatives develop and maintain professional competence in order to provide financial services of high quality in the public interest that will support the professionalisation of the financial services industry;

2) to ensure that the FSP (who is a sole proprietor), key individual and representative understand that the primary responsibility for competence vests in the individual, and that they have an obligation to develop and maintain their professional competence, relevant to the nature of their work and professional responsibilities; and

3) to assist an FSP (who is a sole proprietor), key individual and representative to render financial services with due care, competence and diligence and subject to a continuing duty to maintain knowledge and skill at a level required to ensure that a client receives competent professional service based on up-to-date developments in legislation, industry practice and development in respect of specific Categories and subcategories.
Part III: Specific Conditions

3. The specific conditions that apply to a FSP (who is a sole proprietor), key individual and representative:

1) An FSP (who is a sole proprietor), key individual and representative is required to complete the requirements regarding CPD as specified in Part VII of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

2) an FSP (who is a sole proprietor), key individual and representative is required to record individual achievements regarding CPD with the Registrar, using the mechanisms provided by the Registrar for reporting purposes.

Part IV: Verifiable CPD Programmes and/or Activities

4. The requirements for verifiable CPD activities and/or programmes are as follows:

1) Industry associations, statutory professional bodies, voluntary professional bodies, employers, institutions of higher education and accredited training providers may apply, in the prescribed format as published by the Registrar by notice in the Gazette, to the Registrar for recognition of their offerings/interventions as CPD programmes, which will, upon such approval, be added to the Registrar’s reporting mechanism for recording purposes;

2) examples of verifiable CPD programmes and/or activities include, but are not limited to-
   a) courses, conferences and seminars;
   b) studies leading to formal assessments, e.g. additional qualification, which may be through private study, distance learning or attendance at formal courses;
   c) workshops; or
   d) structured self-study programmes, including web-based, computer-based or paper-based delivery, that assess the knowledge.

Part V: Keeping of Records and Reporting

5. The requirements regarding keeping of records and reporting:

1) FSPs (who are sole proprietors), key individuals and representatives are required to confirm that they have complied with the CPD requirements by way of self-certification annually.

2) FSPs (who are sole proprietors), key individuals and representatives are
Determinations

required to retain verifiable proof of the CPD programmes and activities they participated in for a period of five (5) years after completion; and key individuals and representatives are required to provide copies of such documentary proof to the financial services provider on a quarterly basis.

3) FSPs (who are sole proprietors), key individuals and representatives are required to log CPD activities using the on-line CPD register of the Financial Services Board, and must provide-
   a) title and date of activity/programme;
   b) institution providing the CPD activities; and
   c) number of learning hours.

4) An FSP or compliance officer involved will be required to report to the Registrar on the CPD activities undertaken by the key individual(s) and/or representative(s), and the reporting requirements will be included in the annual compliance report submitted by the providers.

5) Compliance officers of FSPs are required to report on the sample used to determine the accuracy of the reporting in terms of CPD conducted by the FSP, and the findings of such sample testing in the compliance report.

Part VI: Format for Approval of CPD Programmes

6. The format for application for the approval and/or removal of CPD programmes from the list of approved CPD programmes is published in the Annexure to this Schedule.

Part VII: Miscellaneous

7. Short title and commencement

This Determination is called the Determination of Continuous Professional Development Requirements, 2008, and comes into operation on 31 December 2008.

Annexure

CONTINUOUS PROFESSIONAL DEVELOPMENT (CPD) APPLICATION FOR RECOGNITION
and
INDEX OF FORMS

1. Purpose of application

The purpose of the application form is to serve as a mechanism whereby accredited
training providers, institutions of higher education, professional bodies, employers and industry associations may apply for recognition of a programme for CPD purposes.

2. **Background**

CPD is one of the requirements that form part of the FAIS Fit and Proper dispensation which requires applicants, key individuals and representatives to complete specific CPO requirements within 3 year cycles. In order to simplify the identification of which programmes are relevant for CPO purposes, a CPO reference list of approved programmes will be developed and published. This list will be updated / amended regularly, and updates will be published on an ongoing basis.

3. **Application process**

Accredited training providers, institutions of higher education, professional bodies, employers and industry associations must use this CPD application form to submit new applications for programmes to be placed on the CPD List of approved programmes, or submit requests for programmes to be removed from the CPD List of approved programmes:

a) For applications for qualifications to be added to the Fit and Proper CPD List complete Form CPD1 to Form CPD 4.

b) For applications for qualifications to be removed from the Fit and Proper CPD List - complete Form CPD 5.

The application is to be submitted directly to the Financial Services Board (FSB): see paragraph 5 below for the relevant address / postal details, or can be submitted electronically on the FSB website.

The application will be considered, and the result of the application will be communicated to the applicant within a period of 4 - 6 months.

4. **Application requirements**

All fields included in the application form must be completed in full in order for the proposed programme(s) to be considered.

Submissions will be considered based on the following principles:

a) The programmes submitted for consideration; and

b) the suitability of the programmes for CPD purposes.

5. **Submission of applications**

Applications must be submitted directly to the Financial Services Board (FSB):

**Delivery:**
FAIS Department
CPD Programmes
Fit and Proper
1st Floor Nassau Building
Kasteelpark Office Park
Cnr. Nossob & Jochemus Street
Determinations

Erasmuskloof

E-Mail
fitandproper@fsb.co.za

Postal Address:
FAIS Department
CPD Programmes
Fit and Proper
PO Box 35655
Menlo Park
Pretoria
0102

- Please note that e-mailed documents should be provided in either MSWord or Adobe Acrobat format.
- Submissions provided in another format will not be accepted.

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The above forms may be found in Government Gazette No. 31514 dated 15 October 2008.

Determination of Qualifying Criteria and Qualifications for FSP’s, 2008
Board Notice No. 105, 2008

Board Notice 105 of 2008

Financial Services Board

I, Dube Phineas Tshidi, the Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under the definition of "qualifying criteria" in paragraph 1(1) and paragraph 5 of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, determine the qualifying criteria and qualifications for financial services providers as set out in the Schedule.

D P Tshidi
Registrar of Financial Services Providers
Part I: Definitions

1) In this Schedule:-

"the Act" means the Financial Advisory and Intermediary Services Act, 2002, including, unless the context indicates otherwise, any measure referred to in the definition of "this Act" in section 1(1) of the Act; and any word or expression to which a meaning has been assigned in the Act and in the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, shall have that meaning, and, unless the context otherwise indicates -

"accredited training provider" means a provider of occupational learning programmes;

"entry level qualification" means a qualification obtained on or by the date of first appointment, and is normally at a lower level than the required full qualification;

"full qualifications" means a qualification that is appropriate to a specific category or subcategory of financial products;

"generic qualification" means a qualification that addresses knowledge, skills and competence that are broadly applicable to the financial services industry, without addressing any specific type of narrow specialisation relating to a specific subcategory;

"institutions of higher education" means institutions, whether public or private, that is accredited by the Council for Higher Education to provide learning programmes at the higher education level;

"learning" the acquisition of knowledge, understanding, values, skills, competence and/or experience through a range of formal and/or informal activities and/or processes aimed at achieving a specific learning objective.;

"professional programme and/or qualification" means a learning programme and/or qualification offered by a professional body (voluntary or statutory) for the purposes of providing specialised knowledge in a specific field of the financial services industry;

"specific qualification" means a qualification that addresses specific and/or specialised knowledge, skills and competence that is applicable to the financial services industry, and may address a specific type of specialisation and/or subcategory in the financial services industry;
Part II: Qualifying Criteria

1) The purpose of the qualifying criteria is to provide the criteria against which the regulatory examinations will be set, and against which any proposed qualification(s) will be evaluated and considered for recognition by the Registrar.

2) The qualifying criteria applicable to the regulatory examinations are published in Annexure 1 of this Determination.

Part III: Qualifications

1) Qualifications will be approved based on the extent to which the qualification addresses the qualifying criteria that had been approved and published by the Registrar.

2) Applications for approval of a qualification must be submitted in the prescribed format as published by the Registrar, will be evaluated against the qualifying criteria for the applicable regulated function, category or subcategory, and will, upon approval, be added to the list of recognised qualifications.

3) The following types of qualifications will be considered for recognition:
   a) A qualification that is registered by SAQA;
   b) an extracurricular specialist programme offered at a postgraduate 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 provider; or
   d) a foreign qualification similar to qualifications in paragraph (a) to (c) above.

4) Subject to the requirements of part V of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, qualifications will be approved in terms of the requirements in the case of-
   a) "full qualifications", for category I purposes;
   b) "entry level" qualifications, for category II, IIA and/or III; or
   c) "full qualifications", for category II, IIA and/or III.

