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## BOARD NOTICE

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### BOARD NOTICE 102 OF 2012

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

#### EXEMPTION OF CERTAIN PERSONS FROM THE LEVEL 1 REGULATORY EXAMINATION REQUIREMENTS

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), certain persons from the Level 1 regulatory examination requirements, to the extent and subject to the conditions set out in the Schedule.



**G E ANDERSON,**  
*Deputy Registrar of Financial Services Providers*

#### SCHEDULE

#### EXEMPTION OF CERTAIN PERSONS FROM THE LEVEL 1 REGULATORY EXAMINATION REQUIREMENTS

##### 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 is assigned in the Act shall have that meaning, and unless the context otherwise indicates-

**'average'** means a clause in a policy that provides that where assets are insured for less than their full value, the insured is required to bear a proportion of any loss;

**'Determination of Fit and Proper Requirements'** means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

**'first level regulatory examination'** means the first level regulatory examinations referred to in Annexure 1 to the Determination of Qualifying Criteria and Qualifications for Financial Services Providers, No. 1 of 2008;

**'limited underwriting'** means where the only requirements a prospective policyholder or life assured must comply with in order for a product supplier to accept risk or pay a claim are-

- (a) the furnishing of a health declaration by such policyholder or life assured, structured as answers to no more than eight questions relating to specific medical conditions;
- (b) a requirement that the policyholder or life assured must undergo an HIV test;
- (c) the requirements imposed by the National Credit Act, No. 34 of 2005; or
- (d) a combination of any of the requirements referred to in paragraphs (a), (b) and (c);

**'no underwriting'** means there is no requirement by a product supplier for any medical, financial or lifestyle information to be provided by a prospective policyholder or life assured in order for such product supplier to accept risk or pay a claim;

**'private equity fund'** means a managed pool of capital that-

- (a) as its principle business invests primarily in unlisted companies/ventures to earn income and capital gains;
- (b) is managed or advised by a member of the South African Venture Capital and Private Equity Association or other equivalent private equity and venture capital industry body; and
- (c) is not open or offered to the public as an investment;

**'provider'** means-

- (a) a representative who is employed or mandated by an authorised financial services provider to render financial services in respect of a policy only;
- (b) a financial services provider, its key individuals and representatives who render financial services to or for or on behalf of a private equity fund only;
- (c) a financial services provider, its key individuals and representatives who renders financial services as an underwriting manager only;

**'policy'** means-

- (a) the long-term insurance policies referred to in the definition of 'Long-term Insurance subcategory B1' in section 1 of the Determination of Fit and Proper Requirements and which policies require no or limited underwriting; or
- (b) the long-term insurance policies referred to in the definition of 'Long-term Insurance subcategory B2' in section 1 of the Determination of Fit and Proper Requirements and which policies provide for the premiums to be invested in an investment portfolio managed by the product supplier with no option by the policyholder to change or amend that portfolio;
- (c) the short-term insurance policies, excluding-
  - (i) group policies; and
  - (ii) marine policies, engineering policies and guarantee policies as defined in section 1 of the Short-term Insurance Act, No. 53 of 1998, referred to in the definitions of 'Short-term Insurance Personal Lines' in section 1 of the Determination of Fit and Proper Requirements and which policies-
    - (aa) require no or limited underwriting;
    - (bb) define policy benefits as a sum assured, provides for the replacement of the insured asset or provides for the settlement of outstanding balances due and payable to credit providers;
    - (cc) have contract terms of 24 months or less;
    - (dd) are not subject to average; and
    - (ee) do not provide for any exclusions from liability of the insurer other than-
      - (aA) exclusions relating to unlawful conduct, provided that such exclusions may only be applied or relied on if there is a direct link between the cause of the loss and the unlawful conduct;
      - (aB) special risks referred to in the Conversion of the SASRIA Act, No. 134 of 1998; or
      - (aC) exclusions relating to the condition of any asset insured at inception of the policy other than exclusions relating to the wear and tear of the asset;
      - (aD) exclusions relating to the maintenance and usage of the insured asset under a policy that insures against unforeseen mechanical or electrical component failure;
      - (aE) exclusions relating to consequential loss;

**‘Regulations’** means the Regulations under the Long-term Insurance Act, 1998, and the Regulations under the Short-term Insurance Act, 1998;

**‘underwriting manager’** means an underwriting manager as defined in regulation 6.1 of the Regulations;

**‘wear and tear’** means the normal expected deterioration of the insured asset arising from normal usage and age.

#### **Extent of exemption and condition**

- 2 A provider is exempted from sections 3(3), 3(4), 6(1)(f) and 10 of the Determination of Fit and Proper Requirements insofar reference is made to the first level regulatory examination, provided that the provider-
- (a) successfully completes the relevant first level regulatory examination by a date to be determined by the Registrar of Financial Services Providers;
  - (b) must register the exemption with the Registrar in the prescribed format and manner by 30 June 2012 or upon application for authorisation in case of an unauthorised financial services provider; and
  - (c) must inform the Registrar in writing within 15 days after the change has taken place, of any change in respect of the information that was submitted for purposes of registering the exemption.

#### **Amendment and withdrawal of exemption and conditions**

- 3 The exemption mentioned in paragraph 2 is subject to-
- (a) amendment thereof published by the registrar by notice in the *Gazette*; and
  - (b) withdrawal in like manner.

#### **Short title and commencement**

- 4 This Exemption is called the Exemption of Certain Persons from the Level 1 Regulatory Examination Requirements, 2012, and comes into operation on the date of publication in the *Gazette*.
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