BOARD NOTICE 131 OF 2003

FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2003

(ACT NO 37 OF 2003)

EXEMPTION OF AUTHORISED FINANCIAL SERVICES PROVIDERS AND REPRESENTATIVES CONDUCTING SHORT-TERM DEPOSIT BUSINESS FROM CERTAIN FIT AND PROPER REQUIREMENTS AND THE GENERAL CODE WHEN RENDERING FINANCIAL SERVICES RELATING TO MONEY MARKET FUNDS

I, Jeffrey van Rooyen, 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), authorised financial services providers and representatives conducting short-term deposit business from certain provisions of the Fit and Proper Requirements and the General Code when rendering financial services relating to money market funds, to the extent and subject to the conditions as set out in the Schedule.

J VAN ROOYEN,

Registrar of Financial Services Providers

SCHEDULE

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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 shall have that meaning and, unless the context otherwise indicates-

"Fit and Proper Requirements" means 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;

"General Code" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, published by Board Notice No. 80 of 2003 in *Gazette* No. 25299 of 8 August 2003;

"money market fund" means a 'money market portfolio' contemplated in Chapters III of the Determination of securities and classes of securities that may be included in a portfolio of a collective investment scheme in securities and the manner in which and limits and conditions subject to which securities may be so included, published by Board Notice No. 2071 of 2003 in *Gazette* No. 24984 of 1 August 2003;

"provider" means an authorised financial services provider which is a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), conducting short-term deposit business and includes, where appropriate, any representative of the provider, when any such provider renders financial services relating to money market funds;

"short-term deposit business" means short-term deposit business as defined in the Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposit Business, published by Board Notice No. … of 2003 in *Gazette* No. … of 2003;

"Specific Code of Conduct" means the Code referred to in the definition of 'short-term deposit business'.

Objective of exemptions

2. The objective of the exemptions mentioned in paragraph 3, is to address the possibility of regulatory arbitrage between financial products that are substantially similar in nature, purpose and duration.

A money market fund comprises of the similar underlying assets as those of a deposit in a money market account. There appears to be reasonable grounds to allow banks to give advice and perform intermediary services with regard to money market funds without the necessity of complying with the higher standards required in the Fit and Proper Determination for other providers rendering financial services in respect of a financial product referred to in paragraph (b) of the definition of '*financial product*' in section 1(1) of the Act ('*participatory interests in collective investment schemes*').

The lastmentioned providers are required to adhere to the General Code. On consideration, there appears to be reasonable grounds for exempting banks from the provisions of that Code due to the similar nature of the relevant products and the possibility of regulatory arbitrage if they are required to adhere to the more stringent requirements of the General Code. Such exemption is in paragraph 3 made subject to the condition that they comply with the Specific Code of Conduct, which should ensure consumer protection when they render financial services in respect of money market funds.

Extent of exemptions

3.1 A provider is exempted from paragraph 3(1) of the Fit and Proper Determination as regards the minimum experiences required in Column Two, the minimum academic standards required in Column Three and the conditions required in Column Four, of Table A in Part III of that Determination, in respect of Subcategory (9) in Column One when rendering financial services with regard to a money market fund. This exemption is subject to the condition that such provider conforms to all the requirements referred to in respect of Subcategory (13) of Table A in the said Part III.

3.2 A provider is exempted from the provisions contained in the General Code when rendering a financial service with regard to a money market fund. This exemption is subject to the condition that any such provider complies with the provisions of the Specific Code of Conduct at all times when rendering financial services with regard to a money market fund.

Amendment and withdrawal

4. An exemption mentioned in paragraph 3-

(a) is subject to amendment thereof published by the registrar in the *Gazette*; and

(b) remains operative until withdrawn in like manner.

Short title and commencement

5. This Exemption is called the Exemption of Authorised Financial Services Providers and Representatives conducting Short-term Deposit Business from certain Fit and Proper Requirements and the General Code when rendering Financial Services relating to Money Market Funds, 2003, and comes into operation on the date determined by the Minister in terms of section 7(1) of the Act.