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BOARD NOTICES

BOARD NOTICE 95 OF 2003

FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. 37 OF 2002)

EXEMPTION OF FINANCIAL SERVICES PROVIDERS AS REGARDS REPRESENTATIVES

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), authorised financial services providers from section 13(2)(a) of the said Act, to the extent and subject to the provisions as set out in the Schedules.



J. VAN ROOYEN,
Registrar of Financial Services Providers

EXEMPTION OF AUTHORISED FINANCIAL SERVICES PROVIDERS AS REGARDS REPRESENTATIVES

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-

"Determination" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2003 promulgated under the Act;

"representative" means a natural person who-

- (a) is a representative of an authorised financial services provider belonging to Category 1 as defined in paragraph 1(1) of the Determination;
- (b) is employed or mandated by the provider on or after the date determined by the Minister in terms of section 7(1) of the Act; and
- (c) does not have to the satisfaction of the provider the required minimum experience;

"required minimum experience" means the minimum experience referred to in Column Two of Table A of the Determination;

"services under supervision" means financial services rendered by a representative under the guidance, instructions and supervision of a supervisor;

"supervisor" means-

- (a) an authorised financial services provider being a natural person;
- (b) a key individual; or
- (c) a representative of the provider who meets to the satisfaction of the provider the relevant requirements of the Determination.

Objectives of exemption

2. Section 13(2)(a) of the Act determines that an authorised financial services provider must, inter alia, at all times be satisfied that a representative is in the rendering of financial services competent to act with reference to fit and proper requirements similar to those contemplated in section 8(1)(a) and (b), as set out in the Determination. The objective of this Exemption is to relieve the provider of the obligation under section 13(2)(a) as regards the required minimum experience. This implies that the representative will regarding such

minimum requirement not have to comply with the standards set for the provider.

The Registrar is satisfied that this Exemption meets the requirements of section 44(1) of the Act.

Extent of exemption

3. An authorised financial services provider is in respect of a representative exempted from the obligation under section 13(2)(a) of the Act regarding the required minimum experience: Provided that in respect of a representative employed or mandated by the provider after the date determined by the Minister in terms of section 7(1) of the Act-
 - (a) such representative must render services under supervision until the required minimum experience has been attained to the satisfaction of the provider;
 - (b) a supervisor-
 - (i) must conduct performance appraisals and progress assessments of financial services rendered by the representative, in order to assist the representative to acquire and apply the necessary skills to render financial services; and
 - (ii) must review and assess financial services rendered by the representative on an ongoing basis.

Amendments or withdrawal

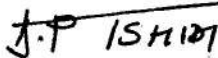
4. This Exemption-
 - (a) is subject to any amendment thereof published from time to time by the registrar in the *Gazette* (if any); and
 - (b) remains operative until withdrawn in like manner.

Short title and commencement

5. This Exemption is called the Exemption of Authorised Financial Services Providers as regards Representatives, No. 1 of 2003, and comes into operation on the date determined by the Minister in terms of section 7 (1) of the Act.

BOARD NOTICE 96 OF 2003**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. 37 OF 2003)****EXEMPTION OF CERTAIN FINANCIAL SERVICES PROVIDERS FROM REQUIREMENTS PERTAINING TO AUDITED FINANCIAL STATEMENTS AND FINANCIAL SOUNDNESS**

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby exempt under section 44(4)(a) of the Financial Advisory and Intermediary Services Act, 2002, (Act No. 37 of 2002), authorised financial services providers, Category I, who do not receive or hold clients' money or assets or who do not receive premiums (as contemplated in the Short-term Insurance Act, 1998 and the Long-term Insurance Act, 1998) from section 19(2)(a) and (b)(i) of the said Act and from paragraph 5(2) of the Determination of Fit and Proper Requirements for Financial Services Providers, to the extent and subject to the provisions as set out in the Schedule.

**J. VAN ROOYEN,***Registrar of Financial Services Providers*

SCHEDULE

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

EXEMPTION OF CERTAIN AUTHORISED FINANCIAL SERVICES PROVIDERS, FROM REQUIREMENTS PERTAINING TO AUDITED FINANCIAL STATEMENTS AND FINANCIAL SOUNDNESS

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-

"financial services provider" means an authorised financial services provider belonging to Category I as defined in paragraph 1(1) of the Fit and Proper Requirements, who does not receive or hold money or assets on behalf of clients or does not receive premiums as contemplated in the Long-term Insurance Act or the Short-term Insurance Act;

"Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2003, published by Board Notice No. 91 of 2003 in *Gazette* No. 25446 of 10 September 2003;

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

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

Objectives of exemption

2. In terms of section 19(1) of the Act a financial services provider must, *inter alia*, annually prepare financial statements reflecting the financial position of the business as at the last day of the financial year in question. Section 19(2) further requires that these statements be audited and reported on by an external auditor approved by the registrar and submitted to the registrar within a required time period.

