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BOARD NOTICE


BOARD NOTICE 85 OF 2004

FINANCIAL SERVICES BOARD

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

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

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby exempt under section 44(4), read with section 44(1)(b) and (c), of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), certain authorised financial services providers from certain provisions of section 19 of the Act 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 (ACT NO. 37 OF 2002)

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

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, or in the Long-term Insurance Act, shall have that meaning and, unless the context otherwise indicates-

"accounting officer" means a person contemplated in section 60 of the Close Corporations Act, 1984 (Act, No. 69 of 1984);

"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;

"intermediary entity" means a financial services provider who belongs to Category I as defined in paragraph 1(1) of the Fit and Proper Requirements and who renders an intermediary service, excluding the offsetting of claims, in respect of financial products belonging to Long-term Insurance Category A, referred to in subcategory (1) in Column One of Table A of paragraph 3(1) of the Fit and Proper Requirements;

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

"offsetting of claims" means the payment of policyholders' claims and the offsetting of such claims against premium received from policyholders for remittal to the long-term insurer.

Objective of exemption

2. Section 19(1) of the Act imposes a duty on an authorised financial services provider (unless exempted) to maintain proper accounting records and to prepare the conventional annual financial statements thereon.

Section 19(2) to (6) of the Act then provide that an auditor must prepare audited statements with reference to the various matters referred to therein, and in addition deals with incidental matters in connection herewith.

The registrar is satisfied that in the case of intermediary entities these requirements are capable of causing financial or other hardship or prejudice

(as referred to in section 44(1)(b) of the Act), to such entities in so far as auditor involvement is required, and that a relaxation of these requirements subject to certain proposed conditions, will satisfy the requirements of section 44(1)(c). Such conditions will then be that, in effect, references to an auditor and auditor statements be replaced by references to an accounting officer and financial statements of such officer. It must be noted that in the case of close corporations, auditor involvement has for a number of years not been obligatorily required in RSA law, and that the registrar is satisfied that similar considerations justify similarly less onerous requirements for intermediary entities.

Extent of exemption

3. Intermediary entities are, in respect of an intermediary service referred to in the definition of an intermediary entity, hereby exempted from section 19(2)(a), (2)(b) and (3) to (6) of the Act to the extent that reference is made therein to an auditor, or an audit of an auditor, or to statements or reports by an auditor, subject to the conditions that-
 - (a) the exemptions will not apply where an intermediary entity is in any case obliged by any other law to cause financial statements to be audited and reported on, or otherwise prepared, in which case section 19 remains applicable;
 - (b) in any case other than the case envisaged in subparagraph (a), an intermediary entity must appoint an accounting officer who must on prior written application to the registrar be approved by the registrar;
 - (c) any such approved accounting officer must certify and report on the financial statements of the intermediary entity referred to in section 19(1) in conformity with the practices of the accounting officer's profession, and that section 19(2)(a)(i) to (iii), (b)(ii) to (iv), and (3) to (6) of the Act will apply with the necessary changes to any such officer, any certification and reports by the officer and termination of appointment.

Amendment and withdrawal of exemption

4. An exemption may, subject to section 44(3) of the Act on the lapsing thereof, at any time-
 - (a) be amended by the registrar by notice in the in the *Gazette*;
 - (b) be withdrawn by the registrar 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 (2), 2004, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.
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