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BOARD NOTICES

BOARD NOTICE 126 OF 2010

EXEMPTION IN RESPECT OF SERVICES UNDER SUPERVISION RENDERED BY COMPLIANCE OFFICERS, 2010

I, Dube Phineas Tshidi, 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 rendering compliance services under supervision in accordance with the requirements and conditions set out in the Schedule, from-

- (a) any provision of the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2008, or of any measure promulgated thereunder; and
- (b) whenever that Notice is repealed and replaced by a corresponding Notice on the qualifications and experience of compliance officers, from any provision of the latter Notice, or any measure promulgated thereunder,

which is irreconcilable with a provision set out in the Schedule.



D P TSHIDI,

Registrar of Financial Services Providers

SCHEDULE

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 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-

"approval" or **"approved"** or **"date of approval"** means the date on which a supervisee was first granted Phase I and Phase II approval;

"direct supervision" means the supervision of the compliance services rendered by a supervisee under the guidance, instructions and supervision of a supervisor, and which occurs on a regular (ranging between daily and weekly) basis;

"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 fortnightly to monthly basis;

"services under supervision" means compliance services rendered in relation to one or more Categories of providers, by a supervisee who does not meet the required experience and 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 a person who meets the qualification requirements and who renders services under supervision until the required requirements for experience and regulatory examination have been met by that person;

"supervision agreement" means the written agreement by the financial services provider and supervisor with a supervisee regarding the rendering of services under supervision by the supervisee;

"supervisor" means an approved compliance officer responsible for direct supervision and ongoing level of supervision of a supervisee.

Objectives of exemption

2. Section 17(1)(b) of the Act determines that an approved compliance officer must, *inter alia*, at all times be competent to act with reference to qualifications and experience requirements contemplated in section 17(1)(b) of the Act. The objective of the exemption is to relieve persons (supervisees) rendering services under supervision of the obligation under section 17(1)(b) as regards the experience and regulatory examination requirements. This implies that a supervisee will, with regard to the experience and regulatory examination requirements, not have to comply with the standards set for the compliance officer at date of first appointment. The registrar is satisfied that the exemption meets the requirements of section 44(4) of the Act, read with section 44(1), (2) and (3) of the Act.

Extent of exemption

3. The extent of the exemption is set out in the registrar's enacting clause to the exemption and operates subject to the requirements and conditions set out in this Schedule.

Requirements and conditions

4. (1) A compliance officer or compliance practice that provides a supervisee with the opportunity to render services under supervision, must satisfy the registrar that the compliance officer or compliance practice-
 - (a) has the operational ability to monitor the rendering of services under supervision; and
 - (b) can through or as an approved compliance officer act as supervisor of the supervisee that renders services under supervision.
- (2) A compliance officer or compliance practice that intends to provide a supervisee with the opportunity to render services under supervision must-
 - (a) ensure that the supervisee is co-appointed with the supervisor as compliance officer of the FSP concerned;
 - (b) ensure that the supervisee is monitored under the direct supervision and ongoing level of supervision of the supervisor concerned.
- (3) A supervisee that only meets the required qualification requirements on approval may render services under supervision whilst obtaining the required experience and regulatory examination.
- (4) The following will apply to the period a supervisee renders services under supervision:

- (a) The maximum period any supervisee may render services under supervision is three years from date of approval;
 - (b) the relevant period commences on the date the supervisee is approved to render services under supervision; and
 - (c) any significant interruption (six consecutive weeks or longer) while obtaining the required experience and regulatory examination must be compensated for by arranging for an additional period for monitoring the rendering of services under supervision, equal to the period interrupted.
- (5) Supervision may include one or more of the following activities:
 - (a) Sign-off by a supervisor on services rendered under supervision;
 - (b) pre-reporting sign-off by a supervisor where services are rendered under supervision;
 - (c) attending meetings with supervisee where the purpose of the meeting is the rendering of services under supervision;
 - (d) appropriate post-monitoring sampling;
 - (e) follow-up calls to confirm certain aspects of the rendering of services under supervision;
 - (f) any other activity that enables the supervisor to scrutinise the activities of the supervisee in respect of the rendering of services under supervision:
- (6) In the case of Categories II and IIA providers, the supervisor must check and sign-off that the supervisee has monitored mandate compliance controls implemented by the FSP.
- (7) Supervision arrangements must be arranged in accordance with the following specific requirements:
 - (a) Selection of the supervisor:

The FSP, compliance practice or compliance officer 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 supervision agreement, and that there is regular contact that enables the transfer of skills, which may include face-to-face contact or contact via electronic means, between the supervisee and supervisor in the execution of duties.
 - (b) Supervision agreement:

There must be an agreement that details the procedures regarding the rendering of services under supervision.
 - (c) Supervisor responsibilities:
 - (i) The supervisor must supervise at all times the proper execution of duties by the supervisee;
 - (ii) the supervisor must ensure that the supervisee has a good understanding of duties in the rendering of services under supervision which must include but, not be limited to-
 - (aa) conducting a risk assessment of the business;
 - (bb) compilation of an appropriate risk management plan; and
 - (cc) implementation of appropriate processes and procedures;
 - (iii) the supervisor must observe selected meetings by the supervisee in the rendering of services under supervision, the frequency of which may vary according to the complexity of the

- financial service rendered by the financial services provider; the complexity of the financial products offered; the experience of the supervisee; or the qualifications of the supervisee;
 - (iv) the supervisor must be 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 compliance related advice given by the supervisee for appropriateness; and
 - (vi) the supervisor and supervisee must have documented properly evidence of rendering services under 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 agreement;
 - (ii) provide the supervisor with any records and or documents regarding the rendering of services under supervision;
 - (iii) where such supervisee is a compliance officer other than an internal compliance officer, in interaction with FSPs, disclose that the supervisee acts under supervision;
 - (iv) request guidance from the supervisor if in doubt when performing any duties in relation to the rendering of services under supervision.
 - (e) Supervision applicable to compliance officers of Categories I and IV providers:
 - (i) A supervisee rendering services under supervision is not allowed to conduct any unaccompanied monitoring of financial services rendered to clients during the first year under supervision;
 - (ii) A supervisee rendering services under supervision may conduct unaccompanied monitoring reviews during the second and third year under supervision, but is not allowed to provide the final sign-off on compliance reports submitted to senior management and the registrar in respect of the rendering of financial services to clients;
 - (iii) A supervisee rendering services under supervision is not allowed to complete the annual compliance report on behalf of a financial services provider.
 - (f) Supervision applicable to compliance officers of Categories II, IIA and III providers:
 - (i) The supervisor must, where the supervisee is rendering services under supervision with respect to Categories II and IIA providers, review and approve in writing the rendering of such services prior to conclusion of any review;
 - (ii) a supervisee rendering services under supervision is not allowed to conduct any unaccompanied monitoring of financial services rendered to clients during the first two years under supervision;
 - (iii) a supervisee rendering services under supervision may conduct unaccompanied monitoring reviews during the third year under supervision, but is not allowed to provide the final sign-off on compliance reports submitted to senior management and the registrar in respect of the rendering of financial services to clients;

- (iv) a supervisee rendering services under supervision is not allowed to complete the annual compliance report on behalf of a financial services provider.

Amendment or withdrawal

- 5. 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.

Short title and commencement

- 6. This Exemption is called the Exemption in respect of Services under Supervision rendered by Compliance Officers, 2010, and comes into operation on the date of publication thereof in the *Gazette*.