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BOARD NOTICES

NOTICE 79 OF 2003

FINANCIAL SERVICES BOARD

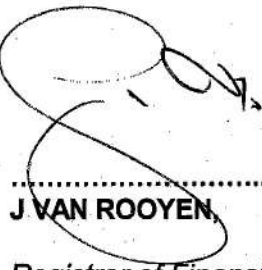
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. OF 2002)

CODES OF CONDUCT FOR ADMINISTRATIVE AND DISCRETIONARY FSPs

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 FSPs, 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 FSPs, 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

SCHEDULE

CHAPTER 1

CODE OF CONDUCT FOR ADMINISTRATIVE FSPs

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

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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 FSPs 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 (j) 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;

"FSP" means an authorised financial services provider;

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

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

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

"regulations" means the Financial Advisory and Intermediary Services Regulations, 2002.

- 2.2 In the case of any inconsistency or conflict between a provision of this Code and a provision of the General Code, the firstmentioned 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; and
 - (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 the cost of the increase may not become effective during the notice period.
- 5.7 If a client notifies an administrative FSP in writing that the client has terminated the client's relationship with a particular FSP and wishes to continue with the relationship with an administrative FSP through another FSP, such notification must be sent by the administrative FSP to the terminating FSP.
- 5.8 An administrative FSP may accept telephonic or electronic instructions without written confirmation, provided that appropriate controls and personal identification procedures have been put in place to ensure security of information and transactions, and that records of such telephonic or electronic instructions must be made and stored for a period of five years from the date when the instruction was received.
- 5.9 Where another FSP intends to provide, through an administrative FSP, a client with its own personalised range of financial products, such other FSP and the administrative FSP must first enter into a written agreement which must provide for termination of the agreement by either party on written notice of not less than 30 days.
- 5.10 An administrative FSP must enter into an appropriate written agreement with each product supplier from or to whom it buys or sells financial products on behalf of clients, which agreement records their particular arrangements and makes provision for termination of the agreement by either party on written notice of not less than 30 days.
- 5.11 In relation to new investments placed with an administrative FSP, no interest shall be payable to a client until the expiry of the first completed day after receipt of the funds. After the expiry of the first completed day, interest earned shall be payable to the client.
- 5.12 No interest shall be payable to clients in relation to funds held in bulk during the execution of a switching instruction, provided that the administrative FSP adheres to the time standards which are stipulated as part of the service levels to clients. In the event of non-adherence, the client shall be entitled to interest for the period in excess of the stipulated time period.
- 5.13. If an administrative FSP has made a mistake in executing an instruction or allocating client funds in such a manner that a client is entitled, in law, to be placed in the position that the client would have been in had the administrative FSP not made the mistake, the client shall only be entitled to compensation to the extent that the client is placed in said position. The administrative FSP shall not be required to pay interest to the client in addition to restoration.

- 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 FSPs, 2003.

CHAPTER II**CODE OF CONDUCT FOR DISCRETIONARY FSPs****Section 15(1)(a) of Financial Advisory and Intermediary Services Act, 2002
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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 FSPs 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 FSPs, 2002, contained in Chapter 1 of this Schedule;

"nominee company" means a nominee company referred to in section 8;

"regulations" means the Financial Advisory and Intermediary Services Regulations, 2002.

- 2.2 In the case of any inconsistency or conflict between a provision of this Code and a provision of the General Code, the firstmentioned 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.

5. Mandates

5.1 A discretionary FSP must obtain a signed mandate from a client, before rendering any intermediary service to that client: Provided that the parties may agree to complete an electronic mandate in respect of which appropriate controls and personal identification procedures have been put in place that ensures security of information, and that the mandate records the arrangements made between the parties, and must –

