

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;

- (b) the maximum period any representative can act under supervision in any Category or subcategory, is six (6) years from date of appointment;
 - (c) representatives who give advice and/or render intermediary services in respect of multiple Categories or subcategories can gain the experience at the same time, and will remain under supervision until the experience requirements for the most onerous Category or subcategory is met;
 - (d) the relevant minimum and maximum periods commence on the date the representative is appointed to render services in relation to the specific Category or subcategory; and
 - (e) any significant interruption during six (6) consecutive weeks (or longer) while gaining experience must be compensated for by arranging for an additional period under supervision, equal to the period interrupted.
- (7) Supervision may include one or more of the following activities:
- (a) Sign-off by a supervisor on the advice given to a client;
 - (b) pre-transaction sign-off by a supervisor where intermediary services are rendered;
 - (c) attending meetings with supervisee and clients where the purpose of the meeting is the rendering of financial services;
 - (d) appropriate post-transaction sampling;
 - (e) follow-up calls to clients after the rendering of financial services by the supervisee to confirm certain aspects of the interaction with the client; or
 - (f) any other activity that enables the supervisor to scrutinise the activities of the supervisee in respect of rendering of financial services:

Provided that in the case of Category I financial services providers the intensity of supervision is aligned to the phase of supervision (direct or ongoing supervision), referred to in Table A below, which applies.

- (8) In the case of Categories II and IIA financial services providers, the following will also be recognised for supervision purposes:
- (a) Minutes of the "investment team meetings", will be accepted as sign-off; or
 - (b) sign-off on transactions regarding intermediary services will require that the supervisor checks that the representative carries out instructions accurately and in line with the relevant mandate and/or consensus decision.
- (9) Supervision arrangements must be arranged in accordance with the following specific requirements:
- (a) Selection of the supervisor:

The financial services provider must ensure that the normal working relationship between the supervisee and supervisor allows the supervisor oversight of the activities performed by the supervisee as per agreement, and that there is regular contact that enables the transfer of skills, which may include face-to-face and/or contact via electronic means, between the supervisee and supervisor in the execution of their duties.

(b) Supervision agreement:

There must be a written agreement, which may or may not form part of the employer's performance management processes, that details the procedures regarding the rendering of services under supervision.

(c) Supervisor responsibilities:

- (i) The financial services provider is required to ensure that supervisees are supervised at all times when executing their duties in terms of the supervisory arrangement;
- (ii) the supervisor must ensure that the supervisee has a good understanding of and exposure to the Categories and/or subcategories he or she is providing financial service in;
- (ii) the supervisor must observe selected meetings between the supervisee and customers, the frequency of which may vary according to the complexity of the service that is provided; and/or the complexity of the products offered; and/or the experience of the supervisee; and/or the qualifications of the supervisee;
- (iv) the financial services provider must ensure that the supervisor is able to provide evidence of the supervision actions undertaken and such evidence must be available for scrutiny by the Registrar;
- (v) the supervisor must assess the advice given by the supervisee for appropriateness based on a review of the analysis conducted and the record of the advice as provided for in terms of the General Code of Conduct, and ensure that the FSP takes the necessary action to protect the client where it is found that the supervisee's actions may not have been in the interest of the client; and
- (vi) the supervisor and supervisee must have properly documented evidence of the supervision, the method followed and frequency thereof that took place during the period under supervision.

(d) The supervisee must-

- (i) adhere to the requirements of the supervision contract;
- (ii) provide the supervisor upon request, where applicable, with any records and or documents regarding the advice given and/or intermediary services rendered;
- (iii) disclose to clients that he or she is acting under supervision;
- (iv) actively pursue the completion of the required qualifying criteria within the prescribed time limits;
- (v) undertake the relevant product training; and
- (vi) request guidance from the supervisor if in doubt when performing any duties in relation to the supervision contract.

