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BOARD NOTICE 88 OF 2007

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

APPLICATION BY FINANCIAL SERVICES PROVIDERS FOR AUTHORISATION BY THE FINANCIAL SERVICES BOARD AMENDMENT DETERMINATION, 2007

I, Robert James Gourlay Barrow, Registrar of Financial Services Providers, hereby, under section 8(1) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), amend the Application by Financial Services Providers for Authorisation by the Financial Services Board (promulgated by Board Notice 98 of 2003 in *Gazette* No. 25523 of 3 October 2003), as set out in the Schedule.

RJG Barrow,
Registrar of Financial Services Providers

SCHEDULE

APPLICATION BY FINANCIAL SERVICES PROVIDERS FOR AUTHORISATION BY THE FINANCIAL SERVICES BOARD AMENDMENT DETERMINATION, 2007

[**General Note:** In this Schedule words underlined with a solid line indicate insertions in existing enactments, and words in bold type square brackets indicate deletions from existing enactments.]

Definition

1. In this Schedule "the Application" means the Application by Financial Services Providers for Authorisation by the Financial Services Board, promulgated by Board Notice 98 of 2003 in *Gazette* No. 25523 of 3 October 2003.

Substitution of title of Application

2. (a) The following title is hereby substituted for the title of the Application:

"DETERMINATION OF FORMS OF **[APPLICATION BY FINANCIAL SERVICES PROVIDERS]** APPLICATION FOR AUTHORISATION AS FINANCIAL SERVICES PROVIDERS **[BY THE FINANCIAL SERVICES BOARD]** , 2003".

(b) Any reference in any law or document to the Application by Financial Services Providers for authorisation as Financial Services Providers by the Financial Services Board, 2003, is construed, unless the context indicates otherwise or it is otherwise inappropriate, as a reference to the Determination of Forms of Applications for Authorisation as Financial Services Providers, 2003, referred to in subparagraph (a) of this paragraph.

Amendment of Introduction to Application

3. The following paragraph is hereby inserted in the Schedule to the Application after the first paragraph appearing in the Introduction (preceding the Index of Forms):

"A person holding a licence as a discretionary FSP on the date of publication of the Determination of Fit and Proper Requirements for Financial Services Providers Amendment Determination, 2007, in the *Gazette*, who wishes to extend their licence must on a date at least two months prior to the date of coming into operation of that Determination submit, in accordance with the provisions of this Introduction and on forms FSP 15, 15A, 15B and 15C, an application for approval as a Category IIA FSP.".

Addition of Forms FSP 15, 15A, 15B and 15C to Application

4. The following Forms are hereby added to the Application:

Form FSP 15 – Page 1 of 2

APPLICATION FOR APPROVAL AS A CATEGORY IIA FSP

FSP No

Name

Instructions:
The application must be accompanied with the prescribed fee and the attachments as indicated in the form below.

All attachments must be clearly marked on each page

Where an amendment to a license is done a new license certificate will be issued and if you require additional certified copies please specify the amount of copies and pay the prescribed amount.

1.1 Contact person in terms of application

1.2 Telephone number of contact person

1.3 Fax number of contact person

1.4 E-mail address of contact person

1.5 Number of certified license copies required

1.6 List of attachments to the application form

Number	Requirement	Attachment number	Number of pages
1	FSP 15A form completed for each key individual that will be involved in overseeing or managing hedge funds.		
2	FSP 15B form relating to the operational ability of the financial services provider relating to hedge funds.		
3	FSP 15C form relating to the hedge funds and the underlying clients of the hedge funds (If the information relating to the underlying clients is not available to the applicant reasons must be provided why the information can not be submitted)		
4	A specimen mandate relating to the management of hedge funds must be attach to the forms.		
5	Details (in the format of the table attached to FSP15C) of the types of clients for whom the manager manages hedge fund assets or portfolios, as well as total market value and the percentages of hedge fund assets managed for each category of client. The percentages must be based on the most recent portfolio valuations available.		
6	A copy of the latest audited financial statements of the financial services provider. If the financial statements are older than 3 months the latest management accounts.		
7	Description of the risk management process as required in terms of Part IX of the General Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003, that is employed in the business with specific reference to of hedge fund management.		
8.1	Names, ID numbers, qualifications and experience of the person(s) responsible for risk management of hedge fund portfolios (in the case of the function being outsourced provide full details of the entity and responsible persons)		
8.2	Names, ID numbers, qualifications and experience of the person(s) responsible for administration of hedge fund portfolios (in the case of the function being outsourced provide full details of the entity and responsible persons) must be provided in a separate schedule		
8.3	Names, ID numbers, qualifications and experience of the person(s) responsible for the valuation of hedge fund portfolios (in the case of the function being outsourced provide full details of the entity and responsible persons) must be provided in a separate schedule		