- (a) authorise the discretionary FSP to act on behalf of the client, indicating whether the authorisation is given with full or specified limited discretion;
- (b) state the investment objectives of the client and whether there are any investment or jurisdiction restrictions that apply to the rendering of intermediary services in relation to the financial products involved;
- (c) contain a general statement pertaining to the risks associated with investing in local and foreign financial products, with particular reference to any currency risk;
- (d) stipulate in whose name the financial products are to be registered and whether they are, for example, to be registered in the name of –
 - (i) the client or a nominee company nominated by the client;
 - (ii) the nominee company of the discretionary FSP or a nominee company within the group of companies of which the discretionary FSP forms part;
 - (iii) the nominee company of a product supplier;
 - (iv) a nominee company of any depository institution or central securities depository registered or licensed in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992), or of any bank registered or licensed in terms of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (v) an administrative FSP's independent nominee, in the case of a FSP who deals through an administrative FSP;
- (e) 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;

- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) empower either party to the mandate to terminate the mandate after notice in writing of not more than 60 calendar days;
- (k) stipulate whether the discretionary FSP may vote on behalf of its clients in respect of their financial products;
- (l) 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;
- (m) 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;
 - (e) non-cash transactions during the period including, without limiting the generality of the foregoing, capitalisation issues and scrip dividends and option expiries;
 - (f) financial products received or delivered to a client or nominee

company during the period;

- (g) profits and losses realised during the period;
- (h) with regard to foreign financial products -
 - (i) the conditions in terms of which the rendering of intermediary services with regard to a financial product will take place;
 - (ii) the manner in which such financial product may be acquired;
 - (iii) the jurisdictions from which the financial products may be acquired;
 - (iv) the specific licensed exchange or other exchange on which the financial products are listed or traded, if applicable;
 - (v) the country in which the financial products are licensed or registered, if applicable;
 - (vi) the name and address of the foreign FSPs 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.

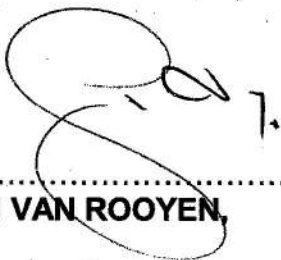
PART III**SHORT TITLE**

9. This Chapter is called the Code of Conduct for Discretionary FSPs, 2003.

NOTICE 80 OF 2003**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)****GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES
PROVIDERS AND REPRESENTATIVES**

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

SCHEDULE

GENERAL CODE OF CONDUCT FOR AUTHORISED FINANCIAL SERVICES PROVIDERS AND THEIR REPRESENTATIVES

Section 15 of Financial Advisory and Intermediary Services Act, 2002 (Act No. 37. of 2002)

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PART I

INTRODUCTORY PROVISIONS

Definitions, construction and application

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

"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.

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

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

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

(2) (a) This Code must be construed-

- (i) in conjunction with the provisions of the Act and in manner conducive to the promotion and achievement of the objectives of codes of conduct as stated in section 16 of the Act; and
- (ii) as being in addition to any other law not inconsistent with its provisions and not as replacing any such law.

(b) In the case of any inconsistency or conflict between-

- (i) a provision of this Code and a provision of any other specific Code drafted under section 15 of the Act, the last mentioned 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

General duty of provider

2. 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.

Specific duties of provider

3. (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) 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;
 - (c) 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
 - (d) 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;
 - (e) transactions of a client must be accurately accounted for; and
 - (f) 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.

PART III

INFORMATION ON PRODUCT SUPPLIERS

4. (1) A provider other than a direct marketer must at the earliest reasonable opportunity, and only where appropriate, furnish the client with full particulars of the following information about the relevant product supplier and, where such information is provided orally, must confirm such information within 30 days in writing:
- (a) Name, physical location, and postal and telephone contact details of the product supplier;
 - (b) (i) the contractual relationship with the product supplier (if any), and whether the provider has contractual relationships with other product suppliers;

- (ii) names and contact details of the relevant compliance and complaints departments of the product supplier.
- (c) the existence of any conditions or restrictions imposed by the product supplier with regard to the types of financial products or services that may be provided or rendered by the provider; and
- (d) where applicable, the fact that the provider –
 - (i) directly or indirectly holds more than 10% of the relevant product supplier's shares, or has any equivalent substantial financial interest in the product supplier;
 - (ii) during the preceding 12 month period received more than 30% of total remuneration, including commission, from the product supplier,

and the provider must convey any changes thereafter in regard to such information at the earliest opportunity to the client.

