BOARD NOTICE 103 OF 2004

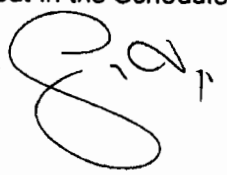
FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

(ACT NO. 37 OF 2002)

EXEMPTION OF BANKS IN RESPECT OF CERTAIN CLIENTS

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 44 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), exempt banks, to the extent and subject to the condition set out in the Schedule.



J VAN ROOYEN,

Registrar of Financial Services Providers

SCHEDULE

EXEMPTION OF BANKS IN RESPECT OF CERTAIN CLIENTS

Definitions

1. In this Schedule, "the FAIS 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 FAIS Act shall have that meaning, and unless the context otherwise indicates-

"bank" means a 'bank', 'branch', 'branch of a bank', 'mutual bank' or 'representative office' as defined in section 1(1) of the Banks Act, 1994 (Act No. 94 of 1994), who renders a financial service to a client as a regular feature of its business and belongs to 'Category I' as defined in paragraph 1(1) of 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;

"client", in relation to a bank, means-

(a) another bank;

(b) a financial services provider who is registered licensed, recognised, approved or otherwise authorised by-

(i) the Registrar of Long-term Insurance to conduct long-term insurance business;

(ii) the Registrar of Short-term Insurance to conduct short-term insurance business;

(c) a person outside the Republic who-

(i) as a regular feature of the person's business, renders a service similar to a 'financial service' as defined in section 1(1) of the FAIS Act ; and

(ii) is registered, licensed, recognised, approved or otherwise authorised to conduct the business of a bank or a business referred to in paragraph (b) by a foreign regulator, with functions similar to those of the Registrar of Banks or a Registrar referred to in the said paragraph;

(d) a central bank or other national monetary authority of any country, state or territory;

(e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the bank that the market value of the assets

managed by the person will exceed R1 billion at all times of the rendering of financial services to the person;

(f) any other person included in the definition of 'client' in section 1(1) of the Act, who has confirmed to the satisfaction of the bank that the person will have assets of which the net asset value will exceed R20 million at all times of the rendering of financial services to the person, and who is not–

(i) a natural person;

(ii) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);

(iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998),

Objective of exemption

2. Banks have submitted an exemption application in respect of the rendering of financial services in the course of merchant banking business.

The registrar is of the view that the provisions of the FAIS Act can hardly be applied where a bank is confronted by large corporate and other clients in a business situation where clients will usually have sufficient know-how and expertise, or access thereto. Certain of these clients will be "execution-only" clients who will have a fixed mind on the services required, leaving the bank with a limited discretion in the rendering of the required service.

Having regard particularly to the applicable requirements for an exemption from section 7(1) of the FAIS Act, as set out in section 44(1)(b) and (c) of the FAIS Act, the registrar is also satisfied that the requested exemption can hardly frustrate the achievement of any object of the FAIS Act, particularly as the exemption will not apply to several classes of clients still in need of full statutory protection.

The registrar is in addition satisfied that under current economic and public financial circumstances, the granting of the requested exemption does not seem to be in conflict with public interest, and that the public interest in sound merchant banking business, which is apparently conducted in terms of proper international standards and norms, may not be capable of being served by the application of section 7 of the FAIS Act, conjointly with other provisions of the FAIS Act, and may obviously result in financial or other hardship or prejudice to the relevant parties.

The registrar is however, despite the considerations mentioned above, satisfied that economic and public financial circumstances and current business practices and client bases of the relevant banks may change even in the near future, and that the non-applicability of the provisions of the FAIS Act referred to above, may in practice be proved to frustrate an object of the FAIS Act to provide and promote client protection, and that at this stage an exemption of only limited duration must be granted.

Duration of exemption

3. A bank is exempted until 30 September 2006 from section 7(1) of the FAIS Act.

Amendment and withdrawal of exemption

4. The exemption mentioned in paragraph 3 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

5. This Exemption is called the Exemption of Banks in respect of Certain Clients, 2004, and comes into operation on the date determined by the Minister in terms of section 7(1) of the FAIS Act.