On consideration of the application of section 19(2) to financial services providers, reasonable grounds appear for relaxation of such requirements. The objective of the exemption mentioned in paragraph 3 is to relieve financial services providers from the obligation under section 19(2)(a) to cause the annual financial statements referred to in subsection 19(1) to be audited and reported on by an external auditor. The obligation to prepare annual financial statements in the manner

prescribed in section 19(1), (2)(a)(i) and (ii), (b)(ii) and (iii) remains applicable. The statements need not to be prepared in accordance with the provisions of section 19(2)(b)(i). The financial services provider is required to submit the unaudited financial statements to the registrar in the manner and time frame prescribed in section 19(2)(b)(iv). However, in those instances where the provider is obliged by any other law to have financial statements audited and reported on by an external auditor or, otherwise prepared by an accounting officer, such statements have to be submitted to the registrar.

Paragraph 5(2) of the Fit and Proper Requirements stipulates that an applicant's assets must exceed the applicant's liabilities. This requirement is considered to be necessary only in those instances where the financial services provider will be handling clients' funds or assets, or receive premiums (as contemplated in the Short-term Insurance Act or the Long-term Insurance Act), because of such funds or assets or premiums being at risk.

Extent of exemption

- 3.1 A financial services provider is exempted from section 19(2)(a) and (b)(i) of the Act. The exemption is subject to the condition that such provider, where the provider is obliged by any other law to cause financial statements to be audited and reported on, or otherwise prepared, must submit such financial statements to the registrar in accordance with section 19(2)(b)(iv) of the Act.
- 3.2 A financial services provider is exempted from paragraph 5(2) of the Fit and Proper Requirements. The exemption is subject to the condition that the financial services provider, must, when complying with section 19(2)(b)(iv) of the Act, certify to the satisfaction of the registrar, that the provider will at all times be able to meet any financial liability in respect of the provider's business of rendering financial services.

Amendments and withdrawal


4. An exemption-
 - (a) is subject to any amendment thereof published by the registrar in the Gazette; and
 - (b) remains operative until withdrawn in like manner.

Short title and commencement

5. This Exemption is called the Exemption of certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements and Financial Soundness, No.1 of 2003, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.

BOARD NOTICE 97 OF 2003**BOARD NOTICE 97 OF 2003****FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT
NO. 37 OF 2003)****EXEMPTIONS OF INVESTMENT MANAGERS AND LINKED INVESTMENT
SERVICES PROVIDERS, AND THEIR RELATED FUNCTIONARIES, FROM
CERTAIN FIT AND PROPER REQUIREMENTS**

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002, (Act No. 37 of 2002), investment managers and linked investment services providers as defined in the Schedule, and their related functionaries, from the provisions of the Fit and Proper Requirements to the extent and subject to the provisions as set out in the Schedule.

**J VAN ROOYEN,***Registrar of Financial Services Providers*

SCHEDULE

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

EXEMPTIONS OF INVESTMENT MANAGERS AND LINKED INVESTMENT SERVICE PROVIDERS, AND THEIR RELATED FUNCTIONARIES, FROM CERTAIN FIT AND PROPER REQUIREMENTS

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-

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

"Conditions" means the Conditions referred to in the definition of "authorised representative" above;

"Financial Services Provider, Category II" means a financial services provider belonging to Category II as defined in paragraph 1(1) of the Fit and Proper Requirements;

"Financial Services Provider, Category III" means a financial services provider belonging to Category III as defined in paragraph 1(1) of the Fit and Proper Requirements;

"Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2003, published by Board Notice No. 91 of 2003 in *Gazette* No.25446 of 10 September 2003;

"investment manager" means an investment manager approved on or before 30 October 2003 in terms of section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or section 5(1)(a) of the Financial Markets Control Act, 1989 (No. 55 of 1989), in respect of the financial products to which the approval relates, and who cannot be licensed under the Act as a Financial Services Provider, Category II, due to inability to comply with paragraph 3(2) of the Fit and Proper Requirements;

"LISP" means a linked investment services provider as defined in the Conditions and approved on or before 30 October 2003 in terms of

section 4(1)(a) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or section 5(1)(a) of the Financial Markets Control Act, 1989 (No. 55 of 1989), and who cannot be licensed under the Act as a Financial Services Provider, Category III, due to inability to comply with paragraph 3(3) of the Fit and Proper Requirements.

