

**BOARD NOTICE 208 OF 2012****FINANCIAL SERVICES BOARD  
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002  
(ACT NO. 37 OF 2002)****EXEMPTION OF CERTAIN PERSONS CONDUCTING FINANCIAL SERVICES RELATED  
BUSINESS WITH PRIVATE EQUITY FUNDS**

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 provisions of the Act when conducting financial services related business with a private equity fund, 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 CONDUCTING FINANCIAL SERVICES RELATED  
BUSINESS WITH PRIVATE EQUITY FUNDS****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-

**'associate'** means an 'associate' as defined in section 1(1) of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

**'Code of Conduct for Discretionary FSPs'** means the Code of Conduct for Discretionary FSPs, 2003, contained in Chapter II of the Notice on Codes of Conduct for Administrative and Discretionary FSPs, published by Notice 79 of 2003 in Gazette No. 25299 of 8 August 2003, as amended;

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

**'clients'** means the persons, other than the provider or its associates, who have committed capital to the private equity fund;

**'pension fund'** means a pension fund and the board or board members as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

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

- (a) has as its principle business the making of equity, equity orientated or equity related investments primarily in unlisted companies or ventures to earn income or 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 Category II FSP that render financial services to a private equity fund.

### **Extent of exemption and conditions**

#### **2 (a) A provider is exempted from-**

- (i) section 5(1)(c) of the Discretionary Code of Conduct in respect of mandates concluded prior to the date referred to in paragraph 4 hereunder provided the provider, in writing, has informed clients of the risks associated with investing in private equity funds and local and foreign financial products with particular reference to any currency risk or informs clients of the aforementioned risks within six months from the date referred to in paragraph 4;
  - (ii) section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded prior to the date referred to in paragraph 4 hereunder;
  - (iii) section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded after the date referred to in paragraph 4 hereunder provided clients, who in the aggregate have committed 75% of the capital to the private equity fund, have the right to terminate, for any reason whatsoever, the mandate of the provider after notice in writing of not more than 180 days;
  - (iv) section 9(4)(c) of the Determination of Fit and Proper Requirements until 30 June 2014 provided such provider renders financial services to one or more private equity funds only.
- (b) The exemptions referred to in paragraph 2 are subject to the conditions that the provider must-
- (i) register the exemption with the Registrar in the prescribed format and manner; and
  - (ii) 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 exemptions and conditions referred to in paragraphs 2 are 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 conducting Financial Services related business with a Private Equity Fund, 2012, and comes into operation on the date of publication in the *Gazette*.