- (2) A product supplier which is an authorised financial services provider, and which has entered into an intermediary contract or similar contractual relationship with another provider (not being a representative) for the purpose of rendering a financial service in respect of its financial products, must within a reasonable time after being requested to do so by such other provider, provide such other provider with sufficient particulars to enable the provider to comply with the disclosure requirements of this Code relating to the furnishing of details of the product supplier and the product in question.
- (3) A provider must, where the relevant licence, terms of employment or mandate enables such provider to provide clients with financial services in respect of a choice of product suppliers, exercise judgment objectively in the interest of the client concerned.
- (4) A provider may not, in dealing with a client, compare different financial products, product suppliers, providers or representatives, unless the differing characteristics of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, provider or representative.

PART IV

INFORMATION ON PROVIDERS

5. Where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of the following information and, where such information is provided orally, must confirm such information within 30 days in writing:
- (a) Full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of the relevant business carried on, as well as the names and contact details of appropriate contact persons or offices;
 - (b) concise details of the legal and contractual status of the provider, including details as regards the relevant product supplier (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative in the rendering of the financial service involved and the 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 of any charges and fees to be levied against the product, including the amount and frequency thereof and, where the specific structure of the product entails other underlying financial products, in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and
- (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;
- (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(1)(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; and
 - (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.

PART VII

FURNISHING OF ADVICE

Suitability

8. (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;
 - (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;
 - (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; and
 - (viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement.
- (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 long-term insurance contract or policy of such advice.
- (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.

Record of advice

9. (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; and
 - (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

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 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

Control measures

11. 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.

Specific control objectives

12. 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.

Insurance

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

PART X

ADVERTISING AND DIRECT MARKETING

14. (1) An advertisement by any provider must-
- (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
 - (b) if it contains-
 - (i) performance data (including awards and rankings), include references to their source and date;
 - (ii) illustrations, forecasts or hypothetical data-
 - (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with

- a reasonable prospect of being met under current circumstances;
 - (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
 - (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
 - (iii) a warning statement about risks involved in buying or selling a financial product, prominently render or display such statement; and
 - (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
 - (c) 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, voicellogged 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;
 - (b) a copy of all such records must be provided on request by the client or the registrar within seven days of the request;
 - (c) all the information required by sections 4(1)(a) and (c) and 5(a) and (c) shall not be required: Provided that the client is provided with basic details (such as business name and telephone number or address) of the provider or relevant product supplier, and of their relevant compliance departments: Provided further that, if the promotion results in the rendering of a financial service, the full details required by those sections are provided to the client in writing within 30 days of the relevant interaction with the client.
- (3) Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.

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

Provided that where the direct marketer is a representative, the information contemplated in 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) when advising or being advised by a client that the financial product concerned is to replace an existing financial product held by the client, 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.
- (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 (c) in writing.
- (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 voicellogged records must be provided, on request, to the client or Registrar within a reasonable time.
- (6) Notwithstanding the above or contrary provision in the code, such of the information required to be provided to the client in terms of clauses 4, 5 and 7 of this Code as has not yet been recorded or provided to the client in writing before the conclusion of any transaction, must be provided to the client in writing within 30 days thereafter.

PART XI**COMPLAINTS****General****16. (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.

Basic principles of systems and procedures

17. 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.

Resolution of complaints

18. 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

Specific obligations

19. (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;

- (d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-
 - (i) the complaint receives proper consideration;
 - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
 - (iii) the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
- (2) In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.

PART XII

TERMINATION OF AGREEMENT OR BUSINESS

20. Subject to the Act, and sections 3(2) and (3) of this Code-

- (a)
 - (i) a provider must, subject to any contractual obligations, give immediate effect to a request of a client who voluntarily seeks to terminate any agreement with the provider or relating to a financial product or advice;
 - (ii) where the client makes the request on the advice of the provider, the provider must take reasonable steps to ensure that the client fully understands all the implications of the termination;
- (b) a provider, other than a representative who ceases to operate as such, must immediately notify all affected clients accordingly and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps

to ensure that any outstanding business is completed promptly or transferred to another provider; and

- (c) where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.