Form FSP 15 – Page 2 of 2

Declaration by the Financial Services Provider
(A Key Individual of a close corporation, partnership, trust and sole proprietor or the managing director or chief executive officer of a company must sign this declaration)

I confirm that the information contained in this application is accurate.

Name: _____ *Capacity:* _____

Date: _____ *Signature:* _____

Form FSP 15A– Page 1 of 3

APPLICATION FOR APPROVAL AS A CATEGORY IIA FSP
KEY INDIVIDUAL DETAIL

FSB

A. Full Names of Key Individual

B. Details of Key Individual

Title

Initials

First Name

Surname

ID/Passport Number

Date of Birth

Date of appointment to current position

C. Contact details:

Physical Address

Postal Code

Postal Address

Postal Code

Telephone Number

Fax Number
(if applicable)

Mobile Phone Number
(if applicable)

E-mail Address
(if applicable)

D. Role in the organisation:

- Company director ☐
- Member of a close corporation ☐
- Trustee of a trust ☐
- Partner in a partnership ☐
- Manager ☐
- Other ☐

(If "other", provide a short description of the key individual's role)

Form FSP 15A– Page 2 of 3

E. Fit and Proper Requirements – Character qualities of honesty and integrity questions

*If the answer to any of the questions is **YES**, provide full details and attach to the application form*

	Questions	Yes	No
1	Has an adverse finding been made against you within a period of five years preceding the date of application in any civil or criminal proceedings by a court of law (whether in the Republic of South Africa or elsewhere) in which you were found to have acted fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty?	☐	☐
2	Have you within a period of five years preceding the date of application been found guilty by any professional or financial services industry body (whether in the Republic or elsewhere), of an act of dishonesty, negligence, incompetence or mismanagement?	☐	☐
3	Have you within a period of five years preceding the date of application been denied membership of any body referred to in paragraph 2 on account of an act of dishonesty, negligence, incompetence or mismanagement?	☐	☐
4	Have you within a period of five years preceding the date of application been found guilty by any regulatory or supervisory body (whether in the Republic or elsewhere) of an act of dishonesty, negligence, incompetence or mismanagement?	☐	☐
5.	Have you within a period of five years preceding the date of application been found guilty by any regulatory or supervisory body (whether in the Republic or elsewhere), recognised by the Board, or has an authorisation to carry on business has been refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement?	☐	☐
6.	Have you at any time prior to the date of application been disqualified or prohibited by any court of law (whether in the Republic or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not?	☐	☐

F. Section 8(2)(a) of the Act – Additional Information

	Questions	Yes	No
1	Have you been refused the right to carry on or restricted from carrying on a trade, business or profession for which a specific license, registration or other authority is required by law in any country?	☐	☐
2	Have you been issued with a prohibition order under any Act administered by the Financial Services Board or been prohibited by other regulatory bodies from operating in the financial services industry?	☐	☐
3	Have you been involved with a corporation, which has been censured, disciplined, suspended or refused membership or registration by a stock exchange, futures exchange, other market or regulatory authority?	☐	☐
4	Have you had any judgment (including a finding of fraud, misrepresentation or dishonesty) given against you in any civil proceedings, in South Africa or elsewhere or are there any proceedings now pending which may lead to such a judgment?	☐	☐
5	Have you knowingly or negligently aided or abetted other persons in the breaching of any laws, regulations, exchange rules and/or codes of conduct?	☐	☐
6	Have you been the subject of any investigation or disciplinary proceedings by any regulatory authority (whether in the Republic or elsewhere) or exchange, professional body or government body or agency?	☐	☐
7	Has your estate ever been sequestrated?	☐	☐
8	Have you ever been a controlling shareholder, director of a company or member of a close corporation at the time it was placed under judicial management or in provisional or final liquidation?	☐	☐
9	Have you ever been refused a licence or registration in any place under any law, which requires licensing or registration in relation to securities, futures, leveraged foreign exchange or insurance activities?	☐	☐
10	Have you ever been refused authorisation to carry on business by any regulatory body (whether in the Republic or elsewhere), recognised by the Financial Services Board or has such authorisation ever been suspended or revoked by any such body, because of negligence, incompetence or mismanagement?	☐	☐
11	Do you have any additional information, which should be brought to the Registrar's attention, which may have an impact on the evaluation, by the Registrar of your good character and integrity?	☐	☐