Objectives of exemption

2. The objective of the exemption mentioned in paragraph 3 below is, firstly, to address a problem currently experienced in the investment management and LISP industry, namely, that not all investment managers (or persons connected with them as authorised representatives and occupying posts that would qualify them as key individuals or representatives, respectively, for purposes of the Act), and LISPS (or persons connected to them and occupying posts that would qualify them as key individuals for purposes of the Act) will, on application being made for a licence in terms of the Act, comply with the requirements set out in paragraphs 3(2) and 3(3), respectively, of the Fit and Proper Requirements.

The exemption consequently facilitates transition by such persons to the new regime created by the Act which, in the public interest and for better consumer protection, modernises various features of their profession. The exemption is aimed at avoiding of financial or other hardship or prejudice to investment managers and LISPS and their related functionaries.

Secondly, it deals with a problem relating to representatives, namely that section 13(2) of the Act, which provides for the responsibilities of authorised financial services providers in respect of the qualifications of their representatives and key individuals of the latter, does not clearly include providers who are exempted from requirements mentioned in that section. It is necessary to indicate which "similar" requirements must be applied to such persons. For the sake of promotion of legal certainty in this regard, this problem is addressed in this exemption.

The exemption is otherwise clearly of a temporary and restricted nature as after the date envisaged in section 7(1) of the Act, all new applicants for a licence as a Financial Services Provider, Category II and III, and their representatives and key individuals, must comply fully with the Act. The latter requirement will also apply to new key individuals or representatives in respect of the investment managers and LISPS that are exempted hereby, as authorised financial services providers under the Act.

Furthermore the provisions of paragraphs 2, 4 and 5 of the Fit and Proper Requirements will remain applicable to investment managers and LISPS (in terms of the Act referred to as discretionary and administrative FSPs, respectively).

Extent of exemption

3. The following persons are hereby, subject to paragraph 4 below, exempted to the extent indicated:
- (a) an investment manager, and any person appointed as an authorised representative of such an investment manager who stands on or before 30 October 2003 to the manager in a relationship which would qualify that person as a key individual when the manager is licensed under the Act as a Financial Services Provider, Category II, are exempted from the requirements set out in paragraph 3(2) of the Fit and Proper Requirements;
 - (b) a LISP, and any person who stands on or before 30 October 2003 to the LISP in a relationship which would qualify that person as a key individual when the manager is licensed under the Act as a Financial Service Provider, Category III, are exempted from the requirements as set out in paragraph 3(3) of the Fit and Proper Requirements;
 - (c) an investment manager, with regard to a person who on or before 30 October 2003, is an authorised representative of such an investment manager, and who would not qualify as a key individual when the manager is licensed under the Act, but who-
 - (i) stands to the investment manager in a relationship which will qualify that person as a representative when the manager is licensed; and
 - (ii) will not in terms of section 13(6) of the Act be regarded as a representative,

is exempted from the provisions of section 13(2)(a) of the Act as regards paragraph (b) of section 8(1) of the Act referred to therein with regard to such an authorised representative, but only to the extent that paragraph (b) refers to the competency requirements set out in paragraph 3(2) of the Fit and Proper Requirements.

Conditions of exemption

4. The following conditions will apply to the exemptions mentioned in paragraph 3:
- (a) Where any investment manager or LISP, after the date determined by the Minister in terms of section 7(1) of the Act, wishes as an authorised financial services provider-

- (i) to appoint a person other than a person contemplated in paragraph 3(a) or (b) above as a key individual, such person must comply with the requirements as set out in the Fit and Proper Requirements; or
 - (ii) to employ or mandate a person other than a person contemplated in paragraph 3(c) as a representative, including any key individual of that person, any such person must comply with requirements which are similar to the requirements contemplated in section 8(1)(a) and (b) of the Act; and
- (b) the registrar may at any time by notice in the *Gazette* amend or withdraw a condition mentioned in paragraph (a), or any exemption.

Period for which exemptions will be valid

5. An exemption mentioned in paragraph 3 above remains operative until the date on which the exemption is withdrawn under paragraph 4(b) below, or the date on which the currency of the licence of the provider concerned is terminated by virtue of a provision of the Act, whichever date occurs first.

Short title and commencement

6. This Exemption is called the Exemption of Investment Managers from Fit and Proper Requirements, No 1 of 2003, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.
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