(e) Supervision applicable to representatives of Categories I and IV financial services providers:

Table A below sets out the level of supervision required in respect of representatives acting under supervision of Categories I and IV financial service providers:

TABLE A: CATEGORIES I and IV: LEVEL OF SUPERVISION REQUIRED			
	COLUMN ONE: SUBCATEGORY	COLUMN TWO: DIRECT SUPERVISION-	COLUMN THREE: ONGOING LEVEL OF SUPERVISION-
1.1	Long-term Insurance Category A	The first 2 months of the period under supervision	After 2 months for the rest of the period under supervision
1.2	Short-term Insurance Personal Lines		
1.3	Long-term Insurance Category B		
1.4	Long-term Insurance Category C		
1.5	Retail Pension Benefits		
1.6	Short-term Insurance Commercial Lines		
1.7	Pension Fund Benefits (excluding Retail Pension Benefits)	The first 4 months of the period under supervision	After 4 months for the rest of the period under supervision
1.8	Securities and Instruments: Shares		
1.9	Securities and Instruments: Money Market Instruments		
1.10	Securities and Instruments: Debentures and Securitised Debt		
1.11	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt		
1.12	Securities and Instruments: Bonds		
1.13	Securities and Instruments: Derivative Instruments		
1.14	Participatory Interests in one or more Collective Investment Schemes		
1.15	Forex Investment Business		
1.16	Health Service Benefits	The first 2 months of the period under supervision	After 2 months for the rest of the period under supervision
1.17	Long-term Deposits	The first 6 weeks of the period under supervision	After 6 weeks for the rest of the period under supervision
1.18	Short-term Deposits		
1.19	Friendly Society Benefits	The first 2 weeks of the period under supervision	After 2 weeks for the rest of the period under supervision
IV	Category IV: Assistance Business FSP	The first 6 weeks of the period under supervision	After 6 weeks for the rest of the period under supervision

- (f) Supervision applicable to representatives of Categories II, IIA and III financial services providers:
- (i) The supervisor must, where the representative is rendering discretionary financial services (Categories II and IIA), review and approve in writing the rendering of such services prior to conclusion or execution of any transaction;
 - (ii) the supervisor must, where the representative is rendering discretionary financial services (Categories II and IIA), approve a transaction before it is finalised in respect of all representatives acting under supervision of Category III providers or, if the transaction is of such a nature where prior approval is not feasible, within a reasonable period thereafter;

- (iii) in respect of Categories II and IIA providers, the supervisor is required to ensure that all actions taken by the representative adheres to the mandate and/or morning meeting decisions;
- (iv) the supervisor must conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings;
- (v) the supervision requirements may not be lessened in intensity during the duration of the period under supervision.

5 **Amendment or withdrawal**

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

6 **Miscellaneous**

(1) **Repeals**

The Amendment Notice of the Exemption of Authorised Financial Services Providers as regards Representatives, No. 1 of 2008, published by BN 565 of 2008 in *Gazette* No. 31244 of 14 July 2008, is hereby repealed.

(2) **Transitional arrangements**

For the purposes of this Exemption, the following transitional arrangements apply:

- (a) A supervisor who does not meet the qualification requirements or has not completed the relevant first or second level Regulatory Examination(s), in relation to a specific Category or subcategory that he or she was appointed for before the date of coming into operation of this Exemption, may continue to function as a supervisor until he or she has met the requirements as set out in the Determination of Fit and Proper Requirements, 2008, as they apply..
- (b) Paragraph 4(9)(b), (d) and (e) in respect of a representative, exempted from the obligation under 13(2) of the Act, will only come into effect six (6) months after the date of coming into operation of this Exemption: Provided that during the transitional period-
 - (i) such representative must render services under supervision until the required minimum experience has been attained to the satisfaction of the provider;
 - (ii) such representative must inform clients prior to the rendering of the financial service that he or she renders services under supervision;
 - (iii) the provider must have procedures in place to ensure that a representative is appropriately supervised; and
 - (iv) the provider must maintain and retain records of how the supervision of a representative is carried out, the assessments and reviews of the financial services rendered and the approvals by the supervisor.

6. Short title and commencement

This Exemption is called the Exemption of Services under Supervision in terms of Requirements and Conditions, 2008, and comes into operation on 31 December 2008.