5) The list of recognised qualifications will distinguish between the applicable recognition that is given to each qualification, and will indicate the following types of recognition:
   a) generic qualifications recognised for qualification purposes for sole proprietors, key individuals and/or representatives in category I FSPs, where the regulatory examinations at levels one and two are also required;
   b) generic qualifications recognised for entry level qualification purposes for sole proprietors, key individuals and/or representatives in category II, IIA and/or III FSPs, where the regulatory examinations at levels one and two are also required;
c) generic qualifications recognised for entry level qualification and/or qualification requirement purposes for sole proprietors, key individuals and/or representatives in specific subcategories or category II, IIA and/or III FSPs, where the regulatory examinations at levels one and two are also required;

d) specific qualifications recognised for entry level qualification and/or qualification requirement purposes for sole proprietors, key individuals and/or representatives in specific subcategories of category II, IIA and/or III FSPs, where the regulatory examination at level one is not required;

e) specific qualifications recognised for entry level qualification and/or qualification requirement purposes for sole proprietors, key individuals and/or representatives in specific subcategories of category II, IIA and/or III FSPs, where the regulatory examination at level two is not required;

6) Generic qualifications must meet the following criteria:
   a) The qualification must be approved by the Registrar as a generic qualification for meeting the entry level qualification and/or qualification requirements in respect of category I, II, IIA and/or III;
   b) the generic qualification must be completed in full;
   c) the individual must have successfully completed a minimum of three different subjects or modules that appear in the appropriate subject list, as set out in paragraph 4 of this Determination: Provided that at Certificate and Diploma level, the qualification must contain at least three of these subjects with at least one of the subjects in the field of commerce, and where a certificate or diploma has major subjects, at least one must be a major subject (final year level); and
   d) at Degree level at least one of the subjects must be in the field of commerce and of the three subjects at least one must be a major subject (final year level).

7) With reference to the transitional requirements, as published in Part X of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, the specific qualifications must meet the following criteria:
   a) i) the qualification was assessed against the qualifying criteria for a specific Category and/or subcategory; and
      ii) where the qualification contains a fundamental, core and elective component, the fundamental, core and elective component of the qualification corresponds with at least eighty percent (80%) of the qualifying criteria for the specific Category and/or subcategory; or
   b) the qualification corresponds with at least eighty percent (80%) of the qualifying criteria for the specific Category and/or subcategory.

8) With reference to post-transitional requirements, as published in Part V of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, the specific qualifications must meet the following criteria:
   a) i) The qualification was assessed against the qualifying criteria for a specific Category and/or subcategory; and
      ii) where the qualifications contains a fundamental, core and elective component, the fundamental, core and elective component of the qualification corresponds fully with the qualifying criteria for the specific Category and/or subcategory; or
b) the qualification corresponds fully with the qualifying criteria for the specific Category and/or subcategory.

9) The list of recognised qualifications applies to all applicants, key individuals and representatives, in accordance with the Category or subcategory he or she renders financial services in.

Part IV : List of Appropriate Subjects

The following subjects are deemed to meet the requirements for appropriateness, and will be used in combination with the list of generic qualifications as approved by the Registrar.

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**Part V: Maintenance of Qualifying Criteria and List of Recognised Qualifications**

The Registrar will from time to time, after consultation with the Advisory Committee, publish
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an updated version of this Schedule and/or its Annexures, by notice in the *Gazette*.

**Part VI: List of Qualifying Criteria and List of Recognised Qualifications**

1) The list of recognised qualifying criteria will be published as part of Annexure 1 to this Determination.

2) The list of recognised qualifications will be published by the Registrar after consultation with the Advisory Committee as part of the Annexures to this Determination.

3) The use of the abbreviation "G" in relation to a qualification on the list of recognised qualifications indicates that it is recognised as a generic qualification for a specific subcategory, and still requires the relevant regulatory examination at second level to be completed.

4) The use of the abbreviation "S" in relation to a qualification on the list of recognised qualifications indicates that it is recognised as a specific qualification for a specific subcategory, and does not require the relevant regulatory examination at second level to be completed in relation to the transitional requirements.

5) The use of the abbreviation "SP" in relation to a qualification on the list of recognised qualifications indicates that it is recognised as a specific qualification for a specific subcategory, and does not require the relevant regulatory examination at second level to be completed in relation to the post-transitional requirements.

**Part VII: Miscellaneous**

**Short title and commencement**

This Determination is called the Determination of Qualifying Criteria and Qualifications for Financial Services Providers, Number 1 of 2008, and comes into operation on date of publication thereof in the *Gazette*.

Annexures 1 and 2 may be found in Government Gazette No. 31514 dated 15 October 2008.

* (These annexures have been updated by Amendment Notice No. 44 of 2010 which can be found in Government Gazette No. 33052 dated March 2010.)

*(Annexure 1 has been amended and can be found in Government Gazette No. 33166 dated 12 May 2010.)*
Determination of criteria and guidelines for the approval of compliance officers

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, acting on authority of the Advisory Committee on Financial Services Providers, hereby make known for general information that the said Advisory Committee has under section 17(2) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determined the criteria and guidelines for the approval under the said section of compliance officers, as set out in the Schedule.

J van Rooyen
Registrar of Financial Services Providers

Schedule

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 authorised financial services provider applying to the registrar for approval of an appointee;

   "appointee" means a natural person or a person envisaged in the definition of "compliance officer" in paragraph I of the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2002, to be approved by the registrar as compliance officer to monitor, as envisaged in section 17(1)(a) of the Act, compliance with the Act by the applicant and any representative of the applicant, and includes any co-appointee to be so approved.

2. **Criteria and guidelines for approval**

   The registrar must, on receipt of an application by an authorised financial services provider for the approval of a compliance officer, submitted in accordance with the provisions of Chapter IV of the Financial Advisory and Intermediary Services Regulations, 2002, consider the application on the basis of all information disclosed in the application, or otherwise obtained in terms of the Act, relating to the proposed appointee, with due regard to the provisions of the said Chapter IV, and the following criteria and guidelines:

   a) Whether the business of the applicant concerned complies with any requirements for the compliance function as prescribed in the Chapter IV of the said Regulations;

   b) whether the applicant will be able to comply with section 17(3) of the Act as
regards establishment of compliance procedures;
c) whether the appointee-
i) (where applicable) has the qualifications and experience determined under section 17(1)(b) of the Act;
ii) complies with the same fit and proper requirements as regards personal character qualities of honesty and integrity as those determined under section 8(1)(j) of the Act for financial services providers;
iii) has sufficient and appropriate knowledge of the provisions of the Act, and particularly of all duties and obligations imposed on the applicant in terms of the Act, and of duties and obligations to be discharged by the applicant in the enforcement of any rights granted by the Act;
iv) will, as regards the relevant business, have adequate resources available to ensure proper compliance monitoring, including as regards the activities of any representative, and have and be permitted direct access to, and demonstrable support from, the senior management of the business and in respect of any representative;
v) will be able to function adequately independently or objectively;
vii) will be able to function, as regards the internal organisational structure of the business, in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees and, in particular the internal audit and control functions, and as regards the functions of any representative;
vii) will be able and enabled to keep written records of all activities undertaken in the course of compliance monitoring, to provide the provider concerned with written reports on at least a quarterly basis on the course of, and progress achieved with, such monitoring duties and to make recommendations to the applicant as regards any aspect of the required compliance or the monitoring functions; and
vii) will be able to liaise directly with the registrar particularly as regards reporting required in terms of section 17(4) of the Act.

3. **Discretions of registrar**

In the exercise of the approval function, the registrar is vested with a discretion and may grant an approval in a particular case notwithstanding that the registrar is not satisfied that any particular criterium or guideline set out in paragraph 2 is fully met in any such case: Provided-

a) that the registrar shall not grant an approval where non-compliance with paragraph 2(a), (6) or (c)(i), (ii), (iii) or (vii) is found;
b) that the registrar may refer any other particular application, or any aspect thereof, to the Advisory Committee for advice; and
c) that the registrar may at any time submit a proposal to the Advisory Committee for consideration of any so proposed deletion, amendment, addition or substitution of a provision of this Schedule.

4. **Short title**

This Determination is called the Determination of Criteria and Guidelines for the Approval of Compliance Officers, 2002, and comes into operation on the date determined by the Minister under section 7(1) of the Act.
Determination of requirements for reappointment of debarred representatives

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under section 13(1)(b)(ii) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determine the requirements for the reappointment of debarred representatives as set out in the Schedule.

J van Rooyen
Registrar of Financial Services Providers

Schedule

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 shall have that meaning and, unless the context otherwise indicates:

"applicant" means a debarred representative who applies to an authorised financial services provider for reappointment;

"appointing provider" means the authorised financial services provider who reappoints a debarred representative;

"date of reappointment", in relation to an applicant, means the date on which the reappointment of a debarred representative is to take effect;

"debarment date" means the date on which the name of a debarred representative has been removed from the register referred to in section 13(3) of the Act;

"debarred representative" means a representative of an authorised financial services provider who has under section 14(1) of the Act been prohibited by the relevant provider to render any new financial services and whose name has been removed from the register referred to in section 13(3) of the Act;

"debarring provider", in relation to an applicant, means the authorised financial services provider who debarred the applicant;

"reappointment", in respect of a debarred representative, means the reappointment of any such person as a representative of any authorised financial services provider (whether being the provider which debarred such person or not), in order to act in accordance with the provisions of section 13(1)(b)(i) of the Act.

