

No. 297

12 March 2004

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002****AMENDMENT OF FINANCIAL ADVISORY AND INTERMEDIARY  
SERVICES REGULATIONS, 2003**

I, Trevor Andrew Manuel, Minister of Finance, hereby, under section 35 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and after consultation with the Registrar of Financial Services Providers and the Advisory Committee on Financial Services Providers, make the regulations in the Schedule hereto.

This Notice comes into operation on the date of publication of this Notice in the Government Gazette.



TA MANUEL, MP  
MINISTER OF FINANCE  
DATE: 23/02/04

## SCHEDULE

### [General note:

In this Schedule words underlined with a solid line indicate insertions in existing enactments, and words in bold type square brackets indicate deletions from existing enactments.]

### Definitions

1. In this Schedule, “**the Regulations**” means the Financial Advisory and Intermediary Services Regulations, 2003, published by Government Notice No. 879 of 2003 in *Gazette* No. 25092 of 13 June 2003.

### Substitution of regulation 6(4) of the Regulations

2. The following subregulation is substituted for subregulation (4) of regulation 6 of the Regulations:

“The nominee company must enter into an **[irrevocable]** agreement with the discretionary FSP in terms of which the provider must pay all expenses for and incidental to its formation, activities, management and liquidation, unless the Memorandum and Articles of Association of the nominee company already provide for such an obligation.”

### Insertion of Chapter VI in the Regulations

3. The following Chapter is hereby inserted in the Regulations before Chapter VI, the existing Chapter VI becoming Chapter VII and the existing regulations 13, 14 and 15 becoming regulations 18, 19 and 20 respectively:

## CHAPTER VI

### MATTERS RELATING TO FOREIGN FOREX SERVICES PROVIDERS AND CLEARING FIRMS

*(Section 35(1)(d) and (e) of Act)*

#### Definitions

13. In this Chapter-

“authorisation” means authorised, licensed, approved or registered;

“Forex Code” means the Code of Conduct for Authorised Financial Services Providers, and their Representatives, involved in Forex Investment Business, 2003.

#### Approval of foreign entities

#### Procedure

14. A forex services provider seeking, in accordance with a provision of the Forex Code, an approval by the Registrar of a clearing firm or a foreign forex services provider, must submit an application for approval to the Registrar in accordance with section 3(2) of the Act, containing at least the following information:

- (a) Full particulars as regards the name and physical location and all other identification particulars of the relevant clearing firm or foreign forex services provider;
- (b) full particulars as regards any authorisation required by such firm or provider for the conduct of business in the country in

which it is located, and of the terms of any such authorisation so granted; and

- (c) full particulars as regards the nature of the regulatory environment under which the firm or provider operates in the country concerned.

### **Requirements**

15. It is a requirement for the granting of approval by the Registrar of any application contemplated in regulation 14, that the regulatory framework of the country in which the clearing firm or provider is located must, to the satisfaction of the Registrar, be substantively of the same nature and standing as that obtaining in respect of the applicant in the Republic.

### **Granting or refusal of approval**

16. (1) The Registrar may, on consideration of any application contemplated in regulation 14, require any further information from the applicant deemed necessary by the Registrar, and may after consideration of all available information but subject to the provisions of these Regulations, grant or refuse the application.
- (2) Where the Registrar has decided to refuse the application, the Registrar must before finally deciding thereon, afford the applicant concerned a reasonable opportunity to respond to the reasons for refusal as determined by the Registrar and disclosed to the applicant.

### Interpretation

17. A reference in any law or document to a forex broker, an introducing forex broker, forex money manager, forex investment manager, forex advisor, forex market maker must, unless clearly inappropriate or inconsistent with a provision of the Act, be construed as a reference to a forex services provider."

### **Commencement**

4. This Notice comes into operation on the date of publication in the Government Gazette.