GENERAL NOTICE

NOTICE 824 OF 2001

NATIONAL TREASURY

PUBLICATION OF FINANCIAL ADVISORY AND INTERMEDIARY SERVICES BILL, 2001

The Minister of Finance intends tabling the Financial Advisory and Intermediary Services Bill, 2001 in Parliament during the third parliamentary term. The Bill is published in accordance with Rule 241 *(c)* of the Rules of the National Assembly.

Interested persons and institutions are invited to submit written representation on the bill to the Secretary to Parliament by no later than 31 July 2001.

All submissions must be addressed to:

The Secretary to Parliament
c/o Mr A Hermans
Committee Section
Parliament of the RSA
P.O. Box 15
8000

You can contact Mr Hermans at:
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FINANCIAL ADVISORY AND INTERMEDIARY SERVICES BILL

To regulate the rendering of financial advisory and intermediary services to clients; and to provide for matters incidental thereto

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

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Definitions

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

(i) "advice" means, subject to subsection (3)*(a)*, any recommendation, guidance or proposal furnished, by any means or medium, to any client or group of clients—

(a) in respect of the purchase of any financial product; or

(b) in respect of the investment in any financial product; or

(c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or

(*d*) on the variation of any contractual term applying to a financial product. on the replacement of any such product, or on the termination of any purchase of or investment in any such product,

and irrespective of whether such advice—

(i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or

(ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected or not; (x)

(ii) "Advisory Committee" means the Advisory Committee on Financial Services Providers referred to in section 5; (x)

(iii) "application", in connection with a required performance of any act by the registrar, means, except where in a specific case other specific provision is made, an application referred to in section 3(2); and "apply" has a corresponding meaning; (x)

(iv) "auditor" means an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No 80 of 1991); (x)

(v) "authorised financial services provider" or "provider" means a person who or which has been granted an authorisation as a financial services provider by the issue to that person of a licence under section 8; (x)

(vi) "Board" means the Financial Services Board established by section 2 of the Financial Services Board Act; (x)

(vii) "board of appeal" means the board of appeal established by section 26(1) of the Financial Services Board Act; (x)

(viii) "client" means any 'person' as defined in this subsection; (x)

(ix) "code of conduct" means any published code of conduct contemplated in section 15(1); (x)

(x) "collective investment scheme" means a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2001 (Act No. ?? of 2001); (x)

(xi) "complainant" means, subject to section 26(1)(*a*)(ii), a specific client who or which submits a complaint in respect of any authorised financial services provider or representative to the Ombud; (x)

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

(*a*) has contravened or failed to comply with a provision of this Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;

(*b*) has wilfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or

(*c*) has treated the complainant unfairly; (x)

(xiii) "compliance officer" means a compliance officer for an authorised financial services provider referred to in section 17; (x)

(xiv) "Court" means any court having jurisdiction; (x)

(xv) "exempt", in relation to the registrar, means to exempt, on application by a person or on the registrar's own initiative, on any of the grounds mentioned in section 44(1)(*a*), (*b*) or (*c*); and "exemption" or "exempted" has a corresponding meaning; (x)

(xvi) "financial product" means, subject to subsection (2) of this section—

(*a*) securities and instruments, including—

(i) shares in a company other than a "share block company" as defined in the Share Block Control Act, 1980 (Act No. 59 of 1980);

(ii) debentures and securitised debt;

(iii) any money-market instrument;

(iv) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii) of this paragraph;

(v) any "securities" as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

(vi) any "investments" as defined in section 4(7)*(a)* of the Stock Exchanges Control Act, 1985; and

(vii) any "financial instrument" as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

(b) a participatory interest in one or more collective investment schemes;

(c) a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No 52 of 1998), and the Short-term Insurance Act, 1998 (Act No 53 of 1998), respectively;

(d) a benefit provided by—

(i) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or

(ii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956), to the members of the society by virtue of membership;

(e) a foreign currency denominated investment instrument, including a foreign currency deposit;

(f) a deposit as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990); (x)

(g) a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);

(h) any other product similar in nature to any financial product referred to in paragraphs *(a)* to *(g)*, inclusive, of this definition, declared by the registrar, after consultation with the Advisory Committee, by notice in the *Gazette* to be a financial product for the purposes of this Act;

(i) any combined product containing one or more of the financial products referred to in paragraphs *(a)* to *(h)*, inclusive, of this definition;

(j) any financial product issued by any foreign product supplier and marketed in the Republic and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs *(a)* to *(i)* of this definition; (x)

(xvii) "financial service" means any service contemplated in paragraph *(a)*, *(b)* or *(c)* of the definition of "financial services provider" in this subsection; (x)

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

(xix) "financial services provider" means any person who or which as part of a regular business of such person—

(a) furnishes advice; or

(b) furnishes advice and renders any intermediary service; or

(c) renders an intermediary service; (x)

(xx) "intermediary service" means, subject to subsection (3)*(b)*, any act other than the furnishing of advice, performed by a person—

(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or

(b) with a view to—

(i) managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;

(ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product;

(iii) receiving, submitting or processing of claims of a client against a product supplier; or

(iv) "management of investments" as defined in section 4(7)*(b)* of the Stock Exchanges Control Act, 1985; (x)

(xxi) "key individual", in relation to an authorised financial services provider, or a representative, carrying on business as—

(a) a corporate or unincorporated body, a trust, or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or