2. Requirements for reappointment of debarred representatives

The requirements for the reappointment of a debarred representative shall be as follows, namely, that the applicant must be a person who, on the date of reappointment, complies with the following, which compliance must, where necessary, be proved by the submission to the appointing provider by the applicant...
Determinations

and, where appropriate, the debarring provider or any other person, of relevant original substantiating documentation or certified copies thereof, including affidavits (if any):

a) At least 12 (twelve) months since the debarment date must have elapsed, unless the debarment was consequent on the applicant not having qualified as contemplated in section 13(2)(a) of the Act, and the applicant has within that period qualified as so contemplated;

b) all unconcluded business of the applicant as former representative, referred to in the proviso to section 14(1) of the Act, has been properly concluded;

c) all-

i) complaints or legal proceedings (if any) submitted by clients to the applicant or the debarring provider, or the Ombud or any court of law; or

ii) other administrative or legal procedures or proceedings in terms of the Act or any other law,

iii) arising out of any acts or omissions in which the applicant was directly or indirectly involved prior to the debarment date, have been properly and lawfully resolved or concluded, as the case may be, and that the applicant has fully complied with any decision, determination or court order in connection therewith, given or issued in respect of the applicant;

d) all fit and proper requirements as contemplated in section 8(1)(a) and (b), read with section 13(2), of the Act are complied with.

3. Short title and commencement

This Determination is called the Determination of Requirements for Reappointment of Debarred Representatives, 2003, and comes into operation on the date determined by the Minister under section 7(1) of the Act.

Determination of date in terms of section 7(1)

Determination of Date, 2004

Notice No. 270
3 March 2004

National Treasury

I, Trevor Andrew Manuel, Minister of Finance, hereby, under section 7(1) of the Financial Advisory and Intermediary Services Act, 2002 Act No. 37 of 2002 ("the Act"), and after consultation with the Registrar of Finance Service Providers, determine 30 September 2004 as the date with effect from which a person may not act as a financial service provider unless such person has been issued with a licence under section 8 of the Act.

T A Manuel, MP
Minister of Finance
Date: 23/02/2004
Determination for Financial Services Providers, 2006

Determination of Fit and Proper Requirements for Financial Services Providers, 2006

Notice No. 91 of 2006

Financial Services Board

I, Robert James Gourlay Barrow, the Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Services Providers, hereby under section 8(1) 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.

R J G Barrow
Registrar of Financial Services Providers

Part I: Definitions

1. Definitions

1) In this Schedule-
   a) "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including, unless the context indicates otherwise, any measure referred to in the definition of "this Act" in section 1(1) of the Act;
   b) "the SAQA Act" means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), including any regulations promulgated thereunder, and any word or expression to which a meaning has been assigned in the Act or in the SAQA Act, shall have that meaning and, unless the context otherwise indicates –

"administrative FSP"
means an administrative FSP as defined in the Notice of Codes of Conduct for Administrative and Discretionary FSPs, 2003, as published by Board Notice 79 of 2003 in Gazette No. 25299 of 8 August 2003;

"applicant"
means the person who has submitted an application in terms of section 8(1) of the Act for a licence to act as a financial services provider;

"application"
means an application by an applicant submitted in the form and manner determined by the Registrar in the Application by Financial Services Providers for Authorisation by the Financial Services Board as published by Board Notice 98 of 2003 in Gazette No. 25523 of 3 October 2003;
"BANKSETA" means the Banking Sector Education and Training Authority;

"BANKSETA ETQA" means the Banking Sector Education and Training Quality Assurance Body;

"Category I" in relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA and III, who require licences to render the financial services (other than financial services mentioned in Categories II, IIA and III) as set out in the relevant application;

"Category IIA" in relation to a financial services provider, means all persons who require licences as hedge fund FSPs as set out in the relevant application;

"Category III" in relation to a financial services provider, means all persons who require licences as administrative FSPs as set out in the relevant application;

"core unit standards" means unit standards classified as the core portion of a qualification quality assured by INSQA, BANKSETA ETQA or FassetQA and registered on the NQF;

"date of first appointment" means the date on which a person was first appointed as a key individual or representative of any authorised financial services provider;

"discretionary FSP" means a discretionary FSP as defined in the Notice of Codes of Conduct for Administrative and Discretionary FSPs, 2003, as published by Board Notice 79 of 2003 in Gazette No. 25299 of 8 August 2003;

"ETQA" means a financial services Education and Training Quality Assurance body, and includes INSQA, FassetQA, HEQC and BANKSETA ETQA;

"experience" in relation to an applicant, means practical experience gained in the rendering of services similar or corresponding to financial services and where-

a) such experience involves the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;

b) at least 6 months of such experience is relevant to the subcategory as regards financial products, in respect of which the applicant requires an authorisation;

c) with regard to providers of Category II, at least 50% of such minimum prescribed experience relates directly to the financial products in respect of which financial services are to be rendered; and

d) with regard to providers of Category IIA, the applicant must have a track-record of managing particular hedge fund strategies and is able to adequately demonstrate knowledge, skill and competency in managing all instruments and asset classes comprising a hedge fund portfolio as optimized by and in
conjunction with the requisite hedge fund strategies employed from time to time and irrespective of whether the experience is gained
i) in the capacity as owner, trustee, associate, director, member, partner, employee, consultant or otherwise, of the business involved; or
ii) in the course of undergoing practical training or a learnership:

Provided that any experience referred to in this definition may have been gained outside the Republic, and may so be, or have been, gained during intermittent periods, and includes experience gained prior to the date envisaged in section 7(1) of the Act;

"FASSET"
means the Finance, Accounting, Management Consulting and other Financial Services Education and Training Authority;

"FassetQA"
means the Finance, Accounting, Management Consulting and other Financial Services Education and Training Quality Assurance Body;

"FETC"
means the Further Education and Training Certificate;

"foreign qualification approved by the Registrar or SAQA"
means a qualification approved by notice in the Gazette for purposes of this Determination by SAQA or the Registrar, after consultation with the Advisory Committee;

"health services benefit"
means a benefit referred to in paragraph (g) of the definition of ‘financial product’ in section 1(1) of the Act;

"hedge fund"
means a hedge fund as defined in the Codes of Conduct for Administrative and Discretionary FSPs Amendment Notice, 2006

"hedge fund FSP"
means a hedge fund FSP as defined in the Codes of Conduct for Administrative and Discretionary FSPs Amendment Notice, 2006; and

"HEQC"
means the Higher Education Quality Committee of the Council on Higher Education as contemplated in the Higher Education Act, 1997;

"Higher Education Institution"
means a registered Higher Education Institution as defined in the Higher Education Act, 1997;

"INSETA"
means the Insurance Sector Education and Training Authority;

"INSQA"
means the Insurance Sector Education and Training Quality Assurance Body;
"learnership" means a learnership as contemplated in the Skills Development Act, 1998 (Act No. 97 of 1998);

"Long-Term Insurance Category A" means assistance policies as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), but excludes policies mentioned in Long-term Insurance Categories B and C;

"Long-Term Insurance Category B" means the following long-term insurance contracts as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998):

a) risk policies which provide cover in respect of death, disability and health events, and which are not marketed as investment or savings policies;

b) investment/savings policies (including recurring premium retirement annuity policies, but excluding single premium retirement annuity policies and policies issued to and/or in respect of preservation funds) which guarantee a minimum return of capital invested at a specified future date or dates, and where such minimum is ascertainable in Rand terms at inception;

c) annuities which guarantee a minimum annuity for the term of the policy which is ascertainable in Rand terms at inception; and

d) any policy which combines the policy features included in paragraphs (a), (b) or (c), but excludes policies mentioned in Long-term Insurance Category C;

"Long-Term Insurance Category C" means single premium retirement annuity policies, policies issued to and/or in respect of preservation funds and other long-term insurance contracts or policies as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and not specified in Long-term Insurance Categories A and B;

"National Learner Record Database (NLRD)" means an information system to assist the SAQA to manage the National Qualifications Framework;

"National Qualifications Framework or "NQF" means the National Qualifications Framework of the SAQA as set out in the SAQA Regulations published in Regulation Gazette No. 61 40 of 28 March 1998;

"pension fund benefits" means financial products contemplated in paragraph (d)(i) of the definition of "financial product" in section 1(1) of the Act;

"retail pension benefits" means pension fund benefits provided by retirement annuity and/or preservation pension and/or preservation provident funds;

"recognition of prior learning (RPL)" means the assessment, by an assessor accredited by SAQA, of evidence of previous learning and experience against registered unit standards or qualifications registered on the NQF;

"SAQA" means the South African Qualifications Authority established in terms of the provisions of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"SETA" means a financial services Sector Education and Training Authority registered
with the Department of Labour, including INSETA, FASSET and BANKSETA;

"short-term insurance commercial lines" means short-term insurance contracts or policies referred to in the Short-term Insurance Act, 1998 (Act No. 53 of 1998), purchased by juristic persons and natural persons acting in a business capacity;

"short-term insurance personal lines" means short-term insurance contracts or policies referred to in the Short-term Insurance Act, 1998 (Act No. 53 of 1998), purchased by natural persons acting otherwise than in a business capacity;

"skills programme" means a skills programme referred to in the Skills Development Act, 1998 (Act No. 97 of 1998);

"subcategory" means, depending on the relevant context, either-
- a) a subcategory of financial products as appears from Table A in paragraph 3(1) of this Determination; or
- b) a subcategory of minimum experience as appears from Tables B, C and D in paragraphs 3(2), (2A) and 3(3) of this Determination, as the case may be.

