

**NOTICE 58 OF 2010
FINANCIAL SERVICES BOARD**

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002:
AMENDMENT OF THE GENERAL CODE OF CONDUCT FOR
AUTHORISED FINANCIAL SERVICES PROVIDERS AND
REPRESENTATIVES**

I, **DUBE PHINEAS TSHIDI**, the Registrar of Financial Services Providers, after consultation with the Advisory Committee on Financial Service Providers and representative bodies of the financial services industry, and client and consumer bodies determined by the Advisory Committee, hereby, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), amend the General Code of Conduct for Authorised Financial Services Providers and Representatives published in Board Notice No. 80 of 2003, *Gazette* 25299 of 8 August 2003, as set out in the schedule.



DP Tshidi,
Registrar of Financial Services Providers

SCHEDULE

Definitions

1. In this schedule, "General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003 and amended by Board Notice No. 43 of 2008.

Amendment of section 1 of the General Code:

2. Section 1 of the General Code is hereby amended by -

- (a) the insertion in subsection (1) after the definition of "advertisement" of the following definitions:

"associate" -

- (a) in relation to a natural person, means –
 - (i) a person who is recognised in law or the tenets of religion as the spouse, life partner or civil union partner of that person;
 - (ii) a child of that person, including a stepchild, adopted child and a child born out of wedlock;
 - (iii) a parent or stepparent of that person;
 - (iv) a person in respect of which that person is recognised in law or appointed by a Court as the person legally responsible for managing the affairs of or meeting the daily care needs of the first mentioned person;
 - (v) a person who is the spouse, life partner or civil union partner of a person referred to in subparagraphs (ii) to (iv);
 - (vi) a person who is in a commercial partnership with that person;
- (b) in relation to a juristic person -
 - (i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;
 - (ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;
 - (iii) which is not a company or a close corporation as referred to in subparagraphs (i) or (ii), means another juristic person

which would have been a subsidiary or holding company of the first-mentioned juristic person -

- (aa) had such first-mentioned juristic person been a company; or
- (bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;
- (iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where such juristic person is not a company, the governing body of such juristic person is accustomed to act;
- (c) in relation to any person -
 - (i) means any juristic person of which the board of directors or, in the case where such juristic person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph;
 - (ii) includes any trust controlled or administered by that person.

“company” means a company under the Companies Act, 1973 (Act No. 61 of 1973);

“conflict of interest” means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, –

- (a) influence the objective performance of his, her or its obligations to that client; or
- (b) prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client,

including, but not limited to –

- (i) a financial interest;
- (ii) an ownership interest;
- (iii) any relationship with a third party;”;

- (b) by the insertion in subsection (1) after the definition of “direct marketer” of the following definitions:

“distribution channel” means –

- (a) any arrangement between a product supplier or any of its associates and one or more providers or any of its associates in

terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client;

- (b) any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;
- (c) any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

“fair value” has the meaning assigned to it in the financial reporting standards adopted or issued under the Companies Act, 1973 (Act No. 61 of 1973);

“financial interest” means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than –

- (a) an ownership interest;
- (b) training, that is not exclusively available to a selected group of providers or representatives, on –
 - (i) products and legal matters relating to those products;
 - (ii) general financial and industry information;
 - (iii) specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;

“holding company” means a holding company as defined in section 1(4) of the Companies Act, 1973 (Act No. 61 of 1973);

“immaterial financial interest” means any financial interest with a determinable monetary value, the aggregate of which does not exceed R 1 000 in any calendar year from the same third party in that calendar year received by –

- (a) a provider who is a sole proprietor; or
- (b) a representative for that representative’s direct benefit;

- (c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;";
- (c) the insertion in subsection (1) after the definition of "provider" of the following definitions:

"ownership interest" means -

- (a) any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or an proprietary interest held as an approved nominee on behalf of another person; and
- (b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

"subsidiary" means a subsidiary as defined in section 1(3) of the Companies Act, 1973 (Act No. 61 of 1973);

"third party" means -

- (a) a product supplier;
- (b) another provider;
- (c) an associate of a product supplier or a provider;
- (d) a distribution channel;
- (e) any person who in terms of an agreement or arrangement with a person referred to in paragraphs (a) to (d) above provides a financial interest to a provider or its representatives".

Amendment of section 3 of the General Code:

3. Section 3 of the General Code is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

- "(b) a provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;
- (c) a provider or a representative must, in writing, at the earliest reasonable opportunity –
 - (i) disclose to a client any conflict of interest in respect of that client, including –
 - (aa) the measures taken, in accordance with the conflict of interest management policy of the provider referred to in section 3A(2), to avoid or mitigate the conflict;

- (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;
- (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and
- (ii) inform a client of the conflict of interest management policy referred to in section 3A(2) and how it may be accessed.”.

Insertion of section 3A in the General Code

4. The following section is hereby inserted after section 3 of the General Code:

“3A. Financial interest and conflict of interest management policy

- (1)(a) A provider or its representatives may only receive or offer the following financial interest from or to a third party –
- (i) commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
 - (i) commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);
 - (iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;
 - (iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if those fees –
 - (aa) are specifically agreed to by a client in writing; and
 - (bb) may be stopped at the discretion of that client;
 - (v) fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered;
 - (vi) subject to any other law, an immaterial financial interest; and

- (vii) a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.
 - (b) A provider may not offer any financial interest to a representative of that provider for -
 - (i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
 - (ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
 - (iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.
 - (c) For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to section 3A(1)(b), in respect of its representatives.
- (2)(a) Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.
- (b) A conflict of interest management policy must –
 - (i) provide for the management of conflicts of interest as defined in section 1, and -
 - (aa) mechanisms for the identification of conflicts of interest;
 - (bb) measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;
 - (cc) measures for the disclosure of conflicts of interest;
 - (dd) processes, procedures and internal controls to facilitate compliance with the policy; and
 - (ee) consequences of non-compliance with the policy by the provider's employees and representatives; and

- (ii) specify the type of and the basis on which a representative will qualify for a financial interest that the provider will offer a representative and motivate how that financial interest complies with section 3A(1)(b);
 - (iii) include a list of all its associates;
 - (v) include the names of any third parties in which the provider hold an ownership interest;
 - (vi) include the names of any third parties that holds an ownership interest in the provider; and
 - (vii) include the nature and extent of the ownership interest referred to in subparagraph (v) and (vi); and
 - (viii) be drafted in an easily comprehensible form and manner.
 - (c) A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.
 - (d) A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.
 - (e) A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
 - (f) A provider must publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.
- (3) A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.
- (4)(a) A compliance officer or, where the provider need not, in terms of the Act, have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.
- (b) The report referred to in paragraph (a) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

Short title and commencement

5. (1) This Notice is called the General Code of Conduct for Authorised Financial Services Providers and Representatives Amendment Notice, 2010.
- (2) This Notice comes into operation on the date of publication thereof in the *Gazette*.
- (3) Despite subsection (2), –
- (a) the amendments to section 3 of the General Code, takes effect three months after the date on which this Notice takes effect;
 - (b) the insertion of section 3A(1)(a) and (c), and section 3A(3) in the General Code takes effect six months after the date on which this Notice takes effect; and
 - (c) the insertion of section 3A(1)(b) and section 3A(2) in the General Code takes effect twelve months after the date on which this Notice takes effect.
- (4) Until section 3A(2) takes effect section 3(1)(c)(i)(aa) must be read as follows:
- “(aa) the measures taken, to avoid or mitigate the conflict;”.
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