Form FSP 15A– Page 3 of 3

G. Qualifications

Institution that issued the qualification	Qualification	Year obtained

H. Employment history

Provide a detailed CV of the key individual's experience in management of hedge funds strategies. The CV must include sufficient detail to enable the Registrar to ascertain that person comply with required experience as set out in the Determination of Fit and Proper Requirements for Financial Services Providers, 2006 as ammended

I. References

Provide three letters of referees with regard to the key individual's employment history. The referees must provide sufficient detail of experience that is required (refer to the definition of experience above).

Form FSP 15B– Page 1 of 1

APPLICATION FOR APPROVAL AS A CATEGORY IIA FSP
OPERATIONAL ABILITY

A	Operational ability - General Questions	Yes	No	Not applicable
1	Do you have guarantees, professional indemnity or fidelity insurance cover in respect of the clients of the provider or representatives? (Attach a copy of guarantees or insurance policies if the answer is "Yes").	☐	☐	☐
2	Will any activities (except the appointment of an external compliance function) of the provider be outsourced? (If Yes answer question 3)	☐	☐	☐
3	Outsourcing			
3.1	Which activities will be outsourced (Please note that a provider cannot outsource any Financial Services)? (Provide detail in a separate document)			
3.2	What is the name of the entity to which you intend to outsource to? (Indicate whether it is a related party)			
		Yes	**No**	
3.3	Provide copies of service level or other agreements in place with outsourced entities?			
3.4	Attach an explanation of the process in place to ensure that providers selected for any outsourced functions are suitable.			
3.5	Is the outsourced entity an approved FSP?	☐	☐	☐

B	Operational ability - Specific questions	Yes	No	Not applicable
1	Do you receive money from clients directly?	☐	☐	
2	If yes, do you have a separate bank account with a registered bank into which clients' monies are deposited? (Attach a copy of bank statement(s) or a letter from the bank verifying the account(s) name and number)	☐	☐	☐
3	Do you have more than one specimen mandate relating to the management of hedge funds?	☐	☐	
4	Are all the specimen mandates attached to the application form (mandates must be attached for approval)?	☐	☐	
5	Do you use a nominee company to register clients' assets?	☐	☐	
6	Is the nominee company approved in terms of the Financial Services Board's nominee policy?	☐	☐	☐
7	Provide details of the entity/ person responsible for valuation of the hedge funds portfolios.	☐	☐	☐
8	Are the valuation process audited? Provide the detail of the auditors and a responsible partner responsible for audit (as well as a copy of the latest audit report).	☐	☐	
9	Do you utilise Over-the-Counter products in the management of hedge fund portfolios?	☐	☐	

Form FSP 15C– Page 1 of 1

APPLICATION FOR APPROVAL AS A CATEGORY IIA FSP OPERATIONAL ABILITY

Type of hedge fund clients	Total hedge fund assets market value of type of client portfolios	Percentage of manager's total hedge fund assets managed for this category of client
Trusts		
Partnerships (please specify the type of partnership)		
Companies (please specify the type of company)		
Other (please specify)		
Total		

Type of investor invested in hedge funds	Total hedge fund assets market value of type of investors portfolios	Percentage of manager's total hedge fund assets managed for this category of investor
Individuals		
Retirement funds		
Trusts		
Partnerships		
Companies (excluding long and short-term insurers)		
Long-term insurers		
Short-term insurers		
Other (please specify)		
Managers own seed capital		
Total		

Addition of substantive paragraph to Application

5. The following separate paragraph is hereby added to the Application after Form 15C:

"**SHORT TITLE**

This Determination is called the Determination of Forms of Application for Authorisation as Financial Services Providers, 2003.".

Short title and commencement

6. This Determination is called the Application by Financial Services Providers for Authorisation by the Financial Services Board Amendment Determination, 2007, and comes into operation on the date of publication thereof in the *Gazette*.