2) Unless the context indicates otherwise, a reference in this Determination to-
- a) a qualification mentioned in Column Two, Three or Four of Table A, B, C or D in paragraph 3(1), (2), (2A) or 3(3) of this Determination, as the case may be, must, subject to subparagraph (c) below, be construed as a reference to any such qualification obtained in the Republic (or a foreign qualification recognised by the Registrar) before or after the date of coming into operation of this Determination, irrespective of whether a partial completion of requirements for the qualification occurred before such date, including a qualification or skills programme consisting of unit standards registered by SAQA, and registered within the National Qualifications Framework, and which qualification may be or may have been obtained in part by Recognition of Prior Learning (RPL);
- b) "grade", refers to the level of education obtained in the course of attending formal schooling, or adult basic education and training provided by a registered or recognised education institution in the Republic;
- c) an "appropriate" certificate, diploma, skills programme or degree, refers to such academic qualifications obtained in the fields of commerce and/or commercial law which includes modules on financial accounting, financial markets, commercial law, insurance law, estate and trust law and similar subjects, or other particular fields of study which equip such person to render a financial service in a specialized class of financial product, registered by SAQA and provided by a registered higher institution whether local or foreign;
- d) Category I, II, IIA or III, or to any subcategory, shall not be construed as preventing an applicant from applying for a licence in respect of one or more financial products of more than one Category or subcategory, subject to compliance with the requirements of this Determination as regards each and every such Category or subcategory; and
- e) any skills programme (i.e. less than 120 credits), and not whole qualifications (i.e. 120 credits and higher), must, subject to any future amendment of this Determination by the Registrar in connection with a stated number of required credits, not be construed as eliminating such a whole qualification which all relevant applicants are in any case encouraged to complete.
Part II : Personal Character Qualities of Honesty and Integrity

2. Honesty and Integrity

1) An applicant must be a person who is honest and has integrity.

2) In determining whether the applicant complies with subparagraph (1), the Registrar may refer to any information in possession of the Registrar or brought to the Registrar’s attention.

3) Without prejudice to the generality of subparagraphs (2) and (4), any of the following factors constitutes *prima facie* evidence that the applicant does not qualify in terms of subparagraph (1), namely that the applicant-
   a) has within a period of five years preceding the date of application been found guilty in any civil or criminal proceedings by a court of law (whether in the Republic or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty;
   b) has within a period of five years preceding the date of application been found guilty by any professional or financial services industry body (whether in the Republic or elsewhere) recognised by the Board, of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
   c) has within a period of five years preceding the date of application been denied membership of any body referred to in subparagraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
   d) has within a period of five years preceding the date of application-
      i) been found guilty by any regulatory or supervisory body (whether in the Republic or elsewhere), recognised by the Board; or
      ii) had its authorisation to carry on business refused, suspended or withdrawn by any such body,

on account of an act of dishonesty, negligence, incompetence or mismanagement sufficiently serious to impugn the honesty and integrity of the applicant;
   e) has within a period of five years preceding the date of application, had any licence granted to the applicant by any regulatory or supervisory body referred to in subparagraph (d) suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant; or
   f) has at any time prior to the date of application been disqualified or prohibited by any court of law (whether in the Republic or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.

4) An applicant must in the application be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to the applicant, and which may be relevant for purposes of a decision by the registrar that
Part III: Competency and Operational Ability

3. Competency

1) Financial Services Providers Category I

Subject to the provisions of the Act, an applicant for a licence to act as a Financial Services Provider, Category I and, where applicable, any key individual of any such person, must be a person who, in respect of one or more of the financial products of a subcategory appearing in Column One of Table A hereunder in respect of which the applicant wishes to carry on business as stated in the relevant application-

a) has the minimum experience applicable to that subcategory stated in Column Two of that Table;

b) has achieved the minimum academic standard, qualifications or professional status applicable to that subcategory as stated in Column Three of that Table; and

c) will after licensing comply with the conditions/restrictions as indicated in Column Four of that Table (if any), in addition to any other conditions/restrictions imposed by the Registrar on the applicant in terms of the Act (if any), as indicated on the relevant licence when granted:

[Table A in this section can be found in Government Gazette No. 29132 dated 16 August 2006]

2) Financial Services Providers Category II

Subject to the provisions of the Act, an applicant for a licence to act as a Financial Services Provider, Category II, and, where applicable, any key individual of any such provider, must be a person who, in respect of the subcategory appearing in Column One of Table B hereunder for which the applicant qualifies-

a) has the minimum experience applicable to that subcategory appearing in Column One of that Table;

b) has achieved the minimum academic standard, qualifications or professional status applicable to that subcategory as stated in Column Two of that Table; and

c) will after licensing be subject to the conditions/restrictions as indicated in Column Three of that Table (if any), in addition to any other conditions/restrictions imposed by the Registrar on the applicant in terms of the Act (if any), as indicated on the relevant licence when granted:

2A) Financial Services Providers, Category IIA (Hedge Fund FSPs)

Subject to the provisions of the Act, an applicant for a licence to act as a Financial Services Provider, Category IIA, and, where applicable, any key individual of any such provider, must be a person who, in respect of the subcategory appearing in Column One of Table C hereunder for which the applicant qualifies-

a) has the minimum experience in managing hedge funds applicable to that subcategory appearing in Column One of that Table, and is able to adequately demonstrate knowledge, skill and competency in managing all instruments
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and asset classes comprising a hedge fund portfolio as optimized by and in conjunction with the requisite hedge fund strategies employed from time to time;

b) has achieved the minimum academic standard, qualifications or professional status applicable to that subcategory as stated in Column Two of that Table; and

c) will after licensing be subject to the conditions/restrictions as indicated in Column Three of that Table (if any), in addition to any other conditions/restrictions imposed by the Registrar on the applicant in terms of the Act (if any), as indicated on the relevant licence when granted:

[Table B in this section can be found in Government Gazette No. 29132 dated 16 August 2006]

| Table C |
|-----------------|-------------------------------------------------|--------------------------------------------------|
| Column One | Column Two | Column Three |
| Minimum experience | Minimum academic standard, qualifications, professional status | Conditions/restrictions |
| 5 years | Grade 12 (Standard 10 or an equivalent qualification) or FETC | The applicant must within 4 years after the date of licensing or, in the case of a Key Individual, after the date of appointment, complete an appropriate NQF level 6 certificate listed on the NLRD, consisting of a minimum of 360 credits (full business honours degree) |
| 4 years | An appropriate National Certificate at NQF level 5; Or A minimum of an appropriate NQF level 6 skills programme consisting of unit standards registered by SAQA and quality assured by an ETQA (minimum 120 credits) | The applicant must within 4 years after the date of licensing or, in the case of a Key Individual, after the date of appointment, complete an appropriate NQF level 6 certificate listed on the NLRD, consisting of a minimum of 360 credits (full business honours degree) |
| 3 years | An appropriate business degree at NQF level 6 |

3) Financial Services Providers, Category III

Subject to the provisions of the Act, an applicant for a licence to act as a Financial Services Provider, Category III, and, where applicable, any key individual of any such provider, must be a person who, in respect of the subcategory appearing in Column One of Table D hereunder for which the applicant qualifies-
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a) has the minimum experience stated in Column One of Table D;

b) has achieved the minimum academic standard, qualifications or professional status applicable to that subcategory appearing in Column Two of Table D; and

c) will after licensing be subject to the conditions/restrictions as indicated in Column Three of Table D (if any), in addition to any other conditions/restrictions imposed by the Registrar on the applicant in terms of the Act (if any), as indicated on the relevant licence when granted:

[Table D in this section can be found in Government Gazette No. 29132 dated 16 August 2006]

4. Operational ability

1) An applicant must have and be able to maintain the operational ability to fulfill the responsibilities imposed by the Act on licensees, including at least the following:

a) A fixed business address;

b) adequate access to communication facilities including at least a full-time telephone or cell phone service, and typing and document duplication facilities;

c) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence; and

d) an account with a registered bank including, where required by the Act, a separate bank account for client funds.