PART XIII

WAIVER OF RIGHTS

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

PART XIV

SHORT TITLE AND COMMENCEMENT

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

NOTICE 81 OF 2003**FINANCIAL SERVICES BOARD
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****(ACT NO. 37 OF 2002)****RULES ON PROCEEDINGS OF THE OFFICE OF THE OMBUD FOR FINANCIAL
SERVICES PROVIDERS, 2003**

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**

SCHEDULE

RULES ON PROCEEDINGS OF THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS, 2002

Definitions and application

1. (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.

Category of persons qualifying as complainants

3. 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.

Type of complaint justiciable by Ombud

4. (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.

Rights of complainants in connection with complaints

5. (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.

Rights and duties of respondent

6. (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 the Ombud may require.

- (f) A respondent is required to act professionally and reasonably and to co-operate with a view to ensuring the efficient resolution of the complaint.

Summary dismissal of complaints

7. (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.

Time limits

8. (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.

Case fees, costs and interest

9. (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.

Liaison between Ombud and Registrar

10. (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.

Administrative and procedural matters

11. (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 submission or disposal of complaints.

Appeals

12. (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 (g) 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.

Short title and commencement

13. 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.

NOTICE 82 OF 2003**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)****DETERMINATION OF REQUIREMENTS FOR REAPPOINTMENT OF DEBARRED
REPRESENTATIVES, 2003**

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

DETERMINATION OF REQUIREMENTS FOR REAPPOINTMENT OF DEBARRED REPRESENTATIVES, 2003

Definitions

1. 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.

Requirements for reappointment of debarred representatives

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

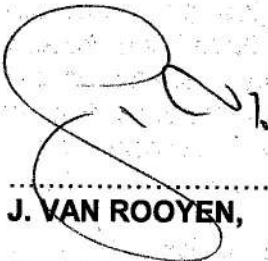
- (a) At least 12 (twelve) months since the debarment date must have elapsed, unless the debarment was consequent on the applicant not having qualified as contemplated in section 13(2)(a) of the Act, and the applicant has within that period qualified as so contemplated;
- (b) all unconcluded business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

Short title and commencement

3. 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.

NOTICE 83 OF 2003**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)****QUALIFICATIONS AND EXPERIENCE OF COMPLIANCE OFFICERS IN
RESPECT OF FINANCIAL SERVICES BUSINESS**

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)(b) 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

QUALIFICATIONS AND EXPERIENCE OF COMPLIANCE OFFICERS OTHER THAN A DIRECTOR, MEMBER, AUDITOR, TRUSTEE, PRINCIPAL OFFICER, PUBLIC OFFICER OR COMPANY SECRETARY IN RESPECT OF FINANCIAL SERVICES BUSINESS

(SECTION 17(1)(b) OF FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002)

Definitions

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

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

Qualifications and experience of compliance officers

2. A person to be appointed as compliance officer other than a director, member, auditor, trustee, principal officer, public officer or company secretary of a particular authorised financial service provider as contemplated in section 17(1)(b) of the Act must be a person complying with the following qualifications and experience, namely, the person must-
 - (a) hold a legal or accountancy university degree, and with at least 3 years' experience as regards the financial services industry; or
 - (b) have passed any specific financial services industry, or compliance related course recognised by the registrar by notice in the *Gazette*, with 3 year's experience as regards the of financial services industry; or
 - (c) already be appointed as a compliance officer by virtue of a law other than the Act relating to the financial services industry; or
 - (d) be an accredited member of the Compliance Institute of South Africa, or any other organisation recognised by the registrar by notice in the *Gazette*, and who has at least 3 years' experience as regards the financial services industry.

Short title and commencement

3. 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.

NOTICE 84 OF 2003**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)****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

CRITERIA AND GUIDELINES FOR THE APPROVAL OF COMPLIANCE OFFICERS BY THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

Definitions

1. 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 1 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.

Criteria and guidelines for approval

2. 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)(i) 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;
- (vi) 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
- (viii) will be able to liaise directly with the registrar particularly as regards reporting required in terms of section 17(4) of the Act.

Discretions of registrar

3. 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), (b) 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.

Short title

4. 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.
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