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BOARD NOTICE 89 OF 2007

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

NOTICE ON CODES OF CONDUCT FOR ADMINISTRATIVE AND DISCRETIONARY FSPs AMENDMENT NOTICE, 2007

I, Robert James Gourlay Barrow, Registrar of Financial Services Providers, hereby, after consultation with the Advisory Committee on Financial Services Providers, under section 15 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), amend Chapter II in the Schedule to the Notice on Codes of Conduct for Administrative and Discretionary FSPs, 2003, as set out in the Schedule to this Notice.

RJG Barrow,
Registrar of Financial Services Providers

SCHEDULE

NOTICE ON CODES OF CONDUCT FOR ADMINISTRATIVE AND DISCRETIONARY FSPs AMENDMENT NOTICE, 2007

[General Note: In this Schedule words underlined with a solid line indicate insertions in existing enactments.**]**

Definitions

1. In this Schedule "the Notice" means the Notice on Codes of Conduct for Administrative and Discretionary FSPs, 2003.

Amendment of Schedule to Notice

2. Chapter II in the Schedule to the Notice is hereby amended-

(a) by the insertion, in subsection 2.1 of section 2 of that Chapter, immediately prior to the definition of **"nominee company"**, of the following definitions:

"fund of hedge funds" means a portfolio that, apart from assets in liquid form, consists of an interest, holding or investment in one or more other hedge funds;

"hedge", in relation to a hedge fund, means to enter into transactions that protect against adverse price movements and limit exposures to specific risks;

'hedge fund' means a portfolio which uses any strategy or takes any position which could result in the portfolio incurring losses greater than its aggregate market value at any point in time, and which strategies or positions include but are not limited to-

(a) leverage; or

(b) net short positions;

'hedge fund FSP' means a financial services provider-

(a) that renders intermediary services of a discretionary nature in relation to a particular hedge fund or fund of hedge funds in connection with a particular financial product referred to in the definition of 'administrative FSP' in subsection 2.1 of section 2 of Chapter 1 of this Schedule; and

(b) acting for that purpose specifically in accordance with the provisions of the respective codes set out in this Chapter and Chapter III of this Schedule, read with the Act, the General Code of Conduct for Authorised Financial Services Providers, 2002 (where applicable), and any other applicable law;

'**leverage**', means-

(a) any position in which the delta factor would be less than -1 or greater than 1; or

(b) a position in which the nominal exposures to assets in the portfolio is less than nil or more than 100% of the market value of the portfolio;

'**net short position**', means a condition in which a portfolio has a greater nominal exposure to short positions than long positions in any asset class or in aggregate across the portfolio, meaning that more capital (including collateral) supports short positions than is invested in long positions and which may in certain cases require additional capital to be invested in the portfolio over and above the initial capital investment;";

(b) by the addition to subsection 2.1 of that Chapter of the following definition:

"'**short position**', means-

(a) a position where an asset is sold by a seller for delivery at a future date or time, and the seller does not own such asset at the time of the sale; or

(b) in the case of a derivative instrument, a position where –

(i) a decrease in the price of the underlying asset has a positive impact on the value of the derivative instrument; or

(ii) an increase in the price of the underlying asset has a negative impact on the value of the derivative instrument."

(c) by the substitution in the said Chapter for the title of Part III thereof of the following title:

"**DUTIES OF HEDGE FUND FSPs, TRANSITIONAL PROVISION AND SHORT TITLE**"; and

(d) by the insertion in Part III of that Chapter, immediately prior to subsection 9.1, of the following section:

"**8A. Duties of hedge fund FSPs**

8A.1 The relevant requirements for discretionary FSPs apply to hedge fund FSPs and their clients as if they were originally enacted for that purpose, but subject to—

(a) the necessary changes;

(b) the provisions of this section, and provisions of the Act or any other law, which may render a particular provision applying to discretionary FSPs clearly inapplicable to a hedge fund FSP and its clients, in general or in a particular case.

8A.2 A hedge fund FSP must before rendering any intermediary services to a client who has clearly indicated to the FSP that the client requires intermediary services in connection with a financial product governed by the Act to be rendered specifically by a hedge fund FSP, provide a written disclosure to the client—

(a) of the applicability in terms of subsection 8A.1 to the relationship between the client and the FSP of the requirements for discretionary FSPs referred to in that subsection; and

(b) in the format from time to time determined by the registrar, on risks involved in hedge funds,

and obtain from the client a written confirmation of receipt of such written disclosures.

8A.3 A hedge fund FSP must, after having complied with subsection 8A.2, with the introductory provisions of subsection 5.1 and with subsection 5.2, and before rendering any intermediary services to the client, obtain an additional signed mandate from the client, in accordance with the proviso to the introductory provisions of subsection 5.1 and subsection 5.2, which apply with the necessary changes.

8A.4 The mandate from a client must confirm the existence and contents of the first mandate, if applicable as contemplated by virtue of subsections 8A.1 and 8A.3, and in particular the utilisation of a hedge fund portfolio for purposes of executing the intermediary services required by the client, and must contain express confirmation by the client that the client—

(a) approves of—

(i) the clients investment objectives, guidelines and trading philosophy of the hedge fund FSP, as disclosed and stated in the mandate;

(ii) utilisation by the hedge fund FSP of the process to be implemented in the form of strategies or positions (including leverage and/or net short positions, borrowing limits and risk management principles to be applied to mitigate interest rate, liquidity, and credit and derivative risk), risk profile and risk management (for

instance a sensitivity analysis), as disclosed and stated in the mandate; and

(b) takes note of the FSP's affirmation, as stated in the mandate, that the establishment of the relevant portfolio does not conflict with any law, and that the operation and management thereof continuously comply with any law that may be applicable thereto.".

Short title and commencement

3. This Notice is called the Notice on Codes of Conduct for Administrative and Discretionary FSPs Amendment Notice, 2007, and comes into operation on the date of publication of this Notice in the *Gazette*.