2) An applicant must have in place the appropriate money laundering control systems and provision for training of staff, including identification, record-keeping and reporting procedures, where required under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

Part IV : Financial Soundness

5. Financial Soundness

1) An applicant must not be an unrehabilitated insolvent or under liquidation or provisional liquidation.

2) The assets of an applicant (excluding goodwill and other intangible assets) must exceed the applicant’s liabilities (excluding loans validly subordinated in favour of all other creditors), subject to any exemptions granted.

Part V : Miscellaneous

6. Repeals

Subject to paragraph 7, the Determination of Fit and Proper Requirements for Financial

7. Transitional provisions

1) The provisions of this Schedule apply, subject to subparagraphs (2) and (3), only to a person who applies for a licence in terms of the Act as a financial services provider, or who is appointed, in terms of the Act, as a key individual or representative for any financial services provider, on the date of coming into operation of this Schedule or on any date thereafter.

2) a) Subject to subparagraph (b), the provisions of this Schedule do not affect the rights, obligations or privileges of a person who on the date of coming into operation of this Schedule holds a licence as a financial services provider under the Act, or a person who is on that date an existing key individual or existing representative of any such financial services provider.

b) Any licensed financial services provider, any key individual and any representative of such provider, who has on the date referred to in subparagraph (a) not yet fully complied with a condition or restriction applying to that person by virtue of a provision in Column Four of Table A, B or C of the Schedule to the Determination referred to in paragraph 6, may elect to comply with an applicable alternative condition or restriction now referred to in Column Four of the Schedule to this Determination: Provided that any such existing condition or restriction not so having been complied with, or any new alternatively elected condition or restriction must be complied with before or on 31 December 2009.

3) Subject to subparagraphs (1) and (2), anything done or omitted under, in terms of or by virtue of a provision of the measures repealed by paragraph 6, is deemed, unless clearly inappropriate, to have been done or omitted under, in terms of or by virtue of a corresponding provision of this Schedule.

8. Short title and commencement

This Determination is called the Determination of Fit and Proper Requirements for Financial Services Providers, 2006, and comes into operation on the date of publication thereof in the Gazette.
I, Robert James Gourlay Barrow, Registrar of Financial Services Providers, hereby under section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), determine, after consultation with the Advisory Committee on Financial Services Providers, the compliance report by compliance officers and authorised financial services providers, as set out in the Schedules hereto, and so determine the following provisions in connection therewith:

a)  
   i) That a report conforming to the report in Schedule A hereto, in written form or in the prescribed electronic format determined from time to time must be submitted to me by the compliance officer concerned two months after the expiration of the reporting date as set out in Column Two of Table A below; or
   
ii) that a report conforming to the report in Schedule B hereto, in written form or in the prescribed electronic format determined from time to time, must be submitted to me by the provider where the provider need not in terms of the Act have a compliance officer and the provider has not appointed a compliance officer two months after the expiration of the reporting date as set out in Column Two of Table A below;

b)  
   i) that the categories of FSPs concerned must answer all questions in the relevant sections as indicated below:
      Section 1 - all financial services providers
      Section 2 - administrative financial services providers
      Section 3 - discretionary financial services providers
      Section 4 - forex financial services providers
      Section 5 - financial services providers authorised for rendering financial services as regards health services benefits
      Section 6 - all financial services providers
      Section 7 - all financial services providers; and
   
ii) that documentary proof of compliance must be attached as annexures to the report when specifically so required and the relevant annexure number must be noted in column 5 and listed in section 7 of the Schedules A and B hereto;
   
iii) that should any questions be identified by the provider as developmental areas this must be noted in column 4 where allowed for;
   
iv) that answers should only be provided in columns that are not shaded in grey;
   
v) that if a question is dependent on the answer to another question and is not required to be answered, no answer is required;

c)  
   i) that in this Notice and the Schedules, unless the context otherwise indicates or it is otherwise clearly inappropriate -
      any word or expression to which a meaning has been assigned in the Act (including any measure contemplated in the definitions of "this Act" in section 1(1) of the Act), has that meaning;
ii) "Code of Conduct" means any such Code published under section 15 of the Act, including the General Code of Conduct, the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposit-taking Business, 2004, the Codes of Conduct for Administrative and Discretionary FSPs, 2003 and the Forex Investment Business Code of Conduct;

iii) "Determination of fit and proper requirements" means the Determination of fit and proper requirements for Financial Services Providers, 2006.

iv) "developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;

v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001)

vi) "Forex Investment Business Code of Conduct" means the code of conduct for Authorised Financial Service Providers, and their Representatives, involved in Forex Investment Business, 2004;

vii) "FSP" and "financial services provider" means an authorized financial services provider, and includes, where appropriate, any representative of the provider;

viii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;

ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;

x) "reporting date" means, where a provider has a financial year-end as referred to in Column One of Table A, the date set out in Column Two of Table A.

xi) "reporting period" means the period from the later of the date of authorisation as financial services provider in terms of section 8 of the Act or first day of the month following the reporting period for the 2006 compliance report, until the reporting date.

<table>
<thead>
<tr>
<th>Column One Provider's Financial year-end</th>
<th>Column Two Reporting Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 January 2007</td>
<td>31 August 2007</td>
</tr>
<tr>
<td>28 February 2007</td>
<td>31 August 2007</td>
</tr>
<tr>
<td>31 March 2007</td>
<td>30 September 2007</td>
</tr>
<tr>
<td>30 April 2007</td>
<td>31 October 2007</td>
</tr>
<tr>
<td>31 May 2007</td>
<td>30 November 2007</td>
</tr>
<tr>
<td>30 June 2007</td>
<td>31 December 2007</td>
</tr>
<tr>
<td>31 July 2007</td>
<td>31 December 2007</td>
</tr>
<tr>
<td>31 August 2007</td>
<td>31 December 2007</td>
</tr>
<tr>
<td>30 September 2007</td>
<td>31 December 2007</td>
</tr>
<tr>
<td>31 October 2007</td>
<td>31 December 2007</td>
</tr>
</tbody>
</table>
This Determination is called the Determination of Compliance Reports by Compliance Officers and Authorised Financial Services Providers, 2007, and comes into operation on the date of publication thereof.

Schedule A : Compliance Report in terms of section 17 (4)

Schedule A : Compliance Report in terms of Section 17(4)

Schedule A can be found in Government Gazette No. 30228 dated 29 August 2007

**Determination of Fees Payable to the Registrar of Financial Services Providers**

**Determination of Fees Payable to the Registrar of FSP, 2003**

Notice No. 536
15 April 2003

National Treasury

I, Trevor Andrew Manuel, Minister of Finance hereby, after consultation with the Registrar of Financial Services Providers, under section 41(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002), determine the fees set out in the several items of the Table of Fees in the Schedule as the fees payable to the said Registrar as contemplated in the said section 41(1).

This determination is called the Determination of Fees payable to the Registrar of Financial Services Providers, 2003.

This Notice comes into operation on 31 March 2003.

Dated at Cape Town this 07 day of April 2003.

**Table of Fees**

In this Schedule-

"Act"

means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including any measure referred to in the definition of ‘this Act’ in section 1(1) of the
Act,

"fee" includes VAT payable on the amount thereof,

"section" means a section of the Act,

and any word or expression to which a meaning is assigned in the Act, unless the context otherwise indicates, has the meaning so assigned to it.

