


BOARD NOTICE 104 OF 2008**FINANCIAL SERVICES BOARD****FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO 37 OF 2002)****EXEMPTION IN RESPECT OF SERVICES UNDER SUPERVISION IN TERMS OF
REQUIREMENTS AND CONDITIONS, 2008**

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

**D P TSHIDI***Registrar of Financial Services Providers*

SCHEDULE

1 Definitions

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

the following words and expressions shall, unless the context otherwise indicates, have the following meanings:

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

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

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

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

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

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

"services under supervision" means financial services rendered by a representative who does not meet the prescribed experience, qualification and/or regulatory examination requirements and which services are rendered under the

guidance, instruction and supervision of a supervisor in terms of the provisions of an exemption by the Registrar under section 44 of the Act;

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

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

"supervisor" means –

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

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

2 Objectives of exemption

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

3 Extent of exemption

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

- (a) the experience requirements required in terms of paragraph 4(1)(b), (2)(b), (3)(b), (4)(b) and (5)(b) of the Determination of Fit and Proper Requirements, 2008;
- (b) qualifications in terms of paragraph 5(1)(d) and (2)(d) of the Determination of Fit and Proper Requirements, 2008;
- (c) the first and second level regulatory examinations in terms of paragraph 6(2)(c) and (3)(c) of the Determination of Fit and Proper Requirements, 2008 ; and
- (d) the Continuous Professional Development Requirements in terms of paragraph 7(1) of the Determination of Fit and Proper Requirements, 2008;

Provided that the provider must comply with the requirements and conditions set out in paragraph 4 below.

4 Requirements and conditions

- (1) A financial services provider that provides representatives with the opportunity to render financial services under supervision, must satisfy the Registrar, that it-
 - (a) has the operational ability to provide such services under supervision; and
 - (b) can itself, or through a key individual that meets the same requirements as provided for in subparagraph (3) below or another competent representative act as supervisor, and meets the relevant requirements for the specific subcategory of financial services wherein the supervisor will oversee the representative(s) that render services under supervision.
- (2) A financial services provider that intends to provide representatives with the opportunity to render financial services under supervision must-
 - (a) indicate on the representative register whether the representative is acting under supervision, and
 - (b) differentiate on the representative register between representatives that are acting under supervision and those that meet all the requirements and are not acting under supervision.
- (3) A supervisor must have completed and meet the relevant requirements regarding experience and qualification and at least the first level regulatory examination in relation to the specific Categories or subcategories before the supervisor is allowed to act as a supervisor for a specific Category or subcategory.
- (4) A representative may only work for a period not exceeding six (6) years after date of appointment under supervision, whilst obtaining the required experience, qualification and regulatory examination(s) as they apply.
- (5) Supervisees are expected to obtain experience across the subcategories in respect of which they are appointed as a representative, but should this prove to be problematic during the minimum period under supervision due to business reasons, the financial services provider should make arrangements to either-
 - (a) place the supervisee in a position where he or she can gain experience in the specific subcategory; or
 - (b) extend the period under supervision to ensure that the supervisee receives sufficient exposure to the specific subcategory, provided that the maximum period under supervision of six (6) years is not exceeded.
- (6) The following will apply to the period a representative acts under supervision:
 - (a) The supervision period is linked to the Category or subcategory;