<table>
<thead>
<tr>
<th>SERVICES REQUIRED</th>
<th>FEES PAYABLE TO THE REGISTRAR FOR DIRECT APPLICATION</th>
<th>FEES PAYABLE TO THE REGISTRAR THROUGH RECOGNISED REPRESENTATIVE BODIES LESS 60%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Recognised representative bodies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Application by a representative body for recognition by the Financial Services Board in terms of section 6(4) of the Act.</td>
<td>R20 000</td>
<td>N/A</td>
</tr>
<tr>
<td>1.2 Delegation of a power to a representative body by the registrar, and recognition by the Financial Services Board (section 6(3) and (4), respectively, of the Act).</td>
<td>R5 000</td>
<td>N/A</td>
</tr>
<tr>
<td>1.3 Additional services rendered relating to recognised bodies.</td>
<td>R500 per hour</td>
<td>N/A</td>
</tr>
<tr>
<td>2. Licensing and matters incidental thereto</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Application for the issue of a licence as a financial services provider (excluding an administrative FSP and a discretionary FSP) for the rendering of advice and/or intermediary service.</td>
<td>R1 000</td>
<td>R400</td>
</tr>
<tr>
<td>2.2 Application for the issue of a licence as a discretionary FSP.</td>
<td>R10 000</td>
<td>R4 000</td>
</tr>
<tr>
<td>2.3 Application for the issue of a licence as a discretionary FSP in addition to a licence referred to in 2.1 and 2.4.</td>
<td>R9 000</td>
<td>R3 600</td>
</tr>
<tr>
<td>2.4 Application for the issue of a licence as an administrative FSP.</td>
<td>R30 000</td>
<td>R12 000</td>
</tr>
<tr>
<td>2.5 Application for the issue of a licence as an administrative FSP in addition to a licence referred to in 2.1 and 2.2.</td>
<td>R15 000</td>
<td>R6 000</td>
</tr>
<tr>
<td>2.6 Application for the issue of a licence as an administrative FSP or discretionary FSP for a person who immediately prior</td>
<td>R500</td>
<td>N/A</td>
</tr>
</tbody>
</table>
to the date contemplated in section 7(1) of the Act as an investment manager (including a LISP) approved in terms of section 4(l)(a) of the Stock Exchanges Control Act, 1985 (Act No 1 of 1985), or section 5(1)(a) of the Financial Markets Control Act, 1989 (Act No 55 of 1989), as the case may be.

2.7 Application for approval as a compliance officer:

<table>
<thead>
<tr>
<th>Function Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Exercise of the functions referred to in section 2(c)(i), (ii) and (iii) of the Determination of Criteria and Guidelines for Approval of Compliance Officers, 2003;</td>
<td>R700</td>
</tr>
<tr>
<td>b) Exercise of other functions referred to in the said Determination.</td>
<td>R300</td>
</tr>
</tbody>
</table>

2.8 Application for approval of a key individual of a financial services provider.

<table>
<thead>
<tr>
<th>Key Individual</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R150 per key individual</td>
</tr>
</tbody>
</table>

2.9 Application for approval of a financial services provider’s auditor in terms of section 19 of the Act.

<table>
<thead>
<tr>
<th>Auditor</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R150</td>
</tr>
</tbody>
</table>

2.10 Amendment of a licensing restriction regarding a limitation on the financial product in respect of which advice and/or intermediary service is rendered.

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R750</td>
<td>R300</td>
</tr>
</tbody>
</table>

2.11 Amendment of a licensing condition.

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R500</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.12 Application for exemption from any provision of the Act (excluding exemption in terms of section 12 of the Act) submitted with an application for a licence as financial services provider.

<table>
<thead>
<tr>
<th>Exemption</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R700</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.13 Application for exemption from any provision of the Act, after licensing.

<table>
<thead>
<tr>
<th>Exemption</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R900</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.14 Application by a financial services provider for approval of an additional key individual.

<table>
<thead>
<tr>
<th>Application</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R150 per key individual</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.15 Application for a change in name of a financial services provider.

<table>
<thead>
<tr>
<th>Change</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R150</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.16 Additional certified copy of licence certificate in terms of section 8(5)(a)(ii) of the Act.

<table>
<thead>
<tr>
<th>Copy</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R50 per copy</td>
<td>N/A</td>
</tr>
</tbody>
</table>

2.17 Application for approval of a nominee company of an administrative FSP or a financial services provider.

<table>
<thead>
<tr>
<th>Approval</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>R5 000</td>
<td>R2 000</td>
</tr>
</tbody>
</table>
**Determination of Fees Payable, 2006**

**Determination of Fees Payable to the Registrar of Financial Services Providers, 2006**

Notice No. R.240
17 March 2006

I, Trevor Andrew Manuel, Minister of Finance hereby, after consultation with the Registrar of Financial Services Providers, under section 41(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002), determine the fees set out in the several items of the Table of Fees in the Schedule as the fees payable to the said Registrar as contemplated in the said section 41(1).

This determination is called the Determination of fees payable to the Registrar of Financial Services Providers, 2006.

The Notice comes into operation on 1 February 2006.

T A Manuel, MP
Minister of Finance

**Table of Fees 2006**

In this Schedule-

"Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including any measure referred to in the definition of 'this Act' in section 1(1) of the Act,

"section" means a section of the Act,

and any word or expression to which a meaning is assigned in the Act, unless the context otherwise indicates, has the meaning so assigned to it.
### Determinations

#### SERVICES REQUIRED

<table>
<thead>
<tr>
<th>Recognised representative bodies</th>
<th>FEES PAYABLE TO THE REGISTRAR FOR DIRECT APPLICATION</th>
<th>FEES PAYABLE TO THE REGISTRAR THROUGH RECOGNISED REPRESENTATIVE BODIES LESS 60%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Application by a representative body for recognition by the Financial Services Board in terms of section 6(4) of the Act.</td>
<td>R19 135</td>
<td>N/A</td>
</tr>
<tr>
<td>1.2 Delegation of a power to a representative body by the registrar, and recognition by the Financial Services Board (section 6(3) and (4), respectively, of the Act).</td>
<td>R4 760</td>
<td>N/A</td>
</tr>
<tr>
<td>1.3 Additional services rendered relating to recognised bodies.</td>
<td>R550 per hour</td>
<td>N/A</td>
</tr>
</tbody>
</table>

#### Licensing and matters incidental thereto

<p>| 2.1 Application for the issue of a licence as a financial services provider (excluding an administrative FSP and a discretionary FSP) for the rendering of advice and/or intermediary service. | R1 200 | R480 |
| 2.2 Application for the issue of a licence as a discretionary FSP. | R9 560 | R3 824 |
| 2.3 Application for the issue of a licence as a discretionary FSP in addition to a licence referred to in 2.1 and 2.4. | R8 520 | R3 408 |
| 2.4 Application for the issue of a licence as an administrative FSP. | R28 000 | R11 200 |
| 2.5 Application for the issue of a licence as an administrative FSP in addition to a licence referred to in 2.1 and 2.2. | R13 160 | R5 264 |
| 2.6 Application for the issue of a licence as an administrative FSP or discretionary FSP for a person who immediately prior to the date contemplated in section 7(1) of the Act as an investment manager (including a LISP) approved in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act No 1 of 1985), or section 5(1)(a) of the Financial Markets Control Act, 1989 (Act No 55 of 1989), as the case may be. | R500 | N/A |
| 2.7 Application for the issue of a licence as a hedge fund FSP in addition to a licence | R2 000 | R800 |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Fee 1</th>
<th>Fee 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.8</td>
<td>Application for approval as a compliance officer:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Exercise of the functions referred to in section 2(c)(i), (ii) and (iii) of the Determination of Criteria and Guidelines for Approval of Compliance Officers, 2003;</td>
<td>R875</td>
<td>R350</td>
</tr>
<tr>
<td>b)</td>
<td>Exercise of other functions referred to in the said Determination applicable to appointment of a Compliance Officer</td>
<td>R300</td>
<td>R120</td>
</tr>
<tr>
<td>c)</td>
<td>Exercise of other functions referred to the appointment of a Compliance Officer where such officer is representing a compliance practice and replace a Compliance Officer</td>
<td>R100</td>
<td>R40</td>
</tr>
<tr>
<td>2.9</td>
<td>Application for approval of a key individual of a financial services provider.</td>
<td>R220 per key individual</td>
<td>R88 per key individual</td>
</tr>
<tr>
<td>2.10</td>
<td>Application for approval of a financial services provider’s auditor in terms of section 19 of the Act.</td>
<td>R140</td>
<td>R56</td>
</tr>
<tr>
<td>2.11</td>
<td>Amendment of a licensing restriction regarding a limitation on the financial product in respect of which advice and/or intermediary service is rendered.</td>
<td>R720</td>
<td>R288</td>
</tr>
<tr>
<td>2.12</td>
<td>Amendment of a licensing condition.</td>
<td>R450</td>
<td>N/A</td>
</tr>
<tr>
<td>2.13</td>
<td>Application for exemption from any provision of the Act (excluding exemption in terms of section 12 of the Act) submitted with an application for a licence as financial services provider.</td>
<td>R4 200</td>
<td>N/A</td>
</tr>
<tr>
<td>2.14</td>
<td>Application for exemption from any provision of the Act, after licensing.</td>
<td>R4 800</td>
<td>N/A</td>
</tr>
<tr>
<td>2.15</td>
<td>Application by a financial services provider for approval of an additional key individual.</td>
<td>R220 per key individual</td>
<td>R88 per key individual</td>
</tr>
<tr>
<td>2.16</td>
<td>Application for a change in name of a financial services provider.</td>
<td>R250</td>
<td>R100</td>
</tr>
<tr>
<td>2.17</td>
<td>Additional certified copy of licence certificate in terms of section 8(5)(a)(ii) of the Act.</td>
<td>R50 per copy</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Without a Compliance Officer

Determination of Compliance Report for Category 1

Board Notice No. 76 of 2010

Financial Services Board

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report must be submitted by Category I Financial Services Providers without a compliance officer, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

a) A written report for the reporting period, by completing the schedule attached hereto, or by completing electronically, the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted to the Registrar by 28 February 2011.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise-

i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1 (1) of the Act);

ii) "Code of Conduct" means any Code published under section 15 of the Act;

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

iv) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring if compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;
Determinations

v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);


vii) "FSP" and "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;

viii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;

ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;

x) "reporting date" means 31 December 2010;

xi) "reporting period" means the period from the latter of –

aa) the date of authorisation as financial services provider in terms of section 8 of the Act; or

bb) the first day of the month following the reporting period for the 2009 compliance report, or

cc) the date of appointment of the compliance officer of the FSP: until the reporting date.

This Determination is called the Determination of Compliance Report for Category I Financial Services Providers without a Compliance Officer, 2010, and comes into operation on the date of publication thereof.

D P Tshidi
Registrar of Financial Services Providers

Compliance Report

The Schedule "Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) ("the Act") by Category I Financial Services Providers without a compliance officer for reporting period ended 31 December 2010" can be found in Government Gazette No. 33238 dated 31 May 2010.

With a Compliance Officer

Determination of Compliance Report for Category I

Board Notice No. 77 of 2010

Financial Services Board
In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of Category I Financial Services Providers with a compliance officer must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

a) A written report for the reporting period, by completing the schedule attached hereto, or by completing electronically, online the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted by 15 August 2010.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise-

i) any word or expression shall have the meaning that It was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1 (1) of the Act);

ii) "Code of Conduct" means any Code published under section 15 of the Act;

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

iv) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;

v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);


vii) "FSP" and "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;

viii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;

ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;

x) "reporting date" means 31 May 2010;

xi) "reporting period" means the period from the latter of-

aa) the date of authorisation as financial services provider in terms of section 8 of the Act;

bb) the first day of the month following the reporting period for the 2009 compliance report; or

cc) the date of appointment of the compliance officer of the FSP, until the reporting date.

This Determination is called the Determination of Compliance Report for Category I Financial Services Providers with a Compliance Officer, 2010, and comes into operation on the date of publication thereof.
Compliance Report


Compliance Report for Categories II, IIA Forex Authorised Financial Services Providers

Board Notice No. 78 of 2010

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of categories II, IIA and Forex Authorised Financial Services Providers must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

a) Written reports for the reporting periods, by completing the schedule attached hereto, or by completing electronically, online the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted by 30 June 2010.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise-
   i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1 (1) of the Act);
   ii) "Code of Conduct" means any Code published under section 15 of the Act;
   iii) "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;
   iv) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;
   v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
   vi) "Forex Investment Business Code of Conduct" means the Code of Conduct for Authorised Financial Service Providers, and their Representatives,
Determinations involved in Forex Investment Business, 2004;

vii) "FSP" and "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;

viii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;

ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;

x) "reporting date" means 31 May 2010;

xi) "reporting period" means the period from the latter of:

i) the date of authorisation as financial services provider in terms of section 8 of the Act;

ii) the first day of the month following the reporting period for the 2009 compliance report; or

iii) the date of appointment of the compliance officer of the FSP, until the reporting date.

This Determination is called the Determination of Compliance Report for Categories II, IIA and Forex Authorised Financial Services Providers, 2010, and comes into operation on the date of publication thereof.

D P Tshidi
Registrar of Financial Services Providers

Compliance Report


Compliance Report for Category IIA Financial

Compliance Report for Category IIA Financial Services Providers, 2010

Board Notice No. 79 of 2010

Financial Services Board

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the interim compliance report of Category IIA Financial Services Providers must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.
a) Written reports for the reporting periods, by completing the schedule attached hereto, or by completing electronically, online the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted by the following dates:
   i) 30 September 2010;
   ii) 31 December 2010; and
   iii) 30 March 2011.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise –
   i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of the Act);
   ii) "Code of Conduct" means any Code published under section 15 of the Act;
   iii) "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;
   iv) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;
   v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
   vii) "FSP" and "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;
   viii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;
   ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;
   x) "reporting date" means:
      aa) 31 August 2010;
      bb) 30 November 2010; and
      cc) 28 February 2011.
   xi) "reporting period" means the latter of-
      aa) the date of authorisation as financial services provider in terms of section 8 of the Act;
      bb) the first day of the month following the reporting period for the previous compliance report submitted; or
      cc) the date of appointment of the compliance officer of the FSP, and
      dd) until the reporting date.

This Determination is called the Determination of Interim Compliance Report for Category IIA Financial Services Providers, 2010, and comes into operation on the date of publication thereof.
Determinations

D P Tshidi
Registrar of Financial Services Providers

Interim Compliance Report

The Schedule "Interim Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act") by Compliance Officers of Category IIA Financial Services Providers" can be found in Government Gazette No. 33238 dated 31 May 2010.

Compliance Report for Categories II and Forex

Compliance Report for Categories II and Forex Authorised

Board Notice No. 80 of 2010

Financial Services Board

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act; 2002 (Act No. 37 of 2002) ("the Act"); I; Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of Categories II and Forex Authorised Financial Services Providers must be submitted, and the matters which it must have regard to. This determination was made after consultation With the Advisory Committee on Financial Services Providers.

a) A written report for the reporting period, by completing the schedule attached hereto, or by completing electronically, online the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted by 31 October 2010.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise —

i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of the Act);

ii) "Code of Conduct" means any Code published under section 15 of the Act;

iii) "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers. 2008;

iv) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control; process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;

v) "FICA" means the Financial Intelligence Centre Act. 2001 (Act No. 38 of 2001);

vi) "Forex Investment Business Code of Conduct" means the Code of Conduct
D P Tshidi  
Registrar of Financial Services Providers

Compliance Report


Compliance Report for Category III Authorised

Board Notice No. 81 of 2010

Financial Services Board

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (“the Act”), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of Category III Financial Services Providers must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial
a) A written report for the reporting period, by completing the schedule attached hereto, or by completing electronically, online the schedule on the web site of the Financial Services Board (www.fsb.co.za), must be submitted by 31 July 2010.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise-
   i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of the Act);
   ii) "Code of Conduct" means any Code published under section 15 of the Act;
   iii) "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;
   iv) "Developmental area" means any control, process or compliance issue that has been identified during the monitoring of compliance as an area in respect of which the need for improvement of such control, process or compliance issue has been identified by the provider, and plans are in place to effect such improvements within a reasonable time;
   v) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
   vii) "FSP" and "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;
   viii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;
   ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;
   x) "reporting date" means 30 June 2010;
   xi) "reporting period" means the period from the latter of-
      aa) the date of authorisation as financial services provider in terms of section 8 of the Act;
      bb) the first day of the month following the reporting period for the previous compliance report submitted; or
      cc) the date of appointment of the compliance officer of the FSP,
      dd) until the reporting date.

This Determination is called the Determination of Compliance Report for Category III Financial Services Providers, 2010, and comes into operation on the date of publication thereof.

D P Tshidi
Registrar of Financial Services Providers
Compliance Report

The Schedule "Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act") by Compliance Officers or Category III Financial Services Providers" can be found in Government Gazette No. 33238 dated 31 May 2010.
Regulations, 2003

Financial Advisory And Intermediary Services Regulations, 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 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

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

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

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

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.
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 sequestrated 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) 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 insuror 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

In this Chapter-

"authorisation" means authorised, licensed, approved or registered;

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 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

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.
Gazette Notices
Notice 172 of 2009
Exemption of Banks

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

1) 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.

Notice 173 of 2009
Exemption of Certain FSPs and Representatives from Qualification Requirements

Notice No. 173 of 2009

Financial Services Board

I, Dube Phineas Tshidi, Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002, certain persons from section 13(2)(a) of the Act and paragraph 10(3)(a) to (c) of the Determination of Fit and Proper Requirements, 2008, to the extent and subject to the conditions set out in the Schedule.

D P Tshidi
Registrar of Financial Services Providers

1. Definitions

1) 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- "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;
"financial product" means health policies, disability policies and life policies issued under the Long-term Insurance Act, 1998, which provide only risk benefits, excluding:

a) fund policies and fund member policies;

b) investment policies which guarantee 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;

c) health policies, disability policies and life policies which provide risk benefits and have a guaranteed investment value or a materially equivalent value;

d) annuities which guarantee a minimum annuity, ascertainable in Rand terms at inception, for the term of the policy; and

e) any long-term policy which combines any of the policy features in paragraphs (b) to (d);

"FSP" means JDG Trading (Pty Ltd (FSP 3247), Ellerine Furnishers (Pty) Ltd (FSP 36219), Lewis Stores (Pty) Ltd (FSP 2815) and Shoprite Checkers (Pty) Ltd (FSP 7732);

"representative" means an individual appointed during 30 September 2004 and 31 December 2007 to render financial services on behalf of an FSP and who on 31 December 2009 renders financial services in respect of a financial product on behalf of an FSP.

2) A reference to the respective policies in the definition of financial product shall have the meaning assigned in the Long-term Insurance Act, 1998, including any subordinate measure made thereunder.

2. Extent and duration of exemption

a) An FSP and a representative are hereby exempted from section 13(2)(a) of the Act and paragraph 10(3)(a) to (c) of the Determination of Fit and Proper Requirements, respectively, subject to the following conditions:

i) The representative must comply with paragraph 10(3)(a) to (c) of the Determination of Fit and Proper Requirements by 31 December 2011;

ii) the representative must render financial services under the supervision of a key individual of the FSP, as supervisor, and such supervision must be performed in accordance with paragraph 4 of the Exemption of Services under Supervision in terms of Requirements and Conditions, 2008;

iii) the representative must comply with paragraph 10(3)(d) and (e) of the Determination of Fit and Proper Requirements within the periods provided for;

iv) an appropriate qualification, recognised by the registrar, must be developed and registered with SAQA by one or more of the FSPs on or before 31 December 2010;

v) the FSP must, within three months of date of publication of this Exemption, furnish the registrar with a project plan that sets out the development, registration and implementation of the appropriate qualification to ensure that representatives will comply with the prescribed requirements by 31 December 2011; and

vi) the FSP must, within three months of date of publication of this Exemption, furnish the registrar with a list of names and identity numbers of the representatives to whom this Exemption applies.
b) This Exemption expires on 31 December 2011.

3. Amendment and withdrawal 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

This Exemption is called the Exemption of Certain FSPs and Representatives from Qualification Requirements, 2009.
Board Notices

www.acts.co.za

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Board Notice 104 of 2008

Exemption in respect of Services under Supervision in terms of Requirements and Conditio

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"
"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

"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

"key individual" of the financial services provider who meets, to the

"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

"key individual" of the financial services provider who meets, to the
satisfaction of the provider, the relevant requirements of this Exemption;

"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 in terms of paragraph 6(2)(c) and (3)(c) of the Determination of Fit and Proper Requirements, 2008;

and

d) the Continuous Professional Development Requirements in terms of paragraph 7(1) of the Determination of Fit and Proper Requirements, 2008:

Provided that the provider must comply with the requirements and conditions set out 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) any significant interruption during six (6) consecutive weeks (or longer) while gaining experience must be compensated for by arranging for an additional period under supervision, equal to the period interrupted.

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 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

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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 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 Gazetted (if any), and remains operative until withdrawn in like manner.

6. Miscellaneous

1) **Repeals**


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 financial service that he or she renders services under supervision;

iii) 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.

(Repealed) Board Notice 37 of 2009
(Repealed) Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Provider

[This Notice repealed by Board Notice No. 123 of 2009 printed in Government Gazette No. 32587 dated 21 September 2009]

Board Notice 37 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. (Repealed) Interpretation

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 is assigned in the Act or in any code of conduct or other measure promulgated under the Act, has that meaning except where it is clearly inappropriate or the context indicates otherwise;

"date of commencement"
means the date on which this Notice, in terms of paragraph 6 of this Schedule, comes into operation;

"General Code"
2. (Repealed) Application

This Schedule only applies to providers and not to representatives.

3. (Repealed) Categories I, II, IIA, III and IV providers

Subject to the provisions of this Schedule-

a) A person who is a Category I provider 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 professional indemnity of a minimum of R1 million; or
   ii) suitable guarantees of a minimum 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 R1 million; or
   ii) suitable fidelity insurance cover of a minimum 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 or IIA and who receives 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 or fidelity insurance cover of a minimum of R5 million, respectively.

e) A person who is a Category III provider and who receives 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 or of a minimum amount of R5 million; or
   ii) professional indemnity and fidelity insurance cover of a minimum amount of R5 million, respectively.

f) The provisions of paragraphs (d) and (e) apply to any person who after the commencement date becomes a Category II, IIA or III provider.
4. (Repealed) Comply with requirements

Any person who is licensed as a financial services provider after this Notice has become effective, must comply with the requirements in terms of Paragraph 3 above, within 6 weeks of the date of authorisation.

5. (Repealed) 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 2 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. (Repealed) 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. (Repealed) 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.

Board Notice 60 of 2009

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

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.


D P Tshidi  
Registrar of Financial Services Providers

**Index of Forms**

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The following forms can be found in Government Gazette No. 32227 dated 15 May 2009.
Determination of Compliance Report for Financial Services Providers changing Compliance Officer

Board Notice 122 of 2009

Financial Services Board

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (“the Act”), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of financial services providers that changed compliance officers during the reporting period, must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

a) A written report for the reporting period, conforming to the schedule attached hereto, or in the prescribed electronic format determined by the Registrar, must be submitted by the resigning compliance officer within one month after date of resignation.

b) Should the resigning compliance officer not be able to submit a compliance report (in case of death or immediate dismissal), a letter from the FSP stating the circumstances, will suffice.

c) Should the FSP appoint a compliance officer from compliance practice the resigning compliance officer is from, the resigning officer does not need to submit a compliance report.

d) Should there be more than one compliance officer appointed by the FSP, the resigning compliance officer does not need to submit a compliance report.

e) Answers should not be provided in columns that are shaded in grey in the schedule.

f) In this Notice and the schedule, unless the context indicates otherwise -

i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of “this Act” as defined in section 1(1) of the Act);

ii) “Code of Conduct” means any Code published under section 15 of the Act;

iii) “Determination of Fit and Proper Requirements” means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

iv) “FICA” means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);


vi) “FSP” and “financial services provider” means an authorised financial services provider, and includes, where applicable, any representative of the provider;

vii) “General Code of Conduct” or “General Code” means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;

viii) “previous reporting period” means the reporting period of the last
annual compliance report submitted;
ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;
x) "reporting date" means date on which compliance officer resigns;
xi) "reporting period" means the period from-
   aa) the date of authorisation as financial services provider in terms of section 8 of the Act; or
   bb) the first day of the month following the previous reporting period, whichever is the later date, until the reporting date. If this period is 2 months or shorter, no compliance report needs to be submitted.

This Determination is called the Determination of Compliance Report for Financial Services Providers changing Compliance Officers, 2009, and comes into operation on the date of publication thereof.

D P Tshidi
Registrar of Financial Services Providers

Schedule : Compliance Report

The report and forms in the Schedule may be found in Government Gazette No. 32587 dated 21 September 2009.

Board Notice 123 of 2009

Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Provider

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;


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 amount 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.

Board Notice 124 of 2009

Determination of Compliance Report for Authorised Foreign Financial Services Providers, 200

Board Notice 124 of 2009

Financial Services Board

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of foreign financial services providers must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

a) A written report for the reporting period, conforming to the schedule attached hereto, or in the prescribed electronic format determined by the Registrar, must be submitted by 31 October 2009.

b) Answers should not be provided in columns that are shaded in grey in the schedule.

c) In this Notice and the schedule, unless the context indicates otherwise -

i) any word or expression shall have the meaning that it was assigned in
the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of the Act);

ii) "Code of Conduct" means any Code published under section 15 of the Act;

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

iv) "FiCA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

v) "Foreign FSP or foreign financial services provider" means a financial services provider that is not domiciled in the Republic of South Africa;


vii) "FSP" or "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;

viii) "General Code of Conduct" or "General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;

x) "reporting date" means 31 August 2009;

xi) "reporting period" means the period from-

aa) the date of authorisation as financial services provider in terms of section 8 of the Act; or

bb) the first day of the month following the reporting period for the 2008 compliance report,

whichever is the later date, until the reporting date.

This Determination is called the Determination of Compliance Report for Foreign Financial Services Providers, 2009, and comes into operation on the date of publication thereof.

D P Tshidi
Registrar of Financial Services Providers

"Compliance Report Schedule and Forms may be found in Government Gazette No. 32587 dated 21 September 2009.

Board Notice 126 of 2010

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

Board Notice No. 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 relevant period commences on the date the supervisee is approved to render services under supervision; and
   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;
   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 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
Board Notices

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.

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.

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

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

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
"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

1) An applicant and compliance practice must apply on the application forms to the Registrar for Phase I and Phase II approvals.

2) The entities that may apply for approval as a compliance practice are-
   a) a partnership of which all the partners are natural persons who are themselves approved compliance officers;
   b) 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 close 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 close 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
Board Notices

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

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 sequestrated 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.

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

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
      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

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

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 sub-section (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
4) A qualification referred to in sub-section (3) must-
   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

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

Annexures

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.
Board Notice 176 of 2011  
Notice on Amendment of Exemptions

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 Melon 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,

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

Board Notice 199 of 2011  
General Exemption: Level 1 Regulatory Examination

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*. 
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